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## Appeal Decision

Inquiry held on 26 September 2017

Site visit made on 27 September 2017

**by Karen L Baker DipTP MA DipMP MRTPI**

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

**Decision date: 05 December 2017**

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**Appeal Ref: APP/M4320/W/17/3167849**

**Land to the south of Andrews Lane, Formby L37 2YH**

- 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 Mr Robin Buckley on behalf of Redrow Homes Limited against the decision of Sefton Council.
  - The application Ref. DC/2016/01740, dated 31 August 2016, was refused by notice dated 22 December 2016.
  - The development proposed is 'mixed use development comprising approximately 90 houses and the laying out of open space'.
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### Decision

1. The appeal is allowed and outline planning permission is granted for residential development comprising up to 95 dwellings and public open space on land to the south of Andrews Lane, Formby L37 2YH in accordance with the terms of the application, Ref. DC/2016/01740, dated 31 August 2016, subject to the conditions in Appendix 1.

### Procedural Matters

2. The planning application was made in outline, with all matters reserved for subsequent approval, with the exception of access.
3. Although the planning application describes the proposed development as set out at the beginning of this Decision, the description has been amended and is agreed by the main parties to be 'outline planning application (with details of access) for residential development comprising up to 95 dwellings and public open space'. I have, therefore, referred to this revised description throughout the remainder of my Decision.
4. An application for full planning permission (Ref. DC/2017/00606) on the appeal site for the construction of 99 dwellings comprising a mix of houses and apartments together with the construction of an access road and the laying out of open space (to include the installation of an attenuation pond) was approved with conditions, subject to the completion of a Section 106 Agreement, by the Council on 30 August 2017. This followed the adoption of the Sefton Local Plan on 20 April 2017, in which the appeal site has been removed from the Green Belt and allocated for housing and open space in Policy MN2. The Council confirmed at the Inquiry that this has overcome its first reason for refusal in respect of the application the subject of this appeal. Furthermore, the Council

also confirmed at the Inquiry that, in respect of the planning application made for full planning permission on the appeal site, the appellants submitted further information in respect of, amongst other things, ecology, flood risk, impact on residential amenity, impact on the local highway network, the provision of affordable housing and the effect on minerals safeguarding interests, each of which had been the subject of a reason for refusal in the appeal scheme. Accordingly, the Council is now satisfied that, had that information been provided in support of the planning application the subject of this appeal, then it would have been adequate and would have addressed each of the remaining 6 reasons for refusal. As such, the Council is not seeking to resist this appeal and has not sought to defend its reasons for refusal. I have had regard to these changes in circumstances during my consideration of this appeal.

5. Following the close of the Inquiry, and as agreed during the Inquiry, the appellants submitted a certified copy of the Planning Obligation by Unilateral Undertaking<sup>1</sup> under Section 106 of the Town and Country Planning Act 1990. This document includes obligations in respect of the provision of 30% affordable housing; financial contributions towards the cost of upgrading Altcar Footpath No. 5 (£90,000) and the construction of the footbridge connecting the open space to the far west of Altcar Footpath No. 5 (£23,000); the provision of a scheme of mitigation at the Hoggs Hill Lane Footpath Level Crossing, along with a financial contribution towards its implementation (being one of £nil, £10,000, £125,000 or £500,000); and the provision and management of public open space on the appeal site. I have had regard to this, along with the Council's Compliance Statement<sup>2</sup> in respect of Sections 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010, during my consideration of the appeal.
6. During the Inquiry the Council sought further information from Network Rail in respect of its concerns relating to the Hoggs Hill Lane Footpath Level Crossing. However, nothing was forthcoming at that time. Following the close of the Inquiry, Network Rail submitted an update to its Risk Assessment<sup>3</sup> of this level crossing. The views of the Council<sup>4</sup> and appellants<sup>5</sup>, along with interested parties<sup>6</sup> who took part in the Inquiry, were then sought on this document. In addition to making comments on the updated Risk Assessment, some interested parties provided additional evidence relating to other aspects of the proposed development. In the interest of fairness and in accordance with the requirement that any comments be related solely to the updated Risk Assessment, I have limited my consideration to those comments made in that regard.

## **Main Issues**

7. There are no main issues remaining in this appeal between the Council and the appellants as confirmed at the Inquiry and in the Statement of Common Ground. However, there are a number of matters of concern to local residents and others opposing the proposed development and I shall consider these further below.

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<sup>1</sup> Document C3

<sup>2</sup> Document C2

<sup>3</sup> Document C4

<sup>4</sup> Document C5

<sup>5</sup> Document C24

<sup>6</sup> Documents C6 – C23 and C25

## Reasons

### *Principle of Development/Green Belt*

8. At the time that the planning application was submitted, the appeal site was located in the Green Belt. However, upon adoption of the Sefton Local Plan, the site was removed from the Green Belt and allocated for residential development and open space in Policy MN2, subject to certain site specific requirements set out in Local Plan Appendix 1. The Council considers that the site specific requirements have been met and, from the evidence before me, I concur with that view. I am therefore satisfied that the principle of residential development and open space has been established on the appeal site and would be acceptable. As such, the proposal would accord with Policy MN2 and Appendix 1 of the Local Plan.

### *Living Conditions*

9. Several local residents have expressed concerns about the impact of the proposed development on the living conditions of neighbouring occupiers. Of particular concern is the location of the access to the proposed development along Andrews Lane, which would pass between No. 1 Barton Heys Road and No. 16 Andrews Close. The proposed access would widen the existing single track lane, which currently provides vehicular and pedestrian access to a dwelling known as Sandywood. The lane also forms part of the Sustrans National Cycle Network Route No. 810 and incorporates an existing public right of way, both of which continue beyond Sandywood to the south. The submitted plan (Drawing No. SCP/15259/SK01 Rev. B) provides details of the proposed access arrangement. This shows how the existing lane would be widened to accommodate a proposed highway of 9.5m in width, which would include a 2m wide footway on each side of a 5.5m wide roadway.
10. The side elevations of No. 1 Barton Heys Road and No. 16 Andrews Close would abut the proposed access. The former, which is a 2 storey detached property, includes 2 first floor windows in its side elevation facing the access road, one of which contains obscure glazing. The latter is a chalet bungalow and its side elevation closest to the access road does not contain any windows. However, it was apparent from my site visit that 2 large ground floor windows and a dormer window face the proposed access road in a side elevation of a rear projection to this property, which is set back from the side boundary. Furthermore, within the rear elevation of the single storey element of No. 16, closest to the proposed access road, there are French doors, which, from evidence given at the Inquiry, open into a bedroom.
11. The Council considers that the proposed access into the appeal site would be acceptable and is satisfied that, subject to a condition which would require the erection of a suitably designed acoustic fence/barrier, it would not unduly harm the living conditions of neighbouring residents with regards to noise. Given the nature of the side elevations of No. 1 Barton Heys Road and No. 16 Andrews Close which are sited closest to the proposed access road, I am satisfied that the provision of such a fence/barrier would be sufficient to safeguard the living conditions of these neighbouring occupiers with particular reference to noise and disturbance.
12. In addition, I note the proximity of the proposed access road to the adjacent properties at Nos. 1, 3, 5 and 7 Sutton Road and I consider that a suitably

designed acoustic fence/barrier along the rear boundaries of these dwellings would safeguard the living conditions of these neighbouring occupiers with particular reference to noise and disturbance. This matter could also be controlled by a planning condition.

13. In terms of the living conditions of residents in properties surrounding the proposed development, I am satisfied that, given the size of the appeal site, appropriate separation distances could be provided between the existing and proposed dwellings to safeguard their outlook, privacy, sunlight and daylight, amongst other things. Nevertheless, this would be a matter for consideration following the submission of a detailed scheme on the appeal site.

### *Ecology*

14. Local residents and interested parties have expressed concerns about the impact of the proposed development on the ecology of the area. The appeal site is located within 900m of the Sefton Coast Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC) and is adjacent to supporting habitat for Martin Mere and Ribble and Alt Special Protection Areas (SPAs) and Ramsar sites. These are also known as Natura 2000 sites and are protected under the Habitats Regulations 2010 as amended. The planning application the subject of this appeal was not accompanied by sufficient information to enable the Council to make a Habitats Regulations Assessment (HRA). However, an HRA was concluded by the Council on 22 June 2017 in respect of the development proposed in the application for full planning permission following the submission of further information. The Council considers that this HRA indicates that the proposed development of the appeal site would not result in any significant impact on the Natura 2000 sites.
15. I note that, following the submission of further information, Natural England considers that the proposed development of the appeal site would not have significant adverse impacts on the designated sites and, as such, has no objection. From the evidence before me, I am satisfied that when considered alone and in combination with any other plans or projects, the proposed development would not have a likely significant effect on the Sefton Coast SSSI and SAC, the Martin Mere and Ribble and Alt SPAs and Ramsar sites.
16. As part of the planning application the subject of this appeal, the appellants submitted an Ecological Survey and Assessment<sup>7</sup>. This presents the ecological, biodiversity and nature conservation status of the appeal site and the results of a desktop study and extended Phase 1 Habitat Survey carried out in May 2016, along with further surveys of the trees to determine the presence or absence of roosting bats, conducted in September 2016. It concluded that the presence of bats at the appeal site could be reasonably discounted but that further surveys would be required to determine whether or not the appeal site is used by wintering birds<sup>8</sup> and that if any works are proposed within 5m of Ditches 2 and 3, further surveys would be required to determine the presence or absence of water vole. Otherwise, it concluded that the ecological appraisal has demonstrated that a residential development at the appeal site would be feasible and acceptable in accordance with ecological considerations and the National Planning Policy Framework (The Framework).

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<sup>7</sup> Core Document DOC6

<sup>8</sup> A report on Wintering Bird Surveys by ERAP (Consultant Ecologists) Limited was prepared in March 2017

17. The appellants also submitted a Water Vole Survey and Mitigation Strategy<sup>9</sup> as part of the planning application which confirms that one water vole burrow was detected on the eastern bank and one water vole latrine was detected on the western bank of Ditch 2. It recommends that a minimum 5m protective exclusion zone be applied to the ditch.
18. From the evidence before me I am satisfied that the proposed development would not have a likely significant effect upon the Natura 2000 sites, priority habitats or protected species, subject to appropriate conditions being attached to any approval requiring the mitigation measures set out in the Water Vole Survey and Mitigation Strategy. As such, the proposal would accord with Sefton Local Plan Policy NH2, which requires development which may result in a likely significant effect on an internationally important site to be accompanied by sufficient evidence to enable the Council to make an HRA.

#### *Flooding and Drainage*

19. Local residents and interested parties have expressed concerns about the impact of the proposed development on flooding and drainage in the local area. A Flood Risk Assessment (FRA) and Sustainable Drainage Strategy<sup>10</sup> was submitted with the planning application. However, one of the reasons for refusal related to the failure of the proposal to demonstrate how the existing flood risk on adjoining residents would be mitigated, due to the lack of capacity on the existing Andrews Lane watercourse. This matter was addressed in the FRA<sup>11</sup> submitted with the application for full planning permission, which satisfies the Council's concerns in this respect, particularly given that it shows that the proposed development would benefit the Andrews Lane watercourse by reducing the rate of run-off from the development area into this watercourse and by improving the capacity/conveyance of the watercourse. Furthermore, it would increase the capacity for upstream flow and would temper the potential for upstream flood risk.
20. From the evidence before me, I am satisfied that, subject to the imposition of appropriate conditions requiring the submission and approval of a Sustainable Drainage Scheme and requiring that it be carried out in accordance with the principles set out in the FRA, the proposed development would not lead to an increased risk of flooding or be detrimental to the drainage of the local area. As such, it would not be contrary to Policy EQ8 of the Sefton Local Plan, which says that development proposals must not increase flood risk from any sources within the site or elsewhere, and where possible should reduce the causes and impacts of flooding, amongst other things; and, that where reasonably practicable, development must incorporate sustainable drainage systems to manage surface water run-off within the site.

#### *Hoggs Hill Lane Level Crossing*

21. Network Rail has raised concerns about the potential impact of the proposed development on the Hoggs Hill Lane Level Crossing, although it has no objections in principle to the proposed dwellings. Network Rail's concerns relate to the potential for this level crossing to see an increase in the type and volume of user, given that the appeal site is currently fields/agricultural and

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<sup>9</sup> Core Document DOC7

<sup>10</sup> Core Document DOC14

<sup>11</sup> Core Document DOC40

the proposed development would include residential properties. Network Rail states that it could not support the layout and design of the footpath links within the development as they could lead residents over the level crossing, thereby increasing the risk. Several local residents and other interested parties are also concerned about the safety of this level crossing, particularly for school children who are classed as vulnerable users.

22. As part of the response to the submission of the appellants' application for full planning permission, Network Rail submitted a Risk Assessment, along with answers to the Council's questions submitted to Network Rail on 23 August 2017<sup>12</sup>. As part of this Risk Assessment, Network Rail has used an industry accepted risk modelling support tool known as All Level Crossing Risk Model (ALCRM) which enables Network Rail to compare risk at all level crossings throughout the network.
23. The ALCRM provides an estimate of both the individual<sup>13</sup> and collective<sup>14</sup> risks at a level crossing. The individual and collective risk is expressed in Fatalities and Weighted Injuries (FWI). The Risk Assessment calculates a risk score of C3<sup>15</sup> and an FWI of 0.00617<sup>16</sup> for this level crossing at present. Following the completion of the proposed development, the ALCRM calculates that this level crossing would maintain a risk score of C3, but that the FWI would rise to 0.00762. The Risk Assessment concludes that if the construction of an overbridge, which would completely remove the risk at this level crossing, would be cost prohibitive, then the installation of a 'VAMOS' overlay system, which works by the approaching train triggering a traffic light system and audible buzzer which indicates when it is safe/unsafe to cross, should be considered. Network Rail states that the installation of such a system would reduce the risk at this crossing by 29%, thereby negating the increased risk of up to 23% generated by the proposed development.
24. This Risk Assessment was based on surveys carried out by Network Rail in January 2015 which recorded that on average there were 76 pedestrians and 26 cyclists using the level crossing each day (102 in total). It also estimates that the proposed development on the appeal site would lead to an increase of 16 pedestrians and 6 cyclists using the level crossing each day (22 in total). This would equate to around a 22% increase.
25. At the Inquiry, Formby Parish Council questioned the evidence given by Network Rail and referred to the advice it had sought from the Office of Rail and Road (ORR)<sup>17</sup>. The ORR had reviewed the Risk Assessment for Hoggs Hill Lane Level Crossing and had contacted Network Rail about it. The ORR confirms<sup>18</sup> an additional census was undertaken in this location in October 2016, but was not used in the Risk Assessment. The ORR stated that this October 2016 census demonstrated a 25% increase on the usage identified in the December 2015 census, which had been used by Network Rail. Although this had raised the risk profile, the ORR confirmed that the overall risk

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<sup>12</sup> Document 3/Core Document DOC47

<sup>13</sup> The individual risk is the annualised probability of fatality to a 'regular user', with a 'regular user' being a person making a daily return trip over the crossing; assumed 500 traverses per annum.

<sup>14</sup> The collective risk is the total risk for the crossing and includes the risk to users (pedestrian and vehicle), train staff and passengers.

<sup>15</sup> Individual risk is presented as a simplified ranking A to M, where A is highest, L is lowest and M is zero risk. Collective risk is also presented in a simplified ranking 1 to 13, where 1 is highest, 12 is lowest and 13 is zero risk.

<sup>16</sup> I have rounded the FWI up to 5 decimal points for the purposes of my assessment.

<sup>17</sup> Document 11

<sup>18</sup> Document 8

- categorisation remained the same. However, the ORR stated that the effect of an estimated 20% increase in usage of this crossing from the proposed development would be to raise the risk categorisation of the crossing.
26. At the Inquiry, however, the appellants stated that if the census figures used in the Network Rail assessment had now gone up by 25%, this would lead to around an additional 19 pedestrians and 7 cyclists per day using the level crossing, which would equate to 95 pedestrians and 33 cyclists in total (128 altogether). As a percentage, the pedestrians and cyclists generated by the proposed development would, therefore, go down. As such, the development would be likely to increase usage at this level crossing by around 17%, on the basis of the estimates used by Network Rail.
27. Following the close of the Inquiry, Network Rail submitted an updated Risk Assessment<sup>19</sup>. The updated Risk Assessment calculates a risk score of C3 and an FWI of 0.00846 for this level crossing at present. This is based on a more recent 9 day census carried out between 5 and 13 October 2016, which recorded that on average there were 95 pedestrians and 45 pedal/motor cycles using the level crossing each day (140 in total). Of these, the survey identified that 28 were unaccompanied children either on foot (12) or using a pedal cycle (16), using the crossing mostly as a route to and from school. The updated Risk Assessment considers that the increase in usage of the level crossing is mostly due to the recent construction of a large housing development to the east of the level crossing, which has also improved access to the level crossing from it and the much larger established residential estate to the north.
28. The updated Risk Assessment estimates that with a user increase of around 20% from the proposed development, which would equate to around 19 additional pedestrian and 9 cyclist users a day, the ALCRM calculates a risk score of C2 and an FWI of 0.01016, which it considers would be a conservative estimate.
29. The appellants have calculated that the total number of pedestrian trips generated by the proposed development in a 24 hour period would be 76. However, the appellants state that there would be no need for residents of the proposed development to utilise the level crossing as part of their journey on foot to access local facilities including employment, commercial and education, as there would be a shorter and more direct route to Formby town centre via Andrews Lane. In addition, there would be more attractive alternatives to using the nearest bus stop on Park Road, which would require future residents to use the Hoggs Hill Lane Level Crossing, with no time saving for passengers who choose to use the Park Road bus stop, rather than the bus stop on Queens Road. The appellants calculate that the proposal would generate 13 pedestrian leisure trips. However, they consider that many of these would travel south from the site towards the nature reserve and coast, with very few, if any, using the Hoggs Hill Lane Level Crossing.
30. The Hoggs Hill Lane Level Crossing has recently benefitted from new signage and fencing, which were installed in 2016 as part of upgrading works. The signage warns of high voltage, the threat of penalty for trespassing and asks cyclists to dismount. The fencing is installed in a dog-leg arrangement on either side of the track, each with a spring loaded gated access. It ensures that pedestrians can stand a safe distance away from the tracks at all times

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<sup>19</sup> Document C4

when waiting for a train to pass. A raised yellow platform is present which indicates the safe crossing point for pedestrians.

31. The Hoggs Hill Lane Level Crossing is a passive crossing, at which point the line speed is 60mph. The minimum sighting distances required at this level crossing are 304m in each direction for each of the 2 lines. The available sighting distances range from 380m to 800m and, as such, substantially exceed the minimum requirements for this level crossing. The length of the crossing, from one safe place on one side of the railway to a safe place on the other side is 9m, and Network Rail estimates in its original Risk Assessment that the time required to traverse the crossing from each side would be 7.57 seconds. However, it estimates that for vulnerable users, which includes school children, the time taken to traverse the level crossing should be increased by 50% to 11.35 seconds. The updated Risk Assessment increases the traverse time for all users to 11.35 seconds, given the identification of vulnerable users, such as unaccompanied children, at this crossing. These times have been calculated using the Network Rail sighting calculation tool.
32. During the last 5 years there has been one reported incident at this level crossing, on 12 November 2015. This related to a near miss, due to youths lingering on the crossing. The train driver applied an emergency brake and the train stopped 3 coach lengths passed the crossing. However, there are no reports of any injuries resulting from this near miss.
33. I acknowledge that a development of 77 houses has recently been constructed on the eastern side of the railway line and that it was not required to make a contribution towards any improvements to the Hoggs Hill Lane Level Crossing, despite being on the opposite side of the railway line to the nearest primary and secondary schools. Indeed, it was apparent from my site visit that some children from properties on the eastern side of the railway line use the level crossing on their route to school, whether that be on foot or by bicycle. This is reflected in the most recent surveys undertaken by Network Rail in its updated Risk Assessment.
34. The appellants have referred me to another appeal Decision (Ref. APP/D3125/W/15/3138076) relating to a residential development of up to 70 dwellings on land off Nethercote Road, Tackley, close to the Tackley level crossing. I note that there are some similarities between that development and the proposed development the subject of this appeal, albeit that its existing risk score and risk score after development is C2, rather than C3 and C2; the line speed is 90mph, rather than 60mph; and it is located close to a railway station, where a stationary train can mask an approaching non-stop train.
35. At the Hoggs Hill Lane Level Crossing there is good visibility for pedestrians and cyclists wishing to cross the railway line. Although I note that some children from the proposed development may visit friends within properties on the eastern side of the railway line and that some leisure trips, which include a route over the level crossing, may be generated by the proposed development, from the evidence before me, I consider that these will be limited, given that there are more attractive routes available both for recreational and other uses. This, along with the relatively good safety record of the level crossing and the current safety measures in the form of signage and fencing, provide sufficient evidence to satisfy me that the small increase in potential users of this level



crossing arising from the proposed development would represent only a nominal increase in the level of risk, albeit that this raises its risk score from the higher end of C3 to the lower end of C2. As such, I consider that the proposal would not be contrary to Local Plan Policy EQ3, which requires new development to adhere to a number of principles, including ensuring the safety of pedestrians, cyclists and all road users is not adversely affected.

### *Highway and Pedestrian Safety*

36. Several local residents and interested parties have expressed concern about the impact of the proposed development on the surrounding highway network, the Sustrans National Cycle Network Route No. 810 and public footpaths in the local area. A Transport Assessment<sup>20</sup> was submitted with the planning application. However, I note that the Council, as Highway Authority, considered that insufficient information had been provided to enable an appropriate assessment of the highways issues to be fully undertaken. One of the Council's reasons for refusal therefore referred to the Transport Assessment being deficient in details to enable an adequate assessment to be carried out on the surrounding junctions. An updated Transport Assessment<sup>21</sup> was submitted in support of the application for full planning permission, which addresses the improvements required at local junctions to make the proposed development acceptable in highway terms. The Council has confirmed that this satisfies its concerns in respect of highway matters.
37. The updated Transport Assessment considers the transport and highway implications relating to the development of the appeal site. It concludes that the proposed development would be acceptable in traffic and transport terms. I acknowledge that some local residents and interested parties have expressed concerns about the traffic data, cycle data, peak hours, growth and Ordnance Survey mapping factors used within the assessment. I note, however, that the appellants and the Highway Authority agreed these matters in advance of the preparation of the updated Transport Assessment, during the pre-application discussions relating to the application for full planning permission.
38. The updated Transport Assessment refers to the proposed changes to the priority arrangement at the Andrews Lane/Barton Heys Road junction and identifies proposed pedestrian mitigation measures along Andrews Lane and Queens Road. Furthermore, it shows how the proposed access arrangements would incorporate the Sustrans National Cycle Network Route No. 810 and existing public right of way.
39. From the evidence before me, I am satisfied that the proposed development would not harm highway or pedestrian safety in the local area, subject to the imposition of an appropriate planning condition which requires the submission and approval of a scheme for the off-site improvement works, including the provision of flush kerbs and tactile paving at a number of locations along Andrews Lane and Queens Road; alterations to the Andrews Lane/Elson Road priority junction; alterations to the alignment and priorities of the Barton Heys Road/Andrews Lane junction; and, alterations to Formby Footpath No. 35/National Cycle Network Route No. 810 from a point 45m south of Barton Heys Road to provide separate facilities for a length of 10m. As such, the

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<sup>20</sup> Core Document DOC8

<sup>21</sup> Core Document DOC38

proposal would accord with Sefton Local Plan Policy EQ3 which sets out the principles for the accessibility of new development.

#### *Local Services and Facilities*

40. Some local residents are concerned that the proposed development would put additional pressure on local services and facilities including schools, hospitals, dentists' surgeries and doctors' surgeries. There have been no objections to the proposed development from the Local Education Authority or Clinical Commissioning Groups. As such, there is no evidence before me to indicate that the proposed development would have a detrimental impact upon these services and facilities.

#### *Formby Neighbourhood Plan*

41. The Neighbourhood Plan is currently being prepared. It was confirmed at the Inquiry that it has been subject to a Regulation 14 consultation exercise. However, given the stage that the Neighbourhood Plan is currently at, I concur with the main parties that it should be afforded little weight in my consideration of this appeal.

#### **Conclusions**

42. I have considered all the other matters raised by third parties, including the impact on parking in the settlement and at the railway station; the need for additional policing; the lack of demand for housing in the settlement; the requirement for smaller homes; the difficulties in accessing Formby from the bypass; and the impact on local house prices. However, paragraph 14 of The Framework says that at its heart is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For decision-taking this means approving development proposals that accord with the development plan without delay. The proposed development would accord with the Sefton Local Plan and should therefore be approved without delay. As such, I conclude that the appeal should be allowed.

#### **Unilateral Undertaking**

43. I have considered the planning obligations included within the Unilateral Undertaking<sup>22</sup> in the light of the statutory tests contained in Regulation 122 of the CIL Regulations. I have also had regard to the Council's CIL Compliance Statement. This confirms that, where Regulation 123 applies, there would be no other obligations contributing towards each infrastructure project and therefore the obligations within the Unilateral Undertaking would be compliant. The obligations within the Unilateral Undertaking relate to the following matters.
44. *Affordable Housing*: Policy HC1 of the Sefton Local Plan says that for new developments of 15 dwellings or more 30% of the total scheme (measured by bed spaces) will be provided as affordable housing. It goes on to say that 80% of the affordable housing should be provided as social rented/affordable rented and the remaining 20% provided as intermediate housing. The supporting text to the policy includes Figure 8.1 which indicates the affordable housing need in

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<sup>22</sup> Document C3

- Sefton. For Formby it calculates the net affordable annual housing need as 64 dwellings.
45. The Unilateral Undertaking includes the provision of 30% of the total number of dwellings to be constructed on the site, measured according to bed spaces, to be affordable housing units, with 80% of these to be rented units and 20% to be intermediate units. Given the level of unmet need for affordable housing in Sefton, and Formby in particular, and having regard to the policy requirements, I am satisfied that this obligation would pass the statutory tests.
  46. *Altcar Footpath No. 5 and Footbridge*: Policy EQ3 of the Sefton Local Plan says that in order to improve accessibility in Sefton, new development must adhere to a number of principles including being located and designed to encourage walking and cycling both within, to and from the site; and, ensuring existing pedestrian and cycle paths are protected and where possible enhanced. Altcar Footpath No. 5 runs along the southern boundary of the appeal site and provides a pedestrian link between the Hoggs Hill Lane Level Crossing and the Sustrans National Cycle Network Route No. 810 and Formby Footpath No. 35.
  47. Altcar Footpath No. 5 is a grassed track on an elevated section of land, immediately to the south of the appeal site. At the time of my site visit I observed its use by dog walkers and secondary school children. The latter were making their way to school from the residential area to the east of the Hoggs Hill Lane Level Crossing, before continuing north along National Cycle Route No. 810 and Andrews Lane. I note that the existing barriers to pedestrian movement were highlighted in the Minimum Accessibility Standard Assessment submitted by the appellants with the application for full planning permission and the Council's statement that the improvements to the existing footpath and a footbridge linking the open space on the appeal site with this footpath would be required to improve the level of accessibility in relation to pedestrian movement.
  48. The Unilateral Undertaking includes financial contributions towards both the improvements to the section of the Altcar Footpath No. 5 (£90,000) west of the railway line from the intersection with the Sustrans National Cycle Network Route No. 810 to the National Rail pedestrian gate, including surface reconstruction in appropriate materials with edging and signage, and the construction of a footbridge (£23,000) connecting the open space to the far west of Altcar Footpath No. 5.
  49. Given the scale and nature of the proposed development it is likely that there would be some demand for access to the public footpath and cycle network from future occupiers of the dwellings on the appeal site. The proposed footbridge and improvements to the existing Altcar Footpath No. 5 would encourage future occupiers to walk and cycle to and from home. As such, I consider that these obligations would pass the statutory tests.
  50. *Hoggs Hill Lane Footpath Level Crossing*: Policy EQ3 of the Sefton Local Plan says that in order to improve accessibility in Sefton, new development must adhere to a number of principles including ensuring that the safety of pedestrians, cyclists and all road users is not adversely affected.
  51. Network Rail is seeking the exploration of a pedestrian over bridge at the Hoggs Hill Lane Level Crossing. However, if that is not deemed viable then it says that a 'VAMOS' Overlay System should be considered, which would

provide a 52% risk reduction. Financial contributions are therefore being sought towards the cost of the equipment relating to the 'VAMOS' Overlay System (£125,000) or the installation of the 'VAMOS' Overlay System (£500,000). The Unilateral Undertaking includes a 'blue pencil' clause<sup>23</sup> which includes a level crossing contribution of £125,000; or, £500,000, as suggested by Network Rail, or £nil; or, £10,000; put forward by the appellants if no improvements would be required or in respect of improvements to the warning signage surrounding the level crossing, respectively.

52. Given the nominal increase in the risk associated with this level crossing which would be generated by the proposed development, I do not consider that it would necessitate any further improvements to the level crossing to make the proposed development acceptable in planning terms, nor would the proposed improvements put forward by Network Rail be fairly and reasonably related in scale and kind to the development proposed. As such, I do not consider that a scheme for the improvement of the level crossing and the level crossing contribution included in Schedule 3, Part 2, Paragraph 1.2.3 ii), iii) or iv) would pass the statutory tests. As such, I consider that the level crossing contribution should be £nil, as included in Schedule 3, Part 2, Paragraph 1.2.3 i).
53. *Public Open Space*: The appeal site is allocated for housing (Site Ref. MN2.20) and proposed open space within Policy MN2 of the Sefton Local Plan. This policy states that the housing allocation is adjacent to an area of proposed open space, shown on the Policies Map, and that this area will be developed for new open space alongside the housing allocation. Appendix 1 to the Local Plan says that the development of MN2.20 must, amongst other things, provide new public open space, Sustainable Drainage Systems and habitat creation on the adjacent land designated as proposed open space.
54. The Unilateral Undertaking includes the provision of an area of public open space and amenity land within the appeal site as part of the development, along with the provision of a landscaping and management scheme and a phasing strategy for the open space. Given the scale and nature of the proposed development it is likely that there would be significant demand for the use of public open space by future occupiers. The submitted Masterplan illustrates the extent of the open space that could be provided on the appeal site. As such, I am satisfied that sufficient open space could be accommodated within the appeal site to meet the needs of future occupiers and satisfy the policy requirements in the Local Plan. I consider, therefore, that this obligation would pass the statutory tests.

### Conditions

55. Following the close of the Inquiry, the appellants submitted a final agreed list of conditions<sup>24</sup>. In addition to the standard time limit and reserved matters conditions, a further 18 conditions have been suggested. I have had regard to the advice in the Planning Practice Guidance<sup>25</sup> (The Practice Guidance) when considering these conditions. A condition requiring full details of the existing and proposed ground levels would be reasonable to safeguard the character

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<sup>23</sup> A 'blue pencil' clause enables the Decision maker to determine the appropriate level of contribution required

<sup>24</sup> Document C3

<sup>25</sup> Circular 11/95: The Use of Conditions in Planning Permissions has been largely superseded by the Planning Practice Guidance, with the exception of Appendix A (Model Conditions)

- and appearance of the area and the living conditions of neighbouring residents. The provision of an acoustic fence/barrier would be necessary to safeguard the living conditions of the occupiers of No. 1 Barton Heys Road, No. 16 Andrews Close and Nos. 1, 3, 5 and 7 Sutton Road. A Construction Environment Management Plan would be necessary to safeguard the living conditions of neighbouring occupiers during the construction period.
56. A scheme for the construction of the site access and off site improvement works would be necessary in the interests of highway safety. The submission and approval of a phasing plan for the development would be necessary to ensure that the site is developed in an appropriate manner. In order to protect the Water Vole habitat it would be necessary to undertake the Water Vole mitigation and licence arrangements outlined in the relevant strategy. It would be necessary to require the eradication of Himalayan Balsam at the appeal site, to prevent it from spreading. A requirement that no ground works shall take place within the proposed open space until a written scheme of investigation for the archaeological work has been submitted and approved would be necessary to protect heritage assets.
57. Conditions requiring the submission and approval of a Surface Water Drainage Scheme and details of the design of the proposed culverts within the site would be reasonable to ensure the sustainable drainage of the development and in the interests of ecology respectively. The provision of visibility splays at the junction of Barton Heys Road and Andrews Lane and the implementation and operation of a Travel Plan would be necessary in the interests of highway safety.
58. A requirement that the site access be constructed to at least base course level would be reasonable in the interests of the living conditions of future occupiers. The submission and approval of details of an acoustic fence/barrier for any dwelling with a boundary to the railway; the glazing standards for properties adjacent to the railway; and the ventilation of all habitable rooms overlooking the railway, would be necessary to provide appropriate living conditions for future occupiers. The distribution of a leaflet within the sales pack and to be issued to the first occupier of each dwelling would be reasonable to safeguard non-breeding birds. Finally, a requirement that the drainage for the development be carried out in accordance with the principles set out in the submitted Flood Risk Assessment and Sustainable Drainage Strategy would be necessary to reduce the risk of flooding.
59. The Council also seeks the inclusion of a number of informatives with regards to addresses, works to the highway, right of way Stopping Up Order, Traffic Regulation Order, cycle network and footpath route, informing Sustrans and an 8m easement agreement with the Environment Agency. I am satisfied that these would be reasonable as they would provide guidance for the developer.

*Karen L Baker*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Ian Ponter *of Counsel*

He called

Ms Liz Beard BA(Hons)

DipTP MRTPI

Senior Planning Officer, Development  
Management Team

### FOR THE APPELLANTS:

Mr Paul Tucker QC

He called

Mr David Roberts IENG

FIHE FCIHT

Mr Graham Trehwella

MCD MRTPI

Director, SCP

Partner, Cass Associates

### INTERESTED PERSONS:

Mr Derek Baxter

Mr Andy Fraser

Mr John Williams

Mrs Bernadette Ramsdale

Mr Dennis Hepworth

Mrs Bridget Carroll

Mr Brian Boothroyd

Mr Peter Willis

Ms Susan Begley

Mrs Liz Williams

Mrs Mavis Ray

Mrs Brenda Littlefair

Dr David Ramsdale

Mr George Simpson

Formby Parish Council

Formby Parish Council

Formby Parish Council

Local Resident

Local Resident

Local Resident

Local Resident

Local Resident

Local Resident

Local Resident

Local Resident

Local Resident

Local Resident

Local Resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Appearances and Opening Statement on behalf of the appellants
- 2 Opening Submissions on behalf of the Council
- 3 Late representations to the Planning Committee on 30 August 2017, submitted by the Council
- 4 Suggested conditions, submitted by the appellants
- 5 SCP Technical Note, dated 25 September 2017, submitted by the appellants
- 6 Appeal Decision (Ref. APP/D3125/W/15/3138076), submitted by the appellants
- 7 Letter from Formby Parish Council, dated 25 September 2017, to Sefton Council, submitted by Mr Baxter
- 8 Email from ORR, dated 22 September 2017, to Mr Baxter, submitted by Mr Baxter
- 9 Analysis of cycle trips for Sustrans National Cycle Network Route No. 810, submitted by Mr Fraser
- 10 Missing Local Plan Policies and Appendix 1, submitted by the Council

- 11 Email from Mr Baxter, dated 31 August 2017, to ORR, submitted by the appellants
- 12 Statement by Mr John Williams
- 13 Slide show presentation, submitted by Mr John Williams
- 14 Draft Planning Obligation by Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, submitted by the appellants

#### **DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY**

- C1 Final list of agreed conditions, submitted by the appellants
- C2 Sections 122 and 123 of the Community Infrastructure Regulations 2010: Statement of Compliance, submitted by the Council
- C3 Certified Copy of Planning Obligation by Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, submitted by the appellants
- C4 Level Crossing Risk Assessment for Hoggs Hill Lane Footpath Level Crossing, dated 19 June 2017 (updated 15 September 2017) prepared by Network Rail, submitted by the Council
- C5 Comments by the Council on the updated Level Crossing Risk Assessment
- C6 Comments by Mrs Bridget Carroll on the updated Level Crossing Risk Assessment
- C7 Comments by Mr Brian and Mrs Marilyn Porter on the updated Level Crossing Risk Assessment
- C8 Comments by Mrs S Begley on the updated Level Crossing Risk Assessment
- C9 Comments by Mrs Brenda Littlefair on the updated Level Crossing Risk Assessment
- C10 Comments by Mr David Seddon on the updated Level Crossing Risk Assessment
- C11 Comments by Ms Melanie Emery on the updated Level Crossing Risk Assessment
- C12 Comments by Mr Andy Muchall on the updated Level Crossing Risk Assessment
- C13 Comments by Mrs Bernadette Ramsdale on the updated Level Crossing Risk Assessment
- C14 Comments by Dr David R Ramsdale on the updated Level Crossing Risk Assessment
- C15 Comments by Mr George Simpson on the updated Level Crossing Risk Assessment
- C16 Comments by Ms Elizabeth Lee on the updated Level Crossing Risk Assessment
- C17 Comments by Mrs Liz Williams on the updated Level Crossing Risk Assessment
- C18 Comments by Ms Lorna Lander on the updated Level Crossing Risk Assessment
- C19 Comments by Mr Paul J Moore on the updated Level Crossing Risk Assessment
- C20 Comments by Ms Elizabeth Magill on the updated Level Crossing Risk Assessment
- C21 Comments by Mr Peter Willis on the updated Level Crossing Risk Assessment
- C22 Comments by Ms Susan Gilham on the updated Level Crossing Risk Assessment
- C23 Comments by Councillor Derek Baxter on behalf of Formby Parish Council on the updated Level Crossing Risk Assessment

- C24 Comments by the appellants on the updated Level Crossing Risk Assessment
- C25 Comments by Sustrans on the updated Level Crossing Risk Assessment

**APPLICATION PLANS**

- A1/1 Plan No. 1 (Drawing No. Rev. A)
- A1/2 Masterplan (Drawing No. 16-141-MP01 Rev. B)
- A1/3 Proposed Access Arrangement, Option (Drawing No. SCP/15259/SK01 Rev. B)

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## Appendix 1 – Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No dwelling shall be constructed until full details of the existing and proposed ground levels (referred to against Ordnance Datum) within the site and on land and buildings around the site by means of spot heights and cross sections, proposed finished floor levels of all buildings and structures, have been submitted to and approved in writing by the local planning authority. The development shall then be implemented in accordance with the approved level details.
- 5) Prior to the access road hereby permitted becoming operational, an acoustic fence/barrier adjacent to the properties at No. 1 Barton Heys Road, Formby, No.16 Andrews Close, Formby and Nos. 1, 3, 5 and 7 Sutton Road, Formby shall be erected in accordance with details that shall have first been submitted to and approved in writing by the local planning authority. The approved acoustic fence/barrier shall be maintained throughout the lifetime of the development.
- 6) No development shall take place until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The approved CEMP shall be adhered to throughout the construction period. The CEMP shall include:
  - The parking of vehicles of site operatives and visitors;
  - Loading and unloading of plant and materials;
  - Storage of plant and materials used in constructing the development;
  - The location of the site compound;
  - Suitable wheel washing/road sweeping measures;
  - Appropriate measures to control the emission of dust and dirt during construction;
  - Appropriate measures to control the emission of noise during construction;
  - Details of all external lighting to be used during the construction;
  - A scheme for recycling/disposal of waste resulting from the demolition and construction works;
  - Measures to protect and avoid harm to retained habitats and species;
  - Construction waste management measures;
  - Pollution prevention measures;
  - A programme for issuing information on construction activities to residents that border the site;
  - Details of the days/hours when construction activities will take place; and,
  - Details of piling and the days/hours when piling activity will take place.

- 7) Prior of the construction of any dwelling hereby permitted a scheme to include full construction details and a programme for the construction of the site access and the following off-site improvement works shall be submitted to and approved in writing by the local planning authority:
- Provision of flush kerbs and tactile paving at the following locations:
    - Queens Road outside No.2 Elson Road;
    - Andrews Lane/Andrews Yort;
    - Andrews Lane/Georgian Place;
    - Andrews Lane/Rostron Crescent (2 locations);
    - Andrews Lane/Crescent Avenue;
    - Andrews Lane/Andrews Close; and
    - Andrews Lane/Barton Heys Road.
  - Alterations to Andrews Lane/Elson Road priority junction including a footway build out fronting Nos. 5 & 7 Andrews Lane, kerb realignment to the south west kerb line of the junction, full footway reconstruction between the existing footway crossings of properties Nos. 1 & 7 Andrews Lane, any associated drainage alterations, road markings, tactile paving across the junction and relocation of the telephone call box.
  - Alterations to the alignment and priorities of the Barton Heys Road/Andrews Lane junction, (including any associated drainage alterations).
  - Alterations to Formby Footpath No. 35/National Cycle Network Route No. 810 from a point 45 metres south of Barton Heys Road to provide separate facilities for a length of 10 metres. Formby Footpath No. 35 to be a 2 metre wide bitmac path and National Cycle Network Route No. 810 shall be a 3 metre wide surfaced shared use access road with tactile paving and dropped kerbs at its junction with the development access road.
- The improvement works shall be constructed in accordance with the approved scheme and programme.
- 8) Prior to the construction of any dwelling a phasing plan including, but not limited to, a site layout plan identifying the proposed number of dwellings in each phase, the provision of internal roads, parking areas, footpaths, lighting and cycleways and open space for each phase shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved phasing details.
- 9) Prior to the occupation of any dwelling hereby permitted, the Water Vole mitigation & licence arrangements shall be carried out in accordance with the recommendations in Section 5 of the Water Vole Survey and Mitigation Strategy (ERAP Ltd Ref 2016\_97b) dated October 2016 and a programme that shall have first been submitted to and approved in writing by the local planning authority.
- 10) Any Himalayan balsam on the site shall be eradicated in accordance with Sections 2.2 to 2.5 (inclusive) of the ERAP Invasive Species Method Statement (April 2017) prior to the occupation of any dwelling hereby permitted.
- 11) No demolition/development shall take place within the proposed open space until a Written Scheme of Investigation shall have been submitted to and approved in writing by the local planning authority.

- 12) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under Condition 11).
- 13) (a) No dwelling hereby permitted shall be constructed until a Surface Water Drainage Scheme has been submitted to and agreed in writing with the local planning authority. The Surface Water Drainage Scheme shall include the following details:
- The life time of the development, design storm period and intensity, discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance and easements where applicable, the methods employed to delay and control surface water discharge from the site, and the measures taken to prevent flooding and pollution of the receiving ground water and/or surface waters including watercourses and details of flood levels in AOD.
  - To demonstrate that the surface water run off will not exceed existing greenfield run off.
  - Any works required off site to ensure adequate discharge of surface water without causing flooding or pollution (which shall include refurbishment of existing culverts and headwalls on the site or removal of unused culverts where relevant).
  - A timetable of implementation including phasing where applicable.
  - Site investigation and test results to confirm infiltration rates.
  - Water quality controls.
  - How any flood water, including depth, will be safely managed in exceedance routes.
  - Arrangements for adoption by an appropriate public body or statutory undertaker or management and maintenance by a management company.
- (b) The Surface Water Drainage Scheme shall be implemented in full accordance with the approved scheme and timetable.
- (c) The development shall be maintained and managed in accordance with the approved scheme at all times thereafter.
- 14) (a) No dwelling hereby permitted shall be constructed until full details of the design of the proposed culverts within the site, including how connectivity for wildlife will be retained, shall have been submitted to and approved in writing by the local planning authority.
- (b) The approved details under (a) shall be implemented within the development.
- 15) No part of the development shall be brought into use until visibility splays of 2 metres by 22 metres at the junction of Barton Heys Road and Andrews Lane have been provided clear of obstruction to visibility at or above a height of 0.6 metres above the carriageway level of Andrews Lane and its extension. Once created, these visibility splays as far as they fall within the site shall be maintained clear of any obstruction and retained for their intended purpose at all times.
- 16) (a) The development hereby permitted shall not be occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority.
- (b) The provisions of the Travel Plan approved under (a) above shall be implemented and operated in accordance with the timetable contained therein.

- 17) No part of the residential development hereby permitted shall be occupied until the approved scheme for the site access has been constructed to at least the base course level.
- 18) Details of an acoustic fence/barrier and glazing standards for any dwellings with a boundary to the railway shall be submitted to and approved in writing by the local planning authority and implemented prior to the occupation of any of these dwellings and retained thereafter throughout the lifetime of the development.
- 19) Details of the ventilation for all habitable rooms overlooking the railway shall meet specifications that shall be submitted to and approved in writing by the local planning authority before any of these dwellings is occupied. The approved scheme of ventilation shall be implemented in full.
- 20) Prior to the occupation of any dwelling, details of the leaflet on non-breeding birds shall be submitted to and approved in writing by the local planning authority. Amongst other things, it shall show the importance of non-breeding birds in the vicinity of the site and the need for care, especially to prevent disturbance by pet dogs. The approved leaflet shall be included in the sales pack and issued to the first occupier of each dwelling hereby permitted.
- 21) The drainage for the development hereby approved, shall be carried out in accordance with the principles set out in the submitted Flood Risk Assessment and Sustainable Drainage Strategy (August 2016) which was prepared by Betts Hydro. No surface water shall drain directly or indirectly into the public sewer. The development shall be completed in accordance with the approved details.

Informatives:

*Addresses*

The appellants are advised that the proposal will require the formal allocation of addresses. Contact the Highways Development and Design Team on Tel: 0151 934 4175 to apply for a new street name/property number.

*Works to highway*

The appellants are advised that all works to the adopted highway must be carried out by a Council approved contractor at the appellants' expense. Please contact the Highways Development and Design Team on 0151 934 4175 for further information.

*Right of Way Stopping Up Order*

The appellants are advised of the requirement for a Stopping Up Order to a section of the Right of Way that will be part of the development access road and a Definitive Map Modification Order will also be required to reflect the Stopping Up Order, if successful; which forms part of the public highway. Please contact the Highways Development and Design Team on 0151 934 4175 for further information.

*Traffic Regulation Order*

A Traffic Regulation Order (TRO) to introduce a 20 mph zone within the development is intended and a program for the implementation will be proposed. Please contact the Highways Development and Design Team on 0151 934 4175 for further information.

*Cycle Network and Footpath Route*

The appellants should note that the National Cycle Network Route No. 810 and Formby Footpath No. 35 must remain available for use at all times. A 3 metre wide temporary diversion route will be permitted if required; however, a Temporary Traffic Regulation Order for the Right of Way would be required to facilitate this. Please contact the Highways Development and Design Team on 0151 934 4175 for further information.

*Informing Sustrans*

Sustrans have requested that they are informed in advance, during the construction works, so they can publicise this route and a suitable diversion must also be provided. No changes should be made to the National Cycle Network Route No. 810 and any damage to path surface or signage or other elements of the route throughout construction should be repaired promptly.

*8 metre easement – agreement from Environment Agency*

Any works that are proposed within the 8 metre easement from the top of the banks of Raven Meols Brook and Hoggs Hill Lane Brook will require the agreement of the Environment Agency.

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