



Ministry of Housing,
Communities &
Local Government

Neil Jones
Rapleys LLP
55 Spring Gardens
Manchester
M2 2BY

Our ref: APP/C2741/W/17/3177821
Your ref: NJ/17-02849

28 September 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY BRITISH SUGAR
LAND AT FORMER BRITISH SUGAR SITE AND FORMER MANOR SCHOOL LINK
ROAD SITE, BOROUGHBIDGE ROAD, YORK, YORKSHIRE YO26 6AQ
APPLICATION REF: 15/00524/OUTM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Zoë Hill BA(Hons) Dip Bldg Cons(RICS) MRTPI IHBC, who held a public local inquiry from 16 January 2018 to 25 January 2018 into your client's appeal against the failure of the City of York Council to determine your client's application for planning permission for the development of the site comprising up to 1,100 residential units (C3), community uses (D1/D2), and new public open space with details of access (to include new access points at Millfield Lane and Boroughbridge Road and a new link road, crossing the former Manor School Site) and demolition of the former Manor School Buildings, with all other matters reserved, in accordance with application ref: 15/00524/OUTM, dated 26 February 2015.
2. On 17 July 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission be granted.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with her recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR16-18, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. The Secretary of State notes at IR131 that the main considerations in this case have altered since the inquiry opened. The main consideration now is whether the s106 Agreement is capable of delivering the necessary infrastructure and affordable housing.

Matters arising since the close of the inquiry

7. The emerging City of York local plan was submitted for examination on 25 May 2018. The Inspector considered the Regulation 19 Publication Consultation Draft of the Local Plan at IR7 and IR34-37 which was the version submitted for examination. The Secretary of State is satisfied that the submission of the emerging Local Plan does not necessitate referral back to parties on this matter.
8. On 30 July 2018, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the implications, if any, of the revised National Planning Policy Framework, which was published on 24 July 2018. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 10 September 2018. The Secretary of State has carefully considered all the representations received and has taken account of them as appropriate. Copies of these representations may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of unrevoked parts of the Yorkshire and Humber Regional Spatial Strategy (RSS) and the Upper and Nether Poppleton Neighbourhood Plan (NP), made on 19 October 2017. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR30-31.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018, and unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

Emerging plan

12. The emerging plan comprises the City of York Local Plan. The Secretary of State considers that the emerging policies of most relevance to this case include those set out at IR36-37.
13. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State finds that the plan has still to go through examination and has outstanding objections, and he affords it limited weight.
14. For the reasons given at IR32-33, the Secretary of State agrees with the Inspector at IR33 that the City of York Development Control Local Plan (2005) does not form part of the Development plan and is of no assistance in the determination of this appeal.

Main issues

Affordable housing

15. For the reasons given at IR138, the Secretary of State considers that the provision of 20% affordable housing on previously developed sites appears reasonable. The Secretary of State notes at IR139 that affordable housing forms a key planning matter in the s106 Agreement because the affordable housing requirement of 20% would not be viable in the initial phases of development; that it is proposed that a minimum provision would be made; and that the 'affordable housing baseline provision' of 3%, which would only be reasonable given the scale of development in the longer term. He further notes that additional affordable housing would be provided based on the Viability Reassessment evidence for each phase after the first phase. The Secretary of State also notes that the affordable housing provision would be capped at 20% of the dwellings on the whole site to reflect the emerging plan policy requirement, which is established from an identified evidence base.
16. For the reasons given at IR140-150, the Secretary of State agrees with the Inspector at IR151 that the change in position with regard to affordable housing is significant. He further agrees that the scheme is now able to deliver affordable housing from the outset and is likely, but not guaranteed, to achieve a policy compliant 20% affordable housing for the site as a whole. He also agrees that the review mechanism, which is embedded within the s106 Agreement, is key to the change and agrees that the worked example provided in evidence and agreed by the parties suggests that, on reasonable assumption, the 20% affordable housing sought would be delivered. The Secretary of State agrees with the Inspector's conclusion that on the evidence before the inquiry this aspect of the proposal would be CIL compliant and achieve the level of affordable housing sought across the whole site.

Education Provisions

17. For the reasons given at IR152-156, the Secretary of State agrees with the Inspector that the following are CIL compliant: Pre-School Education payment; the contribution by the owner to the Council towards the cost of providing the shared access from the public highway to the primary school and community hall land unless the owner undertakes the works; Primary Education Payments; and the Secondary Education off-site contribution.

Community Hall Provisions

18. For the reasons given at IR157-159, the Secretary of State agrees with the Inspector that the contributions to the proposed community hall would meet the CIL tests and the Community Management Organisation contribution would be CIL compliant.

Sports Provisions

19. The Secretary of State has given careful consideration to the Inspector's analysis at IR160-164 that one approach to mitigate for the loss of the existing facilities is an off-site cricket pitch would be provided. The alternative approach is for the £301,387 to be used at three identified existing clubs. For the reasons given at IR160-164, the Secretary of State agrees with the Inspector at IR164 that either would be CIL compliant.

Transport Matters

20. For the reasons given at IR165-167, the Secretary of State agrees with the Inspector that the contributions towards highways works, towards Sustainable Transport Measures and towards resolving the traffic impact in Beckfield Lane would be CIL compliant.

Strategic Green Infrastructure

21. The Secretary of State notes at IR168 that there is uncertainty regarding the area abutting the Tangerine Factory and acoustic barrier which cannot be resolved at this stage and agreement would have to be reached separately in respect of its scheme and management. For the reasons given at IR168, the Secretary of State agrees with the Inspector that notwithstanding the Tangerine Factory element which needs resolving, the matters agreed would be CIL compliant.

Carr Drain

22. For the reasons given at IR169, the Secretary of State agrees with the Inspector that the works required to be undertaken to Carr Drain are CIL compliant.

Overall Conclusion on the Obligations under s.106 Agreement

23. The Secretary of State has given careful consideration to the Inspector's analysis at IR170-172. The Secretary of State notes at IR172 that the main matter in respect of being able to achieve the commitments of the s.106 Agreement relates to the transfer of land. The Secretary of State further notes that the Council had outstanding concerns at the drafting of the s.106 Agreement about some of the requirements of the land transfer arrangements. He further notes that at that stage the precise nature of those concerns was not disclosed. He further notes that the s.106 Agreement was subsequently signed by the respective parties and draft transfers at Appendix 9 remain. On the basis of the evidence before him and that the s.106 Agreement was signed by the respective parties,

the Secretary of State is satisfied that the s.106 Agreement would deliver the commuted sums and works it purports to deliver.

The Principle of Development

24. The Secretary of State notes at IR173 that there is no issue between the main parties in respect of the principle of developing this previously developed site within the built-up fabric of York for housing and related uses. He also agrees that the location is accessible. He further agrees (IR174) that there is a clear need for housing and affordable housing which could be achieved through this scheme.

Other Matters

Remediation

25. The Secretary of State notes at IR175 that conditions are proposed to ensure that remediation is to an acceptable standard.

Living Conditions

26. The Secretary of State notes at IR176 that detailed housing design and landscaping plans would be matters for the detailed design stages.

Highways and Transport

27. The Secretary of State has given careful consideration to the Inspector's analysis at IR177-180 and for the reasons given agrees at IR177 that issues relating to highway traffic flow would be satisfactorily mitigated by the off-site highway works proposed. The Secretary of State further agrees at IR178 that subject to capacity and free flow works proposed to the existing highway network, the scheme would provide for accessible traffic movement. He further agrees at IR179 that the neighbours' concerns would be satisfied by the current details of the scheme which takes the access from Boroughbridge Road over the former Manor School site and Millfield Lane. The Secretary of State further agrees with the Inspector at IR180 that the traffic levels, types and likely main hours of activity for the proposed residential use would not justify withholding planning permission because of disturbance to occupiers of dwellings on Millfield Lane.

Network Rail Commuted Sum Request

28. The Secretary of State has given careful consideration to the Inspector's analysis at IR181-183. For the reasons given at IR181-182, the Secretary of State agrees with the Inspector that the figure sought by Network Rail is not justified in terms of being necessary or reasonable related to the development proposed and so it would not comply with CIL. He further agrees with the Inspector that the request of Network Rail has not been adequately justified and the lack of the contribution sought is not a matter to which weight will be attached in the planning balance.

Drainage

29. For the reasons given at IR184-186, the Secretary of State agrees with the Inspector at IR186 that the drainage associated with Carr Drain would be acceptable.

Building Heights and Ecology

30. The Secretary of State notes the Inspector's analysis at IR187-188 that a heights parameter plan has been agreed to protect important views and that a Biodiversity Management Plan would be necessary were the development to proceed.

Planning Policy

31. The Secretary of State has had regard to the Inspector's analysis at IR189-191, and agrees, for the reasons given that whether or not the housing land supply exceeds three years is not of material importance in the circumstances of this case. He also concludes, in agreement with the Inspector at IR191, that the Neighbourhood Plan, the revised Framework and emerging plan also support the principle of this development.

Benefits of the scheme

32. The Secretary of State has given careful consideration to the Inspector's analysis at IR196-199. The Secretary of State agrees with the Inspector at IR196 that the scheme would deliver much needed housing, including affordable housing, to which the Secretary of State attaches substantial weight.

33. The Secretary of State agrees with the Inspector at IR197 that the development would enable the positive and beneficial reuse of a previously developed brownfield, but currently unused, site, to which the Secretary of State attaches substantial weight. He further agrees at IR198 that the appeal site is in a highly accessible location where transport measures and services would enable a reduced reliance on the private car. For the reasons given at IR199, the Secretary of State agrees with the Inspector that the educational and sports facilities would support social integration of the new community of the proposed development and wellbeing of the proposed and established community. He attaches moderate weight to this benefit.

Planning conditions

34. The Secretary of State has given consideration to the Inspector's analysis at IR120-128, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B and the informatives at Annex C should form part of his decision.

Planning balance and overall conclusion

35. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

36. Weighing in favour of the proposal are benefits of housing, including affordable housing and benefits of using a brownfield site. The community and educational facilities are further benefits of the proposal. The Secretary of State considers that there are no harms arising from the proposal.

37. The Secretary of State concludes that there are no adverse impacts of the proposal that significantly and demonstrably outweigh the benefits. Overall he considers that there are

no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

38. The Secretary of State therefore concludes that the appeal should be allowed and planning permission be granted.

Formal decision

39. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for the development of the site comprising up to 1,100 residential units (C3), community uses (D1/D2), and new public open space with details of access (to include new access points at Millfield Lane and Boroughbridge Road and a new link road, crossing the former Manor School Site) and demolition of the former Manor School Buildings, with all other matters reserved, in accordance with application ref: 15/00524/OUTM, dated 26 February 2015.

40. 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

41. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

42. 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.

43. A copy of this letter has been sent to the City of York Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf

Annex A Schedule of representations

Representations received in response to the Secretary of State's letter of 30 July 2018

Party	Date
The City of York Council	7 September 2018
Rapleys LLP	10 August 2018

Annex B List of conditions

- 1) Approval of the details of the access, layout, scale, design and external appearance of each phase of the development (as identified on the illustrative phasing plan ref 04081 Rev H) hereby permitted and the landscaping (excluding strategic green infrastructure – see condition 2) within the phase ('the reserved matters') shall be obtained in writing from the local planning authority before that development is commenced within that phase. The development shall be carried out in accordance with the approved details.

REASON: To comply with Article 5 of the Town and Country Planning (Development Management Procedure Order 2010).

- 2) Prior to, or at the same time as, the submission of the first reserved matters application, a Masterplan for the approved green infrastructure, identifying the distribution of green infrastructure typologies across the site, in accordance with the illustrative typologies as identified on the approved green infrastructure parameter plan ref 04036 Rev N, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Masterplan.

REASON: To ensure that there is adequate infrastructure to cater for the development, interests of the amenity of future occupants, good design and so that the impact on biodiversity (in particular the bee bank SINC) and the amenity of the surrounding area is as assessed within the application in accordance with paragraphs 58 and section 8 of the National Planning Policy Framework.

- 3) Prior to, or at the same time as, the submission of the first reserved matters application, details of foul and surface water drainage, from the phase boundaries to the site outfall, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Details must include:

- a) A plan detailing the phasing of the installation of the drainage scheme.
- b) Proposals for the inclusion of SuDS features in accordance with the SuDS Manual Version 5 including errata 2016 or any subsequent published evidence on the matter.
- c) Plans to demonstrate that there will be no surface run-off from the site in a 1:100 year storm (+ 20% allowance for climate change) and that run-off from the site will not have an adverse effect on existing properties.
- d) Cover and invert levels to Ordnance Datum of the drainage proposals for the new development.
- e) Computer modelling of the surface water attenuation to accommodate the 1:30 year storm and proposals to accommodate the flood volumes above the 1:30 year storm up to the 1:100 year + 20% climate change storm.
- f) The flow control chamber limiting the surface water to the 43.2 l/s/ha.
- g) The drainage discharge point.
- h) The assumptions and design limitations to be applied to the drainage design of each development plot.

REASON: To ensure proper drainage of the site and so that there is no increase in flood risk elsewhere, in accordance with paragraph 103 of the Framework.

- 4) An Outline/Master Biodiversity Management Plan for the site shall be submitted to and approved in writing by the local planning authority prior to, or at the same time as, the submission of the first reserved matters application. The content of the plan shall be in accordance with the scope set out in BS 42020:2013 or any document replacing that document.

A Biodiversity Management Plan (BMP) for each phase shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved BMP.

REASON: To take account of and enhance the biodiversity and wildlife interest of the area, and comply with Section 11 of the Framework.

- 5) Application(s) for approval of the reserved matters for any development within the first phase to be brought forward ('the initial phase') of the development hereby permitted shall be made to the local planning authority before the expiration of 7 years from the date of this permission.

REASON: To allow for remediation of the site and associated monitoring and to comply with Section 92 of the Town and Country Planning Act 1990 and to prevent an accumulation of unimplemented planning permissions.

- 6) The initial phase of the development hereby permitted shall be begun either before the expiration of 8 years from the date of this permission, or before the expiration of 1 year from the date of approval of the last of the reserved matters to be approved in respect of the development within that phase, whichever is the later.

REASON: To comply with Section 92 of the Town and Country Planning Act 1990 and to prevent an accumulation of unimplemented planning permissions and allowing for the remediation of the site under planning permission reference (14/02798/FULM).

- 7) Application(s) for approval of the reserved matters in respect of the development within each phase other than the initial phase of the development hereby permitted shall be made to the local planning authority before the expiration of 15 years from the date of this permission.

REASON: To comply with Section 92 of the Town and Country Planning Act 1990 and to prevent an accumulation of unimplemented planning permissions.

- 8) Each phase of the development hereby permitted shall be begun before the expiration of 1 year from the date of approval of the last of the reserved matters to be approved in respect of the development within that phase.

REASON: To comply with Section 92 of the Town and Country Planning Act 1990 and to prevent an accumulation of unimplemented planning permissions.

- 9) Plans and particulars submitted for any development pursuant to Condition 1 above shall include the following details:

- a) the layout, specification and construction programme for (i) any internal access roads including details of horizontal and vertical alignment, (ii) footpaths, (iii) parking, turning and loading/unloading areas (including visibility splays), (iv)

- cycleways and parking areas, (v) cycle storage facilities and (vii) access facilities for the disabled, (viii) individual accesses;
- b) the positions, design, materials and type of boundary treatment (including all fences, walls and other means of enclosure) to be provided;
 - c) details for all hard landscaped areas, footpaths and similar areas, including details of finished ground levels, all surfacing materials;
 - d) contours for all landscaping areas together with planting plans and schedules of plants, noting species, sizes and numbers/densities, details of all trees, bushes and hedges which are to be retained (as informed by an arboricultural survey) and a written specification for the landscape works including a programme for implementation, cultivation and other operations associated with plant and grass establishment);
 - e) details of compliance with the principles set out in the Parameters and Design Principles Document design parameters plan as approved pursuant to Condition 10; and
 - f) lighting to roads, footpaths and other public areas.

REASON: To accord with the principles of Section 7 of the Framework.

10) The development hereby permitted shall be carried out in accordance with the following plans and reports:-

- Parameters and Design Principles Document (PDPD), AECOM November 2017 Rev M (24.11.17)
- Outline Planning Application Boundary Plan 04034 Rev D (4.10.17)
- Parameter Plan – Access and Movement (04035 Rev N) (4.12.17)
- Parameter Plan – Green Infrastructure (04036 Rev N) (2.1.18)
- Parameter Plan – Development Zones and Land Uses (04037 Rev M) (30.11.17)
- Parameter Plan – Urban Framework and Building Heights (04038 Rev M) (30.11.17)
- Illustrative Phasing Plan ref 04081 Rev H (2.1.2017)
- DTA Main Street Alignment 17424-41 Rev I (1 of 3) (4.10.17)
- DTA Main Street Alignment 17424-41 Rev H (2 of 3) (7.9.17)
- DTA Main Street Alignment 17424-41 Rev H (3 of 3) (7.9.17)
- DTA Main Street Cross Sections (17424 33 Rev D) (12.10.17)
- DTA Main Street Alignment 17424 41 Rev H 12M Bus Vehicle Tracking (7.9.17)
- DTA Main Street Alignment 17424 41 Rev H 60M Forward Visibility Splays (7.9.17)
- Main Entrance Soft Landscape Design – 60531863_BS_LS_004 Rev J (10.10.17)
- Carriageway 1 Soft Landscape Design – 60531863_BS_LS_006 Rev E (7.9.17)
- Carriageway 2 Soft Landscape Design – 60531863_BS_LS_007 Rev D (7.9.17)
- Carriageway 3 Soft Landscape Design – 60531863_BS_LS_008 Rev F (7.9.17)
- Landscaping for bund around Tangerine - Bund soft landscaping design 60531863_BS_LS_009
- Construction Environment Management Plan V1.2 (7.9.17)
- Arboricultural Method Statement August 2017 (8.8.17)
- Design and Access Statement January 2018
- Detailed Application Proposed Layout Levels - FBSS-URS-XX-XX-DR-CE - 00602 P5
- Detailed Application Cross Sections 1 of 3 - FBSS-URS-XX-XX-DR-CE - 00605 P5
- Detailed Application Cross Sections 2 of 3 - FBSS-URS-XX-XX-DR-CE - 00606 P5
- Detailed Application Cross Sections 3 of 3 - FBSS-URS-XX-XX-DR-CE - 00607 P5

REASON: For the avoidance of doubt and to ensure that the development is carried out only as approved by the local planning authority.

- 11) The following details relating to the Main Street shall be submitted to and approved in writing by the local planning authority prior to each phase of construction of the Main Street (as identified in Condition 17):
- a) the layout and specification for the road including details of surfacing materials, junctions (including visibility splays), crossing points, bus stops, street furniture, and lighting;
 - b) details of the interim construction and specification of the Main Street surfacing to be incorporated during construction of the development hereby approved; and
 - c) details of compliance (where applicable) with the principles set out in the Parameters and Design Principles Document as approved pursuant to Condition 10.

The development of the Main Street shall be carried out in accordance with the approved details.

REASON: To accord with the principles of Section 7 of the Framework.

- 12) Prior to demolition, ground works, or vegetation clearance commencing, a Biodiversity Protection Plan relating to the British Sugar Railway Sidings Site of Importance for Nature Conservation (SINC) must be submitted to and approved in writing by the local planning authority. The content of the plan shall include the measures set out in the Environmental Statement dated November 2014 paragraphs 11.165 & 11.166 (specifically referring to the British Sugar Railway Sidings SINC). Development shall be carried out in accordance with the approved Biodiversity Protection Plan.

REASON: Details are required prior to commencement to allow for the protection of a designated SINC and to take account of and enhance the biodiversity and wildlife interest of the area, and comply with Section 11 of the Framework.

- 13) No ground works shall commence within the former Manor School site and the British Sugar car parking area (at the south east end of the site as annotated on Figure 7 in the Desktop Assessment by OSA, dated May 2007) until the implementation of a programme of archaeological work has been secured (a watching brief on all ground works by an approved archaeological unit) in accordance with a specification which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

REASON: The site lies within an Area of Archaeological Importance and the development will affect important archaeological deposits which must be recorded during the construction programme.

- 14) Prior to construction of dwellings / buildings hereby approved, the works outlined in the Remediation and Reclamation Strategy (dated February 2015) shall be completed and a Verification Report demonstrating their effectiveness shall be approved in writing by the local planning authority.

The report shall include:

- a) confirmation that the remedial target values have been met and that the site is suitable for residential use;

- b) the results of gas and groundwater monitoring carried out before, during and after the works (post-remediation monitoring should continue for 12 months or until the remedial target values have been achieved, whichever is longer);
- c) confirmation that the ground gas concentrations and flow and the risk based Gas Screening Values are at a level no greater than Amber 2 of the NHBC traffic light system, and; assessment in accordance with the NHBC methodology (NHBC (March 2007): Guidance on Evaluation of Development Proposals on Sites Where Methane and Carbon Dioxide are Present: Report Edition no. 4 or in accordance with any guidance published to supersede that guidance.

REASON: The works and approval of the Validation Report must take place prior to construction to ensure that risks from land contamination (including landfill gas) to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, in accordance with paragraphs 109, 120 and 121 of the Framework.

- 15) Prior to commencement of construction of buildings in each phase, a detailed specification of the proposed gas protection measures in the relevant phase shall be submitted to and approved by the local planning authority in writing.

Prior to the occupation of each building in the phase, the building shall be the subject of its own verification report indicating compliance with the approved specification of gas protection measures which shall be submitted to and approved in writing by the local planning authority.

REASON: The agreement of a detailed specification and indication of subsequent compliance must take place prior to construction to ensure that risks from landfill gas to the future users of the land and buildings are minimised in accordance with paragraphs 109, 120 and 121 of the Framework.

- 16) Prior to construction of the Main Street and its associated landscaping (as approved on DTA Main Street Alignment Drawings ref 17424 41 Rev H & I and AECOM Main Entrance Soft Landscape Design – 60531863_BS_LS_004 Rev J, Carriageway 1 Soft Landscape Design – 60531863_BS_LS_006 Rev E, Carriageway 2 Soft Landscape Design – 60531863_BS_LS_007 Rev D and Carriageway 3 Soft Landscape Design – 60531863_BS_LS_008 Rev F), details of utilities to be installed within the Main Street shall be submitted to and approved in writing by the local planning authority. Where these utilities result in material amendments to the approved hard and soft landscaping as shown on the aforementioned approved DTA /AECOM plans, amended plans showing the revisions required to the hard and soft landscaping including a timetable for their implementation shall be submitted to and approved by the local planning authority. Development shall be carried out in accordance with the approved details and timetable.

REASON: In the interests of visual amenity, to ensure that utilities do not have a detrimental effect on the implementation or long term retention of trees as detailed in the approved drawings listed.

- 17) Main Street Phase 1 (as shown on the approved Illustrative Phasing Plan 04081 Rev H or any such illustrative phasing plan subsequently approved) shall be completed prior to the occupation of the first dwelling, Main Street Phase 2 (as shown on the approved Illustrative Phasing Plan 04081 Rev H or any such illustrative phasing plan

subsequently approved) shall be completed prior to the occupation of the 300th dwelling.

REASON: In the interests of promoting sustainable travel and to allow the site to function, in accordance with sections 4: Promoting Sustainable Transport and 7: Requiring Good Design of the Framework.

- 18) The approved landscaping scheme shown on drawing ref 60531863 BS_LS_009 - Landscaping for bund around Tangerine –Bund soft landscaping design - proposed around Tangerine Factory shall be implemented before the end of the first planting season following approval of the Verification Report as required under condition 14 by the local planning authority.

REASON: In the interests of good design, visual amenity and residential amenity, in accordance with place-making design guidance within Building for Life 12 and design guidance within the National Planning Policy Framework and National Planning Policy Guidance regarding the retention and promotion of distinctive character. Also to mitigate against biodiversity lost due to removal of soft landscaping to allow the remediation.

- 19) Prior to any felling of the trees identified in the Environmental Statement (Chapter 11 Figure 11.1 Phase 1 Habitat Plan (Target notes 5 and 6) and Figure 11.2 Bat Roost Potential Tree Plan) as having moderate to high potential to support roosting bats, an updated bat survey shall be submitted to and approved in writing by the local planning authority. If the updated survey identifies any bat roosts, the survey shall include any necessary mitigation measures for approval in writing by the local planning authority. Development shall be carried out in accordance with the approved mitigation matters.

Reason: To take account of and to enhance the habitat for a protected species and comply with Section 11 of the Framework.

- 20) Demolition of the former Manor School buildings shall take place in accordance with all ecological measures and details contained in the Bat Survey Report by MAB Ecology Ltd and dated August 2017.

REASON: To take account of and to enhance the habitat for a protected species and comply with Section 11 of the Framework.

- 21) Prior to soil material being imported onto site, a Soil Verification Report shall be submitted to and approved in writing by the local planning authority to identify that it is suitable for the use intended. Only soil material approved by the Soil Verification Report shall be imported onto the site and used for the approved intended use within the development hereby permitted.

REASON: To ensure that imported soil does not pose a risk to future users of the land and the wider environment in accordance with paragraphs 109, 120 and 121 of the Framework.

- 22) In the event that contamination not previously identified in the approved Reclamation and Remediation Strategy of February 2015 is found at any time when carrying out the works identified in the approved Reclamation and Remediation Strategy, it shall be reported in writing on the day it is identified to the local planning authority and works

shall be stopped until an investigation and risk assessment, and as may be necessary remediation works, have taken place. In this event, the details of an investigation and risk assessment shall be submitted to the local planning authority within 7 days for its written approval to include details of a timetable for the investigation and risk assessment. The investigation and risk assessment shall be carried out in accordance with the approved details and timetable. If further remediation work is identified as required, a further remediation scheme and verification report and timetable for the remediation scheme and verification report shall be submitted to and approved in writing by the local planning authority and the works undertaken in accordance with the approved further remediation scheme, verification report arrangements and timetable.

REASON: To ensure that risks from land contamination (including landfill gas) to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, in accordance with paragraphs 109, 120 and 121 of the Framework.

- 23) If within a period of five years from the date of the planting of any tree or plant, that tree or plant, or any tree or plant planted in replacement, is removed, uprooted or destroyed or dies, a replacement of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

REASON: To ensure that there is adequate green infrastructure for the development, interests of the amenity of future occupants, good design and so that the impact on biodiversity (in particular the bee bank SINC) and the amenity of the surrounding area is as assessed within the application in accordance with paragraphs 58 and section 8 of the Framework.

- 24) Details of the foul and surface water drainage for each phase subsequent to Phase 1 (drainage for Phase 1 is set out in condition 3) shall be submitted to and approved in writing by the local planning authority, along with a timetable for its implementation, prior to the commencement of work on that phase. The drainage works for each phase shall be carried out in accordance with the approved details and implementation timetable.

Details for the each phase shall include:

- a) proposals for the inclusion of SuDS features in accordance with the SuDS Manual Version 5 including errata 2016 or any subsequent published evidence on the matter;
- b) cover and invert levels to Ordnance Datum of the drainage proposals for the new development;
- c) computer modelling of the surface water attenuation to accommodate the 1:30 year storm and details of the proposals to accommodate the flood volumes above the 1:30 year storm up to the 1:100 year + 20% climate change storm;
- d) the flow control chamber limiting the surface water to the 15 l/s/ha; and
- e) the drainage discharge point.

REASON: To ensure proper drainage of the site and so that there is no increase in flood risk elsewhere, in accordance with paragraph 103 of the Framework.

- 25) Prior to the commencement of development the details of the swale and retention ponds shown on the approved parameter plan ref: 04036 Rev N shall be submitted to

and approved in writing by the local planning authority along with a timetable for their implementation. The development shall be carried out in accordance with the approved details and timetable.

REASON: In the interests of visual amenity and safety, in accordance with paragraph 58 of the Framework.

- 26) Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from any car parking areas which accommodate over 50 parking spaces, shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

REASON: To prevent pollution of the water environment.

- 27) The pedestrian and cycle route (from Main Street to Plantation Drive, as shown on drawing ref 04035 Rev N and from the site access to Plantation Drive) shall be completed and made available for use no later than the completion of house building within Phase 2 (as identified on the illustrative Phasing Plan ref: 04081 Rev H) or within 3 years of the commencement of Phase 2 (whichever is the earlier).

REASON: In the interests of promoting sustainable travel and to allow the site to function, in accordance with Sections 4: Promoting Sustainable Transport and 7: Requiring Good Design of the Framework.

- 28) The residential accommodation shall be constructed so as to achieve noise levels of:
- a) 30 dB LAeq (8 hour) and 45dB LAmax inside bedrooms at night (23:00 - 07:00 hrs);
 - b) 35 dB LAeq (16hour) in all other habitable rooms during the day (07:00 - 23:00 hrs);
 - and
 - c) 50dB LAeq (16 hour) in rear gardens (07:00 to 23:00).

The internal noise levels shall be achieved with all windows shut and other means of acoustic ventilation provided. The detailed scheme shall be approved in writing by the local planning authority and fully implemented before the occupation of each dwelling.

REASON: To protect the amenity of residents, in accordance with paragraph 123 of the Framework.

- 29) The combined rating level of any building service noise associated with plant or equipment installed at the community hub facilities shall not exceed 30dB(A), when measured at the boundary of the closest existing and proposed residential properties.

Reserved matters details for any of the uses (pre-schools, primary school and community hall) hereby approved within the community hub area identified on the Development Zones and Land Uses Parameter Plan (04037 Rev M) shall include a scheme for the prevention of noise pollution arising from the relevant approved use. The scheme shall ensure that residential accommodation would achieve noise levels of;

- a) 30 dB LAeq (8 hour) and 45dB LAmax inside bedrooms at night (23:00 - 07:00 hrs);

- b) 35 dB LAeq (16 hour) in all other habitable rooms during the day (07:00 - 23:00 hrs); and
- c) 50dB LAeq (16 hour) in rear gardens (07:00 to 23:00)

The internal noise levels shall be achieved with all windows shut and other means of acoustic ventilation provided.

The approved building /use shall be implemented in accordance with the approved scheme(s) and details, and prevention of noise pollution measures shall thereafter be retained for the purpose intended.

REASON: In the interests of residential amenity, in accordance with paragraph 17 of the Framework.

- 30) A Lighting Impact Assessment for any floodlighting associated with outdoor sports provision shall be approved in writing by the local planning authority prior to installation and the development shall be carried out in accordance with the approved details. The assessment shall include:
- a) description of the proposed lighting: number of lighting columns, their height, and proposed lighting units;
 - b) drawings showing the luminance levels (to be on separate drawings);
 - c) horizontal luminance levels (Eh), showing all buildings within 100 metres;
 - d) vertical luminance levels (average at a distance of 1.5m from ground level), showing all buildings within 100 metres;
 - e) specification of the Environmental Zone of the application site, as defined in The Institution of Lighting Engineers' Guidance Notes for the Reduction of Light Pollution; and
 - f) hours of operation.

REASON: In the interests of local and residential amenity, in accordance with paragraph 125 of the NPPF.

- 31) The development hereby approved shall not exceed 1,100 dwellings.

REASON: To ensure that there is adequate infrastructure to cater for the development and so that the impact on amenity of the surrounding area and on the highway network is as assessed within the application.

- 32) Building heights shall not exceed those shown on the approved Parameter Plan drawing 04038 Rev M.

REASON: In the interests of visual and residential amenity and biodiversity.

- 33) Prior to the commencement of the penultimate phase of development a timetable for the implementation of the final wearing course for the Main Street shall be submitted to and approved in writing by the local planning authority. The final wearing course for the Main Street shall be implemented in accordance with the approved timetable.

REASON: In the interests of allowing the site to function, in accordance with Section 4: Promoting Sustainable Development of the Framework.

Annex C List of informatives

- 1 **Road Safety Audit (RSA):** As part of the highways details a Stage 2 RSA will be expected for each phase of the detailed design of the Main Street. The timing of the Stage 3 RSA and the timeframe for that work will also be expected to form part of the highways reserved matters submissions.
- 2 **Transport / Access:** The means of securing restricted forward visibility along the Main Street, as shown on the approved DTA Main Street alignment drawings, will need to be detailed in each relevant reserved matters application so as to form part of the reserved matters being considered.
- 3 **Carr Drain Easement:** Attention is drawn to the Carr Drain Easement. The developer is advised that no building or other obstruction (including trees) should be located within the 19.5 metre wide culvert easement (9m to each side of the Carr Drain) at the south end of the site, as shown on the approved Green Infrastructure Parameter Plan 04036 Rev N. .This excludes the construction of up to 3 no. access roads which are permitted to cross the culvert.
- 4 **Internal Drainage Board:** The consent of the Ainsty (2008) Internal Drainage Board will be required within the above-referenced easement. This applies to any crossing such as a road or service or development in this easement including, but not exclusively, fences or planting. This is required under the Land Drainage Act 1991 and also the Board's Byelaws. Further details can be found on the Board's website www.yorkconsort.gov.uk
- 5 **Yorkshire Water:** There are public sewers crossing the sites, with various easement requirements, as established by Yorkshire Water. The developer(s) should note these requirements and legislation within the Water Industry Act if there is intent to divert any sewers.

If the developer is looking to have new sewers included in a sewer adoption agreement with Yorkshire Water (under Section 104 of the Water Industry Act 1991), they should contact the Developer Services Team (telephone 0345 120 84 82) at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with the WRc publication 'Sewers for Adoption - a design and construction guide for developers' 6th Edition (or as may be updated) as supplemented by Yorkshire Water's requirements.

- 6 **Sport England:** The details for the on-site sports provision, as shown on the Landscape Structure Plan 04040B¹ (unless an alternative is approved), will be expected to be constructed and drained in accordance with recommendations in Sport England guidance note - Natural Turf for Sport.
- 7 **Environmental Permit:** The northern half of the site was previously used as a landfill site associated with the sugar beet factory. The landfill site is subject to an Environmental Permit (issued and regulated by the Environment Agency) which has not yet been surrendered. The Environment Agency will only surrender the permit once it is satisfied that the site has been cleaned up to an appropriate standard. It is

¹ This is as sought by Sport England but does not form an approved plan, however, the plan cited should be referred to for the purposes of this informative

recommended that construction is not commenced until the permit has been surrendered.

- 8 **Rail Halt:** The developer(s) are reminded that it is a Council aspiration for a rail halt to be developed at the north end of the site. The development should not prejudice this future provision. If this scheme were to be realised, land at the north end of the site (currently shown as Green Infrastructure) would likely be required for access to the rail halt.
- 9 **National Grid:** The developer's attention is drawn to the presence of National Grid assets (over-ground and underground) as specified in the consultation response dated 7 Jan 2015. National Grid should be consulted prior to any development / construction on site in this respect, to understand requirements including any required separation distances.
- 10 **Network Rail:** Network Rail advise that at least six weeks prior to works commencing on site the NR Asset Protection Project Manager (OPE) should be contacted, contact details as below. The OPE will require to see any method statements/ drawings relating to any excavation, drainage, demolition, lighting and building work or any works to be carried out on site that may affect the safety, operation, integrity and access to the railway.

Asset Protection Project Manager
Network Rail (London North Eastern)
Floor 2A
George Stephenson House
Toft Green
York
Y01 6JT
Email: assetprotectionlne@networkrail.co.uk

The following measures should be adhered to during construction -

Drainage

All surface and foul water should be collected and diverted away from Network Rail property.

Excavations/Earthworks

All excavations/ earthworks carried out in the vicinity of Network Rail property/structures must be designed and executed such that no interference with the integrity of that property/ structure can occur. If temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement and provided to Network Rail. Where development may affect the railway, consultation with the Asset Protection Project Manager should be undertaken.

Armco Safety Barriers

An Armco or similar barrier should be located in positions where vehicles may be in a position to drive into or roll onto the railway or damage the lineside fencing.

Fail Safe Use of Crane and Plant

All operations, including the use of cranes or other mechanical plant working adjacent to Network Rail's property, will be carried out in a "fail safe" manner such that in the

event of mishandling, collapse or failure, no materials or plant are capable of falling within 3.0m of the nearest rail of the adjacent railway line, or where the railway is electrified, within 3.0m of overhead electrical equipment or supports.

Security of Mutual Boundary

Security of the railway boundary shall be maintained at all times. If the works require temporary or permanent alterations to the mutual boundary the applicant should contact Network Rail's Asset Protection Project Manager.

Boundary Treatment

At all times there will be a secure boundary fence to the Network Rail land.

Demolition

Any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near to the operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Project Manager before the development can commence.

Landscaping

Where trees/shrubs are to be planted adjacent to the railway boundary these shrubs should be positioned at a minimum distance greater than their predicted mature height from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. Any hedge planted adjacent to Network Rail's boundary fencing for screening purposes should be so placed that when fully grown it does not damage the fencing or provide a means of scaling it.

- 11 **Broadband / Carbon Fibre:** The developer should be aware of the city strategy to make York a gigabit city and associated network design requirements. Infrastructure to enable such should be considered at the design stage. For further details, please contact City Fibre prior to commencement of development.



The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by Mrs Zoë Hill BA(Hons) Dip Bldg Cons(RICS) MRTPI IHBC

an Inspector appointed by the Secretary of State

Date 15 May 2018

Town and Country Planning Act 1990

Appeal by British Sugar

City of York Council

Inquiry opened on 16 January 2018

Former British Sugar Site and Former Manor School Link Road Site, Boroughbridge Road, York,
Yorkshire YO26 6AQ

File Ref: APP/C2741/W/17/3177821

<https://www.gov.uk/planning-inspectorate>

Abbreviations

(The) appellant	British Sugar
CEMP	Construction and Environmental Management Plan
CIL	Community Infrastructure Levy Regulations
(The) Council	The City of York Council
EIA	Environmental Impact Assessment
ES	Environmental Statement
The Framework	National Planning Policy Framework 2012
The Guidance	The National Planning Practice Guidance
ha	hectares
m	metres
m	million (when used with £)
Neighbourhood Plan	Upper Poppleton and Nether Poppleton Neighbourhood Plan
RSS	Regional Spatial Strategy
SHMA	Strategic Housing Market Assessment
SINC	Site of Importance for Nature Conservation
SoCG	Statement of Common Ground
SoS	Secretary of State

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File Ref: APP/C2741/W/17/3177821

**Former British Sugar Site and Former Manor School Link Road Site,
Boroughbridge Road, York, Yorkshire YO26 6AQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by British Sugar against the City of York Council.
- The application Ref: 15/00524/OUTM is dated 26 February 2015.
- The development proposed is for the development of the site comprising up to 1,100 residential units (C3), community uses (D1/D2), and new public open space with details of access (to include new access points at Millfield Lane and Boroughbridge Road and a new link road, crossing the former Manor School Site) and demolition of the former Manor School Buildings, with all other matters reserved.

Summary of Recommendation: The appeal be allowed and planning permission granted subject to conditions and a satisfactory s.106 Agreement.

Preliminary Matters

Inquiry Dates

1. The Inquiry opened on 16 January 2018. The accompanied site visit was undertaken on that opening day. Subsequent sitting days took place on 17, 24 and 25 January 2018.

The Proposal

2. The planning application to which this appeal relates was validated on 6 March 2015. It seeks outline planning permission for the development of up to 1,100 dwellings. In addition it seeks community uses in use classes¹ D1 'non-residential institutions' and D2 'assembly and leisure', to include pre-school, primary school and community / sports hall provision. New public open space of some 9.09ha would be provided on-site. The application also provides details of access, to include new access points at Millfield Lane and Boroughbridge Road and a new link road, crossing the former Manor School site, and demolition of the former Manor School buildings.

Putative Reasons for Refusal Prior to the Inquiry

3. The outline application, the subject of this appeal, was presented to the City of York Council Planning Committee on 25 October 2017 to ask members to confirm how they would have determined the application had it not been appealed against non-determination. The minutes of the meeting confirm that members agreed with the officer's recommendation to refuse the application on the basis of the absence of a completed s.106 Agreement to secure affordable housing, and infrastructure and other mitigation necessary to make the development acceptable in planning terms.
4. However, it is also important to be aware at that stage the committee report confirmed that the principle of the development, including the quantum of residential and ancillary uses and proposals for pedestrian and cycle movement, was acceptable. It also confirmed that the detailed design of the Main Street and

¹ As set out in the Town and Country Planning (Use Classes) Order 1987 (as amended)

its associated landscaping would be acceptable, and that the parameter plans and Parameter and Design Principles Document provide adequate master-planning principles to secure development that would achieve an established character, movement and connectivity within and beyond the site, and how it should respond to identified constraints. Additionally, at that stage, detailed considerations relating to the following were confirmed as being agreed: land contamination and remediation, highway impact (agreement to phasing and triggers for mitigation would be required), drainage and flood risk (save for agreement regarding adoption), impact on residential amenity, green infrastructure provision (agreement to phasing / delivery would be required), community use (agreement on contributions / triggers to be reached), education provision (agreement on contributions / triggers would be required), and biodiversity.

Progress During the Inquiry

5. The Inquiry created a focus for renewed vigour in the negotiation process, which was also undertaken during the event. As a consequence of that process, by the end of the sitting days of the Inquiry the parties had reached general agreement on the content of the s.106 Agreement, with an outstanding issue relating to a legal point regarding land transfer. The Inquiry was therefore adjourned to allow for the completion of the s.106 Agreement.
6. At the end of the Inquiry sitting days a revised Statement of Common Ground (SoCG) was submitted and confirmed that there were no outstanding matters of disagreement except for those relating to conditions.
7. In addition, the Council is progressing with its Local Plan. The Council advised the Planning Inspectorate² that it had written to the Secretary of State (SoS) advising that a decision had been taken to progress to a Regulation 19 Consultation with a view to the Local Plan being examined in May 2018 (see policy section below). The appellant was given the opportunity to comment on this change but concluded there was nothing to add to what had been said. The Inquiry was subsequently closed in writing on 28 February 2018.

Related Applications

8. In tandem with the outline application, a full application for the construction of a development platform³, land form engineering works and remediation and reclamation of the former British Sugar Site was also submitted (Ref: 15/00523/FULM). That application was the subject of an appeal against non-determination but was a duplicate of another application. That other full application (Ref: 14/02798/FULM) was approved on 15 September 2017. Consequently, the appellant, on 8 November 2017, withdrew the appeal in relation to the full application and planning permission is now extant for the

² INQ30

³ The site includes made ground and lagoons. Therefore a scheme of works to deal with contamination, re-profiling the land and improving the engineering competence (strength, and stiffness/compressibility) of materials comprising the main ground was required to form a 'development platform', a base, upon which roads, houses and associated infrastructure could be constructed.

- construction of a development platform, land form engineering works and remediation and reclamation of the former British Sugar site.
9. A separate application for the former Manor School Link Road and Millfield Lane access, which are intended to provide the principal accesses to the former British Sugar Site, was approved on 12 September 2017 (Ref: 17/01072/FUL).
 10. The application subject to this appeal also has a duplicate application (Ref: 14/0789/OUTM). This has been the focus of continuing dialogue between the main parties (the City of York Council and British Sugar). The main parties have agreed that correspondence and amendments in relation to this duplicate pair applies equally to each.
 11. In order to progress matters, further information and plans have been provided which relate to affordable housing, infrastructure and other mitigation necessary to make the development acceptable in planning terms.
 12. The scheme proposed remains essentially the same as that consulted upon in January/February 2017 when there were physical alterations to the proposal. The new material adds detail to the substance of the plans such as an updated Construction and Environment Management Plan (CEMP), landscaping details, and plans reflecting the approved full scheme for the access route within the site. That access scheme was subject to public consultation and now has approval. Interested parties have been made aware of the appeal in both an initial notification on 11 August 2017 and in being notified of the appeal event on 22 December 2017, so there has been opportunity for interested parties to be involved should they so wish.

The Appeal Plans

13. The Appeal Plans under consideration are as follows: -

Parameters and Design Principles Document (PDPD), AECOM November 2017 Rev M (24.11.17)

Outline Planning Application Boundary Plan 04034 Rev D (4.10.17)

Parameter Plan – Access and Movement (04035 Rev N) (4.12.17)

Parameter Plan – Green Infrastructure (04036 Rev N) (2.1.18)

Parameter Plan – Development Zones and Land Uses (04037 Rev M) (30.11.17)

Parameter Plan – Urban Framework and Building Heights (04038 Rev M) (30.11.17)

Illustrative Phasing Plan ref 04081 Rev H (2.1.2017)

DTA Main Street Alignment 17424-41 Rev I (1 of 3) (4.10.17)

DTA Main Street Alignment 17424-41 Rev H (2 of 3) (7.9.17)

DTA Main Street Alignment 17424-41 Rev H (3 of 3) (7.9.17)

DTA Main Street Cross Sections (17424 33 Rev D) (12.10.17)

DTA Main Street Alignment 17424 41 Rev H 12M Bus Vehicle Tracking (7.9.17)

DTA Main Street Alignment 17424 41 Rev H 60M Forward Visibility Splays
(7.9.17)

Main Entrance Soft Landscape Design – 60531863_BS_LS_004 Rev J (10.10.17)

Carriageway 1 Soft Landscape Design – 60531863_BS_LS_006 Rev E (7.9.17)

Carriageway 2 Soft Landscape Design – 60531863_BS_LS_007 Rev D (7.9.17)

Carriageway 3 Soft Landscape Design – 60531863_BS_LS_008 Rev F (7.9.17)

Landscaping for bund around Tangerine - Bund soft landscaping design
60531863_BS_LS_009

Construction Environment Management Plan V1.2 (7.9.17)

Arboricultural Method Statement August 2017 (8.8.17)

Design and Access Statement January 2018

Detailed Application Proposed Layout Levels - FBSS-URS-XX-XX-DR-CE - 00602
P5

Detailed Application Cross Sections 1 of 3 - FBSS-URS-XX-XX-DR-CE - 00605 P5

Detailed Application Cross Sections 2 of 3 - FBSS-URS-XX-XX-DR-CE - 00606 P5

Detailed Application Cross Sections 3 of 3 - FBSS-URS-XX-XX-DR-CE - 00607 P5

Site History

14. The former British Sugar site was utilised historically for sugar beet processing operations by British Sugar. Prior to this use the land had been largely agricultural, with a brick and tile yard close to the south eastern corner of the site being identified on historic maps from the 19th century. The sugar beet factory use took place for almost 80 years following its construction in 1926 on the southern part of the former British Sugar site. It was then expanded during the 1950s to cover the whole site area, with some 121 planning applications made on the site between 1948 and 2005. However, due to restructuring of British Sugar's UK operations, the factory was closed in 2007. Since then, the factory buildings, including large silos and warehouses, have been demolished and the former British Sugar site has been largely cleared.
15. In respect of the former Manor School site, all historic planning applications submitted for the site related to its use as a school. The school use is no longer active following relocation of its facilities.

Environmental Impact Assessment

16. Prior to the submission of the original applications, an Environmental Impact Assessment (EIA) scoping opinion for proposed residential-led development of the site was submitted to the Council on 6 September 2013. The scoping opinion was issued by the Council on 17 October 2013 and confirmed that an EIA would be required as the development would be likely to have significant environmental effects, in particular considering the proposed residential population, traffic generation and land contamination. An Environmental Statement (ES) was therefore prepared. However, prior to the submission of the original applications,

a revised EIA scoping report was submitted to the Council on 28 October 2014. This revised report was submitted to cover the original and full applications including this appeal proposal.

17. Regulation 76 of the 2017 EIA Regulations sets out circumstances under which The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (2011 EIA Regulations) continue to apply, including where 'an applicant, appellant or qualifying body, as the case may be, has submitted an environmental statement or requested a scoping opinion' prior to the commencement of the 2017 EIA Regulations.
18. In the case of this appeal, the 2011 EIA Regulations continue to apply. The review has therefore been conducted against the requirements of Schedule 4 Part 2 of the 2011 EIA Regulations. On the 9 January the Planning Inspectorate wrote to the main parties confirming that the EIA was satisfactory and I concur with that assessment noting that the ES review is solely based on reviewing the scheme related to this appeal for 1,100 residential units given that extant permissions exist for the other elements of the scheme, namely, the construction of a development platform, land form engineering works and remediation and reclamation of the former British Sugar site, and the former Manor School Link Road and Millfield Lane access, which would provide the principal accesses.

The Site and Surroundings

19. The appeal site is located to the north west of the City of York within the defined urban area and York's outer ring road, approximately 2.24 km from the city centre, between the A59 Boroughbridge Road and the Harrogate / East Coast mainline railway line. Immediately west of the site is the former Manor School. The application red line boundary for the appeal site includes the former British Sugar Site and the former Manor School link road. The site area extends to approximately 39.62ha.
20. The former British Sugar site's existing main vehicular access is off Millfield Lane. When the factory was in operation the site had a secondary access from Plantation Drive. The former British Sugar site comprises brownfield land. As set out above, the buildings and structures associated with the former sugar refinery have mostly been demolished, but features that remain on the site consist of the former weighbridge building, soil settlement and wastewater treatment lagoons, a sports field and bunds.
21. The former Manor School was a secondary school, which was relocated to a new site on Millfield Lane in 2009. The link road and the majority of the former British Sugar site falls within Flood Zone 1 so is at low risk of flooding.
22. The former British Sugar site is bordered to the north and east by the Harrogate railway line. Clifton Ings, Acomb Ings and Rawcliffe Meadows are located on the far side of the railway lines, and are areas of natural and semi-natural open space. The Ings form areas of floodplain along the banks of the River Ouse and contain public footpaths for recreational use.
23. Habitats present on the former British Sugar site include amenity grassland, natural grassland, tall ruderal, mixed semi-natural woodland, continuous scrub, standing trees and planted coniferous trees. At one side of the site there is a small Site of Importance for Nature Conservation (SINC). Within the northern

part of the site an area is subject to an Environmental Permit (formerly a Waste Management Licence) held by British Sugar which is regulated by the Environment Agency.

24. The site adjoins residential properties, including those on Langholme Drive, at the north east end of Plantation Drive and on Millgates. There is also residential development fronting the public highways of Low Poppleton Lane and Millfield Lane near to the site. Further residential areas exist beyond those properties and beyond Boroughbridge Road, which is a main transport route into York city centre from the outer ring road.

Site Ownership

25. The appellant is the landowner of the former British Sugar site. The former Manor School site, located to the west of the appeal site, is currently within the Council's ownership. The appellant secured an option agreement with the Local Authority to acquire the land necessary to provide an access link road from the A59 Boroughbridge Road into the former British Sugar site in the event of planning permission being granted for this access. That access road has extant permission satisfying the option. As such, land ownership matters should not impinge on the delivery of this site.

Planning Policy

National Policy

26. Relevant Central Government Policy is contained within the National Planning Policy Framework (the Framework) (March 2012), supported by the National Planning Practice Guidance (the Guidance) launched in 2014. It is noted that a draft revision of the Framework was published on 5 March 2018.

Development Plan (Yorkshire and Humber Regional Spatial Strategy and Upper and Nether Poppleton Neighbourhood Plan)

27. The Council's Development Plan comprises the unrevoked parts of the Yorkshire and Humber Regional Spatial Strategy (RSS) and the Upper and Nether Poppleton Neighbourhood Plan (Neighbourhood Plan).
28. The saved RSS policies relate specifically to the Green Belt around York and are not therefore relevant to the consideration of this appeal.
29. The Neighbourhood Plan, following a referendum, was 'made' on 19 October 2017 and so is part of the Development Plan for part of the site area. Indeed, the Neighbourhood Plan represents the only up-to-date Development Plan document for the City of York Council and, accordingly, planning applications within the Neighbourhood Plan area should be determined in accordance with the Development Plan (that is the Neighbourhood Plan), unless material considerations indicate otherwise. It is noted that not all of the appeal site falls within the Neighbourhood Plan area⁴.
30. In terms of this appeal the following Neighbourhood Plan policies are relevant:

⁴ Shown on INQ20

- Housing Policy PNP 6C – which identifies the former British Sugar site as one of three housing allocations (H1: Former British Sugar Site, Millfield Lane).
 - Housing Policy PNP 6E - which sets out criteria that future development at the former British Sugar site should satisfy. It should include a mix of housing types; provide amenities, outdoor sport and recreational facilities; and provide a principal access point off Boroughbridge Road.
31. Neighbourhood Plan paragraph 2.18 is also of relevance and states that "*policies for what proportion of homes should be affordable need to take account of evidence of both housing need and the viability of residential development.*"

Emerging Plan

32. The City of York Development Control Local Plan was approved by the Council for development control purposes in April 2005. The document does not form part of the Development Plan and is effectively the 4th set of modifications to what was the 1998 deposit draft of the City of York Local Plan. No examination was ever completed and the deposit draft plan progressed through a series of untested modifications, all of which received a significant number of objections, until work ceased in favour of progressing a core strategy.
33. Therefore, given the level of objection, the age and the untested nature of the Development Control Local Plan, it is considered that the document should be given very limited weight and that its role should depend upon its consistency with the Framework. This position is agreed by the parties and has been confirmed in previous planning appeal decisions by the Secretary of State⁵. It is therefore of no assistance in the determination of this appeal.
34. The Council published its Regulation 18 Pre-Publication Consultation Draft of the Local Plan on 18 September 2017 with consultation ending on 30 October 2017. On the 25 January 2018 the Council resolved to undertake a Regulation 19 consultation to run from 21 February to 4 April 2018. The amendments are not considered material to this case, but would increase housing in York Central (Policy ST5) and reduce it at Queen Elizabeth's Barracks, Strensall (Policy ST35). There are other minor changes not related to the appeal site. It is anticipated that the Local Plan will be put forward for examination in May 2018.
35. The appeal site is identified within the emerging draft Local Plan as Strategic Housing Site SS6, defined as a major urban development site. Draft Policy SS6 confirms that the former British Sugar and former Manor School sites will deliver approximately 1,200 dwellings.
36. The following draft Local Plan policies are relevant:
- Spatial Strategy:*
- SS1: Delivering Sustainable Growth for York
 - SS6: British Sugar/Manor School

⁵ Germany Beck and Derwenthorpe, Metcalfe Lane decisions of 9 May 2007 (Ref: 1189897 & 1189885).

Housing:

- H1: Housing Allocations
- H2: Density of Residential Development
- H3: Balancing the Housing Market
- H10: Affordable Housing

Health and Wellbeing:

- HW2: New Community Facilities
- HW3: Built Sports Facilities
- HW4: Childcare Provision
- HW7: Healthy Places

Education:

- ED6: Pre-School, Primary, and Secondary Education
- ED8: Community Access to Sports and Cultural Facilities on Education Sites

Placemaking, Heritage, Design and Culture:

- D1: Place Making
- D2: Landscape and Setting
- D6: Archaeology

Green Infrastructure:

- GI1: Green Infrastructure
- GI2: Biodiversity and Access to Nature
- GI3: Green Infrastructure Network
- GI4: Trees
- GI5: Protection of Open Space and Playing Pitches
- GI6: New Open Space Provision

Climate Change:

- CC1: Renewable and Low Carbon Energy Generation and Storage
- CC2: Sustainable Design and Construction of New Development

Environmental Quality and Flood Risk:

- ENV1: Air Quality
- ENV2: Managing Environmental Quality
- ENV3: Land Contamination

- ENV4: Flood Risk
- ENV5: Sustainable Drainage

Transport and Communications:

- T1: Sustainable Access
- T5: Strategic Cycle and Pedestrian Network Links and Improvements
- T7: Minimising and Accommodating Generated Trips
- T8: Demand Management

Delivery and Monitoring:

- DM1: Infrastructure and Developer Contributions

37. The policies included within the draft Local Plan continue to support the principle of the proposed development. In particular, Policy SS6 identifies the site as a Strategic Housing Site, capable (with the Manor School site) of delivering approximately 1,200 dwellings, with an appropriate mix of housing, new social infrastructure, educational facilities and green infrastructure, to a high design standard. Policy H2 expects densities, in suburban locations such as this, of around 40 units per hectare. Policy H3 seeks a mix of housing, reflecting the continued demand for family housing. Policy H10 seeks affordable housing provision subject to impact on viability. Policies HW1, ED6 and G11 seek the provision of appropriate community, educational and green infrastructure facilities in support of new development. However, these policies should carry a limited amount weight given that they have not been subject to examination and there are outstanding objections to the draft Local Plan. That said, the policies in principle are intended to be in conformity with the Framework.

Supplementary Planning Guidance and Evidence Based Documents

38. Whilst not forming part of the adopted Development Plan, the following Supplementary Planning Guidance documents and evidence base documents provide additional guidance relevant to the appeal site and the development:

- Draft Former British Sugar/Manor School Site Supplementary Planning Document April 2012.
- Affordable Housing Planning Guidance – Interim Targets.
- York Affordable Housing Advice Note 2013.
- North Yorkshire Strategic Housing Market Assessment November 2011.
- Sustainable Design and Construction Interim Planning Statement Addendum 2007.
- Developer Contributions to Education and Facilities (2005/06).
- Commuted Sum Payments for Open Space in New Developments – A Guide for Developers (2014).
- City of York Strategic Flood Risk Assessment Revision 2 March 2013.

- York Biodiversity Action Plan for Life (2013).
- City of York Local Authority Streetscape Strategy and Guidance July 2014.
- Strategic Housing Market Assessment (SHMA) 2016 (GL Hearn).
- Strategic Housing Market Assessment 2017 Update.
- Education SPG 2015 Update V4.
- Open Space and Green Infrastructure September 2014 (Amec).
- Open Space and Green Infrastructure Update September 2017.
- Local Plan and CIL Viability Assessment (2017).

The Case for British Sugar – The Appellant⁶

39. The appeal scheme provides for up to 1,100 new homes in the City of York whilst remediating a previously developed site in a way which complies with all aspects of national and local policy in terms of the effect of the development itself on the landscape, ecology, archaeology, the environment as a whole, residential amenity, transport, sports and leisure provision and education. That position is agreed. It is in complete accordance with the statutory development plan which comprises the Neighbourhood Plan made in October last year where that plan covers the appeal site. There is no other relevant statutory development plan. The parameters and design principles for the whole development are agreed with the Council to be appropriate.
40. It is agreed that this site can and would deliver much needed housing in York. The Council agrees it has only 2.5 to 3.5 years of housing land supply. An Inspector has recently observed that *“it is clear that there is a large shortfall that will take a number of years to address.”*⁷ The Council’s emerging Local Plan has a long way to go before statutory adoption, but the draft to be sent to the SoS for examination includes this site with its draft allocation as for the application before this Inquiry. It is the primary strategic allocation in the draft plan. The statutory development plan is absent, silent and out-of-date and there is a dire need for more houses to be built as soon as possible in accordance with the Government’s primary aim of boosting significantly the supply of housing. Thus, permission should be granted unless the adverse impacts of doing so would so significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. There are no adverse impacts and this is agreed.
41. The only matter between the Council and the appellant at the start of the Inquiry was the mechanism for providing affordable housing. The appellant is not unwilling to provide affordable housing. Rather, the appellant is confident that this scheme provides the ideal opportunity to boost significantly the supply of new homes in York and that that would include supplying both market homes and affordable homes of the types and tenures that the Council wants. This is now agreed.

⁶ INQ30

⁷ Core Document 23 -Avon Drive Inquiry APP/C2741/W/16/3149489 (as referred to in the Proof of Evidence of Jane Healy Brown at paragraph 73)

42. This site is a complex one with a long industrial history. Getting this far in the planning process has necessitated long and protracted discussions with the Environment Agency in order to reach an agreement as to the remediation of the site. It has involved complicated analysis and discussion to work into that remediation scheme the creation of a development platform to enable the residential development to go ahead. That effort resulted in the Council, assisted with advice from the Environment Agency, granting a full planning permission for the development platform. There has had to be careful analysis and discussion of how the transport network can accommodate the traffic generated from up to 1,100 new homes and their associated uses. The Council has granted planning permission for the main access into the site through the former Manor School site. There is no issue that all transport considerations have been satisfied.
43. As such, the site is and will continue to be a difficult, complex and therefore expensive site to bring forward for housing. There are numerous provisions to ensure that there are no adverse effects of the development on the environment, ecology, transport, sport and leisure provision and education. It is agreed that those measures would ensure no adverse effects. The contributions necessary to achieve that result meet the statutory tests for such contributions and the sums to be paid and the triggers for their payment are all agreed.
44. The plans and documents have been subject to minor amendments up to the opening of the Inquiry. The appellant has explained the minor nature of those changes, and clearly demonstrated the scheme before the Inquiry remains essentially the same as the scheme that was considered by the Council, and on which interested people's views were sought. This mirrors the approach that the Inspectorate's Procedural Guidance, *Planning Appeals*, sets out should be taken in the event of amendments to plans and documents. The amendments have made no material changes to the proposed scheme and no one has been prejudiced in any way. The Council agrees.

Policy

45. S.38(6) of the Planning and Compulsory Purchase Act 2004 sets out that it is necessary to start with the development plan. So far as is relevant to this appeal, this comprises only the Neighbourhood Plan. The parties agree that this is the only relevant, up-to-date development plan document for the City of York Council, and that this application should be determined in accordance with this plan unless material considerations indicate otherwise (which they don't).
46. There are two policies in the Neighbourhood Plan which support the grant of planning permission in this matter. They are Housing Policy PNP 6C, which allocates the appeal site for housing, and Housing Policy 6E, which sets out that housing on the appeal site should: include a mix of housing types, provide amenities, outdoor sport and recreational facilities, and provide a point of access off Boroughbridge Road. The scheme accords with all these matters. The Neighbourhood Plan further expressly provides, at paragraph 2.18, that the proportion of affordable housing to be provided on the site must take account of the viability of the proposed development. The scheme fully accords with the development plan and so provides a presumption in favour of the development.
47. The Inquiry heard from Mrs Edith Jones who was a committee member for the Upper and Nether Poppleton Neighbourhood Plan. Mrs Jones spoke strongly in favour the appeal scheme and urged that the appeal be allowed so that the

much-needed housing proposed by the scheme and allocated by the Neighbourhood Plan could be provided without further delay. The work that has gone into preparing the Neighbourhood Plan by people like Mrs Jones, who made the effort to attend the Inquiry to speak in support of the scheme, would come to fruition through approval of this appeal.

48. There are several significant material considerations found in local and national policy that lend further substantial weight to allowing the appellant's appeal.
49. First, the parties agree that because much of the appeal site does not benefit from the allocation in the Neighbourhood Plan, the development plan overall is absent, silent and out-of-date, meaning that the second limb in paragraph 14 applies. This provides that permission should be granted in this matter unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Careful and detailed consideration has been given by the parties to the broad range of applicable planning considerations in the Framework. The SoCG⁸ sets out that in respect of all these matters the parties agree that the scheme is acceptable.
50. Various technical matters were raised by the Inspector and were addressed in a joint response from the parties. The joint response assists in explaining why the Council is in full agreement with the appellant that all relevant technical matters have been fully and appropriately addressed, including in respect of ecological survey information and highways. To put these highways matters in some context, the Framework provides, at paragraph 32, that development should be refused on transport grounds only where the residual cumulative impacts of development are severe. The position is to the contrary; namely that all highways impacts are agreed as being acceptable, including through the payments for highways improvements and sustainable transportation measures that are secured by the s.106 Agreement.
51. There are no adverse impacts identified, let alone ones that come anywhere near close to significantly and demonstrably outweighing the benefits of the scheme. The provisions within paragraph 14 of the Framework are thus satisfied, meaning that the scheme should then benefit from the presumption in favour of sustainable development.
52. The Framework provides express policy support for key benefits of the scheme. The first of these is by the scheme boosting significantly the supply of housing in the Council's area, in accordance with paragraphs 47 and 49 of the Framework. As set out above, the Council has a housing land supply of only around 2.5 – 3.5 years. The provision of 1,100 homes would provide a pipeline of new homes over the coming years that would greatly assist in providing new market and affordable housing to meet the needs of the Council's residents. The Framework states that careful attention should be given to viability and costs in decision-taking. In this case there have been in-depth discussions with the Council and its independent advisers, the outcome of those discussions being that the type and mix of housing proposed by the scheme have been optimised, with the prospect of more affordable housing being able to be provided in the future.

⁸ INQ27

53. Another key benefit of the scheme is that it would encourage the effective use of previously developed land, in accordance with paragraph 111 of the Framework, on a site that needs to be remediated and put to good and effective use. The thrust recognises that such brownfield land is almost invariably located in highly sustainable locations, such that the proposed provision of much-needed housing would be able to take advantage of these locational benefits and allow the new community to knit into the surrounding residential areas.
54. Thus, so far as the Framework is concerned, national policy provides substantial and unconditional support for the scheme. This is a significant material consideration in favour of the scheme being granted permission and this appeal being allowed.
55. So far as local (non-development plan) policy is concerned, support for the scheme is also provided by the Draft Former British Sugar / Manor School Site SPD (April 2012). This was approved by Members and published, though it remains a draft. The draft SPD supports the principle of the site being redeveloped for housing, open space and community uses. It demonstrates that the principle of housing on the appeal site has the support of the Council in policy terms even if the Council does not have an adopted development plan allocating the site for housing.
56. The Council published its Regulation 18 pre-publication consultation draft of the local plan on 18 September 2017, with consultation ending on 30 October 2017. The parties agree that the emerging local plan continues to support the principle of the proposed development, with emerging policy SS6 identifying the appeal site as a Strategic Housing Site earmarked for up to 1,200 dwellings, social infrastructure, educational facilities and green infrastructure, to a high design standard.
57. Policy H10 of the emerging Local Plan makes understandable provision for viability appraisals to be considered when assessing the maximum amount of affordable housing that can be reasonably provided with any development (the target for previously developed land set out in the emerging plan being 20%). The appellants are clear that this is precisely what has happened here.
58. Thus, there is strong support for the scheme and for the level and nature of contributions proposed to make the development acceptable in planning terms. This is reflected in the s.106 Agreement. Allowing the appeal would both accord with the development plan, so far as it applies through the Neighbourhood Plan, as well as with the presumption in favour of sustainable development provided for by the Framework.

Viability

59. The Framework recognises that *"Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the cost of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation,*

provide competitive returns to a willing land owner and willing developer to enable development to be deliverable.”⁹

60. The Council recognises this guidance in its draft Local Plan Policy H10 on affordable housing which seeks a target of 20% affordable housing on brownfield residential schemes of more than 15 dwellings but which goes on to provide: *“Where a developer believes the criteria set out in this policy cannot be fully met, they have the opportunity through open book appraisal to demonstrate to the Council’s satisfaction that the development would not be viable.”* That is followed up in the reasoned justification for that policy¹⁰ which sets out the procedure to be followed, as it has been here.
61. At first it seemed to the appellant that because of the massive costs in getting this site ready for residential development it was not possible to say that the scheme would be able to viably support affordable housing from the outset. However, the Council has been able to obtain independent advice from the District Valuer Services of the Valuation Office Agency, a professional agency of Her Majesty’s Revenue and Customs. Lengthy and fruitful discussions with the appellant on all the relevant topics pertaining to viability of the development and the level of affordable housing that can be achieved have been held. Following on from those discussions the Council and the appellant have been able to agree all the inputs to the viability appraisal of the scheme on the revenue side and on the costs side. They have also been able to agree an appropriate benchmark land value. This enabled calculation of the residual land value.
62. On the cost side of the equation, there has always been more scope for precision. The discussions before the start of the Inquiry narrowed the issues relating to residual land value to four and those matters were:
- (i) The appropriate figure to take into account for the costs the appellant has incurred since the site was closed. Since the start of the Inquiry the relevant documentation from British Sugar has been provided. The sums incurred reflect the complexity of bringing this site forward. A sum reflecting the costs of monitoring for the definitive closure of the site agreed by the Environment Agency is no longer pursued by the appellant as they had in 2015 agreed to bear that cost. On the basis of the documents discussed the Council and the appellant agree that an appropriate figure is £2,668,298 to take into account that ever since this site was closed the appellant has been seeking – and working with this Council – to bring this site forward for primarily residential development and these costs have been properly incurred.
- (ii) The professional fees incurred that are attributable to bringing this site forward. These include costs incurred by the Council as well as the appellant’s own professional fees. In further discussions the Council and the appellant have agreed that an appropriate figure is £5,848,387. That does not include any of the professional fees incurred in bringing this appeal. They amount to £529,502 but the appellant accepts, given the large sums in fees incurred before the appeal was lodged in this case, which the Council agree should be taken into account, and given the lack of clarity in the RICS advice on the inclusion of appeal fees, it would not be appropriate to seek to include this sum in this case.

⁹ Paragraph 173

¹⁰ Paragraph 5.62 of supporting text to emerging Policy H10

- (iii) Acquisition costs by way of stamp duty, agent fees and legal fees. The difference was £152,007. The difference, however, was simply arithmetic as the percentages to be applied to the land values are agreed.
- (iv) The s.106 Agreement contribution to secondary school provision. The number of new pupil places is agreed at 139. The only issue was what multiplier to apply to that number of pupils. The appellant derived a cost from an up-to-date document supported by the Department for Education, The Infrastructure and Projects Authority from within the Cabinet Office and by many local authorities who have used this document in their planning documents for calculations of planning obligation contributions. The Council arrived at a figure using a different route but the difference between the two figures was only £18,515. As this is a figure that is already looking into the future and so cannot be a precise calculated sum, the appellant is content to use the product of the number of pupils and the Council's multiplier to produce a figure for the contribution of £2,236,788.
63. Thus, these figures are all now agreed by the Council and the appellant on the basis of the advice they have received from their advisers as was set out in the Viability SoCG¹¹.
64. The appellant has taken the view that such is their confidence that this scheme would be a success that, even though a viability appraisal carried out with the agreed inputs would not show an initial surplus to fund affordable housing, it has entered into a s.106 Agreement whereby a minimum of 3% of the dwellings in the first phase and then across the whole scheme would be affordable.
65. The s.106 Agreement goes on to provide that the viability of the scheme would be reviewed at the time of submission of each application for approval of reserved matters and any improvement in viability would result in the increased provision of affordable housing. The review mechanism to achieve that result is agreed in the s.106 Agreement. There is a worked example to show how increased values of housing lead to increased provision of affordable housing. A Valuer's Aid that explains in detail how the review mechanism would work is appended to the s.106 Agreement. The parties agree that it is a robust mechanism for securing appropriate levels of affordable housing. The nature of the proposed development in terms of house types and densities would change in time, but such changes would be taken into account in the inputs as part of the Viability Reassessment. The appellant is sufficiently confident in the success of the scheme to enter into a planning obligation¹² which gives the option to provide more affordable housing than the review mechanism shows is viable for a particular phase: a reflection of the confidence that later phases would continue to improve in profitability.
66. These discussions and much hard work outside the Inquiry by both parties and their advisers have resulted in all matters relating to viability being resolved. This provides a strong platform to ensure a viable and deliverable scheme and thereby the earliest possible delivery of market and affordable housing in conformity with national and local policy in line with the Framework.

¹¹ INQ18 Appendix 1 to Mr Bank's first supplementary proof of evidence.

¹² This is at Clause 17.11(b)

67. Viability appraisals were undertaken by both sides which sought to assess the costs of carrying out the development both in terms of obtaining planning permission, building the development, meeting planning obligations and providing a competitive return for a willing developer and comparing that with the likely revenue from the development. That exercise gives a figure for the residual value of the site (the residual land value) which can then be compared against what a typical willing land owner for this type of site in these circumstances would seek to receive on the sale of the site (the base or benchmark land value). A landowner would of course expect to receive a return in excess of the value of the site as it currently stands in order to have sufficient incentive to release the land for the proposed development. If the residual land value exceeds the benchmark land value then that difference indicates the possibility of providing affordable housing in addition to market housing.
68. Clearly these exercises are not a precise science. A great deal of judgment is involved at many stages particularly for a site like this with its unique history, nature and characteristics. One cannot simply look to other sites and see what they sold for. There are no comparable sites and so no comparable values to assist in arriving at a benchmark land value. That is agreed. There have been lengthy and productive discussions between the valuers on both sides and the parties, assisted by the advice they have received, have agreed an appropriate benchmark figure of £8 million (m). The appellant stresses this is not an exact science and is particularly difficult in the circumstances of this site.
69. The Council put forward a figure of £7m for the benchmark land value. It was explained for the Council, however, that on the basis of its appraisal, no affordable housing at all could be provided. The provision of 3% affordable housing as would be secured by the s.106 Agreement is a significant improvement on this assessment, particularly having regard to the review mechanism in place. The parties' experts agreed that it would make no difference to the level of provision of affordable housing if the figure of £7m was employed. Such are the master developer costs of nearly £55m that levels of affordable housing would realistically only be able to increase on the basis of viability assessments at later phases of the development. It was further explained that the £8m benchmark land value agreed by the parties is not to be indexed in the Viability Reassessments, such that while house prices are likely to increase, the benchmark land value would stay the same, confirming that the precise level of the benchmark land value makes little if any difference. There is no magic to the benchmark land value, and the differences, such as they are in these figures, are immaterial in the overall scheme of things.
70. What is left is a s.106 Agreement that commits from the outset to providing 3% affordable housing across the whole of the scheme, and a viability review mechanism which both parties have every confidence would, in due course, provide a far greater percentage of affordable housing. The worked example, agreed with the Council, tested a scenario by which costs and values increased in line with historic trends. The assumptions made about these trends were based in the case of values on the real world increases in values seen in York since 2005, up until 2017 (the most recent data), and so spanning a period of 12 years. This shows a year on year average increase of 3.38% per annum. That increase compares favourably with other data sources for likely increases of values. So far as costs are concerned, the increases here were based upon the Building Costs Information Service All-In Tender Price Index, which the parties

agree is the most reliable and appropriate source of data to consider growth assumptions (it was the same source used by the parties' costs consultants in their respective costs appraisals). This shows an increase of 3.92% per annum.

71. With the benefit of these assumptions, which are grounded in the real world and reflect accepted industry practice, the worked example demonstrates that the scheme is capable of delivering more than sufficient profit to require the owner to provide affordable housing on site well above the minimum percentage agreed. The worked example shows that 11% affordable housing can be provided on site but, based on experience, it is suggested that a scheme of this nature would come forward in more than the six phases tested (for the sake of simplicity), which would have the effect of producing more affordable housing on site.
72. The scheme, as a product of its size and nature, should become more successful as the scheme develops. It would in effect generate its own values, which can be captured for the provision of more on-site affordable housing. Whatever the level of on-site affordable housing that is ultimately provided, the worked example shows that there is more than adequate 'headroom' to ensure that even if more conservative growth assumptions are used, there remains a considerable margin to provide on-site affordable housing. Moreover, if value is generated in the final phases and the 20% affordable housing policy has not been met on site, that value would be captured as a commuted sum for off-site affordable housing. The Council's expert agrees that there is a robust amount of headroom, and that there is every confidence that the scheme would deliver more affordable housing in future phases.

Time Conditions

73. The parties disagree as to whether the submission of reserved matters should be within 5 or 7 years from the date of the permission¹³. The timeline necessitated by the remediation process is such that it needs to allow for the procurement process, site preparation and remediation, a monitoring period, a procurement phase, and infrastructure works, which amount to 4 years and 9 months in total. This period would be yet longer if a further six months is allowed for air sparging¹⁴, let alone the six years (all post-remediation) of monitoring which is presently being discussed with the Environment Agency.
74. The reasons put forward for the condition are "*to allow for remediation of the site and associated monitoring and to comply with section 92 of the Town and Country Planning Act 1990 and to prevent an accumulation of unimplemented permissions.*" These reasons do not justify the timescale of 5 years sought by the Council.
75. First, the appellant has expended considerable time and money in achieving the required permit variation from the Environment Agency and the necessary full planning permission from the Council to secure remediation of the site. It is of no relevance to the time for submission of reserved matters that the remediation

¹³ Condition 5 in the appended conditions schedule

¹⁴ This is an in situ technology to reduce concentrations of volatile organic compounds that are absorbed to soils and dissolved in groundwater. It involves the injection of contaminant-free air into the contaminated area enabling a release of hydrocarbons so that they can be treated above ground.

process will take the period explained. The appellant is clearly anxious to proceed with the remediation as soon as possible to seek to recoup its costs. Secondly, section 92 permits any appropriate time period to be set out by condition. Thirdly, there is no possibility of an accumulation of unimplemented planning permissions here when the appellant is committed to spending approximately £55m to enable it to recoup that money from residential development. Fourthly, these reasons for the condition do not justify the shorter time period.

76. Finally, by reason of s.73(5) of the Town and Country Planning Act 1990, it would not be possible to seek to change this condition to allow a longer period for submission of the first application of reserved matters approval. The permission would cease to be capable of implementation if the protracted period explained prevented the submission of a reserved matters application. It would be an appalling waste of resources if, having secured this planning permission should the appeal be successful, and having spent £55m on the remediation works, it became incapable of implementation by the appellant.
77. The appellant submits that these are powerful reasons why the longer period of 7 years should be permitted. The same arguments essentially apply to the condition¹⁵ which requires the beginning of the development within 8 years from the date of the permission. The Council did not challenge that 8 year period but it needs to be borne in mind that s.75(4) prevents any application to extend that period. It will be noted that the appellant has shown its commitment to early delivery of housing on the site for all the powerful reasons set out above, by agreeing to reduce the period for beginning the development to one year from approval of the last reserved matters application related to that phase and to similarly apply that one year commencement to each of the subsequent phases following approval of reserved matters.

Land Transfers in the s.106 Agreement

78. The appellant is confident that any differences in the wordings of the draft transfers in Appendix 9 of the s.106 Agreement are capable of resolution and would be resolved within the two weeks necessary for the signing of the agreement. The appellant draws attention to the fact that these are draft forms of transfer and that the obligations are to transfer the relevant parcels of land "substantially in the form of" the draft transfers¹⁶. These transfers are not likely to take place for some years and the transfers in due course are unlikely to follow the precise wording upon which issue is being taken.

Network Rail and the Level Crossing

79. Network Rail was consulted through the pre-application consultations with key stakeholders and statutory consultees, and details of this pre-application consultation are provided within the submitted Planning Statement. Further to the submission of the application, a consultation response was received from Network Rail on 6 March 2015¹⁷. Further to the receipt of the consultation response, the appellant provided a response to Network Rail dated 1 April

¹⁵ Condition 6 in the appended conditions schedule

¹⁶ For example clause 5.3(c)(iv)(A)

¹⁷ Core Document 9.1

2015¹⁸, and met with Network Rail on 15 April 2015¹⁹. Network Rail has suggested a contribution towards upgrading the level crossing on Millfield Lane is necessary as a result of the impact of the development. As set out in the appellant's response of 1 April 2015, any s.106 contribution needs to comply with Community Infrastructure Levy (CIL) Regulation 122 and the legal tests for s.106 contributions²⁰.

80. As evidenced in the information provided in the appellant's response of 1 April 2015, the development would not materially affect the operation of the level crossing based on pedestrian and cycle movements. The highest traffic flow at the level crossing in one direction as a result of the development is 245 vehicles in the AM peak, this equates to 4 vehicles a minute, which again would not have a material impact on the operation of the level crossing. Based on the above information, from a highways perspective, there is no necessity to improve the level crossing as a result of the development and therefore any contribution made in this instance would not be CIL compliant. The Council has therefore not requested that the appellant make any contribution towards such improvements, on the basis that they are not necessary. This is recorded in the meeting note of 31 January 2017²¹.

Appellant's Conclusion

81. The proposal before this Inquiry is in full accordance with the only relevant statutory development plan, the Neighbourhood Plan, where it covers the site. In the absence of a development plan for the remainder of the scheme, all material considerations by way of national and local policy point to the need to bring this site forward to achieve the remediation of the land and to provide desperately needed housing in York. The considerable care, attention, and work undertaken by the independent experts that have advised both parties, have led, now, to the parties being in complete agreement on all material matters and so the appeal should succeed.

The Case for the City of York Council²²

Application Background and Current Position

82. At the start of the appeal, the Council objected to the grant of planning permission for this development proposal because it did not provide a suitable secondary school education contribution, there was not an agreed mechanism for providing affordable housing and the lack of a s.106 Agreement meant there was no mechanism to deliver a range of supporting infrastructure. At the commencement of the Inquiry, the appellant agreed that there was no issue regarding the secondary education contribution requirement.
83. Over the course of the Inquiry, considerable work has been done on both sides. This has meant that the main evidence is no longer in dispute, and the areas of

¹⁸ Core Document 17.1

¹⁹ Core Document 17.2

²⁰ That is that the sum is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

²¹ Core Document 17.3

²² INQ29

agreement are set out in the relevant SoCG that now exist in their final form for three areas: planning, viability, and costings. This has also resulted in an agreed approach in the s.106 Agreement with the exception of one remaining matter.

84. The application has seen many alterations and supporting documents. There have also been other planning permissions directly related to the scheme. Thus, it has been a lengthy process to get to an agreement.
85. The main issues were provided in the Council's October 2017 committee report²³, which also set out the extensive range of matters that had required consideration. The outline nature of the scheme has added to complexity and it was necessary to ensure sufficient information was supplied to deal with the Environmental Impact Assessment regime. The lack of detail on floorspace also caused some difficulty in considering other matters such as viability, however, that has been resolved.

Policy Position

86. Turning to Local Plan policy, the Council's position has always been that the redevelopment of the site for housing and associated community infrastructure is supported in principle. An application was always capable of satisfying the policy requirements. As the SoCG notes, the emerging policy continues to support the principle of the proposed development. In particular, emerging Policy SS6 identifies the site as a Strategic Housing Site capable, with the former Manor School site, of delivering approximately 1,200 dwellings, with an appropriate mix of housing, new social infrastructure, educational facilities and green infrastructure, to a high design standard. Moreover, there is no dispute that the correct national and local policies have been identified and applied with regard to the other material points.
87. The Council does not dispute that the presumption in favour of sustainable development set out in paragraph 14 of the Framework applies, because there is an absence of an up-to-date local plan, albeit there is a Neighbourhood Plan, and also because there is no 5-year housing land supply. Again, it is noted that there is a Neighbourhood Plan for part of the site.
88. The Council appreciates that the SoS would want to be informed about the current state of the housing land supply. The current best estimate is that there is between 2.5 and 3.5 years' supply, which has not been disputed. But that is representative of a snapshot in time. The imminent publication of the Regulation 19 draft of the Local Plan means that there will be a plan that is intended to identify sufficient sites to meet the Objectively Assessed Needs in full. There are a number of sites that will be able to be included in the housing land supply figures once that local plan has greater status. The Council does want it noted that it is taking steps to significantly boost the supply of housing land, as sought by the Framework at paragraph 47, through the plan-led process.
89. Further, there is an adopted Neighbourhood Plan that is part of the development plan for the purposes of section 38(6). If it is concluded that there is more than a three-year housing supply, then paragraph 14 of the Framework would not apply to the Neighbourhood Plan and its policies should be treated as up-to-date

²³ Core Doc 19.1

– in the light of the Written Ministerial Statement discussed in the recent *Richborough Estates and others v SoS CLG [2018]* case.

90. It has not been argued that this development is contrary to the Neighbourhood Plan, provided that the necessary mix of housing and the necessary infrastructure for a sustainable community is provided. As regards the part of the site to which it applies, this application can be determined in accordance with the development plan.

Affordable Housing

91. The policy framework regarding affordable housing is provided by the adopted and emerging local planning policy, and by national policy. The requirement to provide affordable housing is also part of the need to provide an appropriate mix of housing types on the site, in accordance with Neighbourhood Plan Housing Policy PNP 6E, the emerging Local Plan and Framework paragraph 50. That is particularly the case when permission is sought to develop a large strategic site such as this. As national policy states, local planning authorities should ensure sites deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities.
92. This is supported by the clear evidence of local need for greater provision of affordable housing as identified in the Strategic Housing Market Assessment (SHMA). Like many planning areas, that evidence of need would support an even greater percentage of affordable housing than is identified in the emerging policy and Supplementary Planning Guidance. The local policy seeks to strike a sensible balance.
93. The Council notes that it is also in line with national policy for the emerging local plan policy to allow for a lower percentage of provision on a brownfield site in recognition of the benefit of encouraging the redevelopment of these sites and of the increased costs that redeveloping such sites involves. As a result, it is expected that there will be a 20% level on a brownfield site. Indeed, the Neighbourhood Plan cross-refers to the emerging local plan on this point.
94. Policies for what proportion of homes should be affordable need to take account of evidence both of housing need and the viability of residential development. This work on viability and deliverability against the policies in the emerging Local Plan will be undertaken to inform the revised Publication Draft Local Plan.

Types and Mix of Housing

95. Proposed new dwellings should comply with relevant national and local policies for the delivery of a mix of housing types including affordable housing, older persons' housing and appropriate dwelling size. The Framework at paragraph 50 seeks that mixed communities should be developed to reflect local demand.

Viability Evidence

96. There is now an agreed mechanism when it comes to the provision of affordable housing in the s.106 Agreement which can be taken into account. The Council considers that the decision-maker can be satisfied that the policy requirements on affordable housing can be met. This is, however, an area where the parties have come to a similar conclusion, but by different routes.

97. There is no dispute that policy also allows for arguments to be made about viability, and that this is consistent with national policy. This may mean that the objective of creating mixed and balanced communities on the site is not met in full in order to enable the development to be deliverable but this is the implicit effect of Framework paragraph 173. If that case is to be made, it is for the developer to show why a reasonable amount of affordable housing cannot be provided on a site. This is not judged with regard to the specific application, but with regard to the hypothetical developer as the Framework states that viability should consider "*competitive returns to a willing landowner and willing developer to enable the development to be deliverable.*"
98. At the beginning of this appeal process, there has been a significant issue about the developer costs that were sought to be included. The Council was not satisfied with what was submitted, as noted in the report to committee²⁴. As matters stand now, the quantity surveyors on each side have scrutinised the figures in detail. They have also drawn on the detailed expertise regarding remediation costs, from AECOM and from Arup. The written evidence demonstrates the amount of work that has been put in, and, as part of this, those costings have changed by an order of some £8.3m when comparing the May 2017 costs within the rebuttal positions. There are now agreed figures in the viability work and, importantly, the proper conclusion that the supporting evidence is robust, as expected by the Guidance. There is also evidence from the viability experts.
99. Thus, a long way has been travelled since the planning committee in October 2017. As the report to committee noted, the applicant had provided a viability appraisal in May 2017. The outcome of that appraisal was that in order to ensure viability the development could not provide affordable housing.
100. Whilst there was discussion about a review, the position originally maintained by the appellant was that the starting point would be a situation where there would be a substantial deficit. By contrast, the District Valuer Service for the Council considered that the benchmark land value was much lower, and the costs were lower, so that that evidence suggested there was a range of affordable housing percentages that could be supported, albeit on original assumptions it was marginal.
101. By January 2018, matters had moved on but in the first Inquiry sitting week the evidence that was that the SoS was being asked to accept a planning obligation that offered a 3% minimum percentage, and an uncertain potential for more through a review, as was reported by the local press. This is different now.
102. As demonstrated at the Inquiry, the Council notes that the site is capable of complying with the policy requirement to include an appropriate level of affordable housing, at 20%, when judged in the light of the improved returns that are likely across the whole development period.
103. The review mechanism is needed to achieve affordable housing. As the Viability Aid included in Appendix 6 of the s.106 Agreement (and clause 17.12) notes, "*The intention of the Viability Review Mechanism is to capture future house price growth and convert this into additional on-site Affordable Housing. It*

²⁴ Core Document 19.1

is acknowledged by the Owner and the Council (hereinafter "the Parties") that as a result of the significant up-front Master Developer costs, which are undertaken over a period of around 5 years, the delivery of Affordable Housing in the early Phases of the Development is difficult to achieve."

104. The worked example the appellant produced²⁵ shows that there is a considerable degree of comfort that the 20% provision can be achieved. There is a considerable degree of profit (or 'super-profit') that can be achieved over and above the level where the site provides the willing developer with an acceptable level of profit (the 20% profit on costs, which is the reward for risk). It is also possible to be more optimistic about greater levels of on-site provision if the development phases occur in a different way, or if the size of the houses is increased.
105. The division between the experts on the benchmark land value does not affect this conclusion. It is important to note the significance of the appellant's revised position to not index the benchmark land value. In effect, the experts agreed that the difference between the Council's position of £7m and the appellant's un-indexed £8m in the review mechanism was not material.
106. Certainly, the position the main parties have reached demonstrates why this is a suitable case for a review rather than just being based on current costs and values in today's circumstances. This scheme requires phased delivery over the medium and longer term, and it falls into the category where changes in the value of development and changes in costs of delivery should be considered as discussed in the Guidance²⁶.

S.106 and Transfer Arrangements

107. One of the greatest uncertainties has concerned the drafting of the planning agreement between the two parties. Leaving aside the point about the transfers, it is confirmed that the Council considers that it does now provide a proper legal mechanism to deal with the delivery of the necessary supporting infrastructure. It can therefore be taken into account in the determination of this appeal.
108. The remaining problem with the draft s.106 Agreement is indeed about substance in that some unacceptable obligations are being sought to be included in the transfers of land to the Council. The substance of them would still be part of the agreement even if the phrasing refers to the final transfer agreements being 'substantially' in the form attached. On the other hand, the Council notes that it is not possible to rely upon broad assertions when transferring land. The formalities of the Law of Property (Miscellaneous Provisions) Act 1989 s.2 apply to the terms of the land transfers (see *Jelson Limited v Derby City Council* [1999] 4 P.L.R. 11). The draft of the transfer agreements do need to be included within the planning obligation. So, if the problem persists, the planning obligations with regard to these points would not be enforceable. If they are unenforceable, it would follow that they cannot be taken into account in this decision, which would mean that there would be outstanding infrastructure problems.

Council's Conclusions

²⁵ J Banks, 2nd supplementary proof

²⁶ Paragraph: 017 Reference ID: 10-017-20140306

109. The Council now considers that the development proposed is sustainable as there is sufficient infrastructure and other mitigation being provided, as is necessary to make the development acceptable in planning terms. As the conclusions in the report to committee note, this is a brownfield, previously developed, site in an urban area. Re-use of such sites and, in particular, to provide housing where there is identified need, is strongly advocated in national planning policy. If the necessary obligations are in place, the appeal scheme would deliver much needed housing. It would also include new community, educational and sports facilities available to the new residents of the development, and accessible to the existing wider community.

The Cases for Others Appearing at the Inquiry

The Case for the Nether Poppleton Neighbourhood Plan Committee made by Mrs Edie Jones

110. Mrs Jones appeared at the Inquiry to reiterate the position in respect of the Neighbourhood Plan being part of the development plan and to identify the key areas and policies of that plan, namely paragraphs 7.5-7.9 and policies PNP 6E. She concluded by confirming support for the development of the site.

Written Representations

Nether Poppleton Neighbourhood Plan Committee

111. The Nether Poppleton Neighbourhood Plan Committee representative, Mrs Edie Jones, wrote explaining that the Neighbourhood Plan was supportive of the scheme but noting that there should be limited access from Millfield Lane because of concerns about the level crossing. Mrs Jones also appeared at the Inquiry as set out above.

Network Rail

112. In response to the appeal notification Network Rail wrote objecting to the proposal on the basis of the impact upon the use of the level crossing on Millfield Lane which has a single arm barrier at each side. Network Rail seeks £50,000 to undertake works at this crossing point.

Environment Agency

113. The Environment Agency responded to the appeal notification setting out a position statement in respect of landfill remediation and permit surrender, explaining that this is a separate matter to planning permission.

Mr Richard Fraiser

114. Mr Fraiser expressed concern about the access along Plantation Drive explaining that it would not be suitable as vehicular traffic thoroughfare.

Written Representations at the Application Stage

External Bodies

115. At the application stage responses were received from the Highways Agency, National Grid, Natural England and Yorkshire Water who raised no objection. The Environment Agency sought conditions. The Internal Drainage Board expressed concern about surface run off rates and crossing the Carr Drain culvert. The Police Architectural Liaison Officer offered advice related to future detailing of the scheme. Network Rail commented as above in its letter responding the appeal notification. Sport England made comments regarding the adequacy of the sports provision, objecting to the loss of existing sports facilities without re-provision. It also expressed concern regarding the delivery of replacement facilities and sought re-consultation on any changes.

Parish Councils

116. The application was supported by Holgate Planning Panel. Nether Poppleton Parish Council did not object to the proposal but made comments regarding traffic and highways, sought that there should be a variety of housing including bungalows within designated zones, and expressed concerns about facilities and the protection of flora and fauna. Rufforth with Knapton Parish Council similarly supported the proposal in general but expressed concern about land levels following reclamation, sought mixing of houses and businesses to improve the development blend, expressed concern about the effect on existing businesses, and on traffic through Millfield Lane. Local Councillors Gilles and Stewart expressed concern about the potential use of Millfield Lane as a 'rat-run' and suggested that at the rail crossing point a bridge or underpass be used. They also sought that the heights of buildings proposed should not threaten views of York Minster.

Local Residents

117. In addition to initial consultation there was re-consultation in January 2017 when the scheme was altered by removing vehicular access from Plantation Drive.

118. Key amongst the responses were concerns about re-profiling of the land behind Langholme Drive which currently has a planted bund along much of the boundary, creating privacy and a verdant outlook. There were concerns raised about publicity for the application and at disruption during remediation and development. Highways and traffic impact concerns were raised as was the potential loss of playing field space and concern regarding drainage.

119. The consultation responses are summarised in the Council's Committee Report²⁷.

Conditions

120. The conditions which were discussed at the Inquiry and deemed to meet the tests of the Framework are set out in Appendix A, along with the reasoning for those conditions. I have amended certain conditions in minor terms so that they comply with the tests. In particular, implementation requirements needed further consideration. In terms of Condition 22, relating to remediation, I have added the need to cease working should unexpected contamination be found until such a time as it has been risk assessed and any necessary remedial works

²⁷ Core Doc 19.1

undertaken. The following conditions, which are addressed in greater detail, are those over which there was no agreement.

121. The first area of dispute between the parties related to the date for submission of the reserved matters for the first phase of development. The Council was concerned that an active start should be made on site as soon as possible so that much needed housing would be promptly delivered. The appellant is, however, much more cautious. Both parties acknowledge that this site is complex and that there are significant works to be undertaken prior to housing being developed on the site because of the need for remediation. The Council sought that the reserved matters for the initial phase would be submitted within 5 years whereas the appellant sought that this would be extended to 7 years.
122. The Council notes that the access through the former Manor School site has planning permission and so can occur independently from the remediation of the former British Sugar site and need not be a reason for delay. The appellant identifies the discharge of conditions, site preparation and remediation, post-remediation monitoring, procurement and off-site infrastructure works as taking some 4 years and 9 months which it considers should elapse before reserved matters are submitted²⁸.
123. Submission of reserved matters does not require the site to be immediately ready for use, although the activity associated with making the site ready for development might have some implications for the precise detail of the reserved matters. Inevitably the process of approving the reserved matters application would take time. The appellant suggests that development should commence on that first phase within 8 years of permission being granted or within a year of the approval of the reserved matters for the phase (whichever is the longer). Whilst that is significantly longer than a typical permission with 3 years for submission of reserved matters and 2 years for commencement, given the remediation complexities and need to co-ordinate the first phase as part of a large site it would not be unreasonable.
124. Further, having undertaken the immense costs of remediating the site, itself a significant environmental benefit, it would be in the owner's (developer's) interests to commence works in order to recoup monies spent. Therefore, they would be likely to bring development forward as soon as practicable and, thus, potentially earlier than the period being sought. On balance, it would be reasonable in this case to set the reserved matters submission deadline at 7 years requiring commencement within 8 years or a year of the approval of the reserved matters for that first phase.
125. The appellant seeks that the reserved matters for all other phases should be submitted within 20 years of the commencement of development and commenced within a year of the approval of the last of the reserved matters in respect of the relevant phase. The same point applies in that it is in the owners' interests to keep up the momentum of development in order to recoup monies. Moreover, there could be many phases over that period and there is nothing to prevent them coming in much earlier. However, once the initial phase and the master-planning elements had been approved, the submission of other reserved matters is likely to involve a greater amount of accord with predetermined

²⁸ INQ25

decisions. Furthermore, it is reasonable to expect delivery on this site, once remediated, at a reasonable pace.

126. The Council seeks a 12 year deadline for the submission of all other reserved matters. However, given the extent of development proposed a longer period would not be unreasonable. That said, 20 years could result in unreasonable delay in delivery and have an impact upon the plan-led system. Given the potential for delay in the approval of reserved matters it would be reasonable to seek details for all other phases to be within 15 years with a year for commencement after the approval of the relevant reserved matters details. This itself exceeds the development timetable which was used to inform the viability appraisal²⁹ which is based on a 12 years and 9 month construction period, but would allow for an amount of slippage.
127. The detailed wording of the gas verification report condition is a matter of disagreement. The appellant would wish to use a standard proforma for each building and to submit those for approval as part of the submission of a report to cover the whole of a phase or parcel of land. However, the health concerns raised by this issue and the potential time period over which the site would be developed are such that rigorous assessment for each building in line with up-to-date best practice, which might well change over the long time span of the proposed development, would be reasonable and necessary. Thus, the proposed condition, whilst revised, follows the intent of the Council's suggestion.
128. Each building would be assessed prior to occupation. The whole site needs to be acceptable prior to construction and this would secure safety for other areas.

Informatives

129. The Council notes that there are a number of points which itself and other parties wish to draw to the attention of the developer of this site should they obtain planning permission. These matters are not matters which should form planning conditions, rather they are matters for guidance and information only. Thus, those items would not form part of a planning permission and have no legal status or enforceability through the planning regime. However, they have been set out in Appendix B for the purposes of keeping those requests in a single location should the SoS or anyone with an interest in the site wish to see them.

Obligations

130. In this case the lack of a s.106 Agreement resulted in the Inquiry and, hence, the new position of there being an agreed and signed s.106 Agreement is of particular significance. As set out above, many of the matters had been broadly agreed, although figures had to be agreed for some of the different commuted sums. The key area where there was particular dispute was the provision of affordable housing. Given the nature of the main issues in respect of this appeal, and to avoid duplication, the provisions of the s.106 Agreement are set out within the Conclusions below. The CIL Compliance Statement and its appendices provides much of the documentary evidence³⁰.

Conclusions

²⁹ INQ26

³⁰ INQ28

[References to earlier paragraphs are set out in square brackets. In addition, two Inquiry Documents are specifically referred to, namely INQ28 the CIL Compliance Statement, and INQ29 the signed s.106 Agreement]

The Main Considerations

131. The main considerations in this case have altered since the Inquiry opened. The main consideration now is whether the s.106 Agreement is capable of delivering the necessary infrastructure and affordable housing. It is also necessary to consider the policy position and the matters raised by other parties. [3-7, 110-119]

The Appeal Proposals - Revised Documentation, Plans and Evidence

132. This appeal is a failure to determine case. The main parties have taken the time since the lodging of the appeal to continue negotiations, as encouraged by the Guidance. The documentation, plans and verbal evidence submitted to address outstanding matters have been provided so as to reduce, and ultimately overcome, the issues between the main parties as part of the appeal process. [3-6, 39-41, 81, 82-83, 109]

133. On balance, it is my view that the amendments proposed, whilst clearly altering the details of the scheme, do not materially alter the nature or scale of the proposed development as a whole. Moreover, I am satisfied that all those with an interest in the application have had sufficient opportunity to examine the revised details before the Inquiry and make their views known. As such, no prejudice would arise as a result of my consideration of the amended scheme, which I shall do. [10-12, 44, 84]

The s.106 Agreement

134. Prior to the commencement of work to build the first dwelling on the development, and prior to the transfer of land for the community uses, the owner is obliged to remediate the land. It is noted full details of remediation and land platform works exist in planning permission 14/02798/FUL. [8]

The Commuted Sums

135. The sums set out are those specified within the s.106 Agreement but it should be noted that these are sums which would be index linked. The main matters are set out below. It has also been clarified by the parties that the CIL Regulation 123(3) limit of 5 obligations being used towards a single scheme would not be breached. This has been further confirmed in the Council's email dated 8 February 2018 submitted to coincide with the submission of the signed s.106 Agreement³¹.

136. CIL Regulation 122(2) makes it clear that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is necessary to make the development acceptable in planning terms; is directly related to the development; and, is fairly and reasonably related in scale and kind to the development. In the reasoning below where the sum or

³¹ INQ30

obligation is identified as CIL compliant it would accord with those Regulation 122(2) tests.

137. The s.106 Agreement obligations below are not in the order of the s.106, rather affordable housing is dealt with first given this was the most contentious matter.

Affordable Housing

138. In 2016 the York Strategic Housing Market Assessment (SHMA) identified that the city had an affordable housing need of 573 homes per annum. That figure significantly exceeds the average 130 affordable homes which are being provided annually. Policy work has identified that a level of 20% affordable housing should be provided on previously developed sites. That is being carried forward in emerging plan Policy H10 and forms the basis of the level of affordable housing being sought on previously developed sites. Given the significant shortfall between supply and demand this appears reasonable. [36, 38, 41, 57, 91-94 also see INQ28, INQ29]
139. Affordable housing provision forms a key planning matter in the s.106 Agreement. This is because the significant remediation costs and size of the site mean that the affordable housing requirement of 20% would not be viable in the initial phases of development. Instead it is proposed that a minimum provision would be made, the 'affordable housing baseline provision' of 3% affordable housing, which would only be reasonable given the scale of development in the longer term. Additional affordable housing would be provided based on the Viability Reassessment evidence for each phase after the first phase. In essence, the uplift value of the site as it goes through remediation and redevelopment would be, in part, captured to provide affordable housing. The affordable housing provision would be capped at 20% of the dwellings on the whole site to reflect the emerging plan policy requirement, which is established from an identified evidence base. [52-72, 96-106]
140. For each reserved matters phase a viability reassessment would need to be submitted by the owner to the Council. Provisions are set out for the submission of that information and its consideration. Appendix 6 of the s.106 Agreement also sets out a Viability Review Template so that there is clarity on the considerations.
141. Prior to each reserved matters phase an affordable housing scheme for that phase would be submitted. This would provide for at least the 3% affordable housing baseline provision and could provide more affordable housing depending on the viability reassessment at each phase. It would provide an affordable housing parking plan, locations, number, size, type and tenure for that phase. No development would commence on the phase until the details had been agreed in writing.
142. Details are set out to ensure that the social housing is only transferred to an Approved Registered Provider and that the provider has to enter into a nomination agreement with the Council. It also sets out the process of housing offers and the steps needed before such housing is disposed of on the open market.

143. The tenure would be a split of 70% social rent 30% discount sale. Affordable housing would be pepper-potted throughout the development, with an exception for whole blocks (for management purposes) provided they are not next to other affordable housing blocks and are not of excessive size. The house sizes for affordable housing would be pro rata with the rest of the development.
144. No more than 65% open market housing would be occupied on a phase until 50% of the affordable housing for social rent and 50% of the affordable housing for discounted sale for that phase had been completed. No more than 90% of the open market housing in any phase would be occupied until 100% of the affordable housing provision had been provided.
145. The worked financial viability model demonstrates a strong likelihood that super profit (i.e. over and above agreed basic profit to the developer) would be created so enabling the additional affordable housing to be financed. The owner may elect to provide more affordable housing in a phase than is identified as viable. This is provided it accords with the affordable housing scheme approved for that phase and that the number of affordable dwellings in any given phase does not exceed 35% of the dwellings in that phase in the interests of providing a mixed and balanced community.
146. The s.106 Agreement sets out three key phase types for viability reassessment; first phase, intermediate phases and final phase.
147. In the first phase, where the viability reassessment determines a residual land value which is in excess of the benchmark land value (which the definitions confirm at no time shall exceed in aggregate the figure of £8m when all viability assessments are taken together) attributable to the net developable area for the first phase, the surplus land value shall be used to provide additional affordable dwellings. These dwellings would be additional to the 3% affordable housing baseline provision. The number of additional dwellings would be up to the cap of 20% with any excess surplus carried forward to the intermediate phase reassessment process. However, if the calculation results in a deficit, that deficit would carry forward to the intermediate phase reassessment process and only the 3% affordable housing baseline provision would be required.
148. In the intermediate phases a similar process would take place. The baseline provision of 3% affordable housing would be provided and any surplus land value would be used to provide affordable housing on the site up to the 20% required for the site (this may be more than 20% of the number being developed in this phase if a deficit exists from the first phase, as is likely) but subject to a cap for that phase of 35%. Although this could have the effect of restricting affordable housing, the review mechanism based on the modelling provided is likely to provide the required 20% across the site. The 35% cap agreed by the parties is to seek to ensure that there are no particular concentrations of affordable housing within the site. This would be in the interests of creating mixed and balanced communities. Taking these factors into account the cap provides a reasonable approach. Again, any further surplus would carry forward into the next reassessment. Similarly, in a deficit situation the deficit would carry forward into the next reassessment and only the baseline 3% affordable housing would be provided.
149. The number of phases has a bearing on how much affordable housing is likely to be delivered on site through the reassessment process. The illustrative

phasing plan, Plan 9 in the Appendix 2 section of the s.106 Agreement, indicates 11 phases of housing development. The evidence to the Inquiry indicated that phasing would be likely to be of this order, thus the likelihood of affordable housing being provided on-site is greater than were phasing to be limited.

150. In the final phase any surplus would be used to provide additional affordable housing to bring affordable housing across the site to 20% but would not exceed 35% in that final phase. Should any further surplus land value exist which exceeds that required to deliver the affordable housing in that final phase a commuted sum would be provided for affordable housing off-site subject to that sum not exceeding the equivalent value of delivering 20% affordable housing across the whole site. Although it would be desirable to deliver all the affordable housing required by the site on-site, it is more important to seek that the requisite 20% funding for affordable housing is captured. The reassessment at each phase of development would be significant in obtaining the greatest opportunity to deliver housing within the site.
151. Thus, the change in position with regard to affordable housing is significant. The scheme is now able to deliver affordable housing from the outset and is likely, but not guaranteed, to achieve a policy compliant 20% affordable housing for the site as a whole. The review mechanism, which is embedded within the s.106 Agreement, is key to the change. The worked example provided in evidence and agreed by the parties suggests that, on reasonable assumption, the 20% affordable housing sought would be delivered. On the evidence before the Inquiry this aspect of the proposal would be CIL compliant and achieve the level of affordable housing sought across the whole site. [96]

Education Provisions

152. The Council has Supplementary Planning Guidance for developer contributions for education (adopted in 2015)³². This matter is also the subject of emerging Local Plan Policy EN6 and the Framework which seeks a positive approach so that there is access to sufficient choice of school places. The development of this site with up to 1,100 dwellings would create significant demand for education facilities for children and young adults across the full school age range. [62(iv), 82]
153. Two pre-schools of 63 spaces each would be provided. The land within the appeal site is specifically identified for this purpose and a marketing strategy is established to obtain pre-school providers to take up the lease or freehold. The pre-school provider would have to be locally or nationally recognised and procured in accordance with guidelines (Appendix 11 of the s.106 Agreement). Lease arrangements are set out in the s.106 Agreement definitions so as to retain these uses and prevent breaks in provision. A Pre-School Education payment for each of the pre-schools of £717,605 would be paid to the Council if the owner elected not to construct the pre-school facilities. This would be CIL compliant.
154. Similarly, a contribution of £23,089 would be paid by the owner to the Council towards the cost of providing the shared access from the public highway to the primary school and community hall land unless the owner undertakes the works.

³² Annex 4 to document INQ28

It would be constructed in accordance with an agreed specification as defined in the s.106 Agreement. This relates to access to necessary community facilities and so would be CIL compliant.

155. Primary Education Payments relate to a 210 place, one form entry, primary school with associated playspace. It would be designed and constructed in accordance with Department of Education standards and be provided on the Primary School Land which is identified as part of the 'shared site' safeguarded for this use. The commuted sum set out is £3,314,899. This is based on an agreed formula adjusted and agreed by both parties' quantity surveyors and a pupil yield of 187 places being paid for by the owner. This would be CIL compliant.
156. Secondary Education would be provided for as an off-site contribution. The contribution would be based on a pupil multiplier of £16,092 per pupil and a requirement of 139 places (some £2,236,788) but would be calculated for each phase and paid for each phase prior to the occupation of dwellings in that phase. The costs have been carefully arrived at considering the Department of Education published data, adjusted to account for time since publication and date of payment, and having regard to the Building Costs Information Service (BCIS) Trade Price Index. This negotiated position at the beginning of the Inquiry has resolved the dispute over secondary education contributions and represents a robust and fair approach. Details are set out in Schedule 2 of the s.106 Agreement. This would be CIL compliant. [INQ28, INQ29]

Community Hall Provisions

157. The Framework places weight on promoting healthy communities. Emerging Local Plan Policy HW2 seeks that new developments provide facilities for future occupiers. The size and type of facility is based on the Sport England Design Note on Village and Community Halls. [4, 36, 115]
158. The proposed community hall (300 sq.m gross internal area) and associated car parking would be supported by a contribution of £643,031 from the owner to the Council. Payment would be due on transfer of the site for the community hall to the Council. The community hall would be for dual community hall/sports hall use and would include a kitchen and toilets and other facilities in accordance with the 'Community Hall Specification' (Appendix 10 of the s.106 Agreement). The payment would be necessary to accommodate the needs of the community arising from the proposed development. There has been detailed assessment of the costs by both parties. The costs involved would be proportionate. The CIL tests would be met.
159. The Community Management Organisation contribution of £268,625 would be to support the organisation appointed by the Council to operate, manage and maintain the community hall in accordance with the Council's aims and objectives. These are set out in Appendix 4 to the s.106 Agreement and include that the asset would be open to the public for at least 500 hours per year, would be used for a variety of purposes and be an asset for the whole community. This relates directly to the hall which would, itself, be required for the community that would result from the development. This would be CIL compliant. [46, INQ28, INQ29]

Sports Provisions

160. In order to mitigate for the loss of the existing facilities an off-site cricket pitch would be provided. This would be provided for by a 'conditions fee' and a commuted sum to establish a facility at Millfield Lane, or by a sum equivalent to the commuted sum, money being spent to upgrade three existing specified local cricket clubs. [46, 115, INQ28, INQ29]
161. The 'conditions fee' of £13,385 to be provided in the Millfield Lane scenario would be paid to the Council to cover the Council's costs in seeking rights, consents, approvals (including planning permission if necessary), works specifications and tendering needed to enable a new cricket ground to be constructed, a survey of the proposed Millfield Lane site to assess its suitability, entering a contract to undertake the required works and producing a detailed specification.
162. Once the cricket ground conditions had been met the Council would serve notice on the owner and a contribution fee of £301,387 would be paid within 28 days of that notice (assumed to be 24 months after the conditions fee) towards the cost of the new standard cricket ground facility at the proposed Millfield Lane site. The cricket ground facility details are set out in the s.106 Agreement definitions and include a natural turf pitch (to include two junior football pitches on its outfield), score box, players' shelter, boundary safety netting, storage, maintenance equipment, fencing and potentially artificial grass/wickets.
163. The alternative approach is for the £301,387 to be used at three identified existing clubs.
164. Either scenario is directly related to the development proposed which results in the loss of an 'existing' (although not in use in recent years due to the site closure) needed community facility in an area (Acomb and Rural West Parishes) where, taken together, there is an identified under-provision of sports facilities. While the alternative provision would be below the target set in the Council's Supplementary Planning Guidance 'Commutated sum payments for open space in new developments – A Guide for Developers' updated in 2014³³, there is also the provision of the community hall facilities and a balanced approach has been taken. On the basis of the proposals Sports England considered that the sport provision would be acceptable. The re-provision costs have been calculated and agreed by the parties and I find no reason to disagree. This would be CIL compliant.

Transport Matters

165. Highway works on the A1237 roundabouts are required to ensure that additional traffic identified in the Traffic Assessment as likely to arise from the proposed development can be accommodated on the road network. More specifically, it is intended that increased flaring would be provided for the northern and southern approaches to the A1237/A59 roundabout and increased flaring would be provided at all four approaches to the A1237/Wetherby Road roundabout. The cost of that work results in a contribution of £282,543 which would be paid prior to the first occupation of any dwelling within the development. This would be CIL compliant.

³³ Annex 5 to document INQ28

166. A contribution of £674,981 would be provided for proposed Sustainable Transport Measures. This relates to Local Bus Revenue Support (£276,405), Local Bus Service Subsidised Travel in the form of Travel Passes (£186,025) and Travel Plans and Planning Improvements (£212,551). These measures have payment triggers related to the number of houses built, the first payment being before any development is commenced, with subsequent payments due before occupation of the 150th, 200th, 300th, 450th and 550th dwelling. These sums would be to encourage use of sustainable transport in line with national and local objectives and best practice. This would be CIL compliant.
167. As identified in the Transport Assessment the development is likely to impact on traffic in Beckfield Lane. As a result a contribution of £300,565 would be provided to resolve this traffic impact by widening the carriageway within Beckfield Lane and undertaking ancillary works to Boroughbridge Road. The sum would be provided before occupation of the 150th dwelling. Again, this would be CIL compliant. [4, 42, INQ28, INQ29]

Strategic Green Infrastructure

168. As part of the s.106 Agreement the owner is required to submit a management scheme at the same time as the reserved matters scheme that would include strategic green infrastructure. The owner would be required to manage and maintain the strategic green infrastructure for the lifetime of the development allowing access by members of the public (other than when specified temporary closures are required) or would offer it to the Council for nil cost and transfer it along with a commuted sum for its maintenance. Those sums are £667,488 for the attenuation areas and £924,471 for the remainder of the area. However, this excludes an area abutting the Tangerine Factory and acoustic barrier. There is uncertainty regarding that area which cannot be resolved at this stage and agreement would have to be reached separately in respect of its scheme and management. Notwithstanding the Tangerine Factory element which needs resolving, the matters agreed would be CIL compliant. [4, 36-38, INQ28, INQ29]

Carr Drain

169. The s.106 Agreement restricts occupation of any dwellings until works have been undertaken to Carr Drain in accordance with an agreed specification. It requires maintenance and remedying of any defects to the drain until such a time as the responsibility for the maintenance of the drain has been transferred to the Council. The Council is obliged to maintain the drain, once transferred, for the lifetime of the development. The works are required so that the housing site is adequately drained. This would be CIL compliant. [115, INQ28, INQ29]

Overall Conclusion on the Obligations under s.106 Agreement

170. As set out above, in each case the commuted sum or works/activities which have been agreed are necessary to make the development acceptable in planning terms, they are directly related to the development proposed and are fairly and reasonably related in scale and kind to the development proposed.
171. Whilst the positive intention is for these sums and works/activities to take place, the remaining issue is whether the s.106 Agreement would deliver what it is intended to achieve.

172. The main matter in this respect of being able to achieve the commitments of the s.106 Agreement relates to the transfer of land arrangements. As identified above in the broadest terms by the Council, the Council had outstanding concerns at the drafting of the s.106 Agreement about some of the requirements of the land transfer arrangements. At that stage the precise nature of those concerns was not disclosed. The s.106 Agreement was subsequently signed by the respective parties and draft transfers at Appendix 9 remain. However, no further comment on the legal position or the position in terms of the draft form of land transfers has been supplied by the Council; rather the Council has signed up to the s.106 Agreement. Clearly this matter is of critical significance to the determination of this appeal as the infrastructure requirements of the site need to be met in the interests of proper planning so as to provide for the needs of the future community which would arise as a result of the development. It is therefore essential that the SoS satisfies himself that the s.106 Agreement would deliver the commuted sums and works it purports to deliver. [INQ28, INQ29]

The Principle of Development

173. There is no issue between the main parties in respect of the principle of developing this previously developed site within the built-up fabric of York for housing and related uses. In addition to both open market and affordable housing the scheme includes provision for education from pre-school through to secondary age so as to serve the needs of future occupiers of the scheme. It would provide a community hall, sports facilities, recreational and open space and a range of transport incentives to increase the uptake of sustainable transport choices. The location is accessible, being in relatively close proximity to the city centre, accessible by bus, with its train service to wider destinations, and all the facilities of a vibrant city. [4-6, 39-40, 45-54, 82-84, 86-90]

174. There is a clear need for housing with the parties agreeing that the current housing land supply for the City of York is in the region of 2.5-3.5 years. Affordable housing is required as part of that mix as are other forms of housing which could be achieved through this outline scheme. [88]

Other Matters

Remediation

175. Remediation of the land would be required before development commences. This is a matter with which the Environment Agency is already engaged through the Environmental Permit regime, having particular regard to controlled waters. Planning conditions would be required to ensure that the land is safe for residential use having regard to human health. Conditions are proposed to ensure that remediation is to an acceptable standard. Separate planning permission exists for this initial phase of work. [8, 42, 53, 109, 113]

Living Conditions

176. Whilst concern is raised at the proposed removal of the bund at the rear of Langholme Drive, it was constructed to protect residents from the industrial use on the site. In contrast, the proposed housing would be for a compatible residential use such that retention of the bund would not be necessary. Precise details of inter-relationships would be determined at the reserved matters stage

and should be able to provide for acceptable living conditions for both existing and future occupiers. Detailed housing design and landscaping plans would be matters for the detailed design stages. [4, 118]

Highways and Transport

177. Issues relating to highway traffic flow would be satisfactorily mitigated by the off-site highway works proposed. Whilst there would inevitably be changes to traffic, the Framework is clear that this should only prevent development where impacts would be severe. The modelling indicates that this would not be the case here and the Council as local highway authority does not object to this aspect of the scheme. This site is in an accessible location and a raft of measures have been addressed through the s.106 Agreement to seek to increase means of transport other than by use of the private car. Moreover, planning permission is now extant for access through the former Manor School site. [4, 19, 39]
178. Whilst some local residents expressed concern about traffic at the outset of the application, the highways evidence is clear that, subject to the capacity and free flow works proposed to the existing highway network, the scheme would provide for acceptable traffic movement. It is notable that general traffic concerns were not raised in any of the letters submitted in response to the appeal notification and the Council, as the local highway authority, is satisfied with the works proposed. [114, 116, 118]
179. The specific concerns raised at appeal stage by the interested parties essentially appear to relate to the movement of traffic on Millfield Lane and along Plantation Drive. The scheme does not propose a vehicular route through Plantation Drive, which was a former secondary access to the Sugar Beet Factory. Rather it would be used as a pedestrian and cycle route to improve accessibility and permeability across the site. As such, the neighbours' concerns would be satisfied by the current details of the scheme which takes the access from Boroughbridge Road over the former Manor School site and Millfield Lane. [114]
180. In terms of Millfield Lane, there would be a change to traffic flows because of the proposed access. However, the traffic modelling and highways works are such that there would be no reason to resist the scheme on the basis of highway free-flow or safety. There would be additional traffic along Millfield Lane and this is likely to be noticeable in terms of general background noise and disturbance in part because it will have been quieter in terms of activity since the former school and industrial operations ceased use. Millfield Lane is restricted in terms of through traffic to the industrial/commercial areas beyond the railway line and crossing which limits some traffic movement. Moreover, the traffic levels, types and likely main hours of activity for the proposed residential use would not justify withholding planning permission because of disturbance to occupiers of dwellings on Millfield Lane. [4, 109]

Network Rail Commuted Sum Request

181. Network Rail has sought £50,000 towards works at the Millfield Lane level crossing. This is for vehicle-activated signage either side of the crossing (up to £30,000) and anti-skid surfacing and re-application of thermoplastic lining (up to

£20,000). However, it does not justify why this sum is sought in terms of mitigating the effects of the proposed development. [112]

182. The access along Millfield Lane towards the industrial estate is restricted to buses only. At the site visit it was apparent that this restriction is currently enforced using cameras. It is intended that this restriction would remain in place. As such, it is unlikely that the change to vehicular traffic flow over and above that accounted for in the highway modelling would arise. Thus increased vehicular traffic would not justify a commuted sum. Whilst there might be some increase in pedestrian or cycle use linking to the commercial uses in the Millfield Lane industrial estate, or possibly additional bus use, no evidence has been supplied to justify the works. On this basis the figure sought is not justified in terms of being necessary or reasonably related to the development proposed and so it would not comply with the Community Infrastructure Levy Regulations.

183. Therefore, the request of Network Rail has been considered but, on the evidence before me, I share the views of the main parties that it has not been adequately justified and the lack of the contribution sought is not a matter to which I shall attach weight in the planning balance. [79, 112]

Drainage

184. The functioning of the Carr Drain is a matter that has been raised as being of concern. Drainage and run-off rates would be a matter for the planning conditions and the easement associated with the drain is proposed to form part of the green infrastructure. Adoption of the Carr Drain is a matter dealt within the s.106 Agreement.

185. Wider drainage related to the site would be covered by the requirements of conditions. It is not for the appeal proposal to resolve other issues beyond the site although it should not exacerbate them and may well remedy other issues.

186. The Internal Drainage Board has reviewed its position since the consultation on this proposal and now confirms consent for the drainage proposals³⁴. As such, the drainage associated with Carr Drain would be acceptable. [115]

Building Heights

187. A heights parameter plan has been agreed to protect important views, including to York Minster, and sensitive locations such as alongside Langholme Drive and the bee bank SINC (see below). [4]

Ecology

188. The appeal site has acknowledged areas of ecological importance. In particular, the bee bank Site of Importance for Nature Conservation (SINC) would be protected with a buffer and accommodated within the development so that there would be no loss of irreplaceable habitat. A Biodiversity Management Plan to account for that buffer, amongst other things, and conditions relating to other species including bats, would be necessary were the development to proceed. [4]

Planning Policy

³⁴ IDB letter dated 19 September 2017

189. The precise extent of housing supply has not been an issue in this Inquiry. Suffice to say it has been agreed that the housing land supply position is in the region of 2.5-3.5 years. If the housing land supply were above 3 years the Written Ministerial Statement³⁵ clarifies that the Neighbourhood Plan, as part of the development plan, should not be considered out-of-date. The Neighbourhood Plan covers part of the site's area and supports the scheme. Thus the development would be supported by paragraph 14 of the Framework in that this sets the presumption in favour of sustainable development and for decision-taking establishes that this means approving development proposals that accord with the development plan without delay. [26, 40, 45-58, 86-90, 110-111]
190. However, were the housing land supply less than 3 years there would be no up-to-date development plan policy and the scheme would fall to be determined in terms of the Framework and particularly paragraphs 49³⁶ and 14. Again, in principle this would support the scheme, a matter which is not in dispute, because where the development plan is absent, silent or relevant policies are out-of-date 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 that development should be restricted, a matter which is not claimed here.
191. Thus, whether or not the housing land supply exceeds 3 years is not of material importance in the circumstances of this case. Rather, the Neighbourhood Plan as the development plan, the Framework and emerging policy support the principle of this development.
192. Simply, if the scheme is acceptable with the conditions and s.106 Agreement it should be allowed. If the development is unacceptable by virtue of inadequacies in the scheme, particularly the s.106 Agreement, to the extent that the adverse impacts would significantly and demonstrably outweigh the benefits, it would fail to accord with the Framework. It would also fail to accord with the policies of the Neighbourhood Plan which requires, through Housing Policy PNP 6E, a mix of housing types, provision of amenities, outdoor sport and recreational facilities, amongst other things. [30]
193. The emerging plan is a document which can only be afforded limited weight. Nonetheless, it is intended to be a Framework compliant document and, insofar as it sets general development management guidelines the parties agree that the scheme would comply with its policies. Although this of itself can only carry limited weight, it indicates that development management matters relating to the site, in as much as they are identified in an outline scheme, have been considered and found acceptable and there is no evidence to dispute that conclusion. [32]

³⁵ 12 December 2016 (which was subsequently incorporated into the Guidance) and raised in the *Richborough Estates and others v SoS CLG* [2018] case.

³⁶ Paragraph 49: Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

194. Moreover, the outline scheme provides enough information to enable determination.
195. Insofar as there are other development plan policies in place, the scheme is policy compliant in that it accords with the Neighbourhood Plan, a matter which the Neighbourhood Plan Committee took time to make sure was clear. [110-111]

Benefits of the Scheme

196. I concur with the position established by the main parties in the final SoCG that the appeal scheme proposes a major development of a former factory site which would deliver much needed housing. This would include affordable housing. [40, 52]
197. The development would enable the positive and beneficial reuse of a previously developed brownfield, but currently unused, site, in accordance with the overarching planning policy objective of re-using previously developed land. [42, 53]
198. The appeal site is in a highly accessible location where transport measures and services would enable a reduced reliance on the private car. [19, 24]
199. Provided that the s.106 Agreement is enforceable the proposed new community, educational and sports facilities would be available to the new residents of the development and be accessible to the existing wider community. The community and educational facilities are located such as to be easily accessible to both the new and existing population. This would support social integration of the new community of the proposed development and wellbeing of the proposed and established community. [4, 6]

Planning Balance

200. Paragraph 14 of the Framework sets out the approach to establishing a planning balance.
201. In circumstances where the development plan is absent, silent or relevant policies are out-of-date 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. In this case, provided that the s.106 Agreement is enforceable, the main parties agree, and I concur, that there are no adverse impacts which would significantly and demonstrably outweigh the benefits of the proposed development. However, should the s.106 Agreement be unable to deliver the essential infrastructure and affordable housing provisions that position would be reversed.
202. Given the housing land supply position and the development plan status of the Neighbourhood Plan, it might be possible to conclude that the development plan is not out-of-date, resulting weight being attached to the Neighbourhood Plan which covers part of the site. However, in doing this there would be accord with the development plan subject to the s.106 Agreement being able to deliver the necessary infrastructure and affordable housing. Thus the outcome would be the same.

Recommendation

203. On the basis of the forgoing, it is recommended that the appeal be allowed, and planning permission granted subject to conditions and a satisfactory s.106 Agreement. In making his decision the Secretary of State should satisfy himself that the s.106 Agreement will secure the matters it covers but with particular regard to whether or not the draft land transfer arrangements as set out in the signed s.106 Agreement impact upon the enforceability of the planning obligations set out in that s.106 Agreement. [107-108]

Zoë Hill

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Rhodri Price Lewis QC assisted by Andrew Byass
both of Landmark Chambers, 180 Fleet Street, London
Instructed by Addleshaw Goddard LLP, Milton Gate, 60 Chiswell Street, London

He called:	
Mr Colin Eldridge BSc (Hons) MRICS	Project Director AECOM Limited, Bridgewater House, Manchester
Mr James Charles Banks FRICS	Consultant of Rapleys, 51 Great Malborough Street, London
Mr Robert Clarke Ba(Hons)DipTP MSc MRTPI	Senior Partner and Head of Town Planning of Rapleys, 51 Great Malborough Street, London

FOR THE APPELLANT:

William Upton of Counsel
Instructed by the City of York Council

He called:	
Jane Healy Brown BA(Hons)(Oxon) MA FRICS	Associate Director, ARUP
Mr Alex Hargeaves BSc(Hons) MRICS	Associate Director, Turner and Townsend
Mrs Cecilia Reed BSc(Hons) MRICS	Principal Surveyor and RICS Registered Valuer, DVS, Valuation Office Agency

INTERESTED PERSONS:

Mrs Edie Jones on behalf of
Nether Poppleton
Neighbourhood Plan Committee

INQUIRY DOCUMENTS (Submitted at the Inquiry)

- INQ1 Appearances for the Appellant
- INQ2 Appearances for the Council with Plans and Documents Update List
- INQ3 Cecilia Reed Addendum to Proof of Evidence
- INQ4 Alex Hargreaves Addendum Update
- INQ5 Colin Eldridge Rebuttal with Cost Estimate Statement of Common Ground dated 11 January 2018 and National School Delivery Costs Benchmarking as appendices
- INQ6 James Charles Banks Rebuttal with Development Appraisal 100% Private Proposed Scheme dated 12 January 2018
- INQ7 Statement of Common Ground for Planning dated 14 December 2017 with City of York Council Update of 12 January 2018 and

- Draft Conditions List
- INQ8 British Sugar Masterplan 9 January 2018 Cost Estimate Statement of Common Ground (n.b. update of 11 January 2018 – see INQ5 above)
- INQ9 Development Assumptions Draft Statement of Common Ground Development Inputs and respective positions of the main parties dated January 2018
- INQ10 Draft s.106 Agreement
- INQ11 s.106 summary as at 15 January 2018
- INQ12 CIL Compliance Note by the City of York Council dated January 2018
- INQ13 Opening Submissions on Behalf of the Appellant
- INQ14 Opening Submissions on Behalf of the City of York Council
- INQ15 Report to the Local Plan Working Group for 23 January 2018
- INQ16 Summary of Changes to York Local Plan as Relevant to the Proposed Development on the Former British Sugar Site
- INQ17 Secondary School Place Costs Multiplier for Developers' Section 106 Education Contribution
- INQ18 Supplementary Proof of James Banks with Appendices (a) Updated Statement of Common Ground (b) e-mails regarding costs (c) Updated Overview from British Sugar (d) copy of INQ17
- INQ19 Draft Conditions List (annotated 14.1.18 16:41)
- INQ20 Response to Inspector Questions including Neighbourhood Plan Area Map
- INQ21 Potential Changes to Policy Post Pre-Publication Consultation (see INQ15)
- INQ22 Draft s.106 Agreement
- INQ23 Report on the Planning Agreement (INQ22) by Addleshaw Goddard
- INQ24 Revised Draft Conditions
- INQ25 Council's Comments on Revised Draft Conditions (INQ24)
- INQ26 Second Supplementary Proof – Mr James Charles Banks
- INQ27 Signed Statement of Common Ground
- INQ28 CIL Compliance Statement with appendices
- INQ29 Closing Submissions for the Council
- INQ30 Closing Submissions for the Appellant

INQUIRY DOCUMENTS (Submitted after the Inquiry had sat but prior to it being closed)

- INQ31 The Completed s.106 Agreement
- INQ32 Email from the Council dated 8 February 2018
- INQ33 Bundle of email correspondence relating to the submission of the Draft Local Plan to the Secretary of State for examination

CORE DOCUMENTS

National Planning Policy and Guidance

- 1.1 National Planning Policy Framework (March 2012)
- 1.2 Planning Practice Guidance (launched March 2014)
- 1.3 Manual for Streets March 2007
- 1.4 Building for Life 12 January 2015
- 1.5 Viability Testing Local Plans: Advice for Planning Practitioners, Local Housing Delivery Group (Harman Report) June 2012
- 1.6 The RICS Guidance Note: Financial Viability in Planning (First Edition) August 2012 (FVIP)

- 1.7 Department for Communities and Local Government (DCLG)
Guidance: S106 Affordable Housing Requirement, Review and Appeal
April 2013
The Development Plan
- 2.1 The Upper and Nether Poppleton Neighbourhood Plan October 2017
Documents Approved for Development Control Purposes
- 3.1 City of York Draft Local Plan (incorporating the 4th set of changes,
April 2005) and Proposals Map
Emerging/Draft Local Plan Documents
- 4.1 City of York Local Plan Preferred Options June 2013 and Proposals
Map
- 4.2 City of York Local Plan Preferred Sites Document July 2016
- 4.3 City of York Local Plan Pre-Publication Draft September 2017
- 4.4 City of York Local Development Scheme
**Supplementary Planning Guidance and Evidence Base
Documents**
- 5.1 City of York Draft Former British Sugar/Manor School Site
Supplementary Planning Document April 2012
- 5.2 City of York Affordable Housing Planning Guidance – Interim Targets
2013
- 5.3 York Affordable Housing Advice Note 2013
- 5.4 Strategic Housing Market Assessment 2016
- 5.5 Sustainable Design and Construction Interim Planning Statement
(IPS) Addendum 2007
- 5.6 Developer Contributions to Education and Facilities SPD (2005/06)
- 5.7 Commuted Sum Payments for Open Space in New Developments
Advice Note – A Guide for Developers (2014)
- 5.8 City of York Strategic Flood Risk Assessment Revision 2 March 2013
- 5.9 York Biodiversity Action Plan for Life (2013)
- 5.10 City of York Statement of Community Involvement December 2007
- 5.11 City of York Statement of Community Involvement December 2007
- 5.12 Education Supplementary Planning Guidance Update V4 (2015)
- 5.13 Open Space and Green Infrastructure (Amec) 2014
- 5.14 Open Space and Green Infrastructure Update (2017)
- 5.15 Strategic Housing Market Assessment Update (2017)
- 5.16 Local Plan and CIL Viability Assessment (2017)
**Representations Submitted on behalf of ABF/British Sugar to
Planning Policy Documents**
- 6.1 Rapleys Representations to British Sugar Draft Supplementary
Planning Document 8 November 2010
- 6.2 Rapleys Representations to former British Sugar/Manor School Draft
Supplementary Planning Document Consultation Draft January 2011
- 6.3 Rapleys Representations to York Core Strategy Submission
(Publication) November 2011
- 6.4 Rapleys Representations to York Local Plan Preferred Options July
2013
- 6.5 Rapleys Representations to City of York Plan Further Sites
Consultation July 2014
- 6.6 Rapleys Representations to Draft Poppleton Neighbourhood Plan
October 2016
- 6.7 Rapleys Representations to Local Plan Pre-Publication Draft
September 2017

The Application Submission February 2015

- 7.1 Application covering letter dated 26 February 2015
- 7.2 Planning Application forms, notices and certificates dated 26 February 2015
- 7.3 Planning Statement (including Section 106 draft Heads of Terms, Open Space Statement and Affordable Housing Statement) dated November 2014
- 7.4 Design and Access Statement, AECOM dated February 2015
- 7.5 Parameters and Design Principles Document, AECOM dated February 2015
- 7.6 Environmental Statement 2014 Volume 1
- 7.7 Environmental Statement 2014 Volume 2 Technical Appendices
- 7.8 Environmental Statement 2014 Volume 3 Non Technical Summary
- 7.9 Environmental Sustainability Statement, URS November 2014
- 7.10 Supplementary Environmental Statement February 2015 and updated Technical Appendices, by Rapleys and others
- 7.11 Statement of Community Involvement, Rapleys dated November 2014

The Application Drawings February 2015

- 8.1 Topographical Survey (1112/112 – 1112/116)
- 8.2 Outline Planning Application Boundary (04043)
- 8.3 Parameter Plan – Access and Movement (04035 Revision A)
- 8.4 Parameter Plan – Development Zones and Land Uses (04037)
- 8.5 Parameter Plan – Green Infrastructure (04036 Revision A)
- 8.6 Parameter Plan – Urban Framework and Building Height (04038)
- 8.7 Landscape Structure Plan (04040)
- 8.8 Site Development Section Plan (04031)
- 8.9 Site Development Sections (04041)
- 8.10 FMS Link Road and Main Street Alignment (P-026 Revision H)
- 8.11 Millfield Lane and Main Street Junction Alignment (60037229-P-029)
- 8.12 Proposed A59/Millfield Lane Junction Improvement and FMS Link Road (60037329-P-20 Revision K)
- 8.13 FMS Link Road and Main Street Cross Sections (60037229-P-027 Revision C)
- 8.14 Illustrative Masterplan (04039 Revision A)
- 8.15 Illustrative Masterplan Constraints Overlay (04047)
- 8.16 Quantum of Development Schedule

Statutory Consultation Comments

- 9.1 Network Rail consultation response dated 6 March 2015

Formal Amendments to Outline Application January 2017

- 10.1 Cover letter dated 12 January 2017 and:
- 10.2 Schedule of Amendments January 2017
- 10.3 Outline Planning Application Boundary Plan (04034 Rev C)
- 10.4 Parameter Plan Access & Movement (04035 Rev H)
- 10.5 Parameter Plan Green Infrastructure (04036 Rev H)
- 10.6 Parameter Plan Development Zones (04037 Rev H)
- 10.7 Parameter Plan Building Heights (04038 Rev H)
- 10.8 Illustrative Masterplan (04039 Rev J)
- 10.9 Landscape Structure Plan (04040 Rev B)
- 10.10 Site Development Sections (04041 Rev C)
- 10.11 Illustrative Masterplan Constraints (04047 Rev A)
- 10.12 DTA Main Street Alignment (17424 21 Rev O)

- 10.13 DTA Boroughbridge Road Access (17424 22 Rev D)
- 10.14 DTA Millfield Lane Access (17424 26)
- 10.15 DTA Main Street Cross Sections (17424 33)
- 10.16 Parameters and Design Principles Document (Incorporating Supplementary Information) December 2016
- 10.17 Design and Access Statement (Incorporating Supplementary Information) December 2016
- 10.18 ES Non Technical Summary January 2017
- 10.19 ES Supplementary – Main Text Volume 1 January 2017
- 10.20 ES FRA and Drainage Strategy Technical Appendix 8.1b January 2017
- 10.21 ES Transport Assessment Addendum Technical Appendix 10.1 January 2017
- 10.22 ES Travel Plan Technical Appendix 10.2a January 2017
- Formal Amendments to Outline Application May 2017**
- 11.1 Cover email dated 10 May 2017 and:
- 11.2 DTA Main Street Alignment (17424 21 Rev AA)
- 11.3 DTA Boroughbridge Road Access (17424 22 Rev F)
- 11.4 DTA Millfield Lane Access (17424 26 Rev A)
- 11.5 DTA Main Street Cross Sections (17424 33 Rev A)
- 11.6 AECOM Soft Landscape Design (60531863 BS LS 001 Rev G Sheet 1)
- 11.7 AECOM Soft Landscape Design (60531863 BS LS 002 Rev B Sheet 2)
- 11.8 AECOM Soft Landscape Design (60531863 BS LS 003 Rev E Sheet 3)
- 11.9 Green Infrastructure Phasing Plan (05001)
- 11.10 Arboricultural Method Statement May 2017
- Formal Submission to Outline Application August 2017**
- 12.1 Cover email dated 8 August 2017 and:
- 12.2 Arboricultural Method Statement 8 August 2017
- Formal Submissions and Amendments to Outline Application September 2017**
- 13.1 Cover email 7 September 2017 and:
- 13.2 Construction Environment Management Plan V1.2
- 13.3 Cover email 27 September 2017 and:
- 13.4 Main Street Alignment 17424 41 Rev H (1 of 3, 2 of 3 and 3 of 3)
- 13.5 Main Street Alignment 17424 41 Rev H 12M Bus Vehicle Tracking (new plan)
- 13.6 Main Street Alignment 17424 41 Rev H 60M Forward Visibility Splays (new plan)
- 13.7 Main Street Cross Sections 17424 33 Rev C
- 13.8 Main Entrance Soft Landscape Design – 60531863_BS_LS_004 Rev H
- 13.9 Carriageway 1 Soft Landscape Design – 60531863_BS_LS_006 Rev E
- 13.10 Carriageway 2 Soft Landscape Design – 60531863_BS_LS_007 Rev D
- 13.11 Carriageway 3 Soft Landscape Design – 60531863_BS_LS_008 Rev F
- Formal Amendments to Outline Application October 2017**
- 14.1 Cover email 4 October 2017 and:
- 14.2 Outline Planning Application Boundary Plan ref: 04034 Rev D
- 14.3 Green Infrastructure Phasing Plan ref: 04087 Rev C
- 14.4 2 no. cover emails 12 October 2017 and:
- 14.5 Main Street Alignment ref: 17424-41 Rev I (1 of 3)
- 14.6 Main Street Cross Sections 17424-33 Rev D

- 14.7 Main Street Draft Adoption Plan 17424-42 Rev A (submitted informally)
- 14.8 Main Entrance Soft Landscape Design ref: 6053186_BS_LS_004 Rev J (submitted informally)
- 14.9 Parameter and Design Principles Document October 2017 Rev H
Formal Amendments to Outline Application November 2017
- 15.1 Cover email 22 November 2017 and:
- 15.2 Parameter and Design Principles Document November 2017 Rev L
- 15.3 Cover email 24 November and:
- 15.4 Parameter and Design Principles Document November 2017 Rev M
Formal Amendments to Outline Application December 2017
- 16.1 Cover emails 30 November and 4 December 2017 and:
- 16.2 Parameter Plan Access and Movement (04035 Rev N)
- 16.3 Parameter Plan Green Infrastructure (04036 Rev M)
- 16.4 Parameter Plan Development Zones and Land Uses (04037 Rev M)
- 16.5 Parameter Plan Urban Framework and Building Heights (04038 Rev M)
Post Submission Correspondence (as relevant) with the Local Authority and other Parties
- 17.1 Rapleys response to Network Rail dated 1 April 2015
- 17.2 Rapleys Note of Meeting held with Network Rail 15 April 2015
- 17.3 Rapleys Note of Meeting with Local Authority dated 31 January 2017
- 17.4 Correspondence from Internal Drainage Board (removing objection to the proposed discharge of surface water into the Carr Drain watercourse) dated 31 October 2017
- 17.5 Local Authority's email 17 November 2017 providing estimated costs for the green infrastructure maintenance contribution
Decision Notices
- 18.1 FMS Link Road and Principal Accesses ref: 17/01072/FULM
- 18.2 Original Full Application ref: 14/02798/FULM
Committee Report
- 19.1 Committee Report for Outline Application ref: 15/00524/OUTM
- 19.2 Minutes for Outline Application ref: 15/00524/OUTM
Conditions Schedule
- 20.1 Draft Outline Conditions Schedule 20 November 2017
S106
- 21.1 Draft S106 Agreement 14 November 2017
Viability Appraisal
- 22.1 Affordable Housing and Viability Position Statement September 2017, submitted 8 September 2017
Appeal Decisions
- 23 APP/C2741/V/14/2216946
APP/C2741/W/16/3149489
APP/Z5630/W/16/315298
- 24 **Additional Plans**
- 24.1 Email 20 December 2017 regarding Open Space Typologies
- 24.2 Parameter Plan – Green Infrastructure
- 24.3 Design and Access Statement 2018
- 24.4 Contour Plans linked to Design and Access
- 24.5 Update Phasing Plan (Revision H)
- 24.6 Tangerine Landscaping Plan and associated email

Appendix A – Conditions Schedule APP/C2741/W/17/3177821

- 1) Approval of the details of the access, layout, scale, design and external appearance of each phase of the development (as identified on the illustrative phasing plan ref 04081 Rev H) hereby permitted and the landscaping (excluding strategic green infrastructure – see condition 2) within the phase ('the reserved matters') shall be obtained in writing from the local planning authority before that development is commenced within that phase. The development shall be carried out in accordance with the approved details.

REASON: To comply with Article 5 of the Town and Country Planning (Development Management Procedure Order 2010).

- 2) Prior to, or at the same time as, the submission of the first reserved matters application, a Masterplan for the approved green infrastructure, identifying the distribution of green infrastructure typologies across the site, in accordance with the illustrative typologies as identified on the approved green infrastructure parameter plan ref 04036 Rev N, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Masterplan.

REASON: To ensure that there is adequate infrastructure to cater for the development, interests of the amenity of future occupants, good design and so that the impact on biodiversity (in particular the bee bank SINC) and the amenity of the surrounding area is as assessed within the application in accordance with paragraphs 58 and section 8 of the National Planning Policy Framework.

- 3) Prior to, or at the same time as, the submission of the first reserved matters application, details of foul and surface water drainage, from the phase boundaries to the site outfall, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Details must include:

- a) A plan detailing the phasing of the installation of the drainage scheme.
- b) Proposals for the inclusion of SuDS features in accordance with the SuDS Manual Version 5 including errata 2016 or any subsequent published evidence on the matter.
- c) Plans to demonstrate that there will be no surface run-off from the site in a 1:100 year storm (+ 20% allowance for climate change) and that run-off from the site will not have an adverse effect on existing properties.
- d) Cover and invert levels to Ordnance Datum of the drainage proposals for the new development.
- e) Computer modelling of the surface water attenuation to accommodate the 1:30 year storm and proposals to accommodate the flood volumes above the 1:30 year storm up to the 1:100 year + 20% climate change storm.
- f) The flow control chamber limiting the surface water to the 43.2 l/s/ha.

- g) The drainage discharge point.
- h) The assumptions and design limitations to be applied to the drainage design of each development plot.

REASON: To ensure proper drainage of the site and so that there is no increase in flood risk elsewhere, in accordance with paragraph 103 of the Framework.

- 4) An Outline/Master Biodiversity Management Plan for the site shall be submitted to and approved in writing by the local planning authority prior to, or at the same time as, the submission of the first reserved matters application. The content of the plan shall be in accordance with the scope set out in BS 42020:2013 or any document replacing that document.

A Biodiversity Management Plan (BMP) for each phase shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved BMP.

REASON: To take account of and enhance the biodiversity and wildlife interest of the area, and comply with Section 11 of the Framework.

- 5) Application(s) for approval of the reserved matters for any development within the first phase to be bought forward ('the initial phase') of the development hereby permitted shall be made to the local planning authority before the expiration of 7 years from the date of this permission.

REASON: To allow for remediation of the site and associated monitoring and to comply with Section 92 of the Town and Country Planning Act 1990 and to prevent an accumulation of unimplemented planning permissions.

- 6) The initial phase of the development hereby permitted shall be begun either before the expiration of 8 years from the date of this permission, or before the expiration of 1 year from the date of approval of the last of the reserved matters to be approved in respect of the development within that phase, whichever is the later.

REASON: To comply with Section 92 of the Town and Country Planning Act 1990 and to prevent an accumulation of unimplemented planning permissions and allowing for the remediation of the site under planning permission reference (14/02798/FULM).

- 7) Application(s) for approval of the reserved matters in respect of the development within each phase other than the initial phase of the development hereby permitted shall be made to the local planning authority before the expiration of 15 years from the date of this permission.

REASON: To comply with Section 92 of the Town and Country Planning Act 1990 and to prevent an accumulation of unimplemented planning permissions.

- 8) Each phase of the development hereby permitted shall be begun before the expiration of 1 year from the date of approval of the last of the reserved matters to be approved in respect of the development within that phase.

REASON: To comply with Section 92 of the Town and Country Planning Act 1990 and to prevent an accumulation of unimplemented planning permissions.

- 9) Plans and particulars submitted for any development pursuant to Condition 1 above shall include the following details:
- a) the layout, specification and construction programme for (i) any internal access roads including details of horizontal and vertical alignment, (ii) footpaths, (iii) parking, turning and loading/unloading areas (including visibility splays), (iv) cycleways and parking areas, (v) cycle storage facilities and (vi) access facilities for the disabled, (vii) individual accesses;
 - b) the positions, design, materials and type of boundary treatment (including all fences, walls and other means of enclosure) to be provided;
 - c) details for all hard landscaped areas, footpaths and similar areas, including details of finished ground levels, all surfacing materials;
 - d) contours for all landscaping areas together with planting plans and schedules of plants, noting species, sizes and numbers/densities, details of all trees, bushes and hedges which are to be retained (as informed by an arboricultural survey) and a written specification for the landscape works including a programme for implementation, cultivation and other operations associated with plant and grass establishment);
 - e) details of compliance with the principles set out in the Parameters and Design Principles Document design parameters plan as approved pursuant to Condition 10; and
 - f) lighting to roads, footpaths and other public areas.

REASON: To accord with the principles of Section 7 of the Framework.

- 10) The development hereby permitted shall be carried out in accordance with the following plans and reports: -
- Parameters and Design Principles Document (PDPD), AECOM November 2017 Rev M (24.11.17)
 - Outline Planning Application Boundary Plan 04034 Rev D (4.10.17)
 - Parameter Plan – Access and Movement (04035 Rev N) (4.12.17)
 - Parameter Plan – Green Infrastructure (04036 Rev N) (2.1.18)
 - Parameter Plan – Development Zones and Land Uses (04037 Rev M) (30.11.17)
 - Parameter Plan – Urban Framework and Building Heights (04038 Rev M) (30.11.17)
 - Illustrative Phasing Plan ref 04081 Rev H (2.1.2017)
 - DTA Main Street Alignment 17424-41 Rev I (1 of 3) (4.10.17)
 - DTA Main Street Alignment 17424-41 Rev H (2 of 3) (7.9.17)
 - DTA Main Street Alignment 17424-41 Rev H (3 of 3) (7.9.17)
 - DTA Main Street Cross Sections (17424 33 Rev D) (12.10.17)
 - DTA Main Street Alignment 17424 41 Rev H 12M Bus Vehicle Tracking (7.9.17)
 - DTA Main Street Alignment 17424 41 Rev H 60M Forward Visibility Splays (7.9.17)
 - Main Entrance Soft Landscape Design – 60531863_BS_LS_004 Rev J (10.10.17)
 - Carriageway 1 Soft Landscape Design – 60531863_BS_LS_006 Rev E (7.9.17)
 - Carriageway 2 Soft Landscape Design – 60531863_BS_LS_007 Rev D (7.9.17)

- Carriageway 3 Soft Landscape Design – 60531863_BS_LS_008 Rev F (7.9.17)
- Landscaping for bund around Tangerine - Bund soft landscaping design 60531863_BS_LS_009
- Construction Environment Management Plan V1.2 (7.9.17)
- Arboricultural Method Statement August 2017 (8.8.17)
- Design and Access Statement January 2018
- Detailed Application Proposed Layout Levels - FBSS-URS-XX-XX-DR-CE - 00602 P5
- Detailed Application Cross Sections 1 of 3 - FBSS-URS-XX-XX-DR-CE - 00605 P5
- Detailed Application Cross Sections 2 of 3 - FBSS-URS-XX-XX-DR-CE - 00606 P5
- Detailed Application Cross Sections 3 of 3 - FBSS-URS-XX-XX-DR-CE - 00607 P5

REASON: For the avoidance of doubt and to ensure that the development is carried out only as approved by the local planning authority.

- 11) The following details relating to the Main Street shall be submitted to and approved in writing by the local planning authority prior to each phase of construction of the Main Street (as identified in Condition 17):
- a) the layout and specification for the road including details of surfacing materials, junctions (including visibility splays), crossing points, bus stops, street furniture, and lighting;
 - b) details of the interim construction and specification of the Main Street surfacing to be incorporated during construction of the development hereby approved; and
 - c) details of compliance (where applicable) with the principles set out in the Parameters and Design Principles Document as approved pursuant to Condition 10.

The development of the Main Street shall be carried out in accordance with the approved details.

REASON: To accord with the principles of Section 7 of the Framework.

- 12) Prior to demolition, ground works, or vegetation clearance commencing, a Biodiversity Protection Plan relating to the British Sugar Railway Sidings Site of Importance for Nature Conservation (SINC) must be submitted to and approved in writing by the local planning authority. The content of the plan shall include the measures set out in the Environmental Statement dated November 2014 paragraphs 11.165 & 11.166 (specifically referring to the British Sugar Railway Sidings SINC). Development shall be carried out in accordance with the approved Biodiversity Protection Plan.

REASON: Details are required prior to commencement to allow for the protection of a designated SINC and to take account of and enhance the biodiversity and wildlife interest of the area, and comply with Section 11 of the Framework.

- 13) No ground works shall commence within the former Manor School site and the British Sugar car parking area (at the south east end of the site as annotated on

Figure 7 in the Desktop Assessment by OSA, dated May 2007) until the implementation of a programme of archaeological work has been secured (a watching brief on all ground works by an approved archaeological unit) in accordance with a specification which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

REASON: The site lies within an Area of Archaeological Importance and the development will affect important archaeological deposits which must be recorded during the construction programme.

- 14) Prior to construction of dwellings / buildings hereby approved, the works outlined in the Remediation and Reclamation Strategy (dated February 2015) shall be completed and a Verification Report demonstrating their effectiveness shall be approved in writing by the local planning authority.

The report shall include:

- a) confirmation that the remedial target values have been met and that the site is suitable for residential use;
- b) the results of gas and groundwater monitoring carried out before, during and after the works (post-remediation monitoring should continue for 12 months or until the remedial target values have been achieved, whichever is longer);
- c) confirmation that the ground gas concentrations and flow and the risk based Gas Screening Values are at a level no greater than Amber 2 of the NHBC traffic light system, and; assessment in accordance with the NHBC methodology (NHBC (March 2007): Guidance on Evaluation of Development Proposals on Sites Where Methane and Carbon Dioxide are Present: Report Edition no. 4 or in accordance with any guidance published to supersede that guidance.

REASON: The works and approval of the Validation Report must take place prior to construction to ensure that risks from land contamination (including landfill gas) to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, in accordance with paragraphs 109, 120 and 121 of the Framework.

- 15) Prior to commencement of construction of buildings in each phase, a detailed specification of the proposed gas protection measures in the relevant phase shall be submitted to and approved by the local planning authority in writing.

Prior to the occupation of each building in the phase, the building shall be the subject of its own verification report indicating compliance with the approved specification of gas protection measures which shall be submitted to and approved in writing by the local planning authority.

REASON: The agreement of a detailed specification and indication of subsequent compliance must take place prior to construction to ensure that risks from landfill gas to the future users of the land and buildings are minimised in accordance with paragraphs 109, 120 and 121 of the Framework.

- 16) Prior to construction of the Main Street and its associated landscaping (as approved on DTA Main Street Alignment Drawings ref 17424 41 Rev H & I and AECOM Main Entrance Soft Landscape Design – 60531863_BS_LS_004 Rev J, Carriageway 1 Soft Landscape Design – 60531863_BS_LS_006 Rev E, Carriageway 2 Soft Landscape Design – 60531863_BS_LS_007 Rev D and Carriageway 3 Soft Landscape Design – 60531863_BS_LS_008 Rev F), details of utilities to be installed within the Main Street shall be submitted to and approved in writing by the local planning authority. Where these utilities result in material amendments to the approved hard and soft landscaping as shown on the aforementioned approved DTA /AECOM plans, amended plans showing the revisions required to the hard and soft landscaping including a timetable for their implementation shall be submitted to and approved by the local planning authority. Development shall be carried out in accordance with the approved details and timetable.

REASON: In the interests of visual amenity, to ensure that utilities do not have a detrimental effect on the implementation or long term retention of trees as detailed in the approved drawings listed.

- 17) Main Street Phase 1 (as shown on the approved Illustrative Phasing Plan 04081 Rev H or any such illustrative phasing plan subsequently approved) shall be completed prior to the occupation of the first dwelling, Main Street Phase 2 (as shown on the approved Illustrative Phasing Plan 04081 Rev H or any such illustrative phasing plan subsequently approved) shall be completed prior to the occupation of the 300th dwelling.

REASON: In the interests of promoting sustainable travel and to allow the site to function, in accordance with sections 4: Promoting Sustainable Transport and 7: Requiring Good Design of the Framework.

- 18) The approved landscaping scheme shown on drawing ref 60531863 BS_LS_009 - Landscaping for bund around Tangerine –Bund soft landscaping design - proposed around Tangerine Factory shall be implemented before the end of the first planting season following approval of the Verification Report as required under condition 14 by the local planning authority.

REASON: In the interests of good design, visual amenity and residential amenity, in accordance with place-making design guidance within Building for Life 12 and design guidance within the National Planning Policy Framework and National Planning Policy Guidance regarding the retention and promotion of distinctive character. Also to mitigate against biodiversity lost due to removal of soft landscaping to allow the remediation.

- 19) Prior to any felling of the trees identified in the Environmental Statement (Chapter 11 Figure 11.1 Phase 1 Habitat Plan (Target notes 5 and 6) and Figure 11.2 Bat Roost Potential Tree Plan) as having moderate to high potential to support roosting bats, an updated bat survey shall be submitted to and approved in writing by the local planning authority. If the updated survey identifies any bat roosts, the survey shall include any necessary mitigation measures for approval in writing by the local planning authority. Development shall be carried out in accordance with the approved mitigation matters.

Reason: To take account of and to enhance the habitat for a protected species and comply with Section 11 of the Framework.

- 20) Demolition of the former Manor School buildings shall take place in accordance with all ecological measures and details contained in the Bat Survey Report by MAB Ecology Ltd and dated August 2017.

REASON: To take account of and to enhance the habitat for a protected species and comply with Section 11 of the Framework.

- 21) Prior to soil material being imported onto site, a Soil Verification Report shall be submitted to and approved in writing by the local planning authority to identify that it is suitable for the use intended. Only soil material approved by the Soil Verification Report shall be imported onto the site and used for the approved intended use within the development hereby permitted.

REASON: To ensure that imported soil does not pose a risk to future users of the land and the wider environment in accordance with paragraphs 109, 120 and 121 of the Framework.

- 22) In the event that contamination not previously identified in the approved Reclamation and Remediation Strategy of February 2015 is found at any time when carrying out the works identified in the approved Reclamation and Remediation Strategy, it shall be reported in writing on the day it is identified to the local planning authority and works shall be stopped until an investigation and risk assessment, and as may be necessary remediation works, have taken place. In this event, the details of an investigation and risk assessment shall be submitted to the local planning authority within 7 days for its written approval to include details of a timetable for the investigation and risk assessment. The investigation and risk assessment shall be carried out in accordance with the approved details and timetable. If further remediation work is identified as required, a further remediation scheme and verification report and timetable for the remediation scheme and verification report shall be submitted to and approved in writing by the local planning authority and the works undertaken in accordance with the approved further remediation scheme, verification report arrangements and timetable.

REASON: To ensure that risks from land contamination (including landfill gas) to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, in accordance with paragraphs 109, 120 and 121 of the Framework.

- 23) If within a period of five years from the date of the planting of any tree or plant, that tree or plant, or any tree or plant planted in replacement, is removed, uprooted or destroyed or dies, a replacement of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

REASON: To ensure that there is adequate green infrastructure for the development, interests of the amenity of future occupants, good design and so that the impact on biodiversity (in particular the bee bank SINC) and the

amenity of the surrounding area is as assessed within the application in accordance with paragraphs 58 and section 8 of the Framework.

- 24) Details of the foul and surface water drainage for each phase subsequent to Phase 1 (drainage for Phase 1 is set out in condition 3) shall be submitted to and approved in writing by the local planning authority, along with a timetable for its implementation, prior to the commencement of work on that phase. The drainage works for each phase shall be carried out in accordance with the approved details and implementation timetable.

Details for the each phase shall include:

- a) proposals for the inclusion of SuDS features in accordance with the SuDS Manual Version 5 including errata 2016 or any subsequent published evidence on the matter;
- b) cover and invert levels to Ordnance Datum of the drainage proposals for the new development;
- c) computer modelling of the surface water attenuation to accommodate the 1:30 year storm and details of the proposals to accommodate the flood volumes above the 1:30 year storm up to the 1:100 year + 20% climate change storm;
- d) the flow control chamber limiting the surface water to the 15 l/s/ha; and
- e) the drainage discharge point.

REASON: To ensure proper drainage of the site and so that there is no increase in flood risk elsewhere, in accordance with paragraph 103 of the Framework.

- 25) Prior to the commencement of development the details of the swale and retention ponds shown on the approved parameter plan ref: 04036 Rev N shall be submitted to and approved in writing by the local planning authority along with a timetable for their implementation. The development shall be carried out in accordance with the approved details and timetable.

REASON: In the interests of visual amenity and safety, in accordance with paragraph 58 of the Framework.

- 26) Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from any car parking areas which accommodate over 50 parking spaces, shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

REASON: To prevent pollution of the water environment.

- 27) The pedestrian and cycle route (from Main Street to Plantation Drive, as shown on drawing ref 04035 Rev N and from the site access to Plantation Drive) shall be completed and made available for use no later than the completion of house building within Phase 2 (as identified on the illustrative Phasing Plan ref: 04081 Rev H) or within 3 years of the commencement of Phase 2 (whichever is the earlier).

REASON: In the interests of promoting sustainable travel and to allow the site to function, in accordance with Sections 4: Promoting Sustainable Transport and 7: Requiring Good Design of the Framework.

- 28) The residential accommodation shall be constructed so as to achieve noise levels of:
- a) 30 dB LAeq (8 hour) and 45dB LAm_{ax} inside bedrooms at night (23:00 - 07:00 hrs);
 - b) 35 dB LAeq (16hour) in all other habitable rooms during the day (07:00 - 23:00 hrs); and
 - c) 50dB LAeq (16 hour) in rear gardens (07:00 to 23:00).

The internal noise levels shall be achieved with all windows shut and other means of acoustic ventilation provided. The detailed scheme shall be approved in writing by the local planning authority and fully implemented before the occupation of each dwelling.

REASON: To protect the amenity of residents, in accordance with paragraph 123 of the Framework.

- 29) The combined rating level of any building service noise associated with plant or equipment installed at the community hub facilities shall not exceed 30dB(A), when measured at the boundary of the closest existing and proposed residential properties.

Reserved matters details for any of the uses (pre-schools, primary school and community hall) hereby approved within the community hub area identified on the Development Zones and Land Uses Parameter Plan (04037 Rev M) shall include a scheme for the prevention of noise pollution arising from the relevant approved use. The scheme shall ensure that residential accommodation would achieve noise levels of;

- a) 30 dB LAeq (8 hour) and 45dB LAm_{ax} inside bedrooms at night (23:00 - 07:00 hrs);
- b) 35 dB LAeq (16 hour) in all other habitable rooms during the day (07:00 - 23:00 hrs); and
- c) 50dB LAeq (16 hour) in rear gardens (07:00 to 23:00)

The internal noise levels shall be achieved with all windows shut and other means of acoustic ventilation provided.

The approved building /use shall be implemented in accordance with the approved scheme(s) and details, and prevention of noise pollution measures shall thereafter be retained for the purpose intended.

REASON: In the interests of residential amenity, in accordance with paragraph 17 of the Framework.

- 30) A Lighting Impact Assessment for any floodlighting associated with outdoor sports provision shall be approved in writing by the local planning authority

prior to installation and the development shall be carried out in accordance with the approved details. The assessment shall include:

- a) description of the proposed lighting: number of lighting columns, their height, and proposed lighting units;
- b) drawings showing the luminance levels (to be on separate drawings);
- c) horizontal luminance levels (E_h), showing all buildings within 100 metres;
- d) vertical luminance levels (average at a distance of 1.5m from ground level), showing all buildings within 100 metres;
- e) specification of the Environmental Zone of the application site, as defined in The Institution of Lighting Engineers' Guidance Notes for the Reduction of Light Pollution; and
- f) hours of operation.

REASON: In the interests of local and residential amenity, in accordance with paragraph 125 of the NPPF.

- 31) The development hereby approved shall not exceed 1,100 dwellings.

REASON: To ensure that there is adequate infrastructure to cater for the development and so that the impact on amenity of the surrounding area and on the highway network is as assessed within the application.

- 32) Building heights shall not exceed those shown on the approved Parameter Plan drawing 04038 Rev M.

REASON: In the interests of visual and residential amenity and biodiversity.

- 33) Prior to the commencement of the penultimate phase of development a timetable for the implementation of the final wearing course for the Main Street shall be submitted to and approved in writing by the local planning authority. The final wearing course for the Main Street shall be implemented in accordance with the approved timetable.

REASON: In the interests of allowing the site to function, in accordance with Section 4: Promoting Sustainable Development of the Framework.

Appendix B –Council suggested Informatives APP/C2741/W/17/3177821

- 1 **Road Safety Audit (RSA):** As part of the highways details a Stage 2 RSA will be expected for each phase of the detailed design of the Main Street. The timing of the Stage 3 RSA and the timeframe for that work will also be expected to form part of the highways reserved matters submissions.
- 2 **Transport / Access:** The means of securing restricted forward visibility along the Main Street, as shown on the approved DTA Main Street alignment drawings, will need to be detailed in each relevant reserved matters application so as to form part of the reserved matters being considered.
- 3 **Carr Drain Easement:** Attention is drawn to the Carr Drain Easement. The developer is advised that no building or other obstruction (including trees) should be located within the 19.5 metre wide culvert easement (9m to each side of the Carr Drain) at the south end of the site, as shown on the approved Green Infrastructure Parameter Plan 04036 Rev N. This excludes the construction of up to 3 no. access roads which are permitted to cross the culvert.
- 4 **Internal Drainage Board:** The consent of the Ainsty (2008) Internal Drainage Board will be required within the above-referenced easement. This applies to any crossing such as a road or service or development in this easement including, but not exclusively, fences or planting. This is required under the Land Drainage Act 1991 and also the Board's Byelaws. Further details can be found on the Board's website www.yorkconsort.gov.uk
- 5 **Yorkshire Water:** There are public sewers crossing the sites, with various easement requirements, as established by Yorkshire Water. The developer(s) should note these requirements and legislation within the Water Industry Act if there is intent to divert any sewers.

If the developer is looking to have new sewers included in a sewer adoption agreement with Yorkshire Water (under Section 104 of the Water Industry Act 1991), they should contact the Developer Services Team (telephone 0345 120 84 82) at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with the WRc publication 'Sewers for Adoption - a design and construction guide for developers' 6th Edition (or as may be updated) as supplemented by Yorkshire Water's requirements.

- 6 **Sport England:** The details for the on-site sports provision, as shown on the Landscape Structure Plan 04040B³⁷ (unless an alternative is approved), will be expected to be constructed and drained in accordance with recommendations in Sport England guidance note - Natural Turf for Sport.
- 7 **Environmental Permit:** The northern half of the site was previously used as a landfill site associated with the sugar beet factory. The landfill site is subject to an Environmental Permit (issued and regulated by the Environment Agency)

³⁷ This is as sought by Sport England but does not form an approved plan, however, the plan cited should be referred to for the purposes of this informative

which has not yet been surrendered. The Environment Agency will only surrender the permit once it is satisfied that the site has been cleaned up to an appropriate standard. It is recommended that construction is not commenced until the permit has been surrendered.

- 8 **Rail Halt:** The developer(s) are reminded that it is a Council aspiration for a rail halt to be developed at the north end of the site. The development should not prejudice this future provision. If this scheme were to be realised, land at the north end of the site (currently shown as Green Infrastructure) would likely be required for access to the rail halt.
- 9 **National Grid:** The developer's attention is drawn to the presence of National Grid assets (over-ground and underground) as specified in the consultation response dated 7 Jan 2015. National Grid should be consulted prior to any development / construction on site in this respect, to understand requirements including any required separation distances.
- 10 **Network Rail:** Network Rail advise that at least six weeks prior to works commencing on site the NR Asset Protection Project Manager (OPE) should be contacted, contact details as below. The OPE will require to see any method statements/ drawings relating to any excavation, drainage, demolition, lighting and building work or any works to be carried out on site that may affect the safety, operation, integrity and access to the railway.

Asset Protection Project Manager
Network Rail (London North Eastern)
Floor 2A
George Stephenson House
Toft Green
York
Y01 6JT
Email: assetprotectionlne@networkrail.co.uk

The following measures should be adhered to during construction -

Drainage

All surface and foul water should be collected and diverted away from Network Rail property.

Excavations/Earthworks

All excavations/ earthworks carried out in the vicinity of Network Rail property/structures must be designed and executed such that no interference with the integrity of that property/ structure can occur. If temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement and provided to Network Rail. Where development may affect the railway, consultation with the Asset Protection Project Manager should be undertaken.

Armco Safety Barriers

An Armco or similar barrier should be located in positions where vehicles may be in a position to drive into or roll onto the railway or damage the lineside fencing.

Fail Safe Use of Crane and Plant

All operations, including the use of cranes or other mechanical plant working adjacent to Network Rail's property, will be carried out in a "fail safe" manner such that in the event of mishandling, collapse or failure, no materials or plant are capable of falling within 3.0m of the nearest rail of the adjacent railway line, or where the railway is electrified, within 3.0m of overhead electrical equipment or supports.

Security of Mutual Boundary

Security of the railway boundary shall be maintained at all times. If the works require temporary or permanent alterations to the mutual boundary the applicant should contact Network Rail's Asset Protection Project Manager.

Boundary Treatment

At all times there will be a secure boundary fence to the Network Rail land.

Demolition

Any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near to the operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Project Manager before the development can commence.

Landscaping

Where trees/shrubs are to be planted adjacent to the railway boundary these shrubs should be positioned at a minimum distance greater than their predicted mature height from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. Any hedge planted adjacent to Network Rail's boundary fencing for screening purposes should be so placed that when fully grown it does not damage the fencing or provide a means of scaling it.

- 11 **Broadband / Carbon Fibre:** The developer should be aware of the city strategy to make York a gigabit city and associated network design requirements. Infrastructure to enable such should be considered at the design stage. For further details, please contact City Fibre prior to commencement of development.



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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