

OBJECTION TO THE POLICIES OF THE LOCAL PLAN (REG 19)

OBJECTION TO GAP POLICY NE7

Objection prepared by

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PREAMBLE

My name is Bryan Jezeph, and I am a Director of Bryan Jezeph Consultancy Limited. (Trading as BJC Planning). These comments and objections have been submitted on behalf of Whiteley Developments Limited.

1.0 Introduction

1.1 The deletion of Policy NE7 has become much more significant given the new government's stated objective of substantially increasing the provision of housing. The new figure for Winchester requires an increase of 62% from 676 dwellings per annum to 1099 dwellings per annum.

1.2 The government has provided a provisional arrangement to proceed with previous housing figures if the Local Plan has reached the Regulation 19 stage. The City Council has decided to take advantage of this concession, but it is essentially an interim position. Once the Local Plan Reg. 19 has been examined by an Inspector and adopted the Council must commence a new Local Plan and the new housing and other government requirements must be addressed.

2.0 Proposed Reforms of the National Planning Policy Framework and Other Changes to the Planning System

2.1 The new government published a draft version of the NPPF seeking views on its content. It also published a Consultation document that discussed the Proposed Reforms, and it sought responses to a wide range of issues. I have identified a number of the Reforms which, in my opinion, justify the deletion of the Gap Policy NE7 now. These extracts are quoted below:-

The new Government campaigned on a mandate of reforming the planning system to enable the building of 1.5M new homes, to deliver the affordable homes we need, and to provide the employment space and infrastructure which is essential to boost our economy.

2.2 To achieve this the new government is seeking to make this mandatory. Its states:-

a. make the standard method for assessing housing needs mandatory, requiring local authorities to plan for the resulting housing need figure, planning for a lower figure only when they can demonstrate hard constraints and that they have exhausted all other options;

The new targets will mean councils must boost housebuilding in areas most in need, helping more people buy their own homes, removing the largest barriers to economic growth, and getting Britain building again.

2.3 The government has advised that local authorities must plan for the higher figure. The government is reinforcing the "presumption" in favour of sustainable development. This "failsafe" is particularly important.

- f. **improve the operation of ‘the presumption’ in favour of sustainable development, to ensure it acts an effective failsafe to support housing supply, by clarifying the circumstances in which it applies; and, introducing new safeguards, to make clear that its application cannot justify poor quality development;**
- 2.4 The shortage of affordable homes is recognised.
- h. **make wider changes to ensure that local planning authorities are able to prioritise the types of affordable homes their communities need on all housing development and that the planning system supports a more diverse housebuilding sector;**
- 2.5 It is recognised that “communities must be involved in shaping development”, but it doesn’t believe that this is compatible with the use of ‘intervention powers’ to achieve it. This will create strife. This is supported in principle, but residents need more guidance on how they can shape their communities. This tends to be a means of opposing development rather than guiding it.
- f. **ensure communities continue to shape housebuilding in their areas, demanding universal local plan coverage from all local planning authorities, while making full use of intervention powers to build the houses we need if this is not achieved;**
- 2.6 Neighbourhood Plans are an obvious demonstration of this. The figures proposed by the local authority tend to be low and the residents even oppose the low figure. The Denmead Neighbourhood Plan was required to provide 100 dwellings by the LPA. This is a settlement that could support at least a 1000 dwellings without breaching any significant constraints but the Steering Committee is opposed to even to 100 dwellings.
- 2.7 I am supportive of the objective to increase the use of brownfield land to achieve all forms of development. However, reviews of sites reveal that nothing is taking place. The former John Lewis building in Southsea was sold to a developer in 2021 but it has stood empty ever since. This accords with the government objective below:-
- 5. **We have been clear that brownfield land must be the first port of call. We want to make clear that the principle of development should not be in question on brownfield land, and so we are consulting on an amendment to paragraph 124c out of the current NPPF, reinforcing the expectation that development proposals on previously developed land are viewed positively. This makes clear that the default answer to brownfield development should be yes.**
- 2.8 The objective of increasing the provision of small sites is supported. It is considered that the criteria should be modified, and in addition, the Council should make specific allocations for small sites based upon the modified criteria.

Making the small site allocation mandatory

15. Small and medium sized builders are essential to meeting our housing expectations and supporting local economies. They also build out the majority of small sites. Their business models often rely on identifying and securing small sites and building them out quickly. The Government is concerned that SME housebuilders are not able to access the small sites that they need, and that local planning authorities are not bringing forward small sites in their plans to the level set out in the NPPF.

2.9 A separate representation has been made to the Local Plan in support for the development of small sites.

3.0 THE PFSH GUIDANCE

3.1 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.**

3.2 It is evident from Appeal Decisions that most of the 9 Gaps in the Winchester Local Plan fail these tests.

GAP Policy CP18 now NE7 in the emerging Local Plan

3.3 BJC Planning objected to Policy NE7 at the previous stage of the Local Plan. There have been some significant developments recently. For example the Council agreed that a site in Whiteley Lane, Whiteley for two dwellings did not affect the function of the Gap (24/01343/OUT).

4.0 LAND ADJOINING LODGE GREEN, WHITELEY LANE, WHITELEY

4.1 Objections the Gap Policy at three Local Plans were rejected. However, two Inspectors in respect of successive planning appeals confirmed that the site was not in conflict with the Gap Policy and awarded costs on that point. However, the Council hasn't taken any action to recognise these decisions until very recently.

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

- 4.2 The Appeal Decision was received on 12th January 2017. This should have been a major breakthrough for the appellants as 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).

- 4.3 The Inspector made a Partial Award of Costs in respect of the Gap Policy.
- 4.4 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.
- 4.5 The Appeal and Cost Decisions in 2017 were not mentioned in the Committee Report when the subsequent application for two dwellings was considered in June 2019.

The Inspector's Appeal and Costs Decisions: February 2021

- 4.6 Inspector Robert Parker also confirmed that the site was not in conflict with the Policy CP18 Settlement Gap and he also awarded costs.

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

- 4.7 Another planning application was submitted in July 2024. 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.”

- 4.8 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.

4.9 I asked the Council to explain its decision to the local residents in Whiteley Lane and the other people who 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.

4.10 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.

4.11 I do not believe that this advice is correct. It means that the Objectors 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.

5.0 THE ALPINES, SCHOOL LANE, KINGSWORTHY

5.1 An Inspector’s Decision with regards to a site in School Lane, Kingsworthy for one dwelling also did not affect the function of the Gap. (APP/L1765/W/22/3310078).

5.2 The failure to review the Council’s policy position when there is a clear issue with policies is not unique to Whiteley Lane. The planning application for one dwelling on a site in Kingsworthy was refused planning permission. One of the reasons quoted was that the site was contrary to the Gap Policy. However, the Inspector concluded in her decision that *the proposal did not affect the functioning of the Gap* (Appeal Decision 12 September 2023 The Alpines, School Lane, Kingsworthy (APP/L1765/W/22/3310078)).

5.3 An Article in the Hampshire Chronicle records the debate by Members of the Planning Committee. The Article states 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."

5.4 The Inspector agreed with Cllr Chris Edwards, who 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.

5.5 The Officers recommended refusal on the Gap issue. This misled the Members of the Planning Committee who gave strong support for the Gap Policy. The Members voted 8 in support of refusing planning permission with one abstention. The local residents had supported the application.

5.6 In this case, Landscape advice was set out in the Committee Report. It stated:-

Service Lead for Community - Landscape

Comment - The site is well screened from public view points, but lies in a designated gap between Headbourne Worthy and Winchester and therefore development within this area should be refused. However the policy does state that 'Within these areas only development that does not physically or visually diminish the gap will be allowed'.

5.7 The author of this 'Comment' was a Landscape Officer who claimed that the site was in the Gap. However, the same Landscape Officer was clearly in the best position to advise Members if the site '**physically or visually**' diminished the gap or not. Perhaps he was unwilling to explain to Members that the site was not in conflict with the Gap Policy.

5.8 This is another case where an Inspector concluded that the development did not harm the functioning of the gap. It means that the Objectors may not realise that the Council has conceded that the site is not in conflict with the Gap Policy. The residents are in same predicament as those in Whiteley. Some of them might object to the Local Plan on the grounds that the site is in the Gap. These people have been misled.

5.9 The Council has made no attempt to consider the implications of this decision. It is evident that the same situation exists in Whiteley Lane. The development would not harm the functioning of the gap.

6.0 Land adjoining Alexandra Cottage Lower Chase Road, Swanmore (APP/L1765/W/17/3174240)

6.1 This appeal was dismissed on grounds of conflict with the infilling criteria (6 dwellings) and conflict with the Swanmore to Bishops Waltham Gap. The same

principle should have been applied to this case. The development did not harm the functioning of the gap.

6.2 The Swanmore to Bishops Waltham Gap also failed the tests in the Gap Policy. It was much longer than the 1250 metres in the Policy. There was no intervisibility which was another criterion. It was evident in this case too that the development would not harm the functioning of the gap.

7.0 ONLY GAP IN THE AREA THAT IS OF “SUBREGIONAL STRATEGIC SIGNIFICANCE”

7.1 The most extraordinary decision was the creation of the new ninth Gap – the Knowle-Wickham-Welborne Gap. This new Gap was added after Local Plan Part 2 was adopted in 2017. Inspector Payne had agreed to a new Policy SH4 which it was ostensible introduced to protect the area between Wickham and the Welborne SDA. The area extended as far as the Meon Gap.

7.2 The decision to introduce a Gap Policy in 2004 created issues of definition. The gaps introduced had widely varying characteristics. This was confusing. Inspector Nigel Payne presiding at the Examination of Local Plans Part 1 and 2 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’.

7.3 Inspector Nigel Payne recognised that this may have been the **“only gap in the area that is of subregional strategic significance”** *but it could not possibly be a settlement gap*. It didn’t satisfy any of the tests in the PUSH Guidance. The Council and Inspector Payne should have created a separate subregional gap instead of setting aside all of the criteria and calling it a settlement gap.

7.4 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. The Gap Policy covering the ‘subregional gap’ is now a vast area greater than the total area of the Welborne 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. There is no consistency.

7.5 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 and local 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).

- 7.6 Inspector Nigel Payne didn't need to read the Report published in 1993 to appreciate that the Gaps in Winchester District were simply a *means of preventing development*. There was no evidence that there was any 'threat of coalescence'. Inspector Payne should have realised that the same criteria could not apply to a gap of "**subregional strategic significance**" with the *upgraded local gaps*?
- 7.7 This also 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 BJC Plan 4 Emerging Local Plan Reg 18 showing the two gaps).
- 7.8 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 but the boundary has been moved. How can a boundary be moved? The River Meon has been replaced by the Eastleigh to Fareham railway line. This Line now forms the eastern boundary (contrary to the PUSH guidance and HDC 11 that refer to natural and manmade barriers).
- 7.9 The western boundary of the new ninth Gap is *also* the Eastleigh to Fareham railway line. The two Gaps have a common 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! Obviously, there are no settlements at risk of coalescence because there is no land or settlements between the two gaps.
- 7.10 Paper 15 recognized that the 'Scale of Strategic Gaps' could 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".**
- 7.11 Inspector Nigel Payne failed to appreciate this point when he discussed the Meon and Knowle-Wickham-Welborne proposal. He referred to the issue of 'sub-regional gaps' but he decided to create two large co-joined settlement gaps without distinguishing them from other gaps. The Council has set aside the guidance to create this bizarre situation.
- 7.12 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 rejection of 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.*

- 7.13 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 itself. If the Council wanted to protect character and identity of settlements in the vast area between Whiteley and the SDA, surely it should have created a new site specific Policy. It has simply ignored its own guidance.

8.0 OTHER POINTS

- 8.1 It is not clear what 'not affecting the function of the Gap' means? Should the Gap be amended. What then is the purpose of the Gap?
- 8.2 The principal objective of the Gap Policies is to prevent the coalescence of development, but it often applies to settlements that are the most sustainable and it mainly affects small sites, the large sites are often supported to meet the housing requirement.
- 8.3 Why is Policy NE7 included in the Section on Nature and Environment Policy?
- 8.4 It must be recognised that Gap Policy NE7 is an unjustified extra hurdle for the development of small sites and the Policy should be deleted. It is in conflict with the guidance on sustainability.

9.0 SOUNDNESS

- 9.1 The Gap Policy should be deleted. Two Inspectors have concluded that two sites are not in conflict with the Policy and the Council in respect of a recent planning application has finally reached the same conclusion.

Local Plans must be prepared in accordance with the National Planning Policy Framework (NPPF).

- 9.2 The NPPF states that a Local Plan is 'sound' if it meets the following tests:-

Positively prepared

- 9.3 I do not believe that the Local Plan was positively prepared. The Gap Policies should have been deleted before it was published. It is misleading because it didn't address the decisions that found that the sites were not contrary to the Policy. It is not guided by sustainability.

Justified

- 9.4 I do not believe that the Gap Policy is justified and it should have been deleted.

Effective

- 9.5 The Local Plan has a very short timeframe as it needs to be reviewed immediately after it is approved by an Inspector. In effect, this is an “Interim Local Plan”.

Consistent with national policy

- 9.6 The Local Plan does not enable the delivery of sustainable development in accordance with the emerging policies of the National Planning Policy Framework and other statements of national planning policy.

Local Residents

- 9.7 Local residents should have been advised that the Gap Policy was not relevant to development in three areas, Whiteley and Kingsworthy and probably Swanmore. This is exceptionally misleading. The Local Plan should be withdrawn so that these residents can be reconsulted.

Appendices

1. Planning Appeal Decision: APP/L1765/W/16/3153276
2. Planning Appeal Decision: The Alpines, School Lane, Kingsworthy
3. Planning Appeal Decision: Land adjoining Alexandra Cottage Lower Chase Road, Swanmore (APP/L1765/W/17/3174240)
4. Decision Notice dated 5 September
5. Officers Report
6. HDC Document on Gaps published in 2016
7. Plan 4: showing the relationship between the Meon Gap and the Knowle-Wickham-Welborne Gap