



Department for
Communities and
Local Government

Our Ref: APP/V0728/W/15/3134502

Mr David Staniland
Knight Frank
No.1 Marsden Street
Manchester
M2 1HW

20 July 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY WEST MIDLANDS METROPOLITAN PENSION FUND
LAND TO THE SOUTH OF MARSKE-BY-THE-SEA, BOUNDED BY LONGBECK ROAD,
A1085 AND A174, REDCAR, CLEVELAND, TS11 6EZ
APPLICATION REF: R/2013/0669/OOM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI, who held a public local inquiry between 11-14, 18-21 and 25 October 2016 into your client's appeal against the decision of Redcar and Cleveland Borough Council to refuse planning permission for the development of the site to provide up to 1000 no. residential dwellings, together with ancillary uses and a neighbourhood centre, a park-and-ride car park, a petrol filling station, a drive-thru, a pub/restaurant and a 60 bed hotel, with details of access, in accordance with application ref: R/2013/0669/OOM, dated 27 September 2013.
2. On 16 October 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal for residential development of over 150 units or on sites of over five hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation. He has decided to allow the appeal and grant planning permission. A

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copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR4, the Secretary of State is satisfied that the amended Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. The proposed development was amended after the application was determined by the Council. The amendments were agreed by the main parties and the Inspector was satisfied that no other party's interests were jeopardised by consideration of the amended scheme at the planning inquiry (IR2). The amended scheme is described in the Statement of Common Ground as 'a 821 dwelling scheme with ancillary uses, neighbourhood centre, petrol filling station, drive-thru restaurant, pub/restaurant, 60 bed hotel and car parking, with details of access'. The amended scheme and an amended parameters plan were considered at the Inquiry. The Secretary of State is satisfied that no one has been unfairly disadvantaged by the amendment.

Matters arising since the close of the inquiry

7. The Secretary of State referred back to parties on 18 May 2017 to seek their views on the implications for this appeal, if any, of the Supreme Court judgment on the cases of *Cheshire East BC v SSCLG* and *Suffolk Coastal DC v SSCLG*, which was handed down on Wednesday 10 May 2017. A response was received from Knight Frank on 10 July 2017. A copy may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the saved policies of the Redcar and Cleveland Local Plan (LP) 1999, and the Core Strategy Development Plan Document (CS) 2007 and Development Policies Development Plan Document (DP) 2007 of the Redcar and Cleveland Local Development Plan Framework.
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

Emerging plan

11. The Secretary of State notes that the emerging Redcar and Cleveland Local Plan was submitted to the Secretary of State for Examination on 19 April 2017. Examination hearings are expected to begin in September 2017. The Secretary of State considers that the most relevant policies include SD2 (Locational policy) and N2 (Green infrastructure). He has taken into account that the emerging plan is at an early stage, that local consultation on the emerging plan indicates an unresolved objection to Policy N2 by the appellant, and that the emerging policies are largely in accordance with the Framework. Overall he considers that these emerging policies carry little weight.

Main issues

12. The Secretary of State agrees with the Inspector that the main issues in this case are the effect of the proposed development on the character and appearance of the area; the effect of the proposed development on the significance of heritage assets; and whether the Council can demonstrate a 5-year supply of land for housing.

The effect of the proposed development on the character and appearance of the area

13. The Secretary of State has carefully considered the Inspector's analysis of the impact on the character and appearance of the area. For the reasons given in IR230-236, he agrees with the Inspector at IR233 that the proposed development would not adversely affect the character of the remainder of area R2, and would not harm the character of area E7. He further agrees at IR236 that the proposed development would not have a significant adverse effect on the appearance of the area, and considers that any adverse effects carry little weight against the proposal.
14. For the reasons given in IR237-240 the Secretary of State agrees that the strategic gap between Marske and New Marske would remain, and the quality, value, multi-functionality and accessibility of the part of the gap that would be developed would be enhanced. He therefore agrees with the Inspector at that the proposed development does not, in this regard, conflict with CS policy CS23. He further agrees that the proposed development would not result in any significant harm to the character and appearance of the area and does not therefore conflict with CS policy CS22 (IR240).

The effect of the proposed development on the significance of heritage assets

15. The Secretary of State has carefully considered the Inspector's assessment of the effect of the proposed development on the significance of the Scheduled Ancient Monument (SAM), and has taken into account its historic, economic and visual linkages to the village of Marske (IR241-243). He has also taken into account the view of English Heritage¹ that 'less than substantial harm' would be caused to the significance of the SAM (IR245). He agrees that the SAM is a heritage asset of the highest significance, and that the proposed development would not have any direct effect on that significance (IR241).
16. The Secretary of State has taken into account that a 150m buffer zone would be provided within which there would be no built development (IR243). For the reasons given in IR244, he agrees with the Inspector that the SAM would be experienced from an undeveloped area, that the proposed built development would be significantly further from the SAM than existing built development, and that the proposed development would not affect the experience of the SAM from the railway footbridge or from the Black Path for walkers approaching from the west. Overall he agrees with the Inspector that the

¹ Now Historic England.

development would not intrude into the setting of the SAM and there would be no adverse effect on the significance of the heritage asset.

17. The Secretary of State has taken into account that a Conservation Management Plan (CMP) would be put in place which could provide for access to the SAM and for the display of on-site information about its history and significance. The SAM would thus become an educational resource for the whole community. The Secretary of State agrees with the Inspector at IR245 that this would be a direct and beneficial consequence of the grant of planning permission, and considers that these benefits carry moderate weight in favour of the proposal.
18. The Secretary of State has also carefully considered the impact on the significance of St Marks Church. For the reasons given in IR246-7, he agrees with the Inspector at IR248 that no harm would be caused to the significance of St Marks Church.
19. Overall the Secretary of State agrees with the Inspector's conclusion at IR248 that the proposed development does not conflict with CS policy CS25 or DP policy DP11. In reaching this conclusion he has taken account of his duty under s.66 of the LBCA Act.

Five year housing land supply

20. The Secretary of State notes the main parties' agreement that there are 1839 housing units under construction or with planning permission, that the Council has a record of persistent under-delivery and that a buffer of 20% should be applied (IR249). He agrees with this assessment, and also with the Inspector's assessment at IR262 that the backlog is 707 houses, and that it should be dealt with within the first five years of the plan period (which equates to 141dpa). He further agrees, for the reasons set out at IR250, that the CS housing requirement (270dpa) should be set aside in favour of an Objectively Assessed Need (OAN) figure for the Borough.
21. The Secretary of State has considered carefully the arguments put forward by the main parties in respect of the OAN figure, and the Inspector's assessment of these arguments (IR251-264). He considers that the figure of 132dpa, as set out in the conclusion on the Strategic Housing Market Assessment, published in February 2016 (IR256), is the appropriate starting point for considering OAN.
22. He accepts the Appellant's arguments at IR260 that models such as that put forward by Experian cannot be relied upon in circumstances such as the 'one-off shock' associated with the closure of the steelworks, and agrees that considerable efforts will be made '...to replace those lost jobs, not to mention regenerate the steelworks site'. He also accepts that past trends and/or economic forecasts are a valid part of an assessment of employment trends (IR253), and considers them to be relevant in the circumstances of this case. Overall he therefore considers that the appropriate job growth prediction will be nearer to the Appellant's figure of 2,200 than to the Council's figure of 500. He agrees with the Inspector at IR261 that it is not possible in this context to reach a firm conclusion on the OAN for the HMA. The Secretary of State considers that the OAN in this case lies in the range 240-285, and that the 5-year housing land supply is therefore in the range 3.6-4 years.
23. The Secretary of State considers that the appeal proposal is in conflict with Policy DP1, which defines the type of development which is acceptable in principle outside development limits. The Secretary of State has considered whether Policy DP1 is out of date. He considers that it has some limited consistency with the core principles of the Framework (for example as set out in the 5th bullet point of paragraph 17). However, he

has concluded above that the Council has not identified a 5-year housing land supply as required by paragraph 47 of the Framework. Overall he considers that Policy DP1 is out of date by virtue of inconsistency with the Framework, and taking into account his conclusion that the housing land supply is in the range of 3.6-4 years, he considers that it carries only limited weight.

Other matters

24. For the reasons given in IR266-270, the Secretary of State considers that matters relating to flooding, drainage, economic competition, highways, traffic and parking do not weigh against the proposal.

Planning conditions

25. The Secretary of State has given consideration to the Inspector's analysis at IR226 and IR275, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy tests set out at paragraph 206 of the Framework and that the conditions set out at Annex A should form part of his decision.

Planning obligations

26. Having had regard to the Inspector's analysis at IR227-229, the planning obligation dated 14 November 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusions, for the reasons given in IR227-229, that the various Schedules of the Agreement comply with Regulation 122 of the CIL Regulations. He considers that the provisions of the Agreement meet the tests at paragraph 204 of the Framework, are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development.
27. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the appeal. For the reasons given at IR229, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

Planning balance and overall conclusion

28. For the reasons given above, the Secretary of State considers that the proposed development would conflict with DP policy DP1 (Development outside development limits). However, he considers that this policy carries limited weight, and that the proposed development is in accordance with the development plan as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
29. In the absence of a 5-year supply of housing land, paragraph 14 of the Framework states that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted.

30. The Secretary of State considers that the contribution to meeting housing needs carries significant weight in favour of the development, the economic benefits carry moderate weight, and the heritage benefits carry moderate weight.
31. He considers that the conflict with policy DP1 carries limited weight against the proposal. He further considers that there would not be a significant adverse impact on the character and appearance of the area, and that this carries little weight against the proposal. For the reasons given above, he considers that the strategic gap would be maintained and that no harm would be caused to the significance of the heritage assets.
32. In the light of his conclusions on the heritage assets and the strategic gap, the Secretary of State considers that there are no specific policies in the Framework which indicate that this development should be restricted. He further considers that the adverse impacts of granting permission do not significantly and demonstrably outweigh the benefits. He concludes that there are no material considerations to indicate that the proposal should be determined other than in accordance with the development plan.

Formal decision

33. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the development of the site to provide a 821 dwelling scheme with ancillary uses, neighbourhood centre, petrol filling station, drive-thru restaurant, pub/restaurant, 60 bed hotel and car parking, with details of access, in accordance with application ref: R/2013/0669/OOM, dated 27 September 2013, amended as described in paragraph 6 above.
34. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
36. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
37. A copy of this letter has been sent to Redcar and Cleveland Borough Council, and notification has been sent to others who asked to be informed of the decision.

Yours sincerely

Maria Stasiak

Authorised by the Secretary of State to sign in that behalf

ANNEX A – CONDITIONS

1. Application for approval of reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
2. For each phase or sub phase of the development, details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before development is commenced and the development shall be carried out as approved. The details shall accord with the following plans: The details submitted shall be in accordance with the following plans:
 - Fixed Parameter Plan ((SK) 104 Rev D0)
 - Indicative Masterplan ((SK) 103 Rev D0)
 - Indicative Phasing Diagram ((SK) 059 PL1)
 - Indicative Landuse Parameter Plan ((SK) 056 PL5)
 - Indicative Access Parameter Plan ((SK) 058 PL1)
 - Indicative Landscape Plan ((SK) 057 PL1)
3. Each phase or sub phase of the development shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall not be implemented until a Phasing Plan for the timing and delivery of the development, or parts of it, in terms of the relationship between the phases or sub-phases of development and the proposed infrastructure, has been submitted to and approved in writing by the Local Planning Authority. Development shall be undertaken in accordance with the approved Phasing Plan.
5. For each phase or sub-phase of the development, details submitted in accordance with Condition 2 shall include existing and proposed ground levels together with finished floor levels for the development. The levels shall be shown by sections through the site and the development shall be carried out as approved.
6. An art feature or features shall be incorporated into the development in accordance with a scheme that has first been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in their entirety in accordance with the Phasing Plan required by condition 4 above.
7. Prior to the commencement of the relevant phase or sub-phase of the development, a Construction Traffic Management Plan (CTMP) shall be submitted to and agreed in writing with the Local Planning Authority. Development or each phase or sub-phase shall be undertaken in accordance with the approved CTMP.
8. For each phase or sub-phase of the development, development shall not take place until details have been submitted to and approved in writing by the Local Planning Authority of proposals to provide contractors car parking and material storage within the site. The details shall include a timetable for their provision linked to the Phasing Plan referred to in condition 4 above. The details approved shall be implemented and retained for the duration of the construction of each relevant phase or sub-phase until its completion in accordance with the approved timetable.

9. Prior to the occupation of any phase or sub-phase of the development hereby approved, a detailed Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall be implemented for five years after final occupation of that phase or sub-phase.
10. For each phase or sub-phase of the development, development shall not take place until a scheme of ecological mitigation and enhancement, including a timetable for scheme implementation, to accord with the details set out in the Environmental Statement and Phase I Habitat Survey, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall provide for the protection of the most important protected habitat and wildlife species on the site identified in the ES. The development shall be implemented in accordance with the approved scheme and timetable.
11. For each phase or sub-phase of the development no part of the development shall be occupied until a scheme of lighting for the site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme of lighting shall be implemented in accordance with the timetable set out in the approved Phasing Plan required by condition 4 above.
12. For each phase or sub-phase of the development a minimum of 10% of the site's energy requirements shall be provided by embedded renewable energy, in accordance with a scheme that has first been submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be implemented in its entirety, for that particular phase or sub-phase, in accordance with the Phasing Plan required by condition 4 above prior to the occupation of the development.
13. For each phase or sub-phase of the development the working hours for all construction activities on the site shall be limited to between 0800 and 1800 hours on Mondays to Fridays and 0800 to 1300 hours on Saturdays and not at all on Sundays or Public Holidays.
14. For each phase or sub-phase of the development no development shall take place until a scheme for the suppression of dust at the construction site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the commencement of development and shall be adhered to for the duration of the construction period.
15. For each phase or sub-phase of the development, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts (a) to (c) below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until part (e) has been complied with in relation to that contamination.

(a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by

competent persons and a written report of the findings must be produced. The written report is subject to approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground and surface waters, ecological systems, and archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

(b) Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to approval in writing of the Local Planning Authority.

(d) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of part (a) and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of part (b), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

(e) Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring of the long-term effectiveness of the remediation over a period of 10 years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority. This must be

conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

16. For each phase or sub-phase of the development and prior to the commencement of development, details of the surface water drainage scheme shall be submitted and approved by the Local Planning Authority (in consultation with the Lead Local Flooding Authority and Northumbrian Water) and the development shall be completed in accordance with the approved scheme. The design of the drainage scheme shall include;
 - (i) Restriction of surface water run-off rates (QBAR value) with sufficient storage within the system to accommodate a 1 in 30 year storm;
 - (ii) Measures to mitigate known surface water issues on the northwest corner of the site in order to mitigate the risk of increased flooding in this area;
 - (iii) The method used for calculation of the existing greenfield run-off rate shall be the ICP SUDS method. The design shall also ensure that storm water resulting from a 1 in 100 year event, plus 30% climate change surcharging the system, can be stored on site with minimal risk to persons or property and without overflowing into drains, local highways or watercourses;
 - (iv) Full Micro Drainage design files (mdx files) including a catchment plan;
 - (v) The flow path of flood waters for the site as a result on a 1 in 100 year event plus 30%.
17. For each phase or sub-phase of the development and prior to the commencement of the development, details of a Surface Water Drainage Management Plan shall be submitted and approved by the Local Planning Authority. The development shall be completed in accordance with the Management Plan. The Management Plan shall include;
 - (i) The timetable and phasing for construction of the drainage system;
 - (ii) Details of any control structure(s);
 - (iii) Details of surface water storage structures;
 - (iv) Measures to control silt levels entering the system and out falling into any watercourse during the construction process;
 - (v) Details of any structures or features that will be privately owned and maintained, but which make a contribution to the flood or coastal erosion risk management of people and property.

The development shall be carried out in accordance with the approved Management Plan.
18. For each phase or sub-phase of the development no dwelling or other building shall be occupied until a Management & Maintenance Plan for the surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the Management & Maintenance Plan. The plan shall include details of the following;
 - (i) A plan clearly identifying the sections of surface water system that are to be adopted;
 - (ii) Arrangements for the short and long term maintenance of the SuDS elements of the surface water system.
19. For each phase or sub-phase of the development no part of the development shall be brought into use until the parking and servicing provision associated with it are available for use.

20. The details submitted pursuant to condition 2 above shall ensure that private drives should be a minimum of 3.7m wide for their entire length and should serve no more than 5 properties.
21. Access to the site from the existing highway shall incorporate a visibility splay of 2.4m x 43m on Longbeck Road and 2.4m x 43m on the A1085. There shall be no obstructions greater than 600mm in height within these splays and any vegetation shall be maintained at this height.
22. The details pursuant to condition 2 above shall include full highway construction and layout details in accordance with Redcar and Cleveland Design Guide and Specification and shall highways shall be designed and implemented to adoptable standards.
23. Prior to the commencement of development (unless stated otherwise below), or in accordance with a phasing scheme to be agreed in writing with the Local Planning Authority, the following highways improvements that are set out in the Transport Assessment (Report Reference 1270/3/E, August 2016) shall be submitted to and approved in writing by the Local Planning Authority:
- Change Bus stop locations on Longbeck Road (identified on drawing no. 1270/06/D) and on A1085 (identified on drawing no. 1270/37/D);
 - Pedestrian access on A1085 into Marske, by way of a footway under the A1085 railway bridge, prior to first occupation of the development;
 - A174/A1042 Kirkleatham Lane (SJ18, drawing no. 1270/40), prior to first occupation of the development;
 - A174/ Fishponds Road (SJ19, drawing no. 1270/34/A), prior to occupation of Phase 2 (the 275th dwelling);
 - A174/Redcar Lane (SJ20, drawing no. 1270/35), prior to occupation of Phase 3 (the 633rd dwelling).
24. For each phase or sub-phase of the development, prior to the first occupation of any dwelling, boundary walls and fences shall be erected in accordance with a scheme that has first been approved in writing by the Local Planning Authority and shall thereafter be maintained.
25. For each phase or sub-phase of the development, development shall not be occupied until a scheme for the enclosure of any noise emitting plant and machinery with sound-proofing material, including details of any sound-insulating enclosure, mounting to reduce vibration and transmission of structural borne sound and ventilation or extract system, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the building and shall thereafter be retained.
26. No development shall take place until a scheme for protecting the occupants of the proposed residential development from noise from the adjacent road network and from the railway has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the development and shall thereafter be retained.

27. For each phase or sub-phase of the development the landscaping details submitted pursuant to condition 2 above shall make provision for the protection and enhancement of the proposed route of the Public Right of Way (within the site) together with opportunities for ecological enhancement /biodiversity.
28. For each phase or sub-phase of the development, a full planting plan including details of species and mix, together with a landscape management plan covering a period of at least 10 years together with any proposals for advance structure planting shall be submitted to and approved by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is sooner, and any trees or plants which within a period of ten years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
29. For each phase or sub-phase which adjoins the scheduled ancient monument boundary and prior to the commencement of the development in that location, a written scheme of investigation (WSI) for a programme of archaeological evaluation work shall be submitted to and agreed with the Local Planning Authority. The WSI shall as a minimum provide for the following:
- (i) a magnetometer survey of all of the land constituting the areas intended to be set out as landscaping/playing fields lying between the boundary of the scheduled monument at Hall Close and the zones of built development to the south and west, indicated on Fixed Parameter Plan, reference 11-043(SK)104DO;
 - (ii) a resistivity survey of that part of the land subject to magnetometer survey which lies within 50 metres of the boundary of the scheduled monument;
 - (iii) trial trenching of all anomalies of archaeological potential revealed by the magnetometer/resistivity surveys that may be affected by ground works required for the development (including works carried out by statutory undertakers or their agents or sub-contractors) at or below a depth of 300mm;
 - (iv) methodologies, recording, assessment, reporting, and archiving in accordance with professional practice and CiFA standards and guidance.

The requirements of the WSI shall be carried out and the full reports for the surveys and trial trenching shall be made available to the local planning authority before the commencement of development of the phase or sub-phase which adjoins the scheduled ancient monument boundary and in sufficient time to allow agreement of a programme of archaeological investigation (if any) required by this condition.

Prior to the commencement of development of the phase or sub-phase which adjoins the scheduled monument boundary, the developer shall agree with the local planning authority whether the results of the surveys and trial trenching suggest that further archaeological investigation of any structures, remains or deposits is required. If archaeological investigation is required a further WSI for a programme of archaeological work shall be agreed with the local planning authority before the commencement of development. The WSI shall provide for an appropriate agreed programme of work, which may include full excavation of features, strip/map/sample/record, or watching brief, or any combination of those intensities of work, in accordance with then current professional methodologies, practices, recording, reporting, assessment and archiving, and CiFA standards and guidance.

The requirements of any further WSI shall be carried out and the report or reports of work shall be made available by the developer to the local planning authority no later

than when the development of the phase or sub-phase which adjoins the scheduled monument boundary is first brought into use.

30. Prior to the commencement of the development hereby permitted a Conservation Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority, in consultation with Historic England, for the management of the scheduled area of Hall Close (SAM 32746; NHL 1018948) and land within its vicinity to the south and west. The CMP shall provide for maintenance, public access, interpretation (including the results of any archaeological work on adjacent areas carried out by the developer), restriction of access, and prohibitions, or any similar thing or matter in relation to the nature and proximity of the development as well as a timetable to carry out such works. The CMP shall be implemented in accordance with the approved timetable.
31. In accordance with the CMP, the Scheduled Ancient Monument shall be re-assessed to establish whether or not it remains on the Historic England List of Scheduled Ancient Monuments at Risk. If any residual works are required by Historic England they shall be carried out and certified by Historic England.
32. The extent and detailed layout (including gradients, surfaces, planting, any built structures and scheduled monument boundary) in those areas west and south of the scheduled monument at Hall Close, indicated on Fixed Parameter Plan, reference 11-043(SK)104DO to be school playing fields, linear park, open grass and shrubs, shall be approved in writing with by the Local Planning Authority prior to the commencement of the phase or sub-phase which adjoins the scheduled monument boundary. The phase or sub-phase which adjoins the scheduled monument boundary shall not thereafter be brought into use or occupied other than in accordance with that approved detailed layout.
33. Prior to the commencement of the 200th dwelling on the development site, a Reserved Matters (or Detailed Planning) Application for the development of the Neighbourhood Centre shall be submitted to and approved in writing by the Local Planning Authority.
34. Prior to the occupation of the 600th dwelling on the development site, the Neighbourhood Centre approved pursuant to condition 33 shall be constructed and made available for occupation.

Report to the Secretary of State for Communities and Local Government

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 22 February 2017

TOWN AND COUNTRY PLANNING ACT 1990

REDCAR AND CLEVELAND BOROUGH COUNCIL

APPEAL

by

WEST MIDLANDS METROPOLITAN PENSION FUND

Inquiry held on 11-14, 18-21 and 25 October 2016

Land to the south of Marske-by-the-Sea, Bounded by Longbeck Road, A1085 and A174, Redcar,
Cleveland TS11 6EZ

File Ref: APP/V0728/W/15/3134502

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Land to the south of Marske-by-the-Sea, Bounded by Longbeck Road, A1085 and A174, Redcar, Cleveland TS11 6EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by West Midlands Metropolitan Pension Fund against the decision of Redcar & Cleveland Borough Council.
- The appeal was recovered for decision by the Secretary of State, by a direction made under section 79 of the Town and Country Planning Act 1990, on 16 October 2015.
- The application Ref R/2013/0669/OOM, dated 27 September 2013, was refused by notice dated 11 March 2015.
- The development proposed is up to 1000 no. residential dwellings, together with ancillary uses and a neighbourhood centre, a park-and-ride car park, a petrol filling station, a drive-thru, a pub/restaurant and a 60 bed hotel, with details of access.

Summary of Recommendation: The appeal be allowed and planning permission be granted, subject to conditions set out in a schedule attached to this report.

Procedural Matters

The planning application

1. The application was submitted in outline form with all matters except for access reserved for future consideration.

The proposed development

2. The proposed development was amended after the application was determined by the Council. The amendments have been agreed by the main parties and no other party's interests are jeopardised by consideration of the amended scheme. The amended scheme is described in the Statement of Common Ground as 'a 821 dwelling scheme with ancillary uses, neighbourhood centre, petrol filling station, drive-thru restaurant, pub/restaurant, 60 bed hotel and car parking, with details of access'. The amended scheme and an amended parameters plan were considered at the Inquiry and have been in this Report.

Inquiry and Core Documents

3. Documents submitted at the Inquiry (ID) are listed in an appendix to this Report. The amended Fixed Parameters Plan is ID6. Core documents (CD) are also listed in appendix to this Report.

Environmental Statement

4. The proposed development is EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. An Environmental Statement (ES) was submitted to The Planning Inspectorate (PINS). The ES was found not to meet the requirements of the EIA Regulations. An amended ES was submitted to PINS, and copied to the Council, on 5 September 2016 and was advertised in a local newspaper. The amended ES was found to meet the requirements of the EIA Regulations.

Statements of Common Ground

5. The main parties have agreed a Statement of Common Ground (ID5) and a Highways and Transport Statement of Common Ground (ID4).

The Council's Refusal Notice

6. The Council's Refusal Notice cited two reasons for refusal of the outline planning application. These are as follows:

The application site is located outside of the development limits and within a Strategic Gap and it is considered that in the light of available information no exceptional circumstances have been demonstrated to justify the grant of planning permission. The proposed development would result in a substantial built intrusion into an extensive area of countryside beyond the currently approved development limits of Marske that would be detrimental to the character and appearance of this part of the local countryside and would notably reduce the broad Strategic Gap between Marske and New Marske. The Local Planning Authority has considered information set out in the application to justify a departure from policy but considers those grounds do not justify a policy departure at this time. The proposal therefore fails to accord with Policies CS23 (Green Infrastructure) and DP1 of the Local Development Framework (Core Strategy and Development Policies DPDs, July 2007).

The proposed development, taking into account the information submitted to support the application, the location of the Scheduled Ancient Monument (SAM) and the advice received from English Heritage, will have a less than substantial harm upon the SAM but, in the opinion of the Local Planning Authority, the public benefits arising from the proposed development do not outweigh the less than substantial harm identified. The development, therefore, fails the relevant test set out at Paragraph 134 of the National Planning Policy Framework, policy CS25 (Built and Historic Environment) and policy DP11 (Archaeological Sites and Monuments) of the Redcar and Cleveland Local Development Framework (Core Strategy and Development Policies DPDs, July 2007).

The Site and Surroundings

7. The site is about 50 hectares of agricultural land. To the north of the site is a railway line that marks the south boundary of the village of Marske-by-the-Sea (hereafter referred to as Marske). To the east of the site is the A1085 which extends out from the village towards a roundabout junction with the A174, which extends along the south boundary of the site in a wide cutting. To the west of the site is Longbeck Road which extends out from the village also to a roundabout junction with the A174. A triangular area of the area between the three roads and the railway line, to the east of the roundabout junction of Longbeck Road and the A174, is agricultural land not within the site. Also not within but surrounded by the site is Marske Inn Farm, a site mainly in use for vehicle repair and maintenance purposes.

8. The site slopes gently up from north to south and is mainly arable land though a roughly square area at its north-east corner is a Scheduled Ancient Monument (SAM), described by Historic England as 'Manorial Settlement, dovecote and fragment of field system'. Between the SAM and the railway line is Marske Station and a coal depot. The A1085 passes under the railway line and becomes High Street. Where the road passes under the bridge it has no footpath. The village has a district centre based on the High Street with a variety of shops, licenced premises, public services and facilities, and primary and secondary schools. A neighbourhood shopping parade is situated on Hummershill Lane to the east of the High Street.

9. Between the A1085 and Longbeck Road, alongside the railway line, is a public footpath, the Black Path. To the north of Marske is the coastline of the North Sea.

The village is surrounded by countryside though the settlements of Redcar, New Marske and Saltburn are nearby to the west, south-west and east respectively.

Planning Policy

Local planning policy

10. The Development Plan includes saved policies of the Redcar and Cleveland Local Plan 1999 (LP), adopted on 1 June 1999, and the Core Strategy Development Plan Document (CS) and the Development Policies Development Plan Document (DP) of the Redcar and Cleveland Local Development Framework (LDF), both of which were adopted before publication of the National Planning Policy Framework (NPPF).

11. CS policy CS23 'Green Infrastructure' states that strategic gaps between Marske and New Marske and between Marske and Saltburn, amongst other areas, will be protected and, where appropriate, enhanced to improve their quality, value, multi-functionality and accessibility. The strategic gap designation is not identified on the adopted LP Proposals Map and there are no clearly defined boundaries of the strategic gaps. CS policy CS22 seeks to protect and enhance the Borough's landscape and CS policy CS25 'Built and Historic Environment' states that the character of the built and historic environment will be at least protected.

12. DP policy DP1 defines the types of development that will be acceptable in principle outside development limits, though these limits are not defined in the LDF. The main parties agree that the proposed development does not fall within any of the acceptable types of development and that the policy is a policy for the supply of housing. DP policy DP11 states that development that would adversely affect important archaeological sites or monuments will not be approved.

13. CS policy CS13 states that the LDF will provide for net additions to the dwelling stock of the Borough of 300 dwellings per annum in 2004-2011 and 270 dwellings per annum in 2011-2021. These housing requirements are based on the provisions of the now withdrawn Regional Spatial Strategy for the North-East (RSS).

14. A Redcar and Cleveland Local Plan, to replace the LDF, is in preparation. The Council consulted on the Local Plan Scoping Report in July 2015 and on a Draft Local Plan in May 2016. A publication version of the Local Plan has been the subject of consultation but has not been the subject of independent examination. The main parties agree therefore that no weight can be attached to the emerging Local Plan.

National planning policy

15. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years' worth of housing against their housing requirements. Paragraph 49 states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

The Proposals

16. The proposed development is as described in paragraph 2 and as shown on the amended Fixed Parameters Plan. The non-housing elements of the development would be in the south-east corner of the site with a single access off the A1085. There would be a wide undeveloped buffer to the west of the SAM and to the south of New Marske Farm, and a landscape buffer along the boundary to the A174 and to the

boundary to the triangle of agricultural land to the south-west of the site. The remainder of the site would be developed for housing with a spine road between accesses off Longbeck Road and the A1085.

Main Issues

17. The main issues were set out at the Inquiry as being:
1. The effect of the proposed development on the character and appearance of the area;
 2. The effect of the proposed development on the significance of heritage assets;
 3. Whether the Council can demonstrate a five year supply of land for housing.

The Case for West Midlands Metropolitan Pension Fund

The material points of the case made by West Midlands Metropolitan Pension Fund are:

Character and appearance of the area

Strategic Gap

18. The Council has sought to make much of alleged differences between the Appellant's interpretation of CS policy CS23 and that of the Inspector in the Saltburn appeal. It is therefore useful to remember exactly what the Inspector said "I consider it to be both a spatial policy and, by implication, a landscape policy, in so far as it seeks to protect a landscape which forms part of a strategic gap".

19. It is clear that the Inspector saw policy CS23 as primarily a spatial policy. While he recognised that it has a landscape function, his view was that this function was a natural and logical consequence of the spatial function. That the Inspector was able to conclude on compliance with policy CS23 before going on to assess landscape impacts later in his decision shows that his focus was on spatial matters. This is a correct interpretation of policy CS23 for two reasons:

20. Firstly, the wording of the policy itself does not refer to landscape quality or protection, requiring only the development should protect or enhance, "quality, value, multi-functionality and accessibility". Secondly, the purpose of the gap is to prevent the coalescence of the settlements of Marske and New Marske. This interpretation is entirely consistent with the approach adopted by the Council in all circumstances other than in relation to this appeal.

21. As a matter of fact, the development would not result in coalescence, there still being a gap between the A174 to the south of the appeal site and the northern edge of New Marske. Furthermore, development would not result in the two settlements appearing to coalesce from any viewpoint. It is therefore beyond argument that the purpose of the gap is not compromised by the proposed development.

22. The Appellant's approach to the purpose of policy CS23 sits comfortably with the Council's long held views outside of this appeal. In 2013 the Council assessed the site as being, "the most suitable and logical greenfield growth location in the conurbation due to the...(fact that)...it is less constrained by environmental factors...

and policy considerations". The logic of the Council's approach is that nothing would ever get built in the strategic gaps. This would spell the end for the growth of Marske, the village being surrounded by sea to the north, strategic gaps to the east and south and green wedge to the west. It would also be inconsistent with the Inspector's approach to the Saltburn strategic gap. This is not a conclusion that finds any support in either CS policy CS23 or national policy.

23. The CS Key Diagram is the closest thing we have to a proposals map, the Council having not found time to adopt one in the decade since the adoption of the CS. That diagram clearly and deliberately identifies the boundary of the conurbation as being the A174. This is further evidence that it was never intended for strategic gaps to be sacrosanct, otherwise the boundary of the conurbation could just as easily have followed the railway line and the existing settlement edge.

24. In landscape terms the appeal site can be developed without harming the strategic gap and would, in fact, enhance the gap by reducing the visibility of the boundary of Marske from New Marske and vice versa.

Character

25. The 2006 Landscape Character Assessment (LCA) identifies a series of positive and negative elements within the landscape. Positive elements identified in the assessment include variety of landform, accessibility by pedestrians, extensive views, standing or running water, hedgerows and woodlands, wildlife habitats, and archaeological and historical features, and, at the coast, beach and cliffs. Negative elements include intrusive urban elements, (such as power lines and towers), urban edges, sparsity (or evidence of loss of) hedgerow or tree cover, limited public access and caravan sites.

26. This analysis leads to a conclusion as to whether the landscape of each unit has a character which should be retained and where change would be damaging (as a Sensitive Landscape), or whether the landscape may be improved (as a Restoration Landscape). Within the Redcar Flats landscape character area the landscapes to the east and west of Marske (R6 and R7) are identified as Sensitive Landscapes (in part because of their naturally open character caused by their coastal location), as are the woodland areas to the west of Saltburn (R8) and at Kirkleatham (R3). The appeal site falls within R2, which is designated as a Restoration Landscape.

27. While Mr Barker, for the Council, maintained throughout the appeal that openness was an important characteristic of the site, this is impossible to reconcile with everything else that the Council has ever published on the topic. In fact, it is diametrically opposed to the views of the Council before (and in the case of the emerging plan during but outside of the scope of) this appeal. In contrast, the Appellant's argument that the landscape character of the site would be enhanced by the proposed landscaping sits comfortably with the Council's position.

28. Mr Barker supplemented his argument by arguing that the designation of the appeal site as a strategic gap gave it a value that differentiated it from the rest of R2 and means that the Restoration Landscape designation is not appropriate. The strategic gap designation dates back to at least 2004, when it was identified in the Tees Valley Structure Plan. This was a full two years before the LCA, which did not refer to strategic gaps at all and, in any event, distinguished between the quality of the land to the south of Marske to that to the east and west (strategic gap and green wedge respectively). Nor did the SPD choose to reference strategic gaps in 2010, despite their having been reconfirmed again in the Core Strategy.

29. The landscaping proposed would enhance the landscape character of the site, softening the current hard edge of Marske and restoring landscape structure, the absence of which is the primary reason for the Council identifying it as a Restoration Landscape. The Appellant rejects the suggestion that deep boundary planting is intended to hide the development or that it creates an automatic expectation of built form behind. The proposed landscaping (which Mr Barker accepted will substantially screen the built form) is in keeping with the character of the high quality landscapes in the area and would contribute towards the restoration of the landscape character locally so as to be a clear benefit of the proposals.

Appearance

30. Once again Mr Barker was forced to overstate his case in order to try to reach the threshold for harm; this time classifying all receptors as highly sensitive and giving anything that is currently visible from any view a degree of landscape value that might be justified when it comes to views of the coast. This is understandable given that all of the viewpoints that he identified are highly localised and most of them are only available to vehicular and rail traffic, not pedestrians. Even where the views are available to pedestrians, the sensitivity of the pedestrian is reduced because the views coincide with crossings over busy roads.

31. Mr Barker also accepted that, in the main, the view after planting has established would be of the landscaping rather than of built development. This again brings him back to having to argue that trees and hedgerows are harmful visual intrusions. On a number of occasions, Mr Barker was also forced to disregard the fact that the site lies on the edge of Marske. His chosen photographs from the Black Path do not address the fact that users are following the existing settlement edge alongside a railway line.

Valued landscape

32. In response to a question from the Inspector, Mr Barker agreed that there was a difference between a valued landscape for the purposes of the NPPF and a landscape of value. Furthermore, he indicated that the appeal site is a landscape of value. The site is not a valued landscape in NPPF terms and paragraph 109 of the NPPF is not engaged.

Conclusion on character and appearance matters

33. The appeal proposals would not compromise or undermine the strategic gap. Whilst there would be a change to landscape character and that within the site the impact would be significant, this highly localised change (which can be applied to all development on greenfield sites) must be weighed against the positive impact that the proposals would have on wider landscape character, contributing towards the objectives set for this Restoration Landscape.

34. In visual terms, the topography of the wider area means that the extensive views identified as a positive feature of the area by the LCA are largely retained. Only relatively few views would be impacted by the proposals and these are both highly localised and largely not affecting highly sensitive receptors. When considered in the context of existing built form and of the existing lack of visibility into the site from the surrounding areas, the impacts do not justify a refusal of the appeal.

Heritage assets

Policy context

35. The NPPF is clear on how potential impacts on heritage assets should be assessed and taken into account in the context of development proposals. The starting point is to assess the significance of the potentially affected asset, and then to assess the impact that the development proposal would have on that significance.

36. Heritage significance can be derived from any or all of the following: archaeological interest, architectural interest, artistic interest, and/or historic interest. The setting of a heritage asset is not a heritage asset in its own right, but it can make a contribution to the significance of the relevant heritage asset.

37. Whether and to what extent a particular asset's setting contributes to its significance is a matter of fact and degree; setting does not automatically contribute to an asset's significance as is made clear by the NPPF's definition of setting: "The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral". What constitutes setting is also a matter of assessment; the setting being the surroundings in which the asset can be experienced.

38. While there are several advice and guidance notes that can be of assistance in carrying out this assessment, these documents do not supplant or replace the NPPF and the clear approach that it requires. It is common ground that the appeal proposals do not directly impact on, or harm, the significance of any heritage assets.

Scheduled Ancient Monument (SAM)

39. It takes nothing away from the heritage significance of the SAM to accept that its appearance is relatively modest to the untrained eye. In reality, it is a collection of mounds in a field that is currently in use for grazing (albeit very important mounds, the archaeological significance of which is recognised in the Schedule entry). Nonetheless the main parties agree that the SAM has the very highest level of significance.

40. Where the main party's views diverge is in defining the extent of the SAM's setting and the contribution that setting makes to that significance. This is important because, in the absence of direct harm to the SAM, it is only by harming the contribution that its setting makes to its significance that the appeal proposals can have any adverse impact on the SAM.

41. At this point it is important to pause and be clear exactly what must be proven before any harm to the SAM can be established:

- the setting of the SAM must be defined;
- the contribution that that setting makes to the significance of the SAM must be assessed;
- the change that will occur within the setting must be identified; and
- the extent to which such change harms the contribution that setting makes to the SAM must be assessed.

42. One of the most serious weaknesses in the Council's case on heritage is that they have singularly failed to undertake this four-stage assessment.

Setting of the SAM

43. Mr Ives' has carried out a detailed analysis of the surrounding in which the SAM is experienced, taking into account both the locations from which the SAM can be experienced and the locations that can be experienced from the SAM. During the course of the Inquiry the Council sought to make much of the allegation that Mr Ives had wrongly confined his assessment of setting to the locations that can be seen from the SAM and from where the SAM can be seen. It is clear from Mr Ives' evidence that he did not exclude non-visual methods of experiencing the SAM, but that his conclusion was that the SAM, by its very nature, can only be experienced visually.

44. It is submitted that Mr Ives' forensic analysis of the setting is to be preferred to the somewhat arbitrary conclusion that the whole of the appeal site is within the setting of the SAM. Indeed, Mr Burton-Pye was forced to concede during the Inquiry that not all of the appeal site was within the SAM's setting. He accepted that once the SAM is no longer visible from the Black Path (heading east), the SAM is no longer experienced. He makes a similar concession in relation to the part of the appeal site to the south of Marske Inn Farm.

45. Support for Mr Ives' conclusion can also be found in the views of Historic England. While their first letter made clear that they considered that development could take place on some parts of the appeal site their last letter expressed their view that the proposals would still cause a degree of harm. The only way that these two statements can be reconciled is if Historic England considers that not all of the appeal site lies within the SAM's setting.

Contribution of Setting to Significance

46. The parties agree that the SAM has no architectural or artistic interest and that the primary source of significance is the SAM's archaeological interest. The primacy of the archaeological interest is clear from the SAM's schedule entry, although it is perhaps a given that an archaeological site must derive its significance principally from its archaeological interest in any event.

47. The parties agree that some significance can be derived from the SAM's historic interest, although Mr Ives argues that the historic interest is derived from the SAM's relationship with the High Street, the conservation area and the listed buildings at the heart of the village. In this, he draws support from the Council's conservation area appraisal and the schedule entry. While he acknowledges that some historic interest can be derived from the SAM's relationship with its agricultural surroundings, his assessment is that this interest is derived from the evidence of historic ridge and furrow farming practices visible within the SAM and in the field to the east rather than from a modern, intensively farmed field whose historic features were destroyed in the latter half of the 20th century. Mr Ives also argues that the railway line and modern expansion of Marske, as well as the distant views to industrial Teesside, influence the way that the site is experienced.

48. In contrast, Mr Burton-Pye plays down the interest derived from the SAM's relationship with the historic development of Marske and does not even acknowledge the value of the clear evidence of a historic ridge and furrow farming system on the field to the east of the SAM. For him, it is all about the agricultural use of the appeal site. The Appellant submits that Mr Burton-Pye is plainly wrong and that Mr Ives' assessment is to be preferred.

49. In addition, Mr Burton-Pye falls into the trap of ignoring the pattern of urban change in Marske since the mid-1880s, which has changed the SAM's setting and the way that it is experienced. The southward expansion of Marske, the arrival of the railway line and the construction of the A174 bypass have all reduced the contribution that setting makes to the significance of the SAM. In essence, he has made the same mistake that Mr Ives argues was made by Historic England, whose assessment stops in the mid-18th century.

50. The Appellant submits that Mr Ives' conclusion that setting makes only a low contribution to the SAM's significance is the only conclusion before this Inquiry that is based on a proper and robust assessment and should be preferred.

Change within Setting

51. The amendments made to the masterplan during the course of the application mean that the change within the SAM's setting would be modest, largely consisting of the introduction of landscape planting and the change of use of the immediately surrounding land to open space and, possibly, school playing field.

Extent to which Change to Setting Harms Significance

52. Mr Burton-Pye often talked about harm to setting as if it were the end of the matter. In this he revealed the fundamental flaw in the Council's heritage case. Throughout the Council's evidence they have failed to undertake the assessment set out above. Most significantly, they fail to consider the extent to which the changes that would occur within the SAM's setting would harm the significance of the SAM.

53. The Appellant accepts that there would be change within the SAM's setting. What is not accepted, however, is that any of the changes would cause harm to the significance of the SAM. It is common ground that the changes would not cause any harm to the primary archaeological interest of the SAM and so the key question is whether any harm is caused to the historic interest of the SAM by virtue of the changes within its setting. It is submitted that the Council has failed to articulate any such harm and that Mr Ives is correct to conclude that the changes to the SAM's setting would have a neutral impact on its significance.

St Mark's Church, Marske

54. The Church is a Grade II listed building. The main parties agree that it is less important than the SAM but is still a designated asset of significance. The parties agree that this significance is derived from its architectural, artistic and historic interest. It is also agreed that the artistic interest is best appreciated within the building itself and so is unaffected by the appeal proposals.

55. Mr Ives has explained very clearly and cogently why the architectural and historic interest of the Church is best appreciated up close, alongside the other listed buildings around it and within the historic context of the conservation area. Nonetheless, the tower of the Church is visible from many locations outside of the village and the Appellant accepts that the appeal site is within the setting of the Church and makes a moderate contribution to the Church's significance.

56. In views from the north of Marske the Church is less prominent as it is viewed against the backdrop of Errington Woods on higher ground to the south. In any event, the contribution that these views make to its significance is severely reduced by the effect of the new academy buildings that clearly dominate these views when on site, even if conveniently cropped out of Mr Burton-Pye's photographs. Mr Ives also pointed to the greater prominence of the listed Cliff House

in these views, which further reduces the prominence of the Church and the contribution that these views make to its significance. In any event, the change to these views that would result from the appeal proposals is negligible, amounting to nothing more than the addition of a small amount of built form at the back of the village. The appeal proposals would not interfere with views of the church and would not change the skyline.

57. The Council has identified just two views from the south from which existing glimpses of the Church would be lost as a result of the appeal proposals and a further two where the view would be altered by the development. The Appellant does not dispute the Council's evidence in this regard and has accepted from the outset that the appeal proposals would result in some change to these views, but Mr Ives was clear that these minor changes, in the context of the number and quality of views in which the church is prominent and the moderate contribution that setting in this location makes to the Church's significance, do not result in harm to the significance of the Church.

Heritage Benefits

58. The SAM is currently on Historic England's 'At Risk' Register. Unless steps are taken to restore it, its long-time survival is therefore in doubt. At the same time, the SAM's very nature, combined with its location, limit the opportunities for people to understand and appreciate its significance. The Council is wrong to argue that a Conservation Management Plan (CMP) was not proposed before the Appellant referred to it in proofs of evidence. Historic England raised the prospect of a CMP in their consultation responses on the application.

59. A suitable CMP can be secured by condition. While the decision as to whether or not to remove the SAM from the 'at risk' register is one for Historic England and so cannot be guaranteed through a condition, no reasons were put before the Inquiry to indicate why a CMP could not deliver significant improvements in the condition of the SAM and provide opportunities for greater public access to and/or understanding of the SAM's significance. By virtue of the statutory regime, any CMP would also require a Scheduled Ancient Monument Consent application, further reinforcing the protections afforded to the SAM and to ensuring its preservation in the longer-term.

60. The Council has provided no evidence to suggest that a CMP would not be forthcoming in the absence of the development and so this is a very substantial benefit in heritage terms. A benefit of such significance is more than enough to outweigh the harm alleged by the Council.

Conclusion on Heritage Matters

61. The Council has sought to overplay the harm that the appeal proposals would cause to the significance of heritage assets. In order to do so they overstate the extent of the SAM's setting and simply equate change within setting to harm. The extent of the Council's mistake is clear from Mr Burton-Pye's proof of evidence, which makes no reference to the NPPF and its concepts of significance.

62. When properly assessed, it is clear that the appeal proposals would cause no harm to the significance of the SAM but would offer the opportunity to secure it for the future and increase awareness of its significance. This is a clear heritage gain and an enhancement of the SAM's significance. There would be no harm to the significance of the Church, whose significance would therefore be preserved.

63. It therefore follows that the appeal proposals both preserve (in the case of the Church) and enhance (in the case of the SAM) and so there is no heritage case

for the Appellant to answer. Furthermore, even if the Council is correct in its assessment of harm, the benefits to the SAM comfortably outweigh that harm so that, either way, paragraph 134 of the NPPF is not engaged.

Five year housing land supply

Subnational Population Projections (SNPP)

64. The National Planning Practice Guidance (NPPG) makes clear that the starting point for establishing OAN is the latest SNPP projections. The NPPG makes a number of important points:

- The projections are trend based, i.e. they provide the household levels and structures that would result if assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice;
- The projections should be adjusted to reflect factors that have affected local demography and household formation rates, including any history of undersupply that might have constrained household formation rates;
- Wherever possible, assessments should be based on the most recently published data.

65. The Council has added a somewhat arbitrary 10% (12 dwellings per annum) to take account of historic undersupply. This is insufficient to reflect the impact of the scale of undersupply on the SNPP figures.

66. There can be no doubt that there has been a significant undersupply throughout the current plan period from 2004. The shortfall is calculated to be 1,034 against the CS requirement and shows that the Council has failed to achieve its target in all but four years of the 12-year plan period. Furthermore, between the adoption and revocation of the RSS the Council monitored its performance against the higher RSS numbers, making the underperformance even worse than it currently looks. The Council's own 2014/15 - 2018/19 Five Year Land Supply Assessment concluded that there has been an undersupply of, on average, 160 dwellings per annum for the plan period to the date of assessment.

67. The impact of this underperformance is clear from the Council's own analysis, which concludes that approximately 170 households per annum have left the Borough during the same period that they identify an undersupply of 160 dwellings per annum. While the Council sought to argue that the report was of little weight because there are later reports for more recent years, that does not in any way call into question the calculations behind these figures. This is not the sort of information that will change with time.

68. The numbers are too similar to be discounted and there is a remarkable similarity between the scale of undersupply and the numbers of households moving away from the Borough. Unless and until the Council is delivering against its own targets, it does not have the right to blame the market and demand factors. The market has not had an opportunity to work due to the lack of supply.

69. The Council accepts that the 12 dwellings per annum (dpa) figure is largely plucked out of the air, in effect being based on a direct extrapolation from two other appeal decisions in completely different parts of the country and without any real analysis of whether the problems were the same type or scale.

70. In view of the arbitrary nature of the adjustment and the clear evidence of undersupply and of the resultant impact on household formation rates, it is clear that

it is right to argue that a 12 dpa increase in housing numbers is not adequate. It is woefully inadequate and understates the scale of the Council's under delivery.

Employment Trends

71. The TNPPG requires those undertaking an assessment of OAN to take account of the likely change in job numbers. It is clear that this should be done by looking at, "past trends and/or economic forecasts as appropriate...".

72. There are three different jobs growth figures before the Inquiry. Oxford Economics (OE) predicts a loss of 1,100 jobs between 2015 and 2032, Experian (on which the Council relies) predicts a growth of 500 jobs in the same period and Dr Gomez for the Appellant predicts jobs growth of 2,200. Ms Howick, for the Council, sees OE and Experian as being broadly similar and "within the margin of error". She has accepted that Dr Gomez's forecast was within the same "margin of error" but considered it unreliable because she did not understand how Dr Gomez had calculated it. Dr Gomez's figures are simply a forward projection based on the latest Census and Labour Force Survey data.

73. In contrast, there are a number of aspects of the Experian model relied on by the Council that Ms Howick could not explain. The Appellant's key criticisms of the Experian model are that it is dependent on the assumption that the Borough's economic activity rate for the 16-64 age group will increase by approximately 5% at a time when Experian is only forecasting a 2.5% increase in economic activity rates nationally. This is a very bullish assumption, especially as it would require the Borough to move from below the national average to above it. Effectively, this requires the Secretary of State to accept that the core working age population will decline by some 8,500 people while at the same time 2,500 or more of that same group will become economically active. Without any explanation of why this might be so, it would be irresponsible in the extreme to use this assumption to limit housing numbers and to be the basis of a statutory development plan that will continue through to 2032.

74. While Dr Gomez's figure takes account of self-employment, Ms Howick could not say whether and, if so, how self-employment is factored into Experian's jobs growth figure. Self-employment is an increasing part of economic activity and until a local plan inspector can be satisfied that it is properly accounted for by Experian, it would be extremely risky to plan on the basis of Experian's less positive projections.

75. As well as using a wildly optimistic assumption about increased economic activity rates in the 16-64 age group to fill the hole in its model, Experian also uses ambitious assumptions about the rate of increase in economic activity in the 65+ population. It does this by assuming an increase in economic activity rates for this age group within the Borough that is significantly above the increases projected nationally by the Office of Budget Responsibility (OBS). Furthermore, given that the Council accepts that activity rates will be much less in the 70+ population because of declining ill health and the availability of the state pension, they could not provide any details as to the local activity rates being assumed in this age group by Experian.

76. Experian relies on assumed commuting rates as a 'balancing factor'. Not only is this contrary to the NPPG but it is also concerning that a figure that can vary so much year-to-year because of the unreliability of how the data is collected is seemingly used to balance the model and make sure that the two sides of the equation balance. The mere fact that the model assumes that jobs demand and job numbers always perfectly balance is itself a warning that the model does not reflect

reality and suggests that commuting and other 'balancing factors' are based more on needing to create a balanced equation than on reflecting what is actually happening.

77. Finally, Dr Gomez was clear that he considers modelling to be unreliable over such a long period of time. He explained how the model is very susceptible to immediate shocks but cannot take account of longer-term responses to them. This is made clear by Ms Howick's indication that the next set of data from the Experian model will show some 1,700 job losses in the period from 2015 to 2032 because of the closure of the SSI steelworks. A one-off shock sends the model significantly negative and in doing so takes no account of the fact that over the next few years there will no doubt be considerable efforts to replace those lost jobs, not to mention regenerate the steelworks site. This susceptibility to immediate negative changes is hardly the positive planning that the NPPF requires.

78. Dr Gomez's approach has the advantage of being understandable and robust when compared with a model whose key assumptions are unknown and which cannot therefore be properly tested in the context of this appeal. Ms Howick's dismissal of the use of past trends is not only contrary to the approach advocated in the NPPG (which not only recognises that past trends are appropriate in the context of jobs growth but also uses similar past trends data (SNPP) to set the starting point housing figure) but is also of limited value when she was unable to give any more detail as to how the Experian model works.

79. Dr Gomez's approach has the advantage of being more positive, in line with the NPPF's promotion of positive planning and specifically of the requirement that local plans should plan for economic growth. Until such time as a local plan Inspector is able properly to assess the robustness of the Experian model, the Appellant submits that the only sensible thing to do in the context of the Framework is to "lean to the generous side".

80. It is perhaps appropriate here to deal with Ms Howick's so called 'logic trap'. In short this is her argument that Dr Gomez's assessment of jobs growth will lead to an unacceptable level of migration if it were applied across the country. In making this argument Ms Howick is assuming that all OAN assessments across England are required to add up to a national whole. This is clearly not the case when the NPPG does not require a particular model to be applied or that all OAN are carried out at the same time.

Affordable Housing Need

81. Dr Gomez has clearly explained how Ms Howick's analysis fails properly to take account of affordable housing need. His evidence on this point was not challenged by the Council. Instead, Ms Howick described this as a policy-on factor that she does not think has any place in the assessment of OAN. In this she is simply wrong.

82. To support her argument, Ms Howick points to the *Hunston* case, which distinguishes between policy-off and policy-on factors. In so doing, she is misunderstanding the meaning of the judgement. At paragraph 26 of his judgement Sir David Keene accepted that, "it is not for an inspector on a Section 78 appeal to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure". The judgement is only relevant to OAN in the context of an appeal in so far as it is making clear that LPAs cannot seek to impose constraints on OAN figures in advance of those constraints being properly tested through examination.

83. None of the factors discussed above are constraints, they are simply part of the evidence that must be taken into account to be able to carry out a comprehensive and robust objective assessment of need. The Council has failed to apply this approach to an assessment of OAN.

OAN Conclusion

84. Dr Gomez's approach is both reliable and in line with the requirement for positive planning required by the NPPF both in terms of housing and economic growth. Ms Howick's approach is untested and based on a model whose inner workings are unclear. Furthermore, to the extent that there is any doubt about which approach is to be preferred, the Appellant submits that the only option open to the Secretary of State in the context of the NPPF's requirement that we boost significantly the supply of housing, is to err on the side of caution and place greater weight on the higher OAN unless and until the lower figure is found to be sound, following the proper and effective scrutiny that can only be achieved through a local plan examination. For both of these reasons, the Appellant therefore submits that the OAN that should be adopted for the purposes of this appeal is at least 349 dpa.

Five-Year Land Supply

85. Whether the five-year land supply should be based on the adopted CS requirement or OAN depends on whether there is evidence that the adopted requirement is not meeting OAN. The NPPF is not a neutral document. At its very core is a clearly articulated ambition on the part of the Government to see a significant boost to housing delivery in England. This is clear from the very first line of the housing section, which sets out a number of steps that LPAs are required to take in order to boost significantly the supply of housing. The first of these steps is to ensure that local plans meet an area's full OAN for housing. It is therefore self-evident that the whole purpose of OAN is to contribute towards the significant boost to the supply of housing that the Government is seeking.

86. The starting point for the assessment of five-year housing land supply must be the adopted development plan. To do otherwise would be contrary to Section 38(6) itself. In fact, the NPPG makes it clear that adopted plans are the starting point, "...Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light...".

87. During discussion of these issues at the Inquiry, the Council regularly made reference to the "previous plan period" when describing the adopted development plan. In so doing, it was misrepresenting the position. There is a development plan, the CS having been adopted in 2007 and covering the period from 2004 to 2021. In itself, there is nothing out-of-date about it.

88. The emerging plan is at an early stage and the parties agree that no weight can be attached to it, so the emerging plan is not able to detract from the weight to be attached to the CS. Likewise, the Council considers that the whole of the plan, in so far as it relates to this appeal, accords with the NPPF and so is not out-of-date by virtue of paragraph 215. Whilst the Appellant disagrees to a limited extent, they agree that the plan is broadly compatible with the NPPF. Being a post-2004 plan, it has also been through the examination process as required by the NPPG.

89. In order to argue for anything less than considerable weight to be attached to it, the Council therefore needs to show that there is significant new evidence. In this context it is important to recognise that there is no direct link between OAN and five-year land supply. OAN is the first step required by paragraph 47 of the NPPF. Five-year land supply is the second step and makes no reference to OAN.

90. The Council argues that the OAN and the data that underpins it (i.e. the 2011 Census and the 2012 SNPP) constitute significant new evidence that renders the CS housing requirement out-of-date. The flaw in this argument is that the OAN the Council invites the Secretary of State to use is considerably lower than the CS housing requirement. The Council's OAN figure is therefore evidence of nothing more than that the adopted housing requirement continues to meet local housing need and, if it is ever actually delivered, will support the primary objective of boosting significantly the supply of housing.

91. The Council is unable to point to a single appeal decision or court case in which an LPA has been able to get away with not delivering the development plan's housing requirement because of a new OAN assessment that points to lower housing need. The absence of authority is not surprising as this would run entirely contrary to the fundamental purpose of boosting the supply of housing.

92. If an LPA believes that it is justified in planning for lower housing delivery than its adopted plan requires then it must be required to prove the soundness of such a step. To do otherwise would be about as far removed from positive planning and from the statutory presumption in favour of the development plan set out in Section 38(6) as it is possible to imagine. This is particularly important when, as here, an LPA has a poor record on getting plans in place. The Council never got around to adopting any allocations under the 2007 CS. Having decided to instead bring forward a new local plan, it then decided to abandon it when the going got tough a few years later. Now it is starting again with another new plan. Unless and until the Council is able to secure the adoption of a new plan it must be held to its current one rather than risk even less certainty and delivery by creating a hiatus.

93. Reliance on the Council's OAN figure would be contrary to Section 38(6), the NPPF and the NPPG, and it would be fundamentally wrong to calculate five-year land supply by reference to it rather than the adopted CS requirement. If the Secretary of State prefers the Appellant's OAN figure, then consideration must be given to whether the higher figure constitutes significant new evidence that renders the CS requirement out-of-date. This depends on whether the current backlog is to be included. If not, then even the Appellant's OAN produces a lower figure than the CS requirement and so the submissions above must apply equally to it.

94. However, the Appellant submits that the backlog cannot be excluded in advance of the local plan examination. To do so would effectively allow the Council to write-off its undersupply against the adopted housing requirement in advance of proving the soundness of its new approach. Again, this would be contrary to the very clear requirements of the NPPF and the NPPG.

95. The Council claims that there are numerous authorities that support their case, but they can only point to one, the Zurich case, but this is of no relevance to the present appeal and Mr McMullan is right to include the backlog in his calculations at this stage. In doing so, he is entirely consistent with the approach taken in the Saltburn appeal. The Inspector asked Mr McMullan whether the inclusion of the backlog and the addition of a 20% buffer was double-counting. Mr McMullan accepted that it was but this double counting is right and proper because the five-

year land supply calculation against the CS requirement includes the backlog and the buffer and is not challenged by the Council.

96. This approach must be correct and is no different to every five-year land supply calculation. It is generally accepted that any undersupply in past years should be made up in future years, the only area of discussion being whether the undersupply should be made up in the next five years (the Sedgfield method) or the remaining years of the plan (the Liverpool method). Likewise, the NPPF requires a buffer to be imposed in every case, the only issue being whether it is 5% or 20% depending on whether there is a record of persistent under delivery.

97. The NPPF therefore requires double counting of the sort Mr McMullan has undertaken. The only question for the Secretary of State is whether the situation should be different when dealing with OAN rather than adopted housing requirements. In the Appellant's submission, until a new housing requirement is adopted, there is no justification for a different approach.

98. With the backlog included, the Appellant's OAN produces a housing supply of 2.75 years whereas against the CS requirement the supply is 3.21 years. This is a difference of approximately half a year and amounts to significant new evidence that could justify placing less weight on the CS requirement in view of the requirement of the NPPF to significantly boost the supply of housing by ensuring plans meet OAN.

99. If the backlog is excluded then the calculation produces a more favourable position for the Council (by hiding the actual underperformance) than a five-year land supply calculated against the CS requirement and so, for all of the reasons above, the CS figure should continue to be preferred.

100. Unless the Secretary of State adopts the Council's OAN, the Council cannot demonstrate a five years housing land supply. This is not in dispute. The worst case is a 2.75 year supply. The CS requirement is little better, producing a 3.21 year supply. The Appellant's OAN without backlog enables the Council to get to 4.4 years supply. In any of these situations there is a significant undersupply and paragraph 49 of the NPPF (and through it paragraph 14) is triggered.

Effect of a lack of five-year land supply

101. Following the Court of Appeal's decision in the Suffolk Coastal case, what constitutes a "relevant policy for the supply of housing" for the purposes of paragraph 49 is clear. As Lindblom LJ explained "The contentious words are "[relevant] policies for the supply of housing". In our view the meaning of those words, construed in their proper context, is "relevant policies affecting the supply of housing". A "relevant" policy here is simply a policy relevant to the application for planning permission before the decision-maker - relevant either because it is a policy relating specifically to the provision of new housing in the local planning authority's areas or because it bears upon the principle of the site in question being developed for housing. The meaning of the phrase "for the supply" is also, we think, quite clear. The word "for" is one of the most versatile prepositions in the English language. It has a large number of common meanings. These include, according to the Oxford Dictionary of English 2nd edition (revised), "affecting, with regard to, or in respect of". A "supply" is simply a "stock or amount of something supplied or available for use" - again, the relevant definition in the Oxford Dictionary of English. The "supply" with which the policy concerned, as the policy in paragraph 49 says, is a demonstrable "five-year supply of deliverable housing sites". Interpreting the policy in this way does not strain the natural and ordinary meaning of the words its draftsman has used...".

102. Even if DP policy DP1 is not out-of-date on its own terms, it is self-evident that it is a relevant policy for the supply of housing applying this test. Indeed, it is an almost identical policy to one of those considered in the Suffolk Coastal case. It is equally clear that CS policy CS23 is also a relevant policy for the supply of housing. Applying the different components of Lindblom LJ's test the policy is clearly relevant to the determination of this appeal, in so far as it bears upon the principle of the acceptability of the appeal site being used for housing, and, accordingly, it clearly affects the supply of housing. With the benefit of Lindblom LJ's explanation, it is therefore beyond doubt that CS policy CS23 is also rendered out-of-date by paragraph 49 in the absence of a five-year land supply.

103. The Council points to the Inspector's decision in Saltburn in support of its contention that CS policy CS23 is not a relevant policy for the supply of housing. In the Appellant's submission this is completely misguided in view of the decision in Suffolk Coastal. The Inspector reached his decision in 2015, before the Court of Appeal gave its judgement in Suffolk Coastal and at a time when Lang J's decision in William Davis was good law. The Court of Appeal expressly overruled William Davis in Suffolk Coastal, Lindblom LJ saying "...those cases in which the court has rejected the "wider" interpretation of the policy have not in our view been correctly decided on that particular point...this may be said of the decision in William Davis, where the judge concluded that a policy restricting development in a "Green Wedge"...was not a relevant policy for the supply of housing within paragraph 49, despite the fact that it prevented housing development...".

104. It is legally dubious in the extreme for the Council to seek to rely on the conclusions of an Inspector that were based on what we now know to be bad law. The Inspector did not have the benefit of the Court of Appeal's judgement and so his conclusions are irrelevant. The Secretary of State, whose arguments the Court accepted, must now make up his own mind about the point and in doing so, he must apply the Court's judgement and not the prior findings of an Inspector.

Weight to be attached to out-of-date Policies

105. Suffolk Coastal is clear that the effect of paragraph 49 is not to exclude out-of-date policies from consideration; instead, consideration must be given to the weight to be attached to them. The Council has not demonstrated any abnormal circumstances that would justify not reducing the weight of either DP policy DP1 or CS policy CS23 and the reduction in weight should be substantial. Very limited weight can therefore be placed on any conflict with CS policy CS23 and no weight can be attached to DP policy DP1.

Contribution to five-year land supply

106. The development would contribute some 50 dwellings per year to the five-year land supply, with the remainder coming forward in later years, if only one developer is on site. But, on a site of this size, it is likely that two or three house builders would be on site at the same time. If that is the case, then an even larger contribution to five-year land supply would be made. Even 50 dwellings is a meaningful contribution to five year land supply and the remainder of the site will address the lack of a 6-10 and 11-15 year supply that is also required by paragraph 47 of the NPPF. Given that the Council has failed to allocate land for the current CS, despite it being adopted over a decade ago, and has already had one abortive attempt at putting a new local plan in place, it would be foolhardy to trust that they will deliver this time around.

Drainage and Flooding

107. Despite the Council's best attempts to argue the contrary, it is clear from the original ES that it was never intended that there would be no outfall from the site. It is impossible for infiltration-only solutions on anything other than fragmented chalk geology and certainly not on non-porous clay as on the appeal site. Mr Fraser could not assist the Inquiry with any knowledge of the sewer requisition process but Mr Travis has considerable experience that he was able to share. From that experience it is clear that there is a statutory right for a sewer to be requisitioned once planning permission is granted but that the type of sewer (existing capacity upgrade, new sewer, etc.) and the route of any new sewer are entirely matters for the statutory undertaker outside of the planning process.

108. While the Council sought to cast doubt on the ES because of its failure to assess either the route or the effect of the sea outfall, neither criticism can be maintained. In light of the inability for the Appellant to control the route of the sewer, it is simply impossible for any likely significant environmental impacts to be assessed now. A finding that the route of any new sewer be included within the ES would have the effect of preventing the appeal from being determined and interfere with the separate statutory regime for requisitioning new sewers. The point about the failure to assess the likely significant impacts of surface water being discharged to the sea is plainly wrong. As Mr Travis explained, the sea is not a sensitive receptor that will be affected in any way by the release of surface water into it. It is therefore impossible for any outfall to have any environmental effect on the sea, let alone be likely to have a significant one.

109. The Appellant, the Council and third parties all agree that there is a serious issue with flooding within Marske and that this is in part caused by surface water coming from the appeal site. The Appellant has demonstrated that the appeal proposals would not only avoid exacerbating the current problem, but would actually improve the situation by controlling run-off from the appeal site. If a new sewer is provided by NWL via the requisition process, as seems likely, this would also create additional capacity that could be used to alleviate other sources of flooding in the area. This is a very considerable benefit of the appeal proposals.

110. Significantly, Mr Fraser accepted in response to a question from the Inspector that all of his concerns were now addressed by the agreed conditions. Mr Fraser also accepted that the benefits were significant. It is therefore clear that the Council has no case on drainage and flooding and that the residents' concerns will be addressed by the proposals, making this a very considerable benefit of the development.

Other Matters

111. After flooding the major concern for local residents is traffic impacts, and in this regard Mr Jackson answered all questions from the third parties openly and honestly; explaining the limited impacts that the appeal proposal would have on local traffic flows and the measures that are proposed to address the minor issues that will arise. Mr Jackson also explained how the proposals would resolve the existing problem of a lack of a pedestrian footpath under the railway bridge on the A1085 and how cycle parking facilities at Longbeck railway station will be improved by the relevant planning obligation. These are clear benefits of the scheme.

112. Some concerns were raised about GP surgery capacity, but Mr McMullan confirmed that no objections to the proposal were received from local doctors' surgeries or other parts of the NHS. Additionally, Mr McMullan confirmed that the

proposals include a new GP surgery, pharmacy and dental surgery in any event. Whether these come forward will be determined by demand.

113. Mr McMullan also confirmed that a contribution would be made to ensure that the additional capacity that is needed within local schools is delivered. In addition, land is also being made available to the Council to build a new primary school should it wish. While the ultimate decision is for the Council, the land has been made available at their request and so there is clearly a desire to see a new primary school provided. If, as is likely, the school comes forward, this will provide additional capacity over and above the requirements of the development, representing a further benefit of the scheme.

Compliance with the Development Plan

114. The Appellant accepts that the appeal proposals conflict with DP policy DP1. However, the Appellant submits that in the absence of adopted development boundaries, the policy is out-of-date on its own terms. While the Council argues that the 1999 local plan boundaries are applicable, this position cannot be reconciled with the supporting text to policy DP1, which makes no reference to those boundaries and recognises that boundaries will need to be brought forward at a later date. Even if the Council's argument had weight, it would not change the fact that policy DP1 would remain out-of-date. Mr McMullan was clear in his oral evidence that the current boundaries cannot accommodate either the CS housing requirement or even the Council's OAN figure. Even if there is a boundary, it cannot be up-to-date if it cannot accommodate the planned growth. This is entirely consistent with all previous appeal decisions.

115. If the Secretary of State accepts the Appellant's case that the appeal proposals would not harm the character and appearance of the site then CS policy CS22 is not breached. Even if the Council is correct to identify harm then policy CS22 is not automatically breached. Rather, the harm needs to be weighed against the need for the scheme. This is an exercise that is undertaken in the context of paragraph 14 of the NPPF and it is clear that any landscape and visual harm is more than outweighed by the substantial benefits of the scheme. The appeal proposals would actually result in a landscape benefit, contributing to the restoration of a degraded landscape in accordance with the LCA, thus going beyond compliance with CD policy CS22.

116. In any event, the weight to be attached to policy CS22 is reduced by virtue of paragraph 215 of the NPPF. Paragraph 113 requires local plans to include criteria based policies against which landscape impacts can be judged, and also requires the hierarchy of designations to be recognised and treated appropriately. But policy CS22 does not even distinguish between the approach to be taken in Sensitive and Restoration Landscapes identified in the LCA. If there is any conflict between the appeal proposals and CS policy CS22, such conflict should be given little weight in view of the significant differences between it and the NPPF.

117. The Appellant's case on CS policy CS23 is clearly set out above; there is no conflict between the appeal proposals and this policy. In fact, the landscaping buffer proposed to the south of the appeal site offers the opportunity to reinforce and enhance the gap. The value of the strategic gap would be enhanced through this reinforcement, as would its quality. Value and quality would also be enhanced through improved biodiversity and public access as well as the introduction of a variety of uses including recreation. This would also satisfy the multi-functionality and accessibility requirements of the policy.

118. Furthermore, the policy can find no support anywhere in the NPPF and conflicts with paragraph 113 for the reasons set out above. While the Council originally sought to argue that it finds support in paragraph 109, Mr Barker's acceptance that it is not a valued landscape renders this point irrelevant. Even if there was a conflict, the lack of conformity with the approach in the NPPF would therefore mean that little weight should be placed on such conflict by virtue of paragraph 215 in any event.

119. The lack of any harm to the significance of the Church by virtue of change within its setting means that DP policy DP10 is complied with. Likewise, the lack of any harm to the archaeological significance of the SAM or to its wider significance resulting from change within its setting means that DP policy DP11 is complied with. In fact, the overall enhancement to the SAM's significance goes beyond mere compliance and into the realms of benefit. It therefore follows that there is no conflict with these policies or with CS policy CS25.

120. The appeal proposals accord with the development plan and should be approved unless material considerations indicate otherwise.

Planning Balance

121. There are no specific policies of the NPPF that indicate that the development should be prevented and so it follows that the presumption in favour of sustainable development applies to the appeal proposals unless any harm significantly and demonstrably outweighs the benefits of the proposal "when assessed against the policies of the Framework as a whole".

122. The benefits of the appeal proposal are many and substantial and include:

- Substantial enhancement to the significance of the SAM, through the agreement of a CMP;
- Reinforcing the strategic gap and restoring the site's degraded landscape;
- Increasing public access to the site and securing significant new recreation space to the benefit of the wider area;
- Securing a net-gain in biodiversity;
- Reducing flooding within Marske and providing increased sewer capacity to the settlement;
- Improving pedestrian safety by providing a footpath under the railway bridge over the A1085;
- Providing opportunities for the provision of a new school, GP surgery, pharmacy and dental surgery;
- Contributing towards addressing the shortfall in 5YLS and providing a significant amount of new affordable housing;
- Creating new jobs in construction and within the development and boosting economic growth.

123. Paragraph 6 of the NPPF is clear that sustainability is determined by applying paragraphs 18 to 219. That is the exercise that has been carried out above. It is therefore clear that the proposal represents sustainable development.

124. However, for completeness, the Appellant has considered each of the three limbs of sustainability below:

- **Economic:** It is clear that the proposals would create new jobs during both the construction and occupation phases. It is also clear that the presence of new residents in Marske would provide a new source of potential customers for existing businesses, further boosting the local economy.
- **Social:** The delivery of housing and affordable housing would be a clear social benefit in its own right. Likewise, the provision of a new school and other facilities outlined above also offers social benefits.
- **Environmental:** The substantial benefit to the SAM, addressing existing flooding issues, improving pedestrian safety, delivering net-gains for biodiversity and improving a degraded landscape all represent environmental benefits that contribute to sustainability. The site's location in relation to public transport links also further contributes to this aim.

125. The Appellant therefore submits that the proposals offer net-gains in all three areas of sustainability and so represents a sustainable form of development.

Conclusion

126. For all of the above reasons, the appeal should be allowed.

The Case for Redcar and Cleveland Borough Council

The material points of the case made by Redcar and Cleveland Borough Council are:

127. This case must be considered with specific reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the Act). The first issue to be determined therefore, having regard to the test in 38(6) of the Act, is whether the proposals are 'in accordance' with the development plan.

128. The appeal site is a large, unallocated, greenfield site. There can be no doubt that it currently forms part of the countryside. The development of the site for residential and mixed commercial retail uses is not supported, directly or indirectly, by the adopted development plan. On the contrary the appeal scheme conflicts directly with several policies of the development plan. These proposals cannot therefore be 'in accordance' with the development plan.

129. The statutory presumption in favour of the development plan weighs heavily against the grant of the appeal scheme. This is the correct legal starting position for the decision maker's deliberations. The question then becomes whether there are any material considerations in this case which outweigh the statutory presumption in favour of the development plan.

Character and appearance of the countryside

130. Mr Barker's evidence for the Council on landscape matters was both comprehensive and cogent; his assessment remained robust and credible in the face of cross examination. In contrast, the evidence of Mr Laws was at times incomprehensible and confused under cross examination. Critically, Mr Laws conceded that the appeal scheme would result in harm to the landscape unless his 'woodland planting' alongside the A174 was successful in creating an impermeable visual barrier, effectively hiding the development from view.

131. This concession from Mr Laws reinforces the evidence of Mr Barker that the appeal scheme is simply inappropriate for its landscape context. The 'landscaping scheme', which the Appellant claims is a 'benefit', is nothing of the sort. It is a desperate attempt to hide built development which would cause a significant level of harm to the surrounding landscape character that it sits within.

132. The terms of CS policy CS22 makes clear that the question is whether development would "...lead to the loss of features important to the character of the landscape". If such harm would occur, the development will not be allowed unless, "the need for the development outweighs the landscape considerations".

133. The Landscape Character Assessment 2006 (LCA) identifies the appeal site as falling within the 'Redcar Flats' character area. Within this general character area, the appeal site falls within the Landscape Unit 'R2 Lowland Farmland (South of Redcar and Marske)'. The LCA identifies positive landscape features as including: i) extensive views, some of which include the coast, and ii) physical separation between urban areas. These are quite evidently features of the landscape which the LCA considers to be important to its character.

134. Mr Barker's evidence demonstrates that both of these positive landscape features will be adversely affected by the development of the appeal site. Considering the landscape impacts of the appeal scheme, on this crude analysis alone, demonstrates a clear conflict with CS policy CS22. Furthermore, the appeal site plays a crucial role in providing an attractive rural setting to the settlement of Marske. It provides, for example, the users of the Black Path with an uninterrupted view across the wider countryside up to the key feature of Errington Woods, and a sense of being separate from the edge of Marske (given the clear demarcation between 'urban' and 'rural' which is provided by the railway line). The impact of the development on this valuable recreational resource is indisputable. It will sever the connection between the users of the footpath and the wider countryside.

135. The appeal scheme would appear as a salient protrusion into the existing open countryside, breaching the defensible barrier of the railway line, and removing a critical part of the existing rural gateway into Marske. The adverse impacts of the appeal scheme are not reduced merely because the viewpoints which would be affected by the development are relatively limited in number.

136. The careful assessment of Mr Barker regarding the high quality and extensive views which would be adversely affected by the appeal proposals cannot be properly replicated here. As Mr Barker identifies, the appeal site is instrumental in preserving long distance views of well-established and unique local landmarks. Its contribution to preserving the identity of Marske should not be under-estimated. It is not simply the 'openness' of the site which results in it being valuable; it is the combination of its openness and its particular location. Any greenfield site may be comparatively 'open'; however, not all of them will perform an important role in preserving key distinctive and expansive views, which are important for the character of the wider landscape, or in providing an attractive setting to a particular settlement along key approaches, Longbeck Road and the A1085.

137. This is to say nothing of the important role the appeal site plays as part of the wider landscape which forms the 'strategic gap' between Marske and New Marske. The combination of these factors sets the appeal site apart from the countryside in general, and imparts its value to the local landscape. These demonstrable physical attributes set the appeal site apart and are more than capable of qualifying for protection under paragraph 109 of the NPPF.

138. It is evident, however, that the Council's case on landscape harm and the harm to the character and appearance of the countryside does not rest on the paragraph 109 'point'. The substance of the arguments made by Mr Barker hold good irrespective of whether the appeal site is considered to be a 'valued landscape'.

Heritage Impacts

The Scheduled Ancient Monument

139. With respect to the SAM, Mr Ives's approach rests upon his assessment that the wider appeal site does not form part of the 'setting' to the SAM. In taking this approach he departs in his assessment methodology from both KM Heritage and CGMS, not to mention Heritage England and Mr Burton-Pye. Mr Ives agreed that his conclusion as to the relevance of the appeal site as part of the SAM's setting in turn rests upon his focus upon 'views' into the SAM from different parts of the appeal site.

140. This focus on views to determine the 'setting' for the SAM exposes the weakness in Mr Ives's approach. His narrow assessment of the extent of the setting of the SAM compromises his evidence that there would be no harm to the SAM. If the extent of the SAM's setting is unduly restricted, changes to the setting that adversely affect the significance of the SAM will be missed.

141. Mr Burton-Pye adopts a more comprehensive and 'rounded' approach to the issue of setting for the SAM. He has explained how the existing land use of the appeal site for agricultural purposes helps to inform the significance of the SAM by way of the continued connection to a rural setting and land use. There can be no real doubt that the development of the appeal site for urban housing and commercial development would impact adversely on the existing setting of the SAM, and in turn would diminish the ability to experience the significance of the SAM as an isolated and rural heritage feature.

142. Mr Burton-Pye accepts that the existing setting of the SAM carries within it negative features which already harm its significance (the 'urban elements' such as the coal yard, the existing settlement edge of Marske, the railway line etc.). However, this does not justify in any way further harm being caused. The appeal scheme would result in a magnitude of harm over and above that to which the SAM is already exposed.

143. It is difficult to conclude that major development of the scale proposed by the appeal scheme, would not cause additional and significant harm to the setting and significance of the SAM. Mr Burton-Pye's assessment on this issue is supported in this respect by the views of Heritage England. The final consultation response from Heritage England is absolutely clear: notwithstanding the efforts of the Appellant to 'pull back' built form from the immediate vicinity of the SAM, the appeal scheme would cause harm to the SAM. This harm would be 'less than substantial' in NPPF terms, but this does not negate its importance.

St Mark's Church

144. The Appellant suggests that there will be no adverse impact on the significance of St Mark's Church as a result of the appeal scheme. However, Mr Ives accepted that the significance of St Mark's Church, in both historical and architectural terms, stemmed (at least in part) from the prominence of its tower. Mr Ives also accepted that the 'prominence' of the church tower was best appreciated from viewpoints which were further away from the church itself. The importance of the appeal site in facilitating views that capture the prominence of the church tower is clear.

145. The appeal proposals would adversely impact upon the prominence of the church tower, not least from the well-used footpath of Quarry Lane. In light of this, it is difficult to understand how the Appellant can robustly maintain that the ability to understand its historic and architectural significance would not be adversely affected in any way by the appeal scheme. The Council robustly maintains its position that harm would be caused to the significance of St Mark's Church. The harm would be 'less than substantial' in NPPF terms, but the guidance and legislative framework is clear that any harm is a weighty consideration in the overall planning balance.

Five year housing land supply

146. The relevance of OAN stems from i) central Government's abolition of 'top down' regional housing targets, and ii) the policy guidance contained within the NPPF as to how LPA's should address the provision of housing following their revocation.

147. Paragraph 47 of the NPPF makes clear that, "To boost significantly the supply of housing" LPA's should, *"use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area..."*. As the Court recognised in the Solihull MBC case, *"The NPPF indeed effected a radical change...It means that housing need is clearly and cleanly ascertained. And as the judge said at paragraph 94, "here, numbers matter; because the larger the need, the more pressure will or might be applied to [impinge] on other inconsistent policies"*.

148. In the Hunston case the Court rejected the proposition that a "housing requirement figure *derived* from a revoked plan" could lawfully be used as a "proxy" for OAN, specifically citing the Government's express move away from the 'top down' approach which was inherent within regionally imposed 'housing targets'. Furthermore, as the Court made clear in this case "The needs assessment, objectively arrived at, is not affected in advance of the production of the Local Plan, which will then set the requirement figure". It is, therefore, an entirely separate exercise from setting a 'requirement' as part of a Local Plan process.

149. The decision maker in this case must therefore ascertain the OAN based on the information available to him; to do otherwise would be to fall into an error of law. In the absence of such an assessment it will not be possible to properly assess whether the LPA will be able to supply enough housing to meet its OAN. If it is able to do so the aim of paragraph 47 of the NPPF will be fulfilled; if it is not, an LPA will be unable to demonstrate that it is 'boosting the supply of housing' as per the NPPF objective.

150. In making such an assessment, the decision maker has before him the evidence of Ms Howick for the Council and that of Dr Gomez for the Appellant. They differ significantly in their overall conclusion as to what the OAN is. Ms Howick's assessment concludes that the OAN is 132 dwellings per annum. In contrast, Dr Gomez proposes an OAN of 349 dwellings per annum.

Labour market alignment

151. It is agreed between the parties that the difference in the calculations relates to the disputed issue of future jobs growth. Dr Gomez refers to this as the 'economic growth adjustment'; Ms Howick refers to it as the issue of 'labour market alignment'. Notwithstanding the terminology used, the essence of the question is: 'will there be enough people in the future to meet the demand for workers in the future'.

152. Ms Howick's assessment concludes that there is no need to make an upwards adjustment to the demographic projections. Dr Gomez concludes the opposite - his

case on OAN rests upon his argument that there is a need to make a significant uplift to the demographic projections to ensure the demand for jobs can be fulfilled by the population. This has the effect of more than doubling the amount of homes the Council has to provide in order to meet what Dr Gomez asserts is its OAN.

153. It is imperative therefore that an assessment is made as to what the likely level of jobs growth will be in the future. This is reflected in the NPPG which states that, "Plan makers should make an assessment of the likely change in job numbers based on past trends and/or economic forecasts...". Without this, it is impossible to understand whether there will be enough people in the future to meet any 'jobs growth' which is likely to occur in the future. Once the likely level of jobs growth is assessed, it is necessary to consider whether there will be sufficient people available to meet the jobs.

154. Therefore, there are two sides to the equation: what will the 'demand' for jobs in the future be, and what will the 'supply' of people be in the future to meet the demand? If either side of the equation is incorrectly calculated, it will affect the overall outcome.

155. Dr Gomez contends that jobs growth will increase in the future by 132 jobs per annum. The only evidence he presents for this assertion is a calculation which he says is based on a 'past trend' in jobs growth from 2000 to 2014. Neither the Council nor the decision maker in this case is able to interrogate and/or understand the mathematics behind Dr Gomez's calculation. Dr Gomez made a vain attempt to address this criticism at the Inquiry but he conceded that the 'additional' information provided did not plug the gaps identified by Ms Howick.

156. Both of the data sets from which Dr Gomez's 'past trends' figure is derived are based on surveys. It is impossible to understand the level of accuracy that the data carries with it. Dr Gomez does not provide any information as to the 'margin of error' which might be inherent within the data. In the absence of providing the underlying data, and showing his mathematical calculations, Ms Howick made clear that she could not assess whether the 132 jobs per annum figure was in fact an accurate reflection of 'past trends'. Neither can the decision maker in this case.

157. There can be no confidence as to how Dr Gomez has reached his 'past trends' figure. If he has made an error in his calculation of the past trend, this will undoubtedly infect his calculation going forward. Unfortunately, it is simply not possible to know whether the calculation is accurate or not. The importance of this issue for Dr Gomez's case is amplified because it is the only data on which he relies.

158. More importantly, however, is the fact that Dr Gomez has merely 'rolled forward' a past trend into the future. He has done this without any analysis as to whether the past trend is likely to continue. It is a logical non-sequitur that the future will necessarily follow the past. This cannot be assumed. The likelihood of this eventuality must be properly assessed taking into account relevant factors which i) will affect the future, and ii) may not have been the same as the past. In the absence of this assessment, merely rolling forward a past trend is meaningless and is not based upon any robust evidence.

159. Dr Gomez accepted that his past trend figure would have within it factors including i) overall population level, ii) the size of the working age population, and iii) activity rates. He accepted that all these factors affected the level of job growth. He likewise accepted that he had not provided any of this information to the Inquiry. His approach of rolling forward a past trend is therefore entirely 'blind' as to the factors which may have been affecting job growth for the relevant period.

160. It is simply impossible, therefore, for Dr Gomez's approach to be based on any robust understanding of why jobs growth was what it was 'in the past'. Without this information it is simply unacceptable to 'roll' the trend forward. There is no confidence that what happened in the past is likely to happen in the future.

161. Even more damaging, however, is that the evidence provided by Ms Howick demonstrates quite clearly that the future will be different from the past. In this regard Dr Gomez agreed that there will be a rapidly ageing population in the UK from 2014 onwards. He attempted to suggest that some of this would have been captured during the time period which his past trend was derived from. However, there is simply no evidence for his assertion. When pressed, Dr Gomez rightly conceded that this change from 2014 onwards cannot possibly be taken account of in his 'past trend' figure. This fundamentally undermines the approach taken by Dr Gomez of 'rolling forward' a past trend as a 'proxy' for future jobs growth.

162. Furthermore, it is now absolutely clear that the jobs number in itself makes a difference to the outcome. Dr Gomez accepted that the jobs growth figure was important and that it does make a difference to the overall calculation as to whether 'demand' and 'supply' are in balance or not. Dr Gomez sought to rescue his case by suggesting that there was little difference between the future jobs growth calculated by Ms Howick (30 per annum) and the future jobs growth of 132 per annum. He asserted that the main difference between his assessment and that of Ms Howick was the use of activity rates on the 'supply' side of the equation for older age groups i.e. how many older people will remain active in the workforce.

163. This assertion lacks any credibility in light of the 'alternative scenario' carried out by Ms Howick. She has demonstrated that the outcome of her assessment does not alter if lower activity rates are assumed, as opposed to the higher activity rates (predicted by Experian). Dr Gomez clearly accepts that Ms Howick has demonstrated that the use of OBR or Experian activity rates for older age groups in the future did not alter her assessment. This can, therefore, no longer provide an explanation for the difference between Dr Gomez and Ms Howick's assessment.

164. Finally, on this issue, the evidence of Dr Gomez as to what the likely job growth will be in the future is entirely out of step with the future job growth forecast by both Experian and Oxford Economics (OE). The latter forecast predicts job losses over the plan period in the order of 1110. Dr Gomez predicts jobs growth over the same period of 2244. A difference of 3354 jobs is clearly a significant difference.

165. It should be noted that in his main proof of evidence, Dr Gomez did not seek to criticise the job growth forecast by OE. Indeed, he specifically references the OE forecast in his POE, but makes no complaint as to its methodology or overall conclusions. On the contrary Dr Gomez acknowledges that it is the only forecast presently available which assesses the impact of the closure of the SSI Steelworks on job growth in Redcar and Cleveland.

166. Dr Gomez accepted that his jobs growth figure, based on a past trend, could not possibly take into account the impact of the closure of the SSI Steelworks. His paragraphs 5.33 to 5.37 appear to provide reasons why he does not think the impact will be as severe as the impacts predicted by OE. This is however nothing more than conjecture and opinion. Dr Gomez seems to suggest in his proof that the SSI closure only resulted in the loss of 1000 jobs, or 2% of the resident workforce. Such a simple analysis fails entirely to understand the wider ramifications of those job losses for the local economy. The only up to date analysis of the likely impact of the job losses are found in the OE forecast.

167. The logic trap is another way of demonstrating that Dr Gomez's assessment of future jobs growth is fundamentally flawed. As already referred to above, Ms Howick has provided evidence that there will be a rapidly ageing population at the UK level from 2014 onwards. This slows the future growth of employment at the national level from 2014 onwards, compared with the past. This is demonstrated by a figure presented by Ms Howick in her rebuttal proof of evidence, which is a replicated figure from the OBR Fiscal Sustainability Report (FSR).

168. Dr Gomez accepted that if the OBR are correct about activity rates for older people in the future (as opposed to Experian's higher economic activity rates) the size of the national economy will shrink. Dr Gomez also accepted that the growth of the national economy will be a factor which affects growth at the local level i.e. within Redcar & Cleveland; he conceded that he would expect local growth to follow the national trend/pattern.

169. The difficulty for Dr Gomez is that Experian, whilst using significantly higher activity rates in the future for older people compared to the OBR, predict lower jobs growth than Dr Gomez. If Experian are wrong about future activity rates, the national economy will grow slower than Experian predict.

170. The consequence is that if Dr Gomez is correct about future activity rates being lower than those predicted by Experian, his assumption about job growth at the local level (i.e. in Redcar and Cleveland) pays no regard to the slowing of the national economy which the OBR predicts. In order to be logically consistent, Dr Gomez's jobs growth number would have to be lower than that predicted by Experian; it clearly is not. Dr Gomez accepted that he had looked at jobs growth at the local level 'in isolation' from the national economy. This is a fundamentally flawed approach - it ignores one of the major drivers of future jobs growth anywhere in the country: the national economy.

171. The Appellant has failed to mount any credible challenge to the evidence of Ms Howick on the issue of labour market alignment. The criticisms raised by Dr Gomez in his proof of evidence were two-fold: i) that the SHMA used only one economic forecast, and ii) that Ms Howick relied on unused activity rates for the 'supply' side of the labour market 'equation'. Both have been rebutted.

172. The production of the SHMA Update and Ms Howick's rebuttal proof of evidence explain that additional forecasts have been taken into account by Ms Howick. Indeed, Dr Gomez accepted that the criticism he raised in his proof of evidence now apply with more force to his own work - he is reliant on only one source of data for his predicted future jobs growth (and it is a source which is evidently out of step with more up to date economic forecasts).

173. Not only has Ms Howick had regard to the OE forecast, it is consistent with her overall conclusion that no uplift to the OAN is needed as a result of likely future jobs growth. Indeed, by resting her final conclusion on the Experian forecast (which predicts a slightly less pessimistic picture for jobs growth in the Borough than OE) she has not adopted the 'worst case' scenario for future jobs growth.

174. The 'Alternative' Experian scenario demonstrates that there is no change to Ms Howick's case even if she adopts the lower OBR activity rates for older people in the future. Dr Gomez made no criticism of the 'Alternative' Experian scenario. As noted above he fully accepted that this work effectively removes any doubt that her position was contingent on the higher Experian activity rates being correct (i.e. the concern raised by the Longbank Farm Inspector).

175. There was some exploration of the 'commuting balance' change when comparing the Experian 'baseline' with the Experian 'sensitivity' forecast. However, this went nowhere. As Ms Howick explains in the SHMA Update one of the main effects of reduced activity rates in the future (for older people) is that jobs demand is reduced (by 1500 by the end of the plan period). This is because (as is explained at paragraph 3.22 of the SHMA Update) if the OBR are correct about lower activity rates, the economy will grow more slowly and therefore there will be less jobs overall. In other words, 'demand' reduces as well as 'supply'.

176. Further, Ms Howick's table (provided to the Inquiry immediately prior to her evidence in chief) setting out commuting ratios also makes clear that the assumption made by Experian in the 'sensitivity test' is entirely consistent with the 'business as usual' scenario for commuting flows. The available data indicates that between 2011 and 2014, the commuting flows in the borough were likely to have varied between a ratio of 1.2 to 1.3. This is summarised in Ms Howick's rebuttal proof of evidence which notes that, "Commuting changes of this order are common". The Appellant has adduced no evidence to the contrary.

Summary on OAN

177. Ms Howick's evidence presents a credible and thorough assessment of the OAN for the borough. The SNPP 2012 population projections are, in this case, the appropriate measure of OAN. By contrast the OAN which Dr Gomez argues for is underpinned by an unreasonable uplift for 'economic factors'. The fracture between Dr Gomez's assessment and reality 'on the ground' is well understood by those living within the Borough today. Younger people leave the borough, not because there is a problem with housing supply, but because there are no higher education or employment opportunities to retain them.

178. Artificially inflating the OAN will not address this issue; it requires a policy intervention. As such, it is plainly a matter for the emerging local plan to address and is wholly irrelevant to the issue of OAN.

179. Dr Gomez's case fails entirely to reflect the reality of the likely future jobs picture in the Borough; unfortunately, on the best available evidence, there will be no material jobs growth in the Borough over the plan period. Importing additional population into the borough (over those projected by SNPP) to compete for jobs which do not exist will only cause harm. This ultimately exposes the overall approach of Dr Gomez as an erroneous one. His evidence starts out on the wrong foot, seeking to address the OAN, "...and the proposed housing requirement for the borough". The issue of the proposed housing requirement for the borough is entirely irrelevant to the question of OAN. His continual references to the potential housing requirement figures in the emerging local plan demonstrate this point.

180. Despite Dr Gomez's best endeavours they take the Appellant nowhere on its case regarding OAN. Dr Gomez's reliance on the Strategic Economic Plan (SEP) likewise is entirely mis-placed; the SEP does not provide any assessment of how jobs growth in the borough is likely to change in the future - it is an aspirational policy document which looks at how many jobs would be needed to increase employment in the existing population. It does not suggest, in any way, that such a level of jobs growth is likely given the prevailing economic climate for the borough.

181. As Ms Howick explains clearly in her evidence, there is nothing inherently wrong with a projected falling population in 'working age' people as predicted by the SNPP. The question is whether that falling population will be able to provide enough workers in the future (supply) to meet the likely growth for jobs in the future

(demand). The answer is clearly yes. In that scenario, there is no justification for an uplift to the OAN for 'economic factors'.

Five Year Supply of Housing Land

182. The parties agree that the Council is able to demonstrate a deliverable supply of 1839 houses within the relevant five year period. The difference in position stems not from the amount of deliverable supply of land within the relevant five year period, but the numerical 'target' which the deliverable supply has to satisfy.

183. Mr Cansfield deals with this issue for the Council, making reference to the approach taken in the Council's Five Year Housing Land Supply Assessment. The Council's approach is as follows:

- The calculation starts with the OAN for the relevant five year period: 1030 (206 per annum x 5);
- A backlog of 20 is added to the 1030 (this reflects a small 'shortfall' of delivery against 'target' in the first year);
- A 20% buffer for persistent under delivery (measured against past 'housing requirement') is applied;
- This provides a total 'target' of 1259 houses over the five year period;
- It should be noted that this differs from the 123 dpa for the OAN over the emerging plan period, which is an 'averaged' figure;
- Taking into account the deliverable supply, the Council is therefore able to demonstrate a 7.3 supply of housing land.

184. Mr McMullan presents the Appellant's evidence on the five year supply issue, which is set out in his 'Supplementary' note to his main proof of evidence. The key differences are:

- Mr McMullan suggests that the housing requirement figures from the Core Strategy should be used to calculate the 'target', rather than the 'OAN';
- In so far as OAN is relevant to the calculation of five year supply, the OAN is 349 dpa;
- In either scenario, the 'target' should be added to by '1034' in order to require the Council to 'make up' a 'backlog' of delivery;
- A 20% buffer should then be applied for persistent under delivery against the Core Strategy housing requirement figure.

185. In summary therefore, the Appellant i) starts from a 'higher' numerical target (either 270 or 349) and ii) applies a 'backlog' for what is contended to be an under supply against the Core Strategy target. However, as was made absolutely clear in Mr McMullan's evidence in chief, the Appellant pins its colours to the 'Core Strategy' mast (270 dpa), rather than Dr Gomez's OAN (349 dpa).

186. In order for its case to succeed on five years supply, it must therefore demonstrate that it is correct to add to the 'target' a 'backlog' for under supply since 2004. If it fails in this part of its argument, the Council will be able to demonstrate a five year supply of housing even assuming a starting point of 270 houses per annum. Indeed, Mr McMullan accepted that in the absence of his 'Core Strategy Backlog', the Council would be able to demonstrate a five year supply of housing measure against the 270 dpa 'target'.

OAN or Core Strategy target

187. The Council remains firmly of the view that its OAN for the relevant five year period should be the starting point for the five year supply calculation. Both parties

place weight on the guidance in the NPPG which states that "Housing requirement figures in up to date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light".

188. Mr McMullan accepted that the SNPP is the sort of 'significant new evidence' which the NPPG is referring to. There can be no doubt that this has come to light since the housing requirement targets in the Core Strategy were adopted. Mr McMullan likewise agreed that the SNPP supersedes entirely the evidence base which was used for the Core Strategy (which goes back to the early 2000's). This is a critical concession. It renders the Appellant's case on this issue wholly unsustainable. The SNPP cannot and should not be ignored.

189. Apart from the above, there are very good reasons indeed why the Core Strategy requirement should not be used to calculate the five year housing land position. To do so would fly in the face of the Government's clear objective of moving away from top down targets, which were imposed by the regional strategies.

190. The Core Strategy Requirement is derived entirely from the emerging RSS for the North East at the time of its adoption. The Appellant accepts this point. The housing requirement figures within the CS are therefore rendered effectively obsolete by the revocation of the RSS. There is clearly a policy vacuum regarding the housing delivery target. Using a CS requirement which is derived from a revoked RSS would render the entire concept of OAN irrelevant to the issue of five year supply. A housing requirement derived from RSS cannot be used as a 'proxy' for OAN.

191. The Council must meet its OAN to give effect to paragraph 47 of the NPPF; it does not need more. The question of whether or not it should look to do more is a question for the emerging plan process. Any additional housing requirement will have to balance the competing demands of the Borough in accordance with the other policies in the NPPF, including those which seek, for example, to recognise the intrinsic value and beauty of the countryside. Using the CS requirement to calculate the land supply would effectively neuter the fundamental changes to assessing housing need which are within the NPPF.

192. The only reason why the Appellant argues for such an approach is because, in this case, the assessment of OAN does not assist them. If they were able to demonstrate on any convincing basis an OAN higher than the CS requirement, they would no doubt be arguing that the Council could not, as a matter of law (applying *Hunston*), insist on using the lower CS figure for its five year supply calculation. The correct interpretation of the housing supply policies within the NPPF cannot, as a matter of law, alter on a case by case basis. The Appellant's approach to this issue is fundamentally flawed.

The backlog dispute

193. The NPPG deals expressly with the question of 'how LPA's should deal with past under-supply'. Mr McMullan agreed that its terms were clear: past under-supply is to be dealt with by assessing whether a particular LPA has a record of persistent under delivery. The approach to be taken if persistent under delivery is demonstrated could not be made clearer by the NPPF: a 20% buffer is to be applied to the starting point 'target' for the relevant five year period. The NPPF makes equally clear that this 20% buffer is not an overall increase on the 'target' for the plan period - it is simply moving it forward from later in the plan period.

194. The assessment of OAN in itself takes into account issues of past under supply of housing. This has been done robustly by Ms Howick. If past under supply needed to be 'made up' this would be clearly evident from the housing market signals within the borough, such as affordability and overcrowding, which have been assessed as part of the SHMA and SHMA Update. Notwithstanding that market signals overwhelmingly indicate there is no issue with under-supply in the Borough, Ms Howick has erred on the side of caution and applied a 10% uplift to the OAN.

195. The Appellant's approach of imposing a 'backlog' on top of i) the 10% uplift to the OAN for 'market signals' and ii) a 20% buffer to the 5 year supply 'target' is an egregious example of double counting. It should be noted that although Dr Gomez is critical of the 10% uplift for market signals, he does not provide any alternative in his evidence; his case on OAN rests entirely on his unfounded economic 'uplift'.

196. The Appellant's approach to dealing with the backlog in the five year supply assessment is not supported by the NPPG or the NPPF. It is nothing more than an attempt to artificially inflate the OAN, which is unsupported by the up to date evidence base that informs the SHMA and the SHMA Update.

Summary of the five year supply calculation

197. The Council robustly maintains its position that it is able to demonstrate a five year supply of housing land. The consequence, of course, is that any policies of the Development Plan that are considered to be 'relevant' to the supply of housing, are not rendered out of date pursuant to paragraph 49 of the NPPF.

Flooding and Drainage

198. On a sensible reading of the original ES and the ES updates (either September or October 2016) it is difficult to see how the Appellant can maintain its position that a sea outfall was 'always' part of its drainage scheme. A sea outfall is simply not mentioned anywhere in the original ES.

199. Mr Travis accepted that the environmental impacts of constructing a new sewer to service the appeal scheme have not been assessed. He suggested that this was not possible, as the Appellant has no control over the final route of the new requisitioned sewer. However, as Mr Travis made clear, the options for the new sewer appear to be reasonably well established. The mere fact that some of those options will not be taken forward does not preclude them from being properly assessed as part of the ES process. The construction and operation of a new sewer has the clear potential to result in environmental impacts. It is development which is related to and an integral part of the appeal scheme. The proper approach is to ensure that those impacts are, in so far as they can be, assessed before outline planning permission is granted for the appeal scheme. If this assessment is not made prior to the grant of outline permission, the potential environmental impacts of the new sewer will avoid scrutiny altogether.

200. In short, the Appellant's drainage proposals have altered materially from the 'solution' which was proposed to the Environmental Agency (EA). It is simply untenable that the 'additional information' was the proposal of a condition; a condition of the same nature and type was always proposed in the original ES. The 'additional information' was the proposed drainage scheme shown on the plan attached to Enzygo's letter. The EA made clear that their objection was withdrawn subject to the 'information' in question forming part of the application; that information can only be the scheme which was proposed. Not only did the proposed

drainage solution never make its way into the application proposals, but the options now being set out by the Appellant differ fundamentally from that provided to the EA.

201. It is fair to say that it is not always necessary to require an advanced level of information at the outline stage regarding the availability and adequacy of drainage solutions. However, this site suffers from and causes significant flooding elsewhere in the locality. This increases the importance of being able to assess the adequacy of any drainage solution proposed at the outline stage. It is simply irrelevant that NWL do not object to the Appellant's proposals to requisition a sewer. The statutory consultee with responsibility for this issue is now the LLFA. Mr Fraser's evidence is clear that as things stand, the information provided by the Appellant does not allow an appropriate level of assessment to be carried out. The absence of information is the basis for the Council's objection in this case.

The Planning Balance

202. The Council maintains its position that the appeal scheme is contrary to the Development Plan, read as a whole, and it considers there are no material considerations which outweigh this policy conflict.

The Development Plan

203. Mr McMullan seeks to argue that the appeal scheme is in 'overall compliance' with the Core Strategy. A key part of his case on this issue rests on his interpretation of CS policy CS2 and the 'key diagram' in the Core Strategy. On a fair reading of Mr McMullan's evidence, it is clear that he contends that a key diagram can be interpreted as a 'settlement limit'. He suggests that as the appeal site falls within the purple shading on the key diagram which denotes the 'conurbation', that the appeal scheme is expressly supported by policy CS2.

204. It is right that Marske is recognised as one of the settlements which is said to fall within the 'Conurbation'; as a matter of common sense this alone cannot lend any weight to the appeal scheme. The appeal site is outside the settlement of Marske as it stands today. The key diagram cannot properly be read as providing any indication that the CS envisaged development of the appeal site. Mr Cansfield has explained the purpose and role of key diagrams at the time the CS was adopted. It cannot sensibly be interpreted as providing any indication as to what the future settlement limit of Marske was likely to be.

205. The Council maintains its position that the appeal scheme conflicts with DP policy DP1. Mr McMullan conceded that policy DP1 seeks to protect the countryside from development. Whether policy DP1 is out of date in any way, whether by way of the five year land supply, or due to the absence of a review of settlement limits, the Council considers that it can legitimately be given weight by the decision maker. DP policy DP1 reflects the policy objective of bullet point 5 of paragraph 17 and is therefore consistent with the NPPF's objective to recognise the intrinsic beauty and character of the countryside.

206. The Court made clear in *Suffolk Coastal* that the NPPF does not prescribe any particular level of weight that a decision maker must afford to a policy which is 'out of date'. Should the decision maker consider it appropriate, full weight can be afforded to DP policy DP1. Given the extent to which this appeal proposal conflicts with its countryside protection objective, the Council considers that significant weight should be afforded to policy DP1.

207. The Council rejects any suggestion that DP policy DP1's relevance and/or its application depends upon the existence of a 'new' proposals map. The wording of

the policy makes no reference to the need for development limits to be identified in order to ensure its operation. If the operation of DP policy DP1 was dependent on a new proposals map coming forward, it should not have been found sound. It could not be clearer that the appeal site lies outside of the existing development limits of Marske and falls within the 'countryside' as a matter of policy. DP policy DP1 therefore applies and the scheme conflicts with it significantly.

208. The Appellant accepts that CS policy CS22 is fully up to date with the NPPF and that it is not a policy which is 'relevant' to the supply of housing. CS policy CS22 should therefore be afforded full weight in the determination process if the appeal scheme conflicts with it. The Council concludes that there is conflict with CS policy CS22 and weight should be given to this conflict in the determination process.

209. DP policies DP10 and DP11 differ slightly in that the Appellant and the Council take a different view as to whether or not they are 'up to date' in NPPF terms. However, the question of conflict essentially turns on whether the heritage evidence of the Council is accepted in substance. If so, then there will inevitably be conflict with DP policies DP10 and DP11. In some respects the policies add little in substance to the assessment which must be carried out under paragraphs 132 and 134 of the NPPF in any event. Save of course for the fact that conflict with DP the policies must be given an appropriate level of weight, over and above that afforded to the NPPF, to reflect the statutory presumption in favour of the Development Plan.

210. On a correct interpretation of CS policy CS23 the Council considers that the appeal proposals plainly conflict with it. As Mr McMullan accepted the appeal site falls within the Strategic Gap. The land within the Strategic Gap is to be 'protected'. It cannot be 'protected' by being built on.

211. To this extent, arguments as to whether the policy is predominantly a 'landscape' policy or a 'spatial' policy are rendered somewhat irrelevant. The Appellant accepts that at least part of the purpose of CS policy CS23 is to protect the landscape which falls within the Strategic Gap but contends that the policy is 'relevant' for the supply of housing. However, this does not assist the Appellant in light of the fact that the Council can demonstrate a five year supply of deliverable housing. The Council resists any suggestion that the judgment in Suffolk Coastal means that the decision maker is required to find that CS policy CS23 is a policy which is 'relevant to the supply of housing'.

212. As with DP policy DP1, even if CS policy CS23 is considered to be 'out of date' by way of the application of paragraph 49 of the NPPF or for any other reason, this does not automatically render it obsolete. The Council contends that CS policy CS23 can still be afforded significant weight in accordance with the NPPF's directive to protect and enhance the landscape and to recognise the intrinsic value of the countryside. The appeal site forms an essential part of the Strategic Gap which CS policy CS23 seeks to protect.

The benefits and harms of the appeal scheme

213. The Council has given careful consideration to the Appellant's case on 'benefits'. The Council does not accept that the items referred to by the Appellant can be properly assessed as 'benefits' of the appeal scheme. In the main, as Mr Cansfield explained in oral evidence, the purported benefits are largely mitigation.

214. The main benefit of the scheme would be the provision of market and affordable housing within the next five years. However, the weight which can be attached to this benefit as a material consideration is substantially reduced in this case because the Council can demonstrate a five year supply of housing land, the appeal scheme would only contribute a minimal supply of housing within the five years, and, if the Council is found to not have a five year supply of housing land, then the harm which the appeal scheme would cause is not outweighed by the benefit of providing a contribution to the five year supply of housing.

215. Taken as a whole, the Council does not accept that the appeal scheme represents sustainable development. The finite and irreplaceable loss of the countryside which the appeal scheme would result in is by itself a clear environmental harm. In addition, the appeal proposal would result in significant harm to the character and appearance of the countryside, and would cause significant harm to the key elements of the wider landscape character within which the site sits. The identity of Marske would be fundamentally compromised, as its rural setting on the southern approaches would be lost and key views which inform its identity (by reference to local landmarks) would also be lost. The integrity of a key part of the Strategic Gap would be significantly compromised. Harm to heritage assets would be caused, which are not 'clearly or convincingly' justified.

216. In essence, the Council contends that the environmental harm which would arise as a result of the appeal scheme renders the proposals unsustainable. The extent and severity of the harm is such that it significantly outweighs the benefits of the appeal scheme in respect of the provision of housing and any economic benefits arising from job creation and investment. Even considered in isolation from any conflict with Development Plan policies, the Council considers that this harm is sufficient for the planning balance to fall heavily on the side of refusal.

217. There are no material considerations which are sufficient to outweigh the conflict with the Development Plan.

Third Party Verbal and Written Representations

The material points of the cases made by third parties in writing and at the Inquiry are:

218. The proposed development would be outside the development limits of Marske and would constitute a significant intrusion into the countryside. The village is already overdeveloped for its core facilities and further development, including a drive-thru restaurant, a hotel and a petrol filling station, would be out of keeping with the traditional character of Marske. The housing proposed is not required to meet local housing needs and is not included in the emerging Local Plan to meet housing needs for the next five years. There is no social benefit in providing housing that is not needed. It is disingenuous for the Appellant to claim that affordable housing would be a benefit when only 15% of the houses would be affordable. The village has expanded in recent years with the construction of about 400 dwellings

and the construction of more than double this number on one site on the edge of the village would have a significant effect on its character.

219. The development would result in loss of agricultural land, research indicates that the UK will face a significant shortage of farmland by 2030, and would have a significant adverse effect on the character of the countryside and on the character of Marske. The development would be a dense suburban expansion of the village and would intrude into the strategic gap between Marske, New Marske and Saltburn. It would be a blight on the fragile landscape beauty that exists in the area. Views northwards over the town towards the sea would be interrupted as would views southwards towards Errington Woods

220. Harm would be caused to the significance of the SAM by the construction of the development within its setting. Whatever the scale of the harm considerable weight must be attached to it in the planning balance. The tower of St Marks Church at the heart of the village would be obscured in views from the A174 and from footpaths on higher ground to the south of the site.

221. Housing development on the scale proposed would increase pressure on already stretched local infrastructure and services; local residents already experience long waiting times for medical services. The Appellant has not assessed the pressure that this proposed development would have on public services in Cleveland and has not offered a contribution to the cost of community infrastructure. It is disputed that the proposed community hall would be a social benefit because there is already a community hall in the village. The provision of a fast food restaurant is a social dis-benefit as it would contribute to obesity and diabetes.

222. The proposed development would increase traffic on roads around and in Marske, which would exacerbate current traffic queues at peak times. The proposal to reduce the width of the road under the railway bridge to single track on the entry to the village, and the introduction of traffic lights, would also contribute to further traffic problems. There is no guarantee that bus services would be provided for the intended residents and existing residents of the village already face problems with fewer public transport services. Car ownership would be essential for residents of the development. Parking is already at a premium in the village and the development would only result in serious parking congestion.

223. Flooding is a serious issue and has affected the village on several occasions in recent years. Many people have had their homes flooded and have suffered the loss of personal items. The proposed development would add to flooding concerns and insufficient information has been provided by the Appellant to indicate that the problem would be resolved if planning permission is granted. In particular rainwater runs off the site and causes flooding on and around the railway crossing on Longbeck Road. The development of the site would only serve to make this flooding worse. The proposal to pump rainwater off the site through a pipe to a sea outfall has been put forward late in the day and there are no guarantees that this will be a realistic solution to the flooding problems.

224. The public house and restaurant proposed for the site would have a destabilising effect on the public houses in the village and would threaten these family run businesses. The proposed petrol filling station would have a similar effect on existing similar businesses in the area. The recent closure of the Redcar Steelworks has resulted in the direct and indirect loss of 1000's of jobs and has had a devastating effect on the local economy. Many people have been forced to move away from the area in search of jobs and in such an economic climate it is unnecessary to build over 800 houses in an area where there are no jobs.

225. The proposed development is contrary to CS and DP policies, there is no demonstrable need for the housing proposed and the other non-residential uses proposed would threaten the economy of the area. The site is not a sustainable location for the proposed development. The strength of local opposition to the proposal should be given significant weight in the decision making process.

Conditions and Section 106 Obligation

226. Recommended conditions are included in a Schedule attached to this report. The reason for each condition appears after the condition. They are, apart from one which is considered in the conclusions in this report, in line with conditions agreed by the Council and the Appellant (ID25). The agreed conditions have been amended, where necessary, to meet the tests set out in the National Planning Practice Guidance (NNPPG) and in the interests of clarity and precision. Phrases such as 'unless otherwise agreed in writing by the Local Planning Authority' have been deleted. Phrases such as 'unless otherwise agreed in writing by the Local Planning Authority' have been deleted.

227. The Appellant has entered into a Planning Obligation with the Council, made under Section 106 of the Town and Country Planning Act (ID27). Schedule 2 of the Obligation requires the Appellant to submit an Affordable Housing Scheme for approval by the Council which will set out the quantum of affordable dwellings, the affordable housing mix, the types and sizes of affordable dwellings, the timing of delivery of the dwellings and their locations. Affordable Dwellings is defined in the Obligation to be 15% of the total number of dwellings in the development.

228. Schedule 3 of the Obligation requires the transfer of land to the Council for the construction of a primary school or the payment in prescribed stages of a Primary School Contribution, which is £2,642 per dwelling. If the land is not transferred within 10 years then the Owner may make a planning application for an alternative use of the land. Schedule 4 of the Obligation requires the payment, before development commences, of a £12,000 PROW Contribution, a £2,000 Cycle Parking Contribution, a £3,000 Traffic Regulation Order Contribution, and a £2,000 Railway level Crossing Contribution. Schedule 4 also requires the payment, before occupation of any dwelling, of a £111.73 per dwelling Community Facilities Contribution, and the payment, before occupation of the 400th dwelling, of a £25,000 Marske Leisure Centre Contribution. Schedule 5 of the Obligation requires the Council to use or repay, under specified circumstances, the financial contributions.

229. The provisions of the Obligation are all related to requirements of development plan policies and are all necessary to make the development acceptable in planning terms. They are all, furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Agreement therefore complies with the tests set out in the Planning Practice Guidance and with Regulation 122 of the CIL Regulations 2010 and, with regard to clause 4 of the Undertaking, is required if planning permission is granted for the development. The Council has confirmed that there is no conflict with Regulation 123(3) (ID26).

Conclusions

Numbers in square brackets at the end of each paragraph refer to earlier paragraphs in this Report.

The first issue – the character and appearance of the area

230. The former hedgerow subdivisions of the appeal site have been removed and it is, apart from the fenced SAM, now simply a very large area of arable farmland. It is devoid of any features of interest, other than the SAM, and there is no public access across the site. These characteristics of the site are mentioned in the negative elements of landscape set out in the LCA and have led to the site's inclusion within area R2 'Lowland Farmland' (South of Redcar and Marske) within the Redcar Flats Landscape Tract, which is designated as a Restoration Landscape, rather than within an area designated as a Sensitive Landscape. [25, 133]

231. The LCA refers to existing features in the denuded Restoration Landscape which are "...relatively sparse, due to hedgerow decline and loss, and their retention is important to 'place' new development, to act as the basis for additional planting, or for the creation of 'new landscape'. Additional planting may comprise...a hedgerow to continue the line of an existing one, or, in preference, form a hedgerow pattern or network and combine with tree planting to create an enhanced landscape structure".

232. The site, in itself, has little character though such character that it does have would be fundamentally altered by the proposed development. Rather than open farmland the site would be almost wholly developed for housing and other uses. Furthermore, whilst there are no hedgerows to be retained on site, the proposed development would provide the opportunity to reintroduce a hedgerow pattern, to sub-divide phases of the housing development in particular, and to introduce tree planting within the site and, as proposed, in a landscape buffer alongside the A174. The development has the potential to create an enhanced landscape structure for the site in accordance with the LCA aspirations for Restoration Landscapes. [26, 134]

233. The landscape character of the site would not be 'improved' by the development but it is reasonable to conclude that the development would have an overall positive effect on the character of the site. The proposed development would not adversely affect the character of the remainder of area R2, which is an extensive open farmed area that extends from the outskirts of Redcar to the west up to the outskirts of Saltburn to the east and from Marske up to New Marske and Errington Woods to the south, and would not harm the character of Area E7 'Upland' (Upleatham) which includes Errington Woods. [29, 135]

234. The site can be, and is by residents of the area, valued for its openness but it falls well short of being a 'valued landscape' for the purposes of paragraph 109 of the NPPF. There are views across the site from the Black Path towards Errington Woods on high ground to the south and these would be largely lost if the development was to be permitted and ultimately implemented. But the Black Path is not, on evidence gained at site visits both during and after the Inquiry, a well-used footpath and the loss of these views is not regarded to be significant. [32, 138]

235. Glimpsed views towards the sea across the site from the A174 would be lost but these are from fast moving vehicles and there are similar views from other sections of this trunk road to the west and east of the site. These partial seascape views are a feature of travelling along the A174 and the loss of views from a short section of the road is not regarded to be significant. There are seascape views from footpaths to the south of the site, particularly from Quarry Lane, and from a

footbridge that crosses the A174 close to Longbeck Road, but these views would remain over the rooftops of the buildings on the site. The proposed development would not intrude in glimpsed views of distant features of the area such as the disused steelworks in Redcar. [30, 135]

236. The proposed development would have a short built frontage to Longbeck Road but this would be opposite development on the west side of the road. The development would be screened by structural landscaping in the buffer strip alongside the A174, similar to that which screens development on the south side of Redcar which extends up to this road, and an existing hedgerow to the A1085 leading from the A174 into Marske would be retained. Despite the railway line that defines the existing south boundary of Marske, the proposed development would be, in many respects, a natural extension of the village. The site is well defined and bounded on all four sides by existing roads and the railway line, and for this and other aforementioned reasons the proposed development would not have a significant adverse effect on the appearance of the area. [31, 136]

237. With regard to the Strategic Gap between Marske and New Marske that is a subject of CS policy CS23, the supporting text to the policy states that the gap will be protected to ensure that settlements do not coalesce with surrounding settlements to help maintain their identity. The proposed development would not, as a matter of fact and in plan terms, result in Marske coalescing with New Marske; the south-west corner of the appeal site is about 0.5 kms from the north-east corner of New Marske. There would not, furthermore and given in particular the lack of any significant landscape features in the gap that would remain, be any visual coalescing of the two settlements from any vantage points and, in particular, from the A174. A clear and visible separation of the two settlements would be maintained. [21, 137]

238. Planning permission was granted on appeal in December 2015 (CD30) for 'the erection of up to 130 dwellings, landscaping, and ancillary works' on land south of Marske Road, Saltburn, following an Inquiry held in October 2015. The 5.83 hectare site is on the south side of the A174 and abuts the western edge of Saltburn. The permitted scheme, if implemented, will result in the strategic gap between Marske and Saltburn being reduced to about 0.5 kms: the same as the gap that there would be between Marske and New Marske as a result of the appeal development. It is worth noting that the Inspector in the Saltburn appeal reached similar conclusions on the strategic gap as are reached in this report. [22]

239. The proposed housing development would have a spine road running through it from the A1085 to Longbeck Road and it is intended that there would be a footpath link to the Black Path for access to the station and to the village. Whereas there is currently no access to the site, particularly to the SAM, there would be throughout the proposed development. The proposed development would be inherently multifunctional and, given the current denuded character of the site, there is good reason to suppose that the quality and value of the site would be enhanced. [33]

240. The strategic gap between Marske and New Marske would remain and would thus be protected, and the quality, value, multi-functionality and accessibility of the part of the gap that would be developed would be enhanced. The proposed development does not, in this regard, conflict with CS policy CS23. The proposed development would not result in any significant harm to the character and appearance of the area and does not therefore conflict with CS policy CS22. [34, 218]

The second issue – the significance of heritage assets

241. The SAM is a heritage asset of the highest significance but the proposed development would not have any direct effect on that significance. The only possible heritage harm that might be caused would be as a result of development within the setting of the SAM. The setting of the SAM, the surroundings in which the heritage asset is experienced, extends out from the monument and includes the railway line, coal yard and village to the north, the appeal site to the west, Marske Inn Farm to the south, and the A1085 and farmland to the east. In general visual terms the SAM can be experienced, from public vantage points, from the Black Path and from a footbridge that provides access to the westbound station platform, and through a boundary hedgerow alongside the A1085. [43-45, 139]

242. There is good reason to agree with Mr Burton-Pye for the Council who has stated that “The SAM and the manor house that it represents once formed a key element of the village of Marske”. The A1085 was almost certainly, when the manorial settlement was established, a track that led past the settlement to the village and the coast from the south. The track is now a substantial metalled highway and, furthermore, the SAM’s direct relationship to the village has been severed by the railway line and the introduction of the station and coal yard. The manorial settlement is likely, given that part of a field system is part of the heritage asset, to have been established just outside the village so that it was also directly related to the land that was farmed to provide produce for its residents. [47, 140]

243. Evidence indicates that the field system extended into the field to the east, beyond the track that is now the A1085, and it is quite possible that the field system that supported the manorial settlement extended into the appeal site. The settlement clearly has a direct and important relationship to the farmland that surrounds it, and this includes the major part of the appeal site that would be developed. Though the SAM cannot be experienced from the appeal site at present it would be if the site was to be developed. This factor has been addressed however by incorporating a 150 metre wide buffer zone within which there would be no built development. If the prospect of developing a primary school on the site was to be taken up by the Council the buffer zone would be playing fields and if this does not come to fruition the buffer zone would be a public access amenity area. [49, 141]

244. In either event the SAM would be experienced from an undeveloped area and proposed built development to the west and south would be significantly further away from the SAM than existing built development in the village, at the railway station, and at Marske Inn Farm. Further built development would not intrude into the setting of the SAM. The proposed development would not affect experience of the SAM from the railway footbridge or, given that the SAM is undulations in a field and that boundary treatment and landscaping would be matters for careful consideration at reserved matters stage, from the Black Path for walkers approaching from the west. The development would not intrude into the setting of the SAM and there would be no adverse effect on the significance of the heritage asset. [52-3]

245. The Appellant has proposed that the SAM, if planning permission is granted, is the subject of a Conservation Management Plan (CMP). At present the SAM is inaccessible and is on Historic England’s List of Scheduled Ancient Monuments at Risk. The CMP may or may not result in removal of the SAM from the list but this is more likely to occur with a CMP in place; a condition agreed between the parties would require the approval and implementation of a CMP. The CMP could provide, at least, for access to the SAM and for the display of on-site information about its history and significance. The SAM would thus become an educational resource for

the whole community. This would be a direct and beneficial consequence of the grant of planning permission and would outweigh Heritage England's view, if that view is to be preferred, that less than substantial harm would be caused to the significance of the heritage asset. [58-60, 142]

246. St Marks Church, a Grade II listed building, is at the centre of Marske. The church tower, which is a prominent feature of the area around Marske, contributes to the architectural and historic interest of the listed building. In this regard, the area around Marske may be regarded to be part of the setting of the heritage asset. The built elements of the proposed development would be visible in views of the church, particularly from Quarry Lane, from the footbridge over the A174, and on the approach to the village along the A1085. In views from Quarry Lane and the footbridge built elements of the proposed development would be in the foreground but it is unlikely that they would obscure the church tower or even detract from the experience of the tower in the landscape. [54-55, 143]

247. Even if the development did obscure the tower from some public vantage points it is a feature of the area that the church tower is not a constant feature, such as it might be in a featureless and flat landscape, but is glimpsed between landscape and topographical features. In this regard many glimpses of the church tower would remain. The view of the church tower along the A1085 was particularly referred to at the Inquiry but before Marske Inn Farm it is hedgerows on both sides of the road and road signs that are the most prominent landscape features, and built elements of the proposed development to the west of the road would not obscure or detract from the experience of the church tower from the road. From no other direction would the proposed development reduce the prominence of the tower in the landscape. [56-57]

248. A CMP and its implementation, which would be required by an agreed condition, would ensure that no harm would be caused by the proposed development to the significance of the SAM and no harm would be caused to the significance of St Marks Church. The proposed development does not therefore conflict with CS policy CS25 or with DP policy DP11. [61-63, 220]

The third issue – five year housing land supply

249. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5%, or 20% if there has been a record of persistent under delivery. The main parties agree, for the purposes of assessing housing land supply, that there are 1839 housing units under construction or with planning permission, that the Council has a record of persistent under delivery of housing, and that a buffer of 20% should be applied. Consideration must also be given as to whether any backlog should be made up, either in the first five years of the remaining plan period, the Sedgefield approach, or over the whole of the remaining plan period, the Liverpool approach.

250. The NPPG states that housing requirement figures in up-to-date adopted Local Plans should be used as a starting point for calculating five years supply and that considerable weight should be given to these figures unless significant new evidence comes to light. The NPPG also mentions that it should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not reflect current housing needs. The CS housing requirements for the Borough are indeed based on a revoked RSS and the Appellant has accepted that the Sub-National Population Projections for England (SNPP) published by the Office for National Statistics (ONS) in 2012, and which therefore postdates the adoption of the CS, is significant new evidence. There is good reason

therefore to set the CS housing requirements aside in favour of an OAN for the Borough. [64, 187-192]

251. The main parties agree that the Housing Market Area (HMA) is the Borough Council area. The NPPG is clear that the starting point for assessing the OAN for the HMA is Household Projections for England (HP) published by the Department for Communities and Local Government (DCLG). These projections are produced by applying projected household representative rates to the SNPP population projections. The NPPG indicates that the household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which have not been captured in past trends. [65-67]

252. The SNPP predicts that the population of the Borough will not increase from 135,000 up to mid-2022 and the HP therefore predicts that household growth, presumably as a consequence of the reduction in household size, will increase by only 2,000 up to 2024. Thereafter the main parties agree that an adjustment needs to be made for 'economic growth adjustment' or 'labour market alignment', depending on terminology. It is the issue of jobs growth that is critical. [71, 151]

253. The NPPG states that employment trends should be based on an assessment of the likely change in job numbers based on past trends and/or economic forecasts as appropriate, whilst also having regard to the growth in the working age population in the HMA. In accordance with this guidance the Appellant has based their assessment of jobs growth on past trends and has assessed it to be an increase of 2,200 jobs over the plan period of 2015-32. The Council relies on the economic forecast of Experian who predict a growth of 500 jobs over the same period. [72,

254. OAN has been debated at two relatively recent Inquiries into proposed housing schemes in the Borough. The Inspector in the Saltburn Inquiry, mentioned in paragraph 240, commented that "As affirmed by the Court of Appeal in *Hunston v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1610 (*Hunston*), it is not the purpose of a Section 78 appeal to formally determine an authority's OAN, its housing requirement, or its available five-year housing land supply. That exercise is a legitimate part of a wider and more elaborate development plan process". An assessment of OAN for the purposes of this report, given that it is being undertaken in consideration of a Section 78 appeal, must take an appropriate 'broad brush' approach to the evidence put forward by both parties, as did the Inspector in the Saltburn Inquiry. That Inspector did not reach a conclusion on OAN but did "...find no justification for the Council to confine its assessment of housing need in the way it has" and favoured "...a more comprehensive assessment of requirement at 395 dwellings per annum". [103, 148]

255. The other relatively recent Inquiry was held in early 2016 and related to a proposed housing scheme for up to 320 dwellings on a site in Ormesby (CD32). At the Inquiry the Council was represented by the same Counsel, Ms Ogle, and by the same housing consultant, Ms Howick, as appeared at the Inquiry that was held into the appeal that is the subject of this report. The case presented by the Council at that Inquiry, and the documentary evidence submitted, is likely to have been similar to that presented and submitted in this case. The Inspector concluded: "...the Appellant's view on activity rates to be more realistic. Accordingly, I am persuaded...that the OAN figure of 355 dpa is the more robust figure".

256. Two volumes of a Strategic Housing Market Assessment (SHMA) have been published, in February 2016, since the Ormesby Inquiry. Volume 2 of the SHMA, 'Objectively Assessed Housing Need', was prepared by Peter Brett Associates. Ms Howick works for Peter Brett Associates and is likely to have been the author of, or at

least contributed to, Volume 2, and it is not surprising that the conclusions reached in that document are virtually the same as those put forward by Ms Howick at the Inquiry. The conclusion of Volume 2 is that "...there is no justification for a 'future jobs' uplift to the housing need figure of 132 dpa from 2015 to 2032. This conclusion is based on a 'business as usual' economic scenario. It also assumes that economic activity rates for the older age groups increase in future, in line with Experian's view...". [77-80, 161-163]

257. Both main parties have addressed the issue of undersupply in previous years. The Council maintains that this is taken up in the assessed OAN, and should not be added to it, whereas the Appellant maintains that it should be added to the OAN before the 20% buffer is added. The Planning Advisory Service (PAS) has indicated that a "...SHMA should properly take account of backlog as part of the calculation of OAN...". The recent SHMA does not mention undersupply specifically but does include a section on 'Past Delivery and Market Signals'. A table in this section sets out housing completions against targets and shows, over the ten year period 2004-14, that 2,203 houses were completed. The Local Plan housing target in the first seven years was 300 dpa and in the last three years was 270 dpa; a total of 2,910 houses. The shortfall for the ten year period was 707 houses. [94-99, 193-196]

258. The SHMA makes the observation that 72% of house completions in the period 2004-2010 were on windfall sites because "...most of the housing land allocations in the 1999 Local Plan had been built out". The SHMA goes on to state that "Recognising the threat to its five-year land supply position, the Council from 2011 onwards has been granting windfall permissions on sites outside development limits, which they did not do previously. This evidence suggests that in recent years planned land supply may have constrained housing development...". This indicates that the Council is in a precarious position with regard to housing land supply, particularly as they did not adopt any housing land allocations to support achieving the 2007 CS housing targets, abandoned the first draft Local Plan a few years later, and have yet to reach a point where the emerging Local Plan can be given any weight. The SHMA does not clearly indicate that the shortfall in the ten years up to 2014-15 has been accounted for in the stated base OAN of 120 dpa, to which has been added a 'market signals uplift' of 10%, 12 dpa, to reach an OAN of 132 dpa.

259. With regard to an economic growth adjustment the Council favours the job growth prediction of Experian, that job numbers in the Borough will increase by only 500 up to 2032, and the prediction by that organisation that the rate of increase in economic activity rates in the 65+ population of the Borough will be significantly above the national increase for this age group that is predicted by the Office for Budget Responsibility (OBR). Taking into account the prediction, by OBR and other forecasters, that economic activity rates will increase in the 16-64 age group as a result of the aging population, the recent closure of the SSI Steelworks in Redcar that resulted in the direct and indirect loss of many more than 1,000 jobs, and other factors, the Council makes no economic growth adjustment to their assessed OAN of 132 dpa. [72, 165]

260. The Appellant predicts that job numbers in the Borough, on the basis of past trends, will increase by 2,200 up to 2032, though it is not clear how this figure is calculated. They also predict that self-employment will continue to increase and that, with regard to the closure of the steelworks, considerable efforts will be made "...to replace those lost jobs, not to mention regenerate the steelworks site". They have pointed to the 'one-off shock' of the closure of the steelworks as a reason why models such as that put forward by Experian cannot be relied on. However, it is unclear what the Appellant regards the base OAN to be from an assessment of the

HP figures published by DCLG and what economic growth adjustment can be applied to that base OAN. It is entirely unclear how the Appellant has arrived at an overall OAN of 349 dpa. [77, 170]

261. Taking into account the affirmation in *Hunston* it is not possible in this report to reach a firm conclusion on the OAN for the HMA. But there is clearly a significant difference between the conclusions of the main parties on this matter. If the Council's OAN of 132 dpa is accepted then they would be able, irrespective of other considerations such as application of a backlog before applying a 20% buffer, to demonstrate a five year housing land supply, and if the Appellant's OAN of 349 dpa is accepted then the opposite would be the case. [82, 183-184]

262. Taking into account the statement in the SHMA "...that in recent years planned land supply may have constrained housing development..." and other factors, particularly the Council's reliance on windfalls and the Government's commitment in the NPPF to boost the supply of housing, it is appropriate to take account of the housing supply backlog in an assessment of five year housing land supply. This backlog is taken to be 707 houses, as set out in the SHMA, rather than 1034 houses as claimed by the Appellant. There is no reason to depart from guidance in the NPPG that 'local planning authorities should aim to deal with any undersupply within the first five years of the plan period' and an assessment of supply will be carried out on this basis. A backlog of 707 houses therefore equates, for the purposes of assessing the five year housing land position, to 141 dpa. [84, 194]

263. Taking into account the agreed current supply of 1839 houses and the need to account for the backlog, the OAN, once an agreed buffer of 20% is also applied, needs to be 166 dpa or less to result in there being five years of housing land supply (1839 divided by ((166 + 141) x 1.2) equals 5). Taking all other matters into account, including commuting rates, affordable housing need and the 'logic trap' referred to by the Council, it is reasonable to conclude that the OAN for the HMA, whilst it is probably not as high as 349 dpa as claimed by the Appellant, is significantly higher than 166 dpa. [98-99, 167, 175]

264. The Appellant has remarked that the Council's OAN is lower, significantly in fact, than the CS requirement of 270 dpa. It would be remarkable if, in the light of the Government's requirement to boost the supply of housing, an OAN that is lower than an adopted and current CS requirement was to be accepted. Taking account of the backlog and a 20% buffer the CS housing requirement of 270 dpa results in there being only 4.2 years of housing land supply. [100, 197]

265. The Council cannot demonstrate a five year supply of housing land and paragraph 49 of the NPPF is therefore engaged.

Other matters

266. Parts of Marske have been flooded in recent years and residents have suffered damage to their homes and the loss of personal possessions. There is also evidence, given the non-porous clay soil that underlies the site and ground levels, that rainwater runs off the site at its north-west corner and contributes to flooding around the railway crossing of Longbeck Road and of nearby properties. The development of the site, which would require the introduction of a comprehensive sustainable drainage scheme (SuDS), would result in rainwater no longer running off the land. This may not alleviate flooding around the railway crossing but it is entirely safe to conclude that the proposed development would not exacerbate flooding in Marske. [107, 199]

267. There is nothing in evidence, either in the ES or elsewhere, to indicate that there was ever the intention that rainwater falling on the site would not be carried away from the site through an underground sewer. The outflow would be controlled by the introduction of attenuation ponds on the site, as part of the SuDS, and would be the subject of a sewer requisition to NWL that would be the subject of the statutory regime for such requisition. There is nothing to indicate that NWL would not ultimately provide the necessary sewer, that agreement with EA for the drainage scheme would not be forthcoming, or that an outfall to the sea, as would appear to be the logical solution, would cause any environmental concerns. Mr Fraser, for the Council, accepted at the Inquiry that agreed conditions overcame concerns and these have been included in the schedule of conditions attached to this report. Furthermore, nothing can occur on the site until reserved matters applications have been submitted to and approved in writing by the local planning authority. Drainage of the site and full details of all SuDS and outfall drainage matters can be fully considered at that stage before development commences. [108, 200, 223]

268. Local residents have commented that local businesses, particularly shops and public houses in the village, are suffering during the current depressed economic climate and that the proposed development, particularly the proposed public house and drive-thru restaurant, would destabilise these businesses. It is not a purpose of the planning system to prevent competition between similar commercial uses and it is likely that existing businesses in the village would benefit from residents of the proposed development becoming customers. In this regard the site is within easy walking distance of the town and would be served by an upgraded Black Path and by a footpath that would be introduced, where there is none at present, where the A1085 passes under the railway line. [112, 221, 224]

269. The introduction of the footpath under the railway line would require reducing the width of the roadway to a single lane and the introduction of traffic lights to control the two way flow of traffic. The Highway Authority has agreed this and other highway alterations and there is nothing in evidence to indicate that the proposed development would result in any adverse consequences for highway safety, would result in traffic congestion in the village, or would result in unacceptable pressure on public parking in the village centre. In this regard it is worth reiterating that residents of the proposed development would have easy walking and cycling access to all of the existing services and facilities in the village and would have almost direct access to the A174 for driving access to Redcar and further afield. [113, 222]

270. All other matters raised by local residents have been considered but none are of sufficient weight to influence the planning judgement that must be made.

Overall conclusions

271. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

272. With regard to paragraphs 47 and 49 of the NPPF, DP policy DP1, given that the Council cannot demonstrate a five year supply of housing land, is out of date.

273. The proposed development, with regard to its effect on the character and appearance of the area, does not conflict with CS policies CS22 and CS23, and, with regard to its effect on the significance of heritage assets, does not conflict with CS policy CS25 and DP policy DP11. The proposed development is in accord with the Development Plan as a whole and there are no material considerations to indicate

that the proposed development should be determined other than in accordance with the Development Plan [114-119, 120-217, 203-212]

274. Paragraph 14 of the NPPF states that there is a presumption in favour of sustainable development and that, for decision taking, this means, approving development proposals that accord with the development plan without delay. The proposed development, for this reason and given that it satisfies the three dimensions to sustainable development set out in paragraph 7 of the NPPF, is sustainable development. The development would contribute, if implemented, to meeting the housing needs of the Borough within the next five years and, in accordance with paragraph 47 of the NPPF, would contribute to meeting housing supply beyond that period. [106]

275. The first of twelve core planning principles set out in paragraph 17 of the NPPF states that planning should "...be genuinely plan led...with succinct local and neighbourhood plans setting out a positive vision for the future...Plans should be kept up to date...They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency". The Council has not allocated land for housing since 1999 and has relied in recent years, to a significant degree, on windfalls to meet their housing requirements. Windfalls within built up areas are a finite resource and it is worth noting that the Council has been permitting housing developments on windfall sites that are outside development limits. This is an ad hoc approach to planning and is not the genuine plan led approach required by the NPPF.

276. Condition one in an agreed conditions schedule (ID25) requires that an application for approval of reserved matters shall be submitted for approval by the local planning authority within fifteen years of the date of the permission. This time period exceeds the normal time period of three years. No explanation of why such an extended period is appropriate, or why this is a change from the previously agreed condition in a draft conditions schedule (ID24), has been given by either main party. Land with planning permission for housing is required now to meet the housing requirements of the Borough and there is no justification for a reserved matters application to be submitted beyond the standard time period.

Recommendation

277. It is recommended that the appeal be allowed and that planning permission be granted, subject to conditions set out in the attached schedule.

John Braithwaite

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms A Ogley	Of Counsel
She called	
Mr D Burton-Pye MBE DipTP MRTPI IHBC	Historic Environment Consultant
Mr P Barker MPhil CMLI	Director of Glen Kemp (Newcastle) Ltd
Ms C Howick MA MSc	Partner at Peter Brett Associates LLP
Mr Cansfield BA(Hons) MTP MRTPI	Planning Consultant at Cundall Johnston and Partners LLP

FOR THE APPELLANT:

Mr T Ivory	Of Counsel
He called	
Mr G Ives MRTPI	Associate Director of Turley Planning Consultants
Mr S Laws BA(Hons) DipLA CMLI	Landscape Architect at One Associates
Dr R Gomez BA MA PhD	Director of Regeneris Consulting
Mr A McMullen MRTPI	Partner at Knight Frank
Mr B Jackson BEng(Hons) MSc MCIHT	Director of Ashley Helme Associates Ltd
Mr M Travis BSc(Hons) MSc CWEM MCIWEM CSci CEnv	Consultant at Enzygo

INTERESTED PERSONS:

Mrs A Turley	Member of Parliament for Redcar
Mr H Bowman	Local resident
Mrs M Marshall	Local resident
Mr A Fox	Local resident
Mrs Findley	Local resident

Mr P Wensley	Local resident
Mr P Finlinson	Local resident
Mrs S Sandiford	Local resident
Mr Lockey	Local resident
Mr M Douglas	Local resident
Mrs A Sidgwick	Local resident
Mr Lombard	Local resident
Mr A Barker	Local resident
Mr J Wilkinson	Local resident
Councillor S Turner	Ward Councillor for Longbeck
Councillor K King	Ward Councillor for St Germain's
Ms J Holland	Local resident
Mrs Birtill	Local resident
Councillor N Cooney	Ward Councillor for Longbeck
Mrs M Mabbs	Local resident
Councillor M Findley	Ward Councillor for Longbeck
Councillor M Dick	Ward Councillor for Brotton
Councillor P Thomson	Ward Councillor for Saltburn
Rev Lambert	Local resident
Mr Fraser	Local resident
Mr J Lambert	Chairman of Saltburn, Marske and New Marske Parish Council

INQUIRY DOCUMENTS

- 1 Council's letter of notification of the Inquiry and lists of those notified.
- 2 Opening statement on behalf of Redcar and Cleveland Borough Council.
- 3 Opening submissions on behalf of the Appellant.
- 4 Highway Statement of Common Ground.
- 5 Statement of Common Ground.
- 6 Parameters Plan – Drwg. No. (SK)104 Rev. D0.
- 7 Housing Delivery Plan.
- 8 Housing Delivery Table.
- 9 Appellant's Supplementary Housing Calculations.
- 10 Emails regarding site drainage.
- 11 Emails regarding site drainage.
- 12 Sewer Requisition Application Guidance Notes.
- 13 National and DEFRA Guidance on drainage issues.
- 14 Tees Valley Hotel Futures Summary Report.
- 15 OAN and Housing Targets Technical Advice Note.
- 16 Strategic Housing Market Assessment – Volume Two.
- 17 OBS Fiscal Sustainability Report June 2015.
- 18 Appeal Decision APP/W1525/W/15/3121603.
- 19 Letter to PINS dated 7 October 2016 from Mr McMullen of Knight Frank.
- 20 Extract from NPPG – Housing and Economic Land Availability Assessment.
- 21 Commuting Data – Redcar and Cleveland 2011-15.
- 22 Highways Plans.
- 23 Coverdale v Charlton Dec 2 1878.
- 24 Draft Conditions Schedule.
- 25 Agreed Conditions Schedule.
- 26 CIL Compliance Statement.
- 27 Signed and Dated Section 106 Planning Obligation.
- 28 Representation by Anna Turley MP.
- 29 Representation by Mr Andrew.
- 30 Representation by Ms Archer.
- 31 Representation by Mr Wilkinson.
- 32 Representation by Mr Lambert.
- 33 Representation by Mr Barker.
- 34 Representation by Mrs Daniel.

- 35 Representation by Mrs Lilley.
- 36 Representation by Rev Lambert.
- 37 Representation by Councillor Thomson.
- 38 Representation by Ms Mabbs.
- 39 Representation by Mr Wensley.
- 40 Representation by Councillor Dick.
- 41 Representation by Councillor Findley.
- 42 Representation by Ms Sidgwick.
- 43 Representation by Mr Barker.
- 44 Representation by Mr Wensley.
- 45 Representation by Mr Lombard.
- 46 Representation by Mr Lockey.
- 47 Representation by Mr Finlinson.
- 48 Representation by Ms Findley.
- 49 Representation by resident of Sherwood Drive, Marske.
- 50 Representation by Mr Sanderson.
- 51 Representation.
- 52 Representation by Mr Bowman.
- 53 Representation by Mr Wensley.
- 54 Representation by Mrs Waters.
- 55 Representation by Councillor Cooney.
- 56 Representation by Ms Birtill.
- 57 Representation by Ms Holland.
- 58 Representation by Councillor King.
- 59 Representation by Councillor Turner.
- 60 Representation by Mr Wilkinson.
- 61 Representation by Mr Douglas.
- 62 Closing Statement on behalf of Redcar and Cleveland Borough Council.
- 63 Closing Submissions on behalf of the Appellant.

CORE DOCUMENTS

- 1 Redcar and Cleveland Local Development Framework – Core Strategy DPD (July 2007)
- 2 Redcar and Cleveland Local Development Framework – Development Policies DPD (July 2007)
- 3 Redcar and Cleveland Local Plan Publication Version (July 2014) (abandoned)
- 4 Redcar and Cleveland Draft Local Plan (May 2016)
- 5 Redcar and Cleveland Draft Local Plan – Background Evidence Paper : Housing Supply Requirements and Site Allocations (September 2013)
- 6 Redcar and Cleveland Draft Local Plan – Housing Land Supply and Allocations Background Evidence Paper (June 2016)
- 7 Redcar and Cleveland Developer Contributions SPD (December 2014)
- 8 Redcar and Cleveland Regeneration Masterplan – Redcar Area Spatial Framework (April 2010)
- 9 Regeneration Master – Delivery Plan (2012-17)
- 10 Our Plan (also identified as the Corporate Plan) (2015-17)
- 11 Strategic Housing Land Availability Assessment (SHLAA) Update (August 2014)
- 12 Strategic Housing Land Availability Assessment (SHLAA) Consultation Draft (June 2016)
- 13 5 Year Housing Land Supply Assessment (June 2014)
- 14 5 Year Housing Land Supply Assessment (September 2014)
- 15 5 Year Housing Land Supply Assessment (December 2015)
- 16 Redcar and Cleveland Strategic Housing Market Assessment (SHMA) 2016 – Volume 1 : Household Survey and Affordable Housing (February 2016)
- 17 Redcar and Cleveland Strategic Housing Market Assessment (SHMA) 2016 – Volume 2 : Objectively Assessed Housing Need (February 2016)
- 18 Redcar and Cleveland Borough Council Employment Land Review Update (July 2016)
- 19 Historic England : Historic Environment Good Practice Advice in Planning Note 2 : Managing Significance in Decision-Taking in the Historic Environment 2015
- 20 Historic England : Historic Environment Good Practice Advice in Planning Note 3 : The Setting of Heritage Assets 2015
- 21 Marske Conservation Area Appraisal 2011
- 22 Redcar and Cleveland Landscape Character Assessment (April 2006)
- 23 Redcar and Cleveland Landscape Character SPD (March 2010)
- 24 Redcar and Cleveland's Green Space Strategy

- 25 Redcar and Cleveland Green Wedge and Strategic Gap Review (May 2016)
- 26 Review of Development Limits Background Evidence Report (May 2016)
- 27 An Approach to Landscape Character Assessment : Natural England (October 2014)
- 28 National Character Area Profile : 23 Tees Lowlands (Natural England)
- 29 National Character Area Profile : 25 North York Moors and Cleveland Hills (Natural England)
- 30 Appeal Decision APP/V0728/W/15/3006780 - Land South of Marske Road, Saltburn
- 31 Appeal Decision APP/V0728/W/15/3063757 – Spencerbeck Farm, Normanby Road, Middlesborough
- 32 Appeal Decision APP/V0728/W/15/3018546 – Longbank Farm, Ormesby, Middlesborough
- 33 Jones v Mordue EWCA Civ 1243
- 34 Appeal Decision APP/T3725/A/14/2216200 – Land south of Mallory Road, Bishop’s Tachbrook, Warwickshire
- 35 Appeal Decision APP/W1850/W/15/3002571 – Land west of Upper Court Road, Bosbury, Herefordshire
- 36 Appeal Decision APP/J0405/A/14/2219574 – Land east of A413 Buckingham Road and Watermead, Aylesbury
- 37 Appeal Decision APP/C1570/A/14/2213025 – Land west of Great Dunmow, Essex
- 38 Appeal Decision APP/C1570/A/14/2219018 – Land north-east of Elsenham, Essex
- 39 Five Year Housing Land Supply Assessment 2016/17 – 2020/21 (September 2016)
- 40 Scheduled Monuments and Nationally Important but Non-scheduled Monuments (October 2013)
- 41 Objectively Assessed Need and Housing Targets Technical Advice Note (July 2015)
- 42 Strategic Housing Market Assessment (SHMA) Volume 2 : Objectively Assessed Housing Need (September 2016 Update)

RECOMMENDED CONDITIONS

1. Application for approval of reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

Reason - to accord with the provisions of Section 92 of the Town and Country Planning Act (as amended)

2. For each phase or sub phase of the development, details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before development is commenced and the development shall be carried out as approved. The details shall accord with the following plans: The details submitted shall be in accordance with the following plans:

- Fixed Parameter Plan ((SK) 104 Rev D0)
- Indicative Masterplan ((SK) 103 Rev D0)
- Indicative Phasing Diagram ((SK) 059 PL1)
- Indicative Landuse Parameter Plan ((SK) 056 PL5)
- Indicative Access Parameter Plan ((SK) 058 PL1)
- Indicative Landscape Plan ((SK) 057 PL1)

Reason - to accord with the provisions of Section 92 of the Town and Country Planning Act (as amended)

3. Each phase or sub phase of the development shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Reason - to accord with the provisions of Section 92 of the Town and Country Planning Act (as amended)

4. The development hereby permitted shall not be implemented until a Phasing Plan for the timing and delivery of the development, or parts of it, in terms of the relationship between the phases or sub-phases of development and the proposed infrastructure, has been submitted to and approved in writing by the Local Planning Authority. Development shall be undertaken in accordance with the approved Phasing Plan

Reason - to ensure that the development is completed in accordance with an agreed phasing plan which reconciles the requirement for infrastructure provision on the site for each phase of the development

5. For each phase or sub-phase of the development, details submitted in accordance with Condition 2 shall include existing and proposed ground levels together with finished floor levels for the development. The levels shall be shown by sections through the site and the development shall be carried out as approved.

Reason - in order that the Local Planning Authority is properly able to consider the impact of the development on the local landscape in respect of the height and massing of the development in the interests of local visual amenity

6. An art feature or features shall be incorporated into the development in accordance with a scheme that has first been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in their entirety in accordance with the Phasing Plan required by condition 4 above.

Reason - to secure the provision of an artistic element in accordance with policy DP15 (Art and Development) of the Redcar and Cleveland Local Development Framework (Development Policies DPD) 2007

7. Prior to the commencement of the relevant phase or sub-phase of the development, a Construction Traffic Management Plan (CTMP) shall be submitted to and agreed in writing with the Local Planning Authority. Development or each phase or sub-phase shall be undertaken in accordance with the approved CTMP.

Reason - in order to minimise the impact of the construction process on the amenity of the locality and in the interests of local highway safety

8. For each phase or sub-phase of the development, development shall not take place until details have been submitted to and approved in writing by the Local Planning Authority of proposals to provide contractors car parking and material storage within the site. The details shall include a timetable for their provision linked to the Phasing Plan referred to in condition 4 above. The details approved shall be implemented and retained for the duration of the construction of each relevant phase or sub-phase until its completion in accordance with the approved timetable.

Reason - in order to minimise the impact of the construction process on the amenity of the locality and in the interests of local highway safety

9. Prior to the occupation of any phase or sub-phase of the development hereby approved, a detailed Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall be implemented for five years after final occupation of that phase or sub-phase.

Reason - to encourage access to and from the site but sustainable transport choices in the interest of promoting the delivery of a sustainable development

10. For each phase or sub-phase of the development, development shall not take place until a scheme of ecological mitigation and enhancement, including a timetable for scheme implementation, to accord with the details set out in the Environmental Statement and Phase I Habitat Survey, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall provide for the protection of the most important protected habitat and wildlife species on the site identified in the ES. The development shall be implemented in accordance with the approved scheme and timetable.

Reason - to improve the biodiversity interest of the site in accordance with policy set out at paragraph 109 of the National Planning Policy Framework

11. For each phase or sub-phase of the development no part of the development shall be occupied until a scheme of lighting for the site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme of lighting shall be implemented in accordance with the timetable set out in the approved Phasing Plan required by condition 4 above.

Reason - to minimise the impact from on-site lighting in the interests of the visual amenity of the area

12. For each phase or sub-phase of the development a minimum of 10% of the site's energy requirements shall be provided by embedded renewable energy, in accordance with a scheme that has first been submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be implemented in its entirety, for that particular phase or sub-phase, in accordance with the Phasing Plan required by condition 4 above prior to the occupation of the development.

Reason - to accord with policy DP3(e) (Sustainable Design) of the Redcar and Cleveland Local Development Framework (Development Policies DPD)

13. For each phase or sub-phase of the development the working hours for all construction activities on the site shall be limited to between 0800 and 1800 hours on Mondays to Fridays and 0800 to 1300 hours on Saturdays and not at all on Sundays or Public Holidays.

Reason - to minimise the impact of construction operations and the amenity of existing and potential residential occupiers

14. For each phase or sub-phase of the development no development shall take place until a scheme for the suppression of dust at the construction site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the commencement of development and shall be adhered to for the duration of the construction period.

Reason - to minimise the impact of construction operations in terms of the possible generation of dust nuisance in the interests of protecting the amenity of existing and potential residential occupiers

15. For each phase or sub-phase of the development, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts (a) to (c) below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until part (e) has been complied with in relation to that contamination.

(a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground and surface waters, ecological systems, and archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

(b) Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must

ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to approval in writing of the Local Planning Authority.

(d) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of part (a) and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of part (b), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

(e) Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring of the long-term effectiveness of the remediation over a period of 10 years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason - in order that the Local planning Authority is properly able to assess, monitor and manage the risk associated with any contamination found on the site

16. For each phase or sub-phase of the development and prior to the commencement of development, details of the surface water drainage scheme shall be submitted and approved by the Local Planning Authority (in consultation with the Lead Local Flooding Authority and Northumbrian Water) and the development shall be completed in accordance with the approved scheme. The design of the drainage scheme shall include;

(i) Restriction of surface water run-off rates (QBAR value) with sufficient storage within the system to accommodate a 1 in 30 year storm;

(ii) Measures to mitigate known surface water issues on the northwest corner of the site in order to mitigate the risk of increased flooding in this area;

(iii) The method used for calculation of the existing greenfield run-off rate shall be the ICP SUDS method. The design shall also ensure that storm water resulting from a 1 in 100 year event, plus 30% climate change surcharging the system, can be stored

on site with minimal risk to persons or property and without overflowing into drains, local highways or watercourses;

(iv) Full Micro Drainage design files (mdx files) including a catchment plan;

(v) The flow path of flood waters for the site as a result on a 1 in 100 year event plus 30%.

Reason - in order that the development, or each phase of it, is provided with the necessary surface water drainage infrastructure to deal with surface water run-off from the site and to minimise the risk of additional surface water flooding in the locality

17. For each phase or sub-phase of the development and prior to the commencement of the development, details of a Surface Water Drainage Management Plan shall be submitted and approved by the Local Planning Authority. The development shall be completed in accordance with the Management Plan. The Management Plan shall include;

(i) The timetable and phasing for construction of the drainage system;

(ii) Details of any control structure(s);

(iii) Details of surface water storage structures;

(iv) Measures to control silt levels entering the system and out falling into any watercourse during the construction process;

(v) Details of any structures or features that will be privately owned and maintained, but which make a contribution to the flood or coastal erosion risk management of people and property.

The development shall be carried out in accordance with the approved Management Plan.

Reason - in order that the development, or each phase of it, is provided with the necessary surface water drainage infrastructure to deal with surface water run-off from the site and to minimise the risk of additional surface water flooding in the locality and ensure that these structures and features can be protected after the completion of the development

18. For each phase or sub-phase of the development no dwelling or other building shall be occupied until a Management & Maintenance Plan for the surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the Management & Maintenance Plan. The plan shall include details of the following;

(i) A plan clearly identifying the sections of surface water system that are to be adopted;

(ii) Arrangements for the short and long term maintenance of the SuDS elements of the surface water system.

Reason - in order that the development, or each phase of it, is provided with the necessary surface water drainage infrastructure to deal with surface water run-off from the site in order to minimise the risk of additional surface water flooding in the locality and to ensure that the drainage infrastructure is maintained in accordance with an approved management regime

19. For each phase or sub-phase of the development no part of the development shall be brought into use until the parking and servicing provision associated with it are available for use.

Reason - to ensure that each phase of the development is supported by parking and servicing arrangements in accordance with the Council's adopted standards

20. The details submitted pursuant to condition 2 above shall ensure that private drives should be a minimum of 3.7m wide for their entire length and should serve no more than 5 properties.

Reason - to accord with the Council's adopted standards in the interest of highway safety

21. Access to the site from the existing highway shall incorporate a visibility splay of 2.4m x 43m on Longbeck Road and 2.4m x 43m on the A1085. There shall be no obstructions greater than 600mm in height within these splays and any vegetation shall be maintained at this height.

Reason - to accord with the Council's adopted standards in the interest of highway safety

22. The details pursuant to condition 2 above shall include full highway construction and layout details in accordance with Redcar and Cleveland Design Guide and Specification and shall highways shall be designed and implemented to adoptable standards.

Reason - to accord with the Council's adopted standards in the interest of highway safety

23. Prior to the commencement of development (unless stated otherwise below), or in accordance with a phasing scheme to be agreed in writing with the Local Planning Authority, the following highways improvements that are set out in the Transport Assessment (Report Reference 1270/3/E, August 2016) shall be submitted to and approved in writing by the Local Planning Authority:

- Change Bus stop locations on Longbeck Road (identified on drawing no. 1270/06/D) and on A1085 (identified on drawing no. 1270/37/D);
- Pedestrian access on A1085 into Marske, by way of a footway under the A1085 railway bridge, prior to first occupation of the development;
- A174/A1042 Kirkleatham Lane (SJ18, drawing no. 1270/40), prior to first occupation of the development;
- A174/ Fishponds Road (SJ19, drawing no. 1270/34/A), prior to occupation of Phase 2 (the 275th dwelling);
- A174/Redcar Lane (SJ20, drawing no. 1270/35), prior to occupation of Phase 3 (the 633rd dwelling).

Reason - to ensure that the offsite highways works identified in Transport Assessment are implemented in the interests of highway safety

24. For each phase or sub-phase of the development, prior to the first occupation of any dwelling, boundary walls and fences shall be erected in accordance with a scheme that has first been approved in writing by the Local Planning Authority and shall thereafter be maintained.

Reason - so that the Local Planning Authority is able to confirm the means of enclosure to be developed on each phase do the development in the interests of promoting good design visual amenity of the development

25. For each phase or sub-phase of the development, development shall not be occupied until a scheme for the enclosure of any noise emitting plant and machinery with sound-proofing material, including details of any sound-insulating enclosure, mounting to reduce vibration and transmission of structural borne sound and ventilation or extract system, has been submitted to and approved in writing by the

Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the building and shall thereafter be retained.

Reason - to protect the amenity of existing and future residential occupiers from the impacts of noise associated with the development of plant and machinery

26. No development shall take place until a scheme for protecting the occupants of the proposed residential development from noise from the adjacent road network and from the railway has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the development and shall thereafter be retained.

Reason - in the interests of protecting the amenity of the prospective occupiers from the impact of rail and road noise

27. For each phase or sub-phase of the development the landscaping details submitted pursuant to condition 2 above shall make provision for the protection and enhancement of the proposed route of the Public Right of Way (within the site) together with opportunities for ecological enhancement /biodiversity.

Reason - to ensure that the development makes appropriate provision for footpaths within the site and the secure associated ecological enhancement of the site in accordance with paragraph 109 of the National Planning Policy Framework

28. For each phase or sub-phase of the development, a full planting plan including details of species and mix, together with a landscape management plan covering a period of at least 10 years together with any proposals for advance structure planting shall be submitted to and approved by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is sooner, and any trees or plants which within a period of ten years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason - to ensure that details of landscaping are in accordance with Policy DP3 of the Council's Development Policies DPD

29. For each phase or sub-phase which adjoins the scheduled ancient monument boundary and prior to the commencement of the development in that location, a written scheme of investigation (WSI) for a programme of archaeological evaluation work shall be submitted to and agreed with the Local Planning Authority. The WSI shall as a minimum provide for the following:

- (i) a magnetometer survey of all of the land constituting the areas intended to be set out as landscaping/playing fields lying between the boundary of the scheduled monument at Hall Close and the zones of built development to the south and west, indicated on Fixed Parameter Plan, reference 11-043(SK)104DO;
- (ii) a resistivity survey of that part of the land subject to magnetometer survey which lies within 50 metres of the boundary of the scheduled monument;
- (iii) trial trenching of all anomalies of archaeological potential revealed by the magnetometer/resistivity surveys that may be affected by ground works required for the development (including works carried out by statutory undertakers or their agents or sub-contractors) at or below a depth of 300mm;
- (iv) methodologies, recording, assessment, reporting, and archiving in accordance with professional practice and CiFA standards and guidance.

The requirements of the WSI shall be carried out and the full reports for the surveys and trial trenching shall be made available to the local planning authority before the commencement of development of the phase or sub-phase which adjoins the scheduled ancient monument boundary and in sufficient time to allow agreement of a programme of archaeological investigation (if any) required by this condition.

Prior to the commencement of development of the phase or sub-phase which adjoins the scheduled monument boundary, the developer shall agree with the local planning authority whether the results of the surveys and trial trenching suggest that further archaeological investigation of any structures, remains or deposits is required. If archaeological investigation is required a further WSI for a programme of archaeological work shall be agreed with the local planning authority before the commencement of development. The WSI shall provide for an appropriate agreed programme of work, which may include full excavation of features, strip/map/sample/record, or watching brief, or any combination of those intensities of work, in accordance with then current professional methodologies, practices, recording, reporting, assessment and archiving, and CiFA standards and guidance.

The requirements of any further WSI shall be carried out and the report or reports of work shall be made available by the developer to the local planning authority no later than when the development of the phase or sub-phase which adjoins the scheduled monument boundary is first brought into use.

Reason - to ensure that each phase of the development is the subject of an investigation in order that the archaeological interests of the site is properly assessed and recorded in accordance with policy set out at paragraph 141 of the National Planning Policy Framework

30. Prior to the commencement of the development hereby permitted a Conservation Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority, in consultation with Historic England, for the management of the scheduled area of Hall Close (SAM 32746; NHL 1018948) and land within its vicinity to the south and west. The CMP shall provide for maintenance, public access, interpretation (including the results of any archaeological work on adjacent areas carried out by the developer), restriction of access, and prohibitions, or any similar thing or matter in relation to the nature and proximity of the development as well as a timetable to carry out such works. The CMP shall be implemented in accordance with the approved timetable.

Reason - in order that the impact of the development on the Scheduled Ancient Monument can be fully assessed and that the appropriate level of mitigation as to any impact on the site is implemented

31. In accordance with the CMP, the Scheduled Ancient Monument shall be re-assessed to establish whether or not it remains on the Historic England List of Scheduled Ancient Monuments at Risk. If any residual works are required by Historic England they shall be carried out and certified by Historic England.

Reason - given that the development relies upon the removal of the Scheduled Ancient Monument from the Historic England At-Risk Register of Scheduled Ancient Monuments to mitigate the impacts of the development then the removal of the site from that list occurs prior to the commencement of the development

32. The extent and detailed layout (including gradients, surfaces, planting, any built structures and scheduled monument boundary) in those areas west and south of the scheduled monument at Hall Close, indicated on Fixed Parameter Plan, reference 11-043(SK)104DO to be school playing fields, linear park, open grass and shrubs, shall be approved in writing with by the Local Planning Authority prior to the commencement of the phase or sub-phase which adjoins the scheduled monument

boundary. The phase or sub-phase which adjoins the scheduled monument boundary shall not thereafter be brought into use or occupied other than in accordance with that approved detailed layout.

Reason - in order that the impact of the development on the Scheduled Ancient Monument can be fully assessed and that the appropriate level of mitigation as to any impact on the site is implemented

33. Prior to the commencement of the 200th dwelling on the development site, a Reserved Matters (or Detailed Planning) Application for the development of the Neighbourhood Centre shall be submitted to and approved in writing by the Local Planning Authority.

Reason - in order to ensure the delivery of the Neighbourhood Centre within a reasonable timescale

34. Prior to the occupation of the 600th dwelling on the development site, the Neighbourhood Centre approved pursuant to condition 33 shall be constructed and made available for occupation.

Reason - in order to ensure the delivery of the Neighbourhood Centre within a reasonable timescale



Department for Communities and Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.