



Appeal Decision

Inquiry held 11-12, 14, 18-19 and 21 October 2022

Site visit made on 13 October

by Mike Worden BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd November 2022

Appeal Ref: APP/A1720/W/22/3299739

Land East of Newgate Lane East, Fareham, Hampshire, PO14 1AZ, 457419, 103497

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Miller Homes Ltd and Bargate Homes Ltd against Fareham Borough Council.
 - The application Ref P/22/0165/OA, is dated 31 January 2022.
 - The development proposed is outline application with all matters reserved (except access) for residential development of up to 375 dwellings, access from Newgate Lane East, landscaping and other associated infrastructure works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved apart from access. I have considered the appeal on this basis
3. Prior to the Inquiry the appellants asked me to consider amended details relating to access. These comprised minor highways alterations at the primary site access at Newgate Lane East and at the pedestrian/cycle/emergency access to Tukes Avenue. No objection was made to the submission of these details by the planning or highways authorities and indeed the changes have been made in response to highway authority comments. Having regard to the Wheatcroft principles, I consider the changes proposed to be minor and non-prejudicial. Consequently, I decided to accept them and consider them within the scheme before me.
4. I made an accompanied site visit on 13 October with the representatives of the appellants and the Council. The visit followed a walking route agreed by both parties. I also visited the site alone on 10 October and on 17 October when I visited the Stubbington bypass at the request of the appellants.
5. The Council set out 14 reasons for refusal that it would have relied upon to refuse planning permission if it had been able to determine the application. Some of these related to similar issues. Leading up to the Inquiry the parties agreed a number of matters and these were set out in statements of common ground.

6. The effect of these discussions was to reduce the numbers of matters in dispute, subject to legal agreements being secured to ensure appropriate mitigation. Therefore, matters relating to ecology, open space, SUDS provision, affordable housing and transport were not in dispute between the main parties by the time of the Inquiry. However, Hampshire County Council as highways authority maintained an objection to the proposal and gave evidence to the Inquiry. The objection was on a specific ground and in light of the evidence and the basis of the objection, I do not consider transport matters to be a main issue. I will deal with this in my decision.

Main Issues

7. Having regard to the above I consider that the main issues in this case are:
- The effect of the proposed development on the character and appearance of the area, and;
 - Whether the proposal would be consistent with the area's adopted strategy for the location of new housing

Reasons

Character and appearance

8. The appeal site comprises of four field parcels defined by mature hedgerows lying to the west of the Bridgemary/Woodcot urban area. The appeal site lies between the urban area and Newgate Lane East. To the northwest of the appeal site lie the HMS Collingwood sports field and to the immediate south lies open fields which now have planning permission for housing following appeals¹ in 2021 (the Brookers Lane decision).
9. Newgate Lane East was completed in 2018 and heads south from the Fareham urban area down to the Peel Common roundabout. It leaves the urban area between the commercial Speedfields Park area on one side and HMS Collingwood on the other side, runs alongside the HMS Collingwood sports field before running alongside the western edge of the appeal site, then the western edge of the Brooker Lane site and then the Brooker Lane recreation ground before reaching the Peel Common roundabout.
10. There is a length of tall acoustic fencing separating the Brookers Lane site from Newgate Lane East which is designed to reduce traffic noise impact on the existing Bridgemary/Woodcot community. On the western side of the new road lies the old Newgate Lane which is fronted by some ribbon development at Peel Common. In between the old road and the new road are some agricultural fields.
11. As the user of Newgate Lane East travels south the character changes from being quite urban by Speedfields Park with its retailing and commercial buildings on one side and HMS Collingwood on the other to opening out more. HMS Collingwood fields lie on the eastern side whilst on the western side the old Newgate Lane diverges away from the new road and behind it are a nursing home and a small ribbon development of houses. By the time the appeal site is reached the character of the area as seen from the road is one of a flat, wide, open landscape and clearly one of countryside.

¹ APP/J1725/W/20/3265860 and APP/A1720/W/21/3269030

12. The boundary of the appeal site with the existing development of Bridgemary/Woodcot is defined by a line of mature trees and hedgerow.
13. On the Gosport side of this boundary there is a track which serves the rear of the properties on Tukes Avenue which face away from the appeal site. Immediately to the north of the appeal site is a play area beyond a public footpath/cycleway which runs from Tukes Avenue along the top of the HMS Collingwood sports field to Newgate Lane East.
14. The appeal site is flat and mainly in agricultural use, mostly arable. From within the site the views are fairly open to the south and the west from the large fields in the southern part of the site. In the part of the site between the HMS Collingwood sports field and Tukes Avenue, the views out are more contained by trees and hedges. The field there is currently not in arable use, and is used as rough grazing.
15. From within the main part of the appeal site though views can be gained of the properties along the old Newgate Lane to the west across Newgate Lane East. The views out to the south are of a flat landscape with the north-south running hedgerows framing the open countryside views. From the western side of Newgate Lane East, the roofs of some of the houses on Tukes Avenue can be seen although, in my site visit in October, the well-defined and mature tree boundary there somewhat limits views of the Bridgemary/Woodcot urban area. As the photographs set out in the Council's evidence show, those houses are more visible in the landscape in winter and early spring.
16. The appeal site lies within area LCA 8 and sub area 8.1a of the Fareham Landscape Assessment (FLA) 2017. It describes this sub area as being affected by localised intrusion of urban influences and that it lacks the sense of remoteness and natural qualities found in other parts of the coastal plain. It states that its urban context is perceptible even if not dominating, but does conclude that its landscape value is moderate to high.
17. The FLA was prepared prior to the completion of the Newgate Lane East road and the sub area comprises the appeal site, the consented site Brookers Lane and land between Newgate Lane East and Peel Common. Even in 2017 the FLA described the character of the LCA 8 area as being influenced by the busy road corridor and from my site visit the busyness of the new road and its cutting through LCA 8 sub area 8.1a have a significant impact on the character of the area. The FLA noted the sensitivity of the area to change. It stated that significant further development would, in addition to the road scheme, almost certainly have an overwhelming urbanising effect in the longer term, potentially tipping the balance towards a predominantly urban character.
18. The proposal would have to accord with the illustrative plan submitted with the application, and this would be secured by condition. The scheme would involve the retention of an open area in the western most field of the appeal site, adjacent to Newgate Lane East, the retention of hedgerows and green corridors. It also would be restricted to properties which are no more than two storeys in height through the imposition of a condition agreed by the parties.
19. The consented development to the south, once completed, would also have the effect of reducing potential adverse impacts of the proposed scheme before me on the landscape. With reserved matters submitted and neither party suggesting the consented scheme will not be implemented, it is a material

- consideration in the assessment of potential impact. It would introduce urban form into the immediately adjacent site to the appeal scheme beyond the existing boundary line currently checking the urban development of Bridgemary/Woodcot.
20. My colleague in those Brookers Lane decisions found that the proposals before him would have a harmful effect on the character and appearance of the area. Therefore, the sense of urban context referred to in the FLA will inevitably increase as the urban area of Bridgemary/Woodcot will have been extended beyond the existing well-defined line.
 21. Travelling north from Peel Common roundabout the appeal site would largely appear to sit behind the Brookers Lane development, once completed, as Newgate Lane East bends to the east past the recreation ground and then to the west as it reaches Brookers Lane. Whilst the western most field of the appeal site would remain open, the one next to it would be developed. As a result the proposed development would jut out behind the Brookers Lane development as road users reach the point at which the acoustic fencing now ends when travelling north. It would bring urban development closer to the road than exists now from this point and this sense would be heightened by the new access.
 22. Despite the potential effect of mitigating landscaping schemes including those expected as part of the former HA2 potential allocation requirements which could be carried into this proposal, I consider that it would inevitably add to the urbanising effect as experienced from Newgate Lane East travelling in both directions which the Brookers Lane development would bring. This would also be the case when seen from the area of the old Newgate Lane to the west². As seen from accessible gaps to the rear of Tukes Avenue and from the Tukes Avenue play area, there would also be adverse impacts on landscape character, although the current views out from those locations are more restricted and so harm would be more localised.
 23. The proposal would replace open agricultural land with built development of an urban or suburban nature comprising up to 375 dwellings. The proposed development would all be served off Newgate Lane East for vehicular traffic and creation of a new roundabout and access into what would be clearly a residential development would add to the urbanising effect. This is different to the Brookers Lane site which will be served from the existing development to the east and not from Newgate Lane East.
 24. The proposal, combined with the Brookers Lane development would result in built form over the majority of the LCA8.1a area to the east of Newgate Lane east. Whilst not resulting in physical change to the land to the west of the new road, the perception of urbanising influences would undoubtedly lead to the balance being tipped to the sub area being predominantly urban in character. LCA8.1a is small and therefore susceptible to change, but this does not alter the adverse effect of the proposed scheme on the local landscape character.
 25. The appeal site was part of the HA2 site which was a potential allocation at regulation 18 stage of the emerging Local Plan. The Council may have accepted that the site was acceptable or could be made acceptable in landscape terms at that time but I am making my judgement based on the evidence before me. In

² Eg from Viewpoint 8 of the Mr Dudley's Visual Assessment in Appendix 3 of his Proof of Evidence

any event the site has never been allocated and was one of a number of sites consulted on as part of Regulation 18 consultation in 2017. It received over 500 objections. The HA2 site was not included in the publication version of the emerging Local Plan and carries little weight in this case.

26. For the reasons set out above, I consider that the proposal would lead to significant harm to the character and appearance of the area contrary to Policies CS14 and CS17 of the Fareham Local Development Framework Core Strategy 2011 (the CS) which respectively seek to prevent development which would adversely affect landscape character amongst other things; and to ensure that development responds positively and respects landscape character amongst other design considerations.
27. I will go on to consider the proposal in relation to other policies including Policy DSP40 of the Fareham Local Plan Part 2 Development Sites and Policies 2015 (the DSP). This policy sets out the approach to housing allocations and includes provision for when the Council cannot demonstrate a five year supply of housing land.

Strategy for the location of new housing

28. CS22 of the CS sets out the overarching approach to development within Strategic Gaps. The appeal site lies within the Strategic Gap between Fareham and Stubbington. CS22 states that development will not be permitted where it will either individually or cumulatively significantly affect the integrity of the gap and the physical and visual separation of the settlements. The impact of development proposals within the Strategic Gaps has been the focus of consideration by a number of my Inspector colleagues and many of their decisions were submitted in evidence to this Inquiry by both parties.
29. It is common ground between the parties that the Council cannot demonstrate a five year supply of housing land. The extent of the shortfall is disputed.
30. In this circumstance the provision in Policy DSP40 which relates to the five year land supply not being met is triggered. Five criteria (i-v) would have to be met for the position to be that the proposal may be permitted.
31. The first criteria concerns the scale of the proposal relative to the shortfall. I concur with the view of the parties that at up to 375 dwellings the proposal would be material in assisting the shortfall and that this criteria would be met. It is also agreed that criteria iv) relating to early delivery can be met and this could be assisted by the imposition of a suggested planning condition, also agreed by the parties. I will deal with criteria v) later.
32. Criteria ii) requires proposals to be sustainably located adjacent to and well related to, the existing urban settlement boundaries and can be well integrated with the neighbouring settlement. I agree with the main parties that it is sustainably located.
33. Bridgemary/Woodcot is predominantly residential in character with a variety of building styles which are generally one or two storeys in height. The appeal site is separated from the existing urban settlement boundaries by the well-defined line of trees and hedgerows which run along the back of the properties and track to the rear of Tukes Avenue. The appeal site is effectively the

- immediately adjacent field to the existing urban area. The boundary line is not a straight line and the Tukes Avenue 'triangle' opposite Woodcot Primary School juts out to the west. Furthermore, the consented Brookers Lane development will extend the urban settlement out further than at present by some degree and will become part of the urban settlement itself.
34. However, the current proposal would push the settlement boundary out westwards considerably between the Brookers Lane development and the Tukes Avenue Play Area. This is particularly important in gap terms as the HMS Collingwood sports field is an open area within the Strategic Gap. Similar to my colleague on his assessment of the impact of the Brookers Lane proposal, I find that the proposal before me would not be particularly well related to the existing settlement boundary.
 35. The appeal site does not have many access points to link into Tukes Avenue but this is the nature of the design of the existing development particularly with the access track running along the eastern side of the boundary with the appeal site. Nonetheless there is the access track from Tukes Avenue into the most northern field of the appeal site which would be a key non-vehicle access point as shown on the illustrative plan; the non-vehicular links to the northern footpath between Newgate Lane East and Tukes Avenue and the play area; and the links that will be established to the consented scheme to the south.
 36. The appeal site relates well functionally to the existing urban area with good cycle and walking access to the public transport busway at Henry Cort Way, and schools and community facilities in Bridgemaury/Woodcot. Furthermore, the illustrative plan shows the proposed development linking into the Brookers Lane development. Although not built it is accepted by both parties that it will be and therefore it will become part of the neighbouring settlement.
 37. For these reasons, I consider that the proposal could integrate well into the neighbouring settlement, both physically and functionally. The Council has said that the functional integration is not a reason for refusal but counts against the development in the planning balance. For the reasons above, I disagree. For the reasons set out above I consider that the proposal would partly breach criterion ii).
 38. Criteria iii) requires proposals to be sensitively designed to reflect the character of the neighbouring settlement boundaries and to minimise any adverse impact on the countryside and, if relevant, the Strategic Gaps.
 39. The proposed scheme is in outline with all matters reserved apart from access and so most of its detailed design will be the subject of reserved matters. The scheme will be restricted to a maximum of two storey properties and the illustrative layout shows blocks of development separated by green corridors following the existing hedge lines. The western most field is to be left as an open area and this is secured by condition requiring conformity with the illustrative plan and planning obligation.
 40. I do not see that there is a conflict with the first part of criterion iii) which is about reflecting the character of the neighbouring settlement, assumed to be Bridgemaury/Woodcot. That development is suburban as would be the proposal. The proposed development would have a different form and layout but would be residential development of maximum two storeys also. The reserved

matters can ensure that the detailed design of layout, house design, materials etc can be reflective of the character of the neighbouring settlement.

41. The second part of criterion iii) relates to minimising any adverse impact on the countryside and the Strategic Gap, i.e., that the proposal is sensitively designed to minimise any adverse impact on the countryside and the Strategic Gap.
42. As set out in the Council's Technical Review of Areas of Special Landscape Quality and Strategic Gaps 2020 (the Tech Review), the purpose of the Strategic Gap is to prevent coalescence of separate settlements and help maintain distinct community identities.
43. The Fareham/Stubbington Strategic Gap sweeps round Stubbington in an arc joining up with the western gap, the Meon Gap. The new Stubbington bypass follows part of this arc and runs through this Strategic Gap from Bellfield down to the Peel Common Roundabout. The appeal site lies in the Strategic Gap between Stubbington and Bridgemary.
44. I have found that the proposal would cause significant harm to the character and appearance of the area. It would be harmful to landscape character. However, DSP40 does not seek to prevent development which would cause any harm to the countryside or the Strategic Gap. It clearly states that proposals should be sensitively designed to minimise any adverse impacts on the countryside and the Strategic Gap.
45. The Peel Common Inspector concluded that the policy aims to facilitate housing in the countryside relative in scale to the five-year housing land supply shortfall and that any housing in the countryside would be likely to register some adverse impact. The policy assumes that there could be some adverse impact, but an acceptable scheme would be designed to limit it. Indeed, as my colleague in the Brookers Lane decisions said, this must be the case otherwise the Policy would be likely to become self-defeating in terms of failing to reasonably respond to a housing delivery shortfall which it is, in part, designed to address.
46. My colleague inspectors in the Brookers Lane and Peel Common appeal cases³ both agreed that that the aim of DSP40 is to facilitate housing in the countryside relative in scale to the five year housing supply shortfall. They concluded that any new housing in the countryside would be likely to generate some adverse landscape and visual impact such that it would be reasonable to take 'minimise' to mean limiting any adverse impact having regard to factors such as location, scale, disposition and landscape treatment. As I have already stated I broadly agree with the factors, although they are not policy tests and not set out in policy or reasoned justification to the policy.
47. Having regard to the scheme's retention of the western field as open land, and the potential for maintaining hedgerows and creating green corridors, I find that the proposal could be designed to minimise harm in terms of disposition and internal landscape treatment as these will be primarily for reserved matters.
48. I do not agree with the appellant's witness position advanced at the Inquiry that within the Strategic Gap, there will be a core area and presumably a non-

³ CDJ.7 Peel Common appeals APP/A1720/W/20/3252180 and APP/A1720/W/20/3252185

- core area. I see nothing in the policies or evidence which supports that. The Tech Review highlights two areas in the Strategic Gap where impact may be less as a result of development, but there is no mention of 'core'.
49. In the Peel Common appeal, the Inspector found that the appeal sites were set well apart from the existing urban area beyond agricultural fields and a recreation ground. They were on the western side of Newgate Lane East. He considered that the proposals would be perceived as islands of development, set apart from the existing urban settlements.
50. In contrast, in this case, the appeal site lies adjacent to the existing built-up area and partly sits between the HMS Collingwood fields and that urban area. The built form of the proposed development would not extend much further out to the west than the consented scheme at Brookers Lane. Whilst development of the northern field would be between the HMS Collingwood sports field and the existing urban area, and the proposed development lies adjacent to the boundary of the existing urban area, and contiguous with the consented Brookers Lane site, I consider it to be far from the 'tucked in' form of development as the appellants' argue.
51. Although different in character to 8.1a landscape area, the HMS Collingwood sports fields are open and not built development and the proposed scheme would extend built form out to the west for a further length than is the case at present. Spatially the proposal would push the built development form of Bridgemary out considerably.
52. The Tech Review highlighted that Newgate Lane/Peel Common area (Study Area 8C) is at risk and states that further development in this part of the gap in addition to the road scheme would be likely to cause visual or physical coalescence of settlements on either side of the new road corridor.
53. A scheme of up to 375 dwellings is significant in scale. It is not far short of four times as large as the Brookers Lane proposal. It is significantly larger than any of the schemes in the appeal decisions in the Strategic Gap referred to me. It is not of the relatively modest size by which the Inspector in the Brookers Lane appeal described that site. It extends to around 20 hectares, although that includes the western field which is to remain open. Nevertheless, it is an area of land of significant size which would be developed within the Strategic Gap.
54. It is agreed between the parties that it is relative in scale to the five year shortfall as they both agree criterion (i) is met. In my view any consideration of proposals in relation to minimising any adverse impact on the countryside or the Strategic Gap in relation to criterion iii) must involve consideration of the scale of the proposal.
55. In this sense I see any consideration of scale in relation to criterion iii) distinct from criterion i). A scheme might be relative in scale to the shortfall of five year housing supply but be disproportionate for its setting such that it does not minimise any adverse impact. In this case I have found significant harm to the character and appearance of the area and that the proposal would lead to the character of sub area 8a changing from rural to urban.
56. The site was part of the potential HA2 allocation in the emerging Local Plan at its regulation 18 stage supported by work including Strategic Housing and Economic Land Assessments and Sustainability Appraisals. The Council was

entitled to make the decision not to take it forward as part of its preferred strategy based upon the evidence and representations. The soundness of the emerging Local Plan has been tested through the examination and the Inspector has indicated that the plan can be made sound subject to modifications which do not include HA2.

57. For the reasons I have set out, it carries little weight in this case that the appeal site was considered for allocation in an early version of the plan's preparation. That the Inspector in the Brookers Lane appeals found that the proposals before him, which only encompassed less than a quarter of the HA2 site, did not significantly affect the integrity of the Strategic Gap, does not discredit the Council's earlier decision. In any case that it is matter for the local examination not the case before me.
58. Policy CS22 of the CS does not state that there shall be no development. To conflict with this policy development would have to significantly affect the integrity of the gap, individually or cumulatively, and the physical and visual separation of settlements. In terms of cumulative impact the application of the policy must relate to the impact of both the proposed development and the consented Brookers Lane scheme given that there is nothing to suggest that this latter scheme is unlikely to happen. Whilst the Inspector in the Brookers Lane decisions found that the proposal would not significantly affect the integrity of the gap, he arrived at that considering only the site before him on the eastern side of Newgate Lane East.
59. Whilst DSP40 iii) does not reference a cumulative impact, I consider that it cannot be divorced from the overarching Strategic Gap policy in the CS, CS22 which does. In my view, cumulative impact must be a factor to consider when assessing how a scheme can be designed sensitively to minimise adverse impact. In the case before me, I consider that the cumulative impact of the 99 unit scheme at Brookers Lane and the 375 unit scheme the subject of this appeal, would significantly affect the integrity of the gap.
60. I also consider that the current proposal would reduce the sense of physical and visual separation of Bridgemary/Woodcot and Peel Common particularly in the area close to where the Newgate Lane and Newgate Lane East meet.
61. I consider that the scale of the proposal in this location would, particularly when combined with the Brookers Lane development, lead to the character of landscape study area LC8a and Strategic Gap study area 8C becoming urban rather than rural and would not represent development which is sensitively designed so as to minimise adverse impact on the countryside and the Strategic Gap.
62. For these reasons I consider that the proposal conflicts with both DSP40 and CS22.
63. Policy DSP6 of the Local Plan seeks to prevent residential development outside of the defined urban settlement boundaries. The development proposed is not one of the exceptions criteria listed in the policy and so would be contrary to it.

Other Considerations

Transport

64. The Council put forward putative reasons for refusal which included that the applicant had failed to demonstrate that the proposal would not result in an unacceptable impact on highway operation and safety and cause increased danger and inconvenience to highway users, including those travelling by sustainable modes. The Council stated that the proposal would therefore lead to a severe impact on the road network.
65. Prior to the Inquiry, the Council decided not to defend its transport reasons for refusal as it was content that additional evidence, suggested conditions and draft unilateral undertakings meant that it was satisfied that the proposal was acceptable in transport terms. Hampshire County Council however gave evidence to the Inquiry maintaining an objection to the scheme as it is concerned about a potential conflict with draft Policy DM2 of the emerging LTP4. This policy seeks to support proactive masterplanning of new development sites for high quality neighbourhoods. The provisions which that policy will seek to secure are not in place since it is a draft plan. It has very little weight in the consideration of this proposal. I give considerable weight to the position that Fareham Borough Council, having considered all of the recent transport evidence now do not raise any concerns.
66. There are many concerns from local residents and groups about the transport impact of the proposals. These include highway safety, congestion and potential adverse impacts on the local economy. The introduction of the new roundabout on Newgate Lane East would cause slight delays in journey times at peak times. However, I do not consider that this would be unreasonable and certainly not in the category of a severe impact referred to in paragraph 111 the Framework. The proposal will link to the existing public transport routes in Bridgemary and that is within walking and cycling distance of local facilities with the existing urban area. I have no demonstrable evidence that the proposal would lead to issues of highway safety or that increased traffic would impact adversely on the local economy.
67. I have taken account of the revised access proposals and consider that they do not have any material impact on the supporting evidence. Consequently, I consider that transport does not weigh against the proposal in any planning balance.

Best and most versatile agricultural land

68. Around 59% of the appeal site is made up of land classed as Grade 3A. Policy DS1 of the Local Plan states that proposals in the countryside will not be supported where they would, amongst other things, not be on the best and most versatile agricultural land (BMVL). The Council considers the loss of this land would not in itself be sufficient to justify a refusal of planning permission when Policy DSP 40 is engaged. The loss may be afforded moderate weight in the planning balance, but it would not justify dismissal on its own terms and consequently some conflict with DSP40 v) on the environmental impact as a result of loss of BMVL would not be classed as a breach of the policy as a whole.

Housing Need

69. The parties agree that the Council cannot demonstrate a five year supply of housing land. It is clear that this has been the case for some time. The Council's evidence shows that the supply has not been above 5 years in the last 5 years except in May this year when it was recorded at 5.08. Some of the figures over that time presented by the Council are higher than those confirmed by Inspectors in appeals where the evidence has been tested in hearings or inquiries. The extent of the shortfall is disputed but the parties agree that the identification of a broad magnitude is sufficient. The Council considers that the proposal would make a meaningful contribution to addressing the shortfall in the five year housing supply.
70. It is also agreed that the Housing Delivery Test (the HDT) results show that there has been a significant under delivery of housing over the last three years with only 62% of the requirement met. This is substantial under-delivery.
71. The Council argues that housing delivery will pick up as delivery has been held up by issues concerning nitrates which has affected the issuing of permissions, but which is now resolved. This may be the case although the reasons are disputed by the appellants.
72. Although on adoption of the Fareham Local Plan 2037 (the emerging Local Plan) the Council expects to be able to demonstrate a five year supply of housing by reason of a stepped trajectory, it will still be in a position whereby the most important policies of the Local Plan will be out of date as a result of the HDT. New results will not be due until late 2023 or early 2024 but it is agreed between the parties that the tests are expected to exceed 75% by early 2024.
73. The five year supply shortfall in this appeal is not as great as in the Brookers Lane decisions where the appellants argued it was as low as 0.95 but the Inspector used the Council's figure of 3.57 as his benchmark. In this appeal the appellants position is that the figure is 3.88. Furthermore, since the Brookers Lane decision where the Inspector noted that the emerging Local Plan was at a relatively early stage towards adoption, that plan has since progressed to main modification stage and adoption is anticipated in early 2023 where it is expected that a five year supply will exist.
74. There is a need for affordable housing in Fareham and the extent of this need is confirmed in the Council's Affordable Housing Background Paper September 2022 prepared for the emerging Local Plan. This need has been calculated using PPG methodology. The increase in the affordable housing requirement through this process is a matter for the local plan examination and I cannot prejudge whether it will lead to a changed housing requirement through the modification stage and so I give this very little weight in my decision. Nonetheless, it is clear that there is a need for affordable housing in the Fareham area and the contribution of this scheme of 40% affordable housing is a significant benefit.
75. Taken together, the Council considers that the provision of housing and affordable housing should be afforded substantial weight, and for the reasons I set out above, I agree.

Ecology

76. The parties have reached agreement on ecology matters subject to the necessary agreements being put into place to secure appropriate mitigation. These are set out in the signed unilateral undertakings submitted to me. These include financial contributions to the Solent Recreation Mitigation Strategy and the Councils interim strategy for mitigation for recreational impacts upon the New Forest which will ensure no adverse impact on the integrity of the Portsmouth Harbour Special Protection Area and Ramsar, the Solent and Southampton Water Special Protection Area and Ramsar and the New Forest Special Area of Conservation, Special Protection Area and Ramsar.
77. Legal agreements also secure the purchase of nitrogen credits to mitigate degradation of water quality from increased nitrogen outputs. The loss of functionally linked habitat can be mitigated through the creation and on-going management of off-site Winter Bird Mitigation Areas in Stubbington and in the north west corner of the appeal site. Both of these are also secured through unilateral undertakings. I consider that the unilateral undertakings meet the necessary tests and are required to make the proposal acceptable in planning terms. There would be some net gains for biodiversity through these measures.
78. The appellant's shadow Habitat Regulation Assessment sets out that stage 1 screening and stage 2 Appropriate Assessment have been carried out. It concludes that with the application of this mitigation there is predicted to be no adverse effect on the integrity of any European site, alone or in-combination.
79. As the competent authority, if I were to allow the appeal I would be required by Regulation 63 of the Consultation of Habitats and Species Regulations 2017 to undertake an Appropriate Assessment of the development. I would have had to have regard to the representations of Natural England in accordance with the regulations. Since I am dismissing the appeal I do not to consider this issue further.
80. For the reasons set out above the proposal would accord with Policy CS4 of the Core Strategy and DSP13 and DSP15 of the Local Plan which together and amongst other criteria, seek to protect internationally designated sites and mitigate any effects of recreational disturbance on the Solent sites.

Other Benefits

81. The scheme would provide a number of benefits in addition to the ones already set out above.
82. The construction of new homes would generate economic benefits in the short term and provide longer term economic benefits to the local community. This would attract moderate weight overall recognising the relatively short-term nature of construction related activity.

Other Matters

Impact on local infrastructure

83. A number of local residents have expressed concerns about impact on local infrastructure. The appeal site is close to community facilities in Bridgemary many which can be accessed through walking or cycling. The Council does not hold an objection on the grounds of impact on infrastructure and planning

obligations would secure appropriate mitigation in terms of education provision. I have no demonstrable evidence that the scheme would have a harmful effect on the provision of local infrastructure.

Planning Obligations

84. Signed unilateral undertakings (UU) have been submitted. These cover off site nitrate mitigation, bird habitat mitigation and a principal UU.
85. The principal UU covers a number of obligations. These include financial contributions to off-site highway works and specific agreements regarding access works, securing of travel plans, and contribution to a traffic regulation order to implement parking restrictions. There are financial contributions towards education provision.
86. The principal UU also secures contributions to both the Solent Recreation Mitigation Strategy and the New Forest Disturbance Solution and to secure the bird mitigation area. There is a separate UU to ensure appropriate bird mitigation area provision for this proposal in relation to agreements already secured in connection to the consented scheme at Brookers Lane.
87. The principal UU also includes provision for open space, play area and pedestrian/cycle route provision and management. It also secures provision for affordable housing which I consider to a benefit of the scheme to be taken account of in the planning balance.
88. Since I am dismissing the appeal on other grounds, I do not need to consider the detail of the obligations further.

Planning Balance

89. I have found that the proposal would cause harm to the character and appearance of the area and would significantly affect the integrity of the Strategic Gap and the physical and visual separation of settlements. The proposal would conflict with policies CS14, CS17 and CS22 of the CS, and DSP6 of Local Plan.
90. The Council cannot demonstrate a 5 year supply of housing land and therefore Policy DSP40 of the Local Plan comes into play. This effectively renders DSP6 as having very little weight as DSP40 allows residential development subject to criteria which are different to DSP6. DSP40 specifically aims to allow the release of land for housing in the countryside in a way that helps to address a five year supply shortfall whilst seeking to protect the countryside and Strategic Gaps from adverse impacts that have not been minimised.
91. I have found that the proposal would accord with criteria i) and iv) of Policy DSP40 but not with criteria ii) and iii). The proposal would therefore conflict with Policy DSP40 as a whole and would not accord with the Council's spatial development strategy.
92. Since there is not a 5 year supply of housing land, paragraph 11d of the Framework is triggered. In accordance with the Framework therefore the most important policies for determining the appeal are to be considered out of date and this is a material consideration.
93. The parties agree that policies CS2, CS6, CS14, and DSP6 are out of date in accordance with this paragraph and any conflict with them should be afforded

reduced weight. CS22 would also be reduced in weight due to it deriving from settlement boundaries which reflect out of date housing requirements. I consider that Policy CS22 should be afforded moderate weight. As the Inspector found at Brookers Lane, I too give Policy CS17 full weight as it is consistent with the Framework in seeking high quality design.

94. Policy DSP40 is specifically triggered when there is not a five year supply of housing land. In that sense it acts in the way that paragraph 11d seeks to in the absence of a five year supply. Its criteria are broadly consistent with the provisions of the Framework in for example recognising the intrinsic nature of the countryside and seeking to secure development which is high quality design and sympathetic to local character.
95. The Inspector at the Brookers Lane appeal considered that DSP40 may be unduly restrictive given the persistence of the housing land shortfall in spite of the policy. For the reasons set out in my decision, I consider that circumstances in this appeal are different to those which existed in those cases given the extent of the shortfall and the steps made by the Council to addressing it and to progressing the emerging Local Plan. I therefore consider that the policy carries significant weight.
96. The proposal would deliver a number of benefits. It would bring forward new housing in an area where there is an absence of supply, and would provide affordable housing in an area where it is acknowledged there is a pressing need. This carries substantial weight. There are also moderate benefits in terms of economic activity and some benefits in biodiversity net gain. These need to be weighed against the harms, which I have identified of significant harm to both the character and appearance of the area and to the Strategic Gap. In addition, there would be moderate harm in terms of loss of BMVAL.
97. I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as whole including those which seek to ensure that development recognises the intrinsic beauty of the countryside, is sympathetic to local character, is of high-quality design and achieves well-designed places.
98. I have found that the proposed development would conflict with the development plan. It would be harmful to the character and appearance of the area and would be contrary to the adopted strategy for the location of new housing. Moreover, for the reasons set out above, the application of 11d of the Framework indicates that the appeal should be dismissed.

Conclusion

99. For the reasons given above I conclude that the appeal should be dismissed.

Mike Worden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Christopher Boyle KC	
He called:	
Jeremy Gardiner BA (Hons) BPI Dip Cons (AA) MRTPI	Senior Director Pegasus (Planning)
James Atkin BSC (Hons) DIP LM CMLI	Senior Director Pegasus (Landscape)
David West MENV SCI (Hons) CENV MCIEEM	Associate Director Tetra Tech (Ecology)
Heather Knowler BA(Hons) MA MCMi	EFM Ltd (Education S106)
Tim Wall BA MSc MCIHT CMILT	Partner I-Transport Ltd Transport
Neil Tiley BSc (Hons) AssocRTPI	Senior Director Pegasus (Housing)
Aaron Hopley LLB (Hons)	Senior Associate Gateley (Legal S106)

FOR THE LOCAL PLANNING AUTHORITY:

David Lintott	Of Counsel
He called:	
Stephen Jupp BA (Hons) LLM MRTPI	Chartered Town Planner (Planning)
Ian Dudley BSc (Hons) MICFor CEnv CMLI	Associate Professional Services Manager, Nicholson Lockhart Garratt (Landscape)
Nick Sibbett BSc MSc CEcol MCIEEM CENV CMLI	Associate Director, The Landscape Partnership (Ecology)
Peter Kneen BSc (Hons) MSc MRTPI	Principal Planner Fareham BC (conditions)
Alex Roberts Assoc MRTPI MIED	Director Lambert Smith Hampton (Housing)
Gayle Wootton BSc MSc PHD MRTPI	Head of Planning Strategy and Economic Development Fareham BC (Policy)
Glenn Parkinson	Strategic Development Officer, Hampshire County Council (Education)
Hilary Hudson	Solicitor, Southampton and Fareham Legal Partnership (Legal/S106)

FOR THE COUNTY COUNCIL

Nick Gamer BA MSc MCIHT MTPS	Principal Transport Engineer, Hampshire County Council (Highways)
------------------------------	---

INTERESTED PARTIES:

Mrs Alison Roast	Lee Residents Association
Mr Bob Marshall	Fareham Society

DOCUMENTS SUBMITTED DURING THE INQUIRY

ID1	Appellants' opening submissions
ID2	Council's opening submissions
ID3	Update on Local Plan – submitted by FBC
ID4	Landscape Comparison Table
ID5	Statement from Lee Residents Association
ID6	Statement from The Fareham Society
ID7	Note from Mr Sibbett (Ecology witness for FBC) regarding status of Shadow HRA
ID 8	Report to FBC Executive Committee 10 October 2022 regarding Local Plan modifications
ID9	Schedule of Local Plan main modifications – submitted by FBC
ID10	Revised Affordable Housing Topic Paper Sept 2022
ID11	Hart Local Plan Inspectors Report – submitted by FBC
ID12	Wyre Forest Local Plan Inspectors Report – submitted by FBC
ID13	LPA correspondence to Local Plan Inspector 13 October 2022
ID14	Agenda for Housing Round Table Session
ID15	Response note from Appellants regarding Emerging Local Plan
ID16	Court Case WODC v SSHCLG and Rosconn Strategic Land 2018 EWHC 3065 Admin
ID17	Response note from FBC regarding Local Plan
ID18	Plan submitted by Appellant showing Emerging Strategic Gap with LLCA08 boundary
ID19	Plan submitted by Appellant showing Emerging Strategic Gap with sub parcel 8C boundary
ID20	Council's Closing Submission
ID21	Appellants' Closing Submission