

Our Ref: **WIN/174/BSJ/2024**

Winchester City Council
City Offices
Colebrook Street
Winchester
SO23 9LJ

13 October 2024

For the attention of Mr Steve Opacic
Former Head of Strategy

Dear Mr Opacic

Land adjoining Lodge Green, Whiteley Lane, Whiteley, Hampshire, PO15 6RW
Planning Application: Erection of two detached dwellings and garages

You will be aware that I have been challenging the decision of the Council to introduce the Meon Strategic Gap and the Gap Policies in the District for over twenty years. I believe that Gaps should never have been introduced in Winchester District. However, the principal issue with regard to the above site was the decision to define the boundary of the Gap as Whiteley Lane. The Lane is not in the Meon Valley to which the Gap refers but it is in the Hamble Valley. This has created confusion for Officers, Members of the Council and local residents who failed to appreciate this fact.

The examination of the Meon Strategic Gap has raised many questions but this has revealed issues with the creation of other gaps in the District. The Meon Strategic Gap was introduced in the Local Plan Review in 2004 (Policy CE.1). At the same time, seven local gaps were confirmed in Policy CE.2. In 2016 the local gaps were converted to Settlement Gaps which added to the confusion as they all had different characteristics. They *all failed* the tests in the PUSH Guidance published in 2008.

I have addressed this letter to you because you have been responsible for strategic development throughout the past twenty years but it is evident that many other Officers have been involved. Not one Officer or Member of the Council has examined my complaints properly and responses have revealed a 'cover up culture'. I have identified the most serious failures in this letter. The case is a scandalous and shameful debacle.

Proposal: Erection of 2 detached self build houses with detached garages, parking, turning and landscaping. 24/01343/OUT

A Planning application for the above development was validated on 29 July 2024. It was refused planning permission on the 5 September (Decision Notice ⁽¹⁾). However, the Officer's Report ⁽²⁾ stated that:-

“Having regard to the conclusions reached previously in relation to the impact the proposed development (on the same site) would have upon the settlement gap and the more recent Settlement Gap Review, no conflict with LPP1 Policy CP18 has been identified to warrant a reason for refusal on this basis.”

This is a fundamental and significant change. It means in effect that the Gap Policy should never have been applied to the planning applications and appeals over the past 20 years. It also means that the Inspectors at the Examination of Local plans in 2004, 2013 and 2016 made serious errors of judgement when they rejected objections to the Gap Policy. Furthermore, it demonstrates that seven Officers have advised Members and local residents that the site was in the Meon Gap and contrary to Policy CP18 when this was not the case.

The boundary of the Settlement follows Whiteley Lane and this means that the site remains in the defined countryside. A separate objection to the Local Plan Regulation 19 has been submitted with regard to this issue. There is a separate matter. The application was submitted for custom build housing. A recent Opinion by a Barrister in respect of another scheme for custom build housing that my practice promoted stated that:-

“a case would need to be made that the provision of custom build housing (in circumstances where the Council is failing to meet its need, and there is no plan-led solution), outweighed the conflict with the development plan”

The Council has admitted that there is a current shortfall of 182 plots as reported in the Officers Report.

Appeal Decision: Land to the East of Waitrose, A429, Malmsbury, Wiltshire ⁽³⁾
(Ref:- APP/Y3940/W/23/3317252)

This application was in outline and you will note in paragraph 2 that “the indicative plans were submitted to show how the site could be laid out for up to 26 dwellings” custom build dwellings.

Paragraph 32 states that:-

¹ Decision Notice: Planning application: Land adjoining Lodge Green, Whiteley Lane

² Officer's Report: Planning application: Land adjoining Lodge Green, Whiteley Lane

³ Appeal Decision: Land to the East of Waitrose, A429, Malmsbury, Wiltshire

“Whilst the level of harm would be considerable, I am satisfied that the public benefits of the proposal would be sufficient to outweigh the harm”.

The Conclusion in Paragraph 54 states that:-

“For the reasons above, and having regard to all other matters raised, I conclude that the appeal should be *allowed*.”

This means that the proposal for the custom build application should be permitted even though it is in the defined countryside.

The situation with regard to the significance of the Gap on the proposed development on Land adjoining Lodge Green is clear cut. However, I am concerned about the significance of the Gap Policy for several other sites. I believe that the Gap Policy NE7 that has replaced Policy CP18 in the revised Local Plan Regulation 19 should be deleted. I have submitted an objection to Policy NE7 in respect of the revised Local Plan Regulation 19 (copy attached ⁽⁴⁾).

I have set out the full case in this letter.

⁴ Objection to Policy NE7 in respect of the revised Local Plan Regulation 19

1.0 INTRODUCTION

- 1.1 The issues raised in this letter cover a long period. The decisions that were taken in the 1990's created the problems. However, although the decisions appear to be mistaken it has been impossible to address the errors or correct them. It is not clear why. In part, it reflects the politicisation of planning but it also reflects on Officers who have been unwilling to investigate the Complaints and Inspectors who have not taken objections seriously.
- 1.2 Nimbyism is so ingrained that Members are willing to overlook the most serious failures of professional conduct by Officers. The most basic tenets of Probity are ignored. Sadly, the importance of honesty has been ignored by Officers and there has been no leadership. The Chief Executive Officer, Mrs Taylor, has ignored every letter and email that I have sent seeking her intervention. She must believe that there isn't a case to answer. In the absence of any attempt to respond to these very serious matters I propose to circulate this letter and the appendices as widely as possible.
- 1.3 My main concern has been the decisions in respect of the site in Whiteley Lane. The responses to my complaints have failed to address the fundamental point that the three witnesses at the Hearing in 2021 deceived the Inspector by withholding information that would almost certainly have changed the Inspector's decisions.
- 1.4 This has also revealed that there has been no overall control of planning in Winchester District. There is no evidence that the nominal head of the department, Mr Steve Tilbury, has been involved in this case at all. Complaints about planning decisions concern strategy and development management. These two areas of planning are the responsibility of you and Mr Simon Finch, the Head of Corporate Regularity. Mr Finch, the then Head of Corporate Regularity concluded in 2022 that the Gap Policy should not be applied to the site in Whiteley Lane. I will elaborate on this point later in this letter.
- 1.5 I do accept that the Officers are not responsible for all of the problems. I have identified the failings of the Planning Inspectorate and I have set these out in a letter to Mr Richard Schofield, the Head of Profession at the Planning Inspectorate. Mr Schofield claimed the training was 'second to none'. I have experienced unforgiveable professional incompetence over a period of 20 years by Inspectors. Indeed, I am convinced that three appeals would have been allowed if the Inspectorate had agreed to hold public inquiries. I have identified the cases with which I am most familiar of the sites adjoining Lodge Green, Whiteley Lane; Alexandra Cottage, Lower Church Road, Swanmore and the Alpines, School Lane in Kings Worthy.
- 1.6 Inspectors presiding at the examination of Local Plans in 2004, 2012 and 2016 have endorsed policies that should have been set aside. These Inspectors also failed to scrutinise Officers' evidence. I have set out the position with regard to land in Otterborne where

objections were rejected that could not be justified. I have elaborated on all of these cases in the Section entitled “Other Gaps”.

- 1.7 The most calamitous decision was made by Inspector Nigel Payne who examined Local Plans Part 1 and 2. He endorsed Whiteley Lane as the Gap Boundary of the Meon Settlement Gap. The Local Plan was adopted in April 2017. I was prosecuting a planning appeal at the same time as the Examination of the Local Plan. The appeal concerned the case for one dwelling on land adjoining Lodge Green, Whiteley Lane. In January 2017 the Appeal Inspector Ms Gibbons accepted the appellants’ case that the appeal site was not in the Meon Gap. Inspector Ms Gibbons concluded in her Decision that the site was not in conflict with the Gap Policy and she made a Partial Award of Costs on that point.
- 1.8 The Decision of Inspector Payne led to confusion with serious consequences for Officers and Members because *the Local Plan was out of date by the time it was adopted because Inspector Ms Gibbons in her Appeal Decision dated January 2017*. Subsequently, it led to the Council suffering two Partial Awards of Costs on that point.
- 1.9 The Council should have examined the decision of Inspector Ms Gibbons to decide if there should have been an addendum to the Local Plan to explain that Whiteley Lane was not the boundary of the Gap. Seven Officers were confused and gave misleading advice to Members of the Council and local residents for several years. It was necessary in the period after 2017 to be aware of the planning appeal decision and to disregard the adopted Local Plan. I believe that Inspector Ms Gibbons should have alerted the Inspectorate to the consequences of her decision for the Local Plan.
- 1.10 The Council not only failed to examine the implications but, unbelievably, it has compounded the problem by retaining the Gaps in the Emerging Local Plan Reg 19 published in September 2024 and by retaining Whiteley Lane as the western boundary. The Council has also taken the most extraordinary decision to create a ninth gap, the Knowle-Wickham-Welborne Gap. This Gap has a common boundary with the Meon Settlement Gap!. This vast area now extends from Whiteley Lane to the boundaries of the Welborne SDA and Wickham Village. These Gaps *fail* every test of established criteria.
- 1.11 I do not know who is responsible for these outrageous and ridiculous decisions but I do know that the Officer charged with reviewing the settlement boundaries in 2022, Mr Simon Finch, Head of Corporate Regulatory, has advised that the Gap Policy is no longer relevant to the site in Whiteley Lane (please see the Statement of Community Involvement dated July 2022 ⁽⁵⁾). This must mean that the Policy was never relevant. It also means that the Gap Boundary has been in the wrong place since 2006 assuming that the Council can justify Gap Policy. It seems that nothing can persuade the Council to review its position.

⁵ Statement of Community Involvement dated July 2022 prepared by Palladwr Associates Ltd

1.12 I have examined Gaps in the context of the two important documents that were supposed to provide guidance.

The PUSH guidance was published in 2008 ⁽⁶⁾

1.13 The organisation known as the Partnership for Urban South Hampshire (PUSH) prepared a document in 2008 that was intended to ensure a consistent approach to the provision of Gaps. The PUSH guidance was published in 2008. It established the following criteria.

- **The open nature/sense of separation between settlements cannot be retained by other policy designations;**
- **The land to be included within the gap performs an important role in defining the settlement character of the area and separating settlements at risk of coalescence;**
- **In defining the extent of the gap, no more land than is necessary to prevent coalescence of settlements should be included having regard to maintaining their physical and visual separation.**

1.14 The Council provided another document in 2012 in response to a request from Inspector Nigel Payne, as follows:-

Local Plan Part 1: Further Submissions/Responses to Issues HDC Issue10 (i-vi) ⁽⁷⁾

1.15 In 2012, the Council prepared a document in response to the Inspectors Questions (HDC i-vi). This document provided guidance on various matters and there was a Section on the assessment of Gaps. The document responded to the Question:-

**“Is policy CP18 suitable in principle for a CS and does it define appropriate gaps?
If not what needs to be changed and why?”**

1.16 The response included the following criteria: -

A: The gap separates one H1 settlement from another (H1 or H2) settlement, as currently defined in the Winchester District Local Plan (1998).

B: The gap separates two settlements at risk of coalescence

- a) The distance of separation is less than 1250m (largest gap currently designated in the Winchester District Local Plan).**
- b) The two settlements are not currently protected from coalescence by natural or manmade barriers**
- c) The settlements are at risk of coalescence from significant development pressure.**

⁶ PUSH Guidance 2008

⁷ HDC Further Responses to Issues (iv) dated 2012

C: The gap helps to retain a coherent existing and future settlement pattern.

- a) **Coalescence of the settlements would contribute to urban sprawl**
- b) **It is desirable for settlements to retain a sense of separation.**

1.17 Inspector Payne realised that these two documents were fundamental but he didn't test the Gaps against the criteria. He would then have appreciated that not one of the Gaps in the District satisfy this criteria. I have examined these documents in this letter but it is crystal clear that the Gaps fail all or most of the criteria. The assessment of the Gaps is made more difficult because the Council hasn't provided any Plans that show the extent of the Gaps. I have prepared five plans that show the Gaps for each Local Plan and a plan showing the dimensions of the Gaps. It is evident that they typically exceed **1250 metres** and some are **'protected from coalescence by natural or manmade barriers.'**

Plans and Photographs

1.18 There have been three Local Plans and the Emerging Local Plan Reg. 18 since 2006. The Council hasn't provided Proposals Maps that show the extent of the Gaps. I have prepared plans that show the relevant features at each stage. I have provided these below:-

1. Local Plan Review (adopted 2006) ⁽⁸⁾

Policy CE.1 Meon Strategic Gap; Policy CE.2 Seven Local Gaps
NB **River Meon** is the eastern boundary of the Meon Strategic Gap
The distance between Whiteley Lane and the River Meon is **1400 metres**.

2. Local Plan Part 1 (adopted 2013) ⁽⁹⁾

Meon Strategic Gap Policy CE.1 becomes the Meon Settlement Gap CP18; Policy CE.2 Seven Local Gaps become Seven Settlement Gaps also CP18;
The Eastleigh – Fareham Railway Line becomes the eastern boundary of the Meon Settlement Gap;
NB The distance between Whiteley Lane and the Eastleigh to Fareham Railway line is 2250 metres.

3. Local Plan Part 2 Composite Map (adopted 2017) ⁽¹⁰⁾

New Allocation of 200 dwellings at Ravenswood added to the 2013 Plan; no other changes;
Ravenswood adjoins Knowle village but it lies in Wickham Parish.
NB The distance between Knowle and Wickham is 1700 metres.

⁸ Local Plan Review Composite Map (adopted 2006)

⁹ Local Plan Part 1 Composite Map (adopted 2013)

¹⁰ Local Plan Part 2 (adopted 2017)

4. Emerging Local Plan Reg 18 Composite Map Consultation 2022 ⁽¹¹⁾
New Policy NE7 Settlement Gaps: including new Ninth Settlement Gap Knowle-Wickham-Welborne added (formerly SH4:) to the other Eight Settlement Gaps; this Plan introduced the new exclusively Winchester District concept of adjoining Gaps namely the Meon Settlement Gap and the Knowle-Wickham-Welborne Settlement Gap.
5. Plan showing dimensions of land between Whiteley and the boundary of Welborne Garden Village ⁽¹²⁾
The Council hasn't prepared a plan showing the extent of the land between Whiteley and the boundary of Welborne Garden Village that is supposed to form two Gaps. I have provided a composite plan to show the relative positions and distances.
6. Plan of Welborne Garden Village as shown in the planning permission. This shows the eastern boundary of the Gap ⁽¹³⁾. It should be noted that the permission shows a green infrastructure buffer around the boundaries which precludes any possibility of coalescence with nearby settlements. The distance from the site to the SDA is 2.9 kms (as the crow flies).
7. Contextual Block Plan:
This plan shows the site in Whiteley Lane in its local context ⁽¹⁴⁾. This plan shows that the appeal site has housing development on three sides; the SSSI on the fourth side and the 30 detached dwellings at Skylark Meadows to the east.
8. Plan showing the Ridge between the Meon and Hamble Valleys. This plan demonstrates that the appeal site is in the Hamble Valley and not the valley the subject of the Meon Gap ⁽¹⁵⁾. Furthermore, it shows that 19 of the 30 dwellings at Skylark Meadows are also beyond the ridge and in the Hamble Valley.
9. Dimensioned Plan showing the siting of the Plots as submitted to the Appeal ⁽¹⁶⁾. This plan shows that the plots were to be set back almost 40 metres from the Lane and beyond the woodland at the front of the site.
10. A set of photographs showing the site and its surroundings including the housing in Skylark Meadows ⁽¹⁷⁾. It is not possible to see the appeal site from the Estate.

¹¹ Emerging Local Plan Reg 18 Consultation 2022 showing the two gaps

¹² Plan showing dimensions of Gaps

¹³ Outline Plan of Welborne Garden Village

¹⁴ Contextual Block Plan

¹⁵ Plan showing the Ridge that separates the Meon and Hamble Valleys

¹⁶ Dimensioned Plan showing the Layout of the Site as submitted to the Hearing

¹⁷ A set of photographs

11. WCC Whiteley Proposals Map: shows the land east of Whiteley Lane as ‘countryside’ washing green over the site and including all 30 dwellings on the Skylark Meadows Estate ⁽¹⁸⁾. The Proposals Map doesn’t show the eastern boundary.
12. Proposed Settlement Boundary:
This Plan shows the boundary as proposed by the landowners; ⁽¹⁹⁾

Not one of the Gaps satisfy this criteria so why was the Policy endorsed.

Emerging Local Plan (Reg. 18)

- 1.19 The Council has added to the confusion by retaining the Gap Policy and the Gap boundary in respect of Whiteley Lane in the Emerging Local Plan (Reg.18) published in November 2022.
- 1.20 Mr Simon Finch, Head of Corporate Regulatory, was charged with the review of settlement boundaries for the Emerging Local Plan. He concluded that the Gap Policy should not apply in future to the site in Whiteley Lane. This is recorded in the Statement of Community Involvement (July 2022).
- 1.21 I objected to the Emerging Local Plan in December 2022. I sought the deletion of the Gap Policy NE7. However, you should note at the outset that there have been objections to six of the original eight Gaps. The Chamber of Commerce also sought the deletion of this Policy. The Chairman of the Planning and Development Committee of the Chamber is Gavin Hall, Director of Planning at Savills. Vivid Homes objected to the Policy too. Other planning consultants, landowners and developers have also objected and sought the deletion of Policy NE7.
- 1.22 The fundamental decision for the site in Whiteley Lane is the Settlement Boundary. Where, in this circumstance, should the settlement boundary be? Is it necessary to await the Local Plan Examination to make these decisions when the position is clear cut? Are there matters that outweigh the Local Plan especially bearing in mind that it has required amendment since 2017?
- 1.23 I have recently submitted a planning application for the development of two dwellings on the land adjoining Lodge Green, Whiteley Lane but I cannot be certain that I will receive an honest response. I have sent two letters because the Inspectorate and the Council are responsible for different aspects of the decision making. I have questioned Mr Schofield on the decisions of Inspectors and I have questioned decisions of Officers and Members of the Council within their areas of responsibility. With the latter in mind, I have prepared a section on Probity.

¹⁸ WCC Proposals Map Whiteley

¹⁹ Proposed Settlement Boundary

1.24 I have provided an analysis of the planning history in the following Sections.

Local Plan Regulation 19

1.25 The Council submitted the Plan that is the next stage of the process. There are very few changes from Regulation 18 Plan.

2.0 THE REVIEW OF THE COUNTY STRUCTURE PLAN 1993 AND 1997

- 2.1 The planning history is fundamental to this case. The Reports of the EiP Panel in 1993 and 1997 that examined the County Structure Plan identified the several Strategic Gaps in south Hampshire but *none* were in Winchester District. These Reports were never examined by the District Council and there is no reference to them in discussions of gaps or policies.
- 2.2 The Council introduced the Meon Strategic Gap in 2004 which is relevant to the site in Whiteley Lane. Seven Local Gaps were introduced at the same time. I referred to these reports in my objections to the draft Local Plan Review in 2004. These were ignored by you and the Local Plan Inspector Dr Robins.
- 2.3 The County Council prepared a series of papers as part of the review of the County Structure Plan in the 1990's. Three of these papers addressed the issue of Strategic Gaps.

Paper 15: Review of the Role of Strategic Gaps 1997

- 2.4 The County Council prepared a number of discussion papers on separate issues. Paper 15 referred specifically to the review of the role of Strategic Gaps ⁽²⁰⁾. The Secretary of State required the County Council to re-examine the Gaps (para.3.1). There were two principal considerations identified by the Secretary of State:-
1. where there is a risk of coalescence between substantial settlements; and
 2. to retain the coherent structure of the settlement pattern.
- 2.5 Under the Heading Size of Strategic Gaps, Section 2, it states that
- “the Secretary of State’s requirement that they should include no more land than is necessary to retain the gap, implies that they should be quite limited in extent”**
- 2.6 The Paper explains the difference between strategic and local gaps. It states that
- the only difference is that local gaps are to preserve the separate identify of “smaller” settlements at risk of coalescence with other settlements.**
- 2.7 The Paper recognizes that ‘Scale of Strategic Gaps’ can lead to confusion. **Some may “encompass ..huge tracts of countryside” where “the use of the strategic gap label would be potentially confusing Then “it may be better that they should be called something like regional or sub-regional gaps”.**
- 2.8 Inspector Nigel Payne was appointed to examine both the Local Plan Part 1 and Part 2. He failed to appreciate this point when he discussed the Meon Gap and the Knowle-Wickham-

²⁰ Paper 15: County Council review of the Strategic Gap policies

Welborne Gap proposal in 2012. He referred to the issue of ‘sub-regional gaps’ but he decided to create two large settlement gaps without distinguishing them from other gaps.

2.9 The Paper recognized the varying nature of gaps and it provided a checklist of characteristics to assist their assessment. This included two matters of particular relevance to the Gaps in Winchester namely “the width of the gap” and “intervisibility”.

2.10 With regard to width, it states that

No more land should be included within a strategic gap than that required to prevent coalescence.

2.11 With regard to ‘intervisibility’, it states that **“the prevention of intervisibility may determine the essential minimum amount of land, e.g. as long as development does not go above a particular ridge line, invisibility will not occur.”**

2.12 Finally, Appendix 4 (a) identifies the strategic gaps. Eighteen were confirmed but none were in Winchester District. Appendix 4 (b) identified others to be reviewed including Winchester-Compton; Winchester-Kings Worthy/Headbourne Worthy and Winchester-Littleton.

2.13 Subsequently, an Independent Panel was appointed that comprised three experienced and eminent professionals, Duncan B. W. Ouseley QC, J. A. Zetter and E. B. Williams. They presided at the Examination in Public and they prepared two reports in 1993 and 1997. The EiP Reports state that “we were appointed to consider selected matters arising from the submitted Hampshire County Structure Plan”. These matters included the Gap Policies. These reports covered many issues but there were sections on Strategic Gaps.

2.14 It seems that the first and most consequential mistake was made by the County Council when it concluded that the Winchester District Local Plan published in 2004 was in conformity with the County Structure Plan. The Structure Plan had been examined over the period 1993 to 1997. The Panel comprised three people namely, Duncan B. W. Ouseley QC, J. A. Zetter and E. B. Williams. They prepared two reports on each of these occasions. Both Reports made recommendations in respect of Gaps in south Hampshire.

The Hampshire County Structure Plan Panel Report 1993 ⁽²¹⁾

2.15 The planning situation changed significantly at this time. The initial Report of the Inspectors into the Hampshire County Structure Plan was published in 1993. The Inspectors were very critical of the number and extent of strategic gaps proposed in South Hampshire. Paragraph 3.101 expresses clearly the problems with the policy, it states:-

²¹ HCC Report of the Inspectors 1993: Extracts on Gaps

“We were particularly concerned by what appeared to us to be a tendency to identify as strategic, gaps which were of purely local, if any, significance, or gaps which were not gaps at all but substantial tracts of land, or gaps simply as a means of preventing development. We were further concerned by the way in which many of these gaps were delineated in Local Plan, frequently tight against existing built up areas”. (my italics).

- 2.16 The EiP Panel emphasised the fundamental elements of the policy that should be considered in paragraph 3.105:-

“They must include no more land than is required to prevent coalescence and retain separate identities; it does not mean that every piece of land between the settlements should be left undeveloped.” (my italics)

- 2.17 Paragraph 3.108 recommended that the Structure Plan should have a Policy for strategic gaps. In paragraph 3.110, it states that:-

We recommend the following, and no others, as strategic gaps:

Eighteen Gaps were Listed and there were *no Gaps proposed for Winchester District*. It is evident that there should not be any Strategic Gaps in Winchester District.

Hampshire County Structure Plan in 1997: EiP Panels Report ⁽²²⁾.

- 2.18 A second Report was prepared by the Panel at the EiP into the same County Structure Plan. They made the following statement in paragraph 8.10:-

Reference to the Key Diagram suggests that Policy G1 is as much about absolute protection of broad areas of coast and countryside as the avoidance of coalescence. The Policy throws down a blanket of near prohibition of development over areas far beyond those where the potential for coalescence is discernible.

- 2.19 The Inspectors made the following specific recommendation on the proposed **Meon Strategic Gap** in paragraph 8.12:-

The Meon Valley Gap clearly serves a strategic purpose in separating the major built-up areas in South Hampshire, with Southampton to the west and Fareham and Gosport to the east. But it too is very extensive and takes in some 6km of coastline where the risk of coalescence is virtually nil notwithstanding the other coast and countryside policies in the HCSPR. Winchester City Council suggest that the gap should be extended northwards beyond the railway and reach up to Wickham. This is a case of extending a gap to find a settlement when the motorway, let alone railway, is an appropriate physical barrier to curtail development.

²² HCC Report of the Inspectors 1997: Extracts on Gaps

- 2.20 This confirmed that there should not be a Meon Strategic Gap in Winchester District. The position is unchanged. *There is no settlement east of Whiteley Lane at risk of coalescence.* The EiP Report was absolutely clear cut but **there is no reference to the EiP Reports in the Examinations of the subsequent Local Plans.**
- 2.21 I have been unable to discover why these Reports were not considered by the Council Officers or Inspectors who chose to ignore my objections. I made specific references to them in objections to the Local Plans in 2003, 2012 and 2015.
- 2.22 Even if you disagreed with the EiP Panels' Reports surely these should have been passed to the Local Plan Inspector in 2004 for his consideration. Members of the Council should also have been advised of these documents.

3.0 WINCHESTER LOCAL PLAN REVIEW

3.1 The Local Plan was placed on Deposit in May 2003.

Less than six years after the EiP Inspectors had ridiculed Winchester Council's proposals to extend the Meon Gap into the District the Meon Strategic Gap was introduced. Seven local gaps were introduced too.

An Objection was submitted to the Review of the Local Plan (361/1).

3.2 I submitted an objection on 29 July 2004 on behalf of the landowners⁽²³⁾. In my objection to the draft Gap Policy, I quoted the EiP Inspectors' recommendations.

3.3 There was another significant development that had implications for the Gap Policy. In 1993, a proposal for 30 detached dwellings had been submitted ostensibly to support the provision of a golf course and clubhouse. (W/03045/02: 18 hole golf course 30 dwellings and access roads; granted permission 28 05 1993). This development became known as Skylark Meadows.

3.4 These dwellings are situated to the east of the site and 19 of them are in Hamble Valley. I pointed out that the development of the 30 dwellings at Skylark Meadows had been permitted. These were situated to the east of Whiteley Lane. I also sought the redefinition of the gap boundary to exclude the appeal site.

3.5 My Objection was summarised by the Officers for the Planning Committee⁽²⁴⁾. It states:-

Land east of Whiteley Lane has existing urban development on three sides and there is woodland on the fourth boundary. The land is not in agricultural use and is unlikely to be used for that purpose in the future due to its size and location. An appeal Inspector in 1998 accepted that the land could be developed without detriment to its locality. There is no highway objection.

The Officer's Response

3.6 The response referred to the fact that an appeal was recently dismissed. It stated:-

“the undeveloped appeal site .. partakes more of Hazel Coppice's “countryside” character than it does of that of residential development to the east, south and west and acts as a valuable buffer between the latter and Hazel CoppiceBoth proposals would, it seems to me greatly harm the predominantly rural character of the appeal site; .”

²³ My objection to the Local Plan dated 2004

²⁴ Officers Report on Objections

- 3.7 The Officer's response did *not* complete this sentence and yet after the *semi-colon*, it continues:-

“if the decision were taken at some future date that the appeal site nevertheless falls within Whiteley’s policy boundary, it does not seem to me either proposal would be so alien to development to east and west as to be significantly in breach of the applicable development plan policies. The appeal site, under either proposal, would in my view form an acceptable transition between the spacious new development to the east and the denser layout to the west of Whiteley Lane”

- 3.8 The Officer's decision to leave out the second part of the sentence was totally misleading. It gave the impression that the harm was absolute when the Appeal Inspector had recognised that the situation could easily change. The Inspector in 1998 summed up the actual position very clearly ⁽²⁵⁾. Furthermore, Inspector Parker in 2021 reached the same erroneous conclusion that the position of the settlement boundary was the fundamental issue over 20 years later. Why was the second part of the sentence omitted when it was so fundamental?

The omission of the second part of the sentence was disastrous. The first part was totally misleading while the second part was fundamental. It provided an accurate assessment that remains correct to this day but if Members and Officers had been advised of the marginality of the position it could have altered their attitude. It appears to be a deliberate decision to mislead.

- 3.9 This appeal was determined in 1998 and it predates the Local Plan Review and the Gap Policy.
- 3.10 The Local Plan Inspector made no reference to the EiP Inspectors' 'recommendations' ⁽²⁶⁾. He clearly didn't read my Objection ⁽²⁷⁾ or my rebuttal ⁽²⁸⁾
- 3.11 It is obvious that the selection of Whiteley Lane as the boundary of the Gap failed all three of the tests established EiP Panel's Report 1997 (paragraphs 3.101 and 3.110). I responded to the Officer's analysis in a Rebuttal Statement that was also ignored by the Officers and the Inspector.
- 3.12 The Officer's response states that:-

The Local Plan Review defines the Meon Strategic Gap to the east of Whiteley, in accordance with the Structure Plan.

²⁵ Planning Appeals: T/APP/L1765/A/98/295418/P8 and T/APP/L1765/A/98/295417/P8

²⁶ Local Plan Inspector's Report

²⁷ Local Plan Objection

²⁸ Local Plan Rebuttal (lack of response to the Objection)

The County Council also seems to have ignored the EiP Panel even though it was responsible. The 'recommendations' of the EiP Inspectors that there should be no gaps in Winchester and the fact that they specifically rejected the Meon Strategic Gap was overlooked without any explanation.

- 3.13 The Inspectors at the EiP into the same County Structure Plan made the following statement in paragraph 8.10:-

Reference to the Key Diagram suggests that Policy G1 is as much about absolute protection of broad areas of coast and countryside as the avoidance of coalescence. The Policy throws down a blanket of near prohibition of development over areas far beyond those where the potential for coalescence is discernible.

- 3.14 The Council has created a Gap Policy that conflicts with this statement. It is a form of a Green Belt rather than a Gap. The Officers' Report then states that:-

Whiteley Lane forms a clear and defensible boundary to development in this area.

- 3.15 It might have been acceptable as a boundary for the settlement but it cannot possibly be appropriate as the boundary of the Gap. It ignores the fact that Whiteley Lane is in the Hamble Valley. The decision to use Whiteley Lane to define the boundary to the Gap has caused endless confusion for Officers, Members of the Council and local residents. Seven Officers have supported the refusal of planning applications and appeals on the grounds that the site was contrary to Gap Policy.

- 3.16 One of these Officers was Mr Simon Finch, the Head of Corporate Regulatory, who accepted in 2022 that the Gap Policy should *not* be applied in the case of the site in Whiteley Lane. This also means that it should *never* have been applied.

Objections to the Local Plan and Rebuttal.

- 3.17 The Inspector made no reference to the objection that I submitted dated 2004 which quoted the EiP the Inspectors' recommendations on the Gaps; the criteria for their consideration and the specific rejection of the extension of the Meon Strategic Gap into Winchester District. I repeated the case in a Rebuttal Statement responding to the Council's rejection of the original objection. This was also ignored.

NB Mr Opacic: Why were my objections completely ignored?

- 3.18 The Local Plan Inspector gave a totally false impression that development of the site would cause unacceptable harm when the Appeal Inspector had made the strangely but contradictory point that the position of the settlement boundary was the fundamental issue. He also recognised that this boundary could change. The appeal decision was not clear cut. The Officers misled the Members and their colleagues and local residents.

- 3.19 It does not seem that the Local Plan Inspector read my objection and he was not advised of the EiP Inspectors' 'recommendations' and he did not test the proposed Gap against the Gap Policy (ie to identify a settlement at risk of coalescence). He clearly didn't appreciate the consequences of defining Whiteley Lane as the boundary of Gap.

I do not believe that the 'recommendations' of the EiP Inspectors were checked by the County Council because the preamble of the Local Plan states that "it is in general conformity with the Structure Plan". It clearly was not!

- 3.20 The EiP Inspectors' recommendations have never been addressed by the Council. It has been left as a smouldering issue to this day as the Emerging Local Plan (Reg. 18) published in December 2022 has retained the Meon Settlement Gap and Whiteley Lane as its boundary despite the problems it has caused. The decisions of two Inspectors that the appeal site was not in conflict with the Gap Policy and two Partial Awards of Costs has not convinced the Council that the Gap Policy should be abandoned, or the boundary of the Gap changed.
- 3.21 The Appeal Inspector also stated, in paragraph 7, that ⁽²⁹⁾

I do not consider the striking recent changes to the appeal site's surroundings to the west, south and east to be material considerations of sufficient weight to justify me deciding this appeal otherwise than in accordance with the development plan.

- 3.22 This statement makes little sense. The Appeal Inspector recognised the magnitude of the changes. The appeal site was now isolated from the countryside by the development of the 30 large detached dwellings on an estate known Skylark Meadows. He noted that the site had development on three sides but he didn't note that the SSSI formed the fourth boundary. The nearest "open" countryside involved travelling south to Springles Lane. How 'striking' does it need to be?
- 3.23 The isolation of the site was reinforced when the Lane was made into a cul-de-sac. The local residents had campaigned successfully to preclude through traffic to the Whiteley SDA and the Lane was closed at the northern end in 1999. A gate was provided to allow pedestrian and cycle access only. Horses and mobility vehicles could not pass. The Gate joined a footpath on the road called Parkway that served the Whiteley Business Park. The Lane was now a cul-de-sac with no formal passing places or turning points which led to inevitable conflict.

The isolation of the site in Whiteley Lane is due to actions of the Council that include permitting the development of 30 large detached dwellings to the east of the site and agreeing to create a cul-de-sac that left the site as an isolated field with no relationship with the

²⁹ Appeal Inspector's Report

countryside. Indeed, the Council reinforces this point by protesting that activities on the site cause harm to the SSSI. I asked your colleague, Simon Avery what uses he could recommend and he offered no options but he did claim ‘erroneously’ that the site was in the Meon Gap!

Response of the Local Plan Inspector to Objections to the draft Local Plan

- 3.24 The Inspector made no reference to the recommendations of the EiP Inspectors that ‘ridiculed’ the proposal for a Strategic Gap in Winchester. The Inspector ignored the fact that the Gap failed the tests set out in the EiP.
- 3.25 The objection was given short shrift by the Local Plan Inspector. The Inspector did recognise the extent of changes in the locality. He stated, in paragraph 6.55.7, that
- To the east (of Whiteley Lane), there is a development (Skylark Meadows) of 30 exceptionally large houses set in large plots.**
- 3.26 He then stated, in paragraph 6.55.8, that
- It is apparent that the site has an extensive planning history, amounting to 6 refused planning applications for residential development ranging from 1 to 5 dwellings between 1990 and 1999, two of which resulted in appeals that were subsequently dismissed.**
- 3.27 The Inspector then stated that:-
- Despite this I was advised that the land in question was severed from the curtilage of Lodge Green in 2000.**
- 3.28 The Inspector was critical of the fact, as advised by Officers, that the site “was severed from the curtilage of Lodge Green in 2000”. At that time, the area of the ownership measured approximately one hectare. It comprised two parts. The site of the bungalow measured 0.2 ha and the adjoining field measured 0.79. The field had a separate access from the bungalow. There had been 4 applications and three appeals on this field during its ownership by Mr and Mrs Hawes and Mr and Mrs Coombs.
- 3.29 Mr and Mrs Coombs gained planning permission in 1999 to extend the bungalow but, unfortunately, the wall of the extension suffered serious structural problems. Mr and Mrs Coombs could not afford the repairs. Initially, they sought planning permission in the hope that the sale of the plot on the adjoining land would pay for the repairs. This application was refused. They then sold the area of the field to the builder in partial payment of outstanding fees and they sold the bungalow separately.

3.30 The site of the bungalow was 0.2 ha (one acre) plot the largest in Whiteley Lane. Subsequently the floor area of the bungalow has doubled in size. The Inspector did not explain why he regarded severance as significant. It is completely irrelevant. It appears that the Inspector was given misleading information in respect of the site.

3.31 The land was in the same ownership but it had never been garden land. The property known as Lodge Green was marketed in 1993 on behalf of Mr and Mrs Hawes ⁽³⁰⁾. The agent's description states:-

A detached bungalow situated in a 3 acre plot in this private lane at WhiteleyThe property in addition has kennelling facilities and within the 3 acre plot is an area of copseland.

3.32 The particulars also state that "Outside" there is:-

A kennel complex with various enclosed kennel areas with access to outer dog runs.

NB Mr Opacic: Could you explain why you believed that the land was severed from the bungalow (it wasn't) and why you regarded this severance as having any significance?

3.33 The most astonishing statement was the reference to the Skylark Meadows development by the Local Plan Inspector who stated:-

Notwithstanding the presence of the Skylark Meadows development, I perceive the character of the Strategic Gap in this locality as an area of countryside containing sporadic mixed development rather than unbroken farmland. Consequently, I find the low density development fringing the golf course conforms more to the character of the Gap than it does to the built up area to the west.

3.34 This statement makes little sense. **It is not "open countryside"**. How can 30 large detached dwellings conform to character of the Gap when it fails the tests in the Gap Policy? The mixed development in the Meon Valley may appear spread out or "sporadic" but there is no causal relationship with "the low density development fringing the golf course". I do not believe that anyone could describe the 19 detached dwellings in close alignment on the western side of the ridge as conforming more to the character of the Gap.

3.35 For example, the Inspector also stated in respect of the 30 dwellings that:-

However, I do not consider that an extension of the boundary to encompass this land would be logical, as I regard Whiteley Lane to be a strong and defensible boundary of the main built up area of Whiteley. Furthermore, if I were to recommend extension of the settlement boundary more widely to also encompass the housing in Skylark Meadows, this would confer

³⁰ Property Particulars 1993; Sale of Lodge Green

acceptability for further residential infill and redevelopment within that area and potentially result in a serious inroad of housing into the Strategic Gap.

- 3.36 It would be enlightening for the Inspector if he could revisit the housing in Skylark Meadows. Twenty nine of the thirty dwellings have been extended. Many of the extensions are bigger than most detached houses. A planning appeal was allowed for the redevelopment of one of these already large dwellings. It now has six garages. Two others have been redeveloped. There is no prospect of infilling because every gap has been filled to create a 'solid wall' of development (see Photographs). It is impossible to even glimpse the site from the Estate.
- 3.37 I have provided a list of the main ones to show the magnitude of the changes:-
1. **22/01158/HOU | Single Storey Side Extension to Accommodate Indoor Swimming Pool, Gym, Physio Room and Side, Detached, One-Bedroomed Annex with Studio and Storage within Roofspace: 18 Skylark Meadows Whiteley Hampshire PO15 6TJ; Permitted**
 2. **22/01778/HOU I: Demolition of an existing two car detached garage and the construction of a new single storey pool house and garage. 37 Skylark Meadows Whiteley PO15 6TJ**
 3. **21/00870/HOU | Proposed single storey rear extension (with indoor swimming pool); 10 Skylark Meadows Whiteley PO15 6TJ**
 4. **20/02774/HOU Two storey side extension and single storey rear extension. Replacement entrance canopy, alterations to fenestration, and alterations to external materials. Replacement garage. (Amended Description) 20 Skylark Meadows Whiteley PO15 6TJ**
 5. **20/00214/HOU Ground floor rear/side link extension to new 3-bay garage with ancillary annexe above. New vehicle access (Material Minor Amendment to 19/01640/HOU) 39 Skylark Meadows Whiteley Fareham Hampshire PO15 6TJ**
 6. **16/02833/FUL Demolition of the existing dwelling and the construction of a replacement dwelling (REVISED SCHEME to 15/02292/FUL). 9 Skylark Meadows Whiteley PO15 6TJ**
 7. **4/01430/FUL (HOUSEHOLDER) Two storey side and rear extensions, extension to link garage to house; enlargement of garage and new room in garage roof (PART-RETROSPECTIVE) (amendment to existing planning permission) 1 Skylark Meadows Whiteley Fareham Hampshire PO15 6TJ**
 8. **09/00104/FUL Demolition of existing garage; construction of double garage with accommodation above; two storey side extension and single storey rear extension; new entrance porch (RESUBMISSION) 19 Skylark Meadows Whiteley Fareham Hampshire PO15 6TJ**
 9. **05/02948/FUL First floor side extension over garage; detached outbuilding at rear for swimming pool and changing room (RESUBMISSION) 7 Skylark Meadows Whiteley Fareham Hampshire PO15 6TJ**
 10. **03/01609/FUL Detached swimming pool building with gym 6 Skylark Meadows Whiteley Fareham Hampshire PO15 6TJ**

11. **03/01477/FUL Construct two storey extensions on west and east sides, single storey extension to part rear and alter porch to front of dwelling. Relocate existing detached garage. 15 Skylark Meadows Whiteley Fareham Hampshire PO15 6TJ**
 12. **02/01513/FUL First floor extension to side, single storey extension to front, conversion of integral garage to family room, erection of detached triple garage. 5 Skylark Meadows Whiteley Fareham Hants**
 13. **01/02650/FUL; Construction of swimming pool, pool house, single storey rear extension to house and entrance gates and associated walls/piers 23 Skylark Meadows Whiteley Fareham Hants (same house but more development)**
 14. **00/01952/FUL Convert existing garage to living accommodation including a bay window, new detached garage with room over 23 Skylark Meadows Whiteley Fareham Hants**
 15. **99/01800/FUL (AMENDED DESCRIPTION) Two storey side extension, single storey rear extension with first floor extension and balcony above plus extend existing front porch 35 Skylark Meadows Whiteley Fareham Hants**
 16. **1/01301/FUL Replacement six bedroom dwelling and swimming pool 2 Skylark Meadows Whiteley Fareham Hampshire PO15 6TJ**
- 3.38 I do not believe that the Inspector appreciated what could happen. There have been more developments since this list was formulated.
- 3.39 The Inspector made no reference to the objection that I submitted dated 2004 which quoted the EiP the Inspectors' recommendations on the Gaps; the criteria for their consideration and the specific rejection of the extension of the Meon Strategic Gap into Winchester District. Did he really believe that the River Meon was the appropriate boundary of the Gap?

4.0 ADOPTION OF THE LOCAL PLAN REVIEW 2006

- 4.1 A new Policy CE.1 Strategic Gaps was included in the adopted Local Plan 2006. It is evident that this new Policy CE.1 failed the three basic tests. The Gap Policy at Whiteley did not identify a settlement to the east at ‘risk of coalescence’. It simply referred to the **River Meon**. It stated that:-

Much of the Meon Gap lies within the District, but it is contiguous with land in the adjoining Borough of Fareham. In this District it comprises land between Whiteley to the west and the River Meon to the east.

- 4.2 The (Meon Gap) Policy failed at the first instance. The River Meon is a natural barrier which prevents any possibility of coalescence. The River Meon is 1.74 kms from the site. It will be noted at the next Local Plan stage that the Council prepared a document that confirms that natural and manmade barriers prevent coalescence. It also stated that gaps should not be greater than 1250 metres.

NB Mr Opacic: Why was the Meon River chosen as the boundary between Whiteley and Fareham Borough when it fails the tests?

- 4.3 It is illogical to conclude that 30 large dwellings could be regarded as *open or rural land*. Although the Policy states that “only the land necessary to achieve these objectives has been included”, Whiteley Lane was identified as the western boundary of the Gap. The Lane was in the Hamble Valley and not the Meon Valley the subject of the Policy. There is a continuous line of large dwellings on Springles Lane immediately to the rear and east of the dwellings on Skylark Meadows and parallel with their back gardens. These dwellings were deeper into the Meon Valley. In the reality, the ‘open’ land was beyond and to the east of Springles Lane and deeper into the Meon Valley.

- 4.4 Policy CE.1 stated that:-

Development that would undermine the appearance or functions of the Meon Strategic Gap (as defined on the Proposals and Inset Maps) will not be permitted.

- 4.5 It was impossible for a site in the Hamble Valley to conflict with this Policy. The Inspector did not test Policy CE.1 against the criteria. This policy should never have been agreed.

Policy CE.2

- 4.6 Policy CE.2 introduced seven local gaps. These ‘other’ gaps did not satisfy the criteria. I will identify these gaps and examine them in more detail later.

Policy CE.3

4.7 This Policy stated that:-

Development in the Strategic and Local Gaps, which would otherwise be acceptable in the countryside, will only be permitted if they do not physically or visually diminish the Gap and thus undermine the Gap's function.

4.8 This Policy failed at the first instance. The decision to define Whiteley Lane as the boundary of the Meon Gap was a comprehensive disaster, especially for the owners of the land adjoining Lodge Green. It was also a serious issue for Officers who failed to recognise that Whiteley Lane was in the Hamble Valley and, consequently, it could not possibly diminish the Gap “**physically or visually**”. This led, in turn, to Officers misleading Members and local residents. Furthermore, there was no justification for this Gap because there was no settlement “at risk of coalescence”. The decisions in 2004-2006 set in train problems for the examination of the next two Local Plan reviews.

4.9 It is a poor reflection on the Inspector that he didn't question these decisions and, in fact, he reinforced them with supportive but misguided statements. The issue of the Gaps in Winchester District is unresolved but now there is extensive opposition to the policy.

NB The site in Whiteley Lane was never in conflict with the Gap Policy.

5.0 APPLICATION FOR A REPLACEMENT MOBILE HOME 2006

- 5.1 The residents of Whiteley Lane were primarily concerned about the activities on the site. There had been several complaints especially about the state of the mobile home on the site and its use. The mobile home had been placed on the site in 1998 by Mr and Mrs Coombs. It was a replacement for a caravan owned by their predecessors. However, it had deteriorated over time and it had been vandalised. The Council served an Enforcement Notice in 2005. This was the first of several enforcement notices in the period 2005 to 2016.
- 5.2 In response, the landowners submitted a planning application for the *replacement of the mobile home* in response to an enforcement notice dated 23 January 2006 ⁽³¹⁾. The application was refused and **one of the reasons for refusal related to the Gap Policy!** Although the application was simply seeking its *replacement*, the refusal reasons also referred to it being unacceptable to create a new dwelling in the countryside ⁽³²⁾. The reason for refusal stated that **“The retention of the mobile home... would represent an undesirable additional residential development and it fails to make adequate provision for public recreational open space”** WCC Decision Letter dated 21 March 2006. **How can its retention represent an undesirable additional residential development?** The replacement should have been acceptable.
- 5.3 The Council refused the planning application on the grounds that the appellants were seeking to occupy it. In fact, this was untrue and it was clear that the application was for a *replacement mobile home* to provide changing and refreshment facilities for workers when working the site. The Council changed the description without reference to the applicants.
- 5.4 BJC Planning prepared advice that the landowners could challenge the Council’s decision because it was a clear abuse and unprofessional act and contrary to the evidence. The landowners decided not to challenge the decision. They were advised that they could lodge an appeal or submit a S 191 (CLEUD) application.
- 5.5 The Council served a notice of its intention to take the matter to the Magistrates Court dated 10 May 2016 ⁽³³⁾. The landowners decided to destroy the mobile home on site following the threat of action in the Magistrates Court. This was just a month or so before Inspector Ms Gibbons undertook her appeal site visit.
- 5.6 Ironically, a caravan was moved onto the site in 2020 and the enforcement officers agreed that it could remain (letter dated 4 April 2020 ⁽³⁴⁾).

³¹ Planning application for a replacement mobile Home dated 23 January 2006.

³² Reasons for refusal Mobile Home 21 March 2006

³³ WCC Threat of action in the Magistrates Court 10 May 2016

³⁴ WCC Letter dated 4 April 2020 confirming the no action will be taken

6.0 THE REVIEW OF THE LOCAL PLAN (LPP1) WAS PUBLISHED IN 2012

6.1 The consultation on the Pre-Submission Joint Core Strategy ran from 25 January 2012 until the 12 March 2012. The Examination of the Plan took place between 30 October to 8 November 2012. The Inspector overseeing both Local Plan Part 1 and Part 2 was Nigel Payne BSc (Hons), Dip TP, MRTPI, MCMI.

Response to the SHLAA Submission for land adjoining Lodge Green, Whiteley Lane

6.2 In an email dated 2 August 2013, Ms James, responded specifically to the SHLAA submission in respect of the land adjoining Lodge Green. She responded on behalf of Mr Opacic. She provided guidance on the assessment of settlement boundaries as the Local Plan evolved. The email stated that:-

There may be some amendments to settlement boundaries which will cover *small sites*, directly adjacent to the settlements, these will be considered where the *local community request* them and there is a strong justification to do so (minor changes may be considered where necessary to overcome particular anomalies, or to rationalise a boundary in the vicinity of a site allocation). However, it is not our general intention to amend settlement boundaries, other than where necessary to allocate a site.

6.3 Ms James provided guidance on the assessment of settlement boundaries as the Local Plan evolved. The email stated that:-

As you will probably be aware Winchester City Council has commenced preparation of its Local Plan Part 2.

We have undertaken an initial assessment of all sites taking into consideration their location and size. Following this assessment, the Council does not intend to formally allocate the following type of site:-

Sites which are under 0.3 Hectares

6.4 The site adjoining Lodge Green measures 0.7 ha although the developable area is 0.4ha. This is still greater than the threshold. The SHLAA responded to the question below:-

How many dwellings do you estimate could be built on the site you have submitted for the SHLAA?

6.5 Answer...**Between 1 and 6 dwellings.**

6.6 There were three other bullet points none of which applied to the site. However, the email concludes with regard to the site that:-

We will therefore not be taking your site (reference: 352) forward for allocation through LPP2 for the following reasons:-

The site is distant from the main settlements.

- 6.7 The main settlements quoted did not include Whiteley which was now a substantial area where 4000 dwellings had been developed. It is not clear why Whiteley was excluded. However, the site in Whiteley Lane was in very sustainable location because the Lane led into the Business Park at Whiteley with the shops and other facilities close by and the District Centre beyond this. Inspector Ms Gibbons in her Decision in 2017 confirmed this. She stated, in paragraph 16, that:-

The site is in an accessible location in relation to the services and facilities in Whiteley.

- 6.8 The Council was totally inflexible. Its list of settlements should have included Whiteley. The site was excluded without any justification. The site should have been examined through LPP2. The Officers decided that the site adjoining Lodge Green did not satisfy these considerations ⁽³⁵⁾. This was the first of three occasions when the site was rejected.

Objection to the boundary of the Meon Gap

- 6.9 My objection sought the amendment of the boundary of the Gap on the basis that the boundary was in the Hamble Valley. I was the principal objector to the proposed Gap. ⁽⁸⁾. I have identified the salient points below:-

9.9 It is considered that if the gap policy is to remain the boundary should be amended to exclude the development known as Skylark Meadows.

9.10 The case for the review of boundaries is a strong one. In the intervening period since the adoption of the Local Plan in 2006 the enabling development at Skylark Meadows has been completed and innumerable extensions and a replacement dwelling permitted to create a very dense and urban form. The site, the subject of this application, cannot in fact be defined as part of the Strategic Gap

9.11 The Emerging Local Plan will set out the defined boundary of the Strategic Gap which will be reviewed in the Local Plan Part 2: Development Management and Allocations.

- 6.10 The objection sought the review of the boundaries of the gaps as they pre-existed in the adopted Local Plan.

³⁵ Email from Ms James re Criteria for Changes to Settlement Boundaries

6.11 Inspector Nigel Payne made other decisions that have proved to have long lasting implications .

1. The response to the criteria: HDC Issue10.

6.12 With regard to the Gap Policy CP18, Local Plan Inspector Nigel Payne queried the Officers approach. He asked:-

Is Policy CP18 suitable in principle for a CS and does it define appropriate gaps? If not what needs to be changed and why?

6.13 Inspector Nigel Payne asked this important and fundamental question. In response, the Council prepared advice identified as HDC Issue 10, i-vi, (17). This stated:-

A: The gap separates one H1 settlement from another (H1 or H2) settlement, as currently defined in the Winchester District Local Plan (1998).

B: The gap separates two settlements at risk of coalescence

- a) The distance of separation is less than 1250m (largest gap currently designated in the Winchester District Local Plan).
- b) The two settlements are not currently protected from coalescence by natural or manmade barriers
- c) The settlements are at risk of coalescence from significant development pressure.

C: The gap helps to retain a coherent existing and future settlement pattern.

- a) Coalescence of the settlements would contribute to urban sprawl
- b) It is desirable for settlements to retain a sense of separation.

6.14 Most of the Gaps failed this criteria. Paragraph 32 stated that “Gap Policies have been included within local planning policy documents ... **to define and retain the separate identity of settlements where there is a threat of coalescence.**” There has been no threat of coalescence in most of the Gaps such as the Meon Gap or the Swanmore- Bishops Waltham -Waltham Chase Gap; the Kingsworthy-Headworthy Gap. This has not prevented the Council from making allocations to meet its housing requirement in Gaps, for example, 200 dwellings at Ravenswood near Knowle or 240 dwellings in Swanmore or 71 dwellings in Kingsworthy.

6.15 This document HDC is totally misleading. Unfortunately, Inspector Payne did not test the answer to his question. All of the Gaps failed the criteria above. In the case of the Meon Gap it does *not* separate one H1 settlement from another H2 settlement. There isn't a settlement east of Whiteley. In fact, the Gap fails the other criteria. The settlement boundaries are separated by the River Meon (Local Plan Review) and then Eastleigh Fareham Railway Line (when the Gap boundary moved without any justification in Local Plan Part 2). The distance of 1250 metres was exceeded by most of the gaps.

- 6.16 In the case of the Meon Settlement Gap reference was made separating Whiteley from Fareham Borough but there was no settlement in Fareham beyond the River Meon. The decision to define the eastern boundary as the River Meon in Local Plan Review 2006 was misguided. The River Meon isn't a settlement. It seems that realisation dawned because the eastern boundary was changed without any justification to the Fareham to Eastleigh Railway Line which is a manmade barrier.
- 6.17 The Meon Gap also failed the other test - the limit of 1250 metres. The distance between Whiteley Lane and the River Meon (the Gap boundary in Local Plan 2006) is 1400 metres but when the eastern boundary was moved to the Eastleigh Fareham Railway Line in LPP1 the distance was increased to 2250 metres. Knowle to Wickham is 1700 metres. So these distances all exceed the 1250 metres and are therefore contrary to the Council's own guidance. There was no justification for the relocation of the Gap Boundary.
- 6.18 The Swanmore – Bishops Waltham Gap also failed the 1250 metre limit. The distance between Swanmore (Lower Church Road) and Bishops Waltham to the west exceeds 1250m too. There is housing precluding views to the east. The 1250m figure is also exceeded in the Denmead - Waterlooville Gap. These points are explained in the Section on 'Other Gaps' (22)
- 6.19 The second totally misleading statement was in Paragraph 33 which states that:-
- “the provision for local gaps ... were carried forward into the Local Plan (2006) where the process of defining the extent of the local gaps followed a prescriptive process adhering to the following strict criteria:***
- 6.20 In paragraph 34 of his Report, the Inspector justified the gaps in 2006 as being “*necessary in this area of high development pressure and serve a useful planning function of preserving the separate identities of smaller settlements at risk of coalescence and to also prevent the consolidation of development in rural localities.*” There are no ‘smaller settlements’ identified. Whiteley and Welborne cannot be described as smaller settlements nor Swanmore or Bishops Waltham.
- 6.21 In paragraph 35, the document states that “the issue of gaps is also important sub-regionally and PUSH specifically produced guidance in 2008 to ensure a consistent approach across the sub-region.” I have already explained that all of the gaps fail the criteria in the PUSH document.
- 6.22 In paragraph 36, the policy is defended because “local communities” .. value their inclusion whereas the “opponents” are “predominantly developer/landowners promoting development sites and development opportunities on the edges of settlements”. This is not a justification for the gap policies. Developers and landowners are entitled to promote the development of their land.

This is a totally misleading and mystifying statement. The Council proposed numerous sites in Gaps to meet the housing requirement. These have favoured the larger developers while the owners and developers of small sites have been blocked unfairly.

6.23 Paragraph 39 states,

The Council therefore considers that the policy is locally justified and appropriate for the JCS given that the supporting text explicitly refers to the opportunity to review detailed boundaries in a future development plan document (Local Plan Part 2) or a Neighbourhood Plan. As such, it is appropriate that the JCS establishes in principle where gaps are defined, and maintains their current extent until their precise boundaries are reviewed, as necessary, through Local Plan Part 2.

6.24 The boundaries of Gaps were only to be reviewed in the context of meeting the housing requirement. There was no intention to review any other boundaries. There was an almost absolute resistance to development elsewhere. This is the “big brother” approach to planning. There is no other means of reviewing boundaries than through a Local Plan. Neighbourhood Plans were not appropriate everywhere. Could a Neighbourhood Plan be proposed for the northern part of Whiteley Lane where there are just eleven households? Inspector Robert Parker mentioned this in his appeal decision. It wasn’t appropriate for Lower Church Road, Swanmore. It is a misleading comment.

6.25 The land at Ravenswood which is situated to the north east of Knowle Village was allocated for 200 dwellings. (It is identified on the Composite Plan with dimensions (¹⁹)). Although it is situated close to Knowle Village, it is in Wickham Parish and the Council has counted the 200 dwellings towards Wickham’s housing requirement. The Council claimed that this large site did not affect the ‘functioning’ of the Gap. The Council concluded that it could be permitted without impacting the Gap but *two dwellings in Whiteley Lane were not considered in the same context.*

6.26 The same situation exists in Kingsworthy where the Inspector in respect of a recent appeal in School Lane confirmed that the site was not in conflict with the Gap Policy. The Inspector stated that it didn’t affect the functioning of the Gap. The planning application in Lower Chase Road for six dwellings was refused and dismissed on appeal primarily based upon the same Gap Policy CP18. It is evident that this site could have been examined on the same basis and the Inspector could have accepted that this site was not in conflict with the Gap Policy. There is no means of reviewing these decisions unless the planning application can be resubmitted. In this case the Council can resist the resubmission when a scheme has been rejected at appeal. There is no possibility of any sanction on the Council even when it provides misleading evidence. This is discussed later under “Other Gaps”.

6.27 If it proves necessary to wait for the Examination of the Emerging Local Plan in 2025 it will be over 20 years before the boundaries of other settlements are reviewed. The fact that two Appeal Inspectors confirmed that the development of the site in Whiteley Lane was not

in conflict with the Gap Policy and made Awards of Costs on that point but it hasn't persuaded the Council to examine this Gap Boundary. The same situation prevails in Kingsworthy where the Inspector concluded that *the development of the site would not affect the 'functioning' of the Gap*. Surely, the boundaries of both gaps should have been reviewed.

(Council) Response to further written submissions

- 6.28 The Council responded to the ten objections to Gaps. These included the four objections identified in Paragraph 50 that I have noted in this letter i.e. the objection to the gap policy and the Whiteley Lane boundary ref: HDR 10425 (International Group); HDR 303101 (Mr Graham) reference the Otterbourne Gap; and HDR 30102 (Barratt Homes) the Swanmore Bishops Waltham Gap.

The objections claimed that there is no justification to retain all the pre-existing gaps, these should be reviewed and deleted or amended if they fail to satisfy the criteria listed in Policy Framework for Gaps PUSH 2008.

- 6.29 The Response stated "Proposed Modification/Change to the Plan: No Change". However, subsequently the Barratt/David Wilson Homes site in Swanmore was allocated in LPP2 (in the Settlement Boundary Review). The other 'small' sites were rejected.

- 6.30 The Council claimed that:-

Gap policies have been included in local planning policy documents For many years, to define and retain the separate identity of settlements *where there is a threat of coalescence*.

- 6.31 It is difficult to perceive any threats of coalescence. The greatest 'threat' came from the decision of the Council allocate large sites in Gaps to meet the housing shortfall and not from any other development pressures. Paragraph 33 stated that:-

Indeed, the provision for local gaps originated in the County Structure Plan and these designations were carried forward into the Local Plan (2006) where the process of defining the extent of the gaps followed a prescriptive process adhering to the following strict criteria:

- 6.32 The Officers refer to the **County Structure Plan** with regard to local gaps but ignore the EiP Panel Reports. As a matter of fact, the EiP Inspectors had expressed their concerns in their Report in 1997. Paragraph 3.101 states:-

"We were particularly concerned by what appeared to us to be a tendency to identify as strategic, gaps which were of purely local, if any, significance, or *gaps which were not gaps at all but substantial tracts of land, or gaps simply as a means of preventing development*. We were further concerned by the way in which many of these gaps were delineated in Local Plan, *frequently tight against existing built up areas*". (my italics).

6.33 **NB** I do not know why the EiP Reports were not provided to the Local Plan Inspector by the Officers. There hasn't been any explanation even though they were of fundamental importance. The County Council and Winchester Council should have clarified the position. It can be appreciated that the EiP Inspectors did not support all local gaps and they provided criteria to test the need for them. At the very least, Inspector Payne should have been made aware of the Reports. It is evident now that this is one of the reasons for his confusion. However, it is also evident that he didn't read my objections which included reference to the Reports.

6.34 The Council did *not* follow '**a prescriptive process adhering to the following strict criteria**'. Sub-section A identified the relevant settlements. Sub section; B; states:-

The gap separates two settlements at risk of coalescence;

a) **The distance of separation is less than 1250m;**

b) **The two settlements are not currently protected from coalescence by natural or manmade barriers;**

6.35 Criterion c) states:-

c) **The settlements are at risk of coalescence from significant development pressure.**

6.36 There are no settlements at risk of coalescence. The areas are very large and there are no settlements nearby. The River Meon is a natural barrier (Meon Gap). The EiP Panel referred specifically to the fact that the railway line Fareham to Southampton was a 'physical barrier to curtail development'.

Winchester City Council suggest that the gap should be extended northwards beyond the railway and reach up to Wickham. This is a case of extending a gap to find a settlement when the motorway, let alone railway, is an appropriate physical barrier to curtail development.

6.37 Another perverse decision was that the eastern boundary of the Meon Gap was changed in spite of the Council's own definition in respect of manmade and physical barriers. The new boundary extended beyond the River Meon to the Fareham to Eastleigh Railway Line. The boundary moved from a natural barrier to a manmade one explicitly contrary to the policy guidance. It also changed direction.

6.38 The Meon Gap exceeded 1250 metres (see the Plan with distances marked on it ⁽²²⁾). The distance between Whiteley Lane and the River Meon is 1400 metres. The distance between Whiteley Lane and the Eastleigh to Fareham Railway Line is 2250 metres. So what is the purpose of the 1250 metre limit.

6.39 There was no development pressure and no risk of coalescence and there was no justification for the gap. Most of the Gaps exceeded 1250 metres. It is not clear why Inspector Payne ignored the criteria even though he asked for it!

6.40 The Inspectors at the EiP into the County Structure Plan stated in paragraph 8.10 that:-

Reference to the Key Diagram suggests that Policy G1 is as much about absolute protection of broad areas of coast and countryside as the avoidance of coalescence. *The Policy throws down a blanket of near prohibition of development over areas far beyond those where the potential for coalescence is discernible.*

6.41 Notwithstanding this comment by the EiP Panel, the Council has developed a Policy of ‘near prohibition’ where there is no discernible risk of coalescence. Paragraph 39 of HDC Issue 10 states:-

The Council therefore considers that the policy is locally justified and appropriate for the JCS given that the supporting text explicitly refers to the opportunity to review detailed boundaries in a future development plan document (Local Plan Part 2) or a Neighbourhood Plan. As such, it is appropriate that the JCS establishes in principle where gaps are defined, and maintains their current extent until their precise boundaries are reviewed, as necessary, through Local Plan Part 2.

6.42 The Officers advised the Inspector that they proposed to undertake the “detailed review the boundaries of Gaps” at the LPP2 stage. The detailed review simply made new allocations to meet the housing requirement. Few other reviews took place.

6.43 Inspector Payne stated in his Report with regard to Policy CP18 that:-

131. There is an effective *consensus* that the implementation of a major development area (SDA) at North Fareham on the borders of the district clearly justifies, in principle, the designation of a new strategic gap between the SDA and Knowle/Wickham, as identified on Map 8 under policy SH4.

6.44 It is not clear how the Inspector concluded that there was “an effective consensus”. It was just ‘weaselly’ words! Paragraph 50 specifically refers to my objection (*International Group*) and (*Barratt Group objection*) to the retention of pre-existing gaps, these should be reviewed or deleted or amended if they fail to satisfy the criteria listed in Policy Framework for Gaps PUSH 2008. Who was in the “consensus”?

6.45 The Inspector also stated in paragraph 132 of his Report that:-

However, the policy and its supporting text are also quite clear that all the other gaps listed will be subject to review as part of LP2 in relation to local development needs, amongst other things, which will supersede the 2006 Winchester City Council District Local Plan – Part 1 - Inspector’s Report February 2013 27 Local Plan. The text already includes the full criteria set

out in the PUSH “Policy Framework for Gaps” (OD35) (Dec 2008), which will be applied to help ensure a consistent approach across the area. Therefore, there is no need for this strategic plan to include any further, more detailed or local guidance as to how the review should be carried out in practice.

6.46 I have demonstrated that the Council ignored the PUSH Guidance. The Council was simply intent on creating and retaining Gaps without any regard for the tests in PUSH or the criteria in HDC10. Map 8:- SH4: North Fareham SDA shows the magnitude of the area. ⁽³³⁾

6.47 The Inspector stated in paragraph 134 of his Report that:-

In Denmead, as in and around all towns and villages throughout the district, the detailed definition of specific boundaries for any settlement gaps and protected open spaces will take place in conjunction with the allocation of any necessary new land for development to meet district and local needs, in addition to the strategic sites, as part of the LP2 process. It is not a matter for this strategic level plan.

6.48 The Council did not undertake the “detailed review of the boundaries of Gaps” that it told the Inspector. The boundaries were only reviewed in the context of satisfying the housing requirement (paragraph 39 HDC Issue 10 ⁽¹⁷⁾). Only 8 relatively large allocations were proposed while small sites were mainly ignored. This included the site in Whiteley Lane. In effect, the Council was favouring large volume housebuilders to the detriment of the smaller landowners and small builders.

6.49 Inspector Payne did not review the Guidance in the HDC document. He did not test the gaps against the criteria that he asked the Council to provide. It was evident that they all failed the criteria in HDC.

Policy SH4 – North Fareham SDA

6.50 Another policy was proposed in the Local Plan Part 1. This was Policy SH4 – North Fareham SDA. Policy SH4 was introduced ostensibly to “protect the individual character and identity of those settlements adjoining the proposed SDA at North Fareham” (para 9) ⁽³⁶⁾. Policy SH4 covered the area to the east of the Meon Settlement Gap and it extended to the Fareham Borough Boundary. This was co-terminous with the western boundary of the Welborne SDA (Map 8:- SH4: North Fareham SDA) ⁽³⁷⁾. The northern boundary of Policy SH4 extended northwards to the settlement boundary of Wickham village (Map 23: Wickham) ⁽³⁸⁾. It will be recalled that the EiP Inspectors in 1998 ridiculed the extension of the Meon Gap to Wickham. They stated:-

³⁶ Policy SH4:

³⁷ Map 8: SH4: North Fareham SDA: Local Plan Part 1

³⁸ Map 23: Wickham Village

Winchester City Council suggest that the gap should be extended northwards beyond the railway and reach up to Wickham. This is a case of extending a gap to find a settlement when the motorway, let alone railway, is an appropriate physical barrier to curtail development.

6.51 At the same time, the eastern boundary of the Meon Gap was changed! It was moved beyond the River Meon to the Eastleigh Railway Line. It also changed direction away from the Meon Strategic Gap in Fareham that was the original justification for the decision to define the boundary at the River Meon. It was now coterminous with the western boundary of SH4. The combined area of the Gap Policies CP18 and SH4 is vast and could accommodate several thousand homes. In effect, Policy SH4 was an extension of the Meon Gap Policy CP18 but in 2022 the Emerging Local Plan designated it as a new **Ninth Gap** – the Knowle-Wickham-Welborne Gap!

6.52 The Council has totally disregarded the criteria in its own policy (CP18).

6.53 The sub-text states, paragraph 5.29 that:-

It is also necessary for this Plan to define the general extent of open land within Winchester District which should be retained as a gap between the SDA and these settlements (Wickham and Knowle).The overriding requirement is to retain the open rural nature of this land and to prevent changes which would urbanise its undeveloped character. The uses and management of the area must help to secure an effective, viable and long-term gap between the SDA and the separate settlements of Knowle and Wickham.

NB I have no objection to the concept of a sub-regional gap but it is obvious that it should have been a separate and specific policy. It certainly should not have been called a settlement gap. This was totally confusing. This issue was identified in the HCC Report Paper 15.

6.54 The fundamental point is that SH4 is contrary to all of the criteria that refers to Gaps. It is contrary to the PUSH Guidance. The HCC Paper 15 recognized that the ‘Scale of Strategic Gaps’ can lead to confusion. **Some may “encompass ..huge tracts of countryside” where “the use of the strategic gap label would be potentially confusing Then “it may be better that they should be called something like regional or sub-regional gaps”.**

6.55 The EiP Panel rejected the proposal to extend the gap to Wickham but the Policy states:-

Land within Winchester District (as shown on the plan below) will form part of the open areas, required by the South East Plan, to ensure separation between the SDA and the existing settlements of Knowle and Wickham. The open and undeveloped rural character of this land will be retained through the application of Policy CP18 - Gaps.

6.56 The proposition that the proposed SDA at Welborne in Fareham Borough was at risk of coalescence is ridiculous. The SDA is on the far side of the River Meon ⁽²³⁾. The Fareham to Eastleigh railway line is just beyond this. These are both regarded as obstacles to

coalescence in the Policy CP18. The valley on the eastern side here is very steep and it cannot be developed. The boundary of the SDA is beyond this. Fareham Borough has not proposed a 'gap' between the SDA and the River Meon. The SDA itself has a 'green buffer' and development does not adjoin the boundary with Winchester District or its gap. There was no justification for either of these gaps.

Criteria 2: "only gap in the area that is of subregional strategic significance"

- 6.57 The response of Inspector Nigel Payne to this issue managed to add to the confusion. The County Council prepared a number of discussion papers on separate issues. HCC Policy Paper 15 referred specifically to the review of the role of Strategic Gaps and this Paper also recognised the issue that was raised by the concept of 'sub regional gaps'. ⁽³⁹⁾
- 6.58 Inspector Nigel Payne recognised that this may have been the **"only gap in the area that is of subregional strategic significance"** *but it was not a settlement gap*. It didn't satisfy the PUSH Guidance. If the Council and Inspector Payne wanted to create a special case they should have said so instead of setting aside all of the criteria. This issue was compounded by the decision of Inspector Payne to agree to convert the seven local gaps in the Local Plan Review (Policy CE.2) to Settlement Gaps. These had different characteristics and shouldn't have been covered by the same Policy.
- 6.59 The Gap Policy covering the 'subregional gap' is now a vast area greater than the total area of the Welbourne SDA. On the other hand, the distance was minimal in the case of Otterborne-Shawford Gap and it backed on to the M3 and on the western side. The 'open' area was very small and the contrast with the Meon Gap could hardly be greater.
- 6.60 In 1993, the Panel examining the County Structure Plan drew attention to these issues. They were very critical of the number and extent of strategic gaps proposed in South Hampshire. Paragraph 3.101 expresses clearly the problems with the policy, it states:-
- "We were particularly concerned by what appeared to us to be a tendency to identify as strategic, gaps which were of purely local, if any, significance, or gaps which were not gaps at all but substantial tracts of land, or gaps simply as a means of preventing development. We were further concerned by the way in which many of these gaps were delineated in Local Plan, frequently tight against existing built up areas". (my italics).**
- 6.61 Inspector Nigel Payne didn't need to read the Panel Report published in 1993 to appreciate that the Gaps in Winchester District were simply a *means of preventing development*. Inspector Payne should have realised that the same criteria could not apply to a gap of **"subregional strategic significance"** with the *upgraded local gaps*?

³⁹ HCC Policy Paper 15 Strategic Gaps

- 6.62 This led to the extraordinary decision to create a new strategic gap based on the new Policy SH4. This became the *ninth* Gap in the Emerging Local Plan but this Gap had a *common boundary* with the Meon Settlement Gap to create a vast area of protection – a ‘mini’ Green Belt! (see Plan 4 Emerging Local Plan Reg 18 showing the two gaps) ⁽⁴⁰⁾.
- 6.63 The new ninth gap, now known as the Knowle - Wickham - Welborne Gap has been added to the list of Gaps. The Whiteley – Fareham/Fareham Western Wards (the ‘Meon Gap’) has been retained. The Eastleigh to Fareham railway line now forms the eastern boundary (contrary to the PUSH guidance and HD 11 that refer to natural and manmade barriers). Obviously, there was no settlement at risk of coalescence on this one sided gap. There is very little land separating them.
- 6.64 The western boundary of the new ninth Gap is *also* the Eastleigh to Fareham railway line. The two Gaps share the same boundary! This is simply ridiculous. It cannot be possible to have two gaps with a common boundary. It is really one vast area but it cannot be described as a gap. I do not believe that it can be justified. It certainly isn’t a settlement gap so it needs a new name just as the Report on the County Structure Plan Paper 15 proposed in 1993! The Council has set aside the guidance to create this bizarre situation.
- 6.65 The northern boundary of the new ninth gap is Wickham Village. This is 1.77 kms from the railway line. This was contrary to the EiP Panel’s recommendation on the proposed **Meon Strategic Gap**, which stated that:-

The Meon Valley Gap clearly serves a strategic purpose in separating the major built-up areas in South Hampshire, with Southampton to the west and Fareham and Gosport to the east. But it too is very extensive and takes in some 6km of coastline where the risk of coalescence is virtually nil notwithstanding the other coast and countryside policies in the HCSPR. Winchester City Council suggest that the gap should be extended northwards beyond the railway and reach up to Wickham. This is a case of extending a gap to find a settlement when the motorway, let alone railway, is an appropriate physical barrier to curtail development.

- 6.66 The Meon Gap and the land identified in SH4 failed every principle in the EiP Reports, the PUSH guidance and even the tests in the Policy CP18. The response of Inspector Nigel Payne to this point was totally confused. This may have been the “**only gap in the area that is of subregional strategic significance**” but it was *not a settlement gap* in accordance with the PUSH Guidance. If the Council and Inspector Payne wanted to create a special case they should have said so instead of setting aside all of the criteria. This issue was compounded by the decision of Inspector Payne to agree to convert the seven local gaps in the Local Plan Review (Policy CE.2) to settlement gaps. These had different characteristics.

⁴⁰ Plan 4 Emerging Local Plan Reg 18 showing the two gaps

- 6.65 Inspector Payne didn't need to read the Report in 1993 to appreciate that the gaps were simply a means of preventing development. This was a calamitous decision by Inspector Nigel Payne. What made Inspector Payne believe that the same criteria could apply to a gap of “**subregional strategic significance**” with upgraded local gaps?
- 6.66 Inspector Payne stated in his Report with regard to Policy CP18 that:-
- 131. There is an effective *consensus* that the implementation of a major development area (SDA) at North Fareham on the borders of the district clearly justifies, in principle, the designation of a new strategic gap between the SDA and Knowle/Wickham, as identified on Map 8 under policy SH4.**
- 6.67 Inspector Payne did not appreciate that Whiteley Lane was in the Hamble Valley and that it could not possibly ‘physically or visually diminish the Gap’. He conflated the subregional strategic gap with the settlement gaps. This was made more complicated when he agreed to upgrade the local gaps to settlement gaps. None of them satisfied the PUSH criteria or the advice received from the Council in HDC.

Criterion 3. The Decision to retain Whiteley Lane as the boundary of the Meon Settlement Gap.

- 6.68 This criterion is of fundamental significance to the consideration of the site in Whiteley Lane. This is examined in a separate Section 17.

7.0 LOCAL PLAN PART 1 WAS ADOPTED IN MARCH 2013.

- 7.1 The Local Plan Part 1 was adopted in March 2013. Policy CE1 was replaced by Policy CP18. The description was changed to *Settlement Gaps* and the seven local gaps in the Local Plan Review 2006 were changed to settlement gaps and included in the new Policy CP18. *The three bullet points in PUSH were incorporated into Policy CP18.*
- 7.2 None of these gaps satisfied the criteria established in the PUSH document or even the criteria in Policy CP18. There are two other paragraphs in Policy CP18 that refer to cross boundary gaps.
- 7.3 Besides incorporating the three PUSH bullet points into CP18, the Policy also referred to the Strategic Development Area now known as Welborne. These paragraphs stated:
- 9.44 In addition to this specific guidance for the sub-region, there is recognition that the scale of development proposed at the Strategic Development Area at North Fareham requires the inclusion of a gap to prevent coalescence of the SDA with neighbouring settlements of Wickham, Funtley and Knowle. In order to protect the separate identity of these individual settlements, the South East Plan requires areas of open land to be identified and maintained between the SDA and adjoining settlements.**
- 9.45 The precise extent of this gap will be determined as part of the preparation of an Area Action Plan (for land within Fareham Borough), and policy SH4 of this Plan establishes the extent of the open land (within Winchester District) to be retained to the north of the Fareham SDA.**
- 7.4 The South East Plan was published in 2009 but it was revoked in July 2010. At that time the Strategic Development Area was expected to provide 10,000 new homes. This has gradually been reduced. The planning application for the development was permitted in 2021 and it is now proposed to provide 6000 new homes. It can be seen from the Composite Plan that the area between Whiteley and Welborne is vast ⁽¹²⁾. The total area of the Gaps is greater than the area of the SDA. It is a sort of local ‘Green Belt’. Ironically, Welborne has a “**green buffer**” around the development which precludes any possibility of coalescence. It seems to me that if Inspector Payne wanted to support this sub regional gap he should have given it a new name. It will be seen that in LPP2 it became a settlement gap. The other seven local gaps became settlement gaps too. Not one of the Gaps satisfy the PUSH criteria or the Council criteria in HDC. This simply adds farce upon farce.
- 7.5 The HCC Paper 15 recognized that the ‘Scale of Strategic Gaps’ can lead to confusion. **Some may “encompass ..huge tracts of countryside” where “the use of the strategic gap label would be potentially confusing Then “it may be better that they should be called something like regional or sub-regional gaps”.**

7.6 The local gaps were now given the status of the so called sub-regional gap between Whiteley and the Welborne SDA. This was bound to be confusing as predicted.

7.7 The position was made more complicated because the Meon Gap was now renamed as a “Settlement Gap”. Besides the Meon Gap at Whiteley, the Local Plan introduced seven other gaps including the “Bishops Waltham-Swanmore-Waltham Chase-Shedfield-Shirrell Heath” Gap. This gap was also exceptionally large too. The seven Local Gaps were renamed as “Settlement Gaps” and the same criteria was applied to them. The Local Gaps were now given greater policy protection. This was completely unjustified and this can be seen when the Gaps at Swanmore, Otterbourne and Kingsworthy are examined in the Section “Other Gaps.”

7.8 The PUSH criteria included another clause. It stated:-

- **The open nature/sense of separation between settlements cannot be retained by other policy designations;**

7.9 Policy MTRA4 covers the countryside area to the north of the CP18. It is not clear why the Council decided that MTRA4 wasn’t adequate to protect the Meon Valley north of Fareham Borough boundary as recommended by the EiP Inspectors.

Policy MTRA 4 - Development in the Countryside

7.10 Policy MTRA4 is very restrictive ⁽⁴¹⁾. It states that:-

In the countryside, defined as land outside the built-up areas of Winchester, Whiteley and Waterlooville and the settlements covered by MTRA 2 and 3 above.

7.11 MTRA4 only permits development that has an operational need for a countryside location such as agriculture, horticulture etc. The reuse of existing rural buildings is possible under limited circumstances. New market housing is excluded.

Policy MTRA3 - Other Settlements in the Market Towns and Rural Area

7.12 Policy MTRA3 does allow infilling in the rural area. In fact, *forty six settlements are listed in Policy MTRA 3 - Other Settlements in the Market Towns and Rural Area* where infilling development could be permitted including many villages in the South Downs National Park. The sub-text states:-

- **within the following settlements, which have no clearly defined settlement boundary, development and redevelopment that *consists of infilling of a small site within a continuously developed road frontage* may be supported, where this would**

⁴¹ Policy MTRA4

be of a form compatible with the character of the village and not involve the loss of important gaps between developed areas.

- 7.13 The vague statement that it ‘**consists of infilling of a small site within a continuously developed road frontage**’ was not defined. The policy evolved through planning applications and appeals. The grounds of dismissing the appeal on infilling was that the gap in the frontage was too long or that the development had a detrimental impact on the landscape.
- 7.14 The appeal in respect of land in Lower Chase Road, Swanmore was dismissed on the grounds of conflict with this policy as well as conflict with the Gap (APP/L1765/W/17/3174240⁽⁸⁴⁾). It is obvious that the Gap should not have been endorsed here because the distance between Swanmore and Bishops Waltham was greater than 1250 metres and there was no intervisibility.
- 7.15 It could have been agreed that the development had no impact upon the functioning of the Gap as in the Kingsworthy case or Ravenswood, near Wickham. As a matter of fact, the Council allocated a site on the opposite side of Lower Chase Road for five dwellings in the same Gap. I have reviewed this case in the section on “Other Gaps”.
- 7.16 The appeal site in School Lane, Kings Worthy was dismissed on the basis of conflict with same infilling policy but, on this occasion, the Inspector confirmed that the site was *not* in conflict with the Kingsworthy- Abbots Worthy Gap (APP/L1765/W/22/3310078)⁽⁴²⁾. It was a *self contained site* to the rear of an existing dwelling. There was little possibility that the site could be extended beyond the site boundary. The appeal was dismissed because appeal site wasn’t in “**a continuously developed road frontage**’. The Inspector was unwilling to examine site in its physical context. There simply wasn’t a dwelling on both sides. In reality, the site was self contained as there was a separate use beyond. Some Inspectors exercise flexibility in such cases. I have reviewed this case in more detail in the section on “Other Gaps”.
- 7.17 It was possible to obtain planning permission everywhere in the countryside where there was no gap even though the settlements had few facilities and poor transport connectivity and were in less sustainable locations (MTRA3 + 4). These issues are examined in detail in the Section 22 on “Other Gaps”.

Letter sent to Mr Steve Opacic dated 16 June 2014⁽³¹⁾

- 7.18 I sent a letter to Mr Opacic, Head of Strategy, dated 16 June 2014. I objected to the Meon Gap and the boundary at Whiteley Lane. I quoted the paragraph from the EiP 1997 which questioned the extent of the Meon Gap. I pointed out that the Gap failed all three tests in

⁴² Land in School Lane, Kingsworthy- Abbots Worthy Gap (APP/L1765/W/22/3310078)

the PUSH guidance. I did not receive a reply to my letter. I have been advised that Mr Opacic does recall receiving this letter.

NB Mr Opacic had the opportunity to advise the Local Plan Inspector of the EiP Reports.

7.19 This letter was copied to Mr Simon Avery who also ignored the objection to the Gap. Later that year Mr Avery was the Case Officer for another planning application and he was responsible for the refusal of the application as being contrary to the Gap Policy (Planning Application W00257/12 for three dwellings (2014)).

Planning Application W00257/12 for three dwellings (2014).

7.20 I noted above that Mr Simon Avery had been sent a copy of my letter to Mr Opacic (16 June 2014). Mr Simon Avery was the Case Officer who was responsible for the above application. He made a Consultation Request to the Landscape Team. The response was received from Antonia Whatmore⁽⁴³⁾. She claimed that the application was contrary to Policy CP18 and CP20. She quoted from CP18 that the objective was:-

To retain the generally open and undeveloped nature of the Settlement gaps.

7.21 She claimed that the proposed housing would

“both physically and visually diminish the gap”.

7.22 Antonia Whatmore’s response continued with equally erroneous statements that:-

“A ‘key issue’ for this landscape character area is:

Suburbanisation and urban fringe encroachment at Whiteley

The development of the application site would extend the urban fringe into the countryside adjacent to the Hazel Coppice which is a SSSI. This approach would affect the character and appearance of the surrounding countryside and would be detrimental to the landscape character of the area” Dated 14.8.2014

7.23 This is illogical because the site has housing development on three sides with the SSSI on the fourth. It cannot possibly “extend the urban fringe” because the SSSI was effectively a barrier. It can be seen from the Block Plan⁽²⁴⁾ that there isn’t any fringe to extend. There wasn’t any surrounding countryside by 2000 when the 30 dwellings at Skylark Meadows were completed. It is totally isolated from the countryside.

⁴³ Consultation Response from the Landscape Team 2014

NB This is another Officer confused by the use of Whiteley Lane as the boundary of the Gap. There is no evidence that she walked down the Lane. If she had she would have appreciated that nothing can be seen in the Meon Valley. There was no intervisibility.

7.24 There was no attempt to test this situation. Instead, another planning application was proposed.

8.0 SETTLEMENT BOUNDARY REVIEW 2014

8.1 The Settlement Boundary Review was published in 2014 ⁽⁴⁴⁾. The title is misleading because it wasn't a comprehensive Review and that was never its intention. I have highlighted the main points:-

8.2 Paragraph 6 states that:-

There are a number of advantages of settlement boundaries:

- **They provide an easy to understand tool that gives certainty for landowners, developers and community over where development is likely to be acceptable and where it is not. 2**
- **They can direct development to specific parts of the district and this can help increase the viability of local services, as well as encourage new ones to establish.**
- **They ensure a plan-led and more controlled approach to future development, providing a firm basis for protecting the countryside from unnecessary encroachment.**
- *They can allow a presumption in favour of development of sites that are too small to be identified as formal allocations in a local plan.*

8.3 The fourth bullet point confirms that it is clearly possible to permit the development of small sites such as the site adjoining Lodge Green..

8.4 The Settlement Review 2014 also established the Principles to be considered:-

Principle 1

The boundary will be defined tightly around the built up framework and where possible will follow defined features such as walls, hedgerows and roads. It is important to use a feature that is likely to have a degree of permanence as some features can change over time e.g. fences can be moved and hedgerows can be removed.

8.5 The landowners of site proposed that the settlement boundary should follow the western access road that serves the 19 dwellings in Skylark Meadows and then follow the boundary that separates the site adjoining Lodge Green and the SSSI ⁽¹⁹⁾. These have the degree of permanence as required by Principle 1. It has been established that Whiteley Lane cannot be the Gap Boundary as a consequence of the Inspector's Decisions in 2017 and 2021.

8.6 The Review then identified a second Principle 2

Principle 2

Boundaries will include:

- (a) **New development allocations proposed in LPP2.**

⁴⁴ Winchester District Local Plan Part 2: Settlement Boundary Review 2014

- (b) **Developments of previously allocated sites (e.g. Local Reserve Sites) that are built out and existing commitments for built development where development is underway i.e. commenced planning permissions.**
 - (c) *Small scale development opportunities that are below the threshold size for allocation which would provide infill and rounding off opportunities that are physically, functionally and visually related to the existing urban area, taking account of any environmental development constraints.*
 - (d) **Curtilages which are contained, are visually part of the urban area, and are separated from the open countryside.**
- 8.7 The site adjoining Lodge Green satisfies the third category ‘c’. It is clear that if the Council had accepted that the site was not in conflict with Gap Policy the two clauses identified in italics above could have allowed the development of housing on the site.
- 8.8 It seems that the land adjoining Lodge Green could have been examined as part of LPP2 but there is no mention of this. The Inspector examining the Local Plan Part 1 stated that he didn’t propose reviewing the boundaries. The site should have been examined in the context of the Settlement Boundary Review. It could have been allowed in accordance with Principle 2 c.

Settlement Boundary review – matters to take into consideration

- 8.9 This states that

This note provides a list of matters to be considered when determining if and how an existing settlement boundary should be updated.

- 8.10 It also states that:-

Other smaller settlements may also wish to consider amending existing settlement boundaries to allow for new development. In addition those settlements without a boundary may wish to define one to take a more proactive approach to bringing forward land for new development, within the development strategy in Local Plan Part 1.

- 8.11 It is evident that the Settlement Boundary Review could have released smaller sites. The suggestion that somehow the “smaller settlements” could amend their own boundaries makes little sense. It is obvious that the chance of this strongly “Nimby” orientated Council would agree to any changes is illogical. The guidance in the Settlement Review and subsequently, the policies of LPP2 severely restricted the opportunities for the release of small sites. The possible landscape impact of any of these developments pales into insignificance compared to much greater impact of large sites. The release of small sites could have reduced the magnitude of the larger sites.

8.12 Settlement Boundary Review was a totally misleading document. The fourth bullet point confirms that it is clearly possible to permit the development of small sites. However, paragraph 12 states that:-

The Inspector referred to all individual land allocations and site specific issues being matters for LPP2 and stated: “this includes the review of all MTRA2 settlement and gap boundaries...” When considering the policy MTRA3 he stated: “in the absence of any strategic need for new housing in the smaller settlements, or the wider countryside to which policy MTRA4 applies, there is no assumption that existing boundaries there would need to be reviewed.”

8.13 It is difficult to see any justification for this “assumption”. Even if the Gap was abandoned there was no intention of reviewing the settlement boundaries. The primary objective of the Settlement Boundary Review was the allocation of sites to meet the housing requirement. The site in Whiteley Lane appeared to meet much of the criteria in the Review but there is no evidence that this was given any consideration.

8.14 The same rejection applied to the sites in Lower Chase Road, Swanmore and School Lane, Kingsworthy. On the other hand, sites were allocated in both settlements as part of the Review.

8.15 The site could have been allocated but it became clear in paragraph 12 that the overriding objective was meet the housing requirement:-

“in the absence of any strategic need for new housing in the smaller settlements, or the wider countryside to which policy MTRA4 applies, there is no assumption that existing boundaries there would need to be reviewed.”

8.16 The Settlement Boundary Review was published in 2014 but this proved to be completely misleading. It seemed that some of the ‘principles’ set out in the document could have been applied to the site in Whiteley Lane and others similar sites. The Review was very limited and the principles identified in the document were only applied in a random *not* systematic way.

8.17 It might have been possible to allocate the site on Land adjoining Lodge Green if the Gap Policy hadn’t been an obstacle. The decision that the site was in a Gap precluded the proper assessment of the site.

9.0 LOCAL PLAN PART 2 – Development Management And Site Allocations

- 9.1 Following the adoption of Local Plan Part 1 - Joint Core Strategy which is the overarching document of the Local Development Framework, the Council prepared a second planning policy document. This is the Development Management and Site Allocations now known as Local Plan Part 2 (LPP2).
- 9.2 Draft Local Plan Part 2 was published in 2014. The Plan was submitted for examination on 23 March 2016. The Examination Hearings were held between 12 and 20 July 2016. A main aim of LPP2 is to allocate land to help deliver the development strategy for new housing, economic growth and diversification and includes a number of development management policies in addition to the core policies in LPP1 (paragraph 1.3). LPP2 identifies the development sites necessary to meet the remainder of LPP1's requirements throughout the District. (paragraph 1.4).
- 9.3 The Council's response the Inspector's Questions July 2016 in respect of settlement boundaries, stated:-

The amount of housing to be provided in the Plan period is established in LPP1, with a requirement of 2,500 dwellings for the 'Market Towns and Rural Area' (policy CP1). All of this is allocated to the 8 larger settlements specified in policy MTRA2 and no housing requirement is specified for any of the smaller settlements listed in policy MTRA3, or for the countryside (MTRA4). The LPP1 Inspector's Report (EBT2) refers to settlement boundaries and settlement gaps, stating that these are site specific issues for LPP2 and that this 'includes the review of all MTRA2 settlement and gap boundaries...' (paragraph 110). This relates only to policy MTRA2 settlements.

- 9.4 The Inspector stated in paragraph 132 of his report that:-

However, the policy and its supporting text are also quite clear that *all the other gaps listed will be subject to review* as part of LP2 in relation to local development needs, amongst other things, which will supersede the 2006 Winchester City Council District Local Plan – Part 1 - Inspector's Report February 2013 27 Local Plan. The text already includes the full criteria set out in the PUSH "Policy Framework for Gaps" (OD35) (Dec 2008), which will be applied to help ensure a consistent approach across the area. Therefore, there is no need for this strategic plan to include any further, more detailed or local guidance as to how the review should be carried out in practice.

- 9.5 The Gaps were not examined against the PUSH criteria. They would have been rejected if this had taken place. Nevertheless, the Inspector referred specifically to the Objection to the western boundary of the Meon Gap at Whiteley. He stated in paragraph 174 of his report that:-

The Whiteley settlement boundary in this locality is firmly established as running along Whiteley Lane, despite some sporadic development to the east. It also defines the Meon Gap,

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which has been described in a recent PUSH position statement (EBSH 5 - S1) as the only gap in the area that is of subregional strategic significance, which needs to be protected from inappropriate development. Whilst gap boundaries have needed to be reassessed elsewhere in the district to help meet local development needs, there is no such current requirement in Whiteley.

Local Plan Part 2 was adopted by the Council on 5 April 2017.

- 9.6 The Council did not examine “all of the other gaps” in the context of the PUSH criteria. If it had it would have appreciated that these gaps were clearly contrary to the criteria. The Council did not undertake this test in respect of Whiteley Lane.
- 9.7 The Decision of Inspector Payne led to calamitous confusion with serious consequences for Officers and Members. *The Local Plan was out of date by the time it was adopted because Inspector Gibbons in her Appeal Decision dated January 2017 and her associated Cost Decision in March 2017 confirmed that the site was not in conflict with the Gap Policy CP18 and she made a Partial Award of Costs on that point.*
- 9.8 It can be appreciated that the decision of Inspector Payne to reject the objections to the use of Whiteley Lane to define the Gap Boundary had serious consequences. It led to the Council suffering two Partial Awards of Costs on that point because seven Officers were confused and gave misleading advice to Members of the Council and local residents.
- 9.9 The EiP Inspectors confirmed that there should be no Gaps in Winchester District. Even if this was disregarded, the analysis of the criteria made it plain that the Gaps failed the tests. Objections to Local Plans, planning applications and appeals have been rejected on entirely false grounds at considerable cost to applicants.
- 9.10 Not one of the Officers recognised this. Complaints to the Council were rejected by Monitoring Officers. The responses were simply a “cover up”. The Chief Executive Officer ignored my requests that she should investigate this matter herself.

It was recognised belatedly by Mr Simon Finch, Head of Corporate Regulatory who was previously Head of Development Management. In July 2022, Simon Finch confirmed in a site meeting with ex Councillor Ian Tait that:-

“Mr Finch conceded that the Gap Policy should not be an issue in future” ⁽³⁾

- 9.11 This is recorded in the Statement of Community Involvement prepared by Mr Ian Tait of Palladwr Associates Ltd. Mr Finch confirmed that the Gap Policy should *not* have been a reason refusal in 2019. I will refer to this in detail later.

NB This means that it should never have been included as a reason for refusal in applications in 2006 and 2019. Many landowners and developers have spent significantly levels of money and time challenging the Gap Policy that shouldn't have been applied. Mr Finch left the Council shortly after this meeting in 2022.

9.12 I now turn to the two planning appeals proposing the development of the site commencing with the Appeal and Cost Decisions in 2017

10.0 THE DECISION TO RETAIN WHITELEY LANE AS THE BOUNDARY OF THE MEON SETTLEMENT GAP.

- 10.1 I had objected to the Decision to define Whiteley Lane as the boundary of the Meon Strategic Gap the Local Plan in 2003. When the objection was ignored, I submitted a Rebuttal but this was ignored too. I referred specifically to the EiP Panel Reports. I objected again in 2013 on the same point when the draft Local Plan Part 1 was published.
- 10.2 I sent a letter to Mr Opacic in 2014 and I included references to the EiP Panel Reports. I didn't receive a reply but I have been advised recently that he recalls receiving the letter.
- 10.3 I objected to the draft Local Plan Part 1. This time the objection was addressed and it led to a series of exchanges that I have explained in this Section.
- 10.4. The issue of the Meon Settlement Gap and its boundary was fundamental to the case that I made and my objections. I didn't believe that there should be a Gap Policy at all in the District and equally importantly I claimed that Whiteley Lane should not form the boundary of the Gap if there was a Gap. I made other objections about other gaps including the Otterborne/Shawford one. I have explained the situation in the latter case in the Section on Other Gaps.
- 10.5 Inspector Payne did refer specifically to the site in Whiteley Lane in his Report. In fact, I asked him to visit Whiteley Lane. He declined stating that he no intention undertaking a site visit. I feel certain that but if he had walked down the Lane he would have appreciated that any development could not possibly '**physically or visually diminish the gap**'. He might also have appreciated that the Lane is not in the Meon Valley but in the Hamble Valley. He would certainly have been convinced if he had traced the ridge along Cartwright Drive from the A27 Junction to Whiteley Lane. He would have seen that Cartwright Drive follows the ridge but as it joins Whiteley Lane he would have appreciated that Whiteley Lane gradually moves away from the ridge. When it reaches the junction with Springles Lane it turns westward and downwards into the Hamble Valley.
- 10.6 Inspector Payne referred specifically to the site in Whiteley Lane in his Report on the Local Plans Part 1 but only in terms of a settlement boundary and not the Gap boundary. The Inspector's Report states in paragraph 174 that:-

The Whiteley settlement boundary in this locality is firmly established as running along Whiteley Lane, despite some sporadic development to the east. It also defines the Meon Gap, which has been described in a recent PUSH position statement (EBSH 5 - S1) as the only gap in the area that is of subregional strategic significance, which needs to be protected from inappropriate development. Whilst gap boundaries have needed to be reassessed elsewhere in the district to help meet local development needs, there is no such current requirement in Whiteley.

- 10.7 The “sporadic development” to which he refers comprised the 30 detached dwellings at Skylark Meadows. Beyond these dwellings to the east there is a further continuous line of large detached dwellings in Springles Lane. There is still more housing on the valley slope beyond this before the valley side is more open as it slopes down to the River Meon.
- 10.8 Whiteley Lane was confirmed as the western boundary of the Gap in 2004. This was contrary to the guidance. There were several issues. The Policy states that “*only the land necessary to achieve these objective*” should be included. Nevertheless, the boundary of the Gap was drawn “*tight against the existing built up area*” contrary to the criteria. The decision to make Whiteley Lane the western boundary meant that the 30 dwellings at the Skylark Meadows Estate were included in the Gap. Of greatest significance was the fact that the Gap boundary was in the Hamble Valley and *not* in the Meon Valley that the Gap Policy was supposed to protect (please see the [Plan showing distances](#) (22))
- 10.9 Inspector Payne did not seem to appreciate that Whiteley Lane was in the Hamble Valley and that it could not possibly ‘physically or visually diminish the Gap’. He made no reference to this.
- 10.10 He placed great importance upon the significance that the Meon Gap together with the area covered by SH4 was regarded as a *subregional gap of strategic significance*. It seems that in his mind, this meant that the boundary shouldn’t be altered. This is a convoluted response. Whiteley Lane is in the Hamble Valley and by definition cannot affect the Meon Gap whatever its status. He only applied the resistance to alteration to the western boundary as I will make clear later.
- 10.11 Paragraph 175 of the Report states that:-
- Therefore, there is no justification for changing the extent of a gap of subregional significance simply to accommodate an additional dwelling. This is so despite the presence of other housing on three sides of the site particularly as it adjoins an SSSI and is covered by a group Tree Preservation Order, which reflects the presence of semi natural ancient woodland on the majority of it. I therefore conclude that no further modifications are necessary to policies SHUA 1-5 or to the Whiteley settlement boundary for soundness.**
- 10.12 Inspector Payne refused to visit the site or the Lane. It seems therefore that he was provided with a description of the site that was totally misleading. The site is not covered in trees. There are no trees in the central part of the site and the TPO only covers trees on the boundary of the SSSI together with a woodland buffer on the road frontage. This buffer extends 25 metres into the site. The proposed development avoided all of the trees. The ‘majority’ of the site is *treeless*.

Who provided this completely inaccurate description of the site?

- 10.13 I will refer in detail to the Appeal Decision made by Inspector Ms Gibbons who allowed the Appeal in January 2017 confirming that the site was not in conflict with the Gap Policy and made a Partial Award of Costs on that point.
- 10.14 The reference to “**the presence of semi natural ancient woodland**” is also wrong. I discovered later in email exchanges with Mrs Jill Lee that she was relying on the Magic website. The description was included on the SHELAA. I had submitted a letter from Natural England dated March 2013 where the advice to create a 15 metre buffer from the housing was sufficient to protect the SSSI. Inspector Payne was given erroneous information.
- 10.15 A Habitat Management Plan prepared by Ahern Ecology in 2013 and it was agreed with Natural England. The Natural England advice is set out in paragraphs 4.3.11 to 4.3.15 of the Management Plan. Paragraph 4.3.13 proposed a post and rail fence with wire mesh to discourage access into the SSSI and ancient woodland by local residents, dogs and cats. Appendix B sought the removal of the close boarded fence along the northern and common boundary and its replacement with a post and rail fence along the boundary. This advice is set out in an Appendix to the Plan which included a letter dated 16 September 2013 signed on behalf of Katherine Stearne that apologised for the error on Natural England’s plans. The Natural England plans had shown the site within the SSSI.
- 10.16 Natural England had drawn the boundary of the SSSI across part of the site. Dr Stearne confirmed in a letter that this was a mistake. The Habitat Management Plan included Addendum E which referred to an affidavit prepared in 1993 by Mr Valentine Hawes who owned Lodge Green at the time and the adjoining land confirming that the boundary of the land at Lodge Green had been established at the end of the Second World War.
- 10.17 As a matter of fact I met Dr Katherine Stearne of Natural England on site in 2013. The 15 metre buffer was agreed and Dr Stearne expressed her shock at the state of the SSSI in the area adjoining the site. The SSSI had become overgrown and the lack of maintenance meant that the habitat for species that were regarded as important, such as species of butterflies, had been seriously degraded. We also discussed the plan on the Magic website that referred to the ‘*presence of semi natural ancient woodland*’.
- 10.18 Dr Stearne confirmed that the web site was wrong.
- 10.19 ECOSA prepared a report entitled Ecological Impact Assessment date 11 May 2023 for the landowners that included the previous reports and confirming that they were still extant.
- 10.20 Subsequently, in 2020, I had a series of email exchanges with Mrs Jill Lee about the fact that the SHELAA was wrong but I was advised that it couldn’t be changed until the next iteration of the SHELAA. These email exchanges were copied to Adrian Fox in the Strategic Development Team. This was not checked and it led to years of confusion for

Officers, Members of the Council and local residents. It is difficult to believe that Inspector Payne considered this matter seriously or in depth. His conclusion was undermined by the time that the Local Plan Part 2 was adopted in **April 2017** by the appeal decision in January 2017 of Inspector Ms Gibbons that the site in Whiteley Lane was not in conflict with the Gap.

Planning Appeal Decision APP/L1765/W/16/3153276

10.21 The Appeal Decision was received on 12 JANUARY 2017. It was a major breakthrough when Inspector Ms Gibbons concluded emphatically that the appeal site was not in conflict with the Policy CP18 Settlement Gap. She stated that:-

The ridgeline and enclosed nature of the appeal site means that it cannot be viewed in the context of the separation of the two settlements. The position of development at Skylark Meadow which is between the settlements has isolated the appeal site in Strategic Gap terms. The site is a very small parcel of land within a large Strategic Gap and it does not assist in the intended role to define and retain the separate identity of settlements. These are characteristics which seem to me to be very particular to the appeal site. As a result of these factors, I consider that site no longer performs a role in the visual and physical separation of Whiteley and Fareham and the proposal would not diminish the Strategic Gap. For these reasons, I conclude that the proposal would not be in conflict with Policy CP18 of the LPP1. (paragraph 12).

10.22 The appeal was dismissed but the Inspector made a Partial Award of Costs in respect of the Gap Policy. The Inspector did not reach the logical conclusion that, if the site did not diminish the Gap, then there must be a question about the boundary of the gap.

10.23 The Decisions of Inspector Payne led to confusion with serious consequences for Officers and Members. It is evident that *the Local Plan was out of date by the time it was adopted in April 2017 because Inspector Gibbons in her Appeal Decision dated January 2017 confirmed that the site was not in conflict with the Gap Policy CP18 and her associated Cost Decision in March 2017 when she made a Partial Award of Costs on that point.*

10.24 It can be appreciated that the decision of Inspector Payne to reject the objections to the use of Whiteley Lane to define the Gap Boundary had serious consequences. It led to the Council suffering two Partial Awards of Costs on that point because seven Officers were confused and gave misleading advice to Members of the Council and local residents for several years. This conundrum should have been examined at the time.

10.25 In my opinion, Inspector Ms Gibbons should have brought it to the attention of her colleagues in the Inspectorate. She was best placed to realise the problem. She had examined the Development Plan and she had concluded that the boundary of the Gap was misleading.

- 10.26 The Council should have examined the decision of Inspector Ms Gibbons to decide if there should have been an addendum to the Local Plan to explain that Whiteley Lane was not the boundary of the Gap. Instead, the Council not only failed to examine the implications but it has compounded the problem by retaining the Gaps in the Emerging Local Plan and retaining Whiteley Lane as the western boundary. It seems that nothing will persuade the Council to review its position. I have been unable to find any justification of its decision.
- 10.27 I do appreciate that I could have considered making a judicial review of the Local Plan on the basis that it was unsound. However, I was dumbstruck by the other appeal and cost decisions made by Inspector Ms Gibbons. Although the Council had provided no evidence to defend its reasons for refusal with regard to the effect on the character of the Lane or the alleged harm to the SSSI Inspector Ms Gibbons supported both the reasons for refusal. It was crystal clear that she had misinterpreted the appellants' evidence on landscape. She accepted the advice of Natural England who did not find harm to the SSSI but she didn't make a further Award of Costs on the grounds of unreasonable behaviour. I had expect the appeal to have been allowed.
- 10.28 There were other considerations that distracted me. I had met some of the local residents who lived in the Lane in 2017. I explained that the appeal had been dismissed but the Inspector had concluded that the site was not in conflict with the Gap Policy and that she had made an Award of Costs against the Council. The residents appreciated that this removed the basis of their objections to the development of the site. Subsequently, Mrs Jan Knight contacted one of the Directors to see if the company was willing to discuss an arrangement whereby the residents no longer objected to the development of the site provided that all activities on the site ceased. I spent several months arranging meetings, meeting the Whiteley Town Council and preparing the legal agreement required by the residents. I was distracted by this. It seemed preferable to resubmit the planning application especially when the local residents agreed not to object.
- 10.29 I made reference to the anomalous situation in my Planning Statement in 2019. The Officers made the incomprehensible decision to challenge the 2017 Decision on the basis that the change from one dwelling to two meant that the site was still in conflict with the Gap Policy (Consultation Response to the Planning Application in February 2019). This was recorded in the Committee Report but there was no reference to the 2017 Appeal and Cost Decisions.

Consultation Response February 2019: The proposed development would result in the erection of two market dwellings within the countryside and the gap, contrary to the policies of the Development Plan and in particular MTRA4 (countryside) and CP18 (gaps).

- 10.30 The failure to review the Council's position when there is a clear issue with policies is not unique. The appeal decision in respect of the development in School Lane, Kingsworthy demonstrates this point too as the Inspector concluded that the proposal had no implications for the functioning of the Gap. The Inspector should have brought this to the attention of her colleagues in the Inspectorate. It will be seen later under the Section on 'Other Gaps' that Officers recommended refusal on the Gap point while the article in the Hants Chronicle shows that Members of the Committee were fully supportive of the Gap reason for refusal.
- 10.31 As with so many instances established in this letter neither the Officers nor the Members reviewed the consequences of the decision. This is the reason why the Officers recommended refusal of the planning application on the Gap Policy in 2019. There is no feedback so the situation can arise again. This has led to the current problem with the Emerging Local Plan where the Council has retained the Gap Policy and Whiteley Lane as the Gap Boundary. The same situation applies to the Gap in Kingsworthy. The Gap and the boundary hasn't been reviewed in spite of the Inspector's decision. The other Gaps should have been examined too.
- 10.32 It is known that Simon Finch, the former Head of Corporate Regularity, was charged with reviewing the settlement boundaries and he stated in July 2022 that Gap Policy should not be applied to the development of the site in Whiteley Lane (Statement of Community Involvement 2022 ⁽³⁾) but he has left the Council. I do not believe that he would have told his colleagues.
- 10.33 This means that the gap and settlement boundary of Whiteley and the gap and boundaries of many other settlements will not have been examined since 2004 (or possibly earlier). These issues will have to wait until the Examination of the Emerging Local Plan Review in 2025. Twenty five years will have passed by then and yet the Inspector's appeal decision in 2017 confirmed that the proposed development was not in conflict with the Gap Policy and the Inspector made a Partial Award of Costs on that point.
- 10.34 The failure to ensure that issue of the Gap was brought to the Officers and Members attention led to the second Appeal and Cost Decisions in February 2021. Complaints have not been addressed accurately by Officers or Members. The Council is in a state of corporate denial! Please see the Section on Probity.
- 10.35 I now turn to the two planning appeals proposing the development of the site commencing with the Appeal and Cost Decisions in 2017.

**11.0 APPEAL DECISION JANUARY AND COST DECISION MARCH 2017
Land adjacent Lodge Green, Whiteley Lane, Titchfield, Hampshire PO15 6RW**

11.1 In 2016, a planning application was submitted for one detached dwelling. The application was supported by a Landscape and Visual Impact Assessment ⁽⁴⁵⁾

11.2 The application was refused on grounds that included:-

“the addition of the dwelling in this countryside location would have an adverse impact on the landscape character of the area and physically and visually diminish the Settlement Gap”.

11.3 The first time that the Gap Policy was tested was in an appeal in 2016/2017. The appeal was considered by the written representations. The Inspector in her Decision stated in paragraph 10, (ref: 2) that:-

The ridgeline and enclosed nature of the appeal site means that it cannot be viewed in the context of the separation of the two settlements. The position of development at Skylark Meadow which is between the settlements has isolated the appeal site in Strategic Gap terms. The site is a very small parcel of land within a large Strategic Gap and it does not assist in the intended role to define and retain the separate identity of settlements. These are characteristics which seem to me to be very particular to the appeal site. As a result of these factors, I consider that site no longer performs a role in the visual and physical separation of Whiteley and Fareham and the proposal would not diminish the Strategic Gap. For these reasons, I conclude that the proposal would not be in conflict with Policy CP18 of the LPP1.

11.4 The Inspector in her Decision stated that **“I consider that site no longer performs a role in the visual and physical separation of Whiteley and Fareham and the proposal would not diminish the Strategic Gap”** ⁽⁴⁾. Furthermore, she made a Partial Award of Costs on this point ⁽⁵⁾.

NB: The Appeal Decision was made in January 2017 but the Cost Decision was not received until March 2017. Local Plan Part 2 was adopted by the Council on 5 April 2017. It will be recalled that Inspector Nigel Payne had rejected the argument that the boundary of the Gap was in the wrong place! The Local Plan was out of date before it was adopted!

11.5 The Appeal and Cost Decisions should have been a major breakthrough but it will be seen that the Council Officers failed to appreciate this aspect of the Decision even though the Council had suffered the Partial Award of Costs.

11.6 The Inspector in 2017 considered two other issues raised by the Council:-

⁴⁵ Landscape and Visual Impact Assessment 2015 prepared by SSLA

1. The Council also refused planning permission because it claimed that the development had an unacceptable impact on the character and appearance of the area.
 2. The Council also refused planning permission because it claimed that the development had an unacceptable impact on the SSSI that has a common boundary to the north side.
- 11.7 *The Council offered **no evidence** to support the reasons for refusal on either of these points but the Inspector didn't conclude that this merited an Award of Costs in either case!*

11.8 The refusal reason stated that:-

“the addition of the dwelling in this countryside location would have an adverse impact on the landscape character of the area and physically and visually diminish the Settlement Gap”.

11.9 The Inspector made her own interpretation of the Council's case. She stated, in paragraph 5, that:-

In respect of landscape and settlement gap matters as set out in the reason for refusal 2, the applicant had provided a Landscape and Visual Impact Assessment and a Landscape Appraisal of the Meon Settlement Gap. The Council did not comment on the contents of these reports. I accept that verbal advice on the planning application was provided by the Council's landscape officer although this is not referred to in the officer's report in the consultations section, and it is not clear what that advice contained. My italics and underlining.

11.10 The Inspector's comments are bizarre. It seems that Inspector Gibbons was determined to defend the Council's Decision. What persuaded her to make this incomprehensible and unjustifiable interpretation of the Council's case? It was clearly unreasonable behaviour and surely a full Award of Costs should have followed but the Inspector concluded with regard to the Landscape Character Assessment in paragraph 7 that:-

Although the wider countryside cannot be seen from the road due to the ridgeline and surrounding vegetation, the appeal site does not appear urban or suburban. It retains a sufficient number of trees and shrubs to have a rural characteristic and it is locally distinctive in relation to the context of nearby development.

11.11 This is a completely meaningless and irrelevant statement. She confirms that the **‘wider countryside cannot be seen because of the ridgeline.’** She then states that **‘It retains a sufficient number of trees and shrubs to have a rural characteristic’.** This is no different from most of the Lane and the counter argument could be made that it fits in with the ‘arcadian’ character of the Lane. She then states that **‘it is locally distinctive in relation to the context of nearby development.’** What does this mean? It is an isolated field. The site immediately adjoins a large bungalow with a large parking area in front with the large houses on Skylark Meadows beyond this. The Inspector was *‘looking through rose coloured glasses’* and could only see the points that suited her decision but this is irrelevant.

These words wouldn't matter but Inspector Robert Parker was clearly influenced and he repeated them.

11.12 She then stated that:-

The housing on Skylark Meadows is now well established. However, these houses are little distance away from the appeal site and they have mature gardens. Furthermore, neither these houses nor Lodge Green significantly impinge on the rural character of the appeal site.

11.13 This is nonsense and unworthy of an Inspector. This is an isolated field separated from the open countryside. The two houses on Skylark Meadows Estate *directly back on to the appeal site and share a common boundary*. If the Inspector had read the evidence, she would have noted that the owners of N^o 11 Skylark Meadows and the owners of the appeal site were in dispute about dumping garden refuse on to the appeal site. Both properties shared a common boundary with the appeal site. Any development on the appeal site would have "mature gardens" too as there is woodland on the site to the north and west. This reflected the local character.

11.14 What did the Inspector consider should happen to a small isolated site remote from the countryside? It cannot be preserved in its present state. The open part of the site measures 0.4 ha. It was a residual pocket of land which had limited usefulness. Uses on the site had created 15 years of disputes. If the Council refuses planning permission again, the local residents will have to face more problems as the landowners are not going to leave the site unused.

11.15 The Inspector concluded that the applicants were obliged to provide a LVIA to support its evidence and, on this basis, unreasonable behaviour was not demonstrated. She stated in paragraph 6 that:-

The reasoning on landscape character does not provide a reasonable evidential stance to support its stance. That said, in respect of the landscape character the appeal did not succeed in part due to the effect of the proposed scheme on the character and appearance of the area. The applicant's evidence on that part of the reason for refusal 2 was therefore a necessary part of the appeal process.

11.16 It is difficult to comprehend the Inspector's decision. It is nonsense as it implies that if the appellant's hadn't referred to the LCA Costs may have been awarded. As a matter of fact, the Inspector relied on the appellants' LVIA (which included reference to the LCA dated 2004) to make her decision that the development caused harm to the character and appearance but in reaching this decision she misinterpreted the LVIA. The appellant's landscape consultant had drawn attention to the extent of changes over time. The County Council's Landscape Character Assessment was out of date and misleading.

11.17 Inspector Ms Gibbons misinterpreted the appellants' evidence which demonstrated the magnitude of the changes that had taken place in the period 2004 when the Landscape

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Character Assessment had been prepared to 2016. The changes were fundamental. The 30 detached dwellings had been constructed on Skylark Meadows Estate to the east of the site leaving it isolated from the open countryside. The Council had also agreed to make Whiteley Lane a cul-de-sac without creating any passing places or turning points. She rejected the appellants claim for an Award of Costs on this basic error. If a public inquiry had been held this appeal would almost certainly been allowed.

- 11.18 It is even possible that a barrister would have appreciated the absurd legal situation that had been created with the conflict between the gap boundary in the development plan and the position on the ground.

The landscape consultant had also demonstrated that the site was in the Hamble Valley. A complaint was lodged with the Planning Inspectorate ⁽³⁰⁾.

- 11.19 In paragraph 7, the Inspector stated:-

Although the wider countryside cannot be seen from the road due to the ridgeline and surrounding vegetation, the appeal site does not appear urban or suburban.

- 11.20 It is not clear what point the Inspector was making. The Inspector then states, in paragraph 8, that:-

The proposal is for one dwelling with an access drive and a detached garage. I accept that the proposed materials and design would be compatible with houses in the surrounding area. However, the proposed dwelling would be highly visible when seen from the access drive. The land rises up slightly towards the proposed location of the dwelling and the house would be a prominent feature.

- 11.21 This is simply untrue. The proposed dwelling would not be highly visible. The dwelling would have been set back 39 metres from the Lane and beyond the 25 metre deep woodland belt. It is evident that new planting could readily screen the dwellings. The site had the same characteristics as the other dwellings in the Lane – houses sitting in a woodland setting. It is on the east side of the Lane and has a suburban character with the dwellings on Skylark Meadows in full view to the rear (Please see the photographs). All of the dwellings in the Lane are more visible.

- 11.22 There are many cases where planting has been accepted as being able to screen development including one in the same Meon Gap in Fareham. An appeal decision in respect of land ‘East of Crofton Cemetery and West of Peak Lane, Stubbington, Fareham’ for **206 dwellings** was allowed (*Appeal Ref:* APP/A1720/W/21/3275237) dated 11 January 2022.

This site is in the Fareham part of the Meon Gap ⁽⁴⁶⁾. One of the main issues was ‘the effects of the proposal on the landscape character and appearance of the area’. The Inspector stated that:-

Both parties submitted landscape and visual impact assessments as part of their submissions and the methodologies for these were discussed at length at the Inquiry. I consider the Council’s approach to be more rigorous, not least because it takes a cogent approach to defining the landscape character area and the landscape sensitivity of the site. Nevertheless, both assessments reach the conclusion that *the impacts of the scheme are localised and limited to the immediate environs of the site*. I am therefore satisfied that the proposal would not cause harm to wider landscape character.

11.23 It is obvious that if 206 dwellings do not cause harm then the impact of 2 dwellings can only be *localised and limited to the immediate environs of the site*. It is difficult to comprehend the Inspector’s landscape objection. She used the phrase that “the appeal site does not appear urban or suburban”. This was also quoted by the Council’s Landscape Officer in 2019 without any explanation of the significance of these words. The setting is clearly suburban.

11.24 The Council served another Enforcement Notice in 2015 seeking the removal of the mobile home. This included the threat of action in the Magistrates Court. The mobile home was finally removed in September 2016 and the site cleared of debris. The Inspector made her site visit in November 2016 a matter of weeks after the site was cleared. In her Decision the Inspector commented on the state of the site in paragraph 6:-

I note that the site has been in a poor state in previous years. However, at the time of my visit it had a tidy appearance with no sign of tipping or structures.

11.25 The Inspector ignored the reference to the enforcement notices. The site only had “a tidy appearance for the first time in 17 years because the owners had complied with the Enforcement Notice.

11.26 The Inspector accepted the evidence of the appellants that there was no impact on the SSSI subject to the requirement of Natural England to provide a 15 metre buffer from the common boundary as set out in the letter from Natural England. A Habitat Management Plan prepared by Ahern Ecology had been agreed with Natural England. This buffer is characterised by an extensive woodland protected by a Tree Preservation Order and it separated the SSSI from the developable area of the site. 13.27 The Council had provided no evidence to defend its reasons for refusal with regard to the alleged harm to the SSSI. Inspector Ms Gibbons accepted the advice of Natural England presented by the

⁴⁶ Appeal decision land ‘East of Crofto2n Cemetery and West of Peak Lane, Stubbington, Fareham’ (*Appeal Ref: APP/A1720/W/21/3275237*) dated 11 January 2022

appellants who did not find harm to the SSSI. Nevertheless, Inspector Ms Gibbons didn't make a further Award of Costs on the grounds of unreasonable behaviour. I had expect the appeal to have been allowed.

11.27 The Council in the case at Swanmore accepted that a SINC acted as an 'end stop' to the development of 91 dwellings whereas in Whiteley Lane the Inspector claimed that the development of two dwellings adjoining the SSSI **would have an adverse impact on the landscape character of the area and physically and visually diminish the Settlement Gap**". Both sites were in Gaps and both were being considered in the context of Local Plan Part 2 (Map of Swanmore).

11.28 All smaller sites were rejected and there has been no review of boundaries since. The Council was biased against the owners and developers of small site. The Committee Report described the position correctly but it still permitted the development. It stated that:-

The site currently lies outside the defined settlement boundary of Swanmore and housing would not be generally acceptable under current LPP1 Policy 18 due to the location within the Swanmore-Waltham Chase Settlement Gap. Notwithstanding the location within the gap, the proposed scale and type of housing would not be generally acceptable in the countryside under policy LPP1 Policy MTRA4 in any case.

11.29 Inspector Ms Gibbons referred to the SSSI in Paragraph 3 of the Appeal Decision 2017 that states:-

There was no reason for refusal relating to ecological matters. However, the applicant refers to the Council failing to have proper regard to the responses of Natural England (NE) in relation to the adjacent Site of Special Scientific Interest (SSSI). It is suggested by the applicant that had the Council considered the NE position properly that it may have been a positive aspect in favour of the scheme.

11.30 The Inspector accepted the evidence of the appellants that there was no impact on the SSSI subject to the requirement of Natural England to provide a 15 metre buffer from the common boundary as set out in the letter from Natural England.

11.31 **NB** Please note that the appellants drew attention to the SSSI not the Council.

11.32 There is no reference to the Ancient Woodland in either the appeal or cost decisions.

11.33 Paragraph 26 states that

The proposal would secure a buffer strip parallel and adjacent to Hazel Coppice. There would be some small benefit to the SSSI in terms of keeping activity away from the protected ecology. I have factored this into the planning balance.

Tree Preservation Order 2305W1: 'Land known as Hazel Copse and Lee Coppice to the rear of Skylark Meadows, Whiteley'

- 11.34 The TPO was served because residents in Skylark Meadows had been felling trees and removing limbs of trees within the SSSI (TPO 2305: ⁽⁴⁷⁾). The TPO Plan also helpfully shows clearly the minimal gap between the site and buildings on the Business Park. The SSSI frontage to the Lane is approximately 150 metres.
- 11.35 The TPO adjoins the boundary of the site adjoining Lodge Green. This extends the 15 metre buffer proposed by Natural England by 30 metres. Consequently, there is now a 45 metre protected buffer between the main area of the SSSI and the nearest plot on the site. It is understood that the TPO was not confirmed. However, the accompanying plan is very informative. The boundary of the TPO has a common boundary with the land adjoining Lodge Green.
- 11.36 It also shows that there are nine properties on Skylark Meadows that share a common boundary with the SSSI. Some of these properties have *gates from their gardens directly on to the SSSI*. The 15 metre buffer has not applied to these properties but the buffer would have extended over their gardens and over the dwellings.
- 11.37 The 15 metre buffer would also have affected the gardens of six properties on the western side of the Lane and the commercial buildings on the western side of the Lane. The commercial buildings that share a common boundary with the northern boundary of the SSSI are also within 15 metres of the SSSI.
- 11.38 It can be appreciated that the site adjoining Lodge Green is the *only* property in the vicinity of the SSSI that has had to provide the buffer.

⁴⁷ TPO 2305: 30 metre strip of woodland on the SSSI extends up to the boundary of the adjacent properties

12.0 THE LANDOWNERS REVIEWED THE 2017 INSPECTOR'S DECISION

- 12.1 The landowners reviewed the Appeal Decision and decided that it was not conclusive. The possibility of a High Court challenge was considered but rejected.
- 12.2 Inspector Ms Gibbons had confirmed that the Gap reason for refusal was misapplied and she made a Partial Award of Costs on that point. *The Council had failed to provide evidence to support the other two reasons for refusal.*
- 12.3 Inspector Ms Gibbons decided to make her own interpretation of the Council's case without any grounds to do so. She then proceeded misinterpreted the landscape evidence. It was crystal clear that the Landscape Character Assessment of 2004 was out of date as pointed out by the Consultant's Landscape Consultant. The site was not in the countryside but it was now landlocked by the development of 30 large detached dwellings to the east of the site. There was housing on three sides with the SSSI forming the fourth boundary. The reason for dismissing the appeal was based primarily on the Inspector's misinterpretation of the landscape issue.
- 12.4 The Council had provided no evidence to support its other reason for refusal with regard to the alleged harm to the SSSI. Inspector Ms Gibbons accepted that Natural England did not object to the development subject to the provision of a 15 metre buffer. For some reason, she didn't make an Award of Costs on the basis of unreasonable behaviour.
- 12.5 The landowners concluded that it was preferable to submit another planning application. This decision was reinforced when it became clear that the local residents were minded not to object to another planning application. As part of the consideration of the next steps, the landowners decided to erect fencing. The site had been cleared following the Enforcement Notice in 2016 but only in respect of the questionable decision on the mobile home. It was decided to explore some more uses for the site.
- 12.6 The fencing was to be erected along the Lane frontage but on the appellants' land. On seeing this, one of the residents asked the Director on site what was proposed. There was shock when the residents were advised that the appeal decision was not regarded as conclusive and that yet another application was proposed. It was pointed out to the residents that the Inspector had concluded that the site was not in conflict with the Gap Policy CP18. Many of the residents felt deceived by the Council as their opposition to the development of the site over many years had relied principally on this policy.
- 12.7 The proposed development only had implications for a very limited number of residents. There were just eleven dwellings in the Lane. There were two dwellings in Skylark Meadows that backed on to the site. The only other people that could view the site were the few pedestrians, cyclists and the even fewer riders on horses that passed along the Lane. It should be noted that none of these latter people ever commented or objected to the

development. Thus, the proposal only had local implications. This was further limited because the site could only be viewed as people passed the frontage of the site and the proposed dwellings were to be set back 38 metres into the site and could only be glimpsed for a few minutes (please see the set of photographs). The frontage was just 80 metres long so the interior could only be viewed for a very short time.

The Local Residents Decision not to object to the revised scheme

- 12.8 The attitude of the local residents to the development of the site had been completely misunderstood. They were opposed to housing development. They had been advised that the Lane was the boundary of the Gap and that development on the eastern side would not be permitted. However, every few years from 1993 onwards a planning application had been submitted. There was always the need to object to the proposals and the uncertainty of the outcome. The situation changed fundamentally in 2017 with the Appeal Decision.
- 12.9 The occupiers of Whiteley Bungalow, Mr Peter and Mrs Jan Knight, who lived opposite the site, complained that the fence made it difficult to manoeuvre their caravan from their driveway. Mrs Jan Knight then discussed the situation with one of the Directors. She put the proposition to him that she would contact all of her neighbours in the Lane and to see if agreement could be reached *whereby they would agree not to object to the development of the site in return for the owners agreeing **not** to undertake any more activities on the site.* An initial meeting was held between the three households closest to the site who were most seriously affected by activities on the site.
- 12.10 Mrs Knight duly contacted everyone in the Lane. This is set out in her letter to the Planning Inspectorate in response to the planning application dated 21 October 2020 ⁽¹⁾. She states in that letter that she had no expectation that her neighbours would agree to her proposals. Mrs Knight arranged a site visit to which everyone in the Lane was invited. A layout was displayed at the site meeting and the owners agreed to changes proposed by the residents. The residents wanted to restrict the development to two detached dwellings which they believed would be compatible with the existing housing. A further meeting was held at a local Hotel where the revised plans were agreed.
- 12.11 Many of the residents had found the numerous planning applications and appeals together with the enforcement issues distressing. There was the uncertainty in respect of the future of the site and fears of what could happen. As a result, most of the residents agreed not to object to a proposal for housing development. The letter makes clear that *only one of the eleven households* canvassed by Mrs Knight objected to the development. This proved to be correct. It does not seem that Mrs Clayton as author of the Committee Report or Inspector Parker read the letter from Mrs Knight. Inspector Parker claimed that he had taken all representations into account but it is clear that he hadn't. Inspector Parker ignored or misinterpreted much of the evidence.

Legal Agreement

- 12.12 The local residents and the landowners had been at loggerheads for seventeen years and the residents wanted the assurance that the owners would not seek more than two dwellings and that they would cease all activities on the site. The residents requested that a legal agreement was prepared to this effect (¹).
- 12.13 Three of the residents Mr Knight, Mr Watts and Mr Plummer signed the agreement. *It was only necessary to have **three** signatories to the legal agreement.* The residents wanted to bind the Company so that it could only submit a planning application in accordance with their wishes. The landowners paid for the agreement. It was agreed that:-
- **only two detached dwellings should be built;**
 - **no activities to take place on the appeal site until the decision on the application/appeal was received.**
 - **the Lane would be re-instated to its condition prior to the development between points ‘A’ and ‘B’ on the Plan,**
 - **And on the completion of the site works the Lane would be re-surfaced between points ‘C’ and ‘D’ on the plan including the provision of a turning point.**
- 12.14 Copies of the legal agreement were submitted with the planning application and subsequently with appeal papers.

Whiteley Town Council

- 12.15 A deputation was made to the Whiteley Town Council by Mr Peter Knight and myself. Mr Knight outlined the residents’ concerns about the activities on the site and the reasons why they wanted a legal agreement. The Members agreed not to object to the planning application provided that the legal agreement was executed to the satisfaction of the residents.
- 12.16 A further deputation was made confirming that the agreement had been executed. Members then voted *unanimously* to support the residents and not to object to the planning application (¹). Inspector Parker did not explain why he disregarded the decision of the Whiteley Town Council to support the residents and why he placed no weight on this significant consideration.
- 12.17 It was crystal clear that residents decided not to object to the development because they wanted to end the uncertainty and the bitter arguments about the activities on the site. They were not influenced by the landowners who believed that it was obviously better that there were fewer objections but they also believed that they had a convincing planning case.

Statement of Community Involvement

- 12.18 A Statement of Community Involvement was prepared setting out the details of the consultation with residents and the Town Council (¹²). This made clear that there were only eleven households in the Lane of which just one objected to the development.
- 12.19 This was included as a Section in the application planning statement. This was also provided separately for the planning appeal.
- 12.20 The Inspector stated in paragraph 24 that:-

Although the proposal has the support of Whiteley Town Council and some residents, other individuals remain opposed to the scheme. A number of neighbours have entered into an agreement with the landowners to ensure that no more than two dwellings can be constructed on the site. However, there has been no formal public consultation outside of the planning application process and this is not a community led scheme in the same way as if the scheme had been proposed under a Neighbourhood Plan. Whilst I have taken full account of all representations from those living nearby, they have not been determinative.

- 12.21 This paragraph illustrates the comprehensive failure of Inspector Parker to analyse the evidence correctly. Inspector didn't identify any 'other individuals'. The agreement only required three signatories. Ten of the eleven households in the Lane did not object. Everyone was consulted including the Members of the Town Council. A Neighbourhood Plan was not appropriate or necessary for the small area affected. It is evident that the Inspector did not read the letters of Mrs Knight and the other residents in the Lane. These are still available on the Council's website.
- 12.22 The Officers ignored this and made just passing reference to it. When I complained about this case, I received response known as Stage 2 Complaints Procedure from Mr Richard Botham, a Strategic Development Officer. He stated that:-

I note that you and your client have sought to engage with the neighbouring residents along Whiteley Lane to form some community support for the scheme. As a council we would actively encourage genuine engagement as supported by our Statement of Community Engagement but I understand by the evidence before me that in this case not all residents supported the development and some still chose to object.

- 12.23 He stated that the landowners "**sought to engage with the neighbouring residents**" when it was clear from the letter from Mrs Jan Knight that she contacted the landowners. He also stated that "**I understand by the evidence before me that in this case not all residents supported the development and some still chose to object.**" Mr Botham obviously made no effort to gather the facts and was willing to make unfounded comments belittling the case. I complained to him in a letter about his failure to even gather the facts but I heard nothing more.

Professional Representation of the Local Residents

- 12.24 Planning can be exceptionally complicated and the residents were placed in a difficult position. They had been at loggerheads with the landowners for many years. They had opposed every planning application and appeal. The situation changed in 2017 when Inspector Ms Gibbons concluded that the site was not in conflict with the Gap Policy. This Policy had been the principal ground for their opposition to development. There was the separate issue of the use of the site which was a source of endless aggravation. This was particularly serious for Mr and Mrs Knight who lived opposite the site. When the residents in the Lane agreed not to object to the development it seemed sensible for them to be represented professionally by a barrister or an independent planning consultant.
- 12.25 Some quotes were obtained but these were expensive. It was unreasonable to ask the residents to pay consultants to support their case when the main beneficiaries were the landowners. The landowners considered the possibility of paying the fees but this seemed to be problematic creating issues of conflict and independence. Another possibility was the use of the RTPI Planning Aid facility. It was finally decided that Mr and Mrs Knight should attend the Hearing and make the case on behalf of their neighbours. They agreed but, unfortunately, this proved to create too much stress for Mrs Jan Knight who suffered a breakdown at the Hearing. It became clear when the Appeal Decision was received the Inspector Parker had not understood her case and he should have adjourned the Hearing. I accept that I should have pressed for this.
- 12.26 It is important to stress that NOT one Officer nor one Member visited the residents. This was a contributory factor the led to the misunderstandings of the residents' case.
- 12.27 *All of these issues would have been resolved if the Planning Inspectorate had agreed to a public inquiry and appointed a competent Inspector.*

Proposal: Erection of 2 detached self build houses with detached garages, parking, turning and landscaping. 24/01343/OUT

- 12.28 There was only one objection from a household in the Lane in respect of this planning application. Two households specifically supported the application. Unfortunately, the Town Council was no longer supportive. I do not know the reasons why.
- 12.29 The landowners will lodge an appeal in due course.

13.0 THE REVISED PLANNING APPLICATION (FEBRUARY 2019).

- 13.1 I make clear at the outset that this case was beset by Officers and Members of the Council who were unwilling to spend the necessary time to investigate the case professionally and honestly.. This was compounded by the decision of the Planning Inspectorate to reject a public inquiry and to appoint an Inspector who was not capable of meeting the basic requirements of the role. He was incapable of analysing the evidence analytically and was biased and dishonest.
- 13.2 The revised planning application was submitted in February 2019. The prospects for a successful outcome seemed promising. The planning issues had finally been narrowed to two interrelated matters. The majority of the residents had agreed not to object to the planning application. The favourable points included:-
1. **The Inspector in 2016 had concluded that the appeal site was not in conflict with the Gap Policy CP18;**
 2. **The Inspector had made a Partial Award of Costs 2017 on that issue;**
 3. **Of the eleven households in Whiteley Lane, 4 supported the planning application; 6 had decided not to object and just one household had chosen not to attend the meetings;**
 4. **The application proposed 2 dwellings in accordance with the wishes of the residents and this was established in a legal agreement with the land owners;**
 5. **Whiteley Town Council had voted unanimously to support the local residents and agreed not to object to the planning application;**
 6. **Every planning issue had been resolved and there were no physical constraints.**
- 13.3 Only two interrelated planning issues needed to be examined. These were the effect on the character and appearance of the area and the significance of the settlement boundary.
- 13.4 Inspector Ms Gibbons had concluded that the appeal site was not in conflict with the Gap Policy CP18 and made a Partial Award of Costs in 2017. The Local Plan Part 2 had been adopted in April 2017 and this conflicted with the decision of Inspector Nigel Payne to retain Whiteley Lane as the boundary of the Meon Gap. *It was evident that he had been given false information about the site. His description of the site was clearly incorrect.*
- 13.5 The Council had provided no evidence to support the other two reasons for refusal in 2016. Inspector Ms Gibbons made her own bizarre interpretation of the Council's landscape case. In effect, she defended the Council's incompetence. She disregarded the points made in the Landscape Consultant's LVIA that the Landscape Character Assessment published in 2004 was out of date. There had been several significant changes not least the development of the 30 dwellings on the land to the east of the site and the enlargement of the bungalow on the adjoining site at Lodge Green. Her decision was clearly questionable.
- 13.6 The Council provided no evidence to support the reason for refusal in respect of the alleged harm to the SSSI. Natural England had confirmed that it wouldn't object provided that a 15 metre buffer was provided along the common boundary. Inspector Ms Gibbons accepted

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the evidence of Natural England and that the Council's reason for refusal was not justified but she didn't make another Award of Costs on this point.

- 13.7 Evidence had been submitted identifying seven sites in the Meon Strategic Gap where development had been permitted by both Winchester and Fareham Councils. The relevant cases had been identified in the appellant's evidence (⁴⁸). These cases included the development of a **78 unit** retirement scheme on the valley side and a new Hotel (⁴⁹). This made clear that development could be acceptable beyond the boundaries of the Settlement Gap and the Settlement Boundary if there were material considerations outweighing the policy.
- 13.8 It was evident that the Gap Boundary was incorrectly aligned because the Inspector had confirmed that there was no conflict with it. If the Gap Boundary was realigned surely the Settlement Boundary should be realigned too. It wasn't necessary to prove this to demonstrate that this was a material consideration that outweighed the policy.

Ward Councillor Mrs Vivian Achwal

- 13.9 Unfortunately, the case began to unravel almost immediately. The local Ward Councillor Mrs Vivian Achwal discussed the position with Mr and Mrs Knight and, initially, she seemed supportive of the residents. In spite of the fact that the Whiteley Town Council had voted unanimously to support the residents, Councillor Mrs Achwal objected to the development on the grounds that *the site was in the Meon Gap* and, thereby, contrary to Policy. Although it was crystal clear from the evidence that ten households in the Lane had not objected and just one had objected from their letters, *Cllr Achwal claimed that there were "other objectors"*. Cllr Mrs Achwal stated in her email dated 24 April 2019 in response to the planning application that:-

A number of residents who live near the proposed development have contacted me and do not support this development either.

- 13.10 Cllr Mrs Achwal did not identify anyone (⁵⁰). She was a Member of the of Whiteley Town Council but she didn't attend the meetings when the deputations took place. Did she speak to the Members of Whiteley Town Council or read the letters to the Council from local residents?
- 13.11 This did not seem to be problematic at the time but, subsequently, it seems certain that Inspector Parker relied upon her claim that there were "other objectors" rather than the submitted Statement of Community Involvement or even the letters of residents (paragraph

⁴⁸ Appendix 7 from the Appellants Planning Statement setting out details of the seven sites permitted in the Meon Gap

⁴⁹ Advert for Friary Meadow Apartments and bungalows sited in the Meon Valley (Gap) in Fareham Borough

⁵⁰ Email objection dated 19 February 2019 sent by Cllr Mrs Achwal

25 of the Appeal Decision). He quoted “**other objectors**” in his Decision (paragraph 25 Appeal Decision February 2021). This undermined the case of the local residents as I will explain in detail later. It also meant that there were no Councillors representing the residents on the Council.

- 13.12 I sent a letter to Cllr Mrs Achwal after the Hearing seeking to clarify the position. I asked her to identify anyone (⁵¹). She didn't reply. Mr Ian Tait tried to contact her in 2022 but she didn't reply to his emails. We were hoping that she would not object next time.

Consultation Response on behalf of the Strategic Development Officer

- 13.13 There were two Consultations by Officers in response to the planning application that proved to be very misleading. These had fundamental implications for the consideration of the planning application. The first point related to the issue of the Gap.
- 13.14 The Gap Policy should have been of no significance. Mrs Jill Lee responded on behalf of the Strategic Development Officer to the planning application but she did not mention the Appeal Decision and that there was no conflict with the Gap Policy and she didn't mention the Partial Award of Costs on this point.
- 13.15 It was clear that Mrs Lee had read this Appeal Decision because she stated in her Consultation that the Inspector had only considered the implications of the impact upon the gap of one dwelling. Mrs Lee apparently believed that the fact that the revised application was for two dwellings somehow meant that the site could have an impact upon the gap. Her Consultation response was quoted verbatim in the Committee Report. The Conclusion states:-

The proposed development would result in the erection of two market dwellings within the countryside and the gap, contrary to the policies of the development plan and in particular MTRA4 (countryside) and CP18 (gaps).

- 13.16 She did not make any attempt to analyse the Inspector's Decision in 2017 to conclude that the site was not in conflict with the Gap Policy and she made no reference to the Partial Award of Costs. This was a calamitous decision as it misled the Planning Committee. It also misled Cllr Mrs Achwal and Mr Crowley who made deputations claiming that the site was in the Gap.
- 13.17 The Inspector rejected her claim but he did not reach the obvious conclusion that Members were misled, nor did he conclude that Committee Report had “omitted matters that were fundamental to the Members decision”. The Inspector stated in paragraph 11 that:-

The Council acknowledges the previous appeal decision but points out that it related to a scheme of one dwelling. It argues that the current proposal for two dwellings would have a

⁵¹ My letter dated 28 September 2021 sent to Cllr Mrs Achwal

‘significant impact’ on the gap due to its increased visual impact. However, *it seems to me that the size of scheme is irrelevant in this particular case. It has been established that the site itself does not play a role in the functioning of the gap and therefore by definition it follows that the proposal cannot undermine the function of the gap or conflict with LPP1 Policy CP18.*

NB I sent a letter of complaint to Mrs Lee dated 22 January 2023 ⁽⁵²⁾. I was seeking an apology but I have not received a reply.

Consultation Response on behalf of the Council’s Landscape Officer

13.18 The second point that was fundamental to the case was the response of the Council’s Landscape Officer, Mr Dunbar Dempsey, to the application ⁽⁵³⁾. His consultation was ambivalent. He recognised that the site gave the appearance as an infill plot with housing on three sides and the SSSI on the fourth side. He then provided an alternative scenario that the site had **“survived intact”**.

13.19 Mr Dunbar Dempsey’s response ignored the fact that the residents had complained for 20 years about the activities on the site and removal of trees in 1995 and 2006. In fact, this was recorded in the Committee Report, it states that:-

There are a number of large trees within the site many of which are the subject of Tree Preservation Orders although it appears that historically a substantial part of the site has been cleared of trees.

13.20 Trees had been felled on the site on two occasions in 1993 and 2006. The interior of the site had been cleared completely was open and treeless.

13.21 Mr Dunbar Dempsey considered that the site should be retained in its present state, but he didn’t explain how this could be achieved. It was obvious from the evidence that the site had not **‘survived intact’**. The landowners have kept the site free of activities in accordance with the legal agreement with the local residents but they could commence activities at any time.

13.22 The Inspector didn’t query his evidence.

NB I sent a letter of complaint to Mr Dunbar Dempsey dated 9 January 2023 ⁽⁵⁴⁾. He hasn’t replied.

⁵² Letter of complaint sent to Mrs Jill Lee dated 22 January 2023

⁵³ Consultation Response made by Mr Dunbar Dempsey dated February 2019

⁵⁴ Letter of complaint sent to Mr Dunbar Dempsey dated 9 January 2023

The Fence

13.23 The fence along the Lane frontage had been removed in response to the objections from local residents, but another fence had been erected across the site approximately 25 metres into the site. The inner part of the site beyond the woodland on the frontage cannot be seen from any public viewpoints. The field has been maintained in ‘a tidy state’ as described by Inspector Gibbons. In fact, the landowners and free of any activities as noted by Inspector Ms Gibbons but it has remained like this as agreed with the local residents. It is obvious that planting of trees and plants could replicate the fence and mitigate the views of the plots. A planting scheme was submitted with the planning application together with a cross section along the line of the fence.

Committee Report was published in June 2019.

13.24 I was astonished to read the Committee Report when it was published in June 2019⁽⁵⁵⁾. There was no direct reference to the Appeal and Cost Decisions in 2017. There was no reference to the enforcement issues that was one of the matters that persuaded the residents to decide not to object to the development.

13.25 The only reference to the local residents stated that it was “**just an agreement of the closest neighbours**” who had agreed not to object rather than ten out of the eleven households. The author of the Committee Report, Mrs Nicola Clayton, was present at the Hearing but she did *not* to correct this point even though there was evidence from the letters from residents and the Statement of Community Involvement that made clear that ten of the eleven households in the Lane did not object. I had also submitted a Table of Responses that clearly identified all of the letters from residents in response to the planning application⁽⁵⁶⁾. This Table made clear that ten of the eleven households did not object to the development. It also established that five of the six people who did object to the development were members of the same family.

My Letter objecting to the Committee Report dated 17 June 2019

13.26 I sent a letter dated 17 June 2019 identifying the errors and omissions in the Report prior to the Committee Meeting⁽⁵⁷⁾. I circulated it to every Member of the Planning Committee and I copied it to the author of the Report, Mrs Clayton and to her line manager, Mrs Pinnock.

13.27 I identified the following omissions in my letter of 17 June 2019. There was:-

⁵⁵ Committee Report June 2019

⁵⁶ Table of Responses to the Planning Application

⁵⁷ My letter dated 17 June 2019 to all Members of the Planning Committee and copied to Mrs Clayton and Mrs Pinnock

- i) **No reference to the Award of Costs in 2017;**
- ii) **No reference to the history of the ten Enforcement Cases between 2005 and 2016; there was reference the nine Planning Applications in the same period.**
- iii) **There is no reference in the Committee Report to the highway issues on the Lane. The fact that it is a cul de sac, with no turning facilities and no passing places.**

13.28 Subsequently, I identified other omissions that I hadn't included in my letter as follows:-

- a) **No analysis of the Inspector's Decision in 2016;**
- b) **No reference to the Statement of Community Involvement;**
- c) **No analysis of the change of views of the local residents set out in the Table of Responses, and**
- d) **No analysis of the decision of Whiteley Town Council to support the local residents and not to object to the planning application.**

13.29 It is difficult to believe that all of these matters were overlooked, especially as they were so fundamental to the decision of the Members of the Planning Committee. There were several other matters not covered in the Committee Report. The Report simply recorded that Whiteley Town Council supported the local residents. There was no analysis of the decision of residents not to object to the proposed development in contrast to the objections over the previous 20 years. No analysis of the issues in the Lane that created problems of access to the site.

13.30 The Committee Report stated that there were six letters of support and six letters of objection to the planning application. As a matter of fact, five of the objections came from the same family (the Crowleys). The only other objection came from Mr Aaron Watts who lived at 11 Skylark Meadows one of the properties that backed on to the site (Table of Responses ⁽⁶⁸⁾).

13.31 At the Committee Meeting, one residents of the Lane, Paul Crowley, made a deputation claiming that the site was in the Meon Settlement Gap while Cllr Mrs Achwal also made a deputation objecting on this basis. She stated that several previous planning applications had been refused and some dismissed on appeal. She clearly wasn't aware of the Decision of the Inspector in 2017. She would not have been able to make this claim if the Committee Report had referred to the Appeal and Cost Decisions.

13.32 The Members voted unanimously and *without any debate* to refuse planning permission for *exactly same reasons* as in 2016 ⁽⁵⁸⁾. This is confirmed in the objection letter submitted by Mr Crowley ⁽⁵⁹⁾. He stated that there was no debate:-

75. Reasons for refusal 2016 and 2019 compared

76. Objection letter sent by Mr Crowley February 2019. This confirmed that there was no debate.

I attended the public planning meeting at Winchester Guild Hall where the application was rejected. I spoke as an objector to the application. So clear-cut was the view of the planning committee, once the representations had been heard IT TOOK LESS THAN ABOUT A MINUTE FOR THEM TO REJECT the application based on the countryside location of the site.

- 13.33 I complained to the Council about the lack of debate and the decision to ignore the deputations made by Mr Peter Knight and myself. However, Mrs Lorna Hutchings responding to my complaint about the appeal entitled Stage 1: Complaints Procedure claimed that Members debated the case. She stated in her letter dated 30 March 2021 that:-

I have listened back to the committee recording and note that third parties took the opportunity to speak for and against the development and an accurate record of supporters and objectors was recorded in the Committee report (6 for and 6 against development). These comments were taken into account in relation to the officer's recommendation AND ALSO THROUGH THE DELIBERATIONS OF THE COMMITTEE MEMBERS IN THEIR QUESTIONING, DEBATE AND CONCLUSIONS ON THE PLANNING APPLICATION. I do not agree that the process was flawed or inaccurate information was presented to members to influence the decision.

- 13.34 Mr Peter Knight and I were also present. We were both shocked by the failure of the Members to consider our deputations. Mrs Knight sent a letter to me in response to the Deputation made by her husband, Peter, to the Planning Committee (6¹) that stated:-

My husband also attended the planning committee meeting to make a deputation in support of the landowners. His comment to me after the meeting were, "I'm so glad you didn't go, the way the Chairwoman handled this and other cases was unbelievable, I don't think she thought of the impact she would have on peoples lives. They didn't seem to want to listen." I could tell, he found it all quite upsetting.

- 13.35 It is clear from this letter that Mrs Knight was not supporting the landowners but she was seeking a solution to the use of the site in her and her neighbours interests. Officers still haven't comprehended this. I forwarded this letter to the Planning Inspectorate. It seems certain that Mr Richard Botham responded to the ongoing complaint (Stage 2: Complaints Procedure) didn't read her letter because he stated that:-

I note that you and your client have sought to engage with the neighbouring residents along Whiteley Lane to form some community support for the scheme. As a council we would actively encourage genuine engagement as supported by our Statement of Community Engagement but I understand by the evidence before me that in this case not all residents supported the development and some still chose to object.

- 13.36 I accept that Mrs Hutchings was presented with false information. It is difficult to comprehend how the Officers could make such a recommendation with such blatant disregard to the facts. They acted unprofessionally and dishonestly. Mrs Hutchings

evidently believed that the Members of the Planning Committee didn't need to know that the appeal decision in 2017 had confirmed that the site was not in conflict with the Gap Policy or that Costs had been awarded on that point.

Complaint to the Council: Stage 1 Complaint Procedure

13.37 I have referred to the treatment of my complaints and those made by the landowners in a separate Section entitled "Probity". I have referred to some complaints in this and other Sections where they are relevant to points made by the Officers and Members. I complained to the Council about the content of the Committee Report and the errors and omissions. Mrs Hutchings claimed that:-

"the Committee Report is fact based and should not make elaborations beyond the facts and evidence of the case. I therefore disagree with your assertion that the committee report was flawed and agree with the planning inspector in this regard."

NB I complained to Mrs Hutchings about her response but I didn't receive a reply

13.38 This time Mrs Hutchings agreed with the Inspector unlike the previous statement about the Gap. It is evident that Cllr Mrs Achwal nor Mr Paul Crowley would have objected to the development on grounds that the site was in the Gap and contrary to policy if the Committee Report had referred to the Inspector's Decision in January 2017.

13.39 It is also crystal clear that had Members known of these matters they wouldn't have refused planning permission on the Gap reason. The settlement boundary should then have been examined in the context of matters that outweigh the Development Plan particularly if they had considered the cases that I had identified. It seems probable, if Members had been provided with an accurate assessment, that they would have reached a positive conclusion and granted planning permission. The response of Mrs Hutchings was a comprehensive and inexcusable 'cover up'. I haven't received a response to my letter.

13.40 Mr Peter Knight made a deputation on behalf of the residents and I made a deputation setting out the errors in the Report. We were obliged to split three minutes between us. On the other hand, the one objector in the Lane, Mr Paul Crowley had three minutes to himself and, as a Councillor, Mrs Achwal's deputation was not time limited. It was subsequently revealed that the Crowley family were at loggerheads with their neighbours because they had objected to an infill plot in the Lane that they proposed.

13.41 Mrs Knight sent a letter to me in response to the Deputation made by her husband, Peter, to the Planning Committee ⁽⁶⁰⁾ that stated:-

⁶⁰ Letter from Mrs Jan Knight to Bryan Jezeph dated 16 March 2021

My husband also attended the planning committee meeting to make a deputation in support of the landowners. His comment to me after the meeting were, "I'm so glad you didn't go, the way the Chairwoman handled this and other cases was unbelievable, I don't think she thought of the impact she would have on peoples lives. They didn't seem to want to listen." I could tell, he found it all quite upsetting.

Protocols: Mrs Hutchings

13.42 I complained that the analysis of letters of support and objection was misleading. Mrs Hutchings regarded the fact that there were six letters of objection and support as fair and in accordance with the Council's protocols even though five of the objectors were members of the same family. She stated that:-

I have listened back to the committee recording and note that third parties took the opportunity to speak for and against the development and an accurate record of supporters and objectors was recorded in the Committee report (6 for and 6 against development). These comments were taken into account in relation to the officer's recommendation and also through the deliberations of the committee members in their questioning, debate and conclusions on the planning application. I do not agree that the process was flawed or inaccurate information was presented to members to influence the decision.

13.43 Mrs Hutchings gave no weight nor placed any significance on the fact that the Whiteley Town Council did not object. Mrs Hutchings simply copied the statements of the Inspector who also considered that this satisfied the protocols.

13.44 It is difficult to comprehend how the Officers could make such a recommendation with such blatant disregard to the facts. They acted unprofessionally and dishonestly.

Mrs Pinnock added the reason for refusal in respect of Housing Mix

13.45 At the Committee presentation, the Team Leader, Mrs Julie Pinnock, advised Members that a reason for refusal in respect of Housing Mix should be added. This sought the provision of at least one three bedroom house. Inspector Parker supported this recommendation although he did recognise that he had the discretion to waive it (paragraphs 18 and 19 of the Appeal Decision refer to 'Housing Mix').

13.46 This seemed to be a 'snub' to the residents who wanted two detached dwellings of comparable size to those in the Lane. The landowners had agreed not to seek more than two dwellings. Mrs Pinnock made her decision and recommendation on the planning application without visiting Mr and Mrs Knight or any of the residents in the Lane. This was an exceptionally unprofessional act.

13.47 Mrs Pinnock made no reference to my letter at the Committee. I have complained to Mrs Pinnock about this in my letters to her over the past two years. I haven't received a reply⁽⁶¹⁾.

There is no evidence that any of the Members or the Officers who were sent my letter dated 17 June 2019 read it. However, there is no evidence that the emails failed to reach them. It has to be concluded that they all ignored the letter that I emailed to them.

13.48 Ironically, Inspector Parker referred to my letter but he claimed that I wasn't prejudiced because I was aware of all of the errors and omissions! He stated, in paragraph 4, of the Award of Costs that:-

I am mindful that the appellant took the opportunity to remedy their concerns prior to the committee meeting by writing to all members to highlight some points that were regarded as important by the appellant but not covered in the report. Therefore, even if the report were deficient, the appellant was not placed at a disadvantage by the Council's actions. Unreasonable behaviour has not been demonstrated.

13.49 This is a ridiculous and 'mindless' statement. I sent the letter to demonstrate the problems with the Committee Report. Instead of examining the Committee Report carefully and questioning the Witnesses decision not to provide a Statement of Case Inspector Parker protected them. It seems that my letter to the Members of the Planning Committee dated 19 June pointing out the errors and omissions explains his decision not to make a Full Award of Costs. Inspector Robert Parker should have been able to test and assess the position accurately himself but he could claim that he was misled by the Officers. I find it difficult to be civil in response to his exasperating statement. It is evident that he wasn't seeking the truth.

13.50 The attitude of the Officers to this case is demonstrated by one of Mrs Hutchings statements:-

I note that the issue of the settlement gap has troubled you on more than one occasion and that you have proven to the Inspector that the council acted unreasonably in refusing the application on this ground. I accept this but I DO NOT NECESSARILY AGREE WITH THE CONCLUSIONS.

13.51 Mrs Hutchings was not only dismissive of the fact that the Council had suffered two Awards of Costs but she clearly did not accept those Inspectors' decisions. She belittled my efforts to prove the Council had acted unreasonably for many years. She even disputes the Inspectors' decisions without any grounds to do so. This is clear cut now that Simon Finch

⁶¹ Letter dated 6 June 2020 to Mrs Julie Pinnock

stated that the Gap Policy should not be applied in future and the Case Officer considering the latest application confirmed that there is no conflict with the Gap Policy.

- 13.52 Mrs Hutchings response was followed by several others who took the same dishonest and reprehensible to my complaints. I reported Mrs Hutchings to the Complaints Panel of the RTPI who declined to pursue the matter claiming that I hadn't allowed time for Mrs Hutchings to respond to the complaint. This was also nonsense. Mrs Hutchings still hasn't replied so what am I supposed to do? I will make a further complaint to the RTPI now.
- 13.53 Finally, it should be noted that the letter that I provided as an example for the appeal was the one sent to Cllr Mrs Jane Rutter. Cllr Mrs Rutter is now the Chairman of the Planning Committee. I have reminded Cllr Mrs Rutter of this fact recently. I do not believe that Cllr Mrs Rutter should chair the consideration of the revised planning application because she is clearly prejudiced.

14.0 REQUEST TO THE PLANNING INSPECTORATE: FOR A PUBLIC INQUIRY.

14.1 I contacted the Planning Inspectorate and requested a public inquiry. I concluded that the decisions and attitude of Officers and Members of the Planning Committee required examination at a Public Inquiry. Ideally, I wanted to instruct a Barrister to cross examine the Council's witnesses. I contacted the Planning Inspectorate. I made the case for a Public Inquiry ⁽¹¹⁾. I pointed out the fact that the previous Inspector had confirmed that the site was not in conflict with the Gap Policy and had made an Award of Costs. I have quoted from the email exchange with Mr Boulton dated 28 September 2020. I stated that:-

The Officers' Report to Committee was totally unsatisfactory and completely misleading for Members of the Committee. As I have pointed out elsewhere, three minutes was not long enough to explain the complexities of this case and again the deputations by local residents were dismissed without any discussion by Members. Written comments of the deputations, as suggested by the Council, are totally inadequate to explain the position of local residents. This is particularly significant, bearing in mind the Officers' Report was also dismissive of the concerns of local residents. The local residents were shocked by their treatment. I have sent a letter of Complaint to the Council's Chief Executive Officer about this and the unsatisfactory Committee Report. This letter was agreed by the principal residents. I have not received a reply to date. Given the inadequacy of the Committee Report and the complete absence of any debate on the planning application with no questions put to the Deputies (unlike most other cases in Winchester) it is vital to be able to put questions to those appearing at the Hearing/Inquiry to explain in detail the Council's position.

14.2 My request to the Inspectorate for a Hearing or an Inquiry was resisted strongly by the Council Officers. Mrs Clayton insisted that the written representations method was appropriate. Mrs Clayton appeared as one of the Council's planning witnesses. **Please note that Mrs Clayton was still claiming that the site was contrary to the Gap Policy at the Hearing.** Her attitude to this case overall is unprofessional. She did not admit to any errors at the Hearing and, thereby, deliberately misled the Inspector. She should have admitted that she was aware of the decision of the previous Inspector that there was no conflict with the Gap Policy and corrected her reference in the Committee Report that it was "just a few close neighbours" because she should have known that this statement was incorrect. The planning witnesses should have withdrawn the Gap reason for refusal.

14.3 Mrs Clayton responded to my email to the Inspectorate stating that :-

I have read the appellants reasons and disagree that the appeal should be dealt with through the Appeal Hearing Method for the following reasons:

- **The appellant and local residents had the opportunity to make their cases verbally at the Council's Planning Committee Meeting on 20th June 2019. There is a written record of these comments and the interested parties have a further opportunity to make their case**

through the Written Representation Method of appeal. This does not justify the Hearing Method of appeal.

- The Local Town Council are also able to comment in writing in support of the application at appeal. There is no reason why these views need to be made verbally. This does not justify the Hearing Method of appeal.
- The Inspector will be able to understand the enforcement history of the site through examination of the appellant's case. This does not justify the Hearing Method of appeal.
- The legal agreement can be examined as a written document and will not need verbal clarification. This does not justify the Hearing Method of appeal.
- The visual appearance of site can be assessed through examination of photographs and will be seen by the Inspector during the site visit. This does not justify the Hearing Method of appeal.
- **THE APPELLANT'S ISSUE WITH THE "SETTLEMENT GAP" SHOULD BE EXAMINED THROUGH WRITTEN REPRESENTATION WITH THE AID OF THE COUNCIL'S POLICY MAPS AND LANDSCAPE CHARACTER DOCUMENT. THIS DOES NOT JUSTIFY THE HEARING METHOD OF APPEAL.**
- The award of costs procedure can be engaged through written representations and does not justify the Hearing Method of appeal.

For the above reasons the Council does not consider that an appeal hearing is necessary to examine the above appeal. The Council considers that sufficient written evidence exists, and can be supplied, to examine the appeal through the written representation method.

Kind regards; Nicola Clayton; Senior Planning Officer; Development Management

NB It can be seen that Mrs Clayton was still claiming that the issue with the "settlement gap" required examination rather than referring to the Appeal Decision and Costs that made clear that this matter had been resolved (bullet point 6).

- 14.4 She also sent a letter to the Inspectorate dated 4 November 2020 shortly before the Hearing stating again that the site was in the Gap ⁽⁶²⁾. I assume that she hadn't read the 2017 Appeal and Cost Decisions.
- 14.5 Mrs Clayton has acted unprofessionally throughout the consideration of this case. I sent a letter of complaint to her but she hasn't replied ⁽⁶³⁾. She has now left the Council.
- 14.6 She also claimed that the legal agreement could be examined in the context of the Written Method *but she clearly had not understood its significance*. She referred to the Minutes on the proceedings at the Committee stage but she must have recalled that there was no debate nor discussion (please see objection letter from Mr Crowley ⁽⁶¹⁾).

⁶² Letter sent to the Planning Inspectorate dated 4 November 2020 by Mrs Clayton

⁶³ Letter of Complaint sent to Mrs Nicola Clayton dated December 2022

14.7 The Inspectorate rejected my case for a public inquiry. Mr Boulton replied stating:-

Mr Jezeph

Thank you for your message.

The case has been reviewed by a senior Inspector and subject to satisfactory validation we've decided to handle the appeal by way of a hearing. This is because in our view there are limited issues of complexity which will not require advocacy and so an inquiry is not justified. A hearing will however allow the Inspector to test the evidence through discussion.

We'll be in touch as soon as possible.

14.8 I was offered a Hearing. This should have been adequate. The Inspector appointed proved to be incapable of "testing the evidence". I assume that Inspector Parker was not made aware of these exchanges. He didn't seem to understand the reasons for a Hearing.

14.9 For some reason, he was determined to dismiss the appeal. He ignored evidence that made the position clear. Was he inexperienced or completely incompetent? Why was he appointed when I had made clear my concerns about the case in advance?

The Council offered the Committee Report in lieu of a Statement of Case

14.10 My suspicions were confirmed and my incredulity stretched further when I was advised that the Council proposed to rely on the Committee Report in lieu of a Statement of Case. I had already pointed out to the Officers that it was totally flawed. The decision of the Inspectorate to appoint Inspector Robert Parker was an unmitigated disaster to the appellants. The examination of his decisions with regard to the planning application demonstrates emphatically that he was out of his depths.

The Town and Country Planning (Hearings Procedure) (England) Rules 2000

14.11 I have set out a summary of the guidance on planning appeals for witnesses. The Guidance states that both Parties should provide:-

- i) Full Statements of Case which should provide all the details and arguments needed by the Inspector.
- ii) Statements of Common Ground should provide the Inspector with the main issues and it should also cover legal issues.

14.12 The witnesses did not comply with this guidance and they didn't comply with the Guidance for people giving Expert Evidence. They had deceived him by not advising him of information that could have changed the course of the Hearing. This is a breach of the Planning Inspectorate Guidance on "Expert Evidence". This states:-

0.1.1 Expert evidence is evidence that is given by a person who is qualified, by training and experience in a particular subject or subjects, to express an opinion. It is the duty of an expert to help an Inspector on matters within his or her expertise.

0.1.2 The evidence should be accurate, concise and complete as to relevant fact(s) within the expert's knowledge and should represent his or her honest and objective opinion. If a professional body has adopted a code of practice on professional conduct dealing with the giving of evidence, then a member of that body will be expected to comply with the provisions of the code in the preparation and presentation (written or in person) of the expert evidence.

Expert evidence should include an endorsement such as that set out below or similar (such as that required by a particular professional body). This will enable the Inspector and others involved in an appeal to know that the material in a proof of evidence, written statement or report is provided as 'expert evidence'.

I confirm that the opinions expressed are my true and professional opinions."

- 14.13 The Council's witnesses did not comply with this guidance. They should have withdrawn the Gap reason for refusal. The witnesses deceived the Inspector by withholding information that could have changed the course of the Hearng.

15.0 THE INSPECTOR'S APPEAL AND COSTS DECISIONS: February 2021

- 15.1 The decision of the Planning Inspectorate to reject my request for a public inquiry proved to be disastrous. This was compounded by the appointment of Inspector Robert Parker. The Inspector's Appeal and Costs Decisions test credibility. There is a reasonable expectation, at the very least, that an Inspector will record the fundamental considerations accurately in his Decision. He seems to have been determined to dismiss the appeal in advance and he selected points that reinforced this intention. He claimed to have read the evidence when it is crystal clear that he hadn't. He was blatantly dishonest.
- 15.2 He failed to 'test the evidence'. He reached conclusions that were perverse and in clear conflict with the evidence. He even ignored my reference to the ZINS judgment that I quoted to him. It states that **"In providing that planning advice they (officers) should not omit material considerations which require consideration by the members"**. This is a basic point that required Officers to ensure that Members received all of the information that was required to reach an accurate assessment. It is evident that Members were not provided with accurate information and this led to their disastrous decision.
- 15.3 Inspector Parker was seen to take down the details of the ZINS judgment but there is no reference to this fundamental case. Nor does it appear that he read the previous Appeal and Cost Decisions until after the Hearing. This made clear that the appeal site was not in conflict with the Gap Policy CP18. Surely, he would have questioned the witnesses and ask why they were still pursuing this matter if he had read these Decisions in advance. This would also have meant that the appellants wouldn't have had to address this Policy again.
- 15.4 Surely, the starting point should have been the 2017 Appeal and Cost Decision. Inspector Ms Gibbons stated in her Decision that **"I consider that site no longer performs a role in the visual and physical separation of Whiteley and Fareham and the proposal would not diminish the Strategic Gap"** ⁽⁴⁾. Furthermore, she made a Partial Award of Costs on this point ⁽⁵⁾.
- 15.5 The Inspector even allowed Mr Nick Parker, the Council's principal witness, to make a counter claim for costs ie the witness who had agreed the previous costs and who I had sent the letter questioning his decision to appear as a witness. *The Inspector should have rejected the claim outright.* In fact, he should have prevented the claim from being made. He should have questioned Mr Parker's honesty as a barrister would have done. Inspector Parker made a Partial Award of Costs on the Gap issue but he still didn't question Mr Nick Parker's continued claim that the development was contrary to the Gap.
- 15.6 There should have been just two planning issues for the Inspector to address. Were there material considerations that outweighed the issue of the settlement boundary? Would the development harm the character and appearance of the area? The only other consideration related to the significance of the fact that ten of the eleven households in the Lane did not

- object to the development. Inspector Parker didn't understand the reasons why they didn't object and he didn't even work out that it was ten of the eleven households. He still believed that there were other objectors when there were none.
- 15.7 I must make it absolutely clear that appellants were not relying on the support from local residents. Obviously, it seemed very helpful to the case that the majority of residents did not object. The residents had emphasised the problems with the site and they were supported by Whiteley Town Council. It was the activities on the site and the uncertainty over its future that persuaded them that it was preferable to resolve the situation.
- 15.8 It will be recalled that not one Officer nor one Member of the Council contacted the residents. *The local Councillor Mrs Achwal objected to the development on the gap point leaving the residents with no representation on the Council.* She was the person claiming that there were other objectors in the Lane but she didn't identify anyone. Inspector Parker appeared to have relied on her statement.
- 15.9 I had made the case to the Planning Inspectorate that a Public Inquiry was required because of the errors in the Committee Report that I had identified. I believed that it was essential that the Council's witnesses could be cross-examined. The offer of the alternative of a Hearing seemed to be a satisfactory alternative at the time but the Inspector turned the "Virtual Hearing" into a "Virtual Farce". He didn't seem to know why the Inspectorate agreed to hold a Hearing.
- 15.10 Inspector Parker didn't appear to appreciate that the fundamental matters related to the planning issues, principally the character and appearance of the site and the relevance of settlement boundary. Instead, he concentrated on the attitude of the residents but he couldn't even understand their position correctly. The Inspector did not recognise that ten of the eleven households in the Lane did not object to the proposed development in spite of the evidence that established this. Of these ten households, four made representations in support of the development.
- 15.11 He did *not* appreciate the reasons why the residents had decided not to object. This related to over 20 years of disputes and hostility between the residents and the landowners in respect to activities on the site. They were also distressed by the endless succession of planning applications and the need to object over a ten year period 2005-2016 to the activities on the site. In spite of the evidence to this effect and clearly stated in the letter of Mrs Jan Knight, the Inspector concluded that it was **traffic movements** in the Lane that were the primary concerns of the residents. He decided that these was only of '**temporary duration**' (paragraph 23). This is an absolutely unbelievable misinterpretation of the residents' concerns. Traffic wasn't mentioned in any of their letters.

15.12 The Inspector did acknowledge that there was a *“a notable change in circumstances, with some residents making a conscious decision to work constructively with the appellant to influence the future use and development of the land.”* (paragraph 7).

15.13 How did he conclude that “some residents” sought to influence the future use of the land? There were four sources of evidence that demonstrated the correct position. The Statement of Community Involvement ⁽⁶²⁾; the Table of Responses to the planning application and appeal ⁽⁶⁸⁾; the letters from the residents and, in particular, the letter from Mrs Jan Knight sent to the Planning Inspectorate dated 21 October 2020 prior to the Hearing ⁽⁴⁶⁾. This letter described the negotiations. She stated that:-

At the meeting it was clear that the majority of neighbours present would accept no more than two houses, although they would not all actively support the application they would not, unlike previous application, object. There was only one neighbour who objected, but they chose not to attend any of the meetings; I am unsure of their reasons for their objections. (my italics)

15.14 The letter also provided details of the history of the discussions with her neighbours and the landowners. The Inspector made no reference to the letter from Mrs Knight. It couldn't have been clearer, that:-

There was only one neighbour who objected, but they chose not to attend any of the meetings; I am unsure of their reasons for their objections.

15.15 Did Inspector Parker read her letter? The Inspector made no reference to the Statement of Community Involvement which recorded the consultations that took place with all of the residents in the Lane and the Members of Whiteley Town Council. The Table of Responses recorded letters of objections and support of all of the respondents in respect of the planning applications and appeals. The Statement of Community Involvement was included in the Planning Statement and it was provided separately as a stand-alone document for the planning appeal. It was not mentioned by the Officers or the Inspector. The question has to be asked, what did the Inspector read?

NB Richard Botham responded to my complaint entitled Stage 2 Complaints Procedure. He stated that **‘I note that you and your client have sought to engage with the neighbouring residents along Whiteley Lane to form some community support for the scheme. As a council we would actively encourage genuine engagement as supported by our Statement of Community Engagement but I understand by the evidence before me that in this case not all residents supported the development and some still chose to object.’**

There are three major errors in his reply:-

1. Mrs Jan Knight engaged with the landowners;
2. The engagement with the residents was comprehensive and explained in the Statement of Community Involvement;
3. There were no other objectors.

Richard Botham trivialised the case in his response to the Complaint.

15.17 The Inspector stated in paragraph 24 that:-

Although the proposal has the support of Whiteley Town Council and some residents, *other individuals remain opposed to the scheme*. A number of neighbours have entered into an agreement with the landowners to ensure that no more than two dwellings can be constructed on the site. However, there has been no formal public consultation outside of the planning application process and this is not a community led scheme in the same way as if the scheme had been proposed under a Neighbourhood Plan. Whilst I have taken full account of all representations from those living nearby, they have not been determinative.

15.18 He claimed to “**have taken full account of all representations from those living nearby, they have not been determinative**” when it is crystal clear that he had not. This is a totally inaccurate assessment of the case. He noted that the proposal had the support of Whiteley Town Council and “**some residents**”. He made no comment on the support of the Town Council. He referred to “**some residents**” when it should have stated ten households out of eleven. *He used the weaselly word not ‘determinative’ when he had clearly failed to read the letters of residents or assess the situation accurately.*

15.19 He then stated that “**other individuals remain opposed to the scheme**”. He didn’t identify any other residents. I spent a considerable time checking the source for this statement. The only source of “**other objectors**” was set out in an email dated 19 February 2019 from Cllr Mrs Achwal ⁽⁶⁵⁾. I sent a letter to Cllr Achwal on 6 September 2021 and asked her to identify the “**other objectors**” ⁽⁶⁶⁾. I have not received a reply.

15.20 I complained to the Council about Cllr Mrs Achwal statement in her email and subsequent deputation where she referred to the “other objectors”; and to the claim that the site was in the Gap and the reference to the refusal of previous planning applications ⁽⁶⁴⁾. The Monitoring Officer, Catherine Knight, stated that my complaint was lodged more than 3 months from the date of the matter (February 2019!) and, therefore, it was not necessary to investigate the matter. Cllr Mrs Achwal was the only Councillor who chose to become directly involved in the case and her statements proved to be seriously detrimental to the residents’ case. I do accept that she was clearly misled by the Officers who failed to refer to the 2016 Appeal and Cost Decisions in the Committee Report.

15.21 The Inspector then stated that

A number of neighbours have entered into an agreement with the landowners to ensure that no more than two dwellings can be constructed on the site.

15.22 The Inspector only referred to the “agreement”. The Committee Report had made the same statement. He simply copied this and he did not check it. The legal agreement only required three signatories from each party but it had the support of ten households. The restriction

⁶⁴ Complaint to the Council re Cllr Mrs Achwal’s objection and deputation

to “two dwellings” was agreed by all of the residents and they insisted that this was included in a legal agreement. The Inspector didn’t appreciate that the legal agreement was required by the local residents to ensure that the landowners didn’t apply for more than two dwellings.

15.23 *This is a fundamental and disgraceful error.* He might have reached a different conclusion on the appeal if he had assessed the level of support correctly and the reasons for the support ie activities on the site over twenty years and the nine planning applications and frequent disputes. The complaints to the Council led to several enforcement notices. It is recognised that the views of residents are not always relevant to an Inspector’s decision but in this case this was a fundamental consideration. Was the site to be left as an ongoing battle ground for ever! Unfortunately, the recent refusal of planning permission has already caused issues with local residents.

15.24 The Inspector then claimed that:-

However, there has been no formal public consultation outside of the planning application process and this is not a community led scheme in the same way as if the scheme had been proposed under a Neighbourhood Plan.

15.25 The Inspector ignored the Statement of Community Involvement and all of the letters from residents. Only the residents in the Lane were directly affected by the activities on the site. The only other people were those few who passed along the Lane. It is evident that the majority of residents in the Lane participated. It clearly was a ‘community led scheme’. A Neighbourhood Plan would be totally inappropriate for eleven households in cul-de-sac. Whiteley Town Council had been consulted. (There was nobody else except passers-by).

15.26 There was only one party that chose not to discuss the position of the local residents and that was the Council. This is clear from Mrs Jan Knight’s letter which stated:-

I would love someone to come and discuss this with us and to hear my plea in person. I realise life is difficult for everyone at the moment, but this issue is really getting me down.

15.27 There was no response to her pleas. Did the Inspector read this letter? There is no evidence that he read any of the letters from residents. If the Inspector had read the letter from Mrs Knight it would have established the position of the residents and the Inspector would have had to explain why he didn’t accept her evidence. It is obvious that it was a “community led scheme”.

15.28 It couldn’t have been clearer that the residents were not favouring the landowners but were seeking a resolution in their own interests.

15.29 The only party that didn’t participate was the Council.

15.30 The Inspector stated that “**I have taken full account of all representations from those living nearby, they have not been determinative**”. This clearly is not correct. *This is a blatantly dishonest statement.*

15.31 There is no evidence that he read any of the representations of residents. He seems to have relied on the statements in the Committee Report that I had challenged together with the email objection made by Cllr Mrs Achwal. He made no attempt to verify the facts.

15.32 The Inspector even made reference to the matters omitted from the Committee Report in paragraph 5: Award of Costs: Appellant:- .

The second strand to the costs application is a procedural one. It is suggested that the report to committee failed to include critical information which, had it been disclosed to members, may have led them to approve the application. The report did not include the level of information considered necessary by the appellant in relation to matters such as the site’s enforcement history, the costs award associated with the previous appeal and the background of support from local residents.

15.33 The Inspector identified matters that were fundamental to his Decision but then he concluded that:-

Whilst there may have been merit in elaborating on these points, the report was adequate in its assessment of the planning issues. I am mindful that the appellant took the opportunity to remedy their concerns prior to the committee meeting by writing to all members to highlight some points that were regarded as important by the appellant but not covered in the report. Therefore, even if the report were deficient, the appellant was not placed at a disadvantage by the Council’s actions. Unreasonable behaviour has not been demonstrated.

15.34 This was a ‘mindless’ statement. How could he state that “**the report was adequate in its assessment of the planning issues**” when there was no mention of the Appeal and Cost Decisions in 2017 and no assessment of the other matters that he had identified. He confirmed that the site was not contrary to the Gap Policy and he made an Award of Costs on that point. This couldn’t have happened if the Committee Report was ‘adequate’.

15.35 The Officers and the Members were obviously convinced that the site was in conflict with the Gap Policy because of the failure of Officers to refer to the 2017 Appeal Decision.

15.36 The Officers in the Council have relied on his Decisions to resist the resubmission of the planning application. None of the Officers or Members that I have challenged have acknowledged any mistakes.

15.37 The Inspector stated in paragraph 11 in response to Mrs Lee’s Consultation that:-

The Council acknowledges the previous appeal decision but points out that it related to a scheme of one dwelling. It argues that the current proposal for two dwellings would have a ‘significant impact’ on the gap due to its increased visual impact. However, *it seems to me that the size of scheme is irrelevant in this particular case. It has been established that the site itself does not play a role in the functioning of the gap and therefore by definition it follows that the proposal cannot undermine the function of the gap or conflict with LPP1 Policy CP18.*

- 15.38 The Inspector rejected the argument that the change from one dwelling to two dwellings was relevant but he didn’t acknowledge that this was a calamitous mistake that misled the Members. This was the principal reason for refusing planning permission.

The fence

- 15.39 The Inspector acknowledged the existence of the fence in paragraph 14:-

Although the erection of a 2m high fence parallel to the lane frontage has restricted public views across the site, it retains an open quality with a backdrop of mature trees.

- 15.40 This statement makes little sense. The development would not affect the backdrop of mature trees. These trees are protected by a Tree Preservation Order. No trees were affected by the scheme. It is evident that the fence could be replaced with planting which could restrict “public views across the site.” A planting scheme was submitted. Planting to screen development has been accepted in many appeals.

An appeal decision in respect of land ‘East of Crofton Cemetery and West of Peak Lane, Stubbington, Fareham’ for 206 dwellings was allowed

- 15.41 There are many cases where planting has been accepted as being able to screen development including one in the same Meon Gap in Fareham.

- 15.42 An appeal decision in respect of land ‘East of Crofton Cemetery and West of Peak Lane, Stubbington, Fareham’ for 206 dwellings was allowed (*Appeal Ref: APP/A1720/W/21/3275237*) dated 11 January 2022. This site is in the Fareham part of the Meon Gap ⁽⁶⁵⁾. One of the main issues was ‘the effects of the proposal on the landscape character and appearance of the area’. The Inspector stated that:-

Both parties submitted landscape and visual impact assessments as part of their submissions and the methodologies for these were discussed at length at the Inquiry. I consider the Council’s approach to be more rigorous, not least because it takes a cogent approach to defining the landscape character area and the landscape sensitivity of the site. Nevertheless, both assessments reach the conclusion that *the impacts of the scheme are localised and limited*

⁶⁵ Appeal decision land ‘East of Crofton Cemetery and West of Peak Lane, Stubbington, Fareham’ (*Appeal Ref: APP/A1720/W/21/3275237*) dated 11 January 2022

to the immediate environs of the site. I am therefore satisfied that the proposal would not cause harm to wider landscape character.

- 15.43 The Inspector concluded that the effect of the character and appearance was acceptable and that 206 dwellings in the Gap could be adequately screened. The Inspector even concluded that:-

The designation of a gap therefore does not completely preclude development. Proposals which would not adversely affect the function of the gap and which would otherwise be acceptable in planning terms could be permitted.

- 15.44 It is clear cut that if the impact on a development for 206 dwellings in the Gap can be described as **‘localised and limited to the immediate environs of the site’** then an isolated site in a cul de sac must have a very localised impact. The site in Whiteley Lane had a frontage of 80 metres. The view of the proposed dwellings would be limited and the character is similar to the other dwellings in the Lane as the Inspector reported himself.
- 15.45 Inspector Parker could have made a similar decision that effect on the character of the Lane was **‘localised and limited to the immediate environs of the site’** and that the **“Proposals which would not adversely affect the function of the gap”**. If he had been capable of assessing the case ‘adequately’ this would have led to a full Award of Costs.
- 15.46 Do Inspectors receive the same training? Do large schemes receive preferential treatment with both a more experienced Inspector and a public inquiry? There is obvious bias just as I complained at the Hearing. It seems probable that if the Inspector in the Stubbington case had examined the scheme in Whiteley Lane she would have rejected the argument that the development would have any adverse effect on the character of the area. She would undoubtedly have concluded that the development **would not adversely affect the function of the gap** and allowed the appeal.
- 15.47 *In my opinion, the appeal in Whiteley Lane would have been allowed and full costs awarded if the Inspector who examined the appeal in Stubbington had been appointed to examine the appeal in Whiteley Lane. This was in respect of the same Gap policy. I suspect that she would have queried the boundary too.*

Design and Layout

- 15.48 In paragraph 16, the Inspector stated that **“the architecture of the proposed dwellings would be compatible with other properties in the area”**. This architecture was supported by local residents who wanted to see properties comparable to their own. The Inspector stated that:-

The buildings would be set well back from the lane but their height, bulk and raised position would make them prominent structures, visibly taller than the existing fencing.

15.49 The Inspector recognised that **“the buildings would be set well back from the Lane.”** There is mature woodland of forest trees on the Lane frontage extending 25 metres into the site and the plots were sited at least 39 metres (as set out in the application plans). The site is on rising ground but these dwellings would be less prominent than any others in the Lane including the dwelling Lodge Green (see photographs ⁽²⁷⁾). This form of development reflected the other properties in the Lane. The development would have no impact whatsoever on the character and appearance on the Lane as the residents had stated.

15.50 The Inspector then stated that:-

The creation of driveway entrances would further suburbanise the site to the detriment of its rural character.

15.51 The Inspector did not seem to appreciate from his site visit that the driveways were already in existence (see photographs ⁽²⁷⁾). How do these accesses differ from the other eleven driveways? Did he notice that the adjoining property at Lodge Green had an opening to the Lane that was not screened by vegetation. This revealed a very extensive gravelled area where the owners’ cars and camper vehicles were parked. The entrance to the appeal site was not only in character but it had the least impact. It would be in character. Trees have been felled at the northern end of the Lane completely altering the character.

15.52 The southern one has been used as access to the rear historically. The northern one had been created without any impact upon the trees. The surfaces of both accesses could be enhanced without detriment utilising recognised construction methods as set out in the submitted Arboricultural Report and Method Statement. It was considered preferable to serve each plot separately. The Inspector then stated that:-

The retention of trees and proposals for landscaping on the site frontage would not provide adequate mitigation for the adverse impacts arising from the erosion of the visual buffer between Lodge Green and Hazel Coppice.

15.53 The 15 metre buffer was due to be protected by the Habitat Management Plan and this had the support of Natural England. This would enhance its protection.

15.54 I do not accept that the development would cause ‘the erosion of the ‘visual buffer’. The woodland buffer is 25 metres deep. A minimal amount of understorey planting would provide adequate screening. There are protected trees along the common boundary with the SSSI. Natural England had accepted that a 15 metre buffer protected by a Habitat Management Plan was sufficient to protect the SSSI. Natural England did not require any additional planting. The root protection areas extended the buffer to 18 metres as shown on the layout. The site becomes an obvious infill plot as the Council’s Landscape Officer first stated in his Consultation. It simply needs to be recognised that the SSSI is an end stop to development and that the site is not in the countryside. The SSSI had a 150 metre

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frontage to the Lane before the Business Park was reached. It can be seen that the buildings in the Business Park were in the SSSI. This can be seen clearly on the Plan of the Tree Preservation Order 2305W1 served on 4 November 2021.

Tree Preservation Order 2305W1: ‘Land known as Hazel Copse and Lee Coppice to the rear of Skylark Meadows, Whiteley’

- 15.55 The Council has served a Tree Preservation Order (N^o 2305 of 2021) on the woodland on the SSSI (⁵⁸). This woodland TPO is parallel with the common boundary with the site adjoining Lodge Green. The TPO was served because residents in Skylark Meadows had been felling trees and removing limbs of trees within the SSSI.
- 15.56 The plan that accompanied the TPO is very informative. The boundary of the TPO has a common boundary with the land adjoining Lodge Green. It also shows that there are nine properties on Skylark Meadows that share a common boundary with the SSSI. Some of these properties have *gates from their gardens directly on to the SSSI*. The 15 metre buffer has not applied to these properties but the buffer would have extended over their gardens and over the dwellings.
- 15.57 The 15 metre buffer would also have affected the gardens of six properties on the western side of the Lane and the commercial buildings on the western side of the Lane. The commercial buildings that share a common boundary with the northern boundary of the SSSI are also within 15 metres of the SSSI.
- 15.58 It can be appreciated that the site adjoining Lodge Green is the **only** property in the vicinity of the SSSI that has had to provide the buffer.
- 15.59 This relationship is similar to the situation at ‘The Lakes’ in Swanmore where the development proposals are on either side of the SINC (see Proposals Map Swanmore (⁶⁶)).
- 15.60 The Inspector did not demonstrate harm. On the contrary, he considered that **“the architecture of the proposed dwellings would be compatible with other properties in the area”**.

Site Description

- 15.61 In paragraph 12, the Inspector provides a description of the site confirming that it is an isolated area of land with housing development on three sides and the boundary of the SSSI on the northern side.

The appeal site is broadly rectangular in shape. It comprises a parcel of grassland, with a treed frontage onto Whiteley Lane and various mature trees along the north and rear

⁶⁶ Proposals Map Swanmore

boundaries. Bordering the site to the north is Hazel Coppice, an extensive area of woodland which is designated a Site of Special Scientific Interest (SSSI). Beyond that is a major employment area comprising large scale office buildings laid out within well-landscaped business parks. To the rear of the site is Skylark Meadows, a private development of very large detached houses, and to the south Lodge Green, a sizeable chalet bungalow. On the west side of Whiteley Lane, and facing towards the site, is a row of detached dwellings of mixed age and style.

- 15.62 This is an accurate site description but it is not a description of an area of countryside. This description does not support the contention that the development would cause harm to the character and appearance of the area. There is no reference in the description to the fact that the site is isolated and remote from open countryside and on a Lane that is a cul-de-sac with no passing places. It should be noted too that the Council permitted the 30 detached dwellings and it supported the creation of the cul-de-sac. The Council refuses to recognize that it was its actions that left the appeal site isolated.

Landscape Character Assessment (2004).

- 15.63 It is not known if Inspector Robert Parker read the Complaint sent to the Inspectorate in 2017 that was included in the appeal documents. However, he also referred to the same LCA dated 2004 in his decision.
- 15.64 Inspector Robert Parker stated in paragraph 13 of his Decision that:-

The site lies within the Whiteley Woodlands Landscape Character Area (LCA) as defined in the Winchester District Landscape Character Assessment (2004). Although the LCA contains a predominance of woodland, there are also various other uses including paddocks, nurseries, and smallholdings. The appellant takes issue with the last Inspector's conclusion that the character of the appeal site is not at odds with the description of the LCA. It is contended that the local character is suburban or urban fringe and that development of the site with housing would be acceptable in that context.

- 15.65 It is difficult to perceive the relevance of LCA of 2004. The area had changed dramatically in the intervening period. This description does not apply to the site. The site has been cleared of trees and it is not in any of the **'various other uses including paddocks, nurseries, and smallholdings.'** It is a site with housing development on three sides. It has been cleared of trees. Any relationship with the surrounding countryside as described in the LCA ceased in 1999 when the estate of 30 dwellings at Skylark Meadows had been permitted.
- 15.66 The Inspector then stated in paragraph 14 that:-

The area surrounding the site contains built development, but the immediate environs do not convey a sense of being within a settlement. The suggestion within the appellant's landscape evidence that the site has the feel of a large suburban garden is fanciful.

- 15.67 The ‘immediate environs’ included the enlarged bungalow known as Lodge Green with its extensive area of hardstanding for cars and a mobile home. The dwellings on Skylark Meadows share a common boundary and clearly visible.
- 15.68 The 30 dwellings lie to the north. Mr and Mrs Hawes used it as ‘dog runs’. The site was described in the sale documents in 1993 as part of the bungalow site being used as kennels (⁴²). It is difficult to believe that the local residents would want dog runs on the site.
- 15.69 The Local Plan Inspector claimed that the severance of the property into two parcels caused the problems of its use. He didn’t explain why. In fact, only the ownership had changed.
- 15.70 Inspector Parker then referred to the fence: He stated that:-

Although the erection of a 2m high fence parallel to the lane frontage has restricted public views across the site, it retains an open quality with a backdrop of mature trees. The strong visual connection between the land and Hazel Coppice, noted in the previous appeal decision, remains.

- 15.71 How is the “open quality” appreciated if it cannot be seen. The fence demonstrated that the view could be mitigated by planting. This backdrop would remain even if two dwellings were built. The strong visual connection would remain because of the buffer of 15 metres as favoured by Natural England. This buffer could be extended by 3 metres to protect the root protection areas providing an 18 metre buffer. These trees are protected by a TPO. The SSSI is an end stop to any development. The SSSI extends to 300 acres but it only has a short frontage to the Lane before the buildings on the Business Park are reached.
- 15.72 It is difficult to comprehend the next paragraph.

The houses in Skylark Meadows are now screened from the lane by fencing but they do not *impinge* upon the site’s distinctive rural character in any event. Likewise, the stationing of a caravan in the middle of the site, to provide a welfare facility for the landowners, has not significantly altered the prevailing character.

- 15.73 The Inspector is describing an isolated field. The open area measures approximately 0.4 ha. The site has been free of any activities on the site since 2017 *as agreed with the local residents in the legal agreement*. Some activities can commence at any time and they may not be obscured by the fence. It is a matter of fact that the houses on Skylark Meadows completely isolate the site from the countryside. What did the Inspector believe would happen to the site? Did he believe that the landowners would establish a charity to mow the site once month!
- 15.74 The Inspector then states in paragraph 15 that:-

The Landscape Character Assessment identifies ‘suburbanisation and urban fringe encroachment’ as a *key issue* within this LCA. The proposal is a case in point. New development has incrementally changed the area’s character, but this serves to make the remaining pockets of undeveloped open space more valuable, not less. The site does not need to constitute countryside in its traditional sense, or have views of wider countryside, in order to possess an attractive rural character.

- 15.75 **The site is the only “remaining pocket”!** What is the value of retaining this field in “glorious isolation”? Indeed, how can it be retained? The site will remain a problem for the residents and the landowners if it isn’t developed. It will not be retained in a “tidy state”. What is the purpose of preventing housing on the site? The site is not a “museum” piece that can be protected as an example of “undeveloped open space”. It is an area of land that has caused bitter disputes between the landowners and the local residents for 20 years. It will be a continuous problem if it is left undeveloped.
- 15.76 The protection of the “key issue” did not prevent the development of the 30 dwellings nor the subsequent infilling. Beyond the Estate to the east there are large detached dwellings on Springles Lane where infilling was permitted in the 1990’s. These dwellings form a continuous line but even here the replacement of dwellings with even larger ones has been permitted.
- 15.77 Inspector Robert Parker didn’t even acknowledge this. He concluded that it was traffic movements that concerned the residents. Words fail me!

Policy CP2 Housing Mix

- 15.78 Mrs Julie Pinnock added the planning condition at the Planning Committee. The objective of the Policy CP2 is to retain smaller units in the countryside to ensure that they were affordable. A three bedroom dwelling in this location would probably be worth at least £750,000 based on the values in the Lane.
- 15.79 In paragraph 19, the Inspector stated that:

The appeal scheme has been designed to reflect the prevailing character of Whiteley Lane which consists mainly of large detached properties. In that respect, there is a logic to the appellant’s argument. However, there is no reason why the scheme could not incorporate a greater mix of unit sizes, including at least one 2- or 3-bed unit.

- 15.80 The Inspector even admitted that he had the discretion to take a different approach. He stated that:-

The development plan makes some allowance for local circumstances when determining housing mix.

- 15.81 Nevertheless, it seems inevitable that the Inspector supported the Council's policy on Housing Mix because he seemed to be incapable of making a personal evaluation. What is the benefit of including 'one two or three bed unit' in the local circumstances? How was this good design?
- 15.82 The Inspector claimed that there was an issue with regard to the impact of the development on the character and appearance on the area but there was no analysis in support of this contention. On the contrary, most of his comments confirmed compatibility.

Adjournment: Mr and Mrs Knight withdraw from The Hearing

- 15.83 I have explained the issue of the adjournment. Mrs Knight had been present in the morning. She had expressed her opinion that anyone purchasing a plot restricted to three bedrooms would seek to enlarge it. She explained that there were smaller units in the Lane that had sold for +/- £750,000 which would preclude anyone of modest means.
- 15.84 It is also clear that Mr and Mrs Knight had not had the opportunity to respond to the case presented by the Officers. They had not had the chance to explain the reasons for the change of position by the local residents. With regard to concerns of the local residents about activities on the site, the Inspector stated in paragraph 23, that:-

additional traffic is a genuine concern for local residents, given the narrow width of the lane, but I am mindful that such impacts would be of a *temporary duration*.

- 15.85 It was the activities on the site that distressed the residents. Furthermore, the succession of applications and appeals had created uncertainty about the future of the site and endless disputes with the landowners. Mr and Mrs Knight did not mention traffic movements which were only of secondary concern to residents. The Inspector ignored the reasons why the site was inactive. There had been no activities on the site from 2017 in accordance with the Legal Agreement with neighbours. Why did he ignore the clause in the agreement?
- 15.86 I do not know what advice Inspectors receive when a significant party suffers a serious illness and can no longer participate. In my opinion, the Inspector should have adjourned the Hearing immediately. He hadn't heard the evidence from Mr and Mrs Knight. He didn't consider the fact that Mr and Mrs Knight were the only third parties present and he placed no significance on the fact that the one objector in the Lane, Mr Crowley and Cllr Mrs Achwal did not appear.
- 15.87 It seems certain that he would not have referred to the "temporary duration" of traffic movements, as well as other mistakes, if he had heard evidence from Mr and Mrs Knight. They would have explained that the principal concerns of the local residents were in respect of the activities on the site and the disputes.

15.88 There is no reference in the Committee Report to the fact the Lane is a cul de sac with no formal turning space nor any passing bays. However, the Inspector didn't consider that these omissions were relevant matters even though he concluded that traffic movements were the significant issue.

15.89 Ironically, the Inspector acknowledged that there was a history of enforcement complaints over a 20 year period. He stated in paragraph 22 that:-

The appeal site has a history of enforcement complaints over a 20 year period and the appellant contends that the proposal is an opportunity to resolve this ongoing issue. However, the Council has effective powers to resolve breaches of planning control and furthermore it has the ability under S215 of the Act to require the proper maintenance of land. The potential for unauthorised development or untidy land to have an adverse effect on the amenity of the neighbourhood does not attract any significant weight in favour of the proposal.

15.90 The powers were not very effective. Enforcement Notices had been served from 2005 to 2016. The mobile home was not the only matter of concerns to residents. This did not prevent fly tipping nor the use of the land for other purposes (quad biking) that had been the source of complaints. In future, the landowners could visit the site daily with any size of vehicle that they choose. The Inspector did not appreciate that the local residents were seeking to resolve the issues on the land. The legal agreement required the landowners to cease all activities on the site. I do not believe that the local residents believed that the Council had adequate enforcement powers.

The Committee Report dated June 2019

15.91 There was discussion during the Hearing of the omissions and errors in the Committee Report. It was not the "the level of information" it was the complete absence of information. The Inspector referred to main points missing such as "**the site's enforcement history, the costs award associated with the previous appeal and the background of support from local residents**". These points were absolutely fundamental to the decision. He didn't even place any significance on the points that he identified. It was obviously unreasonable behaviour and it should have led to the Award of Full Costs.

15.92 There were eleven years of enforcement issues which created considerable distress to the residents. The Inspector gave no weight to it but it was fundamental to the residents' decision not to object to the planning application.

15.93 It seems that my letter to the Members of the Planning Committee dated 19 June pointing out the errors and omissions explains the Inspector's decision not to make a Full Award of Costs. I expected Inspector Parker to realise the significance of the errors and omissions. He stated in paragraph 4, of the Award of Costs that:-

I am mindful that the appellant took the opportunity to remedy their concerns prior to the committee meeting by writing to all members to highlight some points that were regarded as important by the appellant but not covered in the report. Therefore, even if the report were deficient, the appellant was not placed at a disadvantage by the Council's actions. *Unreasonable behaviour has not been demonstrated.*

15.94 This is a most outrageous statement. I regard this as 'mindless' nonsense. He stated that "even if the Report were *deficient*, the appellant was not placed at a disadvantage by the Council's actions". So, he probably regarded the Committee Report as 'deficient' but it didn't justify costs because of my letter to the Members prior to the Planning Committee. It seems that my letter saved the Council costs (even though Members ignored it)! It is crystal clear that it was the Inspector who was 'deficient'!

15.95 It should be noted that the Inspector was aware of the errors and omissions because they were set out in the Planning Appeal Statement (⁶⁷). Indeed, the Inspector asked me to identify the references in my Planning Appeal Statement. He even asked me to *read* the relevant paragraphs 18.24 and 18.25 at the Hearing that referred to the errors and omissions.

18.24 It is evident that the Committee Report makes no mention at all to the history of enforcement. As a consequence, the appellants lodged a request under the "Freedom of Information" (FoI) arrangements to try to ascertain how many enforcement letters had been issued and how much the enforcement and appeal work had cost the Council. The response to the FoI simply recorded that there were enforcement issues over a long period but there were no record of the Council's costs.

18.25 There is no mention in the Committee Report that the appellants were awarded Costs against the Council of £5775.75. Furthermore, the Council has included an objection in respect of the settlement gap issue in the reasons for refusal. The appellants have sought advice from a barrister in respect of the overall issues raised by this case. His advice in respect of the gap is that the appellants should expect to be awarded Costs again.

15.96 The Inspector listened but he didn't acknowledge the significance. If he had read the Planning Statement himself he would have seen the separate Section headed the Statement of Community Involvement. He would then have recognised that all of the residents in the Lane had been involved in discussions of the proposals. There had been full consultation with all of the residents in the Lane and the Town Council.

Award of Costs Appellant Claim (2)

15.97 The Inspector stated in paragraph 4:-

⁶⁷ BJC Planning Appeal Statement

The application for an award of costs has two strands, the first of which concerns the settlement gap. The most recent appeal decision addressed this matter specifically, the Inspector finding that ‘the site does not assist in the intended role to define and retain the separate identity of settlements’. This conclusion was clearly directed at the site and not the scheme itself. The Council has argued in this case that the proposal would have a significant impact on the settlement gap due to the increased visual impact of two dwellings over the single dwelling proposed previously. However, it follows from the Inspector’s reasoning that development on the site, regardless of scale, would not physically or visually diminish the gap in conflict with Policy CP18 of the Winchester District Local Plan Part 1 – Joint Core Strategy (LPP1). The Council’s persistence in objecting to elements of a scheme which an Inspector has previously indicated to be acceptable represents unreasonable behaviour as set out in the PPG.

15.98 In paragraph 5 of the Award of Costs the Inspector stated:-

The second strand to the costs application is a procedural one. It is suggested that the report to committee failed to include critical information which, had it been disclosed to members, may have led them to approve the application. The report did not include the level of information considered necessary by the appellant in relation to matters such as the site’s enforcement history, the costs award associated with the previous appeal and the background of support from local residents. Whilst there may have been merit in elaborating on these points, the report was adequate in its assessment of the planning issues. I am mindful that the appellant took the opportunity to remedy their concerns prior to the committee meeting by writing to all members to highlight some points that were regarded as important by the appellant but not covered in the report. Therefore, even if the report were deficient, the appellant was not placed at a disadvantage by the Council’s actions. Unreasonable behaviour has not been demonstrated.

My italics

15.99 The Inspector highlights all of the fundamental problems with the Committee Report but he doesn’t regard them as consequential. This cannot be a satisfactory assessment. Surely, a full Award of Costs should have been awarded. *It is totally unreasonable and unjustified to dismiss my claim for costs on the basis of my letter to the Planning Committee in 2019.*

15.100 It is difficult to envisage a more ridiculous decision.

The Council’s Counter Claim for Costs made by Mr Nick Parker

15.101 Surely, the Inspector should have rejected the decision of Mr Nick Parker to make a counter claim for Costs ⁽⁶⁸⁾. The Inspector should have prevented him from making the claim. It seems that the Inspector didn’t read the 2017 Appeal Decision until after the close of the Hearing. He would then have realised that the site was not in conflict with the Gap Policy and then it wouldn’t have been necessary to address the Gap issue.

⁶⁸ Nick Parker made a counter claim for Costs

15.102 I regard Nick Parker's decision to make an application for an Award of Costs as *despicable*. He and I had agreed the Costs in 2017 and I had reminded him of this in my letter to him dated 30 October 2020. It was plain to see that the Council's case was fraudulent. Again, it appears that the Inspector hadn't read the 2016/2017 Appeal and Cost Decisions until after the Hearing or alternatively, was he simply incompetent!

15.103 The fact that the Inspector was confused about the case is summed up in his comments on the Council's claim.

The appellant was entitled to make that case, given that the situation had changed since the last appeal. It was not unreasonable to request a hearing to enable local residents the opportunity to make their representations in person.

15.104 This statement is yet more nonsense. The request for a public inquiry was based upon my concern that the Council wouldn't withdraw the Gap reason for refusal. I referred specifically to the flaws in the Committee Report. What made the Inspector believe that the request for a Hearing was to enable the local residents to make their representations in person? The case wasn't made on the basis of giving the **'local residents the opportunity to make their representations in person'**. Mr Broughton on behalf of the Planning Inspectorate had agreed to a Hearing rather than an Inquiry on the grounds that a Hearing would be adequate to enable the Inspector to "test the evidence". Inspector Parker failed to test the evidence.

15.105 The Inspector accepted that it was reasonable to provide the local residents with the opportunity to make their representations. Then he ignored them. There were only two third parties present and they withdrew when Mrs Jan Knight had a breakdown. The Inspector didn't hear their case in person! He didn't even understand the residents' issues and the reason for their decision not to object to the development.

15.106 The Inspector summarised the Council's claim for costs in paragraph 5, he stated that:-

An award of costs is sought on the basis that the proposal had no realistic chance of success, given the history of refused planning applications for residential development on the site over the past 20 years or so. Several of those schemes have been dismissed at appeal, including most recently in 2017. Permission was withheld in all cases on the grounds that the site lay outside of the settlement boundary. The Council argues that there has been no change in policy or circumstances sufficient to justify a different decision, and that the authority has been put to unnecessary expense in defending the appeal.

15.107 The claim made by Nick Parker on behalf of the Council was dishonest. There had been the fundamental decision of the Inspector in 2016/2017 that the site was not in conflict with Gap Policy CP18. If Inspector Parker had recognised this at the commencement of the Hearing he could have challenged the witnesses. The Gap issues would have been set aside and the case would then have proceeded on the examination of the only outstanding issues.

15.108 The Council’s witnesses had claimed that there had been no change of policy or circumstances. This is simply not true. I regret to say that I believe that Mr Nick Parker deliberately deceived the Inspector. Mr Nick Parker must have realised that it was untrue because I referred to the Appeal and Cost decisions in my letter to him dated 30 October 2020 ⁽⁹⁾. This letter referred specifically to our email exchanges on costs in 2017 ⁽⁸⁾. No one in the Council has investigated this deception.

15.109 I assume that the Planning Inspectorate (Mr Boulton) had not referred the exchange between Mrs Clayton and myself to the Inspector. This should have influenced the level of experience required when the decision to appoint an Inspector was made. The Hearing wasn’t agreed because of concerns about the local residents. It was primarily about the content of the Committee Report and the attitude of the Officers. I had requested an inquiry so that the witnesses could be cross-examined. I made my concerns very clear and yet the Inspectorate appointed an Inspector who was unable to “test the evidence”.

15.110 The Inspector made a second Partial Award of Costs. This made it clear that there was no reference to this in the Committee Report but, even this didn’t persuade him that the Report was inadequate. Finally, I regard the most damning matter was his decision to disregard of the judgment that I quoted to him at the Hearing.

R. (ZINS) v East Suffolk Council (2020) EWHC 2850 (Admin)

15.111 I quoted the relevant extract from this judgment ⁽⁶⁹⁾. The Inspector was seen to take the details down.

The Claimant, Mr Zins, a local resident applied for judicial review of a grant of planning permission by East Suffolk Council in relation to the creation of a lake..” etc. Mr Zins argued that the Planning Officers Report – materially and seriously misled members of the Planning Committee. This case related to the handling of noise and heritage issues.

James Strachan QC sitting as a deputy judge of the High Court concluded in his judgment with reference to the Zins case that Members were not ‘materially misled’.

However, he stated in para 111 “IN PROVIDING THAT PLANNING ADVICE THEY (OFFICERS) SHOULD NOT OMIT MATERIAL CONSIDERATIONS WHICH REQUIRE CONSIDERATION BY THE MEMBERS”.

15.112 It is obvious that the Planning Committee Report failed this test. Fundamental considerations were omitted. The most damning point in this case is that the Inspector was

⁶⁹ R. (ZINS) v East Suffolk Council (2020) EWHC 2850 (Admin)

made aware of this judgment. He made no reference to this case and he concluded that Report was “adequate”.

15.113 It is evident that the cross examination of the Council’s witnesses would have led to a different outcome and the appeal would have been allowed and a full Award of Costs made.

People Present at the Appeal Hearing

15.114 There were eleven people present at the “Virtual Hearing” who can confirm that the Inspector noted the details of the judgment.

15.115 The Inspector failed to record the people present at the Hearing. In particular, he didn’t record Mrs Clayton’s presence even though she apologised to him when she withdrew from the Hearing in the afternoon. The three Directors of Whiteley Lane were present throughout the proceedings together with Miles White who provided them with the technical support and my fellow Director, Caroline Jezeph, who helped me with the requirements of the “virtual” requirements and sharing documents. These people can verify any of the points with regard to the proceedings.

Proposal: Erection of 2 detached self build houses with detached garages, parking, turning and landscaping. 24/01343/OUT

15.116 I was under the impression that Cllr Mrs Achwal had made the deputation to the Committee because she wasn’t aware of the Appeal and Cost Decisions in 2017. However, her husband, Cllr Dr Sudhakar Achwal, objected to this planning application on grounds that it was contrary to the Gap Policy. I was surprised by his objection not least because I had sent a letter to Cllr Mrs Achwal referring to the appeal decision in 2017 confirming that the Gap was not an issue.

15.117 The Crowley family all objected again to this application. They claimed that the development of the application site would undermine the character of the Lane and yet the area in front of their house still had building materials and the stump of forest tree in full view.

16.0 THE BOUNDARY OF THE GAP: WHITELEY LANE

- 16.1 The issue of the Gap should have been set aside by the Inspector. He was advised that this had been resolved in 2016/2017. This was established in the Appellants' Planning Appeal Statement. It seems that he didn't read the Appeal and Cost Decision in 2017 until after the close of the Hearing because he did confirm that the site was not contrary to the Gap Policy and he made a Partial Award of Costs on that point. If he had read these Decisions earlier it seems certain that he would have challenged the witnesses but he allowed the Council's witnesses to pursue the Gap issue. As a consequence, the appellants had to make the case about the Gap Policy again.
- 16.2 The Council's witnesses should have withdrawn the Gap reason for refusal at the opening of the Hearing. This was the proper professional decision. Their decision to pursue the Gap Issue was a clear breach of the Planning Inspectorate Guidance in respect of 'Giving Expert Evidence'. This is also a breach of the RTPI Code of Practice and I have reported Mr Nick Parker for this breach as well as other points. The other planning witness, Mrs Nicola Clayton, isn't a Member of the RTPI. The landscape witness, Mr Dunbar Dempsey, also gave evidence that was misleading. He claimed that the appeal site had survived intact when there was evidence that the central part of the site had been cleared of trees.
- 16.3 The Settlement Boundary should have been just one of the two outstanding planning issues at the Hearing. The other issue was the effect of the development on the character of the area.
- 16.4 At first sight, Whiteley Lane appears to provide a logical boundary and it is easy to understand the decision to select the Lane as the boundary of the Gap. However, it raises very serious problems in terms of interpreting the Gap Policy. Whiteley Lane is in the Hamble Valley and it is not in the Meon Valley to which Policy CP18 seeks to protect (please see Plan 4: The ridge that separates the two valleys (ref: 10)). The Lane is approximately ten metres below the ridge. This means that the development cannot possibly "visually or physically diminish" the Gap. Anyone walking along the Lane can appreciate that fact.
- 16.5 There are two considerations. The first consideration relates to the decision that Whiteley Lane is not the boundary of the Gap. If the Gap is retained, the boundary needs to be realigned to the east. The most appropriate position would follow the alignment of the ridge (as shown on Plan 8: Proposed Settlement Boundary ⁽¹⁴⁾). If the Gap Policy is deleted it seems logical to move the Settlement Boundary to follow the ridge. This would accord with the principles in the Settlement Boundary Review 2014.
- 16.6 There is a further consideration. The appeal decision in respect of land 'East of Crofton Cemetery and West of Peak Lane, Stubbington, Fareham' for *206 dwellings* was allowed. The site was in the Meon Gap in Fareham Borough. The Inspector even concluded that:-

The designation of a gap therefore does not completely preclude development. Proposals which would not adversely affect the function of the gap and which would otherwise be acceptable in planning terms could be permitted.

- 16.7 The proposed development in Whiteley Lane could not ‘adversely affect the function of the gap’. Furthermore, there were material considerations that outweighed the significance of the Development Plan.
- 16.8 I had provided details of seven cases for application and the appeal where significant development had been permitted in the Meon Strategic Gap. I submitted a plan showing several sites where substantial development had been permitted in the Meon Gap and beyond the settlement boundaries of Winchester and Fareham Districts ⁽⁶³⁾. These sites were identified in appendices to the Planning Appeal Statement. I had provided this document with the planning application and for the appeal.
- 16.9 Housing developments had been permitted in Springles Lane that were in the Gap in Winchester District and even further to the east of the dwellings in Skylark Meadows. Fareham Borough Council had permitted a Hotel, the Holiday Inn, and 78 retirement homes at Abbey Meadows off Cartwright Drive. The 78 retirement homes were all on the western slope of the Gap. A large camping and caravan site in Segensworth Road was permitted too. All of these development were in the “genuine” Meon Gap. The PUSH advice did not preclude development in the Gap. It is clear that development could be permitted beyond the Settlement Boundary.
- 16.10 There were also material considerations that could have outweighed the Development Plan and persuaded Inspector Parker to accept that the Settlement Boundary was not an insuperable issue. He didn’t recognise the significance of the decision of the local residents not to object to the development. He didn’t even assess the degree of support correctly. It was made absolutely clear in the evidence that ten of the eleven households did not object.
- 16.11 It appears that he chose to rely on the statement of Ward Councillor Mrs Achwal that there were ‘other objectors’. She didn’t identify any other objectors and nor did the Inspector. He claimed to have taken account of all of the documentation (paragraph 24) but this was obviously untrue because the details of the responses of local residents sent to the Planning Inspectorate prior to the Hearing. This was also established in the Statement of Community Involvement 2019, the Table of Responses and the Legal Agreement signed by the landowners and the representatives of the local residents. He didn’t give any weight to the decision of the Members of the Whiteley Town Council to vote unanimously in support of the local residents.
- 16.12 Inspector Parker finally accepted that the Gap was not a relevant issue. He confirmed that the site was not in conflict with Gap Policy and he made a Partial Award of Costs on that point. He even appeared to accept that the Settlement Boundary wasn’t an insuperable issue

but he didn't seem to realise that he had the power to make a positive decision. He "insisted" that this issue should be resolved in the context of the Emerging Local Plan.

16.13 In 1998, an Inspector stated in his Decision that:-

"if the decision were taken at some future date that the appeal site nevertheless falls within Whiteley's policy boundary, it does not seem to me either proposal would be so alien to development to east and west as to be significantly in breach of the applicable development plan policies. The appeal site, under either proposal, would in my view form an acceptable transition between the spacious new development to the east and the denser layout to the west of Whiteley Lane"

16.14 The Inspector concluded that he could not make a decision in respect of development beyond the settlement boundary. He concluded that this was not a matter for him at a S.78 appeal but he believed that the issue should be considered at the examination of the next Local Plan. He stated in paragraph 25:-

At the hearing, the appellant made strong submissions to the effect that the settlement boundary had been incorrectly defined. It was further alleged that the Council was biased towards major developers, illustrated by its willingness to amend settlement boundaries to allow large scale development on the edges of settlements. Such matters are not for consideration in the context of a s78 appeal and should be pursued as part of the process of preparing the next local plan. S38(6) of the Act requires me to determine the appeal in accordance with the development plan unless material considerations indicate otherwise.

16.15 I did not make "strong submissions" that the Inspector should amend the boundary. I had already explained that I had failed to change the boundary at the examination of three previous stages of the Local Plans (2004; 2006 and 2014). Why would I believe that the Appeal Inspector could change boundary? I did claim that the alignment of the Settlement Boundary was "incorrectly drawn" but this was in support of the case that the Inspector was empowered to make a decision to allow development beyond the boundary. I asked him to visit the Estate so that he could appreciate that the appeal site was not visible from the Estate.

16.16 I had no expectation that he could change the boundary. I submitted a plan showing several sites where substantial development had been permitted in the Meon Gap and beyond the settlement boundaries of Winchester and Fareham Districts ⁽⁴⁸⁾. These sites were identified in appendices to the Planning Appeal Statement. I had provided this document with the planning application and for the appeal. Inspector Parker didn't seem to appreciate that he was empowered to make a positive decision.

16.17 The objections that I lodged against the Local Plans in 2004, 2016 (Part 1) and 2017 (Part 2) had been ignored. I didn't expect the Inspector to redraw the boundary.

- 16.18 Inspector Parker ‘recommended’ that this should be examined at the forthcoming review of the Local Plan. The Officers realised that the Inspectors ‘recommendation’ enabled them to resist the resubmission of the planning application and insist that the issue of the settlement boundary should be examined at the next Local Plan. The Officers are insistent that this is the fundamental issue and that the case must be considered at the Review of the Local Plan.
- 16.19 I didn’t agree with Inspector Parker opinion. I did object to the Local Plan Regulation 18 but I decided to submit a planning application at the same time.

Appointment of Mr Ian Tait

- 16.20 Ian Tait had been a Conservative Councillor for 19 years until 2019 for a Winchester City Ward. He now manages his own planning consultancy specialising in sustainable energy issues. I had met Ian on several occasions prior to 2019. I was aware that Ian was present at the Planning Committee on the 19 June 2019 when the planning application was determined. Some of the Officers had refused to engage with me so I recommended that the landowners appointed Ian Tait to review the case. I provided Ian with all of the documentation and he agreed to contact the Officers and the local residents to review the case. He was appointed by the land owners in April 2022.
- 16.21 I made arrangements for Ian to meet Mr and Mrs Knight in their home so that he could appreciate their concerns.
- 16.22 Ms Catherine Knight, Service Lead Legal, Deputy Monitoring Officer, stated in her letter to me dated 2 November 2021 ⁽⁷⁰⁾ that:-
- “I also note your comment at page 3 of your letter dated 11 October 2021, where the outstanding issue is that of the settlement boundary. In this regard I recommend that you liaise with Simon Finch as the council are currently undertaking a review of the local plan.”**
- 16.23 I did contact Simon Finch but this also created more confusion. Mr Finch declined to meet me. He said that it was too close the publication of the Emerging Local Plan Reg 18.

Meeting between Mr Tait and Mr Finch July 2022

- 16.24 Mr Finch was unwilling to meet me on site to discuss the local issues but he did agree to meet Ian Tait on site. At that site meeting Mr Finch conceded that the Gap Policy should not be an issue in future ⁽⁷¹⁾. This is noted in the Statement of Community Involvement prepared by Mr Ian Tait of Palladwr Associates Ltd, that:-

⁷⁰ Letter to Bryan Jezeph from Catherine Knight re Settlement Boundary dated 16 December 2021

⁷¹ Statement of Community Involvement prepared by Mr Ian Tait of Palladwr Associates Ltd August 2022.

“Mr Finch conceded that the Gap Policy should not be an issue in future”

16.25 I have established the principal respective errors and omission made by the Inspector and the Officers below.

Analysis of the Main Points in respect of the Inspector and the Council’s Witnesses

1. There were fundamental errors and omissions in the Committee Report. He identified these but he concluded that it was adequate to advise Members. He stated that **“Whilst there may have been merit in elaborating on these points, the report was adequate in its assessment of the planning issues.**
2. He concluded that the appellants were not disadvantaged by the errors and omissions in the Committee Report because I had identified these in a letter to the Members of the Planning Committee and the Officers. On this basis, he concluded, that unreasonable behaviour was not demonstrated. Unbelievable!
3. He did not consider the ZINS judgment that I asked him to address which states that **“in providing that planning advice they (officers) should not omit material considerations which require consideration by the members”**. All of the people present at the Hearing saw him record the details.
4. He made an Award of Costs in respect of the Gap Policy but still allowed Mr Nick Parker to make a counter claim for costs;
5. He relied on the 2004 LCA as his main argument to demonstrate “harm” when it was obviously out of date and irrelevant. The changes in the area were extensive and left the site isolated ;
6. He didn’t question the evidence of Mr Dunbar Dempsey that the site had “endured and survived intact” even though the Committee Report referred to the removal of trees;
7. He acknowledged that the proposed development was compatible with character of the Lane but didn’t reach the conclusion that must follow that the effect on the character and appearance was questionable.
8. He didn’t accept that planting could mitigate the impact of the development even though this is often acceptable in other cases;
9. He was asked to visit Skylark Meadows Estate but makes no reference to the fact that the appeal site is not visible from the Estate;
10. He simply copied the points from the Inspector in 2017 and those of Mr Dunbar Dempsey in respect of landscape impact without checking their accuracy;
11. He didn’t realise that it was the activities on the site that had persuaded the local residents not to object to the development; (not traffic!)
12. He concluded that it was traffic movements on the Lane that distressed the residents even though it was crystal clear that it was the activities on the site that was the main issue;
13. He gave no weight to the “fallback”. He ignored the fact that there had been fifteen years of enforcement actions but he concluded that the Council had powers to prevent such actions in future. This would mean that the residents faced the uncertain future that they had hoped to resolve;
14. He couldn’t work out that ten of the eleven households did not object to the development and he relied on the email of Cllr Mrs Achwal that there were other objectors when there were none. The details were established in three documents – Statement of Community Involvement; Table of Responses and the letter sent to the Inspectorate by Mrs Jan Knight (21 October 2020);
15. He claimed to have “taken into account all of the representations” in the determination of the Decision when it clear that he hadn’t. He was simply dishonest;

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16. He gave no consideration or weight to the fact that Whiteley Town Council voted unanimously to support the residents;
 17. I believe that the Inspector should have adjourned the Hearing when Mrs Jan Knight was ill and withdrew. I admit that, with the benefit of hindsight, I should have pressed for this;
 18. He didn't seem to realise why the Planning Inspectorate had agreed to a Hearing.
- 16.26 I believe that it is most important that you are aware of the consequences of the Inspector's Decision. Words fail me to describe the Inspector. He was dishonest. The appeal was a comprehensive disaster for the appellants. It was the culmination of twenty five years of misguided Local Plan and Appeal Inspectors. It seems probable that this will be confirmed at the forthcoming examination of the Review of the Local Plan now that there are objections to six of the eight gaps from a range of consultants and land owners.

The role of the Council's witnesses in this debacle.

- 16.27 The Inspector could claim in mitigation that he was misled by them. It is beyond question that the Council's witnesses withheld information that could have avoided many of his errors. They did deceive him but he didn't make any attempt to question their evidence.
1. Mr Nick Parker and Mrs Nicola Clayton both claimed that the site was in the Meon Settlement Gap. Mr Nick Parker must have been aware that this was not true because I advised him of this in my letter dated 30 October 2020;
 2. As a consequence, the Council suffered a *second* Partial Award of Costs;
 3. The fact that 10 of the eleven households did not object to the development is recorded in my letter to Mr Parker dated 30 October 2020;
 4. Mr Parker also knew that the reasons why the local residents decided not to object because it is also in my letter too him. They were concerned about activities on the site and not traffic on the Lane;
 5. It is my opinion that Mr Parker should not have acted as a witness. He failed to comply with the Inspectorate's Guidance on Expert Evidence and his reputation would have been "in tatters" if he had been cross examined by a barrister. The Council has studiously ignored my complaints about the performance of witnesses. Not one Officer has examined this matter.
 6. Mr Dunbar Dempsey claimed that the site had "endured and survived intact" even though the Committee Report referred to the removal of trees;
 7. No one Member of the Council nor any Officer contacted the local residents to assess their concerns. The Statement of Community Involvement established the extent of the involvement with all of the residents in the Lane and the Whiteley Town Council. The only party that didn't participate in the consultation was the Council.
 8. All three of the Council's witnesses deceived the Inspector. They made no attempt to provide honest evidence. They didn't correct matters which were fundamental to the Inspector's Decision.
- 16.28 It is my opinion that, if the Inspectorate had agreed to a public inquiry the evidence of Council's witnesses would have been rejected. Their evidence would have been set aside if they had been cross examined by a barrister. Even an inquiry would not have been necessary if the Inspector appointed by the Inspectorate had been capable of "testing the evidence".

17.0 SETTLEMENT BOUNDARY

- 17.1 The Settlement Boundary should have been just one of the two outstanding planning issues at the Hearing. The other issue was the effect of the development on the character of the area.
- 17.2 Inspector Robert Parker did confirm in his Decision that the Gap Policy was not relevant to the consideration of the site in Whiteley Lane. However, he didn't reach this conclusion during the Hearing. He concluded in his Decision that he was unable to resolve the issue of the settlement boundary and he believed that this had to be examined at the next review of the Local Plan.
- 17.3 It was my contention that Inspector Parker could have made a positive decision if there were matters that outweighed the Development Plan. There were two matters that were pertinent. I provided evidence that there had been several planning permissions granted in the Meon Gap. I had provided details of seven cases for application and the appeal where significant development had been permitted in the Meon Strategic Gap. I submitted a plan showing several sites where substantial development had been permitted in the Meon Gap and beyond the settlement boundaries of Winchester and Fareham Districts ⁽⁷²⁾. These sites were identified in appendices to the Planning Appeal Statement. I had provided this document with the planning application and for the appeal.
- 17.4 Housing developments had been permitted in Springles Lane that were in the Gap in Winchester District and even further to the east of the dwellings in Skylark Meadows. Fareham Borough Council had permitted a Hotel, the Holiday Inn, and 78 retirement homes at Abbey Meadows off Cartwright Drive. The 78 retirement homes were all on the western slope of the Gap ⁽⁷³⁾. A large camping and caravan site in Segensworth Road was permitted too. All of these development were in the "genuine" Meon Gap. The PUSH advice did not preclude development in the Gap. It is clear that development could be permitted beyond the Settlement Boundary.
- 17.5 There were also material considerations that could have outweighed the Development Plan and persuaded Inspector Parker to accept that the Settlement Boundary was not an insuperable issue. He didn't recognise the significance of the decision of the local residents not to object to the development. He didn't even assess the degree of support correctly. It was made absolutely clear in the evidence that ten of the eleven households did not object and four had supported the planning application. The local residents had expressed their views that they would like to end the many disputes about the activities on the application site and they were concerned about its future.
- 17.6 It appears that he chose to rely on the statement of Ward Councillor Mrs Achwal that there were 'other objectors'. She didn't identify any other objectors and nor did the Inspector. He claimed to have taken account of all of the documentation (paragraph 24) but this was

obviously untrue because the details of the responses of local residents sent to the Planning Inspectorate prior to the Hearing. This was also established in the Statement of Community Involvement 2019, the Table of Responses and the Legal Agreement signed by the landowners and the representatives of the local residents. He didn't give any weight to the decision of the Members of the Whiteley Town Council to vote unanimously in support of the local residents.

- 17.7 The legal agreement had been prepared whereby the residents wanted to restrict the development to two detached dwellings. Inspector Parker didn't even assess these points correctly. He concluded that the residents were concerned about traffic movements to the site. As a consequence, the issue of the settlement boundary remains unresolved.
- 17.8 At first sight, Whiteley Lane appears to provide a logical boundary and it is easy to understand the decision to select the Lane as the boundary of the Gap. However, it raises very serious problems in terms of interpreting the Gap Policy. Whiteley Lane is in the Hamble Valley and it is not in the Meon Valley to which Policy CP18 seeks to protect. The ridge separates the two valleys passes through the Skylark Meadows Estate. This means that 19 of the 30 dwellings on the Estate lie in the Hamble Valley. and The Lane is approximately ten metres below the ridge. This means that development cannot possibly "visually or physically diminish" the Gap. Anyone walking along the Lane can appreciate that fact.
- 17.9 There are two other considerations. The first consideration relates to the decision that Whiteley Lane is not the boundary of the Gap. If the Gap is retained, the boundary needs to be realigned to the east. The most appropriate position would follow the alignment of the ridge. If the Gap Policy is deleted it seems logical to move the Settlement Boundary to follow the ridge. This would accord with the principles in the Settlement Boundary Review 2014.
- 17.10 There is another consideration. The appeal decision in respect of land 'East of Crofton Cemetery and West of Peak Lane, Stubbington, Fareham' for 206 dwellings was allowed. The site was in the Meon Gap in Fareham Borough. The Inspector even concluded that:-

The designation of a gap therefore does not completely preclude development. Proposals which would not adversely affect the function of the gap and which would otherwise be acceptable in planning terms could be permitted.

- 17.11 In 1998, an Inspector stated in his Decision that:-

"if the decision were taken at some future date that the appeal site nevertheless falls within Whiteley's policy boundary, it does not seem to me either proposal would be so alien to development to east and west as to be significantly in breach of the applicable development plan policies. The appeal site, under either proposal, would in my view form an acceptable transition

between the spacious new development to the east and the denser layout to the west of Whiteley Lane”

- 17.12 The settlement boundary should have been an issue at the Hearing and it certainly should not be necessary to wait for the Examination of the Local Plan.
- 17.13 It will be recalled that Mrs Jan Knight broke down because of the stress she suffered at the Hearing. She has made clear that she and her husband are unwilling to make the case in favour of the development of two dwellings at the Local Plan Inquiry. She has also made clear that they would have to move if the site isn't developed. Inspector Parker decided not to adjourn the Hearing so he didn't hear the reasons for the local residents not to object.
- 17.14 The Inspector concluded that he could not make a decision in respect of development beyond the settlement boundary. He concluded that this was not a matter for him at a S.78 appeal but he recognised that this was a fundamental issue. He recommended that this issue should be considered at the examination of the next Local Plan. He stated in paragraph 25:-

At the hearing, the appellant made strong submissions to the effect that the settlement boundary had been incorrectly defined. It was further alleged that the Council was biased towards major developers, illustrated by its willingness to amend settlement boundaries to allow large scale development on the edges of settlements. Such matters are not for consideration in the context of a s78 appeal and should be pursued as part of the process of preparing the next local plan. S38(6) of the Act requires me to determine the appeal in accordance with the development plan unless material considerations indicate otherwise.

- 17.15 I did not make “strong submissions” that the Inspector should amend the boundary. I had already explained that I had failed to change the boundary at the examination of three previous stages of the Local Plans (2004; 2006 and 2014). Why would I believe that the Appeal Inspector could change boundary? I did claim that the alignment of the Settlement Boundary was “incorrectly drawn” but this was in support of the case that the Inspector was empowered to make a decision to allow development beyond the boundary. I asked him to visit the Estate so that he could appreciate that the appeal site was not visible from the Estate.
- 17.16 I had no expectation that he could change the boundary. I submitted a plan showing several sites where substantial development had been permitted in the Meon Gap and beyond the settlement boundaries of Winchester and Fareham Districts ⁽⁴⁸⁾. These sites were identified in appendices to the Planning Appeal Statement. I had provided this document with the planning application and for the appeal.
- 17.17 Housing developments had been permitted in Springles Lane that were in the Gap in Winchester District and even further to the east of the dwellings in Skylark Meadows. Fareham Borough Council had permitted a Hotel, the Holiday Inn, and 78 retirement homes off Cartwright Drive and a large camping and caravan site in Segensworth Road all in the

“genuine” Meon Gap. I also identified a planning appeal that was allowed for one house in the Meon Gap. The PUSH advice did not preclude development in the Gap. It is clear that development could be permitted beyond the Settlement Boundary.

17.18 The Inspector stated in paragraph 7 that:-

The appellant contends that the settlement boundary has been incorrectly defined and that it should have been redrawn to include the appeal site and other built development to the east of Whiteley Lane. Correspondence from the Council’s Head of Strategic Planning indicates that it was not the authority’s intention to amend settlement boundaries through LPP2, other than where necessary to allocate a site. Nevertheless, the appellant does not dispute that the Council is able to demonstrate a 5 year supply of deliverable housing land1, or that it has passed the Housing Delivery Test. Given the healthy land supply position, there is no reason for me to find that settlement boundaries are out-of-date.

17.19 I do not recall the exchange with the Inspector on this point. This is totally false. I certainly did not agree that the Council had a healthy land supply position. I said that I wasn’t proposing to run a land supply case as in my experience two dwellings would not influence the outcome. It is self evident that there was a shortfall because the Council was allocating sites to meet it. I did try to refer to the case in Swanmore where the case was made that 91 dwellings were acceptable in a Gap to meet the housing requirement just prior to the appeal. These allocations would take time to complete and the development of two dwellings should not have been blocked on this basis. The Inspector claimed that I was introducing new evidence. I have referred to the situation in Swanmore in detail the Section on ‘Other Gaps’.

17.20 I had previously made clear that I didn’t expect the Inspector to redraw the boundary. The objections that I lodged against the Local Plans in 2004, 2016 (Part 1) and 2017 (Part 2) had been ignored. It is correct that the Council only proposed to review settlement boundaries to allocate sites to meet the housing requirement. However, Inspector Parker couldn’t appreciate that this was unjust. Inspector Ms Gibbons had made clear that the site wasn’t in conflict with the Gap Policy. It follows that the gap boundary must be in the wrong place.

17.21 It was a matter of fact that the settlement boundaries had not been reviewed since 2004. The boundaries were clearly in need of re-assessment bearing in mind the extensive changes that had occurred such as the construction of the 30 dwellings at Skylark Meadows and the encroachment of the Whiteley Business Park now backing on to Whiteley Lane. The Inspector should have queried the decision of the Strategic Planning Team to decide unilaterally not to review the boundaries. This could not be justified. It is simply an abuse of power.

Appeal Decision: Land to the East of Waitrose, A429, Malmesbury, Wiltshire (72)
(Ref:- APP/Y3940/W/23/3317252)

17.22 This application was in outline and you will note in paragraph 2 that “the indicative plans were submitted to show how the site could be laid out for up to 26 dwellings” custom build dwellings.

17.23 Paragraph 32 states that:-

“Whilst the level of harm would be considerable, I am satisfied that the public benefits of the proposal would be sufficient to outweigh the harm”.

17.24 The Conclusion in Paragraph 54 states that:-

“For the reasons above, and having regard to all other matters raised, I conclude that the appeal should be *allowed*.”

17.25 This means that the proposal for the custom build application should be permitted even though it is in the defined countryside.

⁷² Appeal Decision: Land to the East of Waitrose, A429, Malmesbury, Wiltshire

18.0 Planning Application: Erection of two detached dwellings and garages: (Ref:- 24/01343/OUT)

18.1 Another planning application was submitted in July 2024. The Decision Notice (¹) is attached together with the Officers' Report (²). The Officers' Report states that

“Having regard to the conclusions reached previously in relation to the impact the proposed development (on the same site) would have upon the settlement gap and the more recent Settlement Gap Review, no conflict with LPP1 Policy CP18 has been identified to warrant a reason for refusal on this basis.”

18.2 This means that after 20 years the Council has admitted that it has been wrong all along and that the Gap Policy CP18 is irrelevant. This also confirms that at least seven Officers had made decisions and advised Members on the grounds that the development was contrary to the Gap Policy. Complaints to the RTPI will be resubmitted about these Officers on the grounds that they have breached the Professional Guidance.

18.3 This was a very positive and fundamental point.

18.4 Unfortunately, the Case Officer, Liz Young, ignored all of the previous evidence submitted for the appeal in 2021. Issues that it was thought were resolved were resurrected. The Case Officer had received amended advice from Natural England that virtually the whole site is affected by Ancient Woodland. For some reason, Natural England reviewed the guidance in 2023 and decided that virtually the whole site was part of the Ancient Woodland. The fact that there were no trees in the area proposed for development was ignored. No trees were to be felled to achieve the development.

18.5 It was especially galling that the issue of Ancient Woodland was raised as the fundamental obstacle to grant of planning permission. There was evidence that this matter had been resolved in 2013 when I met Dr Katherine Sterne on site. She was the legal officer for Natural England she confirmed that a 15 metre buffer offered a sufficient buffer for the development of two dwellings (please see Letter date 13 March 2013. This was never challenged at the appeals in 2016 and 2021.

18.6 Dr Stearne stated in her letter sent to Miss F. Bee, Legal Manager acting for the land owners, dated 13 March 2013, that:- .

I should like to confirm that Natural England welcomes your proposal for a 15 metre buffer between the Woodland boundary and the nearest proposed house and any subsequent development.

18.7 Natural England also proposed planning conditions at this time which included:-

- **Establishment and retention of the 15m buffer zone between development and SSSI**

- **Implementation and delivery of the Lodge Green, Whiteley Habitat Management Plan (Ahern Ecology. Dated January 2015 and as submitted with this application)”**
- 18.8 I requested an extension of time to review this and the other questionable points but the Case Officer stated in her email dated 5 September 2024, copy attached (3), that:-
- “As mentioned in my previous application (email I assume) due to the fundamental nature of the objections to this proposal it is not worth the cost and time of addressing the further concerns raised in relation to Ecology, Highways etc.**
- 18.9 She stated in the email that **I have enclosed the Natural England mapping information however.”** The planning application was refused planning permission on the same day.
- 18.10 A number of the reasons for refusal have been resolved in the period after the 5 September. The Highway objection that required visibility splays has been withdrawn. It has been accepted that the northern access of the two accesses proposed is not new. This means that there is no conflict with the Priority Habitat point as the access does not affect an habitat.
- 18.11 The Arboricultural Report confirms that no trees will be felled to achieve the development.
- 18.12 A Plan that accompanied a Tree Preservation Order is informative.
- 18.13 Two ecology practices have been instructed by the landowners. Ahern Ecology in 2012 and ECOSA in 2016 and subsequently. They had both concluded that there was no overriding ecology issues.
- 18.14 A Tree Preservation Order was served in in response to the clearance of an area of the SSSI. It seems that trees were felled and branches removed by the owners of a dwelling in Skylark Meadows. The area is quite extensive. I have provided a drone video that shows the area affected. I am not aware if any action has been taken in respect of this substantial clearance by the Council or Natural England.
- 18.15 It is a woodland TPO and the accompanying plan is very informative. The boundary of the TPO has a common boundary with the land adjoining Lodge Green. It also shows that there are nine properties on Skylark Meadows that share a common boundary with the SSSI. Some of these properties have *gates from their gardens directly on to the SSSI*. The 15 metre buffer has not applied to these properties but the buffer would have extended over their gardens and over the dwellings.
- 18.16 The 15 metre buffer would also have affected the gardens of six properties on the western side of the Lane and the commercial buildings on the western side of the Lane. The commercial buildings that share a common boundary with the northern boundary of the SSSI are also within 15 metres of the SSSI.

- 18.17 It can be appreciated that the site adjoining Lodge Green is the *only* property in the vicinity of the SSSI that has had to provide the buffer.
- 18.18 The issues of Bio Diversity Net Gain could have been resolved given more time. The proposed development was for two custom build dwellings. The Officers accepted that self and custom build housing is exempt from the requirement to provide 10% gain but they required some enhancement as required by paragraph 180 of the NPPF. It was acknowledged that it is necessary to undertake some planting to enhance the Bio Diversity. The site layout shows a number of new trees and new hedgerow planting. The LVIA submitted with the planning application included an appendix which included a planting scheme (Figure 6). A substantial number of plants were shown. These plants were selected by the applicants' landscape consultant, Sue Sutherland. It is evident that this issue could have been resolved. Negotiations were offered.
- 18.19 There are eleven households in Whiteley Lane. In 2019, ten of the eleven households did not object to the development of two detached dwellings. Inspector Robert Parker gave this no weight. Only one household in the Lane objected to the planning application this time.
- 18.20 I asked the Council to explain its decision to the local residents in Whiteley Lane and the other people that objected on the grounds that the site was in the Gap because I do not believe that this is my responsibility. However, the Case Officer, Liz Young has refused to do this.
- 18.21 She stated that:-
- “It is not the role of the planning authority as decision maker to influence the content of any third party representations and therefore we do not intend to contact those who have made representations. They will be aware that full details of the application are published on the public access pages of our web-site, along with the delegated report and decision notice.**
- 18.22 I do not believe that this advice is correct. It means that the local residents may not realise that the Council has conceded that the site is not in conflict with the Gap Policy. Some of them might object to the Local Plan on the grounds that the site is in the Gap. These people have been misled.
- 18.23 It is frustrating that it will probably be necessary to lodge an appeal even though most of the issues are resolvable.

19.0 PROBITY IN PLANNING

19.1 Probity is defined as, ‘the quality of being honest and behaving correctly’. It applies equally to Officers and Members of the Council. It is often quoted in connection with local politicians when making decisions. The Guidance is set out in two principal documents. The Local Government Association published guidance jointly with the Planning Advisory Service entitled “Advice for councillors and officers making planning decisions”.

19.2 The Royal Town Planning Institute published **RTPI Practice Advice: entitled “Probity and the Professional Planner: Exercising your independent professional judgement”**. With regard to Professional Planners, it states that:-

Professional planners are held in high regard because they deal with important long-term issues that affect the lives of the general public. However, planning decisions can sometimes be controversial, politicised and misunderstood. Public confidence in a rigorous and transparent process is a fundamental requirement for a successful planning system. Professional planners are required to balance competing needs and preferences.

19.3 The Council has not acted rigorously and certainly not transparently in this case. It also states that:-

Planning professionals are expected to meet and maintain high standards of competence and conduct themselves in a way that inspires trust and confidence in the profession. RTPI Members can fulfil their ‘public interest’ duty by having regard to:

The views of stakeholders and public agencies and representations made by local residents and businesses.

19.4 The Code requires RTPI Members to act fearlessly and impartially when exercising their professional judgement. RTPI Members are obliged to exercise their judgement independently and provide planning advice in a professional manner. The Code requires RTPI members to adhere to five core principles, namely:

Competence, honesty and integrity – Members must take all reasonable steps to maintain their professional competence throughout their career; and should be honest and informed by appropriate technical inputs in carrying out their duties;

Independent professional judgement – Members must exercise fearlessly and impartially their independent professional judgement to the best of their skill and understanding;

Due care and diligence – Members must discharge their duty to their employers, clients, colleagues and others with due care and diligence;

Equality and respect – Members must not discriminate on grounds including but not limited to race, nationality, gender, sexual orientation, religion, disability or age;

Professional behaviour – Members are expected at all times to conduct themselves in such a manner that does not prejudice their professional status or the reputation of the RTPI.

19.5 The Local Government Guidance refers to all holders of public office. It adds the following principles, to those above:-

3. **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. **Accountability** - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. **Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. **Honesty** - Holders of public office should be truthful.
7. **Leadership** - Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

19.6 These principles are drawn from “The Committee on Standards in Public Life: Nolan”. Kathryn Elizabeth Stone OBE has been the independent Parliamentary Commissioner for Standards of the British House of Commons. She recently retired but she stated that “**Members of Parliament should live and breath the Nolan Standards**”.

19.7 The same standards apply to Members and Officers of Councils. I have contacted several Officers and Members in respect to the planning applications and appeals at the site in Whiteley Lane. I have received nothing but prevarication and obfuscation. Not one Officer and not one Member involved in this case has addressed my complaints. Not one Officer nor one Member has enquired about the health of Mrs Jan Knight who broke down at the Hearing in 2021. No one has responded to her. No one has investigated the reasons why ten of the eleven households in the Lane did not object to the application.

19.8 It is recognised that ‘Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, *unless it is founded upon valid material planning reasons*’. However, no one has investigated the reasons why the local residents had changed their position. The Council could not even assess the level of support accurately.

19.9 The landowners decided that there were grounds to challenge the Inspector’s decision. It was decided to resubmit the planning application. The positive case was enhanced when the local residents agreed not to object in future. In 2019, a planning application was submitted for two dwellings. I expected the Decision of Ms Gibbons to be a major breakthrough.

- 19.10 This decision was not founded on support for the landowners. This was a reluctant reversal based on the desire to resolve the disputes about the activities on the site (as stated in the letter to the Inspectorate dated 20 October 2020 sent by Mrs Jan Knight
- 19.11 Unfortunately, the case began to unravel almost immediately when the planning application was submitted in February 2019.

Consultation Response of Strategic Policy: Mrs Jill Lee February 2019

- 19.12 There is only one reference to the Planning Appeal Decision in 2017. This is set out in the Strategic Development Officer's consultee response. It states:-

The most recent application (16/00142/FUL) which was for one 5 bedroom detached dwelling with a detached garage was refused and dismissed at appeal (decision dated 12 January 2017) with the Inspector finding conflict with policy MTRA4 which restricts development within the countryside to certain uses and that the development would cause considerable harm to the character and appearance of the area in dismissing the appeal. *The Inspector did find that particular proposal would not diminish the Strategic Gap, however that proposal only considered the impact of one dwelling; the current proposal for two dwellings each with detached garage, could have significant impact due to increased visual impact.*

- 19.13 This was a particularly bizarre response. What made Mrs Lee believe that the change from one to two dwellings could have any significance for the possibility of "physical or visual intrusion" into the Gap? This wording was included in the Committee Report "Under Planning Considerations" verbatim.

"The Inspector did find that particular proposal would not diminish the Strategic Gap, however that proposal only considered the impact of one dwelling; the current proposal for two dwellings each with detached garage, could have significant impact due to increased visual impact."

- 19.14 Fortunately, the Inspector recognised that this was a ridiculous contention. The Inspector responded in paragraph 11 stating that:-

The Council acknowledges the previous appeal decision but points out that it related to a scheme of one dwelling. It argues that the current proposal for two dwellings would have a 'significant impact' on the gap due to its increased visual impact. However, it seems to me that the size of scheme is irrelevant in this particular case. It has been established that the site itself does not play a role in the functioning of the gap and therefore by definition it follows that the proposal cannot undermine the function of the gap or conflict with LPP1 Policy CP18.

- 19.15 It had been demonstrated that the site was not in the Gap. How could a change to the number of dwellings affect that fact? It is a mystery how this Officer made a reference to the 2016 Appeal Decision and yet the Officers who prepared the Committee did not include any analysis of that Decision.

Committee Report published in June 2019

- 19.16 I was astonished to read the Committee Report when it was published in June 2019. There was no direct reference to the Appeal and Cost Decisions in 2017. There was no reference to the enforcement issues that was one of the matters that persuaded the residents to decide not to object to the development. The submitted legal agreement also required all activities on site to cease but the Report stated that it was “**just an agreement of the closest neighbours**” who had agreed not to object. The author of the Committee Report, Mrs Nicola Clayton, was present at the Hearing but she chose *not* to correct this point even though there was conclusive evidence from the letters from residents and the Statement of Community Involvement. I had also submitted a Table of Responses that clearly identified all of the letters from residents in response to the planning application. It also established that *five of the six people* who did object to the development were members of the same family.
- 19.17 I sent a letter dated 17 June 2019 setting out the errors and omissions in the Report prior to the Committee Meeting. I circulated it to every Member of the Planning Committee and I copied it to the author of the Report, Mrs Clayton and to her line manager, Mrs Pinnock. I sent the letter by email and not one was returned ‘undeliverable’.
- 19.18 I identified the following omissions in my letter of 17 June 2019. There was:-
- i) **No reference to the Award of Costs in 2017;**
 - ii) **No reference to the history of the ten Enforcement Cases between 2005 and 2016; there was reference the nine Planning Applications in the same period.**
 - iii) **There is no reference in the Committee Report to the highway issues on the Lane. The fact that it is a cul de sac, with no turning facilities and no passing places.**
- 19.19 Subsequently, I identified other omissions that I hadn’t included in my letter as follows:-
- a) **No analysis of the Inspector’s Decision in 2016;**
 - b) **No reference to the Statement of Community Involvement;**
 - c) **No analysis of the change of views of the local residents set out in the Table of Responses, and**
 - d) **No analysis of the decision of Whiteley Town Council to support the local residents and not to object to the planning application.**
- 19.20 It is difficult to believe that all of these matters were overlooked, especially as they were so fundamental to the decision of the Members of the Planning Committee. I included the letter to Cllr Mrs Jane Rutter in the appeal papers as an example for the ones circulated (?).
- 19.21 The failure to refer to the Planning Appeal and Cost Decision in 2017 misled the Planning Committee. There were two deputations objecting to the application.

Local Ward Councillor Mrs Vivian Achwal

- 19.22 The local Ward Cllr Mrs Vivian Achwal also made a deputation claiming that the site was in the Meon Settlement Gap and, therefore, contrary to Policy CP18. She stated that several previous planning applications had been refused and some dismissed on appeal. She clearly wasn't aware of the Decisions of the Inspector in 2017. She would not have been able to make this claim if the Committee Report had referred to the Appeal and Cost Decisions.
- 19.23 She also claimed that there were other objectors but she didn't name any one at the time. She didn't respond to my letter seeking details of any other objectors. Cllr Mrs Achwal made no reference to the fact that Whiteley Town Council voted unanimously to support the local residents and did not object to the planning application.

Committee Presentation

- 19.24 At the Committee presentation, the Team Leader, Mrs Julie Pinnock, advised Members that a reason for refusal in respect of Housing Mix should be added. This sought the provision of at least one three bedroom house. This seemed to be a 'snub' to the residents who wanted two detached dwellings of comparable size to those in the Lane. The landowners had agreed not to seek more than two dwellings.
- 19.25 Mrs Pinnock made no reference to my letter at the Committee. She advised Members of the Planning Committee that the site was in the Gap thereby misleading them. I have complained to Mrs Pinnock about this in my letters to her over the past two years. I haven't received a reply.

Letter to Chief Executive Officer dated 29 October 2019

- 19.26 I sent a letter to the Chief Executive Officer dated 29 October 2019 setting out my concerns with the Committee Report. I referred to all of the relevant points and I attached the Appeal and Cost Decisions from 2017. I received an acknowledgement but not a formal reply. This letter was copied to Mr Steve Tilbury, Head of Environment Services (including planning). This seems to have been the only time that he was involved.

Acknowledgement

- 19.27 I received an acknowledgement by email on the 1 November 2019 from Ms Jane Jordan, Executive Assistant to the Strategic Directors stating that "We will reply to you in due course". No reply was received.
- 19.28 Mrs Taylor's decision to ignore my letter or the failure of her assistant to advise her of its significance was a disaster. In the absence of a formal reply, I lodged the appeal.

- 19.29 The failure to consider my letter passed the decision to the Council's witnesses to decide whether to withdraw the Gap Reason for Refusal or alternatively to challenge the decision of Inspector Ms Gibbons. Mr Nick Parker and Mrs Nicola Clayton were the witnesses and they did *not* withdraw the reason for refusal and it proved necessary for the Appellants to challenge the Gap Policy again.
- 19.30 Mrs Clayton even sent a letter to the Planning Inspectorate dated 4 November 2020 prior to the Hearing claiming that the site was in the Gap. She then appeared at the Hearing and still did not withdraw the claim.

Letter to Mr Nick Parker: dated 30 October 2020

- 19.31 As the date of the Hearing approached, I was advised that Mr Nick Parker, was going to be the Council's principal planning witness. He had agreed the Costs settlement in 2017. It was obvious that his position was compromised unless the Gap reason for refusal was withdrawn. I sent a letter to him dated 30 October 2020 prior to the Hearing. I questioned his decision to support the Gap Policy at the forthcoming appeal. My letter established the fact the ten of the eleven households had not objected to the planning application. I also advised him that I proposed to make another claim for costs on the Gap Policy.

Request for a Public Inquiry

- 19.32 As the date for the Hearing approached I became convinced that the gap reason for refusal was not going to be withdrawn and the Inspector's decision in 2017 was not going to be challenged. I believed that it was essential that the Council Officers should be questioned on the errors in the Committee Report so I contacted the Planning Inspectorate and requested that a public inquiry should be held.
- 19.33 I contacted the Planning Inspectorate and requested a public inquiry. I concluded that the decisions and attitude of Officers and Members of the Planning Committee required examination at a Public Inquiry. Ideally, I wanted to instruct a Barrister to cross examine the Council's witnesses. I contacted the Planning Inspectorate. I made the case for a Public Inquiry ⁽¹¹⁾. I pointed out the fact that the previous Inspector had confirmed that the site was not in conflict with the Gap Policy and had made an Award of Costs. I have quoted from the email exchange with Mr Boulton dated 28 September 2020. I pointed out the fact that the previous Inspector had confirmed that the site was not in conflict with the Gap Policy and had made an Award of Costs.

The Officers' Report to Committee was totally unsatisfactory and completely misleading for Members of the Committee.

Written comments of the deputations, as suggested by the Council, are totally inadequate to explain the position of local residents. This is particularly significant, bearing in mind the Officers' Report was also dismissive of the concerns of local residents.

Given the inadequacy of the Committee Report and the complete absence of any debate on the planning application with no questions put to the Deputies (unlike most other cases in Winchester) it is vital to be able to put questions to those appearing at the Hearing/Inquiry to explain in detail the Council's position.

Mrs Nicola Clayton

19.34 My request to the Inspectorate for a Hearing or an Inquiry was resisted strongly by the Council Officers. Mrs Clayton insisted that the written representations method was appropriate. Mrs Clayton appeared as one of the Council's planning witnesses. *Please note that Mrs Clayton was still claiming that the site was contrary to the Gap Policy at the Hearing.* Her attitude to this case overall is unprofessional. She didn't correct her reference in the Committee Report that it was "just a few close neighbours" because she should have known that this statement was incorrect.

19.35 Mrs Clayton responded to my email to the Inspectorate stating that :-

I have read the appellants reasons and disagree that the appeal should be dealt with through the Appeal Hearing Method for the following reasons

- **The appellant and local residents had the opportunity to make their cases verbally at the Council's Planning Committee Meeting on 20th June 2019. There is a written record of these comments and the interested parties have a further opportunity to make their case through the Written Representation Method of appeal. This does not justify the Hearing Method of appeal.**
- **The Local Town Council are also able to comment in writing in support of the application at appeal. There is no reason why these views need to be made verbally. This does not justify the Hearing Method of appeal.**
- **The Inspector will be able to understand the enforcement history of the site through examination of the appellant's case. This does not justify the Hearing Method of appeal.**
- **The legal agreement can be examined as a written document and will not need verbal clarification. This does not justify the Hearing Method of appeal.**
- **The visual appearance of site can be assessed through examination of photographs and will be seen by the Inspector during the site visit. This does not justify the Hearing Method of appeal.**
- **THE APPELLANT'S ISSUE WITH THE "SETTLEMENT GAP" SHOULD BE EXAMINED THROUGH WRITTEN REPRESENTATION WITH THE AID OF THE COUNCIL'S POLICY MAPS AND LANDSCAPE CHARACTER DOCUMENT. THIS DOES NOT JUSTIFY THE HEARING METHOD OF APPEAL.**
- **The award of costs procedure can be engaged through written representations and does not justify the Hearing Method of appeal.**

For the above reasons the Council does not consider that an appeal hearing is necessary to examine the above appeal.

- 19.36 It can be seen that Mrs Clayton was still claiming that the issue with the “settlement gap” required examination rather than referring to the Appeal Decision and Costs that made clear that this matter had been resolved (bullet point 6). She also sent a letter to the Inspectorate dated 4 November 2020 shortly before the Hearing stating again that the site was in the Gap (⁷³). I assume that she hadn’t read the 2017 Appeal and Cost Decisions. In effect, she was trying to influence the Inspectorate.
- 19.37 Mrs Clayton has acted unprofessionally throughout the consideration of this case. I sent a letter of complaint to her but she hasn’t replied (⁷⁴). She has now left the Council.
- 19.38 The Inspectorate rejected my request for a public inquiry but I was offered a Hearing.

Council’s Planning Witness Mr Nick Parker

- 19.39 I was surprised to find that Mr Parker was going to be the Council’s planning witness. He had agreed the Award of Costs with me in 2017 of £5762.75. Thus, I felt sure that he would be aware of the fact that the Inspector had concluded that there was no conflict with Policy CP18 and LPP1. I wondered how he would deal with this in his evidence to the Hearing. Prior to the Hearing, I sent a letter to Mr Parker dated 30 October 2020. I had questioned the decision of Mr Parker to support the Gap Policy at the forthcoming appeal. I stated in my letter that:-

I have expressed puzzlement that the issue of the settlement gap is still being pursued. This is especially the case as you and I agreed the payment of the Award of Costs. (I have attached a copy of the email exchange between us on 7 July 2017). Why is the Council pursuing this matter?

I remind you that the Council has not presented any evidence to support this reason for refusal. There has been no attempt to refute the decision of the Inspector who concluded that the site was not in the settlement gap in 2016. My clients have obtained Counsel’s Opinion and they have been advised that they should expect to obtain an Award of Costs again.

Incidentally, there was no mention of the Award of Costs in the Committee Report presented to Members when the planning application was considered.

- 19.40 In my opinion, Mr Parker should *not* have appeared at the Hearing. The Inspector duly awarded Costs again.

Council Cost Claim

⁷³ Letter sent to the Planning Inspectorate dated 4 November 2020 by Mrs Clayton

⁷⁴ Letter of Complaint sent to Mrs Nicola Clayton dated December 2022

- 19.41 Mr Parker made a Claim for an Award of Costs against the appellants based solely on the planning history of planning applications and appeal decisions *prior to 2016* at which the Strategic Gap was the principal reason for refusal. This is an unforgiveable abuse and a most unprofessional and dishonest action. We now know that the site was never in conflict with Policy CP18.
- 19.42 Mr Parker made an unsubstantiated claim that there was a history of refusals when this was not true. He made the Cost Claim despite his certain knowledge that the Inspector in 2016 confirmed that the site was not in conflict with policy.

Local Residents Support

- 19.43 In the same letter to Mr Parker I explained that:-

Local Residents

The activities on the site were fundamental to the decision of occupiers of properties in the Lane to residents to either support the planning application or not to object to it. Please note that there are eleven properties in the Lane and only the occupiers of *one property* objected. It appears that the occupiers were supported by their extended family and friends.

The Lane is not adopted and frontagers are responsible for any maintenance. I am advised that the Lane has been re-surfaced twice at the cost to each property of a total of £2000 each. The same occupiers who objected to the planning application were the only ones who did not contribute on either occasion. This was organized by Mr Sturgess who lives at Lamont, Whiteley Lane. He can verify this at the Hearing.

- 19.44 This letter confirms that there was only one property objecting to the scheme. *Of the six objectors to the development at the Committee stage, five were members of*
- 19.45 There was the further point that the Committee Report states that it was “**Just an agreement of the closest neighbours**”. Mrs Clayton was the author of the Committee Report. It can be seen from the evidence that this was completely wrong. There was Statement of Community Involvement and the Table of Responses that ten of the eleven households did not object to the development. There was also the letter from Mrs Jan Knight dated 21 October 2020 that made clear that all of the residents in the Lane had been consulted, many of whom had met the land owners on site to discuss the proposals in detail.

Letter to the Planning Inspectorate from Mrs Clayton dated 4 November 2020

19.46 I have attached the letter that Mrs Clayton sent to the Planning Inspectorate on 4 November 2020. She stated that:-

The site remains within the countryside as defined by policy and it clearly identifies the site within the settlement gap (policy CP18).

19.47 Mrs Clayton was clearly aware that the 2016 Appeal Decision had concluded that there was no conflict with the Policy CP18 because she then repeated the Consultation of the Strategic Development Officer in 2019 that:-

“The Inspector concluded that the previous proposal for one house would not harm the gap but did not say that it was outside the gap”.

19.50 The Inspector rejected the argument that two houses would could alter the fact that the site was not in conflict with policy. It makes no difference whether the site is in the defined Gap if there is no conflict with policy. Why did Mrs Clayton claim that there was still conflict with Policy CP18? Was this a deliberate attempt to mislead the Inspector?

19.51 The Committee Report made no explicit reference to the Appeal and Cost Decisions in 2916. These Decisions confirmed that the appeal site was not in conflict with the Settlement Gap Policies CP18 and LPP1. However, it was evident that Officers were aware of the 2016 Decisions because Mrs Lee made reference to the Decision.

Consultation Response of Strategic Policy

19.52 There is only one reference to the Planning Appeal Decision in 2016. This is set out in the Strategic Development Officer’s consultee response. It states:-

The most recent application (16/00142/FUL) which was for one 5 bedroom detached dwelling with a detached garage was refused and dismissed at appeal (decision dated 12 January 2017) with the Inspector finding conflict with policy MTRA4 which restricts development within the countryside to certain uses and that the development would cause considerable harm to the character and appearance of the area in dismissing the appeal. *The Inspector did find that particular proposal would not diminish the Strategic Gap, however that proposal only considered the impact of one dwelling; the current proposal for two dwellings each with detached garage, could have significant impact due to increased visual impact.*

19.53 This was a particularly bizarre response. What made Mrs Lee believe that the change from one to two dwellings could have any significance for the possibility of “physical or visual intrusion” into the Gap? This wording was included in the Committee Report “Under Planning Considerations” verbatim.

“The Inspector did find that particular proposal would not diminish the Strategic Gap, however that proposal only considered the impact of one dwelling; the current proposal for two dwellings each with detached garage, could have significant impact due to increased visual impact.”

19.54 Fortunately, the Inspector recognised that this was a ridiculous contention. The Inspector responded in paragraph 11 stating that:-

The Council acknowledges the previous appeal decision but points out that it related to a scheme of one dwelling. It argues that the current proposal for two dwellings would have a ‘significant impact’ on the gap due to its increased visual impact. However, it seems to me that the size of scheme is irrelevant in this particular case. It has been established that the site itself does not play a role in the functioning of the gap and therefore by definition it follows that the proposal cannot undermine the function of the gap or conflict with LPP1 Policy CP18.

19.55 It had been demonstrated that the site was not in the Gap. How could a change to the number of dwellings affect that fact? It is a mystery how this Officer made a reference to the 2016 Appeal Decision and yet the Officers who prepared the Committee did not include any analysis of that Decision.

Mr Stuart Dunbar Dempsey: Landscape Witness

19.56 The second point that was fundamental to the case was the response of the Council’s Landscape Officer, Mr Dunbar Dempsey, to the application (⁷⁵). His consultation was ambivalent. He recognised that the site gave the appearance as an infill plot with housing on three sides and the SSSI on the fourth side. He then provided an alternative scenario that the site had **“survived intact”**.

19.57 Mr Dunbar Dempsey’s response ignored the fact that the residents had complained for 20 years about the activities on the site and removal of trees in 1995 and 2006. In fact, this was recorded in the Committee Report, it states that:-

There are a number of large trees within the site many of which are the subject of Tree Preservation Orders although it appears that historically a substantial part of the site has been cleared of trees.

19.58 Trees had been felled on the site on two occasions in 1993 and 2006. The interior of the site had been cleared completely was open and treeless. In fact, most of the trees that were felled were suffering from disease and the felling was agreed by the Mr Edwards, the Council’s Tree Officer at the time. No forest trees were felled.

19.59 Mr Dunbar Dempsey considered that the site should be retained in its present state, but he didn’t explain how this could be achieved. It was obvious from the evidence that the site

⁷⁵ Consultation Response made by Mr Dunbar Dempsey dated February 2019

had not ‘**survived intact**’. The landowners have kept the site free of activities in accordance with the legal agreement with the local residents but they could commence activities at any time.

NB What is the point of rejecting development on an isolated field remote from open countryside that wasn’t large enough to support any viable activities.

Inspector Robert Parker

19.60 I have no idea why Robert Parker was appointed. I had made clear my concerns about the case to the Inspectorate. It seems that he wasn’t briefed. This was a calamitous omission because the case would certainly have had a different outcome if he had queried the evidence of the witnesses. It shouldn’t have been necessary to brief him. This is a requirement of his role. Unfortunately for the appellants he acted unprofessionally. His analysis of the evidence was perverse and difficult to comprehend. He was biased and dishonest. He claimed to have assessed the evidence when it is crystal clear that he hadn’t. His decision was not conclusive.

19.61 This could have been avoided if the Inspector had questioned the witnesses but he also acted in a dishonest manner because he failed to assess the evidence correctly.

19.62 He stated, in paragraph 4, of the Award of Costs that:-

I am mindful that the appellant took the opportunity to remedy their concerns prior to the committee meeting by writing to all members to highlight some points that were regarded as important by the appellant but not covered in the report. Therefore, even if the report were deficient, the appellant was not placed at a disadvantage by the Council’s actions. *Unreasonable behaviour has not been demonstrated.*

The Council’s Witnesses at the Hearing in January 2021.

19.63 There were three witnesses representing the Council at the Hearing in January 2021 – Nick Parker, Nicola Clayton and Stuart Dunbar-Dempsey. It is a matter of fact that all three deceived the Inspector. The consequences of their deception is that the planning appeal was a complete waste of my time and my clients’ money. My clients have spent over £200,000 on this project and the Council should acknowledge the errors and compensate them.

Mr Nick Parker

19.64 Nick Parker was the principal planning witness. I have attached a letter that I have just sent to him for your information ⁽²⁾. You will note that he not only deceived the Inspector but he deceived the other two Council witnesses. I have also attached my letter to him dated

30 October 2020 ⁽⁷⁶⁾. You will see that he knew that the appeal site was not in conflict with the Gap Policy CP18 and that the Inspector made a partial Award of Costs in 2017. This is not my first contact with Nick Parker as you see below.

Claim for an Award of Costs on behalf of the Council at the Hearing

77

19.65 Mr Parker didn't admit that he was aware of the fact that the site was not in conflict with the Gap Policy at the Hearing and most despicably he made a claim for Costs on behalf of the Council that the site was contrary to the same policy. I assume that you can appreciate how disgusting this is.

Discussion of Costs after the Hearing.

19.66 You will see from my letter that Nick Parker agreed the costs in 2017 ⁽⁷⁸⁾. In March 2021, I emailed the Council seeking to discuss the Costs. Richard Botham recommended that I discussed the figure with Nick Parker. When he made contact with me in March 2021, I refused to even discuss costs with him as he was the cause of the second Award of Costs suffered by the Council and deceived the Inspector.

19.67 I have worked on projects over the previous 12 years where Nick Parker was the Case Officer and I am absolutely dumbfounded by his behaviour. Did he have a breakdown? There has to be a reason why he deceived the Inspector and the other witnesses.

COMPLAINTS FOLLOWING THE APPEAL DECISION

Letter to Chief Executive Officer dated 30 March 2021

19.68 I sent a letter of complaint to the Chief Executive Officer dated 30 March 2021 with regard to the performance of the Witnesses at the Hearing. I copied the letter from Mrs Jan Knight dated 2021.

19.69 I expected the Chief Executive Officer to institute an investigation when I accused the Council's witnesses of deceiving the Inspector.

19.70 The deliberate deception or withholding the truth is an exceptionally serious offence for Officers to commit. In a criminal case, they would have been accused of 'perverting the course of justice'. For reasons that are impossible to comprehend these Officers caused the appeal to be dismissed because they withheld information fundamental to the Inspector's Decision.

⁷⁶ My Letter to Nick Parker dated 9 December 2022

⁷⁷ My Letter to Nick Parker dated 30 October 2020

⁷⁸ Email exchange with Nick Parker dated July 2017

19.71 I expected Mrs Taylor to institute an investigation into my complaint as it was so serious. I received an acknowledgement by email dated 30 March 2021 from Ms Maria Jones, Executive Assistant to the Strategic Directors stating that the Complaint had been forwarded to “Service”. I have heard nothing more from Mrs Taylor. It seems that the Complaint was passed to Mrs Lorna Hutchings to respond.

Complaint to the Council: Stage 1 Complaint Procedure: Mrs Lorna Hutchings

19.72 The Complaint was passed to Mrs Lorna Hutchings. Her letter to me was entitled Stage 1: Complaints Procedure. The response of Mrs Hutchings was untruthful and I regarded it as simply a “cover up”. With regard to the Committee proceedings, Mrs Hutchings claimed that Members debated the case. She stated in her letter dated 30 March 2021 (?) that:-

I have listened back to the committee recording and note that third parties took the opportunity to speak for and against the development and an accurate record of supporters and objectors was recorded in the Committee report (6 for and 6 against development). These comments were taken into account in relation to the officer’s recommendation AND ALSO THROUGH THE DELIBERATIONS OF THE COMMITTEE MEMBERS IN THEIR QUESTIONING, DEBATE AND CONCLUSIONS ON THE PLANNING APPLICATION. I do not agree that the process was flawed or inaccurate information was presented to members to influence the decision.

19.73 However, the letter of objection submitted by Mr Crowley stated that the Members voted unanimously and *without any debate* to refuse planning permission ⁽⁷⁹⁾. He stated that:-

I attended the public planning meeting at Winchester Guild Hall where the application was rejected. I spoke as an objector to the application. So clear-cut was the view of the planning committee, once the representations had been heard IT TOOK LESS THAN ABOUT A MINUTE FOR THEM TO REJECT the application based on the countryside location of the site.

19.74 The application was refused for *exactly same reasons* as in 2016 ⁽⁸⁰⁾.

19.75 Mr Peter Knight and I were also present. We were both shocked by the failure of the Members to consider our deputations. Mrs Knight sent a letter to me in response to the Deputation made by her husband, Peter, to the Planning Committee ⁽⁶¹⁾ that stated:-

My husband also attended the planning committee meeting to make a deputation in support of the landowners. His comment to me after the meeting were, “I’m so glad you didn’t go, the way the Chairwoman handled this and other cases was unbelievable, I don’t think she thought

75. Reasons for refusal 2016 and 2019 compared

76. Objection letter sent by Mr Crowley February 2019. This confirmed that there was no debate.

of the impact she would have on peoples lives. They didn't seem to want to listen." I could tell, he found it all quite upsetting.

19.76 It is clear from this letter that Mrs Knight was not supporting the landowners but she was seeking a solution to the use of the site in her and her neighbours interests. Officers still haven't comprehended this.

19.77 Obviously, Mrs Hutchings was presented with false information. She evidently believes that the Members of the Planning Committee didn't need to know that the appeal decision in 2017 had confirmed that the site was not in conflict with the Gap Policy or that Costs had been awarded on that point. It is evident that Cllr Mrs Achwal nor Mr Paul Crowley would have objected to the development on grounds that the site was in the Gap and contrary to policy if the Committee Report had referred to the Inspector's Decision in January 2017.

19.78 Mrs Hutchings claimed that:

"the Committee Report is fact based and should not make elaborations beyond the facts and evidence of the case. I therefore disagree with your assertion that the committee report was flawed and agree with the planning inspector in this regard."

**Stage 2 - Complaints Procedure: Response from Mr Richard Botham:
dated 28 May 2021**

19.79 I have never received a reply to my letter to Mrs Hutchings. As I rejected the response from Lorna Hutchings the complaint was passed to Mr Richard Botham. He made no reference to my response to Mrs Hutchings. His response in a letter dated 28 May 2021 were equally dismissive⁽⁸¹⁾. His response was unbelievably unprofessional and totally disrespectful. It seems that Mr Botham didn't take the complaint seriously and that he was free to make up his response with a complete disregard to the facts. I understand that he is not a town planner and I am not sure why he was appointed to the role.

19.80 Mr Richard Botham stated:-

I note that you and your client have sought to engage with the neighbouring residents along Whiteley Lane to form some community support for the scheme. As a council we would actively encourage genuine engagement as supported by our Statement of Community Engagement but I understand by the evidence before me that in this case not all residents supported the development and some still chose to object.

19.81 Mr Botham obviously didn't read the letter from Mrs Jan Knight

19.82 Mrs Jan Knight's letter dated 21 October 2020 stated:-

⁸¹ Stage 2: Complaints Procedure Letter from Mr Richard Botham dated 28 My 2021

I arranged to speak to the land owner. To our amazement he was extremely approachable and my husband and I felt we could start negotiations to try and resolve the issue of the land. We arranged a meeting with the landowners to which all residents of the lane were invited to see how we could progress. At the meeting it was clear that the majority of neighbours present would accept no more than two houses, although they would not all actively support the application they would not, unlike previous application, object. There was only one neighbour who objected, but they chose not to attend any of the meetings; I am unsure of their reasons for their objections.

19.83 This confirms that Mrs Knight made the first move and that only one resident proposed to object to the application. The letter makes clear that the residents wanted to restrict the development to two houses. Mr Botham wasn't the only person that didn't read this letter as it is evident that Inspector Parker didn't read it either.

19.84 This matter is so serious that it is essential that Mr Botham's letter and my reply are read in detail ⁽⁸²⁾. I have summarised the main points below.

19.85 With regard to Community Engagement, Mr Botham stated:-

I note that you and your client have sought to engage with the neighbouring residents along Whiteley Lane to form some community support for the scheme. As a council we would actively encourage genuine engagement as supported by our Statement of Community Engagement but I understand by the evidence before me that in this case not all residents supported the development and some still chose to object.

19.86 Obviously, he hadn't read the letters from local residents or the Statement of Community Involvement or the Table of Responses. In my reply, I made it "**absolutely clear that the local residents approached my clients**".

19.87 Mr Botham also claimed that:-

I understand by the evidence before me that in this case not all residents supported the development and some still chose to object.

19.88 In my reply, I pointed out to Mr Botham that the only household in the Lane objected to the development. The Committee Report recorded that there were six objectors but five of these were members of the Crowley family. The other objector lived in Skylark Meadows. Mr Paul Crowley made a deputation to the Committee objecting to the development and that the site was in the Gap and contrary to Policy CP18.

⁸² My Letter of Response to Mr Botham dated 28 May 2021

19.89 I made it absolutely clear to Mr Botham that the residents contacted the landowners. Mr Botham made no attempt to check the facts. Every household in the Lane was consulted and the only parties who didn't engage were the Officers and Members of the Council.

19.90 With regard to the decision of Mrs Pinnock and Ms Clayton to ignore my letter dated 17 June 2019 Mr Botham made the most astounding statement that:-

I have looked into the council's case and understand that the officer, and her landscape colleague, were aware of the previous appeal and costs award when assessing the latest application.

19.91 Surely, if they were aware of the previous appeal and the award of costs they were *duty bound* to bring it to the attention of Members. This compounds the problems for the Officers. It is incriminating if it is correct. If it was true the Officers had breached basic tenets of the guidance and they could be accused of 'perverting the course of justice'. His response makes no sense.

19.92 With regard to the Council's Statement of Case (in reality the Committee Report), Mr Botham stated that:-

The Inspectors conclusion is fully understood and I accept the reason for refusal could have been amplified in the Council's Statement of Case in support of the Council's case. A judgment has been made here in your favour and I understand you are pursuing the costs claim with the council. Mr Parker is best placed to liaise with you in this respect.

19.93 This is another ridiculous point. The Council did not provide a Statement of Case. The witnesses relied on the Committee Report. I responded that you "**accept the reason for refusal could have been amplified in the Council's Statement of Case**". It is difficult to see how it could possibly be amplified. The Committee Report could not be amended so it would have been necessary to provide a separate Statement of Case to amplify the case. The provision of a Statement of Case is a requirement. There is nothing that could be amplified to mitigate the Council's failure to address the 2017 Appeal and Costs Decision and make it abundantly clear in the Committee Report.

19.94 Mr Botham stated, with regard to Costs, that:-

Mr Parker is best placed to liaise with you in this respect.

19.95 I responded to Mr Botham by stating that I regarded it as insulting to compare my contribution to the appeal work to that of Mr Parker. He should have disclosed the fact that he was aware of the 2016/2017 Appeal and its implications as set out in my letter to him (30 October 2020) ⁽⁷⁹⁾. In fact, I was shocked when Nick Parker, the Council's principal witness, tried to engage me in a discussion to resolve the second award of Partial Costs. I refused to discuss this with him as he and I had agreed the previous Costs in 2017. He was

blatantly dishonest and left the Council soon after our discussion and moved to the adjoining Eastleigh Council. He appears to have changed his email title as I have been unable to contact him by email.

19.96 The deliberate deception or withholding the truth is an exceptionally serious offence for Officers to commit. In a criminal case, they would have been accused of ‘perverting the course of justice’.

19.97 It will be recalled that Mrs Lee made the case that two dwellings on the site rather than one dwelling meant that the site was still in conflict with the Gap Policy. This was rejected by the Inspector. For some reason, Mr Botham referred to this as a point in favour of the Council’s case. Mr Botham stated that:-

The case officer was advised that due to the increase in development going from 1 house to 2 houses the impact of the development on the settlement gap would be materially greater and therefore recommended the application be refused on these grounds. This argument was re-examined in the latest appeal and the Inspector judged that the development would not be harmful to the settlement gap.

19.98 I was astounded that Mr Botham drew attention to this matter. It made clear that the Officer had erred but he obviously doesn’t regard it as a serious matter even though it was the most calamitous error in the Council’s case because it misled the Members of the Planning Committee. With regard to the Committee Report, Mr Botham stated that:-

I have concluded that the committee report and assessment was appropriate to enable the Planning Committee to make a *well informed* planning judgement of the case. This has been confirmed by the Inspector as a result of your challenge at appeal, although I note that you dispute this.

19.99 I really despaired when I received his response. What does he mean? I find it inexcusable that Mr Botham and other Officers claim that the Committee Report was “well informed”. How could the planning judgement be *well informed* if the Inspector made another Award of Costs? This is taking denial to an extraordinary extreme.

Mr Dunbar Dempsey: Landscape Architect

19.100 With regard to the landscape advice, Mr Botham stated that:-

The officer’s recommendation was based upon *expert advice* from its senior landscape architect.

19.101 I find it difficult to believe that Mr Botham would make such a statement. Mr Dunbar-Dempsey is one of the other witnesses, besides Mr Parker and Mrs Clayton, whose evidence wouldn’t have stood up to scrutiny at an Inquiry. His evidence was completely misleading

and incorrect. The Inspector didn't challenge his evidence but it would have been rejected if it had been cross-examined by a barrister. Mr Dunbar-Dempsey claimed that the site had 'survived intact' when it was well known that the site had been cleared of trees.

Response to Mrs Jan Knight

19.102 With regard to the letter from Mrs Jan Knight, Mr Botham stated that:-

I have read Mrs Knights letter and it is upsetting to hear of her health issues during the day of the hearing. I have spoken to the officers representing the council at the hearing and they both speak of their shock when they observed your reaction to the news on the day. We of course have great sympathy for Mrs Knight but are relieved that the incident was not as bad as first thought.

19.103 This a totally condescending and inexcusable statement from a senior Officer. Mrs Knight hasn't fully recovered (three years later). It demonstrates the depths to which Officers have sunk. Mr Botham then stated that:-

I cannot accept that the council's actions contributed to the incident. From my understanding of the case, and the information contained within Mrs Knights letter, the perseverance to develop the site over a prolonged period of time has caused tension in the neighbourhood and this has had a direct effect on the wellbeing of some residents.

19.104 I do not understand the point that Mr Botham is making. Does he believe that the landowners shouldn't use their land or pursue their legitimate desire to develop their land? This is still the case in 2024. The Case Office, Liz Young, seems to believe that the site should be left free of development.

19.105 In fact, it is absolutely clear that the Council created the problems. Not one Member of the Planning Committee nor one Officer visited the local residents to understand their position. Mr Botham didn't visit Mrs Knight or contact anyone else in the Lane so how could he appreciate their concerns. He did not even appreciate that Mrs Knight approached the landowners and not the other way round. Even the breakdown of Mrs Jan Knight at the Hearing is never accorded an apology.

19.106 It is clear that the landowners wanted to re-submit the planning application. Mr Botham suggested that a Pre-Application Inquiry was the preferable way forward. The principal issues were not considered properly such as the absence of any reference to the two Partial Awards of Costs with no conflict with the Gap Policy etc.

19.107 On the other hand, Mr Botham then threatened what can only be described as a '**Gagging Order**'. His letter states that the Council will *refuse to entertain the re-submission of the planning application*. He stated that:-

It is clear to me that under the current Local Plan the pursuit of residential development of the land is not policy compliant and no further material planning considerations can justify the development of the site. I would advise that unless circumstances change significantly then the council will use its statutory powers to decline to accept further applications for housing on this site.

19.108 The most significant reason to resubmit the planning application was to hear the case properly. Mr Botham also ignored the fact that the Inspector ‘recommended’ that the settlement boundary should be examined in the context of the review of the Local Plan. The Council failed to assess the case properly and the relevant matters need to be reviewed in the context of the re-submitted planning application not the Local Plan.

19.109 Mr Botham engaged in a pathetic ‘cover up’ for which he should apologise.

Ms Catherine Knight 17 December 2021

19.110 I complained to the Council about the objection and deputation made by Cllr Mrs Achwal. Ms Catherine Knight responded that my complaint was received too late and it wouldn’t be investigated. I refer to your recent email about Cllr Achwal. I have re-read the Complaint and it seems clear to me that Cllr Achwal’s objections misled the Inspector and her decision to support the reasons for refusal left Mrs Jan Knight to make the case at the Hearing on behalf of the local residents. This caused her serious distress. It proved to be “Transient Global Amnesia” and not the stroke that was first thought. I understand that she still has limited recall of the Hearing.

19.111 The Council’s insistence that the matter must be examined at the review of the Local Plan was reinforced by the Monitoring Officer, Ms Catherine Knight, in the same letter. She advised me to consult Mr Simon Finch who was undertaking a review of the settlement boundaries for the Emerging Local Plan.

19.112 I contacted Mr Finch but he declined to speak to me. However, he did meet Mr Ian Tait. He told Mr Tait that the Gap Policy should not be applied to the site in future (2022: Statement of Community Involvement).

Whiteley Developments Ltd Letter to the Chief Executive Officer Dated 5 November 2021

19.113 Whiteley Developments complained about the decision. The company received a reply from Ms Dawn Adey dated 11 November 2021. In her letter, Ms Adey accepted that the Gap Policy was no longer relevant but she stated that the site was still outside the Settlement Boundary and this was now an issue. She said that she could only find one reference to an Enforcement Notice and that this was a S.215 Notice dated 2016. It referred to an ‘untidy’ site and a derelict mobile home.

Ms Dawn Adey

19.114 I responded to her letter. I referred to the fact that the three witnesses at the Hearing had deceived the Inspector. She didn't comment on this but she did advise me that I had "exhausted the Complaints Procedure.

Letter to WDL dated 22 December 2021 from Ms Lisa Kirkham Monitoring Officer

19.115 Ms Kirkham replied stating that:-

"County Structure Plan — You make reference to the County Structure Plan that was produced by the County Council back in the 1990s. Given the age of the document, and the fact that it has long since ceased to be part of the development plan for the district including Whiteley, it has very little relevance to the current situation and, in particular, the two planning applications to develop the site for housing which were dismissed at appeal."

19.116 She then stated that:-

it has very little relevance to the current situation and, in particular, the two planning applications to develop the site for housing which were dismissed at appeal."

19.117 It has fundamental "relevance to the current situation" because *the two planning applications were not dismissed on the basis of conflict with the gap policy*". As you also know, the Inspector did not make a decision on the principal planning issue before him of the implications of the Settlement Boundary but "recommended" that it was reviewed at the next Local Plan.

19.118 Ms Kirkman then states that:-

"The Structure Plan dealt with strategic gaps and local plans with local/settlement gaps. These are two different designations and it was for the City Council to decide through its own local plan whether there was a need to identify local/settlement gaps in the District to prevent the coalescence of settlements and to protect their separate identities. If there was considered a need for this type of policy the location and extent of these gaps would be defined by the local plan".

19.119 You will see that Ms Kirkman claims that the "strategic gaps and local/settlement gaps....are two different designations". Changing the name doesn't alter the assessment. The principles have remained the same.

19.120 My complaints about the emerging Local Plan Reg.18 to Cllrs Mrs Jackie Porter and Cllr Martin Todd were rejected. The Plan proposed a new Gap Policy NE7 but this still referred to the site in Whiteley Lane as being in conflict with the Meon Settlement Gap.

19.121 I also complained to several Members including Cllr Mrs Evans, who was Chairman of the Planning Committee when the planning application was considered in June 2019. She said that she didn't recall my letter. I sent an email to Cllr. Mrs Rutter who is now the Chairman of the Planning Committee. It will be recalled that I presented my letter dated June 2019 to the Hearing. Unfortunately, the planning application in August 2024 wasn't referred to the Committee.

19.122 I received a letter from Ms Fiona Sutherland the Council's Legal Officer dated 19 February 2013 in response to my letter to Ms Adey. Ms Sutherland complained about the fact that I had written to Mr Nick Parker in his new role in Eastleigh Borough Council. She made no reference to my complaint about the Council's witnesses at the Hearing. She also threatened to use the Council's powers to stop any further complaints known as the Council's "Persistent Complainants Policy". There was clause that allowed objections to be raised and these had to be put to the Chief Executive Officer.

Letter to the Chief Executive Officer
Dated 22 May 2023

19.123 I complained about the Chief Executive Officer's failure to address my complaint about the Witnesses. I advised her that I had complained about the performance of nine Officers and one Councillor (Mrs Vivian Achwal) in respect of her misleading objection and deputation.

Complaint referred to "Service"

I received a reply dated 23 May 2023 stating that my complaint about her had been passed to "Service" but, as I expected, I have heard nothing further.

20.0 OTHER GAPS

- 20.1 It will be recalled that the EiP Reports in 1993 and 1997 provided a list of Gaps in south Hampshire and that none of these were in Winchester District. PUSH prepared Guidance on Gaps and it is evident that all of the Gaps in the District failed the tests that it established. It became clear that the site in Whiteley Lane was not the only development adversely affected by the Gap Policies. I do not know how many cases there are. However, there are three other sites in gaps where I am familiar with the details. These are the case in the Otterbourne to Shawford Gap and the planning decision in School Lane, Kings Worthy.
- 20.2 In 2014, the Council changed the description of seven of the Local Gaps listed in the Local Plan 2006 to Settlement Gaps (Local Plan Part 1).
- 20.3 There are eight Settlement Gaps covered by the Gap Policy CP18 and the details were established in Local Plan Part 1. This section summarises some of the issues raised by the Gap Policy in the other seven settlement gaps introduced in LPP1.

BISHOP'S WALTHAM – SWANMORE – WALTHAM CHASE – SHEDFIELD – SHIRRELL HEATH

- 20.4 This Gap is also very extensive. The distance between Bishop's Waltham and Swanmore is considerable and there is very limited, if any, intervisibility (see Map Swanmore) ⁽⁸³⁾. Similarly, the Gap at Waltham Chase is also extensive (see Map 19 ⁽⁸⁴⁾).
- 20.5 The treatment of the gap at Shedfield and Shirrell Heath is especially odd. Part of these areas are designated as a Gap but parts lie beyond the gap and are covered by Policy MTRA3 – 'Other Settlements in the Market Towns and Rural Area'. The Plan states, (page 64) that:-
- **within the following settlements, which have no clearly defined settlement boundary, development and redevelopment that consists of infilling of a small site within a continuously developed road frontage may be supported, where this would be of a form compatible with the character of the village and not involve the loss of important gaps between developed areas –**
- 20.6 This means that it is possible obtain development on land more distant from facilities and less sustainable while it is precluded in the Gap where land is close to facilities such as Swanmore village where there are shops, a secondary school and other facilities in the village are within walking and cycling distance. This perverse situation is demonstrated in the following appeal decision.

⁸³ WCC Proposals Map – Swanmore

⁸⁴ WCC Proposals Map Waltham Chase

20.7 The third case involved an appeal that my practice prosecuted below.

**Land adjoining Alexandra Cottage, Lower Chase Road, Swanmore:
Appeal Ref:- APP/L1765/W/17/3174240: Decision 11 December 2017**

20.8 The application proposed the development of six dwellings (see Plan (⁸⁵)). The site was the only undeveloped land on the western side of Lower Chase Road between Swanmore and Waltham Chase. The site was situated in the Swanmore and Bishop's Waltham/Waltham Chase Settlement Gap. The Gap Policy was the primary reason for dismissing the appeal (⁸⁶).

20.9 The Inspector identified two main issues – one: whether the proposed development accords with the Council's spatial strategy and two: the effect on the character and appearance of the surrounding area and on the Settlement Gap.

20.10 With regard to issue one, the Inspector recited the Council's position in paragraph 4. This states that:-

In the first instance this shall be accommodated through development and redevelopment opportunities within the existing settlement boundary. The Policy goes on to say that sites outside the settlement boundaries will only be permitted where, following an assessment of capacity within the built-up area, they are shown to be needed, or to meet a community need or realise local community aspirations identified through a Neighbourhood Plan or other process which demonstrate clear community support. *Explanatory text of the Policy says that the need for any greenfield sites will be assessed, and allocations undertaken as necessary, through the Winchester District Local Plan Part 2 - Development Management and site allocations (LLP2) with existing settlement boundaries maintained in the meantime.*

20.11 It will be recalled that this was the same statement that the Strategic Officer, Ms James, made in respect of the site in Whiteley Lane. In summary, the Council does not intend to review any settlement boundaries except in exceptional circumstances. Besides the fact that this is unfair, it was especially problematic for sites in Gaps where the infill policies that applied in the rest of the District were not applicable to sites in Gaps. The Explanatory Text was completely irrelevant in the case of small sites in Gaps. This was in effect a blanket restriction on the development of small sites.

20.12 This is made clear in paragraph 10 which states that:-

The 6 proposed houses would be located parallel to the road. They would be served from it by 3 separate accesses. The proposed houses would be on relatively low-lying land and this, given

⁸⁵ Map showing the appeal site at Lower Chase Road, Swanmore

⁸⁶ Planning Appeal Decision Lower Chase Road, Swanmore: APP/L1765/W/17/3174240

the extent of wider vegetation in the area, *would mean that they would not be greatly if at all visible from long or medium distance viewpoints.* However, they would be seen from short distance views from the roadside. This would be so notwithstanding the frontage hedgerow given its punctuation by the proposed access points and, moreover, *there would be no guarantee that the hedgerow would remain in perpetuity.* Whilst currently well screened by hedgerows from a public footpath to the north and north-east there is again no guarantee that this would always remain in place or at the same height.

20.13 The Inspector recognises that:-

The proposed dwellings would only be seen “from short distance views from the road side”.

20.14 It is evident that the effect on the character and appearance is minimal. The Inspector also claimed that:-

there would be no guarantee that the hedgerow would remain in perpetuity.

20.15 The hedgerow could be protected by a planning condition. The Inspector’s claim should be compared to the permission in Links Lane, Rowlands Castle. The Landscape comment referred to the hedgerow. It stated that:- **The retention of the hedgerow which runs alongside Woodhouse Lane is essential to retain the character.** The decision of the Inspector at Lower Chase Road in respect of the hedgerow was wrong.

20.16 The Inspector then referred to the Gap in paragraph 12 which states that:-

Additional harm would arise from the fact that the proposed development is within the identified Settlement Gap between Swanmore and Bishop’s Waltham/Waltham Chase. By adding to the built up appearance of the area the proposed development would detract from the generally open and undeveloped nature of the Settlement Gap. Given the relatively small scale of the development the extent to which, taken in isolation, it would cause *such harm would be limited.* However, such arguments could be raised too frequently and cumulatively development of this type and scale within the Settlement Gap would detract from the extent to which this area helps to define and retain the separate identity of Swanmore and Bishop’s Waltham/Waltham Chase.

20.17 He then accepts that the harm would be limited. He stated that:-

Given the relatively small scale of the development the extent to which, taken in isolation, it would cause such harm would be limited.

20.18 I have provided a plan showing the extent of the distance between Swanmore and Bishops Waltham ⁽⁸⁷⁾ and it can be seen that this exceeds the 1250 metres set out in the Council’s guidance ⁽¹²⁾.

⁸⁷ Plan showing the distance between Swanmore and Bishops Waltham

20.19 He then refers to the possible cumulative impact. I do not believe that this argument could have been sustained if the case was considered at a public inquiry. I refer again to the case in Fareham Borough. An appeal decision in respect of land 'East of Crofton Cemetery and West of Peak Lane, Stubbington, Fareham' for 206 dwellings was allowed. One of the main issues was 'the effects of the proposal on the landscape character and appearance of the area'. The Inspector referred to the respective landscape and visual impact assessments and concluded that :-

the impacts of the scheme are localised and limited to the immediate environs of the site. I am therefore satisfied that the proposal would not cause harm to wider landscape character.

20.20 The Inspector concluded that the effect of the character and appearance was acceptable and that 206 dwellings in the Fareham Meon Gap could be adequately screened. The Inspector even concluded that:-

The designation of a gap therefore does not completely preclude development. Proposals which would not adversely affect the function of the gap and which would otherwise be acceptable in planning terms could be permitted.

20.21 It is clear cut that if the impact on a development for 206 dwellings in the Gap can be described as '**localised and limited to the immediate environs of the site**'.

20.22 Paragraph 47 of this appeal covered the issue of precedent. It states:-

Some residents fear that the proposal will form a precedent for other development in the area, which they fear would erode the strategic gap. My findings on this case relate to the specific circumstances of this proposed development and I have dealt with it according to its individual merits. Any future developments would also be considered on the merits of the case at that time. I therefore have no reason to consider that a permission for this development would pre-determine a future application on another.

20.23 The Inspector in respect of the site at Lower Chase Road should have disregarded precedent. This is basic planning point. There was little prospect of a cumulative impact as the Gap policies were so restrictive.

20.24 The Council claimed that it had a 5-year housing land supply.

It says that provision shall be made in Swanmore for about 250 new homes.

20.25 In paragraph 7, the Inspector states:-

To address the housing need in Swanmore, the LLP2 allocated land to the north of The Lakes for development of around 140 dwellings. So far, says the appellant, permission has been granted for 91 houses on only part of the allocation. It is said that this will lead to a shortfall

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in housing provision. However, no substantial evidence has been given to show that the remainder of the site will not be built upon within the required timescale.

20.26 It was a matter of fact that only 91 dwellings had been permitted of the 140 dwellings required. The position remains the same today. The Council's evidence on housing supply was completely misleading. The additional sites still haven't been developed and these sites are included as proposed allocations in the Emerging Local Plan (Swanmore Proposals Map, page 501 ELP (78)). Officers should have known and confirmed the correct position.

20.27 The Inspector's analysis should have concluded that the development was acceptable but this was trumped by the Gap Policy. Paragraph 14 states that:-

It is concluded that the proposed development would detract from the character and appearance of the surrounding area and be an unacceptable intrusion in the Settlement Gap between Swanmore and Bishop's Waltham.

20.28 In reality, the "Gap" between Swanmore and Bishop's Waltham is very extensive. The development of the appeal site would not make a perceptible impact. (see Plan). In this context, the site at Ravenswood near Knowle, but in Wickham Parish, was allocated for 200 dwellings. The Council concluded that it could be permitted without impacting the functioning of the Gap but two dwellings in Whiteley Lane were not considered in the same context.

20.29 This is another case that demonstrates that the Gap Policies in Winchester District that should never have been agreed. It is also evident that if the appeal had been examined at a public inquiry the outcome would have been completely different. The five year land supply could have been contested by the appellant. Even with the Gap Policy the appeal would have been allowed.

20.30 The Inspector with regard to the site at School Lane, Kingsworthy concluded that:-

Therefore, the proposal would not encroach into the visual and physical gap created, in part, by Barton Meadows. As such it would maintain an important gap between developed areas and not harm that gap's open and undeveloped nature, as required, amongst other things, by LPP1 Policy CP18.

Settlement Boundary Review 2014

20.31 The Settlement Boundary Review made some detailed amendments to Settlement Boundaries. Paragraph 42 states that:-

The next section of this paper sets out the review of the settlement boundaries on a settlement by settlement basis. For each settlement there is a map showing the existing boundary which is annotated to show where changes are proposed. These maps are accompanied by a table for

each settlement which provides detail on how and why recommendations relating to the boundaries were made.

20.32 There were a few changes in each settlement. There were two changes that are relevant to the case at Swanmore.

1. Land off Lower Chase Road (part SHLAA site 429). The 'recommendation' states:-

Limited housing development (about 5 dwellings) associated with and enabling the allocation of land behind for public open space. Area of open space for the benefit of the community, including a footpath link between Lower Chase Road and New Road, to remain outside the settlement boundary in accordance with principle 3(a).

Action: Minor extension to boundary to include only the housing part of this primarily open space allocation.

20.33 This site is further south than the Appeal Site in Lower Chase Road (see Plan and Text annotated with the appeal site and the proposed allocation) ⁽⁸⁸⁾. It is on the eastern side of the Road and it precludes any impact upon that part of the so called Gap identified as Shirrell Heath and Shedfield. This means that only the rear of the appeal site is affected by the Swanmore to Bishops Waltham Gap. This Gap is more than the 1250 metres figure stated in HDC 11 B ⁽⁵⁰⁾.

3. Land north of The Lakes (SHLAA sites 2505, 2464, 340 and Belmont Farm

Recommendation: Area proposed for allocation following site assessments. The proposal includes 2 SINC's to be protected within the overall allocation area. The smaller SINC will be entirely surrounded by development but the larger SINC should remain outside the settlement boundary in accordance with principle 3(a).

Action: Redraw boundary to include allocation but exclude the larger SINC.

20.34 It can be seen that this is very similar to the case in Whiteley Lane where there is development either side of the SSSI.

⁸⁸ Extract from the Settlement Boundary Review 2014: Plan and text annotated with appeal

OTTERBOURNE SOUTHDOWN GAP

20.35 I objected to the proposal for a Gap between Otterbourne – Southdown at the Local Plan stage in 2014 (copy of Objection Statement (⁸⁹)). A separate objection was made in respect of the adjoining site to the south (⁹⁰).

20.36 The frontage to Otterbourne Road is approximately 260 metres long. This comprised the 66 metre frontage of Becket’s Garden Centre and Nursery; 17 metre frontage to the Old Police Cottage and a further frontage to the Garden Centre of 21 metres. There is an open field beyond this with a frontage of 156 metres.

20.37 The rear western boundary is formed by the carriageway of the M3 Motorway. There is a dense woodland on the eastern side of the Road.

20.38 The Gap Policy CP18 seeks to retain the ‘undeveloped’ areas separating settlements. It can be seen that only the open field satisfied this objective. Local Plan Part 1 changed the local gaps in the 2006 Local Plan to Settlement Gaps. The boundaries were unchanged from 2006. However, the Plan requires the review of the boundaries of Settlement Gaps to be undertaken in Local Plan Part 2. This is established in paragraph 132 of the Inspector’s Report into the Joint Core Strategy (paragraph 3.3 of the Objection). It states:-

“However, the policy and its supporting text are also quite clear that all the other gaps listed will be subject to review as part of LPP2 in relation to local development needs, amongst other things, which will supersede the 2006 Local Plan. The text already includes the full criteria set out in the PUSH “Policy Framework for Gaps” (OD35) (Dec 2008), which will be applied to help ensure a consistent approach across the area. Therefore, there is no need for this strategic plan to include any further, more detailed or local guidance as to how the review should be carried out in practice.”

20.39 It is now known that this comprehensive review *never* took place. The criteria in the PUSH “Policy Framework for Gaps” was *never* applied. It is evident that this Gap and all of the others did not satisfy the PUSH criteria. It is also evident that Gap at Otterbourne could have been allocated for development in the same way as The Lakes at Swanmore was allocated. The paragraph above states that **“all the other gaps listed will be subject to review as part of LPP2.”** There was no consistency.

20.40 BJC Planning Objection dated 2014 (⁹³) states in paragraph 3.6 that:-

“During the Local Plan Part 1 – Joint Core Strategy Examination the Council responded to a number of Issues on the Policy in respect of Settlement Gaps raised by respondents to the Submission document. The Council set out additional criteria in Paragraph 33.B in its response to Examination Issues. These points are that”:-

⁸⁹ BJC Objection Statement re Otterbourne – Shawford Gap

⁹⁰ BJC Objection SHELAA Otterbourne

“The gap separates two settlements at risk of coalescence:

- a) The distance of separation is less than 1250m (largest gap currently designated in the Winchester District Local Plan).**
- b) The two settlements are not currently protected from coalescence by natural or manmade barriers.**
- c) The settlements are at risk of coalescence from significant development pressure.”**

20.41 The open and undeveloped land had a frontage of 156 metres but the internal area was concealed from view by a substantial hedge which precluded views of the interior. The eastern side of the road was heavily wooded but the western side was an open field with a hedge along the open section. The character could be maintained by enhancing the existing hedge. Otterbourne Road is a very busy road and traffic travelling long it will only appreciate the open area for a matter of seconds.

20.42 The consequences of protecting this Gap from development is that it created pressure elsewhere. This can be seen clearly from Plan entitled Gladman Lane off Main Road (page 355 of the Emerging Local Plan). Paragraphs 14.54 to 14.61 describe the allocation.

20.43 Paragraph 14.54 states, in the supporting text, that:-

The site at Main Road consists of an area of land which is 1.448 hectares and fronts directly on to the road.

20.44 Paragraph 14.56 states that:-

Open views across the site to the east towards the South Downs National Park are valued by the local community and referred in the VDS.

20.45 Paragraph 14.57 states that:-

The site is visually prominent in the landscape providing a visual break to the nearby village of Twyford and marks the entrance to the village. Any new development should therefore be set well back from the road and should be buffered or separated from the road by a belt of landscaping which should include both hedges and trees.

Conclusion

20.46 The analysis of character and appearance of the above site and the one on Otterbourne Road brings into clear focus the unfairness of the planning process in Winchester. The two sites are along the same stretch of road. The Gladman site at Main Road has a longer frontage.

- 20.47 The site at Main Road has a much greater and more intrusive impact in the landscape. There is emphasis on the provision of belt of landscaping along the road frontage. The site on Otterbourne Road already has a belt of landscaping along the frontage.
- 20.48 The Council was bound by its own policies. It is clear to most people which site had the greatest impact. However, the communities were not given any choice because the Council was hidebound by the Gap Policy. If it decided that it was preferable to allocate the land at Otterbourne Road it would have to admit that the Gap Policy itself was unsound. In this circumstance, it would have to review all of the Gaps.
- 20.49 The Gap Policy is unfair and unjust. It precludes the proper evaluation of the merits of respective sites. It is particularly pernicious for the landowners of small sites. The major developers can overcome the Gap Policy as in the case at Swanmore. Local Plan Inspectors have facilitated this harm because they never test the policies.
- 20.50 The Settlement Gap also coincided with the Parish boundaries of Otterbourne and Compton and Shawford. It seems that this was more of a political gap than a planning one.

KINGS WORTHY – ABBOTS WORTHY GAP

- 20.51 This is another Gap that cannot be reasonably justified (⁹¹). The planning application for the development of one dwelling raises similar issues to the one at Lower Chase Road.

Land at School Lane, Headbourne Worthy, SO23 7JX

- 20.52 The application is located within *the rear garden of a dwelling* that is currently under construction following the grant of planning permission for a replacement dwelling (see Plan of Site (⁹²)). The Committee Report states that:-

The development is recommended for refusal as this site is located within land classified as countryside and Settlement Gap under the Winchester Local Plan and therefore would be contrary to planning policy MTRA 3 and CP18 of the Winchester District Local Plan Part 1.

- 20.53 The reasons for refusal state:-

- 1. The proposal fails to accord with Policy MTRA3 of the Local Plan Part 1... as it does not represent the infilling of a site within a continuously developed road frontage. As a result, the proposal results in undesirable additional dwellings for which there is no overriding justification in an area of countryside, contrary to policy MTRA4 of LPP1.**

⁹¹ WCC Proposals Map: Kings Worthy - Abbots Worthy Gap

⁹² Site Plan: Land at School Lane, Headbourne Worthy

2. **The proposal is contrary to policy CP18 of the Winchester District Local Plan Part 1 and policy DM23 of the Local Plan Part 2 as the development would result in the loss of an important gap between developments, resulting in unacceptable intrusion to the detriment of the rural character of the area.**

20.54 The appeal was dismissed (APP/L1765/W/22/3310078). Ironically, the issue of the Gap was rejected by the Inspector. He stated in paragraph 9 that:-

It is, however, appreciated that there are existing properties to the front and side of the appeal site, and a defined boundary to the rear, which the proposal would not extend beyond. Therefore, the proposal would not encroach into the visual and physical gap created, in part, by Barton Meadows. As such it would maintain an important gap between developed areas and not harm that gap's open and undeveloped nature, as required, amongst other things, by LPP1 Policy CP18.

20.55 It is stated that the site has 'existing properties to the front and rear' and, in fact, there is the open space on the fourth side which is an end stop as stated in paragraph 5: -

- 5 **To the rear of the site is an area of open space known as Barton Meadows. Between Wellhouse Lane and the appeal site is a heavily tree lined, and steep bank, and the site is separated from Barton Meadows by a tree studded hedge.**

20.56 The site didn't affect the gap. It didn't intrude into the landscape. The design was in character, paragraph 12 states:-

The proposed form and design of the new dwelling would also be compatible with the character of this part of Headbourne Worthy as it would constitute an individually designed, detached residential dwelling on a plot similarly sized to those surrounding it.

20.57 Unlike many other decisions the "perceived housing land supply shortfall" was given limited weight. Paragraph 23 states that:-

I have taken account of the Framework's objective to boost significantly the supply of housing and the Council's perceived housing land supply shortfall, as well as the appellant's position that a residential garden in a countryside location should be considered previously developed land. This along with the social and economic benefits of the proposal would attract limited weight.

20.58 The Inspector confirmed that there were no other issues. He stated in paragraph 24:-

That the Council consider the proposal acceptable in relation to the design of the proposed new dwelling, impact on the South Downs National Park, the living conditions of future and neighbouring occupants, parking and highway safety is noted. However, these would constitute an absence of harm and so would be neutral in the planning balance. This would also be the case regarding the lack of harm I have identified in terms of the character of the area and surface water drainage.

20.59 In reality, the development was simply contrary to the Council's policy on infilling all other considerations were set aside. Paragraph 7 states:-

This policy (MTRA3) limits development in these types of settlements to the infilling of small sites within continuously developed road frontages where it would be of a form compatible with the character of the village, amongst other things.

20.60 The contrast with the positive response to the development of three plots in Links Lane is telling. The site has few of the merits of the sites in Lower Chase Road or School Lane but the Council accepted that there was a housing shortfall that trumped other considerations.

Article in the Hampshire Chronicle Reporter Toby Oliver: The Alpines, School Lane

20.61 The Article stated that:-

"Civic chiefs have refused plans for a new house to be built in a rural area near Winchester. The city council's planning committee had concerns over the location, in an area defined as a 'settlement gap' in the local plan. ... City council planning officers recommended that the plans be refused on the grounds of it being in the settlement gap.

Cllr Jane Rutter said: "I'm very happy to support the officer's recommendation. Kings Barton make it more important that we preserve the settlement gap."

Cllr Chris Edwards said: "I find it hard to accept the comment Cllr Rutter has made. It's in the settlement gap, but these houses are now in an established area of development."

The committee chairman, Cllr Therese Evans said: "It's an important strip of land as it separates settlements. The new local plan will stress the importance of local gaps. Building a house here will demolish the gap, visually and physically. An enormous amount of effort has been put into the new local plan. I strongly believe the officer's recommendation is correct."

The committee voting in favour of refusing the application, with eight for and one abstention."

20.62 The Inspector stated that:-

Therefore, the proposal would not encroach into the visual and physical gap created, in part, by Barton Meadows. As such it would maintain an important gap between developed areas and not harm that gap's open and undeveloped nature, as required, amongst other things, by LPP1 Policy CP18.

20.63 The Officers recommend refusal on the Gap issue. Members of the Planning Committee gave strong support but the Inspector concluded that the development did not harm the gap. The boundary of the Gap is incorrectly defined just as Inspector Parker concluded in respect of land adjoining Lodge Green. The Gap boundaries clearly need to be re-examined.

The Appellant: Mr Ashley Senna

20.64 I have contacted the appellant and I recommended that the appellant proposes two changes at the forthcoming Examination of the Local plan that:-

1. A new boundary is proposed to include the site in the settlement;
2. The policy that restricts development to ‘**infilling of small sites within continuously developed road frontages**’ is challenged and replaced;
3. Although the gap issue was set aside the landowner should still seek the deletion of the Gap Policy NE7 and the Kings Worthy Gap in particular.

20.65 Notwithstanding the rejection of this plot, there is another allocation in the Emerging Local Plan in this Gap (KW1). It is a large site of 4.7 hectares. It proposed to provide a site for “Older Persons Housing and Open Space”. The plan states that it is the equivalent of 77 dwellings. This recommendation was established in the Settlement Boundary Review 2014. It stated that:-

1. Land off Lovedon Lane (SHLAA site 365)

Recommendation: Proposed for allocation for housing on part of site following site assessments. Proposed for allocation for housing on part of site following site assessments.

Action: Redraw boundary to include housing allocation but exclude recreation and landscaped area.

20.66 Paragraph 3.101 (EiP Inspectors Report) expresses clearly the problems with the Gap policy with reference to this site, it states:-

“We were particularly concerned by what appeared to us to be a tendency to identify as strategic, gaps which were of purely local, if any, significance, or gaps which were not gaps at all but substantial tracts of land, or gaps simply as a means of preventing development. We were further concerned by the way in which many of these gaps were delineated in Local Plan, frequently tight against existing built up areas”. (my italics).

20.67 This is a gap that is simply a means of preventing development. The Local Plan has allocated a site within the Gap (KW1). The Council simply supports development to meet the housing requirements on large sites and seeks to preclude other development.

20.68 One of the criterion in the PUSH Guidance refers to the use of other policy designations. This appeal proves that Gap Policy is unnecessary because Policies MTRA3 and MTRA4 can provide an adequate alternative. Another recent appeal supports this case.

Land to the south of Abingdon, High Street, Shirrell Heath

(APP/L1765/W/22/3310426).

20.69 This appeal was in relation to the proposals to develop two detached dwellings. The appeal was dismissed. The site was beyond the Gap boundary of Shirrell Heath – Shedfield. There is no settlement boundary in this part of Shirrell Heath. Paragraph 6 states that:-

6. However, LPP1 Policy MTRA3 deals with, amongst other things, settlements in the rural area including those with undefined boundaries such as Shirrell Heath. In such settlements this policy limits development to the infilling of small sites within continuously developed road frontages where it would be of a form compatible with the character of the village. The supporting text for this policy identifies the need to limit uncontrolled or sporadic development across the district to ensure the overriding countryside characteristics of the spatial area are retained. Policy MTRA3 and its supporting text does not clarify what specifically should be considered a small site, nevertheless the policy is clear that the site should be within a continuously developed road frontage.

20.70 Paragraph 7 sets out the case that the site fails the Policy, it states:-

The 4 dwellings to one side of the appeal site would constitute a developed frontage and this is largely reflective of the other buildings along High Street. However, to the opposite side of the appeal site there are only 2 buildings set considerably further back from the road within an area of open space larger than the appeal site. In conjunction with the appeal site and the fields behind, this creates a substantial visual and physical gap within the developed road frontage.

20.70 Paragraph 27 confirms that there are no other issues:-

That the proposed development received some public support is acknowledged. As is the lack of objection from the Council in terms of the nearby South Down National Park, the size of the proposed dwellings, the living conditions of neighbouring and future occupants, parking, highway safety and drainage. Nevertheless, these matters are insufficient to outweigh the identified harm in the main issues.

20.71 Unlike the case in Links Lane, the issue of supply of housing land supply was given no weight. Paragraph 29 states:-

It is noted that the Framework seeks to boost the supply of homes and make more efficient use of land in accessible locations. The proposal would provide a net increase of 2 homes in a rural village with some community facilities. Along with the associated economic and social benefits, this contribution to the windfall element of the Council's 5-year housing land supply attracts modest weight, based on the number of houses involved.

20.72 There is no consistency on this issue. The Inspector who considered the planning appeal on land adjoining Lodge Green was keen to prove that there wasn't a shortfall in the case for the development of two dwellings.

20.73 This case proves that there is no need for a Gap Policy. The Policy MTRA3 was sufficiently restrictive to preclude most development. However, there must be a case to moderate the policy that only permits development on sites “**within a continuously developed road frontage.**” There needs to be other criteria that assesses the overall situation. The bias against small sites in favour of large sites is questionable.

21.0 Report on The Impact Of Planning Constraints on Sme Housebuilders

21.1 A recent report based on research by the Lichfield’s Consultancy found that there was

A consistent trend over the last thirty years has been the declining number of new homes being delivered by SME housebuilders. In 1988, SME housebuilders delivered 39% of all homes built in England, but this fell to just 10% of annual housing completions in 2020.

21.2 This was attributed to planning costs but also to:-

A second factor is the increased “politicisation of planning” with much higher public scrutiny and antipathy to development in some areas.

21.3 The policies in Winchester District reflect the latter point. The policies are dominated by the objective of preventing the development of small sites. Policies such as MTRA3 and MTRA4 are very restrictive and it isn’t necessary to reinforce them with even more restrictive Gap Policies.

22.0 TWO OTHER GAPS

Denmead – Waterlooville Gap

22.1 This Gap is relatively remote from Winchester City and it has a common boundary with Havant Borough (see Map 20 – West of Waterlooville (⁹³)). LPP1 proposed that the site should be developed as a Strategic Housing Allocation “for about 3000 dwellings together with supporting uses”. It obviously made a significant reduction in the size of the Gap. Nevertheless, the remaining area between Denmead and Waterlooville was very extensive. It wasn’t necessary to create a gap to preclude most development Policies MTRA3 or MTRA4 could have provided adequate protection from most development and modest infill sites could have been permitted where appropriate.

Winchester – Littleton Gap

⁹³ WCC Proposals Map 20 – West of Waterlooville

- 22.2 The southern boundary is drawn tight to Harestock Lane (see Map 24 – Winchester North and Littleton ⁹⁴).
- 22.3 Any detailed review of the boundaries of these gaps will be undertaken in future Local Plan Part 2 or a Neighbourhood Plan, in accordance with the principles contained in the PUSH Policy Framework for Gaps.
- 22.4 Within these areas only development that does not physically or visually diminish the gap will be allowed.
- 22.5 To protect the individual character and identity of those settlements adjoining the proposed SDA at North Fareham, an area of open land is identified as a Gap to be maintained between the SDA and Knowle and Wickham (see Policy SH4). Development which would threaten the open and undeveloped character of this area will be resisted and the land should be managed to secure the long-term retention of its rural character.

23.0 PRESENTATION TO THE HAMPSHIRE CHAMBER OF COMMERCE

- 23.1 I made a presentation to the Hampshire Chamber of Commerce Planning and Development Committee in December 2022. The Chamber is keen to keep its Members informed on planning matters. It is important to its Members who are involved in development especially SMEs. These smaller companies employ local people and they often support the development of all forms of skills. This is an important consideration for the Chamber.

HOW PLANNING POLICY GUIDANCE IS ABUSED BY COUNCILS

Planning by Nimbys

- 23.2 I was invited to make the presentation and I gave it the above title. Obviously, everyone is aware of the opposition of local residents to new development. This influences the election of Members to Councils and it also influences the Members attitude to development. This also leads on occasions to the creation of policies to resist development. This provides an additional power for Members to oppose development or guide it to places where there is the least opposition. The government and most Councils are influenced in this way.
- 23.3 I explained to the Chamber Members that the implications were very serious for its Members affecting the local economy and jobs.
- 23.4 The abuse of planning guidance by Councils is very detrimental. It particularly affects smaller SMEs but it also misleads local residents. I have set out some examples from my Presentation. It was particularly relevant at the time because there were two current Consultations on Local Plans with deadlines in December and January. Winchester

⁹⁴ WCC Proposals Map 24 – Winchester North and Littleton

Emerging Local Plan had a deadline of 14 December 2022 and East Hampshire Local Plan had a deadline of 16 January 2023.

- 23.5 I outlined the case of the Settlement Gaps as set out above. I explained that the Gaps should never have been introduced and that it will be twenty years before the Gap Policy can be challenged at the Review of the Winchester Local Plan 2024.
- 23.6 I also provided examples of issues with Gaps but I also referred to manner in which allocations are made. I referred to the proposals in Wickham Parish and Rowlands Castle Parish. I have set out the issues below.

Whiteley – Fareham/Fareham Western Wards (The Meon Gap)

- 23.7 It can be seen on the Composite Plan that there is a new allocation at Ravenswood that adjoins Knowle Village. The Council has allocated this site for 200 dwellings in the ‘new’ Knowle – Wickham- Welbourne Settlement Gap.
- 23.8 The site is situated to the north of Ravenswood Hospital (Map ⁽⁹⁵⁾). It comprises three parcels of land which measure 65.78 hectares. The indicative number of dwellings is 200. Although the site adjoins Knowle Village, it is within the Wickham Ward boundary and counts towards the Wickham village housing requirement. The Plan states in paragraph 14.99 (page 478) that:-

The site falls within what is currently designated as a settlement gap under adopted LPP1 Policy SHUA4. However, the planning application and associated technical evidence, has demonstrated that development of this site will secure a much larger part of the Gap to be safeguarded for the longer term, and in that context the loss of this part of the gap is acceptable.

- 23.9 The site is approximately 4.1 kms from the boundary of Wickham Village. Needless to say it does nothing for the viability of the village. It can also be seen that the Gaps breach the EiP guidance that the development should not go northwards beyond the motorway or the railway line and extend as far as Wickham!!
- 23.10 The Council claims the community in Wickham supported this proposal in the relevant Policy NE.7. The site is relatively distant from Wickham Village. On the other hand, there is no reference to the views of the community in Knowle who are directly affected by this proposal.
- 23.11 There was no settlement identified at risk of coalescence. The only risk of coalescence is created by the Council which has allocated a site identified as Ravenswood. The Council can decide to breach its own policy when it is expedient to do so. Thus, 200 dwellings near

⁹⁵ WCC Proposals Map 24

Knowle in a Gap are acceptable but the Council claims that a small site in Whiteley Lane which cannot possibly have any impact upon the Gap is unacceptable.

EAST HAMPSHIRE EMERGING LOCAL PLAN

- 23.12 Winchester isn't the only District that uses this ploy. There is similar case in Rowlands Castle comparable to the case in Wickham. There is an allocation of 200 units but the site is on the boundary with Havant Borough adjoining Leigh Park. The site is one mile from the southern boundary of the village of Rowlands Castle.
- 23.13 It is in Rowlands Castle Ward Boundary and so it counts towards the village housing requirements. This may please the village residents but it does nothing to enhance the viability and vitality of the village shops and community facilities. The enhancement of viability and vitality of the village is one of the objectives of the Rowlands Castle Neighbourhood Plan. The allocated site is at least two miles from the railway station in Rowlands Castle.
- 23.13 The residents in the new development will not look to the village but to the nearby facilities and shops in the Leigh Park area of Havant Borough. This is simply a political decision. It is not an example of good planning. It does nothing to enhance the village.

Land adjoining Links Lane, Rowlands Castle, East Hampshire District (Ref:- 21501/005)

- 23.14 There are a few cases that are more pragmatic. This site is in Rowlands Castle Village and it provides an interesting contrast to the manner in which minor development is treated in Winchester District. The proposal was for three dwellings and associated development.
- 23.15 The Committee Report (⁹⁶) states that:-

'the site lies at the northern edge of Rowlands Castle, outside of, but adjacent to, the settlement policy boundary. It adjoins linear development to the south, which extends for approximately 800m along Links Road and agricultural land to the north and west. The boundary of the site to the north and west is also the boundary with the South Downs National Park. ... The site is enclosed from the road by a hedgerow and currently serves as a horse paddock. ... The three dwellings would utilise one shared access in the position of the existing field access gate.

- 23.16 The response of the Landscape Team stated that:-

From a landscape perspective we have the following comments:

⁹⁶ Committee Report: 66 Links Lane, Rowlands Castle

- Given the shape of the site plot no. 3 and 4 are close to Woodhouse lane which will make them visually prominent, in comparison to neighbouring properties. As such trees will need to be introduced to soften the visual impact of the development.
- The introduction of fastigate trees to the frontage of the properties does not offer sufficient canopy cover to mitigate the visual impact. Perhaps a Field maple would be amore suitable tree species.
- The retention of the hedgerow which runs alongside Woodhouse Lane is essential to retain the character.

23.17 The South Downs National Park stated that the proposals would nevertheless result in a harder boundary between the village and the SDNP. The Report states that ‘the proposal is not considered to result in unacceptable harm to the setting of the South Downs National Park, which adjoins the site to the north and west’.

23.18 There were 48 letters of objection including the Parish Council.

23.19 The decision turned on the fact that the Council admitted that it did not have a five year land supply.

Assessment:-

23.20 The Council claimed that it had a five year supply in the case at Lower Chase Road, Swanmore. In fact, the Council claimed that a site was allocated for 140 dwellings nearby but only 91 had been permitted at the time. This was a false claim. The remaining 49 dwellings still haven’t been developed and the allocation has been rolled forward into the Emerging Local Plan 2022 eight years after it was proposed in 2014.

23.21 In the case on land adjoining Lodge Green, Whiteley Lane, the Inspector concluded that the Council had a five year land supply when this case wasn’t raised. In fact, it was evident that this was untrue because the site in Swanmore for 91 dwellings was permitted at the same time as the site on Whiteley Lane was dismissed.

The National Planning Policy Framework

23.22 I also drew the attention of Members of the Chamber to the latest government guidance that requires Councils to provide a minimum of 10% of new development to be provided on sites of less than one hectare for developers of small sites. This is a very important consideration for the Chamber because of its concerns for small development companies.

23.23 This is established in the National Planning Policy Framework, it states in paragraph 69 of the revised version (2021):-

Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:

- a) identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved;
- b) use tools such as area-wide design assessments and Local Development Orders to help bring small and medium sized sites forward;
- c) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes; and
- d) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.

23.24 Following my presentation, the Chamber made the decision to seek the deletion of the new Gap Policy (NE.7). It also objected to the failure to give greater emphasis on small developments as required by the NPPF. The objection is attached (⁵⁰). It should be noted that the Chairman of the Planning and Development Committee of the Chamber is Gavin Hall, Planning Director at Savills.

THE EMERGING WINCHESTER LOCAL PLAN (Reg 18).

23.25 I had complained about the misleading objections and deputations made by Cllr Mrs Achwal. Cllr Mrs Achwal claimed that there were “other objectors”. The Inspector referred to this when he should have concluded that there were only two objectors. One in the Lane and one in Skylark Meadows. Of the eleven households in the Lane ten did not object. Cllr Mrs Achwal didn’t identify anyone and nor did the Inspector.

23.26 The Monitoring Officer, Mrs Catherine Knight, rejected my complaint on the grounds that it was made too late. I do not know what date she had identified.

Mr Simon Finch Corporate Head of Regulatory

23.27 In response to my complaint about Cllr Mrs Achwal, Mrs Knight, advised me to contact Mr Simon Finch as he had been instructed to review all of the settlement boundaries for the Emerging Local Plan. I sent a letter to Mr Finch and I tried to engage him in a discussion about the Gap and the Settlement Boundary. I asked him to visit the area of the appeal so that I can explain the issues. He declined. As none of the other Officers would engage in discussions with me my clients asked Mr Ian Tait to review the case. As you know, Ian Tait is a former District Councillor, who is well known to Officers and Members. I asked Ian to contact Mr Finch on my behalf. He invited Mr Finch to visit the site and to see the site and to view the developments in Skylark Meadows.

23.28 Mr Tait has prepared a Statement of Community Involvement which refers to this meeting. Mr Finch confirmed that he believed that *the Gap Policy was no longer relevant to the*

assessment of the site as recorded in Statement of Community Involvement prepared by Mr Tait ⁽¹⁰⁾.

- 23.29 Unfortunately, Mr Finch has now left the Council and it is not possible to clarify this point.
- 23.30 It did seem from these exchanges that the Gap Policy might be dropped. Obviously, there had been two Awards of Costs on this point too. The boundary had also led to many complaints about Officers and Cllr Mrs Achwal who failed to recognise that the site was not in conflict with the Gap Policy. It seemed possible that the realignment of the settlement boundary would be considered carefully and the justification for the gap policy examined.

Mr Botham: Stage 2 Complaints Procedure

- 23.31 Mr Botham advised me to contact the Strategic Planning Team

I do advise you to make further contact with the Council's Strategic Planning team to discuss the settlement boundary issue in the context of the Local Plan Review.

- 23.32 I made contact and Mr Simon Finch concluded that '*the Gap Policy was no longer relevant to the assessment of the site.*'

The Emerging Local Plan (Reg 18)

- 23.33 It was a shock when the Emerging Local Plan was published. The Gap Policy had been retained. The boundaries were unchanged. Whiteley Lane has been retained as the boundary of the Gap. Policy CP18 has been replaced by the new Policy NE7 Settlement Gaps it states:-

The local planning authority will retain the generally open and undeveloped nature of the following defined settlement gaps:

- i. Bishop's Waltham – Swanmore – Waltham Chase – Shedfield – Shirrell Heath
- ii. Denmead – Waterlooville
- iii. Kings Worthy - Abbots Worthy
- iv. Otterbourne – Southdown
- v. Winchester – Compton Street
- vi. Winchester – Kings Worthy/ Headbourne Worthy
- vii. Winchester – Littleton
- viii. Whiteley – Fareham/Fareham Western Wards (the 'Meon Gap')
- ix. Knowle, Wickham and Welborne

Within these areas only development that does not undermine the function of the gap and its intended role to define and retain the separate identity of settlements will be permitted.

To protect the individual character and identity of those settlements adjoining the proposed SDA at North Fareham, an area of open land is identified as a Gap to be maintained between the SDA and Knowle and Wickham. Development which would threaten the open and

undeveloped character of this area will be resisted and the land should be managed to secure the long-term retention of its rural character

- 23.34 The new ninth gap Knowle, Wickham and Welborne The Whiteley – Fareham/Fareham Western Wards (the ‘Meon Gap’) has been retained. The Eastleigh to Fareham railway line now forms the eastern boundary (contrary to the PUSH guidance and HD that refer to natural and manmade barriers). Obviously, there was no settlement at risk of coalescence.
- 23.35 The western boundary of the new ninth Gap is the Eastleigh to Fareham railway line. The two Gaps shared the same central boundary. The northern boundary of the new ninth is Wickham Village (contrary to the EiP Inspectors advice). It is 1.77 kms from Wickham to the railway line. The eastern boundary is the Fareham Borough boundary but the SDA development did not extend to the Borough boundary. Again, there was no settlement at risk of coalescence. The two Gaps share the same central boundary and the combined area is greater than the area of the Welborne Garden Village which was proposes to accommodate 6000 dwellings; 92 hectares of commercial land; a District Centre two primary schools and a secondary school. It is difficult to imagine a more ridiculous concept of two gaps that fail the PUSH criteria joined together. In reality, the original Meon Gap and the new ninth one form one vast area. This area cannot be described as a gap.
- 23.36 Even if the Meon Gap was retained the western boundary of the Gap should be reconsidered. It is obvious that Whiteley Lane cannot be the appropriate boundary as it is in the Hamble Valley. The Policy ignores the fact that there are 30 very large detached dwellings east of the Lane. The boundary of the Gap fails the tests set out in the PUSH Guidance. I have provided a plan showing the boundary realigned on the eastern side of Skylark Meadows Estate (⁸).
- 23.37 The retention of Whiteley Lane as the western boundary of the Gap is unjustified. Two Inspectors in respect of two s.78 appeals have confirmed that the site is not in conflict with the Gap and have awarded Partial Costs on both occasions.
- 23.38 The Gaps fail the tests in the Policy CP18. The history of the Gap Policy over the past 25 years demonstrates clearly that the decision to introduce the policy was a mistake.
- 23.39 As a consequence of Inspector Robert Parker’s recommendation in his Decision that the boundary of the settlement at Whiteley Lane is, in his opinion, the fundamental issue. The decision of the Inspector into the appeal in January 2021 was a complete farce. Nevertheless, I am obliged to pursue the amendment of the settlement boundary through the Local Plan even though I do not believe that this is the correct course. This is a consequence of the deception of the witnesses at the Hearing who withheld evidence that would have altered the course of the Hearing and the decision.

- 23.40 I have objected to the boundary and to the Gap Policy NE7. I have sought the deletion of the Policy NE7 in its entirety.
- 23.41 I have gained support for this. I made a presentation to the Hampshire Chamber of Commerce. The Chairman of the relevant Committee of the Chamber is Gavin Hall a Director at Savills. The Chamber has also objected to the Gap Policy and is seeking the deletion of Policy NE7. Vivid Homes have objected to the Gap at Otterbourne/Shawford. There are objections in respect of the Gap between Swanmore and Bishops Waltham. I objected to this Gap in 2016. I have also objected to the Swanmore Gap on behalf of the landowner. The planning appeal at Lower Chase Road, Swanmore was dismissed primarily because of the Gap Policy. There are objections in respect of the Gap at Kings Worthy. The Inspector concluded that Gap wasn't relevant in respect of the appeal at The Alpines. He stated that the site does not affect the functioning of the Gap. This demonstrates that it should be withdrawn. I believe that there will be objections to all of the Gaps if the Policy is not withdrawn prior to the Examination of the Local Plan.
- 23.42 All of these parties have been misled in respect of planning applications and appeals where the issue of a Gap should not have been relevant. The Inspectors who presided at the examination of the Local Plans are directly responsible for this calamity.

CONCLUSION

The situation has changed fundamentally since the appeal in 2021.

It was recognised belatedly by Mr Simon Finch, Head of Corporate Regulatory who was previously Head of Development Management. *In July 2022*, Simon Finch confirmed in a site meeting with ex Councillor Ian Tait that:-

“Mr Finch conceded that the Gap Policy should not be an issue in future”

This means that it should never have been included as a reason for refusal in applications in 2006 and 2019. Many landowners and developers have spent significantly levels of money and time challenging the Gap Policy that shouldn't have been applied. Mr Finch left the Council shortly after this meeting in 2022.

The second reason why the Gap issue is no longer pertinent follows from the Officers Report on the planning application that was submitted in July of this year.

Proposal: Erection of 2 detached self build houses with detached garages, parking, turning and landscaping. 24/01343/OUT

It was refused planning permission on the 5 September (Decision Notice ⁽⁹⁷⁾). However, the Officer's Report ⁽⁹⁸⁾ stated that:-

“Having regard to the conclusions reached previously in relation to the impact the proposed development (on the same site) would have upon the settlement gap and the more recent Settlement Gap Review, no conflict with LPP1 Policy CP18 has been identified to warrant a reason for refusal on this basis.”

This is a fundamental and significant change. It means in effect that the Gap Policy should never have been applied to the planning applications and appeals over the past 20 years. It also means that the Inspectors at the Examination of Local plans in 2004, 2013 and 2016 made serious errors of judgement when they rejected objections to the Gap Policy. Furthermore, it demonstrates that seven Officers have advised Members and local residents that the site was in the Meon Gap and contrary to Policy CP18 when this was not the case.

The boundary of the Settlement follows Whiteley Lane and this means that the site remains in the defined countryside. A separate objection to the Local Plan Regulation 19 has been submitted with regard to this issue. There is a separate matter. The application was submitted for custom build housing. A recent Opinion by a Barrister in respect of another scheme for custom build housing that my practice promoted stated that:-

⁹⁷ Decision Notice: Planning application: Land adjoining Lodge Green, Whiteley Lane

⁹⁸ Officer's Report: Planning application: Land adjoining Lodge Green, Whiteley Lane

“a case would need to be made that the provision of custom build housing (in circumstances where the Council is failing to meet its need, and there is no plan-led solution), outweighed the conflict with the development plan”

The Council has admitted that there is a current shortfall of 182 plots as reported in the Officers Report.

Appeal Decision: Land to the East of Waitrose, A429, Malmesbury, Wiltshire (⁹⁹)
(Ref:- APP/Y3940/W/23/3317252)

This application was in outline and you will note in paragraph 2 that “the indicative plans were submitted to show how the site could be laid out for up to 26 dwellings” custom build dwellings.

Paragraph 32 states that:-

“Whilst the level of harm would be considerable, I am satisfied that the public benefits of the proposal would be sufficient to outweigh the harm”.

The Conclusion in Paragraph 54 states that:-

“For the reasons above, and having regard to all other matters raised, I conclude that the appeal should be *allowed*.”

This means that the proposal for the custom build application should be permitted even though it is in the defined countryside.

The situation with regard to the significance of the Gap on the proposed development on Land adjoining Lodge Green is clear cut. However, I am concerned about the significance of the Gap Policy for several other sites. I believe that the Gap Policy NE7 that has replaced Policy CP18 in the revised Local Plan Regulation 19 should be deleted.

I have submitted an objection to Policy NE7 in respect of the revised Local Plan Regulation 19 (copy attached (¹⁰⁰)). I have also submitted an objection to policies SP3, H3 and H4 in the Regulation 19 Plan in respect of the treatment of small sites. These policies conflict with the new government’s emerging advice that are seeking to boost the provision of small site because they benefit the local economy and provide local jobs.

It is evident that the Gap reason for refusal is no longer relevant. The planning application proposed two custom build dwellings. It seems that the settlement boundary should no longer be an obstacle to development.

⁹⁹ Appeal Decision: Land to the East of Waitrose, A429, Malmesbury, Wiltshire

¹⁰⁰ Objection to Policy NE7 in respect of the revised Local Plan Regulation 19

Unfortunately, the application has been refused planning permission. The Officers have raised issues that it was believed had been resolved many years ago so it may require a planning appeal to resolve these matters.

Gap Policy

I have objected to the Gap Policy. I made the case in respect of Local Plan Review in 2004 and subsequently in Local Plan Parts 1 and 2. The owners of the land adjoining Lodge Green have been treated despicably by Inspectors and Council Officers. It is most important that it is recognised that the decisions of the Council over the past 20 years have been an exceptionally expensive and unpleasant experience for the owners of the land adjoining Lodge Green and myself. My protestations have not been treated seriously. In the main they have simply been ignored. I have received the most unprofessional and scandalous responses with no regard for the importance of *honesty* that guidance on probity demands of Officers and Members of the Council. I have reported four Officers to the Royal Town Planning Institute with regard to breaches in its Guidance.

Two Inspectors at planning appeals have made decisions that are not justified by the evidence. In the case of Inspector Robert Parker he was biased, incompetent and blatantly dishonest. Many of the statements in his Decision were copied word for word from the Decision of Inspector Ms Gibbons. Inspector Parker failed to comprehend the reasons why ten of the eleven households in Whiteley Lane didn't object to the application in 2019. They were keen to end the disputes with the landowners that had lasted over 10 years or more. Inspector Parker concluded that they were concerned about traffic movements.

It is crystal clear that Whiteley Lane should not form the boundary of the Gap. The Lane is *not* in the Meon Valley that the Policy was intended to protect. It is in the adjoining Hamble Valley and approximately 10 metres below the ridge that separates the two Valleys. This means that development cannot possibly conflict with the test in the Policy that requires development not to "visually or physically diminish" the Gap. Anyone walking along the Lane can appreciate that fact. It is evident that there can be no conflict with the policy that seeks to protect the Meon Strategic Gap.

The fact that the boundary was in the misaligned was made clear when, in 1999, planning permission was granted for an 18 hole golf course and 30 detached dwellings. 19 of these dwellings were on the Hamble side of the ridge. The site cannot be seen from the ridge.

There were objections to the Local Plan Regulation 18 by several other parties including the Chamber of Commerce, Vivid Homes and one land owner and one other planning consultant to five of the nine Gaps. Many of the Gaps failed the tests in the PUSH guidance published in 2008.

The Gap Policies should never have been introduced. Paragraph 3.108 recommended that the Structure Plan should have a Policy for strategic gaps. In paragraph 3.110, it states that:-

We recommend the following, and no others, as strategic gaps:

Eighteen Gaps were Listed and there were **no Gaps proposed for Winchester District at all**. It is evident that there should not be any Strategic Gaps in Winchester District.

Paragraph 3.101 of the EiP Report expresses clearly the problems with the policy, it states:-

“We were particularly concerned by what appeared to us to be a tendency to identify as strategic, gaps which were of purely local, if any, significance, or gaps which were not gaps at all but substantial tracts of land, or gaps simply as a means of preventing development. We were further concerned by the way in which many of these gaps were delineated in Local Plan, frequently tight against existing built up areas”. (my italics).

The EiP Inspectors emphasised the fundamental elements of the policy that should be considered in paragraph 3.105:-

“They must include no more land than is required to prevent coalescence and retain separate identities; it does not mean that every piece of land between the settlements should be left undeveloped.” (my italics)

The Inspectors made the following specific comment on the proposed Meon Strategic Gap in paragraph 8.12:-

The Meon Valley Gap clearly serves a strategic purpose in separating the major built-up areas in South Hampshire, with Southampton to the west and Fareham and Gosport to the east. But it too is very extensive and takes in some 6km of coastline where the risk of coalescence is virtually nil notwithstanding the other coast and countryside policies in the HCSPR. Winchester City Council suggest that the gap should be extended northwards beyond the railway and reach up to Wickham. This is a case of extending a gap to find a settlement when the motorway, let alone railway, is an appropriate physical barrier to curtail development.

This confirmed that the Meon Gap should not be extended from Fareham Borough into Winchester District. The position is unchanged. The EiP Report was absolutely clear cut. However, the EiP Reports have never been examined by Officers, Members of the District Council or Local Plan Inspectors.

These same tests were included in the PUSH Guidance prepared in 2008.

The document identified the following criteria:-

- **The open nature/sense of separation between settlements cannot be retained by other policy designations;**
- **The land to be included within the gap performs an important role in defining the settlement character of the area and separating settlements at risk of coalescence;**

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- **In defining the extent of the gap, no more land than is necessary to prevent coalescence of settlements should be included having regard to maintaining their physical and visual separation.**

For these reasons, I believe that the Gap Policy NE7 should be deleted from the Local Plan Regulation 19.

Yours sincerely



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References will be sent separately