



## Department for Communities and Local Government

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Our Ref: APP/B2002/A/13/2196572  
Your ref: SP04900001

28 November 2013

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY KEYSTONE DEVELOPMENTS (LG) LIMITED, J A GOUGH, R  
TURNER, M L GREEN AND S M STEPHENSON  
LAND SOUTH OF HUMBERSTON AVENUE, HUMBERSTON, NORTH EAST  
LINCOLNSHIRE - APPLICATION REF: DC/107/12/HUM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jessica Graham BA(Hons) PgDipL, who held an inquiry on 3 – 5 September 2013 into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of North East Lincolnshire Council to refuse outline planning permission, with all matters reserved save for means of access, for residential development of up to 400 dwellings, (including retirement dwellings), highway works, site for community use (Class D1), public open space, children's play area, landscaping, drainage and associated infrastructure, dated 13 February 2012.
2. The appeal was recovered for the Secretary of State's determination on 30 April 2013, 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 on a site of over 5 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**

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and planning permission granted. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation. A copy of the Inspector's report (IR) is enclosed. All paragraph numbers, unless otherwise stated, refer to the IR.

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## Policy considerations

4. In deciding this appeal, 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 North East Lincolnshire Local Plan 2003 (the Local Plan) (IR3.1 – 3.2).
5. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework – March 2012); Technical Guidance to the National Planning Policy Framework; Circular 11/1995: *Use of Conditions in Planning Permission* and the *Community Infrastructure Levy (CIL) Regulations 2010* (as amended). The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance is currently in test mode and for public comment, he has attributed it limited weight.
6. The Secretary of State notes that the Council is in the process of producing a new Local Plan (IR3.4). An Issues and Options Paper was published for a period of consultation, which ended in December 2012. The current Local Development Scheme states that the new Local Plan is due to be adopted in 2015. As the new Local Plan is still in the early stage of preparation, the Secretary of State attaches little weight to it in the determination of this appeal.

## Main issues

### *Housing land supply & policy*

7. The Council accepts that it does not have a five year housing land supply, and as a consequence, LP policies relevant to the supply of housing should not be considered up-to-date (IR11.1). The Secretary of State agrees with the Inspector that, in line with paragraph 14 of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework (IR11.2).
8. The Secretary of State agrees that it is therefore necessary to identify the benefits and the adverse impacts of the proposal and then to weigh them very carefully in the balance (IR11.3). The Inspector notes that the Council accept that the proposals would provide housing, deliverable within the next 5 years, and this is a benefit. He notes too that the Council recognise that the provision of affordable dwellings and retirement housing is additionally beneficial (IR11.4). The Secretary of State agrees with the Inspector that the Strategic Housing Market Assessment shows that an increasing proportion of older people in the district's population will place a greater pressure on existing stock, and the housing waiting list shows that there is a pressing need for affordable homes (IR11.4).

### *The re-use of previously developed sites*

9. For the reasons given by the Inspector at IR11.7 -11.10, the Secretary of State agrees with her conclusion that there is no convincing evidence to support the Council's assertion that there must be a connection between the non-delivery of a

large number of brownfield sites and the continued coming forward of greenfield sites. Like the Inspector, the Secretary of State considers that this is a matter which attracts only very limited weight (IR11.11).

*The extent to which built-up areas would merge*

10. Like the Inspector, the Secretary of State considers that the fact that the appeal site lies outside the development boundary for Humberston is not a reason in itself to refuse planning permission (IR11.12). For the reasons set out by the Inspector at IR11.13 -11.15, the Secretary of State agrees that the construction of houses on the appeal site would not result in the harmful coalescence of otherwise clearly distinct settlements (IR 11.16).
11. The Secretary of State agrees with the Inspector that the proposals would result in the loss of green fields, and agrees too that the loss of this part of the countryside to housing development would have a harmful effect on the character and appearance of the area. The Secretary of State agrees too that this would be at odds with LP policy, and although that harm would be somewhat lessened by the proposed public open space within the site, he accepts the Inspector's conclusion that this is an adverse impact that needs to be weighed in the overall planning balance. (IR11.17).

*The effect on the local highway network*

12. The Secretary of State agrees, for the reasons given by the Inspector at IR11.20 - 11.26, that the provision of funding for works intended to ensure that conditions did not worsen as a result of the proposal accords with the provisions of paragraphs 203 and 204 of the Framework. The Secretary of State notes that the Highway Authority has confirmed that the proposed financial contribution would enable it to satisfactorily mitigate the increased congestion that the construction of the new dwellings would otherwise cause. He therefore agrees with the Inspector that there would be no adverse impact in this respect to weigh against the proposal (IR11.27).

*Over-reliance, on the part of future occupiers, on the use of private motor vehicles*

13. The Secretary of State has carefully considered the Inspector's reasoning and conclusions at IR11.29 – 11.32 on the access to local services by future occupiers. The Secretary of State agrees with the Inspector's view that the services and facilities necessary to meet the needs of future residents would be accessible from the appeal site either on foot, by bicycle or by bus. The Inspector concluded that as a consequence, the location and circumstances of this appeal site could not reasonably be considered likely to be the cause of any over-reliance by future occupiers on the use of private motor vehicles (IR11.33). The Secretary of State agrees with that view.

*Other matters*

14. For the reasons given by the Inspector at 11.34 -11.35, the Secretary of State accepts the Inspector's conclusion that the proposed development would not have any significant adverse impact on protected species or their habitat (IR11.36).

15. With regard to residents' concerns about drainage capacity, the Secretary of State agrees with both the Inspector and the Council that a SUDS system could be accommodated as part of the development, and this has a clear potential to improve, rather than merely 'not worsen', the existing drainage system (IR11.37).
16. Turning to the impact of the proposed development on public services and infrastructure, the Council has assessed the impacts that the proposal would have on all services, and their mitigation. The contributions the Council identified as necessary were the provision of a play area (and arrangements for its maintenance), and funding for the provision of primary school places for primary school-aged children likely to be living in the proposed houses. The Secretary of State accepts the Inspector's view (IR11.38) that the S.106 Agreement secures these contributions, and in the absence of any substantive evidence to the contrary, agrees that the proposal would have no adverse impact on other local services or infrastructure.

#### *Conditions and s.106 obligation*

17. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and the S.106 obligation, as set out in IR11.41 – 11.48. The Secretary of State is also satisfied that the conditions recommended by the Inspector and set out at Appendix C attached to the IR are reasonable and necessary and meet the tests of Circular 11/95.

#### **Overall conclusions**

18. The Secretary of State agrees with the Inspector's overall conclusions at IR 11.39 – 11.40. He agrees that the appeal proposals would result in the loss of open green fields which currently provide some visual relief from the otherwise near-continuous built development along Humberston Avenue, and that is an adverse impact which carries some weight. Whilst the Secretary of State agrees that very limited weight should be attached to the possibility that permitting the residential development of the appeal site would discourage the regeneration of brownfield sites in the district's urban areas, other adverse impacts are adequately mitigated either by the S.106 Undertaking and Agreement, or by the imposition of conditions.
19. Parties are agreed that the local planning authority does not have a 5 year supply of housing and, in accordance with paragraph 215 of the Framework, the Secretary of State concludes that full weight can no longer be given to the relevant housing supply policies of the development plan. This does not mean that there is no restriction in the countryside but that paragraph 14 of the NPPF applies in the determination of this appeal.
20. Although the proposals would cause limited harm by the residential development of the appeal site, the Secretary of State is satisfied that this would not significantly and demonstrably outweigh the benefits of the scheme when considered against the policies of the NPPF taken as a whole.

#### **Formal decision**

21. 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 outline planning permission with all matters reserved save for means of access,

for residential development of up to 400 dwellings, (including retirement dwellings), highway works, site for community use (Class D1), public open space, children's play area, landscaping, drainage and associated infrastructure, in accordance with planning application ref: DC/107/12/HUM, dated 13 February 2012, subject to the conditions listed at Annex A of this letter.

22. 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.
23. 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**

24. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
25. A copy of this letter has been sent to North East Lincolnshire Council. A notification letter or e-mail has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Richard Watson**

Authorised by the Secretary of State to sign in that behalf

**Reserved Matters and associated details**

- 1) 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 any development begins and the development shall be carried out as approved. The reserved matters application for the first phase of development shall be made within one year of the date of this permission, and application for approval of all other reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 2) The development hereby permitted shall commence before the later of (i) 18 months from the date of this outline permission, or (ii) one year from the date of approval of reserved matters for the first phase of development.
- 3) The details to be submitted in accordance with condition no. 1 above shall include a Landscape Management Plan setting out management responsibilities and maintenance schedules for all landscaped areas, inclusive of trees, hedges, ditches and balancing ponds; a Biodiversity Enhancement Scheme setting out measures for habitat creation and management, including the provision of bat roosts and bird boxes; a statement on the sustainability performance of the dwellings, based on the Code for Sustainable Homes; and a location plan indicating which of the dwellings shall be reserved, in accordance with condition no. 14 below, for persons over the age of 55.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination:

Site Location Plan	B.10,113b
Illustrative Masterplan	4587-P-10 Revision J
Development Framework	4587-P-14 Revision B
Open Space Plan	4587-P-16 Revision B
Highways Plan	20177_03_005 Revision C

**Drainage**

- 5) No development shall take place until a scheme for the provision of surface water drainage, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been approved in writing by the local planning authority. The scheme shall include details of any ground level raising, and a strategy for the management of the surface water drainage scheme. Development shall thereafter be carried out only in accordance with the approved details.
- 6) No development shall take place until a scheme for the provision and implementation of foul drainage works has been approved in writing by the

local planning authority. Development shall thereafter be carried out only in accordance with the approved details.

## **Construction**

- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the routeing and management of construction traffic
  - ii) the parking of vehicles of site operatives and visitors
  - iii) loading and unloading of plant and materials
  - iv) storage of plant and materials used in constructing the development
  - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - vi) wheel cleaning facilities
  - vii) measures to control the emission of dust and dirt during construction
  - viii) details of noise reduction measures
  - ix) a scheme for recycling/disposing of waste resulting from demolition and construction works
  - x) the hours during which machinery may be operated, vehicles may enter and leave, and works may be carried out on the site.

## **Archaeology**

- 8) No development shall take place until a written Scheme of Investigation (or Specification of Works) for a programme of archaeological work in respect of the north-west field of the site has been submitted to and approved in writing by the local planning authority, and the Scheme of Investigation (or Specification of Works) has been implemented in accordance with the approved details. None of the dwellings hereby permitted shall be occupied until the findings resulting from the programme of archaeological work have been published, and the archive resulting from the programme of archaeological work deposited with an organisation first approved in writing by the local planning authority.

## **Ecology (including lighting scheme)**

- 9) No development shall take place until a scheme to screen the appeal site from neighbouring fields in order to prevent disturbance to estuary birds, based on the retention of existing mature boundary hedgerows, has been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out only in accordance with the approved details.

- 10) No development shall take place until a lighting management scheme, designed to minimise light spill from the appeal site to adjacent ecological habitats, both during the construction period and once the development is occupied, has been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out only in accordance with the approved details.
- 11) Development shall only be carried out in accordance with the Working Methods Statement at page 9 of the submitted Great Crested Newt Report.

### **Trees and Hedges**

- 12) No development shall take place until an Arboricultural Method Statement, prepared in accordance with BS 5837:2012 *Trees in Relation to Design, Demolition and Construction*, has been submitted to and approved in writing by the local planning authority. Works shall thereafter be carried out only in accordance with the approved details. The Arboricultural Method Statement shall include the specification, location and phasing for the installation of tree and hedge protection measures, and a schedule of all proposed tree and hedge works, including the reason for such works.
- 13) No trees or hedges on the appeal site shall be wilfully damaged, cut down, uprooted, pruned, felled or destroyed except for the trees and hedges to be removed to facilitate the development as shown in the approved Illustrative Masterplan (drg. no. 4587-P-10 Rev J) without the prior written consent of the local planning authority.

### **Access**

- 14) None of the dwellings hereby permitted shall be occupied until the access road has been constructed to at least base course level, and lit, in accordance with details first submitted to and approved in writing by the local planning authority.

### **Retirement homes**

- 15) No fewer than 50% of the approved dwellings shall be restricted to occupation only by (i) persons aged 55 years and over; (ii) persons who are living as part of a single household with a person aged 55 years or over; and (iii) persons who were previously living in that dwelling as part of a single household with a person aged 55 years or over who has since died.

### **Land Contamination**

- 16) If, during development, contamination is discovered that has not previously been identified, the local planning authority shall be notified immediately and no further work carried out until a method statement, detailing a scheme for

dealing with the contamination discovered, has been submitted to and approved in writing by the local planning authority. Development shall thereafter proceed only in accordance with the approved details. If, during development, no contamination is found, a written statement confirming that fact must be submitted to the local planning authority upon completion of the construction works.

## **Travel Plan**

- 17) The package of measures detailed in sections 7 and 10 of the submitted Travel Plan shall be implemented in their entirety. Contact details for the Travel Plan Coordinator shall be provided to the local planning authority before any of the dwellings hereby permitted are occupied. A review of the Travel Plan, including the results of the annual travel report, shall be submitted to the local planning authority at the end of every three year period following the occupation of the first dwelling. Each Travel Plan Review shall include a revised set of targets and an action plan linked to the results of the travel report, which shall thereafter be implemented.

End

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# Report to the Secretary of State for Communities and Local Government

by Jessica Graham BA(Hons) PgDipL

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

Date: 4 November 2013

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TOWN AND COUNTRY PLANNING ACT 1990

**NORTH EAST LINCOLNSHIRE COUNCIL**

APPEAL MADE BY

KEYSTONE DEVELOPMENTS (LG) LIMITED, J.A.GOUGH, R.TURNER, M.L.GREEN AND  
S.M.STEPHENSON

Inquiry opened on 3 September 2013

Land South of Humberston Avenue, Humberston, North East Lincolnshire DN36 4TA

File Ref: APP/B2002/A/13/2196572

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**File Ref: APP/B2002/A/13/2196572**

**Land South of Humberston Avenue, Humberston, North East Lincolnshire  
DN36 4TA**

- 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 Keystone Developments (LG) Limited, J.A.Gough, R.Turner, M.L.Green and S.M.Stephenson against the decision of North East Lincolnshire Council.
- The application Ref DC/107/12/HUM, dated 13 February 2012, was refused by notice dated 28 November 2012.
- The development proposed is up to 400 dwellings (including retirement housing), access, highway works, site for community use (Class D1), public open space, children's play area, landscaping, drainage and associated works.

**Summary of Recommendation: That the appeal be allowed**

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<b>CONTENTS</b>	<b>Page</b>
1. Procedural matters	2
2. The site and surroundings	2
3. Planning policy and guidance	3
4. The proposal	3
5. The case for the Council	4
6. The case for the appellant	10
7. The cases for interested parties	18
8. Written representations	20
9. S.106 Obligations	20
10. Conditions	21
11. Inspector's conclusions	22
12. Inspector's recommendation	31
 <i>Appendices</i>	
A. Appearances	32
B. Documents	33
C. Suggested conditions	37
D. Glossary of acronyms and abbreviations	40

## **1. Procedural matters**

*References in round brackets are to documents (listed in Appendix B), while references in square brackets are to paragraphs within this report.*

- 1.1 The inquiry sat on 3, 4 and 5 September 2013. I made unaccompanied visits to the site and surrounding area on 2 and 5 September.
- 1.2 The application now the subject of this appeal was submitted in outline, with details of access provided, but details of scale, layout, appearance and landscaping reserved for future determination. My consideration of the appeal proceeds on that basis.
- 1.3 By letter dated 30 April 2013, the SoS directed that he would determine the appeal himself. The reason given for that direction was that “the appeal involves proposals for residential development of over 150 units or on sites of over 5 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”.
- 1.4 At the inquiry, I identified the three main issues for this appeal as (1) whether or not the Council is able to demonstrate a five-year supply of housing land, and the implications of that in terms of local and national planning policy; (2) the effect that the proposed development would have on the local highway network; and (3) whether the circumstances of the proposed development would lead to over-reliance, on the part of future occupiers, on the use of private motor vehicles.
- 1.5 The Council’s fifth reason for refusal concerned the development of a greenfield site in advance of previously developed sites within the borough. In the interests of procedural fairness, I drew the parties’ attention to the decision of the SoS on an appeal at Burgess Farm, Salford, in which he stated that national planning policy in the NPPF encourages the use of previously developed land but does not promote a sequential approach to land use (INQ 1, DL 17), and invited their views on the implications of this decision for their respective cases.
- 1.6 Final drafts of a S.106 Agreement and S.106 Unilateral Undertaking (INQ 11) were submitted at the inquiry, but as one of the signatories was unavailable these could not be executed before the inquiry closed. I therefore agreed a post-inquiry submission date of 13 September 2013. The executed deeds were duly provided (PINQ 1, PINQ 2), and I consider their content and operation below [9.1, 11.37].

## **2. The site and surroundings**

- 2.1 The appeal site consists of four fields on the southern side of Humberston Avenue, currently laid to pasture, and covering some 18 ha in total. No. 184 Humberston Avenue, a large property with a range of outbuildings, lies at the centre of the site but does not form part of it. Hedges, in part interspersed by trees, form the field boundaries. There is an open drainage channel within the eastern boundary of the site, and adjacent to this, a public footpath.

- 2.2 To the east and west respectively lie the residential areas of Humberston and New Waltham. On the opposite side of Humberston Avenue to the appeal site is Humberston Academy, Humberston Cloverfields Primary School, a Country Club, Golf Club and No. 191 Humberston Avenue.
- 2.3 Further details of the site's location, landscape and character can be found at section 2 of the Statement of Common Ground agreed between the Council and the appellant (INQ 7) and in the Design and Access Statement.

### **3. Planning policy and guidance**

#### *The Development Plan*

- 3.1 When the Council determined the planning application, the *Yorkshire and Humber Plan: Regional Spatial Strategy to 2026* formed part of the Development Plan. The Regional Strategy was partially revoked by a Government Order which took effect on 22 February 2013, with the retained policies relating solely to the York Green Belt. The statutory Development Plan for the area now consists of the North East Lincolnshire Local Plan (LP) adopted in November 2003.
- 3.2 In September 2007 the SoS issued a saving direction which prevented most of the LP policies from expiring in accordance with the Planning and Compulsory Purchase Act (PCPA) 2004. Thus, while the period that the saved policies were originally intended to cover has now expired, they will remain an extant component of the Development Plan until they are replaced by the adoption of a new Local Plan.
- 3.3 Saved LP Policy GEN2 concerns development in the open countryside. Its first limb seeks to restrict such development unless it is one of eight specified types. Following the decision of an Inspector who determined an appeal at Church Lane in Humberston (APP 4.5), the Council and the appellant agree that in circumstances where the Council is unable to demonstrate a 5 year supply of housing land, such that by virtue of paragraph 49 of the NPPF relevant policies for the supply of housing should not be considered up to date, the first limb of Policy GEN2 should be considered out of date (INQ 7).

#### *The emerging Local Plan*

- 3.4 The Council is in the process of producing a new Local Plan. An Issues and Options Paper (CD 25) was published for a period of consultation, which ended in December 2012. The current Local Development Scheme (CD 23) states that the new Local Plan is due to be adopted in 2015.

#### *National planning guidance*

- 3.5 The National Planning Policy Framework (NPPF), published by the government in March 2012, provides the national policy guidance for this appeal. Also of relevance is Circular 11/95 *The Use Of Conditions In Planning Permissions*.

### **4. The proposal**

- 4.1 The development proposed is up to 400 dwellings, including some affordable housing and some retirement housing, together with a site for community use, areas of publicly accessible open space and a children's play area. Two new accesses would be provided from Humberston Avenue, either side of the

existing dwelling at No. 184. A sustainable urban drainage system is proposed, which would involve raising the existing ground levels in part of the south-east field and the south-west field. Highway improvement works to Humberston Avenue are also proposed.

## **5. The case for the Council**

The following paragraphs summarise the Council's case, which is set out more fully in its closing submissions (INQ 12).

*First main issue: whether or not the Council is able to demonstrate a five-year supply of housing land, and the implications of that in terms of local and national planning policy*

- 5.1 The Council is not able to demonstrate a 5 year supply of housing land. Following the abolition of the RS, the Council does not have an adopted housing target. The most recent statement it has made about its proposed policy supports the locally-derived figures requiring 410 houses per year for the period 2011-2017, and 520 houses per year thereafter (CD25, 6.5). The Council has not succeeded in delivering 410 houses in any recent year, and so the additional 20% buffer required by paragraph 47 of the NPPF must also be applied. A supply of sites sufficient to provide 1,422 dwellings (CD9, 4.2) is obviously not sufficient.
- 5.2 The implication of this is that the first part of LP Policy GEN2 has to be treated as out of date (INQ 8). The Council recognised this, following the Church Lane appeal decision (APP 4.5), in its assessment of its existing LP Policies (INQ 8, Appendix A).
- 5.3 The fact that the most relevant Development Plan Policy is out of date has an implication for paragraph 14 of the NPPF. The Development Plan being out of date, the presumption requires the grant of planning permission unless adverse impacts would significantly and demonstrably outweigh the benefits. Both impacts and benefits have to be assessed against the NPPF. The fact that this proposed development would provide housing, deliverable within the next 5 years, is a benefit that is relevant for the purposes of the presumption. The fact that the housing would include affordable housing and retirement housing is additionally beneficial. But the proposal involves no benefits beyond the provision of housing.
- 5.4 Despite the absence of a 5 year supply of housing land, and the consequence of this for LP Policy GEN2, it was correctly accepted by the appellant that
  - (a) the appeal site is not required to be treated as if it were within a Development Area Boundary;
  - (b) considerations pertinent to assessing the impact of new development in the countryside (such as impact on the landscape, the potential for sprawl and the merger of settlements) are relevant. The Church Lane appeal was itself dismissed because of the impact the development there proposed would have had on the countryside (APP 4.5, para 16); and
  - (c) if the effect of the development of this site would be to discourage the development of identified brownfield sites in the

urban area, this can properly be relied on as a reason for refusing planning permission.

- 5.5 This reflects a correct understanding of the relationship between the 12 core principles of the NPPF. It is agreed that there is no priority between them (Mr Bainbridge in xx). The requirement to have a 5 year supply of housing sites is the elaboration of one of them. Several others are in play in this case, notably that which encourages the development of brownfield sites.
- 5.6 All of the core principles of the NPPF, together with the more detailed guidance which gives effect to them, have a bearing on how the presumption in favour of sustainable development operates. It is true that there is explicit guidance about when Development Plan policies are to be regarded as out of date. But a Development Plan policy may be judged to be inconsistent with the NPPF, and therefore out of date, in very many other situations too. Further, a material failure to satisfy an imperative of the NPPF would constitute an adverse impact, which might significantly and demonstrably outweigh the benefits.

Encouraging the effective use of land by re-using land that has been previously developed

- 5.7 Ms Farrar's evidence for the Council identified brownfield sites (LPA 1, table 7.1) by reference to the SHLAA (CD8). She was careful to present an up-to-date picture, making allowance for the fact that, since writing her proof, some of the sites have been re-assessed as likely now to come forward within the next 5 years. Even now, these sites account for 710 houses which are not expected to be provided in the next 5 years.
- 5.8 The assessment of the deliverability of these sites was not challenged. They are all either permitted or allocated. As Ms Farrar says, if they were allocated, it was presumably thought they would be constructed by 2006 (LPA 1). If they have planning permission, the developer presumably intended to develop rather than do nothing and allow his planning permission to lapse, which has happened in a number of cases (LPA 1, para 7.17). So they have already stood empty for considerable periods, not regenerating the urban areas as they were intended to do, and they are expected to remain undeveloped for another 5 years.
- 5.9 It is the scale of the problem which is of concern (LPA 1, para 7.22). The number is a very significant one in the circumstances of North East Lincolnshire. Judging by the figures for completions in recent years, 710 dwellings might easily equate to the total numbers actually built in 2 or 3 years (LPA 1, Table 7.4).
- 5.10 There is no comparable difficulty with greenfield sites. All allocations have come forward apart from Scartho Top. Large, unallocated greenfield sites have also come forward and been granted planning permission in recent years (LPA 1, Table 7.3). When asked about greenfield sites which had not come forward, Mr Bainbridge's evidence for the appellant referred only to Scartho Top, which he said was not coming forward as quickly as had been thought. Ms Farrar's evidence in relation to that site is that 1211 of the allocated 2100 units have yet to be built, and that of these, 325 are expected in the next 5 years (LPA 1, para 7.18). That is in fact quite high for a single site. The overall

position on greenfield sites is, then, quite different to that on brownfield sites. There is nothing like the same order of non-development.

- 5.11 The regeneration of the urban areas, particularly of Grimsby, has been a principal aspiration of the Council for many years. It was articulated in the Local Plan in 2003 (CD3, 6.20), reflecting an assessment of the condition of the urban areas made before that date. It was to have been a principal objective of the Core Strategy. It is one of the key considerations identified for the new Local Plan in the Issues and Options Paper (CD25, 7.4 and p20). Given its account of the outcomes intended to be achieved by 2030 (CD25 p22), the new Local Plan is presumably intended to have very ambitious regeneration objectives.
- 5.12 It is recognised that brownfield sites like these face difficulties, such as higher mitigation costs and lower proceeds on sale (CD8, para 2.16). This is no more than a statement of the obvious, and points of this kind can be seen in the SHLAA assessments of many of the sites on Ms Farrar's list. It is also recognised that the market is depressed. Some areas, like Humberstone and other arc settlements, are favoured. The urban area is not (CD13, 8.41-8.43).
- 5.13 It is agreed that the development of these brownfield sites should be encouraged under the imperative of the NPPF (Mr Bainbridge in xx). To countenance a situation where these sites remained undeveloped, with the needed new housing provided on the edge of settlements on greenfield sites, would not be acceptable. Encouragement involves avoiding such a situation. This illustrates the point about the different imperatives of the NPPF. The imperative to provide an adequate supply of housing land would, in this event, be satisfied. But this outcome would involve material adverse impacts, and a breach of other parts of the NPPF.
- 5.14 The appellant will contend that there is no evidence that the release of greenfield sites is holding back the development of brownfield sites. When this point was put to Ms Farrar, she said that the situation spoke for itself and she is plainly right. There is a very large element of inaction. The proportion of housing development on greenfield sites has been rising. There is clear evidence that there is only limited developer interest, and the urban area is out of favour. Of course the Council has not been able to find a potential developer of one the brownfield sites who says that the reason why he did not proceed was because a greenfield site had been released. But the suggestion that there is no connection at all between the non-delivery of such a large number of brownfield sites, and the continued coming-forward of greenfield sites, amounts to a contention that the two phenomena are merely a coincidence and that the same fate would have befallen the brownfield sites if there had been no greenfield development. Such a contention is simply unreal.
- 5.15 The matter is not addressed in the appellant's proofs of evidence at all. Mr Bainbridge's proof simply says that the Council does not have enough previously developed land to meet its 5 year requirement, whereas the whole point of the Council's case is that the identified sites cannot form part of the 5 year supply.
- 5.16 The instruction in the NPPF is to "encourage" the effective use of land. The question must therefore be whether this proposal involves encouragement or not: discouragement in the circumstances of this case would involve an

adverse effect within the meaning of paragraph 14 of the NPPF. The Council maintains that it is impossible to see how granting this application would involve any encouragement. There is nothing to suggest that, if this development were to be permitted, the existing state of affairs would not simply continue.

#### The Burgess Farm decision letter [INQ 1]

- 5.17 The inquiry concerning the Burgess Farm appeal was held prior to the introduction of the NPPF. At that inquiry, the Council objected to the release of a greenfield site on the normal sequential approach basis, that is, that there was plenty of suitable brownfield land which should be released first. This argument persuaded the Inspector. Following the subsequent publication of the NPPF, the Council itself abandoned the relevant sequential approach policies and the SoS, hardly surprisingly, said that the NPPF does not promote a sequential approach to land use.
- 5.18 Prior to the NPPF, the mere fact that a site was previously-developed meant that it was regarded as preferable to a greenfield site. That is no longer the case: the relevant sequence is no longer any part of national policy. But in the current case, the Council does not rely on this sequence. It is concerned that brownfield sites which have already been released have not been developed, and are standing empty in urban areas with recognised regeneration needs, and says that the development of these sites needs to be encouraged. The SoS was not considering this position at all in the Burgess Farm appeal. He was not stating what the implications of the 8<sup>th</sup> core principle, and paragraph 111, of the NPPF would be in the circumstances of this case.

#### Merger of settlements

- 5.19 Mr Bainbridge accepted (in xx) that the ribbon development along Humberston Avenue, and the bulk of Humberston, were not merged at present. He sought to contend that there would be no merger with the development of the appeal site: that the Country Club site would continue to perform a strategic separating function, and indeed that it might not even be appropriate to include the whole of the appeal site, post-development, within the Development Area Boundary. Ms Farrar gave evidence to the opposite effect which, the Council contends, is obviously correct. Two built-up areas, which at present are separate, would coalesce. Coalescence is not solely, or even principally, a matter of visibility from public viewpoints. As for the land along the frontage, this would be crossed by two accesses, on either side of the existing bungalow.
- 5.20 It is irrelevant that the two built-up areas are in the same parish, and the naming of the cemetery and Country Club have no relevance. They are outside the present Development Area Boundary, in the countryside, and are part of the existing separation. The merger of distinct built-up areas, previously separated by countryside, is harmful in more or less any situation. It certainly is here. The importance of separation is acknowledged by the designation of the Country Club site. The merger of these two built-up areas would be an adverse impact in the terms of the NPPF.

*Second main issue: the effect that the proposed development would have on the local highway network*

- 5.21 The Council makes no positive case about Junction 4, because the witness it instructed to appear at the inquiry did not have time to carry out his own capacity assessment. It nevertheless contends that the increased traffic flows observed in 2012, and used for the assessment of Junction 5, should either have been applied to Junction 4 or, if that were not possible because the data was incomplete, should have prompted fresh counts and a fresh assessment at Junction 4.
- 5.22 The Council agrees that the appellant's Transport Assessment provides a reasonable assessment of the operation of the remainder of the network in the three scenarios considered (INQ 8). It is agreed that arms at Junctions 1,2,5 and 6 are already operating beyond their capacity, that the situation will be worse in the assessment year of 2022, and that the impact of the proposed development would be sufficient to pass the threshold where mitigation measures are required. It is agreed that in the absence of such mitigation, planning permission should be refused (Mr Bennett in xx).
- 5.23 Although Mr Bennett produced a design for mitigation measures, he did not depart from the Transport Assessment's finding that these would be nonsensical to carry out, and did not suggest that they should be carried out. He said no more than that they showed adjustments which allowed the ARCADY model to produce a post-development assessment the same as, or slightly better than, the no-development assessment. The drawings show an increase in width at the point where the relevant arm enters the junction, this being one of the inputs to the ARCADY assessment. There is no widening of the arms, or of the circuit of the roundabouts. These proposed changes would not produce any benefit if actually constructed, and so would not alleviate the effect of additional traffic.
- 5.24 If the works do not constitute a sensible scheme, they cannot be the basis for the computation of any contribution. The starting point for calculating a contribution has to be a practical scheme that will actually be implemented. Any such scheme would probably produce an improvement in the performance of the junction: with junctions which are already over capacity, it would be stupid to do less. In that case, there would then be debate as to what share a particular developer should contribute. The appellants' proposed approach is essentially blind to how bad existing conditions are. Under their approach, all a developer would have to do would be to compute the cost of works intended to ensure that conditions did not worsen as a result of the development proposed, and upon proffering that sum, would be entitled to planning permission.
- 5.25 The necessary mitigation would only occur if improvement schemes were actually carried out. At the moment, there are none proposed in the Local Transport Plan, other than capacity works at Junction 2. The approach taken by the appellants would effectively require the Highway Authority to be ready on a more or less permanent basis to carry out sensible improvement works to all parts of the network which either have inadequate capacity, or would do if extra traffic associated with the new development were added. Here, works would be required to four different junctions as a result of the proposed

development. In a sense, the appellants are trying to create a quasi-CIL arrangement for the entire highway network, yet with no infrastructure schemes actually devised, and with the developers computing the level of contribution themselves.

*Third main issue: whether the circumstances of the proposed development would lead to over-reliance, on the part of future occupiers, on the use of private motor vehicles*

- 5.26 The NPPF requires that “decisions should ensure developments that generate significant movement are located where the need to travel will be minimised...” (CD1, para 34). It was agreed (Mr Bennett in xx) that the guidance in paragraph 38 of the NPPF, “where practical... key facilities such as primary schools and local shops should be located within walking distance of most properties”, is relevant to this proposal. Accessibility to schools is good, but is of only limited relevance to assessing the sustainability of a location where half the households will have no interest in getting to a school. All the residents will have an interest in using local shops.
- 5.27 The guidance of paragraph 38 of the NPPF is specific in talking about access to the facilities on foot. It is not enough to try to show that there is good access by bus, no doubt because it is recognised that for trips to local shops, if walking is not an option, the overwhelming temptation will be to use the car.
- 5.28 The distances to the relevant facilities are agreed (INQ 8). At 1.5km and 1.6km they are beyond the recommended maximum distances in the CIHT guidelines, which appear to be the only current guidelines. These guidelines are not inconsistent with what was said in PPG13. That earlier guidance did not suggest that people could be expected to walk to all facilities where they were 2km distant; merely that for car trips of 2km or less, walking had the greatest potential to constitute an alternative. The walk to the Humberston Road shops is, for the most part, on the footway of an A-road. The longer walk to the Fieldhouse Road shops involves crossing Humberston Avenue, and then crossing back over Church Avenue in the vicinity of Church Lane.
- 5.29 A certain amount of evidence addressed the possibility of accessing the Humberston Road shops by bus. But it is only necessary to consider the details of this to appreciate why the overwhelming temptation would be to treat the car as a preferable alternative. A bus would only have to be a few minutes late for the shopper, who will have had to get to the bus stop on time, to spend more time just waiting for the bus than would have been required to execute the entire shopping trip by car. Mr Bennet accepted this (in xx). Having arrived at the shops by bus, the shopper would then have either to time himself as he shopped, allowing 57 seconds plus crossing time to get to the return bus stop, or to wait another 30 minutes.
- 5.30 Nobody is going to be walking 2.9km to Tesco, and the prospect of changing buses to get to Tesco would not be an attractive alternative to a 5 minute car journey.
- 5.31 The proposed development fails the requirement of paragraph 38 of the NPPF. Shopping trips would be overwhelmingly by car, including shopping trips to the local shops. This is a situation which ought to be avoided, and indicates that the location is not a sustainable location.

## 6. The case for the appellant

The following paragraphs summarise the appellant's case, which is set out more fully in its closing submissions (INQ 13).

- 6.1 The appeal site has been conclusively demonstrated to be a suitable and deliverable site for meeting housing requirements. Its suitability was endorsed by the site being earmarked in the SHLAA as deliverable in the 0-5 year period (CD8, pp 92-93). In order to be assessed as deliverable the site must have passed the test set out in footnote 11 of the NPPF, and it follows from this that in addition to being viable and available, the site was considered to be a suitable location to meet housing needs. The text of the assessment makes this clear. It was an assessment which the Council then relied upon in the preparation of the SHLAA in 2012 in identifying its 5 year housing land supply, and the contingency sites available to it (CD8 para 2.9, fig 2.2 and final spreadsheet).
- 6.2 In addition, the site was endorsed not once but twice by the Planning Officers of the Council, in recommending the site for approval in both November 2012 and April 2013. They were clearly utterly unpersuaded by the judgement of the Members, presenting the second application with a similarly robust recommendation for approval after the decision in November. They clearly had no faith in the decision that was reached. That independent professional conclusion is of significant weight in considering the evidence in this case. Moreover, the credibility of the approach taken by the Members is further impaired by their obvious, and arguably capricious, inconsistency in relation to the refusal on the basis of highway capacity when, at the same Committee Meeting in April, they reached a diametrically opposed decision concerning the acceptability of a highways contribution toward capacity improvements in connection with the Scouts Lane site just up the road (INQ 2).
- 6.3 This background to the appeal reinforces the conclusion which should be reached on the evidence before the inquiry that there is a pressing need for further housing sites to be identified, and that this site is a suitable and appropriate site on which to meet that need.

*First main issue: whether or not the Council is able to demonstrate a five-year supply of housing land, and the implications of that in terms of local and national planning policy*

- 6.4 The agreed position is that the Council does not enjoy a five-year land supply, and therefore cannot satisfy the requirement of paragraph 47 of the NPPF. Underlying that bald statement are a number of important considerations which lend further weight to the argument in relation to housing need.
- 6.5 The first point to observe is the Council's acceptance that since it has failed, for a considerable period of time, to deliver its housing requirement, it is appropriate to incorporate a 20% buffer in the housing land supply assessment. The evidence therefore demonstrates that there is a long-standing and chronic problem with housing delivery in North East Lincolnshire.
- 6.6 The position is almost certainly far worse than the Council's concession based on the August 2013 update (CD9). Firstly, even on the face of that document, the Council has failed to assess the land supply properly. The figure of 3.9 years is not based upon the requirement as augmented by a 20% buffer:

when calculated by Ms Farrar (in xx) the appropriate requirement, adding in the 20% buffer, resulted in a figure of around 3.3 years.

- 6.7 However, the position is worse than that, since the document makes use of a requirement which is not soundly based. It purports to deploy figures from the Council's SHMA (CD13), when in fact it does no such thing. The SHMA identified three separate scenarios for the purpose of its assessment. The "zero net migration" (or "natural change") scenario was not regarded as realistic (CD13, para 5.13 2, p106). From the two other scenarios the Council chose the figure of 298, a trends-based figure derived from the Rebased 2010 SNPP, which the SHMA identifies will further exacerbate the large outflow of people of working age from North East Lincolnshire.
- 6.8 Instead, the SHMA recommends that its third scenario, the "employment-led" scenario, should be considered as being the principal scenario for consideration in the development of future policy (CD13 para 10.25, p 199). That is a figure of 493 dwellings per year. Obviously, the use of that much higher figure would give rise to an even shorter housing land supply. It is virtually the same as the Council's last locally derived figure, which is also very similar to the most recently tested figures from the revoked RS. The fact that the RS figure is the most recently tested figure is significant, and endorses its suitability as a basis for housing land supply calculation until a locally derived figure, having been tested, can be ascribed weight.
- 6.9 Thus it is that the housing land supply position in North East Lincolnshire is significantly short, and the NPPF requires the identification of deliverable sites. The fact that the Council has not managed to achieve its housing requirement figures in the past is not endorsed by the NPPF as being a sensible excuse for not endeavouring to meet the target. The NPPF requires, as one of the facets of sustainable development, that objectively-assessed housing needs are met: the fact that this may be challenging is not identified as an excuse. The Council has not identified any environmental or infrastructure capacity argument that would preclude it from doing so. The failure to release suitable and deliverable sites in these circumstances cannot therefore be justified.
- 6.10 The question that then arises is as to the implications for national and Development Plan policies that arise from the conclusion that the Council does not enjoy a five-year housing land supply. These are relatively straightforward, and have in effect already been determined in earlier decisions. In the Church Lane appeal, the Inspector found that in the absence of a five-year supply, the consequence of paragraph 49 of the NPPF is that policies restricting the supply of housing should be considered out of date (APP 4.5 para 5). In this instance, the first part of LP Policy GEN2, which forms the fundamental basis of the Council's refusal in this case, is deemed to be out of date. In other words, the Council cannot rely upon a Development Area Boundary which restricts the supply of housing as a basis for refusing planning permission. The reliance on that out-of-date policy is simply not good enough in a world where the Council needs to seek to find new housing sites to fulfil the 5 year supply.
- 6.11 Because the policy on which the Council has previously relied is out of date, the consequence is felt in the application of the presumption in favour of sustainable development contained within paragraph 14 of the NPPF. The

effect of applying the presumption is that the fulcrum of the planning balance shifts in favour of the grant of permission. Permission should only be refused if it can be demonstrated that harm would “significantly and demonstrably” outweigh the benefit of the development. “Harm” of itself is not sufficient: it must be harm of such gravity as to significantly and demonstrably outweigh the benefits. The reason for this significant shift in the fulcrum of the planning balance is that it is a key policy objective of the NPPF to ensure that a five-year supply of housing land is in place.

- 6.12 There are also significant consequences in relation to the Council’s case in respect of previously developed land. The Burgess Farm decision (INQ 1) demonstrates that the SoS interprets and applies the NPPF as not promoting a sequential approach to the use of land which requires the development of previously developed land first. Paragraph 17 of that decision makes clear the importance of achieving sustainable development to meet identified needs.
- 6.13 This means that, whilst the encouragement of the use of previously developed land is a material consideration, in circumstances of housing shortage the existence of available but undeliverable previously developed land should not stand in the way of meeting the need for housing, even if that is to be met on greenfield sites. Indeed, it would appear that the evidence in the Burgess Farm appeal was, in contradistinction to the present case, that there were substantial tracts of brownfield land that were suitable, available and deliverable. Nevertheless the SoS found that not to be a reason, in circumstances where there was not a five-year land supply, to prevent a suitable greenfield site from being brought forward to meet the need (INQ 1, IR para 185).
- 6.14 The shortfall in the five-year housing land supply is not the only route to the verdict that the LP Development Area Boundary is out of date. The LP was adopted ten years ago and expired seven years ago. It was based upon development requirements which not only expired in 2006 but which were derived from Structure Plan requirements of 1987 and 1993 that, at the time of the LP’s adoption, were in need of revision (CD3 para 1.13 p8 and 15). The antiquity of these housing requirements tells strongly against placing reliance upon the proposals of the LP. The Development Area Boundary is no longer fit for purpose, and this is a further reason for concluding that it is out of date and the presumption in favour of sustainable development clearly applies.
- 6.15 There is now no Development Plan target for previously developed land, and nor is there any policy in the Development Plan which seeks to prefer the development of previously developed land over greenfield sites. Thus, whilst the status of a site as an undeveloped greenfield site remains obviously a material consideration, it is not in and of itself in this case a sufficient basis for refusal. In fact, the Council has a strong record of delivering previously developed land against the target that was previously identified in the RS. The 2012 Annual Monitoring Report shows that over the past eight years, some 63% of housing completions were on previously developed land and that in many years, including years affected by the recession, delivery of housing on previously developed sites continued (CD10 para 5.38 table 5.20).
- 6.16 The Council contends that the development of greenfield sites prejudices or impedes the development of brownfield sites, but there is simply no connection between the two. There is no evidence to support that assertion in any of the

documents that have examined either housing land availability, or the housing market.

- 6.17 It is certainly the case that the global recession, and the impact of the financial crisis on the property market, will have had an effect on residential land values within North East Lincolnshire (CD7 para 1.17). Furthermore, there is no question but that previously developed sites will have site-specific costs which will imperil their viability. However, there is nothing in any evidence to suggest that the development of greenfield sites generally, let alone the appeal site, would have any effect on any of the viability issues which are holding up the brownfield sites identified in Ms Farrar's proof.
- 6.18 The fact that those sites are not being brought forward is not a matter which can be laid at the door of the appeal site, or permissions granted on greenfield sites. They will have their own specific viability problems, which will be related to site-specific costs and/or the values which can be realised given their location. Neither of these factors is in any way influenced by the introduction of greenfield housing land to the market, especially since, as Mr Bainbridge observed, there is no evidence whatsoever that the market is saturated.
- 6.19 For example, entirely irrespective of the decision in relation to the appeal site, the site at Cartergate in Grimsby was included in the 2012 SHLAA but is now excluded from the August 2013 exercise. There are no details provided in the 2013 document, but it is reasonable to surmise that this is obviously related to site-specific issues wholly unrelated to the refusal of permission on the appeal site.
- 6.20 The SHLAA exercise has assessed all of the previously developed sites, and those considered deliverable are counted in the supply. There is no evidence to suggest that any of the others that are not regarded as deliverable will be affected by the decision made on this appeal. Sites which are not deliverable are simply incapable of meeting the purpose for which the appeal site has been brought forward, namely to meet the five-year land supply shortfall. Thus, any harm that might arise from their failure to be regenerated is wholly unrelated to the decision in this case, and cannot form a rational basis for refusing permission.
- 6.21 The word "coalescence" does not feature anywhere in the Council's reasons for refusal, and nor is there anything remotely resembling this described in their terms. It is unclear, therefore, where the basis for this concern could arise. No point was taken in respect of coalescence either in the site assessment by the SHLAA (CD8, p92) or in the Committee Report. The obvious reason for that is that the appeal site is within Humberston, and not between the settlements of Humberston and New Waltham. As Ms Farrar accepted (in xx), it is not possible to allege coalescence in respect of a site which is within a settlement as opposed to between two settlements.
- 6.22 In any event, this argument is not founded on any local planning policy. The LP contains a specific policy directed at precluding coalescence of specific settlements, including Humberston and New Waltham, by identifying a designated area. That designation is Policy NH9. It may be that the Council wishes, for the purposes of its argument, that the appeal site had been included in the area designated by the Local Plan, but the key fact is that it was not. This appeal is not the opportunity to rewrite the Local Plan.

- 6.23 The contentions raised by Ms Farrar in relation to the explanatory text of Policy GEN1 are nothing to the point. This explanatory text describes how development boundaries were drawn so as to avoid coalescence (CD3, p24). It relates to the whole of the District, and adds nothing to the argument in circumstances where the plan has a specific policy to address issues of coalescence in this location. In circumstances where there is a specific policy in respect of coalescence, which covers the land to the north of the appeal site but not the appeal site itself, it is impossible to contend that this text plays any part in supporting the allegation made in this case in relation to coalescence.
- 6.24 The circumstantial physical and administrative features around the appeal site reinforce the appellants' view. The site is well inside Humberston Parish, and therefore clearly within the settlement defined by this administrative boundary (APP 3). It is surrounded by facilities identified as being part of Humberston. Humberston Cemetery and allotments are to the west; the Humberston Country Club and Humberston Academy to the north. It is untenable to suggest that all of these facilities have been misnamed and the parish boundary drawn in the wrong place, so as to suggest that the site is not within Humberston. All of the evidence supports the contention that coalescence is simply not an issue in this case.
- 6.25 It follows from this analysis that in terms of the planning points raised by the Council, neither the contentions about previously developed land nor the allegation in relation to coalescence are supported by either policy or evidence. They could not begin to amount to any harm, let alone the harm needed to significantly and demonstrably outweigh the benefits which the site brings and which will be analysed in striking the overall planning balance.

*Second main issue: the effect that the proposed development would have on the local highway network*

- 6.26 Under paragraph 32 of the NPPF, only where residual cumulative impacts are severe should development be prevented or refused. Further, in paragraph 187 of the NPPF it is made clear that local planning authorities should strive to find solutions, rather than problems, so as to enable necessary development to occur.
- 6.27 It is clear, and on record, that the Highway Authority has no objection to the development in the context of the contribution made to off-site highway works. That is the case not only in relation to the determination of the second application, which shows that they were wholly unimpressed by the Members' initial refusal of planning permission on this basis, but remains the case in the context of this appeal.
- 6.28 The reason for this is that, having the responsibility for administering the highway network, the Highway Authority has concluded, on the basis of the best evidence, that the contribution which is provided is entirely suitable to mitigate the impacts of the proposed development, assist in facilitating a wider network strategy, and meet the requirements of the NPPF. The circumstances which evidence the good sense of the Highway Authority's approach are as follows.

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- 6.29 Firstly, the network in the Southern Arc of the District is congested at the junctions in the vicinity of the appeal site. Secondly, it is clear not only from the Highway Authority's responses and the Council's Rule 6 Statement (para 3.4, p6) but also from the Local Transport Plan (CD16, pp60-61) that there is a commitment to a strategy to improve these junctions, as part of a programme of works for the wider network.
- 6.30 It is clear that, whilst they would warrant contributions, the impacts of the proposed development would be small. The evidence shows that they would be less than 2% in 2022 at each of the junctions considered. That assessment was made using industry-standard software, and there can be no quarrel with the conclusion that modest adjustments to the junctions produce a modelled situation comparable to that without the development. The modesty of the improvements is related to the slightness of the impacts occasioned.
- 6.31 In circumstances where the wider strategy does not yet exist and cannot be examined, it is only sensible that the improvements indicated by the Appellants' modelling should be used as the best available evidence in order to cost their contribution. That is what occurred, and it remains the clear preference of both the Highway Authority and the Appellants that contributions gauged against the costs of the improvements should be paid, rather than the improvements themselves implemented. This approach would enable the contributions to be put toward the network-wide strategy when it emerges.
- 6.32 The evidence given by Mr McKinney on behalf of the Council is somewhat opaque. He offers no solution as to what he suggests any contribution should be. He does not appear to suggest that all development should be refused unless and until any strategy has been devised. He appeared to be contending that it was for the developer to devise the network strategy for the Council in the context of presenting an application for planning permission, and then to model and determine the impact the proposed development would have upon the proposed strategy, and to derive the contribution from that exercise. The appellants consider that to be, with the greatest of respect, nonsensical and impractical.
- 6.33 The ultimate design of the network-wide strategy will be complex, and will involve wider policy and infrastructure choices which are not the responsibility of the developer, but lie within the province of the Highway Authority. The evidence of the Local Transport Plan (CD 16) shows that the Highway Authority is fully briefed in relation to the challenges and range of choices. Thus, any strategy which the developer might produce, irrespective of the wholly impractical cost of doing so, would be a totally hypothetical exercise. It was not an exercise that the Highway Authority encouraged.
- 6.34 Indeed, it appears to the appellants that Mr McKinney occupies a lonely vigil in pursuing this approach. It is not even one which appears to be supported by the Members, who were quite happy to accept the approach of costing improvements to the existing network as a means of gauging the appropriate measure of contribution, and to accept such a contribution, in the decision that was reached in relation to the Scouts Lane development (INQ 2, s.7).
- 6.35 In this case, the contribution offered is appropriate in terms of the impact the development would have, and is based upon the best evidence for quantifying such an impact. Mr McKinney's approach is incoherent and inoperable. The

Highway Authority is content that the contribution equips it appropriately, in devising its strategy to ameliorate any impact from the proposed development in a manner which is proportionate to that impact, and which reflects the requirements of the CIL Regulations. There is therefore no substance in the Members' reason for refusal in this respect.

*Third main issue: whether the circumstances of the proposed development would lead to over-reliance, on the part of future occupiers, on the use of private motor vehicles*

- 6.36 There is no dispute that Humberston is a sustainable settlement. It contains a significant variety of services and facilities fit to meet the day-to-day requirements of residents. It is therefore, as a location, an entirely suitable and sustainable place in which to meet residential requirements. As to the particular circumstances of the appeal site, there is again no argument that many of those facilities are within easy walking or cycling distance (INQ 8, Table 1). The agreed position in relation to distances demonstrates that facilities such as schools, the library, open space and leisure facilities are all close by and available by slow modes.
- 6.37 In substance, the only real point raised by the Council concerns the distance to the nearest local shop, which is agreed as being 1,625 metres, or 20 minutes' walk, from the appeal site.
- 6.38 The first point to observe is that there is nothing about the circumstances of the walk which renders it unattractive to the pedestrian. It is a walk on a level gradient with conveniently appointed crossing facilities, some of which will be facilitated by the appeal proposals. It is a walk through a well-landscaped urban area, and the road to which it is adjacent is not one which is heavily trafficked and unpleasant as a result.
- 6.39 Turning to the distance of the walk, it is well within the 2km identified by PPG13 as presenting a reasonable alternative to the private car, and which was recently endorsed as offering a credible opportunity for adults to take a walk trip, by the Inspector who determined an appeal in Shepshed (APP 2.4 para 15). There is nothing about the length of the walk which would render it unattractive. Indeed, the statistics derived from Table NTS0312 of the National Travel Survey (INQ 3) show that significant percentages of people up to the age of 70 will walk 20 minutes or more 3 or more times a week, evidencing within that social survey a clear propensity to undertake the walk to the local shop. There is therefore no substance in the Council's complaint.
- 6.40 In any event, it is important not to obsess about one facility in circumstances where the assessment required by paragraph 38 of the NPPF is a holistic one. Even if one focuses exclusively on the local shop, that needs to be put in the context of the extent to which shopping is a trip purpose and will generate travel demand from the site. It is clear from other elements of the National Travel Survey (APP 2.12, p.9) that shopping is a relatively minor trip purpose when compared with all of the other reasons why people make trips, for instance for employment, leisure or education. Local shopping will be an even smaller proportion of travel demand. Shopping trips appear to be declining as more modern forms of retailing prevail. Thus it is a minor element of the assessment in any event.

- 6.41 Whilst the Council has expressed concern about the distance in relation to the proportion of the site that is for elderly accommodation, again the detailed breakdown of the National Travel Survey shows that it is only after the age of 70 that there is a decline in propensity to walk for 20 minutes or more on a frequent basis. That is unsurprising when the statistics in relation to mobility and impairment for the 70+ age group are taken into account (INQ 3). It is not therefore a significant point in relation to accessibility in this case. In any event, as examination of the bus routes and timetable demonstrates (APP 2.7), the number 8 bus provides a very convenient opportunity to use public transport, either for a two-way trip, or to get to the shop and then walk home.
- 6.42 In summary, then, the complaint about accessibility is entirely without substance. It is therefore wholly unsurprising that both in the SHLAA (CD8, p92) and also in the Committee Report (para p.14), the professional assessors of the site concluded that it was well-related to services and facilities, and in an accessible location with characteristics appropriate to accommodate residential development.

### *The planning balance*

- 6.43 In circumstances where the principal policies in the Development Plan are out of date, it is necessary to draw the factors together and feed them into the equation provided by paragraph 14 of the NPPF. That exercise requires one to start with a careful examination of the benefits of the proposal. Unfortunately, there is little, if any, evidence in the proof of Ms Farrar, and none in the consideration of the members as articulated by Cllr Harness (INQ 9), of a close understanding of the significant benefits which this scheme delivers.
- 6.44 There is firstly the five-year housing land supply requirement, which needs to be met. The development also offers the opportunity, given the experience and commitment of Keystone, to provide for up to half of the homes as being for older persons. The SHMA makes clear that the population of the district in the future will contain a significantly increased proportion of older people, amounting to a 31-34% increase in the over-65s between 2011 and 2030. As the SHMA notes, this will place greater pressure on existing housing stock (CD13, para 6.107, p148). There is therefore a free-standing and additional need for bespoke accommodation for older people.
- 6.45 Furthermore, 25% of the site is identified as being committed to affordable housing. There is a clear and extensive need for affordable homes. Evidence of that can be seen from the correspondence which Mr Bainbridge has exhibited in respect of the extent of the housing waiting list (APP 4.10). That correspondence shows that within the high-priority category of the housing waiting list, there are nearly 4,000 households currently living in inadequate housing where they are overcrowded or in medical need, or living in insanitary or unsatisfactory conditions. Their need is for housing now, and the appeal site promises the delivery of that upon the grant of planning permission.
- 6.46 The evidence of the housing waiting list is further reinforced by the analysis undertaken by GVA in the SHMA, where they calculated that there was a net annual affordable housing need of around 586 dwellings per year over the next five years (CD13, para 10.32, p200). In these circumstances, the need for affordable housing is a very significant and weighty benefit in support of the

grant of planning permission. Unfortunately, it is not one that has been analysed or considered in the Council's evidence.

- 6.47 Thus, there are substantial and significant benefits to be derived from the grant of planning permission. As set out above, there is in substance no harm, let alone harm that could significantly and outweigh those benefits, which has been demonstrated by the Council. All other matters which might give rise to harm, or the conclusion that the site is not suitable, have been addressed and resolved. There is no objection raised in relation to any ecological impact on the interests of the nearby European sites of nature conservation interest. Archaeological issues have been explored and are not a constraint upon development. A solution has been derived in relation to drainage and flood risk. Suitable contributions are being made in relation to social infrastructure to address the needs of the development. In short, the case in favour of the proposed development is overwhelming.

### *Conclusion*

- 6.48 From the evidence before the Inquiry, it is clear that the Council's Planning Officers were absolutely correct in recommending to the Members on 21 November 2012 that planning permission should be granted. They were also right to set little store by the Members' rejection of the proposals, and to provide them with a further opportunity to make the right decision. The Officers' independent endorsement of the need for this site, and its suitability, as set out above, carries significant weight in the consideration of this appeal. There is, on analysis, no substance in the reasons for refusal which the Members imposed. Indeed, in relation to the highways reason for refusal, they did not agree with it themselves on the same night that they imposed it in respect of this site.
- 6.49 There is a strong, positive case for development of the appeal site, and one which will bring about significant benefits in terms of addressing housing requirements in North East Lincolnshire. That is not simply in relation to the need for market housing. The development also addresses the needs of those who are unable, through their own socio-economic circumstances, to meet their housing requirements and are currently forced to live in unsuitable and unsatisfactory homes. The proposals will assist in meeting a pressing requirement for further accommodation for older persons. In the light of the material before the Inquiry, there is no sensible basis to do other than recommend to the SoS that planning permission should be granted.

## **7. The cases for interested parties**

Oral representations made in addition to those of the main parties are summarised below. A copy of Cllr Harness' speaking notes provided to the inquiry is attached (INQ 9).

### *Cllr S Harness*

- 7.1 The proposed development has been an unpopular and contentious issue with many local residents, also with organised objectors such as "Save Our Fields", and the Humberston and New Waltham ward councillors have been united in their opposition to it. The case for the appellant appears to be based on an arbitrary figure set by the Government to build a certain number of houses

each year. The Planning Committee would have been fully aware that their decision to reject this proposal defied that government target, and would not have taken such a decision lightly.

- 7.2 The field that this development would be built on is the last agricultural field fronting on to Humberston Avenue, the remainder of the land fronting Humberston Avenue having already been developed. The village of Humberston is becoming a suburb thanks to all the proposed development. This field is unique, and takes on the appearance of a medieval pasture, with a timeless contribution to the scenic appearance of the village and area. Cows graze there, and the habitat it provides for wildlife is priceless. It must be preserved because it is a green field, and of major environmental significance to the area.
- 7.3 It does not make sense to sacrifice this green oasis for housing that is not needed. There are other developments in the immediate and wider area that are either unfinished, or have not been started. These should be finished, and a traffic study analysing their impact completed, before more land is released for development in this area. Local people and the Parish Councils are dismayed that housing developments are being put into the mix without consideration for the infrastructure to support them. The area already suffers major congestion at certain times of the day, being part of a particularly busy road network.
- 7.4 The planned developments in the area will require more school places and this will add to the traffic chaos. The site is not sustainable due to its distance from shops and other facilities, and this would increase the traffic problems. Public transport is also inadequate at its present frequency.
- 7.5 Residents are aware that there is pressure to build new houses to accommodate an increasing population and to increase prosperity via the building industry. This is how the market works in practice. But that said, the need to build new houses does not, and should not, override the preservation of this unique field.

*Mr M Willerton*

- 7.6 The effect that the proposed development would have on the public footpath at the eastern side of the land, as well as the effect on other local infrastructure, is a concern.
- 7.7 Humberston Avenue was the site of serious flooding some five years ago, in May-June, when two houses were flooded to such an extent that the Fire Brigade had to be called. No. 148 Humberston Avenue is situated on a slight rise, but the drain failed to empty, because it is below the level of the carriageway.
- 7.8 This gives rise to serious concerns about what might happen to the drainage system as a result of the proposed construction of 400 new dwellings. The proposed surface-water storage facilities seem very small for the size of the site, and may not be adequate to cope. Local residents already experience problems with the low pressure of the current water supply.

*Mr F N Smith*

- 7.9 The loss of 4 fields to provide 400-odd houses would lead to around 1,000 extra people living in the area, and this would result in excessive traffic on what is a small road. Traffic is already a concern, particularly in connection with the numbers of schoolchildren. There is more traffic on the road every day, and no room for the road to expand to cope with this in future years.
- 7.10 It is unlikely that pensioners living in the new houses would want to walk a mile in either direction to the nearest shops. Nature would also suffer, being pushed into a smaller and smaller area. Too great an emphasis has been placed on the importance of providing housing; there is no real need for it here, due to the amount of other housing development that is already going on in the area.

## **8. Written representations**

- 8.1 A considerable number of objections to the proposed development were received by the Council at the application stage (collected in Folder TP 1), and two further objections were received by the Planning Inspectorate at the appeal stage (collected in folder TP 2).
- 8.2 Many of these written representations set out similar concerns to those subsequently articulated by those who spoke at the inquiry, as outlined above. Other matters raised were whether local schools and health services would be able to cope with additional residents; concerns about highway safety; the potential loss of a site of archaeological significance; and the harm that may be caused to wildlife and protected species.

## **9. S.106 Agreement and Undertaking**

- 9.1 The development proposal is the subject of a S.106 Agreement made between the Council, the owners of the appeal site, and Keystone Developments (LG) Limited as developer (PINQ 1). It is also the subject of a S.106 Unilateral Undertaking given by the land owners and the developer to the Council (PINQ 2). The principal terms of the S.106 Agreement are as follows:

- provision of 25% of the houses built on the site as affordable dwellings;
- staged payment of a financial contribution toward works at either or both of Humberston Cloverfields Primary School or Humberston Church of England Primary School, on the basis of £11,276.64 for every four dwellings constructed (excluding one-bedroom dwellings and retirement homes);
- provision of at least 6.35ha of on-site publicly accessible open space, to include a children's play area with installed play equipment, and payment of a financial contribution towards the future maintenance of this space, should it be transferred into the ownership of the Council.

The principal terms of the S.106 Unilateral Undertaking are as follows:

- completion of specified highway improvement works to Humberston Avenue (including new zebra crossings and pedestrian footways) before any of the new dwellings are occupied; and

- the staged payment of a financial contribution of £133,266 toward junction improvements at Toll Bar roundabout, Hewitt's Circus, Low Farm junction and Love Lane roundabout.

I am satisfied, on the basis of the evidence provided, that the planning obligations contained in both the Undertaking and the Agreement meet the statutory tests set out in Regulation 122 of the CIL Regulations 2010 and so can be taken into account in determining whether planning permission should be granted.

## **10. Conditions**

- 10.1 The appellant and the Council helpfully agreed a list of 28 conditions which they would regard as reasonable and necessary should the SoS be minded to grant planning permission for the proposed development (INQ 5).
- 10.2 The suggested conditions relate to the submission of reserved matters and the timescale for commencement of development (1 & 2); compliance with the approved plans (3); surface water and foul drainage (4 & 5); restricting the occupation of 50% of the dwellings to persons over 55, and their households or surviving households (6 & 7); details of internal access routes and parking provision, and their construction (8, 11 & 12); construction of the access road (9); laying out of the highway works (10); measures to protect neighbouring residents' living conditions, and highway safety, during the construction period (13, 14, 16, 17 & 18); archaeological investigation (15); remediation of contamination (19); a statement of sustainability (20); the provision of screening (21); a lighting management scheme (22); a biodiversity enhancement scheme (23); the protection of existing trees and hedges (24 & 27); a landscape management plan (25); compliance with the working methods identified in the Great Crested Newt report (26); and the delivery of measures detailed in the Travel Plan.
- 10.3 As a result of discussion at the inquiry, the parties agreed that conditions relating to details and construction of the internal access routes and parking provision would not be necessary, since they could be better addressed at Reserved Matters stage, when layout details would be provided. It was also agreed that the various conditions concerning requirements during the construction period could be replaced by a single condition requiring compliance with an agreed Construction Method Statement.

## 11. Inspector's conclusions

*First main issue: whether or not the Council is able to demonstrate a five-year supply of housing land, and the implications of that in terms of local and national planning policy*

- 11.1 Paragraph 49 of the NPPF states that if a local planning authority cannot demonstrate a five-year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up-to-date. The Council acknowledges that it is not able to demonstrate a five-year supply of housing sites, and that as a consequence, LP policies relevant to the supply of housing should not be considered up-to-date. [5.1, 5.2]
- 11.2 This has implications for the application of paragraph 14 of the NPPF, which sets out how the "presumption in favour of sustainable development" is intended to operate. It explains that where relevant policies are out of date, then (unless material considerations indicate otherwise) planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.
- 11.3 It is therefore necessary to identify the benefits and the adverse impacts of the current proposal, and then to weigh them very carefully in the balance.
- 11.4 The Council accepts that the fact that this proposed development would provide housing, deliverable within the next 5 years, is a benefit; it recognises the proposed provision of affordable dwellings and retirement housing as additionally beneficial. I note that a number of local residents have queried whether there is in fact any real need for more affordable housing or more retirement housing. The evidence suggests that there is: the SHMA shows that the proportion of older people in the district's population will increase significantly between 2011 and 2030, placing greater pressure on the existing housing stock, and the numbers on the housing waiting list show that there is a pressing need for affordable dwellings. [5.3, 6.44, 6.45]
- 11.5 While acknowledging the benefits of providing much-needed housing, the Council remains concerned that the residential development of this particular site would have adverse impacts in terms of the effective re-use of other previously developed sites, and the merger of built-up areas.

### The extent to which the re-use of previously developed sites might be affected

- 11.6 Paragraph 111 of the NPPF advises that planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed.
- 11.7 The Council has consistently viewed the regeneration of the district's urban areas as one of its priorities, and to this end has identified a number of previously developed ("brownfield") sites in urban areas, many of which are presently occupied by old or unwanted buildings which contribute little or nothing to the surrounding area. Some of these sites were allocated for residential development in the current Local Plan, and some have been granted planning permission for housing. That is consistent with the NPPF's

approach of encouraging the effective use of such land, but as is evident from the number of them which have the benefit of an allocation and/or planning permission yet still remain undeveloped, provides no guarantee that housing will actually be delivered on those sites. [5.11, 6.18]

- 11.8 In the circumstances, I can understand the Council's concern to ensure that nothing should discourage the re-development of these urban brownfield sites, but am not persuaded by its argument that permitting the residential development of the appeal site would necessarily have that unwanted effect. I have not been provided with any substantive evidence that the delivery of housing on greenfield sites prejudices the delivery of housing on brownfield sites. The Council contends that the situation speaks for itself, but it seems to me that it would be over-simplistic to assume that a housebuilder would always choose a greenfield site over a brownfield site. Much will depend on the specific circumstances of each site, and the capabilities, preferences and financial arrangements of each developer. Some may favour a greenfield site, to avoid the need to demolish existing unwanted buildings: some may favour a brownfield site, to avoid the need to lay electric, gas, water and sewage connections. [5.14, 6.16, 6.17]
- 11.9 Further, in the context of the acknowledged shortfall in the district's housing provision, I see no reason why housing permitted on greenfield sites in order to redress that shortfall should in any way affect the housing on brownfield sites that has already been assessed by the Council as deliverable within the next 5 years. There is no indication that the assessment of deliverability was based on the premise that no other housing sites would come forward. [5.16]
- 11.10 As to the brownfield sites assessed by the Council as not being capable of delivering housing within the next 5 years, again I see no reason to suppose that situation would alter as a result of the residential development of the appeal site. The deliverability of such sites is far more likely to be affected by the market conditions and housing need that exist five years hence. The Council does not seek to argue that it would be right to countenance an under-provision of housing for the district, in the hope that such under-provision would incentivise the earlier regeneration of these sites. There is no evidence at all that such an approach might work, and it would in any event conflict with the NPPF's clear objective "to boost significantly the supply of housing" by requiring Councils to make provision for a five-year supply of deliverable housing sites. [6.20]
- 11.11 Taking all of this into account, I find no convincing evidence to support the Council's assertion that there must be a connection between the non-delivery of a large number of brownfield sites and the continued coming forward of greenfield sites. That being the case, I attach only very limited weight to the possibility that permitting the residential development of the appeal site would discourage the regeneration of brownfield sites in the district's urban areas.

#### The extent to which built-up areas would merge

- 11.12 As discussed above, the fact that the Council cannot demonstrate a five-year supply of deliverable housing sites means that by operation of paragraph 49 of the NPPF, relevant policies for the supply of housing should not be considered up-to-date. As a consequence, the first limb of LP Policy GEN 2, which seeks to restrict house-building in the countryside outside the defined development

boundaries of settlements, must be considered out of date. The fact that the appeal site lies outside the development boundary for Humberston is not, therefore, a reason in itself to refuse planning permission. The second limb of Policy GEN2 remains relevant, and provides that the suitability of development proposals should be assessed in relation to (among other things) their impact on the character and appearance of the area. [3.3]

- 11.13 The supporting text to LP Policy NH9 explains that this policy is essentially a supplementary consideration to Policy GEN2, aimed at ensuring development does not result in an apparent increase in scale of the built environment between defined development areas. Its stated purpose is to define and designate "Strategic Gaps", in order to prevent coalescence of the Grimsby/Cleethorpes urban area with the settlements of Humberston, Waltham and New Waltham to the south, and other settlements to the west. It is material to note that land on the northern side of Humberston Avenue, opposite the appeal site, was included within the Policy NH9 "Strategic Gap" designation: the appeal site was not. [6.22]
- 11.14 The settlements of Humberston and New Waltham are connected by Humberston Avenue, a long, straight road. Ribbon development has built up on either side of this road, mainly taking the form of large houses set in extensive grounds backing on to countryside, although there appears to have been some sub-division of plots to create backland development in various areas. Toward the eastern end of Humberston Avenue, approaching the main built-up area of Humberston, there is a visual break in this ribbon development. On the northern side of the road, the leisure uses and educational establishments are forms of development that have a more open character than the adjoining residential uses, while opposite them on the southern side of the road the fields comprising the current appeal site, interrupted only by No. 184, provide views of the countryside.
- 11.15 While New Waltham and Humberston have their own distinct identities, the presence of residential development along nearly the entire length of the avenue that connects them makes it rather difficult to distinguish, physically, the point along that road where one settlement ends and the other begins. I am not convinced that this point lies at the appeal site, because if it were the case that this currently undeveloped land could reasonably be identified as the only feature separating the two settlements, it would surely have been included within LP Policy NH9 as a Strategic Gap. Further, the Humberston village sign lies a considerable distance to the west of the appeal site along Humberston Avenue.
- 11.16 In the context of the extent to which the built-up areas of Humberston and New Waltham are now linked by existing development along Humberston Avenue, I do not consider that the construction of houses on the appeal site would result in the harmful coalescence of otherwise clearly distinct settlements. [5.19, 5.20, 6.21]
- 11.17 It would, however, result in the loss of open green fields which currently provide some visual relief from the otherwise near-continuous built development along Humberston Avenue. I share the view of local residents that the loss of this part of the countryside to housing development would have a harmful effect on the character and appearance of the area, which

would be at odds with the objectives of part (ix) of the second limb of LP Policy GEN2. That harm would be somewhat lessened by the proposed provision of public open space within the site, which has been secured by the s.106 Agreement made between the appellant and the Council (PINQ 1), but is nevertheless an adverse impact that needs to be weighed in the overall planning balance.

*Second main issue: the effect that the proposed development would have on the local highway network*

- 11.18 Part (x) of the second limb of LP Policy GEN2 requires the suitability of development proposals to be assessed in relation to vehicle generation levels.
- 11.19 The evidence of local residents is that junctions in the vicinity of the appeal site frequently become congested. It is also common ground between the appellant and the Council that arms of the junctions at Toll Bar roundabout, Hewitt's Circus, Low Farm junction and Love Lane roundabout are already operating beyond their capacity, and that while the impact of the additional vehicle movements generated by the proposed development would be small, they would nevertheless give rise to the need for appropriate mitigation measures. [5.22]
- 11.20 The provision of mitigation to offset what would otherwise be a harmful impact of a development proposal is not a new concept; it is a well-established principle of the planning system. Requirements for mitigation can be addressed either by attaching appropriate conditions to a grant of planning permission, or through the execution of a legal deed requiring the parties to comply with relevant planning obligations.
- 11.21 The most recent iteration of the guidance on such matters is found at paragraphs 203 and 204 of the NPPF, which explain that planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations, which should only be used where it is not possible to address unacceptable impacts through a planning condition, must meet the tests of being (1) necessary to make the development acceptable in planning terms; (2) directly related to the development; and (3) fairly and reasonably related in scale and kind to the development.
- 11.22 While the Council recognises the need for a highway infrastructure strategy to address capacity restrictions and deliver highway improvements, in this locality and across the wider road network, no such strategy is yet in place. In its absence, it would clearly not be reasonable to impose a condition requiring the appellant to implement all or part of the highway works needed to alleviate the pressure on the relevant junctions, because the extent, nature and timing of the works necessary has yet to be established. [5.25, 6.29]
- 11.23 The appellant therefore carried out a computer modelling exercise, in consultation with the Highway Authority, to establish the extent of the highway works that would be required at the relevant junctions to mitigate the effect of traffic associated solely with the development here proposed. [5.23, 6.31]
- 11.24 As appears to be generally agreed, it would be nonsensical to require the appellant actually to implement those works: the modest improvements

involved would not alleviate the existing (or address possible future) congestion at the affected junctions, and so further works to that effect would need to be carried out, once a comprehensive highway infrastructure strategy for the district was in place. Instead, the Highway Authority and the Council's planning officers favoured the approach of requiring the appellant to pay a financial contribution equivalent to the cost of implementing the agreed works, which could then be put towards funding the holistic junction improvements to be worked up by the Highway Authority. [5.24, 6.31]

- 11.25 That seems to me an eminently sensible solution. It enables the calculation of a financial contribution which is fairly and reasonably related to the impacts of this specific development proposal, and the appellant has provided a S.106 Undertaking to pay that contribution in the event that the appeal were allowed.
- 11.26 In so far as I understand the Council's objection to this approach, it seems to be founded on the view that because it would be nonsensical to implement improvement works aimed only at addressing the impact of this particular development, the costs of those works cannot be used as the basis for calculating a financial contribution. Instead, the Council contends that the calculation should be based on a scheme that would be implemented. That rather misses the crucial point that the relevant authorities have not yet determined the design and detail of the works needed at the relevant junctions. In the meantime it would hardly be reasonable, or proportionate, to require the proponent of each new development proposal to devise a demonstrably implementable highway infrastructure strategy for the surrounding area, simply to form a basis for calculating the contribution to be made in respect of that particular development. [5.24, 6.32]
- 11.27 The Council appears to be arguing that the provision of funding for works intended to ensure that conditions did not worsen as a result of a particular proposal is somehow inappropriate. I do not share that view. I consider that such an arrangement would accord perfectly well with the provisions of paragraphs 203 and 204 of the NPPF. As to the Council's concern that this would effectively require the Highway Authority to be ready to carry out highway improvement works necessitated (and funded) by new development, it seems to me that this would not be an entirely unreasonable expectation. In any event, in the context of this particular development proposal and in view of the Local Transport Plan commitment to improving the road network, the Highway Authority has confirmed that the proposed financial contribution would enable it to satisfactorily mitigate the increased congestion that the construction of the new dwellings would otherwise cause. That being the case, there would be no adverse impact in this respect to weigh against the proposed development. [5.25, 6.33, 6.35]
- 11.28 A number of local residents have expressed concern that the proposed creation of two new vehicular accesses to Humberston Avenue, and the increased traffic movements likely to be generated by the new houses, could have adverse impacts for highway safety, particularly around the start and finish of the school day. However, the proposed development would provide a number of measures aimed at improving highway safety, including two new zebra crossings; widening the footway on the northern side of Humberston Avenue and installing a 2m wide footway on the southern side; relocating bus stops

closer to the pedestrian crossings, and providing them with raised kerbs. The S.106 Undertaking provided by the appellant secures the completion of all of these works before any of the proposed dwellings could be occupied. The Highway Authority has assessed the impact of the proposed development and is satisfied that it would have no adverse impact on highway safety; a conclusion shared by both the expert Highways witnesses who appeared for the Council and the appellant at the inquiry. I have no reason to doubt any of this professional evidence.

*Third main issue: whether the circumstances of the proposed development would lead to over-reliance, on the part of future occupiers, on the use of private motor vehicles*

- 11.29 While the appeal site is located within easy walking distance of a number of local services, such as a library, schools, open space and leisure facilities, it is just over 1.5km from the nearest shop (INQ 8). This is beyond the recommended maximum walking distance in the CIHT publication *Guidelines for Providing for Journeys on Foot*, and the Council is concerned that as a result, shopping trips made by future residents would be made by private car rather than on foot. [5.28]
- 11.30 As the Council rightly points out, paragraph 38 of the NPPF advises that where practical, key facilities such as primary schools and local shops should be located within walking distance of most properties. But it is important to bear in mind that this paragraph is part of the section of the NPPF headed "Promoting sustainable transport", which also advocates support for development "which, where reasonable to do so, facilitates the use of sustainable modes of transport" (paragraph 30), and advises that development should be located, where practical, to have access to high quality public transport facilities [5.27].
- 11.31 The appeal site is very close to bus stops on Humberston Avenue, and the Council recognises that it is well served by public transport, which provides a good service to shopping centres in Grimsby as well as other key facilities such as Tollbar Academy, Diana Princess of Wales Hospital, Grimsby town centre and Grimsby railway station (LPA 2, 4.7). I also note that the Number 8 bus operates to a timetable which would enable occupiers of the proposed dwellings to use it for brief return trips to the Humberston Road convenience store. I saw at my site visit that the 20 minute walk from the appeal site to the nearest shop passes through a level and reasonably attractive urban landscape, provided with footways and crossing facilities, and no hazards that would act as an obvious deterrent to pedestrians or cyclists. [5.30, 6.38, 6.41]
- 11.32 The Council's concern that future residents of the retirement housing may, as a function of increasing age and decreasing mobility, be less inclined than younger residents to walk to the shops does not appear to be wholly borne out by the statistics derived from the National Travel Survey (INQ 3). In any event, however close new houses may be built to shops and other facilities, there is no guaranteed method of predicting how their occupiers will choose to travel; some people like to walk, some do not, and some simply cannot. The important thing, and the thrust of the guidance contained in the NPPF, is that a choice be made available, so that those who are unwilling or unable to walk do

not have to be reliant on the use of a private car but are instead able to access more sustainable methods of transport.

- 11.33 In this case, I am satisfied that the services and facilities necessary to meet the needs of future residents would be accessible from the appeal site either on foot, by bicycle or by bus. As a consequence, the location and circumstances of the appeal site could not reasonably be considered likely to be the cause of any over-reliance by future occupiers on the use of private motor vehicles.

*Other matters*

- 11.34 The appeal site lies around 2.7km from the Humber estuary, which has national and international protection as a Site of Special Scientific Interest (SSSI), a Special Area of Conservation (SAC), a Special Protection Area (SPA) and a Ramsar Site. The appellant has provided a comprehensive professional Ecology Report, including over-wintering bird surveys and a Great Crested Newt survey.
- 11.35 Natural England, the non-departmental public body charged with ensuring that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, was consulted by the Council and provided with copies of the Ecological Report and surveys. It has advised that taking account of the considerable distance of the appeal site from the SPA, the sporadic nature of its use by curlew (the only species associated with the SPA that was recorded) and the presence of extensive areas of similar habitat in the general area, and subject to conditions requiring adequate screening from adjacent fields and the prevention of light spill, the proposed development would not be likely to have a significant effect on the Humber Estuary SPA, SAC and Ramsar Site or cause damage or disturbance to the SSSI. The RSPB agreed. Natural England was also satisfied that while the proposed development would be likely to affect the habitat of bats and Great Crested Newts, the working practices, mitigation measures and enhancement work detailed in the Ecology Report would be sufficient to maintain the population of these species.
- 11.36 The Ecology Report did not find evidence of badgers, water voles or any other protected species within the site. Taking all of this into account, I conclude that subject to appropriately worded conditions, and the Council's approval of detailed biodiversity and landscape management schemes at Reserved Matters stage, the proposed development would not have any significant adverse impact on protected species or their habitat.
- 11.37 A number of local residents have raised concerns over the adequacy of the existing drainage capacity, and this is clearly an important consideration. The appellant has provided a preliminary drainage strategy incorporating a system of swales and a storage pond. While details of the storage capacity and the proposed ground-raising in parts of the site will need further consideration at Reserved Matters stage, I agree with the Council that the preliminary strategy is sufficient to show that a SUDS system could be accommodated as part of the development, and has clear potential to improve, rather than merely 'not worsen', the existing drainage situation. I note that the Environment Agency and Anglian Water raised no objection to the proposals, subject to appropriate conditions. [11.43]

11.38 Local residents also expressed concern about the ability of local schools, and other public services and infrastructure, to cope with the increase in population that would result from the proposed development. The Council has assessed the impacts that the proposal would have on all such services and has had the opportunity to request works, or financial contributions, to secure such improvements or additions as it considered necessary to mitigate those impacts. The contributions identified as necessary were the provision of at least 6.35ha of publicly accessible open space within the appeal site, including an equipped play area for children and arrangements for its future maintenance, and the payment of a commuted sum calculated as necessary to fund the provision of primary school places for the number of primary school-aged children likely to living in the proposed houses. I am satisfied that the S.106 Agreement completed by the Council and the appellant secures these contributions, and in the absence of any substantive evidence to the contrary, that the proposal would have no adverse impact on other local services or infrastructure. [9.1]

### *The overall balance*

11.39 I have found that the proposed residential development of the appeal site would result in the loss of open green fields which currently provide some visual relief from the otherwise near-continuous built development along Humberston Avenue, and that is an adverse impact which carries some weight. I have also found that some weight, albeit only very limited weight, should be attached to the possibility that permitting the residential development of the appeal site would discourage the regeneration of brownfield sites in the district's urban areas. However, I have found that such other adverse impacts as may otherwise have weighed against the scheme (such as the effect upon the local highway network, and the drainage system) would be adequately mitigated either by the S.106 Undertaking and Agreement that have been provided, or by the imposition of appropriately worded conditions.

11.40 In the context of the current significant shortfall in the supply of deliverable housing sites needed to meet the district's five-year housing requirement, and in view of the fact that the proposed development would also deliver much-needed affordable and retirement housing, I do not consider that the limited harm that would be caused by the residential development of the appeal site would come close to significantly and demonstrable outweighing the benefits. Rather, I conclude that the benefits weigh overwhelmingly in favour of permitting the proposed development.

### *Conditions*

11.41 If the SoS were minded to grant planning permission for the proposed development, I consider that most of the conditions agreed between the Appellant and the Council would be necessary and reasonable [10.1 – 10.3]. I have amalgamated and amended some of those conditions, in accordance with discussions at the inquiry, to ensure they accord with the tests and guidance set out in Circular 11/95: *The Use of Conditions in Planning Permissions*. My suggested conditions are set out at Appendix C.

11.42 I agree with the parties that in view of the District's significant housing shortfall, and the consideration that the timely delivery of the proposed development is a benefit that weighs in its favour, it is appropriate to shorten

the timescales specified in the standard conditions governing submission of Reserved Matters and commencement of development. I have amalgamated the various suggested conditions concerning information to be submitted as part of any subsequent Reserved Matters applications into a single condition requiring details of a Landscape Management Plan, Biodiversity Enhancement Scheme, Sustainability Statement and the location of the retirement homes.

- 11.43 I have included the standard condition requiring compliance with the approved plans, but have amended the list of such plans to exclude reference to the Design and Access Statement (since it is not a plan), and to include reference to the Highway Plan (since it provides details of access, which is not a reserved matter).
- 11.44 Pre-commencement conditions requiring schemes for surface- and foul-water drainage, a Construction Method Statement and a programme of archaeological works are needed, to ensure that satisfactory measures for water disposal are put in place, the living conditions of neighbouring residents are not compromised during the construction period, and any archaeological remains are properly investigated and recorded.
- 11.45 In accordance with the advice of Natural England, conditions are needed to minimise disturbance to estuary birds through the provision of screening from adjacent fields, and the prevention of light spill. Conditions are also needed to ensure that the development observes the Working Methods detailed in the Great Crested Newt Report, to minimise disruption to the habitat of this protected species, and to ensure that proper provision is made for the protection of retained trees during the construction period. I have included the suggested condition preventing the removal of any trees and hedges other than that shown as necessary on the illustrative masterplan, but would not recommend imposing a requirement for replacement planting at this stage, as that would be better addressed as part of the consideration of the landscaping, planting details and Landscape Management Plan to be submitted at Reserved Matters stage.
- 11.46 A condition requiring the access road to be constructed to at least base course level, and adequately lit, prior to the occupation of any of the houses is necessary in the interests of highway safety. However, I do not consider it necessary to impose the suggested condition requiring the highway improvement works to Humberston Avenue to be carried out before occupation of the dwellings because, while this is important, it is already secured by the terms of the appellant's S.106 Undertaking. [9.1]
- 11.47 An important component of the proposed development, which has weighed in the balance of considerations of its acceptability as a whole, is the provision of at least half of the new dwellings for persons aged over 55. It is therefore necessary to attach a condition ensuring that these dwellings will continue to be restricted to such occupiers, along with their households. The provision of 25% of the new dwellings as affordable housing is equally important, but is already secured by the terms of the S.106 Agreement between the appellant and the Council. [9.1]
- 11.48 There is no evidence that the appeal site is likely to suffer from contamination of any form, but in the absence of certainty, I agree that it is appropriate to attach a condition specifying the measures to be taken should any be

discovered during construction. A condition is also needed to secure the implementation of measures contained in the approved Travel Plan, in order to promote the use of sustainable modes of transport.

**12. Inspector's recommendation**

- 12.1 For the reasons set out above, and subject to the conditions listed at Appendix C, I recommend that the appeal be allowed.

*Jessica Graham*

INSPECTOR

## **Appendix A: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr R Langham, of Counsel

Instructed by the Head of Legal  
Services, NE Lincolnshire Council

He called

Ms J F Farrar BA(Hons) MSc MRTPI

Associate Director, Atkins Ltd

Mr G McKinney BA(Hons) MSc MCILT

Director, PTB Transport Planning Ltd

### FOR THE APPELLANT:

Mr I Dove, Queen's Counsel

Instructed by Mr Bainbridge of Bidwells

He called

Mr A Bennett BSc(Hons) MCIHT

Director, M-EC Ltd

Mr D Bainbridge MA(Hons) MRTPI

Partner, Bidwells

### INTERESTED PERSONS:

Cllr S Harness

Ward Member

Mr M Willerton

Local Resident

Mr F N Smith

Local Resident

## Appendix B: DOCUMENTS

### THE COUNCIL'S DOCUMENTS

LPA 1	Proof of Evidence of Ms Farrar
LPA 1.1	Appendix to Ms Farrar's proof of evidence: extract from <i>Community Infrastructure Levy and Sheltered Housing / Extra Care Developments: A Briefing Note on Viability Prepared for Retirement Housing Group by Three Dragons</i> (May 2013)
LPA 2	Proof of Evidence of Mr McKinney (Volume 1 – Text)
LPA 3	Proof of Evidence of Mr McKinney (Volume 2 – Figures, Tables and Appendices) comprising:
LPA 3.1	Table 1: Distances to key facilities via walking, cycling and public transport
LPA 3.2	Figure 1: Site location plan
LPA 3.3	Figure 2: Key junctions
LPA 3.4	Figure 3: Observed Traffic Survey Flows – a.m. peak (0800-0900)
LPA 3.5	Figure 4: Link Flows on A1098 – a.m. peak (0800-0900)
LPA 3.6	Figure 5: Walking Distances and Key Facilities
LPA 3.7	Appendix A: Traffic Survey Analysis Calculations
LPA 3.8	Appendix B: Junction 6 – A16/Station Road (Tollbar Roundabout) Ariel Image
LPA 3.9	Appendix C: Junction 6 – A16/Station Road (Tollbar Roundabout) Photos

### THE APPELLANT'S DOCUMENTS

APP 1	Proof of evidence of Mr Bennett
APP 2	Appendices to Mr Bennett's proof of evidence, comprising:
APP 2.1	Extracts from Committee Report 21 November 2012
APP 2.2	Department for Transport guidance on Transport Assessments
APP 2.3	NE Lincs Council correspondence 8 October 2012
APP 2.4	Appeal decision ref. APP/X2410/A/12/2177327
APP 2.5	FPCR Parish Boundary Plan (drg. no. 4587-INQ-02)
APP 2.6	20177_15_006 Local Facilities Plan (Humberston Boundary)
APP 2.7	Bus and train timetables
APP 2.8	20177_15_007 Wider facilities and amenities plan
APP 2.9	CIHT publication "Providing for journeys on foot"
APP 2.10	Manual for Streets
APP 2.11	20177_03_005C Improvements to Humberston Avenue
APP 2.12	Department for Transport National Travel Survey 2012
APP 2.13	Department for Transport National Travel Survey 2010
APP 2.14	Sustrans Cycle Route Map
APP 2.15	2001 Census Data
APP 2.16	Section 6.0 Transport Assessment (Rev A)
APP 2.17	20177_SK_001 Accident Data Plan
APP 2.18	20177_03_006A Access Designs
APP 2.19	Location Plan of 4 off-site junctions
APP 2.20	Anecdotal evidence on retirement homes parking space usage

APP 2.21	NE Lincs Council correspondence 10 September 2012
APP 2.22	20177_03_007 Clee Road Roundabout Improvement Plan; 20177_03_008 Hewitts Circus Roundabout Improvement Plan; 20177_03_009 Toll Bar Roundabout Improvement Plan; 20177_03_010 A16 Hewitts Avenue Roundabout Improvement Plan
APP 2.23	Correspondence on contribution calculation
APP 2.24	Extracts from Scout Lane Transport Assessment
APP 2.25	Strategic Housing Land Availability Assessment 2012
APP 2.26	FPCR Illustrative Masterplan (drg. no. 4587-P-10 Rev J)
APP 2.27	M-EC Drainage Statement (1) 20177_02_002D Planning application drainage strategy (2) Anglian Water Sewer Records (3) Anglian Water Developer Enquiry Response July 2013 (4) 20177_02_003 Drainage Strategy with revised level raising (5) FPCR cross-section drawings (4857-INQ-04, 4857-INQ-05)
APP 3	Proof of evidence of Mr Bainbridge
APP 4	Appendices to Mr Bainbridge's proof of evidence, comprising:
APP 4.1	Plan and list of Longhurst Group Stock owned and managed by Local Authority
APP 4.2	Images of existing developments by Keystone Developments
APP 4.3	Compatibility assessment by NE Lincs Council
APP 4.4	Plan of site relative to development areas
APP 4.5	Appeal decision ref: APP/B2002/A/12/2168897 (Church Lane, Humberston)
APP 4.6	Appeal decision ref: APP/Z2830/A/12/2183859 (Towcester Road, Silverstone)
APP 4.7	Planning Appeal Inquiry Ecology Statement by FPCR, dated 5 July 2013
APP 4.8	Specification for an Archaeological Trial Trench Evaluation, dated February 2012
APP 4.9	e-mail from Archaeologist and Historic Environment Record Officer, dated 5 March 2012
APP 4.10	Letter and appendices from Alex ray, Director of Operational Services at L&H Homes, dated 2 August 2013
APP 4.11	Plan of site location relative to Parish boundaries
APP 4.12	Plan of site location relative to wider urban area
APP 4.13	e-mail from Highways and Transport Officer, dated 8 October 2012
APP 4.14	Illustrative sections by FPCR
APP 4.15	Amended draft minutes of meeting held on 15 May 2013

### THIRD PARTY REPRESENTATIONS

Folder TP1	Representations received by the Council in response to the planning application
Folder TP2	Representations received by the Planning Inspectorate in response to the appeal

## CORE DOCUMENTS PRESENTED TO THE INQUIRY

CD 1	National Planning Policy Framework, 2012
CD 2	Technical Guidance to the National Planning Policy Framework, 2012
CD 3	Saved Policies of the North East Lincolnshire Local Plan including Minerals and Waste Policies, 2003
CD 5	North East Lincolnshire Supplementary Planning Guidance Note No. 4: Developer Contributions to Education Facilities, 2005
CD 7	North East Lincolnshire Interim Planning Statement: Affordable Housing, 2010
CD 8	North East Lincolnshire Draft Strategic Housing Land Availability Assessment 2012 including Five Year Supply Spreadsheet
CD 9	North East Lincolnshire Five Year Housing Land Supply Assessment, 2013
CD 10	North East Lincolnshire Monitoring Report 2011/12, 2012
CD 13	North East Lincolnshire Strategic Housing Market assessment, 2013
CD 14	Humber Housing Strategy 2009-2019, 2010
CD 15	Revocation of the Regional Spatial Strategy: Housing – A Response, Background Paper for LDF Core Strategy Submission August 2010, Reviewed December 2010
CD 16	Pages numbered 60 and 61, extracted from Local Transport Plan 3 Transport Strategy April 2011 – March 2026, Parts 1 and 2 and delivery Plan
CD 18	A Good Place to Grow Older: North East Lincolnshire's Strategy for Later Life 2009-2012
CD 22	Invest North East Lincolnshire Development and Growth Plan, 2012
CD 23	North East Lincolnshire New Local Plan Local development Scheme 2012, Effective from 11 June 2012
CD 25	North East Lincolnshire New Local Plan Initial Issues and Options Paper, 2012
CD 27	The Yorkshire and Humber Plan: Regional Spatial Strategy to 2026

## OTHER DOCUMENTS SUBMITTED AT THE INQUIRY

INQ 1	Copy of the SoS' decision, and Inspector's report, on an appeal concerning land at Burgess Farm, Hilton Lane, Worsley, Manchester (Ref: APP/U4230/A/11/2157433)
INQ 2	Copy of the Officers Report to the Council Planning Committee Meeting of 10 April 2013 concerning a site at Scouts Lane (Humberston Park Golf Club), submitted by the appellant
INQ 3	Tables extracted from Department for Transport statistics for the national Travel Survey, submitted by the appellant
INQ 4	Copy of opening submissions made on behalf of the appellant
INQ 5	Plan showing bus stops adjacent to Humberston Road local Centre, agreed between the Council and the appellant
INQ 6	List of suggested conditions, agreed between the Council and the appellant
INQ 7	Statement of Common Ground, signed by the Council and the appellant
INQ 8	Further Statement of Common Ground, signed by the Council and the appellant
INQ 9	Copy of oral representations made by Cllr S Harness

- INQ 10 Plan showing suggested walking route for the Inspector's site visit, agreed by the appellant and Council with input from other attendees at the inquiry
- INQ 11 Final drafts of proposed S.106 Agreement and Undertaking
- INQ 12 Copy of closing submissions made on behalf of the local planning authority
- INQ 13 Copy of closing submissions made on behalf of the appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED, IN ACCORDANCE WITH THE TIMETABLE AGREED AT THE INQUIRY

- PINQ 1 S.106 Agreement
- PINQ 2 S.106 Undertaking

## Appendix C: SUGGESTED CONDITIONS

- 1) 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 any development begins and the development shall be carried out as approved. The reserved matters application for the first phase of development shall be made within one year of the date of this permission, and application for approval of all other reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 2) The development hereby permitted shall commence before the later of (i) 18 months from the date of this outline permission, or (ii) one year from the date of approval of reserved matters for the first phase of development.
- 3) The details to be submitted in accordance with condition no. 1 above shall include a Landscape Management Plan setting out management responsibilities and maintenance schedules for all landscaped areas, inclusive of trees, hedges, ditches and balancing ponds; a Biodiversity Enhancement Scheme setting out measures for habitat creation and management, including the provision of bat roosts and bird boxes; a statement on the sustainability performance of the dwellings, based on the Code for Sustainable Homes; and a location plan indicating which of the dwellings shall be reserved, in accordance with condition no. 14 below, for persons over the age of 55.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination:
 

Site Location Plan	B.10,113b
Illustrative Masterplan	4587-P-10 Revision J
Development Framework	4587-P-14 Revision B
Open Space Plan	4587-P-16 Revision B
Highways Plan	20177_03_005 Revision C
- 5) No development shall take place until a scheme for the provision of surface water drainage, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been approved in writing by the local planning authority. The scheme shall include details of any ground level raising, and a strategy for the management of the surface water drainage scheme. Development shall thereafter be carried out only in accordance with the approved details.
- 6) No development shall take place until a scheme for the provision and implementation of foul drainage works has been approved in writing by the local planning authority. Development shall thereafter be carried out only in accordance with the approved details.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be

adhered to throughout the construction period. The Statement shall provide for:

- i) the routing and management of construction traffic
  - ii) the parking of vehicles of site operatives and visitors
  - iii) loading and unloading of plant and materials
  - iv) storage of plant and materials used in constructing the development
  - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - vi) wheel cleaning facilities
  - vii) measures to control the emission of dust and dirt during construction
  - viii) details of noise reduction measures
  - ix) a scheme for recycling/disposing of waste resulting from demolition and construction works
  - x) the hours during which machinery may be operated, vehicles may enter and leave, and works may be carried out on the site.
- 8) No development shall take place until a written Scheme of Investigation (or Specification of Works) for a programme of archaeological work in respect of the north-west field of the site has been submitted to and approved in writing by the local planning authority, and the Scheme of Investigation (or Specification of Works) has been implemented in accordance with the approved details. None of the dwellings hereby permitted shall be occupied until the findings resulting from the programme of archaeological work have been published, and the archive resulting from the programme of archaeological work deposited with an organisation first approved in writing by the local planning authority.
- 9) No development shall take place until a scheme to screen the appeal site from neighbouring fields in order to prevent disturbance to estuary birds, based on the retention of existing mature boundary hedgerows, has been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out only in accordance with the approved details.
- 10) No development shall take place until a lighting management scheme, designed to minimise light spill from the appeal site to adjacent ecological habitats, both during the construction period and once the development is occupied, has been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out only in accordance with the approved details.
- 11) Development shall only be carried out in accordance with the Working Methods Statement at page 9 of the submitted Great Crested Newt Report.
- 12) No development shall take place until an Arboricultural Method Statement, prepared in accordance with BS 5837:2012 *Trees in Relation to Design, Demolition and Construction*, has been submitted to and approved in writing by the local planning authority. Works shall thereafter be carried out only in accordance with the approved details. The Arboricultural Method Statement shall include the specification, location and phasing for the installation of tree and hedge protection measures, and a schedule of all proposed tree and hedge works, including the reason for such works.

- 13) No trees or hedges on the appeal site shall be wilfully damaged, cut down, uprooted, pruned, felled or destroyed except for the trees and hedges to be removed to facilitate the development as shown in the approved Illustrative Masterplan (drg. no. 4587-P-10 Rev J) without the prior written consent of the local planning authority.
- 14) None of the dwellings hereby permitted shall be occupied until the access road has been constructed to at least base course level, and lit, in accordance with details first submitted to and approved in writing by the local planning authority.
- 15) No fewer than 50% of the approved dwellings shall be restricted to occupation only by (i) persons aged 55 years and over; (ii) persons who are living as part of a single household with a person aged 55 years or over; and (iii) persons who were previously living in that dwelling as part of a single household with a person aged 55 years or over who has since died.
- 16) If, during development, contamination is discovered that has not previously been identified, the local planning authority shall be notified immediately and no further work carried out until a method statement, detailing a scheme for dealing with the contamination discovered, has been submitted to and approved in writing by the local planning authority. Development shall thereafter proceed only in accordance with the approved details. If, during development, no contamination is found, a written statement confirming that fact must be submitted to the local planning authority upon completion of the construction works.
- 17) The package of measures detailed in sections 7 and 10 of the submitted Travel Plan shall be implemented in their entirety. Contact details for the Travel Plan Coordinator shall be provided to the local planning authority before any of the dwellings hereby permitted are occupied. A review of the Travel Plan, including the results of the annual travel report, shall be submitted to the local planning authority at the end of every three year period following the occupation of the first dwelling. Each Travel Plan Review shall include a revised set of targets and an action plan linked to the results of the travel report, which shall thereafter be implemented.

## **Appendix D: GLOSSARY OF ACRONYMS AND ABBREVIATIONS**

ARCADY	The acronym for “Assessment of Roundabout Capacity And Delay” modelling software
CIHT	Chartered Institution of Highways and Transportation
CIL	Community Infrastructure Levy
DCLG	Department of Communities and Local Government
EIC	Evidence in Chief
ha	Hectare
LP	Local Plan
NPPF	National Planning Policy Framework
PCPA	Planning and Compulsory Purchase Act
PPG	Planning Policy Guidance
Ramsar Sites	Wetlands of international importance, designated under the Ramsar Convention
RTPI	Royal Town Planning Institute
S.106	Section 106 of the Town and Country Planning Act 1990
SoCG	Statement of Common Ground
SoS	Secretary of State for Communities and Local Government
SUDS	Sustainable Urban Drainage System
XX	Cross Examination



## Department for Communities and Local Government

### **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 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**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.