Department for Communities and Local Government

Steven Longstaff Esq.
England & Lyle
Gateway House
55 Coniscliffe Road
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DL3 7EH

Our Ref: APP/V0728/A/13/2190009
Your ref: 194'12

26 September 2013

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY TAYLOR WIMPEY (NORTH YORKSHIRE) LTD
LAND WEST OF GALLEY HILL ESTATE, STOKELEY ROAD, GUISBOROUGH
APPLICATION REF: R/2012/0617/OOM

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs Zoë Hill BA(Hons) MRTPI DipBldgCons(RICS) IHBC, who held an inquiry on 18-20 June 2013 into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Redcar & Cleveland Borough Council to refuse outline planning permission, with all matters reserved save for means of vehicular access, for residential development of up to 350 dwellings and associated garaging, public open space, play area, landscaping, ecological enhancement and ancillary works, dated 8 August 2012.

2. The appeal was recovered for the Secretary of State's determination on 3 February 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal for residential development of over 150 units on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation

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

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Matters arising after the close of the inquiry

4. A letter objecting to the proposals was received from Mr T E Longstaff, a resident of Guisborough, after the inquiry had closed. The Secretary of State has carefully considered this representation, but as it did not raise new matters that would affect his decision, he has not considered it necessary to circulate it to all parties. A copy of this letter will be provided on application to the address at the bottom of the first page to this letter or to PCC@communities.gsi.gov.uk.

Policy considerations

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Redcar & Cleveland Borough Council Local Plan 1999 (the Local Plan), the Redcar & Cleveland Local Development Framework Core Strategy Development Plan Document 2007 (CS) and the Redcar & Cleveland Local Development Framework development Policies Development Plan Document 2007 (DP). The Secretary of State agrees with the Inspector that the development plan policies relevant to the appeal are those set out at IR15-17.

6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework – March 2012); Technical Guidance to the National Planning Policy Framework; Circular 11/1995: *Use of Conditions in Planning Permission* and *the Community Infrastructure Levy (CIL) Regulations 2010* (as amended). The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance is currently in test mode and for public comment, he has attributed it limited weight.

7. The Secretary of State notes that the Council produced a Scoping Report in November 2012 for a new Local Plan (IR19). However, the proposed new Local Plan is not yet published, and it is understood that a consultation draft will not be published until the autumn of this year (2013). As the new Local Plan is still in the early stage of preparation, the Secretary of State attaches little weight to it in the determination of this appeal.

8. The Secretary of State agrees with the Inspector (IR13) that as the North East of England Plan, the Regional Spatial Strategy to 2021 (RSS), is no longer extant, no weight should be attached to its policies. The Secretary of State deals with the housing land and supply issues arising from the evidence base underpinning the RSS at DL 11 below.

Main issues

9. The Secretary of State agrees with the Inspector that the main consideration in this case is whether residential development should be allowed having in mind local and national policies in respect of residential development (IR33).

10. The Secretary of State notes that the Council decided during the course of the inquiry to withdraw from defending the appeal, and for the reasons described at IR36-

39, does not now dispute that it would be appropriate for the appeal to be allowed and permission to be granted (IR42).

Housing land supply

11. The Council accepts that it does not have a five year housing land supply. In terms of the extent of that under-supply, the Secretary of State agrees with the Inspector (IR128) that as the RSS has the most up-to-date figures, they should carry greater weight than the CS, particularly as the CS seeks early review and relies on old evidence. For the reasons give by the Inspector at IR129-138, the Secretary of State agrees with the Inspector on the matter of housing supply. Bearing in mind that the Council chose not to test the evidence on this matter, he agrees that there is a shortfall of housing land significantly greater than that maintained by the Council, if not quite so poor as claimed by the appellant and that in any event the shortfall in housing land is significantly below the five year supply required (IR138).

Housing policy

12. The Secretary of State agrees with the Inspector that Policy DP1, which relates to housing requirements established in the mid 1990s, is out-of-date. As such, he agrees too that it should not be afforded any significant weight (IR140). The Inspector notes in her report (IR141) that despite the aim of Policy CS2 to prioritise use of previously developed land, this is not delivering the much needed homes in this locality. The Secretary of State agrees with this view, and like the Inspector, considers that the development of this greenfield appeal site, which is sustainably located, is in-line with the Framework's Core Principles in that it would help drive and support sustainable economic development to deliver the homes that the country needs.

13. The Secretary of State agrees with the Inspector that Policy CS2 may have some value in certain circumstances, but that in this case, and in light of the housing land supply situation, it should not be afforded significant weight (IR142). Regarding the matter of prematurity, the Framework and *The Planning System: General Principles* both set out that emerging plans may attract some weight. However, in this case the Secretary of State agrees with the Inspector (IR143) that there is no current emerging plan that could be undermined, and as such, he agrees that this point does not attract significant weight.

14. For the reasons given by the Inspector in IR 144 and 145, the Secretary of State agrees that the development would accord with the Framework with respect to the main issue in this appeal – the provision of housing.

Other matters

15. The Secretary of State agrees with the Inspector (IR146) that the site is located where the facilities of the town can be reached with reasonable ease by foot, bicycle or public transport. In terms of highway safety, the Secretary of State accepts the Inspector's view (IR147) that there is no reason to consider that highway safety would be materially harmed by this proposal. He agrees with the Inspector (IR148) too that a pedestrian route would be possible on the inside of the Stokesley Road hedgerow and that links could be provided to the existing residential estate footpath network. The Secretary of State agrees that the projected level of queuing at the new junction would not justify withholding planning permission (IR149).

16. In terms of general drainage in certain areas of the site as well as on the road, the Secretary of State agrees with the Inspector (IR150) that the drainage system for the development would be able to deal with localised areas with drainage issues. He agrees too that improvements to the roadside drains would benefit future occupiers of the site by making the highways safer as well as benefitting other road users in the area.

17. Turning to the visual impact of the proposed development upon the town, the Secretary of State accepts the Inspector's view (IR151) that the scheme would appear as an extension to the existing settlement and would be set against the backdrop of rising land when seen from most directions. Furthermore, he notes that landscaping and appearance are reserved matters over which the Council has control.

18. The Secretary of State notes that the Phase I Habitat Survey carried out by the appellant found no presence of reptiles, or protected species, and no suitable roosting sites for bats or owls. He agrees with the Inspector (IR152) that the agricultural regime undertaken on site means that it is of low ecological value and there is no reason to suppose that the development would conflict with the requirement of preserving the species at a favourable population for the locality. Like the Inspector, he notes that Natural England made its own assessment of the site and decided to make no objection to the scheme, and made no criticism of the survey effort undertaken.

19. With regard to the existing provision of educational facilities, the Secretary of State accepts the Inspector's conclusion (IR153) that the contribution made through the s.106 Agreement in respect of primary school provision would assist in the provision of additional classroom accommodation and so overcome concerns about the lack of provision. In terms of water quality at Saltburn, the Secretary of State notes that the sewerage undertaker does not object to this scheme (IR154). Although not a matter related to this proposed development, the sewerage undertaker has advertised a scheme to improve water quality in this area. The Secretary of State agrees with the Inspector that the development proposed would not have implications for sea water quality.

20. The Secretary of State agrees with the Inspector (IR155) that in this case there would be a good mix of housing including affordable housing, bungalows and some dwellings aimed at the 'executive' homes market, for which there is also an identified need in this area. Furthermore, he accepts that the spread of housing type and, in particular, the supply of types for which there is an identified shortage, is a significant benefit of the scheme that attracts positive weight in the planning balance.

21. Turning to the loss of agricultural land and its implications for national food security, the Secretary of State accepts the Inspector's conclusion (IR156) that because only a small part of the site is higher grade agricultural land, and that area is land-locked, little would be gained from seeking to protect it. Like the Inspector, the Secretary of State considers this is not a matter which attracts significant weight.

Conditions and s.106 obligation

22. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and s.106 obligation, as set out in IR157—158. The Secretary of State is also satisfied that the conditions recommended by the Inspector and set out at Annex

A attached to the IR are reasonable and necessary and meet the tests of Circular 11/95.

Overall conclusions

23. The Secretary of State agrees with the Inspector's overall conclusions at IR 159-162. He agrees that although the appeal proposals would erode a green area and loss of habitat, only moderate harm would arise in terms of erosion of the green area and no significant harm would arise in terms of habitat because of the compensation provided.

24. Whilst the exact amount of housing supply figures are not agreed, parties are agreed that the local planning authority does not have a 5 year supply of housing and, in accordance with paragraph 215 of the Framework, full weight can no longer be given to the relevant housing supply policies of the development plan. This does not mean that there is no restriction in the countryside but that paragraph 14 of the NPPF applies in the determination of this appeal.

25. The appeal scheme represents sustainable development making a contribution to the undersupply of housing including housing for a variety of types of households, all of which there is an identified housing need. Although the proposals would cause limited erosion of a green area, the Secretary of State is satisfied that this would not significantly and demonstrably outweigh the benefits of the scheme when considered against the policies of the NPPF taken as a whole.

Formal decision

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission with all matters reserved save for means of vehicular access, for residential development of up to 350 dwellings and associated garaging, public open space, play area, landscaping, ecological enhancement and ancillary works, in accordance with planning application ref: R/2012/0617/00M, dated 8 August 2012, subject to the conditions listed at Annex A of this letter.

27. 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.

28. 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

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

30. A copy of this letter has been sent to Redcar & Cleveland Borough Council. A notification letter or e-mail has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt
Authorised by the Secretary of State to sign in that behalf

CONDITIONS **Annex A**

Reserved Matters and associated details

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) The applications for the approval of reserved matters shall be in accordance with the principles set out in the Updated Design and Access Statement.

5) The development hereby permitted shall be carried out in accordance with the following approved plans: The Application Plans: Site Location Plan Ref: Y81.840.01; Ref: Proposed Ghost Island Right Hand Turn Junction 3673-C-D9-01 Rev E.

6) Details submitted in accordance with Condition 1 shall include existing and proposed ground levels together with finished floor levels for the development. The levels shall be demonstrated by sections through the site. The development shall be carried out as approved.

7) No development shall commence until full details for the play area have been submitted to and approved in writing by the local planning authority. The timetable for the implementation of the approved scheme shall be set out in the Phasing Plan required by condition 9 below which shall be adhered to.

8) An art feature or features shall be incorporated into the development in accordance with a scheme that has first been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in their entirety in accordance with the Phasing Plan required by condition 9 below.

Phasing

9) No part of the development hereby permitted shall be implemented until a Phasing Plan for the timing and delivery of the development, in terms of the relationship between the phases of development and the proposed infrastructure, has been submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the Phasing Plan.

Highways and Access

10) No development shall commence until a Traffic Management Plan for the construction phases of the development has been submitted to and agreed in writing with the local planning authority. The development shall take place in accordance with the approved Traffic Management Plan.

11) Prior to the occupation of any part of the development hereby approved a detailed Travel Plan in accordance with the Travel Plan (ref: 467_20120727A_Travel Plan) shall be submitted to and approved in writing by the local planning authority. The approved Travel Plan shall be implemented for the lifetime of the development.

12) No development shall commence until a scheme for preventing the deposition of mud/debris on the highway shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in its entirety before development commences and adhered to for the lifetime of the construction period.

13) No development shall take place until details have been submitted to and approved in writing by the local planning authority of proposals to provide contractors car parking and material storage within the site including a timetable for their provision linked to the Phasing Plan referred to in condition 9 above. The details approved shall be implemented and retained for the duration of the construction within each relevant phase until its completion in accordance with the approved timetable.

14) The proposed junction with the existing highway (Stokesley Road) shall be provided in accordance with details set out on Plan 3673-C-D9-01 Rev E (Proposed Ghost Island Right Hand Turn Junction) and have a visibility splay of 4.5m x 90m. The area enclosed by this splay shall be maintained to ensure there are no obstructions or any vegetation greater than 600mm in height. These junction and visibility works shall be fully implemented prior to the occupation of the first dwelling to be occupied on the site.

15) The principal access to the site shall be constructed to final finish in accordance with the approved access details and available for use prior to the commencement of any other construction or associated works at the site.

16) No development shall commence until full details of the emergency access to be taken from Lark Drive have been submitted to and approved in writing by the local planning authority and a timetable for its implementation has been approved in writing by the local planning authority, as part of the Phasing Plan referred to in condition 9 above. The emergency access shall be implemented in accordance with the approved Phasing Plan and accord with the approved details.

Drainage

17) No development shall take place until details of drainage for the development, including the timetable for their implementation which shall relate to condition 9 above in respect of phasing, have been submitted in writing to the local planning authority for its written approval. The approved scheme shall be implemented in accordance with the approved details including the phasing arrangements.

Noise

18) No development shall commence until a Noise Scheme for protecting the proposed dwellings from road traffic noise has been submitted to and approved in writing by the local planning authority; all works which form part of the Noise Scheme, unless related to an individual property, shall be completed before any of the dwellings identified as being affected by noise are occupied and any works to individual dwellings shall be completed before the dwelling to which it relates is occupied, unless otherwise agreed in writing as part of the phasing arrangements under condition 9 above.

Landscaping and ecology (including lighting scheme)

19) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the phasing scheme required by Condition 9 and any trees or plants which within a period of ten years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written approval to any variation.

20) No development shall take place until a scheme of ecological mitigation and enhancement, including a timetable for its implementation, to accord with the details set out in the Environmental Statement and Phase I Habitat Survey has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details and timetable.

21) No development shall take place until a Scheme of Lighting for the site has been submitted to and approved in writing by the local planning authority. The approved Scheme of Lighting shall be implemented in accordance with the timetable set out in the approved Phasing Plan required by condition 9 above.

Sustainable Energy

22) A minimum of 10% of the site's energy requirements shall be provided by embedded renewable energy or in accordance with a scheme that has first been submitted to and agreed in writing by the local planning authority. The approved scheme shall be implemented in its entirety in accordance with the Phasing Plan required by condition 9 above.

Protection of Existing Living Conditions

23) The working hours for all construction activities on this site shall be limited to between 08:00 and 18:00 hrs Mondays to Friday and 08:00 to 13:00 hrs Saturdays and not at all on a Sundays or Public Holidays.

24) No development shall take place until a scheme for the suppression of dust at the construction site has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the commencement of development and adhered to for the duration of the construction period.

Land Contamination

25) In the event that contamination is found at any time when carrying out the approved development it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and submitted to the local planning authority for its written approval. Where remediation is necessary a remediation scheme must be prepared to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, and submitted to the local planning authority for its written approval. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which shall be subject to the approval in writing by the local planning authority.

End

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Mrs Zoë Hill BA(Hons) MRTPI DipBldgCons(RICS) IHBC

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

Date: 16 July 2013

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY TAYLOR WIMPEY (NORTH YORKSHIRE) LTD

REGARDING THE REFUSAL OF PLANNING PERMISSION OF AN OUTLINE APPLICATION WITH ALL MATTERS RESERVED SAVE FOR MEANS OF VEHICULAR ACCESS, FOR RESIDENTIAL DEVELOPMENT OF UP TO 350 DWELLINGS AND ASSOCIATED GARAGING, PUBLIC OPEN SPACE, PLAY AREA, LANDSCAPING, ECOLOGICAL ENHANCEMENT WORKS AND ANCILLARY WORKS

At

LAND AT GALLEY HILL FARM, STOKESLEY ROAD, GUISBOROUGH, CLEVELAND

Inquiry held on 18 -20 June 2013

Land at Galley Hill Farm, Stokesley Road, Guisborough, Cleveland TS14 8HL

File Ref: APP/V0728/A/13/2190009

File Ref: APP/V0728/A/13/2190009
Land at Galley Hill Farm, Stokesley Road, Guisborough, Cleveland TS14 8HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Taylor Wimpey (North Yorkshire) Ltd against the decision of Redcar & Cleveland Borough Council.
- The application Ref: R/2012/0617/OOM, dated 8 August 2012, was refused by notice dated 22 November 2012.
- The development proposed is described as an application for outline planning consent, with all matters reserved save for means of vehicular access, for residential development of up to 350 dwellings and associated garaging, public open space, play area, landscaping, ecological enhancement and ancillary works.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Preliminary Matters

1. During the afternoon of the first day of the Inquiry the Council confirmed that it was formally withdrawing its objection to the development proposed[1].

Procedural Matters

2. The Secretary of State (SoS) directed by letter dated 3 February 2013 that he shall determine this appeal. The reason for this is that the appeal involves a proposal for residential development of over 150 units on a site of over five hectares (ha) which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

3. The Inquiry sat on three days. I undertook an unaccompanied site visit prior to opening the Inquiry to familiarize myself with the site and its surroundings. In addition an accompanied site visit was undertaken with representatives of the appellant and the Council as well as two interested parties who spoke at the Inquiry (both local residents) on 19 June 2013. On that day I continued the site visit on an unaccompanied basis to look at the viewpoints set out in the Environmental Statement (ES)[2].

4. The Council adopted a screening opinion to the effect that the development proposed was not Environmental Impact Assessment (EIA) development. However at the appeal stage it was identified that the proposed development fell within the description at paragraph 10b of Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) Regulations, such that on the 15 February 2013 the SoS directed that the development proposed is EIA development.

5. The ES was accompanied by a non-technical summary[3]. Additionally there was a raft of supporting statements relating to different aspects of the proposals.

[1] The Council's revised position is set out in its Closing Position Statement ID17
[2] I viewed those viewpoints for which photographs were supplied and checked some of the others which did not have photographs because it was found views were very restricted
[3] CD3

There is no dispute from any party as to the adequacy of the EIA process or the ES.

6. A signed s.106 Agreement[4] was submitted at the Inquiry. The Council produced a note relating to the compliance of the obligation with the Community Infrastructure Levy (CIL) Regulations 2010[5].

7. A full list of plans was set out in the Statement of Common Ground (SoCG)[6]. However, that contained some errors and so a revised list was submitted at the Inquiry[7].

8. At the Inquiry I advised those present that I am related to an officer of the adjoining National Park Authority (NPA). That Authority had made no comment on the appeal and did not intend to appear. No comment or objection was made to my appointment.

The Reasons for Refusal

9. Whilst the Council has now withdrawn from the appeal and no longer supports its reason for refusal, the reason set out at the time it made its decision was:

"*The application proposes development of a greenfield site which is not allocated for development and is presently in agricultural use and outside the limits to development for the town of Guisborough, identified in the development plan. The Local Planning Authority has had regard to the information submitted with the application and, notwithstanding the lack of a five year housing land supply, considers there are insufficient grounds that indicate a departure from policy is justified in this case.*

The proposed development is therefore considered contrary to policy CS2 (Locational Strategy) of the Core Strategy DPD (July 2007) in that it promotes further development in Guisborough inconsistent with the locational strategy of the development plan and policy DP1 of the Development Plan Policies DPD (July 2007) in that it would result in development outside the approved development limits and does not meet any of the exceptions set out in the policy."[8]

The Site and Surroundings

10. The appeal site extends to some 15.1 hectares and comprises predominantly arable farmland. Its south-eastern boundary adjoins an established housing estate, which forms part of the settlement of Guisborough. The southern boundary abuts Stokesley Road. The remaining boundaries adjoin further farmland, although to the northern side the site comes close to Middlesbrough Road (A171).

11. To the south of the site, beyond further agricultural land, the topography alters and the land begins to rise quite steeply. The North York Moors National

[4] ID15
[5] ID16
[6] CD5
[7] ID2
[8] The policy document referred to is the Redcar & Cleveland Local Development Framework Development Plan Policies Development Plan Document (DPD) adopted in July 2007

Park (NYMNP) is situated at this southern side, being some 300 metres (m) from the appeal site at its nearest point.

Planning Policy

12. The Development Plan comprises the Redcar & Cleveland Borough Council Local Plan 1999 (the Local Plan)[9], the Redcar & Cleveland Local Development Framework Core Strategy Development Plan Document 2007 (CS)[10] and the Redcar & Cleveland Local Development Framework Development Policies Development Plan Document 2007 (DP)[11].

13. The North East of England Plan, the Regional Spatial Strategy to 2021 (RSS)[12] is no longer extant so no weight is to be attached to its policies. However, in terms of housing land requirements, the evidence base for that document is the most recently examined evidence. The RSS was in draft form at the time when the CS was adopted and so the CS reflects early housing figures. Moreover, the CS establishes that early review of the CS would be necessary to take on board any material differences arising from changes to the draft RSS[13]. This has not happened. However, on that basis it appears reasonable and justified to attach weight to the housing land supply requirements arising from the evidence base of the RSS that culminated in the figures set out in the finalised RSS.

14. The appeal site has no specific land use allocation.

15. The main policies under consideration in this appeal are CS Policy CS2 (Locational Strategy) and DP Policy DP1 (Development Limits).

16. In addition the following policies are of relevance:

- CS1 Securing a Better Quality of life
- CS7 Spatial Strategy for Guisborough
- CS13 Meeting Housing Requirements
- CS14 Phasing of Housing Developments
- CS15 Delivering Mixed and Balanced Communities and Quality Homes
- CS17 Housing Density
- CS19 Delivering Inclusive Communities
- CS20 Promoting Good Design
- CS22 Protecting and Enhancing the Borough's Landscape
- CS24 Biodiversity and Geological Conservation
- CS25 Built & Historic Environment

[9] CD8
[10] CD9
[11] CD10
[12] CD11
[13] CD9 paragraph 1.23 deals with the need for early review

- CS26 Managing Travel Demand
- DP2 Location of Development
- DP3 Sustainable Design
- DP4 Developer Contributions
- DP5 Art and Development
- DP6 Pollution Control
- DP7 – Potentially Contaminated & Unstable Land
- DP11 Archaeological Sites & Monuments[14]

17. In addition, Saved Policy H9 of the Local Plan is relevant; that policy relates to Affordable Housing[15].

18. In view of the area of dispute at the time of determination policies DP1 and CS2 were the focus of discussion. The weight to be attached those polices in light of the Framework advice at paragraph 215 was therefore a significant matter. It was conceded for the Council in this case that those policies were 'out-of-date' because of the lack of a five year housing land supply. However, in the Council's closing position statement it was stated that the Council considers that they are not out of date for all purposes[16].

19. A consultation draft of a document entitled '*Communities DPD Preferred Positions'* which included housing allocations was produced in 2009 but this was subsequently abandoned. The Council then produced a Scoping Report in November 2012 for a new Local Plan. However, the proposed new Local Plan is not yet in a published form, and it appears unlikely that a consultation draft will be available until mid to late autumn of this year (2013).

Planning History

20. There is no history of planning applications on this land.

The Proposal

21. The main element of the proposal is the development of up to 350 dwellings. The scheme has been submitted in outline with only access to be considered at this stage. Despite this, other elements of the proposed scheme would be largely fixed because of the s.106 Agreement or by virtue of planning conditions. Those matters relate to open space, ecological enhancement space, the positioning of a sustainable urban drainage scheme (SuDS) pond and the position for an emergency access.

22. The proposed dwellings would be of mixed type providing for executive homes, family houses and affordable housing (15% which, for a 350 unit scheme, equates to 53 affordable units). Although the illustrative layout is not for determination at this stage it indicates that the dwellings would include three

[14] This list of policies is that same as that in the SoCG CD5, with the policies in CD9 and CD10
[15] This is agreed in the SoCG CD5 with the Policy in CD8
[16] Foot note 2 to the Council's Closing Position Statement ID17

storey properties (including an attic floor), two storey properties and bungalows[17]. The parties agree that because of the level of detail provided and the expectations for development set out in the ES it would be reasonable and is necessary that the principles set out in the Updated Design and Access Statement (DAS)[18] should be adhered to and that this should be the subject of a condition. That being the case there is a strong likelihood that any scheme would reflect the general approach set out.

23. The access would be from Stokesley Road with a ghost island at the junction. The emergency access, for which details would be required, would be from Lark Drive.

24. The existing housing estate has a footpath along much of the boundary with the appeal site. The proposed development would include a green edge alongside the existing housing estate boundary. The public open space would abut that boundary. The eastern corner of the site would be managed as an ecological enhancement area. A play area would be provided near to the SuDS pond at an existing low point adjoining the northern boundary. Perimeter hedging would be retained, with another section of hedging also retained. Two hedges running approximately north to south would be removed and a section of the road frontage hedge would be removed to create the access.

25. The site would be built out in phases. A general indication of phasing is set out in the ES[19]. The timing of other aspects of the development, such as the ecological enhancement area and open spaces, is partly set out in the s.106 Agreement. A comprehensive phasing scheme would need to be provided and could be the subject of a condition. It is envisaged that 105 dwellings would be built out in the first five years.

Other Agreed Facts

26. In addition to the matters set out above, the comprehensive SoCG sets out the main agreed facts, excepting for the fact that the Council subsequently changed its position and withdrew from defending the appeal. Most of the agreed facts are summarised in the appellant's case at paragraph 43 below; other additional points not specifically mentioned in the appellant's list are as follows:

27. It is common ground that paragraph 49 of the Framework states that *'Relevant policies for the supply of housing should not be considered 'up-to-date' if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites'*. Since the SoCG, at the Inquiry, it was accepted that the appeal should be determined in accordance with this paragraph of the Framework.

28. It is agreed that 1 and 2 bed dwellings and bungalows would be able to address the identified affordable housing need.

29. The site density would be some 27 dwellings per hectare, which given the 13 hectares (ha) developable area and the provision of bungalows and executive

[17] Illustrative sections are set out in the Updated Design and Access Statement CD4
[18] CD4
[19] CD3 Vol II figure 4.3

homes to meet identified needs, it is agreed by the parties would be acceptable and appropriate.

30. In terms of development impacts it is agreed between the parties that the scheme would be acceptable and would not result in visual or landscape impact that would warrant refusal of planning permission. Subject to the principles in the Updated DAS it is agreed that the scheme would not result in any material adverse impact on the living conditions of the occupants of existing properties.

31. The parties agree that there is sufficient capacity in the highway network to accommodate the proposed development and that the access arrangements would provide for safe access.

32. It is agreed that, subject to the developer contributions in respect of Galley Hill Primary School and the King George V Sports Complex, there would be no detrimental impact on capacity and function of existing community infrastructure.

The Main Considerations

33. It is apparent that there is no dispute about the sustainability or suitability of the site for housing. Bearing this in mind at the opening of the Inquiry the main consideration identified and agreed was:

- whether residential development should be allowed having in mind local and national planning policies in respect of residential development.

34. In addition to the above, a number of other material considerations were aired at the Inquiry. These are addressed insofar as they were raised or remain relevant.

The Comments for the Council

35. The comments for the Council reflect the fact that it decided during the course of the Inquiry to withdraw from defending the appeal.

36. The Council originally objected to the proposal being allowed. This was on the basis that, despite the acknowledged lack of a five year supply of housing land in the Borough and the presumption in favour of sustainable development in paragraph 14 of the Framework, the Council considered it appropriate to give greater weight in the circumstances to the fact that the appeal site lies outside development limits, and thus the proposal would be contrary to policy DP1 of the DP, and would have been harmful to the Council's locational strategy as set out in Policy CS2 of the CS.

37. However, in the course of giving evidence the Council's witness explained that he had come to the view that, although the Council had been justified in refusing permission in November last year at a time when the transitional provisions of the Framework, set out in paragraph 214, allowed full weight to be given to local policies adopted under the 2004 Act, he accepted that the balance of considerations had shifted with the full coming into force of the provisions of the Framework. Accordingly, he indicated that, if he had to determine the application again now, he would probably have been inclined to grant permission.

38. In these circumstances, it was clear that there was no longer any proper evidential support on which the Council's original case could reasonably be maintained. Therefore, advice was sought from senior officers at the Council as

to whether the Council should formally revise its case and withdraw its objection to the appeal being allowed.

39. Senior officers at the Council supported the Council's witness's view that the position originally taken could not be maintained. Therefore, in the afternoon of the first day of the Inquiry, the Council confirmed that it was formally withdrawing its objection. Moreover, the Council confirmed it would not be cross-examining the appellant's witnesses or making further submissions on the determination of the appeal.

40. The Council, however, wants it to be clear that this does not mean that the Council agrees with everything said on behalf of the appellant at the Inquiry. It is only right that this should be borne in mind because, as a consequence, the appellant's case and evidence has not been fully tested on certain disputed issues in the way that it would have been if the appeal had remained contested[20].

41. In particular, there is little agreement concerning the calculation of the five year supply, for example: whether to rely on the housing requirements in the CS or the now revoked RSS; whether it is appropriate to use the 'Sedgefield'[21] or some other method to address the historic shortfall; and, whether (if the Sedgefield approach is used) the 20% uplift from the Framework should be applied before or after adding the historic shortfall into the required five year supply. It should also be noted that, although the Council's witness was prepared to agree that Policy DP1 and Policy CS2 are 'out-of-date' given the lack of a five year housing land supply, the Council, corporately, does not accept that they are 'out-of-date', or at least not for all purposes, given that they are not simply policies for the supply of housing but apply more generally. This is also important in that the Council presently remains committed to retaining the thrust of the locational strategy in Policy CS2 in its emerging Local Plan.

42. Nonetheless, the Council does not now dispute that it would be appropriate for the appeal to be allowed and permission to be granted[22].

The Case for the Appellant

43. The appeal is against the Council's refusal of planning permission for a single reason, relating to conflict with two policies of the Development Plan: Policy DP1, relating to development outside the development limits and Policy CS2, relating to the locational strategy for development. The Council has now withdrawn all opposition to the appeal.

44. The site extends to some 15.1 ha. Some 12 ha of this is proposed for development, with the balance remaining undeveloped either as open space, planting areas or an ecological enhancement zone. The site is undeveloped at present and is adjacent to the existing Galley Hill Estate, which forms the majority of the southern boundary. The site has no specific policy designation.

[20] The Council's witness evidence was fully tested, the remaining evidence was also tested as far was considered necessary in the circumstances, albeit not by the Council; the Council chose to withdraw

[21] That is the method whereby the historic shortfall of housing is met in the first five years and contrasts with the residual approach where the shortfall is spread over the remaining plan period

[22] ID17

45. The application proposals are in outline, save for the arrangements for access from Stokesley Road. All other matters are reserved for subsequent approval. It is indicated that the site will accommodate up to 350 dwellings with a range of housing. This will include a range of two to four bed detached, semi-detached and terraced family housing, larger detached housing of four or more bedrooms, bungalows and around 53 affordable units (15% of the total).

46. The application was recommended for approval by officers of the Council who recognised that all development control issues were fully resolved. The Policy Department of the Council were also content for the application to be approved.

47. The Council screened the application in order to determine whether it was EIA development and concluded that it was not. Subsequently, the SoS issued a further Screening Opinion, concluding that the development is EIA development. As a consequence a comprehensive ES was prepared and submitted. A press notice was issued on 24 April this year. Copies of the ES have been submitted to all relevant parties (including the National Park Authority (NPA)) and no adverse comments have been received from any statutory consultee, including Natural England (who had previously indicated satisfaction with the proposals and adequacy of survey, relative to the issues at hand) and the NPA.

48. The appellant was involved in a comprehensive pre-application consultation event, which resulted in a number of representations both in favour and in opposition to the proposals. Subsequently, letters have been written to the Planning Inspectorate by a small number of parties and only a few objectors attended the Inquiry.

Statement of Common Ground

49. A very substantial SoCG[23] has been agreed between the appellant and the Council. This was initially helpful in narrowing down the key issues of contention. All matters are now agreed and there are no areas of disagreement. The SOCG originally agreed;

- That Guisborough is a suitable and sustainable location for additional housing development.
- That the site is developable and in a suitable location for residential development and is in a sustainable and accessible location, relative to a range of services and facilities by all modes of transport[24].
- That the proposal represents sustainable development, as envisaged by the Framework.
- That the Council is not able to demonstrate a supply of deliverable housing land, to meet the five year housing requirements. The Council believed that the five year housing land supply amounts to 3.4 years. The appellant considers that the housing land supply is materially less than this.
- It is only in relation to Policies DP1 and CS2, that there is any disagreement as to policy compliance. The parties agree that the Development Plan policies are met

[23] CD5
[24] APP4 Appendix B Transport Assessment

in all other respects and that the proposals do not conflict with and are supported by the material planning considerations of the Framework, other supplementary documents and the evidence base documents produced by the Council.

- The development limits were defined in the 1999 Local Plan and have not been reviewed or amended since. The Development Plan does not contain any up to date housing allocations and there are insufficient deliverable housing sites within the development limits to deliver five years worth of housing against requirements.
- Policy DP1 and Policy CS2 are related to the supply of housing.
- The Council has historically failed to meet either CS or the former RSS housing requirement figures by at least 1100 dwellings since 2004 (more now, in light of the new five year supply work of the Council). The Council is an authority where a 20% additional buffer on the five year housing requirement is appropriate.
- There is a material shortage of affordable housing and the provision of affordable housing, through this appeal, is agreed to be a significant material benefit given the scale of identified need and the limited prospect of any other significant affordable housing delivery[25].
- The site is in a location that is able to deliver executive housing which is a material benefit that weighs in favour of the appeal proposals.
- The site is in a location, to the west of Guisborough, which is considered less environmentally sensitive and has the most scope for achieving an urban extension to the settlement to meet local housing needs. Other directions of potential growth are constrained.
- There is no basis for refusal relating to design and landscape, residential amenity, noise, heritage, ground conditions, surface water drainage and flooding, foul drainage, access and highways, flora and fauna, trees and hedgerows, or the effect the proposal would have on the provision of sufficient community facilities.
- The proposal would provide material benefits which, in addition to housing and affordable housing, include open space, ecological enhancement, employment opportunities, local expenditure within Guisborough and other matters such as the new homes bonus.
- Whilst not in the SoCG, it is now agreed that there is no basis for the Council to resist the appeal proposal. The Council accept that the development plan policies are out of date and cannot be used to resist development, in the light of the Framework and changed circumstances.

Sustainable Development

50. As already indicated, the proposed development is agreed to be sustainable development in the SoCG. Guisborough is the Council's only Rural Service Centre, with the role of serving the towns and villages of East Cleveland and the wider rural area. It is the largest and most sustainable settlement outside the

[25] The housing need is identified in the Strategic Housing Market Assessment 2012 CD20

conurbation by some considerable measure. It has a wide range of education facilities, retailing and employment[26].

51. The appeal site itself is not allocated for any specific purpose, not located within a flood risk area and not designated or protected for its ecological, historic or landscape value. It is not subject to any specific designations in the sense meant by footnote 9 of the Framework that would indicate it should be precluded from development.

52. The appeal site has good pedestrian links to the town and good cycle links[27]. There is good public transport with 6 buses per hour at peak times and direct links to Middlesbrough and the railway station at Nunthorpe.

53. The proposed development would be able to deliver a high quality and wide choice of housing, consistent with the requirement of paragraph 17 of the Framework, and would be able to meet the objectively assessed housing needs of the area and respond positively to the wider growth opportunities. The Council has persistently under delivered housing since 2004. Last year the delivery was just 61 net additional dwellings, some 209 short of the CS figure for the year (304 down on the RSS figure)[28].

54. The proposals put forward a mix of housing including executive housing and affordable housing. It is agreed that the delivery of both is material and, particularly in the case of affordable housing, a significant benefit of the scheme.

55. The affordable housing delivery and supply position in the Borough is very poor. The 2012 Tees Valley Strategic Housing Market Assessment (SHMA)[29] identifies a need for 57 dwellings per annum in Guisborough and 97 dwellings per annum across the Borough. This produces, just in Guisborough alone, a need for 285 affordable dwellings in the next 5 years. The current supply of all dwellings in Guisborough (189 according to the Council's 2012 SHLAA) would, even if 15% affordable housing was delivered on all sites, produce only 10% of the identified needs for Guisborough.

56. Executive housing, is an under represented element of the housing mix according to the 2012 SHLAA. The site is able to assist meeting the needs of the area in this respect. Only Guisborough was identified in the 2009 SHMA as being an appropriate location within the Borough for meeting this need. The appellant's planning witness sets out further detail in his proof at Appendix F.

57. The proposal is well designed, able to meet all flooding and drainage issues, and would cause no harm to bio-diversity or amenity. Whilst the site is agricultural land, at present, less than 20% of it (2.8 hectares) is Grade 3A. The balance is worse quality. The Grade 3A area of land is physically separated from the public highway and inaccessible. It cannot realistically be farmed on its own or in conjunction with any other 3A or higher grade land in the wider area.

58. The proposal meets the social, economic and environmental roles of the Framework as agreed in the SoCG.

[26] APP1 pages 26 and 27
[27] CD4 pages 39, 40 and APP4 Appendix B - Transport Assessment, and Appendices E, F & G
[28] This was in new evidence verbally reported to the Inquiry by the Council
[29] CD20

Housing Land Supply

59. It is common ground that the Council cannot identify a five year housing supply across the Borough. The Council maintain that there was 3.4 years supply in May this year. However, there are two important aspects to consider in terms of the requirement. The first is that the Council has historically sought to rely upon the RSS housing requirement. This produces a five year requirement (absent the issue of past under delivery and 20% buffer) of 1755 dwellings. The CS figure is 1350 dwellings. The additional 405 dwellings is the amount of housing the Council has sought through its representations to the draft RSS at all stages. This also has to be seen in the context of the CS setting an objective of 'stabilising and reversing the existing trend of out migration from the Region'[30].

60. In this respect, the timelines are important. The CS was produced using the Submission Draft RSS figures, because at the time it was examined and adopted, the final RSS figures were not available. However, the Inspector's Report of the examination into the CS[31], records the Council's commitment to review the CS to the extent necessary to reflect the final adopted version of the RSS. In the Inspector's Report[32], it is stated that any substantial variation from the Submission Draft RSS housing figures would be likely to require a review of the CS and the Council made a commitment[33] that should the adopted RSS differ significantly from the Submission Draft RSS, this would give rise to the need for an early review of the CS. The adopted RSS in 2008 made a material increase from the Submission Draft, but the CS has not been reviewed. The Council sought the increase in the representations it made to the RSS. The representations put forward by the Council[34] refer to a table which contains the figures finally adopted in the RSS. The RSS evidence base was tested, is more up-to-date than the evidence base relied in the Submission Draft which led to the CS figures and should be given material weight regardless that the RSS is now revoked.

61. The other area of difference on the requirement side is how past under provision is taken into account. In addition to the fact that it is agreed that this Council should have a 20% additional buffer on its five year housing land supply to reflect persistent under delivery[35] there has been a material under delivery since 2004, whether judged against the RSS or the CS. The Council's current approach is to avoid meeting the under provision until after year five of the next five year period. This is not an approach which suggests the Council would avoid meeting the provision altogether; simply that it will delay doing so. This is entirely inconsistent with the Sedgefield approach and the position explained in the appeal decisions at Sellers Farm[36] and Honeybourne[37]. The Council previously sought to meet the under provision in the first five years when putting together its SHLAA documents. Indeed, up until 2011, every SHLAA sought to meet the under-provision in the following five years. It is only recently that the

[30] CD9 paragraph 5.5
[31] APP2 Appendix G
[32] At paragraph 7.1
[33] CD9 Paragraph 1.23
[34] APP2 Appendix M
[35] As required by paragraph 47 of the Framework
[36] APP/C1625/A/11/2165865 - see APP2 - Appendix N, paragraph 15
[37] APP/H1840/A/12/2171339 – see APP2 - Appendix O, paragraph 36

Council chose to change its approach. This approach is entirely inconsistent with paragraph 47 of the Framework which seeks to boost significantly the supply of housing and make every effort to meet the objectively identified needs for the area. The needs that have gone unmet in the past, remain part of the needs now. The houses that should have been built for the populous of the area still need to be built. The current undersupply is agreed now to be 1,676 as against the former RSS and 1,311 as against the CS[38]. This needs to be added to the future five year requirement as well as the addition of 20%.

62. The needs comprise what was not provided and should have been and the future provision. The 20% addition is required as a reflection on the track record of under delivery. This should reflect 20% of the totality of the undersupply because it relates to the extent of development required.

63. In addition, on the supply side, the Council claim to have a supply of 1,527 dwellings. However, this is partly made up of sites without planning permission (some 26.5% or 403 dwellings). Having regard to the approach of recent Inspector's on this topic[39], there is serious doubt as to whether these dwellings should be taken into account as part of the future supply when there is no permission and no clarity of delivery. Footnote 11 to the Framework, requires that for sites to be considered deliverable, they should be available now, offer a suitable location for development now and be achievable with a realistic prospect that housing will be delivered within five years and be viable. There is no evidence before the Inquiry on these points. The new supply figure from the Council has not been tested, is not supported by a SHLAA, has not been considered by the development industry or relevant professionals in relation to delivery rates and viability; as such it must be of limited weight.

64. Taking only the requirement side arguments, there is between 1.85 and 2.4 years supply. If the supply side figure is also reduced to reflect the omission of sites that don't have planning permission, this drops to between 1.37 years and 1.76 years, depending upon whether the RSS or the CS annual requirement is utilised. This is before taking a further allowance for non-delivery of small sites with permission (10% according to an appeal cited by the appellant's planning witness[40]).

65. On this basis there should be no doubt that paragraph 49 of the Framework is engaged and policies for the supply of housing land should not be considered up-to-date. The only policies that were ever at issue in this appeal are policies relevant to the supply of housing land and they are therefore out-of-date on this point alone. Consequently paragraph 14 of the Framework is engaged and planning permission should be granted unless there are significant adverse effects that outweigh the benefits of the proposal. In this regard, the Council had intimated that there may be an effect on delivery of housing within the conurbation part of the Borough. However, there is no evidence and paragraph 14 of the Framework puts the burden of proof on the Council to demonstrate this point.

[38] ID10 and ID12
[39] APP2 Appendix P, paragraph 30 and Appendix Q, paragraph 10
[40] APP2 Appendix O, paragraph 39

66. Importantly there is nothing within the Framework that indicates that authorities should calculate a five year supply on a sub-area basis. The Council's subdivision of the five year housing land supply into different areas, is without any national policy foundation. Additionally, Policy CS2, whatever weight it is given, is not a five year housing supply 'split' policy.

Local Planning Policies in the Refusal

67. Policy DP1 dates from July 2007. However, the application of it to the issues in this appeal relates to the limit of development shown on a 1999 Local Plan Proposals Map. It is common ground that that Proposals Map has not been reconsidered or reviewed and the development limits are therefore at least 14 years old. The examination into that Plan was 1997 and the preparation of the development limits was based upon work done prior to that. There can be no doubt that the limits are very old indeed.

68. The 1999 Local Plan defined development limits in order to identify land to meet development needs up to 2006, some 7 years ago. All the allocations relevant to this area have been built out many years ago. It is common ground there is insufficient land within the 1999 development limits to meet a five year housing land supply. Since 2006, housing need has been increasing and indeed whether one looks at the RSS or CS annual requirement, this has resulted in excess of 2,000 additional dwellings that should have been delivered and which the 1999 development limits never contemplated. This point also has to be considered alongside the fact that paragraph 49 and paragraph 14 of the Framework are fully engaged due to the lack of a five year housing land supply.

69. These are all material considerations which significantly influence the application of Policy DP1. It cannot be used to refuse on any proper basis. This is now clearly acknowledged by the Council in deciding not to contest the appeal, following the same approach to the decision at the 6 June 2013 planning committee in relation to land at Carlin How a site which is also outside the development limits and next to a settlement in the 'Rural Area' of the Borough[41].

70. Policy CS2 was adopted in 2007, pre-'credit crunch' and within the background of a much stronger and more buoyant economy. The text to the policy itself sets out that it is intended to determine the location of allocations in a Plan which has never come forward. Most importantly, it is a policy with a brownfield regeneration focus. It pursues a sequential approach, utilising the language of historic national guidance advice in *Planning Policy Guidance note 3 'Housing'* (PPG3) and the now defunct Policy 3 of the Regional Strategy[42]. *Planning Policy Statement 3 'Housing'* (PPS3), which had a priority for the reuse of brownfield land, came out just before the CS Inquiry and the Inspector[43] recognised this but felt that the sequential approach was "broadly consistent". Since then, both the sequential approach of PPG3 and the priority in favour of previously developed land from PPS3 have found no place in the Framework. The Framework, whilst encouraging the effective use of previously developed land, sets this against the principle of pro-actively driving and supporting sustainable economic development to deliver, amongst other things, homes and to make every effort

[41] ID6
[42] CD11
[43] APP2 Appendix G, paragraph 5.2

to meet the objectively identified housing needs (paragraph 17). It is clear that national policy has moved dramatically since the CS was adopted. Further, the CS text identifies that even in 2007 there was a need to be realistic about the speed of regeneration and that the speed of regeneration was likely to be very much dependent upon the housing market and availability of funding, both of which, even in 2007, were described as being uncertain.

71. Since 2007, the housing market has fallen considerably, public sector funding is virtually non-existent and private sector funding is difficult. These changed circumstances are acknowledged by the Council's witness's evidence where he states that the deficiencies of housing delivery in the urban area are attributed to the large number of demolitions and delays in bringing replacement dwellings forward due to financial and economic circumstances and current market considerations (in particular, lack of access to finance and reduced job security). The whole premise of a sequential approach, applied to the situation here, cannot work. Even in 2007[44] it was stated that until the success of stabilising the housing market around Low Grange Farm had been demonstrated, it would be difficult to assess whether the housing market was strong enough to sustain further housing development in that area. Whilst that is a reference to a specific site, it is a perfect example of the changed circumstances. The Council's 2012 Scoping Report for the emerging Local Plan acknowledges the need to revise the approach to Policy CS2 and that the approach chosen has to be achievable.

Impact on Delivery in the Urban Area

72. The Council claimed that the proposals will not advance development in the urban area of Redcar & Cleveland. However, there is no evidence that it will retard the development in that area. It is clear from the three sites[45] referred to in the appellant's planning witness's evidence, all being developed by Taylor Wimpey at present, with one in the heart of the urban area, one on the edge and one at Spring Lodge, Guisborough that there is virtually no overlap of purchasers. The very fact that Taylor Wimpey are developing simultaneously in these locations shows they feel that there is no harm to their sites. The site at High Farm, Teesville has permission for 210 dwellings. It started in 2011 and has delivered only 15 sales or reservations. None of the people purchasing or making reservations are from Guisborough or the wider rural area. The rate of sales for Teesville is very low. In contrast, the site on the edge of the urban area at Mallinson Park has delivered better sales rates but only one person was from Guisborough and none were from the wider rural area. In sharp contrast, the site at Spring Lodge, Guisborough, has delivered a sales rate that matches the Company's national average, with only one person from the conurbation area. It is clear there is a significant and pressing demand and need for housing in Guisborough, which has no material overlap with the urban area.

73. In terms of Taylor Wimpey's three sites in this area the company has not gone for the easiest option first. It started with the hardest site to develop, that at High Farm, then started the next hardest at Mallinson Park and more recently has started Spring Lodge, the easiest of these three sites.

[44] CD9 paragraph 3.8
[45] APP1 - 6.4.60 page 68

74. The refusal of planning permission on the appeal site would provide no positive incentive to development within the conurbation.

75. The appeal site is predicted to produce housing at a high delivery rate, consistent with Taylor Wimpey's national average. It is false to suggest that it would make an immaterial difference to housing land supply. In the appellant's opinion no builder on any site in the Borough is likely to build more quickly or start more quickly.

Guisborough and Previous Housing Provision

76. The Council's concern with the appeal proposals was described as being too much development within the rural area. Guisborough is by far the largest and most sustainable settlement in that area and is recognised as such, being the only Rural Service Centre. It has a population of some 18,000 and a full range of jobs, shops, services and facilities.

77. Since 2004 there have only been 167 net completions in Guisborough, some 21 per year. This is 17% of the completions in the Rural Area as a whole, an amount that is completely out of kilter (too little) given the scale and function of the town. There can be no valid suggestion of 'too much' development in Guisborough, whatever view is taken about the development in the rest of the Rural Area.

The 'Emerging' Development Plan

78. The CS anticipated that an allocations plan would follow its adoption, but this hasn't happened. In 2009, a draft Plan was prepared but abandoned. The Council is now producing a comprehensive Local Plan which will both replace the CS and, for the first time since 1999, identify allocations. However, the furthest the Council has got is a Scoping Report in November 2012 and it is hoped that a consultation draft will be out in October/November this year.

79. The Council's Local Development Scheme is inaccurate. When one looks at what is still to be done, it is clear that there is no real prospect of having an adopted development plan until mid-2015. If all new development was to wait for the development plan to be adopted, it is likely that such development would not produce any delivery until 2017, the last year of the five year housing supply period. In the meantime development needs would go unmet and the five year housing land supply problems would escalate.

80. In the language of *The Planning System: General Principles*[46], refusal in order to wait for the plan, cannot be justified because of the delay this would impose in determining the future use of the land in question. Here the plan is not even at the consultation stage.

81. It is also relevant to have regard to the scale of the proposal in the context of the scale of the need. In this regard, as explained by the appellant's planning witness[47] assuming that the development plan period is to 2030 and assuming that the housing requirement figures remain as per the CS, the appeal proposal amounts to 6% of the future requirement. The appellant's planning witness also

[46] CD7 paragraph 18
[47] APP1 page 77

explained how the effects of allowing the appeal would relate to only a small area. It is further agreed that the site is located in an area (west of Guisborough) which is less environmentally sensitive than others and has the most scope for achieving a major urban extension. This was readily accepted in the SoCG and in the Council's witness's evidence; the site might even have been a draft allocation.

82. The situation in this case reflects that described by the Planning Minister in his speech in January of this year[48] of a Council, dragging its feet towards development plan preparation which the Minister describes as "not acceptable" and goes on to state "Councils which do not produce credible plans to meet local housing needs will find that the presumption in favour of sustainable development will trump local decisions". This is a clear reference to permissions being granted on appeal.

Other Considerations

83. Several points are made by local residents, and others, in relation to highways and access. These are dealt with fully in the appellant's highways consultant's evidence and there is no basis for refusal on these topics, as agreed with the Council. There is no need for more than one access to the site. The emergency access would be purely for emergency purposes and utilises a road of adequate width for that role. The access into the site would be safe and provides full visibility splays in excess of the Council's requirements. There is no issue with regard to horizontal or vertical alignment and forward visibility[49]. Speeds have been fully surveyed and are in line with the speed limits of the road[50]. Accident levels in this particular area are low and do not give rise to any proper conclusion that the highway is inherently unsafe in this location[51]. Some water flows across the road approximately 160 m to the west of the site access, where the super elevation of the road changes. This is principally due to land to the south of Stokesley Road draining in that direction. It is not within the visibility splay of the proposed access, or the 120 m stopping distance, and the site does not put any water onto the road. There is an intention to improve existing road drainage, taking water from some $^{2}/_{3}$ of the relevant area to Sandswath Beck, via a means of positive, balanced drainage.

84. There is no flooding, drainage or sewage issue that has not been properly addressed and considered by the appellant. It is important to note that whilst the Sewerage Authority is content that their systems can accommodate the foul drainage from the site, it also has begun a programme for enhancement to create greater capacity to assist with environmental improvements. This is designed to be complete by September 2015 and is funded[52].

85. The appellant has properly taken into account all matters relating to trees, hedgerows, views, amenity and ground conditions, and there is no basis for refusal in relation to these topics. Whilst the site is some 300 m from the NYMNP, there is an appropriate, safe and convenient pedestrian access to

[48] APP2 Appendix C
[49] APP4 Appendix N
[50] APP4 Appendix I
[51] APP4 Appendix H
[52] APP6 Appendix J

footpaths within the Park that are designed and laid out to accommodate visitors[53]. There is no need to travel to Pinchinthorpe Visitors Centre. The NPA own analysis establishes that there is capacity for greater visitor numbers. Paths in this location are specifically designed and laid out to accommodate visitors from the Pinchinthorpe Visitors Centre. The incremental increase in pedestrians and cyclists entering the NYMNP from the development site compared with existing position is very modest. The NPA has not objected to the proposals and has been consulted in relation to these matters via the ES.

86. The level of ecological survey is viewed by the appellant's ecologist as appropriate, given the absence of evidence of bat roosts and the nature of the potential habitat that would be affected by the development. Trees are largely retained and only a modest amount of hedgerow, other than gappy remnants would be lost. These features are considered to be low value in a local context and the favourable conservation status of bats would be maintained. This has been accepted by Natural England in its consultation response on the application. Natural England has applied its standing advice and applied its flowchart (prepared, in the appellant's solicitor's understanding, as a direct response to the decision of the Supreme Court in Morge[54]) to reach Box (vi), which advises the authority to accept the findings of the ecological assessment work with the application and consider promoting biodiversity enhancements. Natural England was consulted again via the ES and has made no comment. The Supreme Court decision in Morge, specifically refers to the role of Natural England and the reliance upon its position that can be taken by the decision maker[55]. In addition there is no evidence that a licence will be needed, by way of derogation (offending Article 12 (1) of the Habitat Regulations), or that, if it were needed, that it would be unlikely to be obtained which is the relevant test[56].

Conclusions

87. For all the above reasons, the appellant feels there is no proper basis to resist planning permission.

Other Oral Submissions to the Inquiry

88. **Mrs Meynell** is a local resident who explained she was speaking on behalf of many residents in the Galley Hill Area. She read a statement to the Inquiry[57]. The points for objecting include that the development is outside the area set out in the Preferred Options Paper (2009) and exceeds the guidelines on numbers of dwellings for Guisborough. The Redcar & Cleveland five Year Housing Supply Document March 2010 showed adequate supply to 2015 so that there is no need for this development on greenfield land. Guisborough already has sites with planning permission (40 at Spring Lodge, 73 at Enfield Chase, 22 off Middlesbrough Road, and 22 or 23 at the former Park Lane School site). In addition there are small sites.

[53] CD3 (ES) Figure 6.3
[54] Morge v Hampshire CC [2011] UKSC 2 (The appellant's ecologist - Appendix vii)
[55] APP10 Appendix vii, paragraph 30
[56] Morge judgement, paragraph 29
[57] ID9

89. Policy CS13 at 5.7 sets out a requirement to use previously developed land before greenfield sites; there are brownfield sites that should be considered before this agricultural land. The site should also be protected under Policy CS23 as a strategic landscape area.

90. The appeal site includes best arable land that has been continuously farmed. This provides crops and valuable habitat for insects, birds and small mammals, including bats, swifts, house martins and owls. Deer have also been seen. It provides a corridor for movement between the Eston Hills and the NYMNP. It should be preserved; agricultural land is needed for future generations. Being positive the proposed ecological enhancement would be better than the existing bramble and willow area.

91. The drainage system in Guisborough struggles to cope with heavy downpours which are happening more regularly. The proposed development would have more impermeable surfaces needing more measures to prevent flooding.

92. The plans show hedgerows to be removed which should be protected under the Hedgerow Regulations (1997).

93. The last census showed a declining population for Redcar & Cleveland, indicating a need for fewer houses. Local estate agents have some 350 houses for sale, some being for sale in excess of 12 months. As such it is questionable whether new houses are needed.

94. The early stages of the proposed development would be isolated at first reducing sustainable transport options and increasing traffic at peak times. The timings for walking from the site to Galley Hill Road include 10 minutes to Galley Hill School yet, in Mrs Meynell's experience, it is a brisk nine minutes from Mrs Meynell's dwelling which is closer[58]. Additionally walking distances are based on the site entrance and those at the furthest parts of the site would have a longer walk.

95. **Mr Bainton** is a local resident who is also a chartered civil engineer. In addition to other concerns raised, the proposed development would not appear to round-off the settlement, rather it would stand out as a protrusion to the west. In terms of highway concerns six cars queuing at a junction may seem acceptable but should any problem arise it would be like to tail back significantly. Mr Bainton recalls that there have been accidents on the hill coming into the town. These tend to be worse, in terms of frequency, during winter months. Any such accident would make it harder to get out of the site. Moreover, the 120 m sight line proposed may not be possible to achieve for traffic travelling east, especially with vegetative growth on the verges. Given the likely gradient of the access road sight lines ought to be 9 m x 90 m rather than 4.5 m x 90 m. There are also concerns about water on the road. The scheme has not been audited for non-motorised units.

96. **Mrs Hemingway** noted that following what had been heard about the Framework and weight to be attached to policies after one year from its coming into force it seems hard to resist the proposal, particularly as previously developed land costs more to develop than greenfield land. There is also local

[58] Kingfisher Drive

concern that the school is at full capacity. Mrs Hemmingway also noted that further details of the emergency access proposals would have been helpful.

97. **Cllr Spencer** is the Ward Councillor for the Hutton Ward and explained that in this role he represents some 2600 objectors to the scheme. It is acknowledged that those objections are not all on planning grounds; many are emotive. Nonetheless, it is important to represent those people. Moreover, he undertakes this duty as someone who has lived in the area since 1963. Since that time development has been undertaken and that has not always benefitted the town. The five year housing land supply issue is difficult. When the Council dealt with the application in November 2012 it was under the LDF and there was a case for refusing the development. There are 360 houses for sale in Guisborough at present so no housing need. Indeed the five year plan to help with housing is a problem for the South East. If it goes ahead it will mean journeys of 3.2 kilometres (km) to 4.3 km into the town. The amenities there were built for a population of 9000 people. There has been no improvement since. The schools are over subscribed. There are additional concerns about the access and its position on a bend. Given the extent of concern not everyone can be wrong. Whilst he supported the Carlin How scheme it was different to the present scheme.

Written Representations[59]

98. Most of the written representations in respect of the appeal cover the issues already set out above, with letters from Mrs Meynell and Mr Bainton. The gist of the other matters is set out below.

99. The **Council to Protect Rural England** (CPRE) express concerns at the adequacy of the drainage system and have particular concerns that the scheme would further erode sea quality checks off Saltburn, which failed to meet the requirements of the current European Directive. This is of particular concern as the directive is due to change in 2016 with four years of sea water test data required of which two years have already failed. The concern is that continuing failure will impact on the environment and local economy.

100. In **other letters**, concern is raised (in a letter reflecting that also addressed to the SoS) that the decision will not be taken locally but at Government level. Additional concerns raised in that letter include: that the developer has not honoured affordable housing commitments on other sites; that the developer does not wish to provide the kind of housing which is socially desirable (fuel efficient and modestly priced); that other sites are available in the town; and, that overruling local decisions contradicts the expressed Government intention to devolve decision-making to a more local level, contrary to democratic representation.

101. The proposed development would render properties currently on the market unsellable. Applications for 2,000+ dwellings exist in the nearby authorities of Middlesbrough and Stockton reducing any need to develop this site. Moreover the site would have no community centre facilities. There is no need for three to five bedroom houses in this area, the scheme would not serve the needs of the local population, but would attract others with no regard for local heritage or

[59] AD1

values. There is no local employment for such people. The suggestion of providing money towards school facilities is an unacceptable inducement. Providing local jobs during development cannot justify the scheme. There is also a perception that the land owners are not interested in the well being of local residents.

102. One letter supports the scheme, but expresses concern about blocked drains, following the development of Whinchat Tail, causing flooding and that bats are present in the locality.

103. **Letters at the application stage** were numerous[60], many followed a standardised format which, in addition to some of the matters raised above, focuses on the declining population of Redcar & Cleveland, and possible parking on side roads. Letters at this stage also referred to loss of house value and proximity of the proposed SuDS pond to the children's play area. One letter referred to archaeological/historic interest in a stretch of hedgerow which the writer felt should be excluded from development (the scheme proposes that it would be as it would form part of the ecological enhancement area). At this stage the Local MP, Tom Blenkinsop, formally objected to the scheme on the basis of conflict with local policies, the likelihood of the site serving commuters contrary to sustainable development objects, and the absence, at that stage, of ecological assessment.

Conditions

104. The main parties submitted a broadly agreed list of suggested conditions[61] which formed the basis for the discussion at the Inquiry. Having in mind the tests set out in Circular 11/95 *The Use of Conditions in Planning Permissions* it was agreed that alterations and amendments would be necessary were the appeal to succeed. The following discussion organises the conditions into groups of similar items.

105. Conditions setting out the need to submit reserved matters, the date for doing so and subsequent commencement would all be required. In addition, to define the permission further a condition would be necessary to set out the need to accord with the principles of the Updated DAS as this level of detail informed the ES and so has established the type of development expected. Compliance with the approved application plans is also necessary for the avoidance of doubt. In addition it would be necessary that finished floor levels for the development are clearly established because of the topography of the site. Although the play area would form part of the public open space defined in the s.106 Agreement, it would be necessary to require full details of this area so as to ensure that it would provide for the recreational needs of children using the development and can be assessed in terms of the relationship to the proposed dwellings in that area. An art feature is sought by the Council in accordance with Policy DP5 to provide visual interest within the proposed estate and to promote both good design and local distinctiveness. However, the appellant suggests such an art feature may form an integral part of the development fabric.

[60] CD16
[61] ID4

106. A phasing condition would be necessary to make sure that infrastructure would be in place at the correct times given the development of the site is envisaged to take place in a phased manner[62] over a period of some ten years. Other conditions would link to this phasing condition in order to provide a clear basis for timetabling of works.

107. A number of highways conditions would be required. These include the submission of a Travel Plan for the duration of the development to minimise impacts upon the free flow of traffic in the area. It is agreed that a Travel Plan would be needed to assist future occupiers of the proposed development in making sustainable transport choices. A condition would be required to prevent debris being deposited on the highway in the interests of highway safety. This would act as a preventative measure rather than to have to wait to act upon an unacceptable situation where mud is deposited on the public highway. The principal access point would need to be constructed first so that construction traffic entering the site could do so safely and a Traffic Management Plan would be needed to ensure development traffic does not adversely affect highway safety. The access junction would need to be constructed in accordance with the approved plan with visibility splays maintained, again in the interests of highway safety. The junction arrangement would need to be completed before the first dwelling on the site is occupied and because it involves off-site works would need to be a 'Grampian' style condition. It would also be necessary to establish details of the emergency access from Lark Drive and how that would be controlled for emergency use only. Implementation of the approved emergency access arrangements would also need to be agreed. However, given the phasing of the scheme this would need to be considered in the light of how it would serve the development and the point at it which it would become necessary and functional. This is a matter which could reasonably form part of the phasing arrangements.

108. It would be necessary to agree drainage details and the phasing for their implementation so that the site would be suitably drained in the interests of the living conditions of existing and future occupiers.

109. Parts of the site are close to roads from which there is noise of a level which would be likely to cause annoyance to future residents of the site[63]. A noise assessment has been undertaken which indicates that a suitable barrier would provide sufficient attenuation. A full scheme would need to be prepared to relate to the final reserved matters scheme and the acoustic works would need to be undertaken in advance of the occupation of the properties which would be affected by noise.

110. Although landscaping is a reserved matter it would be necessary to ensure that the scheme is implemented and maintained. Given the size of the scheme and the sensitive location at the edge of the settlement it would be reasonable and necessary for the period of maintenance to extend to 10 years. An ecological mitigation scheme would be required to provide habitat for any species using the existing area; this would also provide an enhancement of land managed for habitat purposes. Although the s.106 covers this point, it does not tie the scheme to the details within the existing studies, hence a condition is also

[62] A general phasing plan for the housing is contained within the ES at Fig 4.3
[63] AD3

necessary. Because of the likelihood of bats foraging in this area and the sensitivity of the site in terms of proximity to the NYMNP it would be reasonable and necessary to require the submission and implementation of a scheme for lighting.

111. In order to accord with Policy DP3 and to support national Government objectives reflecting the need to reduce carbon emissions, it would be reasonable and necessary to seek that a minimum of 10% of the site's energy requirements would be provided by embedded renewable energy or another form of sustainable energy scheme.

112. In order to protect living conditions of existing residents it would reasonable to control working hours on site to between 08:00 and 18:00 hrs on Mondays to Fridays, 08:00 to 13:00 hrs on Saturdays and not at all on Sundays and public holidays. It is also reasonable and necessary to require dust suppression measures.

113. An extensive land contamination condition was put forward but, given the findings of the Phase I Desk Study Report[64] it was agreed that it was unduly onerous and reduced requirement would be more appropriate yet still satisfy the purposes of that reports recommendations[65].

114. It was also agreed that the condition requiring achievement of Code Level 3 had no policy basis to justify such a requirement and that, in any event, this would be a matter for Building Regulations. As a result this condition would not be necessary or reasonable. Two of the conditions relate to details of materials to be used, including those for hard landscaping but as this is an outline application these would be covered by the appearance reserved matter, with an overlap with the landscaping reserved matter. The other condition which it is agreed would not be necessary is that sought by the Environment Agency in respect of a buffer zone from a watercourse. It has been clarified that there is no watercourse on site and thus the Environment Agency wrote withdrawing the request for the condition[66,67].

Section 106 Obligation

115. A signed and sealed s.106 Agreement was submitted during the Inquiry, dated 20 June 2013, between the Council, Bernard Hubert Lax, Pamela Jean Bolton, Melanie Jane Lax and Amber Marie Lax and Taylor Wimpey UK Limited, which includes a number of obligations to come into effect if planning permission is granted, subject to some caveats. It was evident that there were two errors within it; the Master Plan Reference on page 4 and the reference to the Inspector rather than the Secretary of State at paragraph 7.12 on page 7. Those matters were corrected by handwritten alteration and signature, including under power of attorney.

116. The s.106 sets out definitions on pages 3 to 5. The obligations provide the following:

[64] AD2 paragraph 4.1
[65] AD2 paragraph 4.3
[66] ID11
[67] The suggested conditions referred to in this paragraph are nos. 8, 13, 14 and 21 of ID4 respectively

Ecological Enhancement Area and Public Open Space

117. The s.106 covenants that the appellant would provide full details for the Ecological Enhancement Area and Public Open Space and the timetabling for their implementation. It also provides for maintenance of those areas, with either transfer to the Council or through management by a Management Company. The appellant covenants not to use those areas other than for the purpose intended and sets out that should these areas be transferred to the Council a commuted sum would be payable to the Council for their maintenance.

Affordable Housing

118. The affordable housing element is defined as provision of 15% of the dwellings of which 70% will be for social or affordable rent, the remainder being for shared equity or shared ownership. The provision of 15% of the dwellings as affordable homes accords with LP Policy H9 and its supporting text.

119. With effect from the commencement of development the s.106 provides that the affordable units would be constructed on site in accordance with a scheme to be agreed with the Council and made available to a Housing Association(s) for sub market rented and shared equity or shared ownership. It sets out a timeframe for transfer to a Housing Association(s) giving 6 months for offers to purchase to be received. After that period, if no offer is received, the developer would be able to dispose of the housing on the open market free from constraint.

120. The transfer of any dwelling would include provisions to make sure that they remain affordable in perpetuity, but allowing for right to buy, rights to staircase and take up the freehold transfer and rights of mortgagees.

Local Labour Agreement

121. The s.106 sets out that the owner would liaise with the Council's Routes to Employment Service in seeking to engage local people and local businesses in tendering, to ensure they benefit from employment opportunities, that training is provided for those local people and businesses. It also agrees that the owner would provide an employment return to the Council within three months of the completion of the development.

Education Contribution

122. An education contribution of £3714.30 per unit would be payable to the Council. The first 30% would be paid on commencement of development, 35% within 12 months of the date of commencement and the final 35% within 24 months of the commencement of development. The monies would be for Galley Hill Primary School Works, although there is scope to discuss alternative arrangements.

Leisure Facilities Contribution

123. A contribution of £100,000 would be made towards the costs of improvements by the Council at Guisborough Swimming Pool and King George V Playing Fields. The first 50% of that contribution would be paid prior to occupation of 40% of the dwellings with the remainder payable before 60% of the dwellings are occupied.

124. The parties broadly agree that these matters accord with the requirements of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. However, the appellant does so cautiously and so has included a caveat that should the SoS decide any requirement is not necessary, directly and fairly related to the development, or not fairly and reasonably related in scale and kind it shall be severable from the remainder of the deed. The Council, to support its position in respect of commuted sums and other obligations, produced a statement entitled The Community Infrastructure Levy Regulations 2010 Compliance Statement[68] at the Inquiry. That Statement, along with the relevant policies (in particular LP Policy H9, CS Policy CS24, DP Policy DP4) and file correspondence regarding the primary school establish the justification for the sums arrived at in the s.106 Agreement.

[68] ID16

Conclusions

Preliminary Matters

125. For ease of reference, the square brackets [] at the end of each paragraph relate to earlier paragraphs of this report.

126. In reaching the recommendation I have had regard to the EIA process and the ES.

Main Issue – Housing Land Supply

127. It has always been the case with this appeal that the Council accepts that it does not have a five year housing land supply [9, 36, 49].

128. However, the parties do not agree on the extent of the undersupply for a number of reasons. Firstly the Council has sought to rely on figures from the CS to establish the extent of housing supply in terms of existing backlog and the requirements going forward. In contrast the appellant considers that the RSS figures should be used. These latter figures, whilst taken from a document that no longer carries any weight in itself, are based on tested evidence. Moreover, because of timing, with the CS published before the RSS, the Council in its CS acknowledges the need for early review should RSS figures differ significantly from those in the CS. As the RSS has the most up-to-date figures it seems that they should carry greater weight, particularly given that the CS seeks early review and relies on old evidence. Those documents set out the following requirements per annum:

No of units per annum	CS	RSS
2004-2011	300	325
2011-2016	270	365
2016-2021	270	330
Total 2004-2021	4,800	5,750

129. The difference between these figures clearly has a significant impact on supply requirements and, if the RSS figures are used, which would be appropriate, this would reduce the number of years of housing land supply which the Council could claim [41, 59 - 61].

130. In terms of potential housing supply, the Framework footnote 11 makes it clear that "*to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not*

be viable, there is no longer a demand for the type of units or sites have long term phasing plans".

131. The fact that a permission has lapsed indicates that there may be some difficulty with a site even if it is simply that the site is suited to development but the landowner isn't proactively seeking to implement it. Additionally, once permission has lapsed there would be some inevitable delay to development as a consequence of needing to seek planning permission, possibly with the need for new supporting documentation and survey work. Nonetheless, such sites might well come forward, albeit later within the five year period so I do not consider it appropriate to discount them altogether.

132. In terms of sites yet to achieve planning permission it is not so straightforward. Allocations, for instance, are likely to be deliverable given that they should have been assessed, even if they do not have extant permission, and there may be other sites which developers are keen to promote with a reasonable likelihood of development in a five year period. Being pragmatic therefore I do not consider all sites without current permission should be discounted. Nonetheless the Council's approach here of identifying the sites and saying they are deliverable where a significant number in the 5 year supply period have no planning permission (403 units on larger sites) and have not been thoroughly assessed or discussed with main stakeholders appears overly optimistic. Thus, I consider that the level of 'supply' identified by the Council in its *Five Year Housing Supply (2013-2018)* document submitted at the Inquiry is not something to which significant weight should be attached [63].

133. Greater weight should be attached to the most recent figures in the SHLAA Review 2012, because it has been subjected to industry scrutiny. Even so, this document quite rationally sets out that the inclusion of any potential housing site in the SHLAA does not mean that the site will be allocated for development through the Local Plan or infer that any planning application would be supported. I also note that this SHLAA, unlike the preceding one, bases requirements on the CS alone with no reference to the RSS figures. But setting aside the matter of requirement, in terms of supply, the SHLAA Review 2012 identifies a deliverable supply of 1,110 dwellings between 2012/13 and 2016/17 which includes 177 units on small sites. In contrast, the untested more recent, paper *Five Year Housing Supply (2013-2018)* identifies some 1,527 units, including 360 on small sites. As a result, the Council asserts supply is better than for the SHLAA Review 2012 but, as set out above, there is a lack of scrutiny and it appears unreasonably positive. Reverting to the tested SHLAA Review 2012 figures reduces the number of years of housing land supply which the Council can truly demonstrate [63].

134. Small sites will contribute to housing land supply and have been included in the figures set out above but, in this case, there is at least one error in the information provided, wherein a conversion scheme, rather than increasing supply, would result in a net loss of two units. That point reinforces the fact that it would be imprudent to rely on the small sites identified in the *Five Year Housing Supply (2013-2018)* because of the lack of rigorous scrutiny [63].

135. For the avoidance of doubt, and in response to the concerns of interested persons raising the point, it is helpful to clarify that existing properties for sale in the area form part of the existing housing supply and so have no bearing upon

new housing requirements. The time properties take to sell will be product of a number of factors, including location, size, style, age, features and price as well as other economic factors, but again this has no direct bearing on the required housing supply [93, 97].

136. Although the approach to how the historic undersupply should be treated has not been a matter for cross examination, from what has been read and heard, and having regard to the purposes of having a five year housing land supply that delivers homes, it seems that any existing undersupply should be dealt with promptly rather than put off. With this in mind the 'Sedgefield' approach appears to be the most appropriate way to deal with undersupply. This is because the immediate provision of housing land is the most likely way in which a chronic shortfall in provision would be addressed; simply putting off provision of the undersupply element, as the Council now is seeking, would mean that a greater number of people are likely to go without the housing they need for longer. Including that unmet need figure within the five year housing land supply requirement would significantly reduce the number of years of housing land supply in the Borough [61].

137. Whether or not the 20% front loading required by the Framework for persistent failure in housing delivery is calculated from the need for the five year period or the five year period plus the backlog was not debated. Whilst it is difficult in such circumstances to offer a balanced view, the appellant's suggestion that it should apply to the undersupply and the five year need has some merit in that it relates to the totality of the need [62].

138. Concluding on the matter of the housing land supply position for this Council, and bearing in mind that the Council chose not to test the evidence on this matter, I have no doubt that the shortfall in housing land is significantly greater than that maintained by the Council, if not quite so poor as claimed by the appellant: in any event the housing supply is significantly below the five year supply required [41, 49, 59-63, 66].

Main Issue – Housing Policy

139. The Council accepts that paragraph 215 of the Framework applies in the determination of this appeal. As such the policies of the development plan should be given due weight depending on their consistency with the Framework [18, 27, 37].

140. It is not disputed that Policy DP1 relates to development limits established in the 1999 Local Plan and so relates to housing requirements established in the mid 1990s. The 1999 Local Plan was intended to cover the period to 2006. Nor is it disputed that all the allocations within it have been built out. Having this in mind, as well as paragraph 49 of the Framework which requires the provision of a 5 year housing land supply that it is accepted cannot be met, there no doubt that Policy DP1 is out-of-date. As such, in line with the Framework at paragraph 215, this policy should not be afforded any significant weight [41, 49, 68, 69].

141. Policy CS2, in part, bases its locational strategy on advice from Planning Policy Statements 3: *Housing* and 7: *Sustainable Development in Rural Areas*. Those documents, which are no longer extant, sought a sequential approach to prioritise re-use of previously developed land. That is an inherently sustainable way to use land and the Core Principles of the Framework still seek the effective

use of land that has been previously developed. However, national policy has been altered to suit current circumstances. National Government is seeking to focus on sustainable development, being about positive growth and setting out that sustainable development based on three core roles, economic, social and environmental, which need to be dealt with as a package. In this case, despite the aim of Policy CS2 to prioritise use of previously developed land, this is not delivering the much needed homes in this locality. Therefore the development of the greenfield appeal site, which is agreed to be sustainably located, appears in-line with the Framework's Core Principles in that it would help drive and support sustainable economic development to deliver the homes that the country needs [41, 70, 71].

142. Indeed the Council's own Local Plan Scoping Report acknowledges there are issues about the split of development between urban and rural areas and therefore seeks to revise the approach of Policy CS2 so that the approach taken to development is achievable. Although this point does not focus on the use of previously developed land, it indicates that Policy CS2 has some problems. Whilst that policy may have some value in certain circumstances, in this case, and in light of the housing land supply situation, it should not be afforded significant weight [71].

143. In terms of the matter of prematurity, or more particularly the implications for allowing the proposed development without it forming part of a development plan, the Framework at paragraph 216 and *The Planning System: General Principles* both set out that emerging plans may attract some weight. However, in this case there is no current emerging plan that could be undermined. As such, that point does not attract significant weight. Indeed the Ministerial Statement of 10 January this year confirms the Government's position in this regard, explaining that where Councils do not produce credible plans to meet local housing need the presumption in favour of sustainable development will trump local decisions. It is also noteworthy that throughout this appeal the Council has accepted that the development represents sustainable development [78-82].

144. Thus, having regard to the Framework and *The Planning System: General Principles*, as well as the acknowledged inability to meet a five year housing land supply even when applying figures as favourably as possible (which for the reasons set out is not acceptable), it is clear that material considerations exist which are so significant that they come into play when considering the s.38(6) requirement that determination must be made in accordance with the plan unless material considerations indicate otherwise [80, 82].

145. Thus, on the main issue, the Council's decision to withdraw from the appeal is not surprising. It reflects the correct approach to national Government planning advice and to the needs of the local housing supply. I conclude on this matter that the proposed development would accord with national Government planning guidance in respect of the provision of housing which, for the reasons explained, takes priority over the provisions of the development plan. However, it is necessary to consider other matters raised [35].

Other Matters

146. The site is located where the facilities of the town can be reached with reasonable ease either on foot, by bicycle or public transport, with good bus services at a rate of 6 per hour during peak times [33, 49, 52, 94].

147. Given the concerns raised by local residents, the proposed highway junction onto Stokesley Road was examined in detail on site, with distance points and the camber change marked on the road in advance of viewing. Whilst some hedgerow removal and management of the verges would be necessary to accommodate the visibility splays the relevant distances would be achieved. As such, there is no reason to consider that highway safety would be materially harmed by this proposal. I have noted the suggestion of a local resident that the visibility splays should be increased to 9 m x 120 m. However, Stokesley Road is not a main classified 'A' road. Rather it is a local road giving access to the town. Traffic speeds have been recorded and are modest. Nor, despite the anecdotal recollections of accidents, does the road have a recorded history of accidents that indicate such splays would be necessary. Moreover, the splays proposed exceed those which the Council would normally seek for this type of road (4.5 m x 59 m). Additionally, in visual terms such an entrance would be out of keeping with this edge-of-settlement location [31, 49, 83, 95].

148. Final finished levels for the access and roads within the site and the gradients associated with them would be dealt with at the reserved matters stage. Equally, pedestrian routes and routes for other non-motorised means (bicycles, horses and so forth) would be considered with the reserved matters details, but it is clear in the DAS that a pedestrian route would be possible on the inside of the Stokesley Road hedgerow and that links could be provided to the existing residential estate footpath network [95].

149. Analysis of traffic using the existing highway network and projecting the impact of the proposed development indicates that no more than 6 cars are likely to be queuing at the new junction. This represents a modest number of vehicles and would not justify withholding planning permission [95].

150. Concerns have been raised about general drainage in certain areas of the site as well as on the road. The drainage system for the development would be able to deal with localised areas with drainage issues. It is agreed that a SuDS scheme would be necessary with a storage pond so that any run-off could be attenuated to green field rate. Highway drainage has been investigated and the drainage concern has been identified as being the result of land drains overwhelming the existing road drainage. Whilst that is not a product of the proposed development, but is an existing problem, it is proposed that the development works include improvements to the roadside drains so that this danger is reduced. This would benefit future occupiers of the site by making the highways safer as well as benefitting other road users in the area [83, 95].

151. Whilst local residents are concerned about the visual impact of the proposed development upon the town, having viewed it from the surrounding area as well as the ES viewpoints, it is apparent that the scheme would appear as an extension to the existing settlement. It would be set against the backdrop of rising land when seen from most directions. There is some established planting which would assist assimilation into the landscape. Moreover, landscaping and appearance are reserved matters over which the Council has control [30, 95].

152. The Phase I Habitat Survey included a desk top exercise and a walkover study. That work found no presence of reptiles, or protected species, and no suitable roosting sites for bats or owls, matters that had been raised by interested parties. In particular, the agricultural regime undertaken on site means that it is of low ecological value. Whilst removal of some sections of hedgerow may have an impact of foraging for bats, given that there are no bat roosts on site, that there are extensive areas around the site for such activity and the ecological area proposed in the scheme, there is no reason to suppose that the development would conflict with the requirement of preserving the species at a favourable population for the locality. In this regard, I have noted that Natural England took care in this case to make its own assessment against its standing advice and decided to make no objection to the scheme and made no criticism of the survey effort undertaken [86, 90, 92, 117].

153. There clearly is an issue in respect of education facilities. However, the contribution made through the s.106 Agreement in respect of primary school provision would assist in the provision of additional classroom accommodation and so overcome those concerns [32, 97, 122].

154. In terms of water quality at Saltburn, the sewerage undertaker does not object to this scheme. Although not a matter related to this proposed development, the sewerage undertaker has advertised a scheme to improve water quality in this area. The development proposed would not have implications for sea water quality [84, 99].

155. Some local residents have expressed concern about whether the house types are appropriate; some consider the dwellings too big and unaffordable whilst others consider that this is not an appropriate site for affordable housing. Paragraph 50 of the Framework says that local planning authorities should deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. In this case there would be a good mix of housing including affordable housing, bungalows and some dwellings aimed at the 'executive' homes market, for which there is also an identified need in this area. Indeed, the spread of housing type and, in particular, the supply of types for which there is an identified shortage attracts positive weight in the planning balance [22, 29, 49, 54-56, 118-120].

156. There are local concerns about the loss of agricultural land and its implications for national food security. However, only a small part of the site is higher grade agricultural land and that area is land-locked so little would be gained from seeking to protect it. On that basis this is not a matter which attracts significant weight [57].

Planning Conditions and s.106 Obligation

157. The conditions in the amended format discussed at the Inquiry, with additional minor alterations that were discussed or otherwise required to achieve a more ready compliance with advice in Circular 11/95, are necessary in order to achieve an acceptable development. As such, the conditions Schedule attached at Annex A are recommended should the SoS decide that planning permission be granted. They have been referred to in paragraphs 104-114 above. They are relevant, necessary to make the development acceptable and otherwise comply with the tests in the Circular [104-114].

158. There is a s.106 planning obligation in the form of an Agreement. It includes a variety of provisions and these are set out in paragraph 113 above. Some of these have been referred to in previous sections of these conclusions. They are required to mitigate adverse impacts, meet the needs of the proposal and allow the scheme to go ahead. I have had regard to the obligation in the light of the statutory tests within Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. These state that a planning obligation may only constitute a reason for granting planning permission if it 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. The parties broadly agree that the obligations within the s.106 Agreement are CIL-compliant, although the methodology in terms of the education sum and the leisure sum are not based on established criteria. However, I am satisfied that there is a rationale behind the sums sought which establish that those sums are fairly and reasonably related in scale and kind. Supporting and training a local workforce reflects a sustainable approach to development. Thus, from the information and evidence provided, I am satisfied that the CIL tests would be met [115-124].

Overall Conclusions and Planning Balance

159. Section 38(6) of the Act requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise. In this case there are clear reasons to depart from the development plan. Although the proposed development would erode a green area, that harm is only moderate because there would be no significant harm to overall landscape character. There would also be a modest loss of habitat but this would be compensated for. No material harm has been identified that would arise from the scheme, a position which the Council does not dispute.

160. Some of the 'benefits' cited in the SoCG are not matters which attract positive weight, rather they are neutral. This is because the ecological enhancement area and open space, including play space, are required for the development. In addition the New Homes Bonus is not a matter which attracts weight in the planning balance; rather it is another incentive for Councils to provide much needed housing.

161. However, the provision of housing, including housing for a variety of types of household all for which there is an identified housing need, counts heavily in favour of the scheme. In addition there would be benefits in terms of employment opportunities and increased commercial expenditure, although these are very modest in the planning balance, unlike the benefits attached to the new housing provision.

162. In this case, the benefits cited significantly outweigh the other matters weighed which are essentially neutral. As a consequence, there is evidenced justification as well as clear support in the Framework for determining the appeal other than in accordance with the development plan.

Recommendation

163. I recommend that the appeal be allowed and planning permission be granted subject to conditions as set out in Annex A.

Zoë H R Hill

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

John Hunter of Counsel Kings Chambers	Instructed by Rachel Dooris
He called	
Cllr Brian Hogg	Redcar and Cleveland Borough Council

FOR THE APPELLANT:

Richard Sagar Partner Walker Morris Solicitors	Instructed by Taylor Wimpey Ltd
He called	
Richard Ellam BEng CEng MCHIT	Technical Director Pell Frischmann
Darren Linklater HND Civil Engineering	Director iD Civils Design Limited
Kit Patrick BA(Hons) DipLa CMLI	Director TPM Landscape
Dr Charlotte Sanderson Phd BSc(Hons) MSc MIEEM	Ecology Project Manager, Delta-Simons Environmental Consultants
Russell Hall BA(Hons) DipTP MRTPI	Principal Planner England & Lyle

INTERESTED PERSONS:

Cllr Peter Spencer	Ward Councillor for the Hutton Ward
Mrs H Meynell	Local Resident
Mrs J Hemingway	Local Resident
Mr Richard Bainton CEng MICE MCIHT	Local Resident

DOCUMENTS

WITNESS DOCUMENTS - APPELLANT'S DOCUMENTS

APP1	Proof of Russell Hall - Planning Witness (with separate Summary)
APP2	Appendices to Proof of Russell Hall - Planning Witness
APP3	Proof of Richard Ellam - Highways and Transportation Witness (with separate Summary)
APP4	Appendices to Proof of Richard - Ellam Highways and Transportation Witness
APP5	Proof of Darren Linklater - Flooding and Drainage Witness (with separate Summary)
APP6	Appendices to Proof of Darren Linklater - Flooding and Drainage Witness

APP7 Proof of Kit Patrick – Landscape and Visual Impacts Witness (with separate Summary)
APP8 Appendices to Proof of Kit Patrick – Landscape and Visual Impacts Witness
APP9 Proof of Charlotte Sanderson – Ecology Witness (with separate Summary)
APP10 Appendices to Proof of Charlotte Sanderson - Ecology Witness

WITNESS DOCUMENTS - COUNCIL'S DOCUMENTS

LPA1 Proof of Councillor Brian Hogg

DOCUMENTS SUBMITTED AT THE INQUIRY[69]

ID1 Appearance List on Behalf of Taylor Wimpey UK Ltd
ID2 Updated Plans List
ID3 Draft s.106 Agreement
ID4 Suggested Conditions List
ID5 List of those Notified (to link to notification letter on file)
ID6 Planning Committee Report Carlin How
ID7 Opening statement on behalf of the Appellant
ID8 Opening Statement on behalf of the Council
ID9 Statement of Mrs Hazel Meynell
ID10 Note on Five Year Housing Supply Paper 2013-2018 (Russell Hall 19.06.13) with 'small sites' list attached
ID11 Email regarding a condition sought by the Environment Agency (no longer required)
ID12 Note on Five Year Housing Supply (amended)
ID13 Bundle of Landscape Character Assessment Documents (4 Documents) as Background Information
ID14 Summary of s.106 Agreement Provisions
ID15 Section 106 Agreement
ID16 The Community Infrastructure Levy Regulations 2010 - Compliance Statement
ID17 Closing Position Statement on behalf of the Council
ID18 Appellants Closing Submissions

CORE DOCUMENTS[70]

CD1 The Planning Application*
CD2 Decision Notice*
CD3 The Environmental Statement*
CD4 The Updated Design and Access Statement*
CD5 The Statement of Common Ground*
CD6 The National Planning Policy Framework*
CD7 The Planning System: General Principles
CD8 Redcar & Cleveland Borough Council Local Plan (1999)
CD9 Redcar & Cleveland LDF Core Strategy DPD (2007)
CD10 Redcar & Cleveland LDF Development Policies DPD (2007)
CD11 North East of England Plan to 2021: Regional Spatial Strategy

[69] These Documents are in the Inquiry Documents Folder
[70] Most Core Documents are within the Core Document File – where they are not a note has been inserted as to where they can be found

CD12 Redcar & Cleveland Development Plan Guide (2011)
CD13 Redcar & Cleveland Local Development Scheme (2012)
CD14 Planning Committee Report – 22 November 2012 Meeting*
CD15 Planning Committee Minutes - 22 November 2012 Meeting*
CD16 Planning Application Consultation Responses*
CD17 Strategic Housing Land Availability Assessment 2010 Review
CD18 Strategic Housing Land Availability Assessment 2012 Review
CD19 DCLG Land Supply Assessment Checks (2009)*
CD20 Tees Valley Strategic Housing Market Assessment 2012
CD21 Redcar & Cleveland Local Plan Scoping Report 2012
CD22 Redcar & Cleveland Masterplan Update 2012-2015 (2012)
CD23 Laying the Foundations: A Housing Strategy for England (HM Government 2011)*
CD24 Five Year Housing Supply 2013-2018 (submitted at the Inquiry)

* These documents are not in the Core Documents folder; they either form part of the submission to the Planning Inspectorate or are National Planning documents

OTHER APPEAL DOCUMENTS

AD1 Letters submitted at the Appeal stage
AD2 Delta-Simmons Desk Study Report (Land Contamination)
AD3 Noise Assessment – Noise & Vibration Associates UK Limited

PLANS

APPLICATION PLANS

A1 The Application Plans: Site Location Plan Ref: Y81.8400.01
A2 Proposed Ghost Island Right Hand Turn Junction 3673-C-D9-01 Rev E

ILLUSTRATIVE PLANS

A3 Landscape Framework Plans (Illustrative)
A4 Block Typology Plan (Illustrative) Ref: Y81:840.06
A5 Site Sections Key Ref: Y81:840.10
A6 Illustrative Sections Sheet 1 Ref: Y81:840.11
A7 Illustrative Sections Sheet 2 Ref: Y81:840.12
A8 Illustrative Sections Sheet 3 Ref: Y81:840.13
A9 Illustrative Sections Sheet 4 Ref: Y81:840.14 Rev A
A10 Illustrative Sections Sheet 5 Ref: Y81:840.15
A11 Illustrative Sections Sheet 6 Ref: Y81:840.16
A12 Illustrative Sections Sheet 7 Ref: Y81:840.17
A13 Illustrative Sections Sheet 8 Ref: Y81:840.18
A14 Long Site Sections Ref: Y81:840.19

PLAN SUBMITTED AT THE INQUIRY

A15 Horizontal and Vertical Visibility Plan also marked to show marking for highway visibility for site visit Ref W50773/SK01

ANNEX A

List of conditions in the event of planning permission being granted

Reserved Matters and associated details

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) The applications for the approval of reserved matters shall be in accordance with the principles set out in the Updated Design and Access Statement.

5) The development hereby permitted shall be carried out in accordance with the following approved plans: The Application Plans: Site Location Plan Ref: Y81.8400.01; Ref: Proposed Ghost Island Right Hand Turn Junction 3673-C-D9-01 Rev E.

6) Details submitted in accordance with Condition 1 shall include existing and proposed ground levels together with finished floor levels for the development. The levels shall be demonstrated by sections through the site. The development shall be carried out as approved.

7) No development shall commence until full details for the play area have been submitted to and approved in writing by the local planning authority. The timetable for the implementation of the approved scheme shall be set out in the Phasing Plan required by condition 9 below which shall be adhered to.

8) An art feature or features shall be incorporated into the development in accordance with a scheme that has first been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in their entirety in accordance with the Phasing Plan required by condition 9 below.

Phasing

9) No part of the development hereby permitted shall be implemented until a Phasing Plan for the timing and delivery of the development, in terms of the relationship between the phases of development and the proposed infrastructure, has been submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the Phasing Plan.

Highways and Access

10) No development shall commence until a Traffic Management Plan for the construction phases of the development has been submitted to and agreed in writing with the local planning authority. The development shall take place in accordance with the approved Traffic Management Plan.

11) Prior to the occupation of any part of the development hereby approved a detailed Travel Plan in accordance with the Travel Plan (ref: 467_20120727A_Travel Plan) shall be submitted to and approved in writing by the local planning authority. The approved Travel Plan shall be implemented for the lifetime of the development.

12) No development shall commence until a scheme for preventing the deposition of mud/debris on the highway shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in its entirety before development commences and adhered to for the lifetime of the construction period.

13) No development shall take place until details have been submitted to and approved in writing by the local planning authority of proposals to provide contractors car parking and material storage within the site including a timetable for their provision linked to the Phasing Plan referred to in condition 9 above. The details approved shall be implemented and retained for the duration of the construction within each relevant phase until its completion in accordance with the approved timetable.

14) The proposed junction with the existing highway (Stokesley Road) shall be provided in accordance with details set out on Plan 3673-C-D9-01 Rev E (Proposed Ghost Island Right Hand Turn Junction) and have a visibility splay of 4.5m x 90m. The area enclosed by this splay shall be maintained to ensure there are no obstructions or any vegetation greater than 600mm in height. These junction and visibility works shall be fully implemented prior to the occupation of the first dwelling to be occupied on the site.

15) The principal access to the site shall be constructed to final finish in accordance with the approved access details and available for use prior to the commencement of any other construction or associated works at the site.

16) No development shall commence until full details of the emergency access to be taken from Lark Drive have been submitted to and approved in writing by the local planning authority and a timetable for its implementation has been approved in writing by the local planning authority, as part of the Phasing Plan referred to in condition 9 above. The emergency access shall be implemented in accordance with the approved Phasing Plan and accord with the approved details.

Drainage

17) No development shall take place until details of drainage for the development, including the timetable for their implementation which shall relate to condition 9 above in respect of phasing, have been submitted in writing to the local planning authority for its written approval. The approved scheme shall be implemented in accordance with the approved details including the phasing arrangements.

Noise

18) No development shall commence until a Noise Scheme for protecting the proposed dwellings from road traffic noise has been submitted to and approved in writing by the local planning authority; all works which form part of the Noise Scheme, unless related to an individual property, shall be completed before any of the dwellings identified as being affected by noise are occupied and any works to individual dwellings shall be completed before the dwelling to which it relates is occupied, unless otherwise agreed in writing as part of the phasing arrangements under condition 9 above.

Landscaping and ecology (including lighting scheme)

19) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the phasing scheme required by Condition 9 and any trees or plants which within a period of ten years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written approval to any variation.

20) No development shall take place until a scheme of ecological mitigation and enhancement, including a timetable for its implementation, to accord with the details set out in the Environmental Statement and Phase I Habitat Survey has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details and timetable.

21) No development shall take place until a Scheme of Lighting for the site has been submitted to and approved in writing by the local planning authority. The approved Scheme of Lighting shall be implemented in accordance with the timetable set out in the approved Phasing Plan required by condition 9 above.

Sustainable Energy

22) A minimum of 10% of the site's energy requirements shall be provided by embedded renewable energy or in accordance with a scheme that has first been submitted to and agreed in writing by the local planning authority. The approved scheme shall be implemented in its entirety in accordance with the Phasing Plan required by condition 9 above.

Protection of Existing Living Conditions

23) The working hours for all construction activities on this site shall be limited to between 08:00 and 18:00 hrs Mondays to Friday and 08:00 to 13:00 hrs Saturdays and not at all on a Sundays or Public Holidays.

24) No development shall take place until a scheme for the suppression of dust at the construction site has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the commencement of development and adhered to for the duration of the construction period.

Land Contamination

25) In the event that contamination is found at any time when carrying out the approved development it must be reported in writing immediately to the

local planning authority. An investigation and risk assessment must be undertaken and submitted to the local planning authority for its written approval. Where remediation is necessary a remediation scheme must be prepared to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, and submitted to the local planning authority for its written approval. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which shall be subject to the approval in writing by the local planning authority.

Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;
The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

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

SECTION 2: AWARDS OF COSTS

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

SECTION 3: INSPECTION OF DOCUMENTS

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