



Department for  
Communities and  
Local Government

Mr Jay Everett  
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Brewery Wharf  
LEEDS  
West Yorkshire  
LS10 1NE

Our Ref: APP/B2002/A/13/2203957

19 June 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY S and M HEWSON  
LAND TO THE REAR OF 32 TO 64 HUMBERSTON AVENUE (MILLENNIUM  
PARK), HUMBERSTON, GRIMSBY - APPLICATION REF: DC/268/13/HUM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, D C Pinner BSc (Hons) DipTP MRTPI, who held an inquiry on 11 February 2014 into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the refusal of North East Lincolnshire Council to grant planning permission for a hybrid scheme for the erection of 339 dwellings(C3), a primary school(D1), a community building(D1), allotments, play areas, landscaping, new access & associated on-site infrastructure (Outline), together with the erection of 46 dwellings (C3) with associated landscaping & access (Full) , in accordance with application ref DC/268/13/HUM dated 5 April 2013.
2. The appeal was recovered for the Secretary of State's determination on 18 November 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 conclusions and recommendation. A copy of the Inspector's report (IR) is enclosed. All paragraph numbers, unless otherwise stated, refer to the IR.

## **Matters arising after the close of the inquiry**

4. For the reasons at IR51-53 the Secretary of State agrees that there were no major changes to the original proposals upon which interested parties should have been reconsulted. On 21 March the appellant wrote to the Secretary of State to provide further information on why the Council withdrew all its original reasons for refusal. The Secretary of State has had regard to this letter.

## **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 consists of the saved policies of the North East Lincolnshire Local Plan 2003. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework – March 2012); the planning guidance published in March 2014 to support the Framework; and the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

## **Main issues**

6. The Secretary of State has had regard to the Inspector's comments at IR4-5 and IR55. He recognises that though there were no unresolved issues at the Inquiry between the appellant and the Council, there were local concerns about the scheme, in particular the need for additional residential development in this location and the effect of the development on the local highway infrastructure.

### Need for the development

7. For the reasons at IR56-58 the Secretary of State agrees with the Inspector that the Council cannot demonstrate a five-year supply of housing land, as required by the Framework. In this respect saved local plan policy GEN 2, which resists development outside development boundaries, is out of date.

### Effect on the local highway infrastructure

8. For the reasons at IR60-63 the Secretary of State, like the Council, considers that with the proposed mitigation measures the proposed development would make satisfactory provision for other road users such as pedestrians and cyclists.

### Other matters

9. The Secretary of State agrees with the Inspector's conclusions on other matters at IR64-67.

## **Conditions and s.106 obligations**

10. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR45-50. He is satisfied that the conditions recommended by the Inspector and set out at Annex A attached to this letter are reasonable and necessary and meet the tests of paragraph 206 of the Framework. He is also satisfied that the Planning Obligation dated 20 February 2014 (IR44) meets the

policy in paragraph 204 of the Framework and all the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010, and is a material consideration in this case.

## **Overall conclusions**

11. The Secretary of State agrees with the Inspector's conclusions at IR68-72. He considers that the housing policies in the development plan are out of date, the proposal would provide a substantial amount of much needed market and affordable housing and the lack of a five year housing land supply weighs significantly in favour of the appeal. The transport impacts would be acceptable and the development would be sustainable in all other respects. Overall, the Secretary of State concludes that the proposal accords with policies in the Framework including the presumption in favour of sustainable development.

## **Formal decision**

12. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation at IR73. He hereby allows your client's appeal and grants planning permission for: a hybrid scheme for the erection of 339 dwellings(C3), a primary school(D1), a community building(D1), allotments, play areas, landscaping, new access & associated on-site infrastructure (Outline), together with the erection of 46 dwellings (C3) with associated landscaping & access (Full) , in accordance with application ref DC/268/13/HUM dated 5 April 2013, subject to the conditions listed at Annex A of this letter.
13. 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.
14. 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**

15. 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.
16. A copy of this letter has been sent to North East Lincolnshire Council. A notification letter or e-mail has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Julian Pitt**

Authorised by the Secretary of State to sign in that behalf

**CONDITIONS**

- 1) The development hereby permitted shall commence within a period of 18 months from the date of this permission;
- 2) Details of the appearance, landscaping, layout and scale (hereinafter called the reserved matters) for development within the site taking place outside phase 1 (as shown on drawing 2187.P102.1 Revision A) shall be made to the local planning authority not later than two years from the date of this permission. Development outside of phase 1 shall not commence without approval in writing of the local planning authority of the reserved matters and the development shall be carried out in accordance with the approved details;
- 3) Insofar as it involves phase 1, development hereby permitted shall be carried out in accordance with the following approved plans, all by Hodson Architects, insofar as those plans relate to matters not reserved for future determination:

Location Plan as Existing	2187 E001
Topographical Survey by David Cotterrell	2187 E002
Existing Location Plan	2187 E002 Rev A
Existing Location Plan	2187 E003 Rev A
Proposed Site Plan	2187 P102 Rev A
Proposed Site Plan	2187 P102.1 Rev A
Site Plan (full)	2187 P103 Rev A
Block Plan and Topographical Survey	2187 P104
Boundary Treatments	2187 P108
Proposed Location Plan	2187 P150 Rev A
Proposed Location Plan	2187 P151
Floor Plans: Detached Type A	2187 P200 Rev A
Elevations: Detached Type A	2187 P201 Rev A
Floor Plans: Detached Type B	2187 P210 Rev A
Elevations: Detached Type B	2187 P211 Rev A
Floor Plans: Semi-detached Type B	2187 P410 Rev A
Elevations: Semi-detached Type B	2187 P411 Rev B
Floor Plans: Semi-detached Type C Bungalow	2187 P420 Rev A
Elevations: Semi-detached Type C Bungalow	2187 P421
Bungalow Type A Floor Plans	2187 P600 Rev A
Bungalow Type A Elevations	2187 P601 Rev A
Bungalow Type B Floor Plans	2187 P610 Rev A
Bungalow Type B Elevations	2187 P611 Rev A
Bungalow Type C Floor Plans	2187 P620 Rev A
Bungalow Type C Elevations	2187 P621 Rev A
Plans: Mews Houses Type F1 (2.5 storey)	2187 (P800 Rev A)
Elevations: Mews Houses Type F1 (2.5 storey)	2187 P801 Rev A
Floor Plans: Mews Houses Type F2 (2.5 storey)	2187 P900 Rev A
Elevations: Mews Houses Type F2 (2.5 storey)	2187 P901 Rev A
Floor Plans: Mews Houses Type F3 (2.5 storey)	2187 P1000 Rev A
Elevations: Mews Houses Type F3 (2.5 storey)	2187 P1001 Rev A
Floor Plans: House Type J1 (3 storey bookend)	2187 P1100 Rev A
Elevations: House Type J1 (3 storey bookend)	2187 P1101 Rev A
Floor Plans: House Type J2 (3 storey bookend)	2187 P1120 Rev A

Elevations: House Type J2 (3 storey bookend) 2187 P1121 Rev A  
Floor Plans and Elevations Double Garage Work Live 2187 P1300  
Elevations – Views 1 to 4 2187 P1350  
Elevations – Views 5 and 6 2187 P1351

- 4) No development shall take place until a landscape management plan has been submitted to and approved in writing by the local planning authority. The landscape management plan shall set out management responsibilities and maintenance schedules for all landscaped areas, inclusive of trees, hedges, ditches and balancing ponds; a Biodiversity Enhancement Scheme setting out measures for habitat creation and management, including the provision of bat roosts and bird boxes, a statement on the sustainability performance of the dwellings, based on the Code for Sustainable Homes. Development shall be undertaken in accordance with the approved details;
- 5) No development shall take place until a scheme for the provision of surface water drainage, based on sustainable drainage principles and an assessment of the hydrological and geo-hydrological context of the development, has been approved in writing by the local planning authority. The scheme shall include details of any ground level raising and a strategy for management of the surface water drainage scheme. Development shall be carried out in accordance with the approved details;
- 6) No development shall take place until a scheme for the provision and implementation of foul drainage works has been approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details;
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) The routing and management of construction traffic;
  - ii) The parking of vehicles of site operatives and visitors;
  - iii) Loading and unloading of plant and materials;
  - iv) Storage of plant and materials used in constructing the development;
  - v) The erection and maintenance of security hoardings, including decorative displays and facilities for public viewing, where appropriate;
  - vi) Wheel cleaning facilities;
  - vii) Measures to control the emission of dust and dirt during construction;
  - viii) Details of noised reduction measures;
  - ix) A scheme of recycling/disposing of waste resulting from demolition and construction works;
  - x) The hours during which machinery may be operated, vehicles may enter and leave the site and works may be carried out on the site;
  - xi) Measures to protect and maintain access along the Public Right of Way (Humberston FP59);
  - xii) Measures to protect breeding/nesting birds habitats (including any vegetation removal);
  - xiii) Measures to safeguard the area of high archaeological potential identified within the Architectural Evaluation Report.

- 8) No development shall take place outside phase 1 until a written Scheme of Investigation (or Specification of Works) for a programme of archaeological work in respect of the south-eastern quarter of the site has been submitted to and approved in writing by the local planning authority, and the Scheme of Investigation (or Specification of Works) has been implemented in accordance with the approved details. None of the dwellings hereby permitted outside of phase 1 shall be occupied until the findings resulting from the programme of archaeological work have been published and the archive resulting from the programme of archaeological work deposited with an organisation first approved in writing by the local planning authority;
- 9) No development shall take place until a scheme to screen the site from neighbouring fields in order to prevent disturbance to estuary birds has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details;
- 10) No development shall take place until a lighting management scheme, designed to minimise light spill from the site to adjacent ecological habitats, both during the construction period and once the development is occupied, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) Before development commences, details of a scheme of acoustic mitigation to protect properties neighbouring the vehicular access routes from Humberston Avenue to the site shall be submitted to and agreed in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details prior to the occupation of any dwellings hereby permitted;
- 12) None of the dwellings hereby permitted shall be occupied until the access road has been constructed to at least base course level and lit, in accordance with details that shall have first been submitted to and approved in writing by the local planning authority;
- 13) If, during construction of the development, contamination is discovered that has not been previously identified, the local planning authority shall be notified immediately and no further work carried out until a Method Statement, detailing a scheme for dealing with the contamination discovered, has been submitted to and approved in writing by the local planning authority. Development shall thereafter proceed only in accordance with the approved details. If during construction, no contamination is found, a written statement confirming that fact shall be submitted to the local planning authority upon completion of the construction works;
- 14) The package of measures detailed in Section 5 of the submitted Travel Plan shall be implemented in their entirety. Contact details for the Travel Plan Coordinator shall be provided to the local planning authority before any of the dwellings hereby permitted are occupied. A review of the Travel Plan, including the results of the annual travel report, shall be submitted to the local planning authority at the end of every three year period following the occupation of the first dwelling. Each Travel Plan Review shall include a revised set of targets and an action plan linked to the results of the travel report, which shall thereafter be implemented;

- 15) No development shall take place until an Arboricultural Method Statement, prepared in accordance with BS 5837:2012 Trees in Relation to Design, Demolition and Construction has been submitted to and approved in writing by the local planning authority. Works shall thereafter be carried out only in accordance with the approved details. The Arboricultural Method Statement shall include the specification, location and phasing for the installation of tree and hedge protection measures and a schedule of all proposed tree and hedge works, including the reason for such works;
- 16) No trees on the site shall be wilfully damaged, cut down, uprooted, pruned, felled or destroyed without the prior written consent of the local planning authority.

Richborough Estates

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

by D C Pinner BSc (Hons) DipTP MRTPI

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

Date 29 April 2014

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**TOWN AND COUNTRY PLANNING ACT 1990**

**NORTH EAST LINCOLNSHIRE COUNCIL**

**APPEAL MADE BY**

**S AND M HEWSON**

Inquiry held on 11 February 2014

Land to the rear of 32 to 64 Humberston Avenue (Millennium Park), Humberston, Grimsby

File Ref(s): APP/B2002/A/13/2203957

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**File Ref: APP/B2002/A/13/2203957**

**Land to the rear of 32 to 64 Humberston Avenue (Millennium Park),  
Humberston, Grimsby**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by S and M Hewson against the decision of North East Lincolnshire Council.
- The application Ref: DC/268/13/HUM, dated 5 April 2013, was refused by notice dated 12 August 2013.
- The development proposed is a hybrid scheme for the erection of 339 dwellings(C3), a primary school(D1), a community building(D1), allotments, play areas, landscaping, new access & associated on-site infrastructure (Outline), together with the erection of 46 dwellings (C3) with associated landscaping & access (Full).

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

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**Procedural Matters**

1. At the Inquiry applications for costs were made by S and M Hewson against North East Lincolnshire Council and by North East Lincolnshire Council against S and M Hewson. These applications are the subjects of a separate Report.
2. The appeal case was linked to 2 enforcement appeals (Refs: APP/B2002/C/13/2201580 and APP/B2002/C/13/2201582) regarding the demolition of a house at 54 Humberston Avenue to provide an access into the proposed development site. The Council withdrew the enforcement notice in an e-mail to the Inspectorate dated 4 February 2014 (Inq3). The enforcement appeals have therefore fallen away.
3. The application the subject of this appeal was a hybrid application that sought outline planning permission, principally for residential development, of the whole site and full planning permission for the first phase of the development, this being for 46 dwellings. 385 dwellings are proposed in total.
4. Following the refusal of planning permission for eight reasons, the Council and the appellants continued discussions about the scheme. The outcome was that, before the start of the inquiry, the Council had withdrawn all eight of its reasons for refusal. The Council called no witnesses and offered no evidence against the scheme at the inquiry.
5. In view of the Council's withdrawal of its objections to the scheme, before the start of the inquiry, I asked them to produce a short report to explain why they now consider the site to be suitable for the proposed development. The report was submitted to the Inspectorate by e-mail before I opened the inquiry and is dated 7 February 2014 (Inq5). The report says that only reason for refusal number 2, relating to the impact of the scheme on the character of the local area, remained, but this reason was outweighed by the benefits of the scheme. However, in a previous e-mail dated 5 February 2014 (Inq4) the Council specifically said that reason number 2 had been withdrawn. The Council made no real distinction between a reason for refusal that had been withdrawn and one which they no longer intended to support with evidence. However, Counsel for the appellants said there was a difference in that a withdrawn reason was no longer before the Secretary of State to consider, whereas a reason that was not

supported with evidence was nevertheless still a reason that the Secretary of State would have to consider. The Council accepted this argument at the inquiry and confirmed that reason number 2 was, in fact, withdrawn.

6. A S106 Agreement has been negotiated between the parties but had not been executed by the date of the inquiry. I agreed a post-inquiry submission deadline of 21 February 2014. The executed deeds (Inq 10) were provided in accordance with that deadline and are considered below.
7. Core documents for the inquiry were provided and are referenced as documents CD1 to CD30 in the appeal documentation. I have referred to them as such in this report. CD1 includes the planning application documentation and is subdivided into 17 parts. CD3 is the Council's decision notice, which lists eight reasons for refusing planning permission, all subsequently withdrawn, as mentioned above.
8. Proofs of evidence were provided on behalf of the appellants by Mark Hodson, BA Dip Arch RIBA FRSA, a founding Director of Hodson Architects Ltd., the scheme architects, and by Jay Everett BSc (Hons) MRTPI, a Partner in Addison Planning LLP. These Proofs and their appendices are included in the appeal documentation as Inq7 and Inq8 respectively. The Council did not provide any Proofs of Evidence.
9. A Statement of Common Ground dated 16 December 2013, together with an updated Highways and Transportation (H and T) section are included in the appeal documentation (Inq6). Two copies of the H and T section are included, one dated 17 December 2013 and signed by Matt Cleggett, a partner in Opus, who produced it on behalf of the appellants, and one signed and dated 24 December 2013 by Mark Cawood, the Planning and Building Control Manager for North East Lincolnshire Regeneration Partnership. It was confirmed at the inquiry that this H and T document is agreed by the main parties and is the basis for the Council's withdrawal of its highways and traffic reasons for refusal.

### **The Site and Surroundings**

10. Humberston Avenue is a long, straight road linking the settlements of Humberston and New Waltham. It has been developed over the years, primarily with residential development, especially houses with very long back gardens. Many of these gardens have subsequently been developed with additional dwellings. A detailed Character Appraisal of the appeal site and of Humberston Avenue is included as Appendix 1 to Mr. Hodson's Proof of Evidence and is an invaluable reference. Section 3 of the Character Appraisal describes the evolution of the development off Humberston Avenue.
11. The appeal site itself comprises 26.3Ha of arable land. It is predominantly flat, with a slight, inconsequential rise towards the southern end of the site. Tree cover is limited to a small copse at the south-eastern tip of the site and a double row of newly-planted trees along the eastern boundary of the site, as mentioned on page 44 of the Character Appraisal.
12. The aerial photographs of the site and its surroundings on pages 4 and 5 of the Character Appraisal show the site in relation to other sites in the vicinity which have planning permission for residential development, but which have not yet been developed. A plan included as CD22 also shows the appeal site in this

context. Of particular interest is the Keystone Development site, a little to the east of the appeal site. The Keystone scheme was the subject of an appeal which was determined in favour of Keystone Developments by the Secretary of State on 4 November 2013 (CD 29/4). Immediately to the west of the appeal site is the former Humberston Par 3 golf course which has planning permission for 121 dwellings, recently granted by North East Lincolnshire Council. (CD28)

## **Planning Policy**

13. The Council raises no policy objections to the scheme. Prior to the withdrawal of reason for refusal number 2, the Council cited saved policy GEN2 of the North East Lincolnshire Local Plan. This policy restricts development in open countryside (i.e. outside defined development limits). However, it is common ground that the Council is unable to identify a five-year housing land supply and they accept also that any such identified supply should also include a 20% over-provision in line with paragraph 47 of the National Planning Policy Framework (CD24). Under these circumstances, it is accepted that policy GEN2 is not up-to-date. Furthermore, the Council accepts, following the Keystone Developments decision, that any harm to the character of the area is outweighed by the benefits of the scheme in going some way towards meeting the considerable shortfall in the five-year supply of deliverable housing land, hence their withdrawal of the second reason for refusal. They did not seek to re-argue any of the other points they had relied upon in their opposition to the Keystone Developments scheme.

## **The Proposals**

14. The scheme is a hybrid scheme, i.e. part outline and part detailed, for the construction of a total of 385 new dwellings. The Design and Access Statement (CD1/7) shows, on its last page, an indicative phasing scheme showing 9 phases of development. The detailed part of the application concerns Phase 1, which is for 46 dwellings. There would be two accesses into the site from Humberston Avenue with Phase 1 being served from the existing westerly access between numbers 38 and 40 Humberston Avenue. A second easterly access into the site would be provided in a later phase over the site of 54 Humberston Avenue. This was a dwelling that has been demolished by the appellants, but the demolition was undertaken without complying with the prior notification requirements of the condition at A.2(b) of Part 31 to the second schedule to the Town and Country Planning (General Permitted Development) Order 1995. That condition requires the developer to apply to the local planning authority for a determination as to whether their prior approval will be required to the method of demolition and any proposed restoration of the site. The withdrawn enforcement notice related to this demolition and required the house to be rebuilt.

### *The outline scheme*

15. The outline application reserves all matters for future approval except for the means of access and landscaping. Although a layout is shown, this is not a matter for consideration at this stage and should be regarded as being only for illustrative purposes. The scheme also includes a potential site for a new school to serve the development. However, subsequent discussions with the Council have resulted in the appellants agreeing that, instead of reserving part of the site for a school, they will make a financial contribution towards the enhancement of existing education facilities as a means of addressing the impact that the

proposed development would have on educational infrastructure in the locality. A revised indicative Master Plan has been included as CD25 to show how the part of the site formerly intended to be reserved for a school could be incorporated into the development. In essence, the school site would be included in the residential scheme but the area shown as Phase 9 on the last page of CD1/7 would see an increased area of open space and a reduced number of dwellings. This increase in the amount of open space in the phase 9 area also demonstrates that there is ample scope for the results of the post-decision geophysical survey of the site to be taken into consideration at the detailed design stage. The geophysical survey report is included as CD17 and concludes (at paragraph 7.5) that the survey results generally suggest a limited archaeological potential for the majority of the site, but a high potential for the southeast corner of the potential development area. As CD25 shows, this part of the site could be incorporated into the undeveloped area of open space.

16. The basic principals of the landscaping proposals are shown on the submitted plans, but the full details and specifications of the proposed landscaping are not. However, the design philosophy is that the southern side of the site would be blurred into the countryside beyond and that "green fingers" of landscaping would be drawn up into the site. The existing public footpath which runs roughly north-south through the middle of the site, before dog-legging to the southeast, would become the focus of a "green spine" running through the site that would broaden out as it heads towards and meets the landscaped southern edge of the developed area. Smaller courtyards of green space would be placed throughout the development between housing squares and onlooking terraces. The Landscaping Strategy Plan can be found at page 53 of the Character Appraisal document.
17. Saved Local Plan policies LCT3 and LCT4, which are included in the bundle of documents in CD7, relate to open space provision and the provision and maintenance of children's play areas within housing schemes of more than 50 houses. The Council raised no objections to the scheme with respect to either of these policies, with the officer's report (CD2) concluding that the proposed open space provision would offer recreational and ecological enhancement opportunities, subject to satisfactory management measures that would need to be addressed in a s106 Agreement.
18. Based on the revised indicative master plan CD25, the total amount of open space to be provided in the scheme is 10.74 Ha, representing 41% of the gross area of the appeal site. Of this, 8.16 Ha of Public Open Space (POS) would be provided outside the residential zones, 1.61 Ha of POS would be provided within the residential zones and just under 1 Ha would be provided as non-public space for the benefit of a not-for-profit social enterprise organisation, "Get Hooked on Positive Action" (GHoPA), that is a spinoff from the award winning national charity Get Hooked on Fishing. In brief, working with localised partnerships and other like-minded social enterprises, GHoPA aims to engage young people in a range of predominantly outdoor activities to promote social responsibility and to offer youth unemployment solutions, all to the benefit of the wider community. The proposals also include the offer of £250,000 contribution to the GHoPA organisation to seed fund the community development phase of their activities on the site. GHoPA already has a licence to use and manage the fishing lakes on the site.

19. The reference to a community building in the description of the outline proposal is to a building shown on the (illustrative) site master layout plan (Drawing no. 2187.P102.1 Rev A included in CD 1 part 1). The building would be for use by GHoPA
20. Further details of GHoPA and their support for the scheme can be found at pages 32 to 34 of Mr Everett's proof of evidence. His appendices JE10 and JE10a are also of relevance.

#### *Phase 1 detailed scheme*

21. The detailed part of the hybrid application is for the erection of 46 dwellings comprising 20 two-bedroom dwellings; 22 three-bedroom dwellings and 4 four-bedroom dwellings. Two of the dwellings are shown as having double garages with roofspace offices, recognising the potential for working from home for some people. There are no identified dwellings that are to be affordable dwellings, but the scheme would be covered by the requirement that 20% of the dwellings to be provided on the site as a whole should be affordable. This would be secured as one of the terms of the s106 Agreement.
22. In his proof of evidence, Mr Hodson explains that there is no recognisable or repeated form of development on Humberston Avenue. There is a mix of bungalows and houses, some very large, some small and there is a varied palette of materials. The design of the scheme is not intended to replicate the designs of the local area but is related to the local vernacular and responds in particular to a thorough understanding of the attractive streets and housing in the area and, in particular, to the Bradford Avenue Conservation Area two miles from the site. The designs respond to the good-quality inter-war housing stock in the surrounding areas of Grimsby and Cleethorpes, which continue to be very popular.
23. At pre-application stage, the scheme as a whole was referred by the Council's Planning Department for peer review to the Yorkshire Design Review Panel (DRP). The DRP report is included in Appendix 1 to Mr Hodson's proof of evidence at pages 57 to 60 and is also provided as CD10. The final submitted design included changes that responded to the DRP's comments.
24. The main accesses into the site from Humberston Avenue will retain existing trees in the case of the existing westerly access, which would serve Phase 1. New planting would be undertaken with respect to the proposed easterly access so that both main accesses would reflect the tree-lined character of Humberston Avenue.

#### **The Case for North East Lincolnshire Council**

25. The Council presented no evidence against the scheme and has withdrawn all of its reasons for refusal. At the inquiry, they called the Council's development Manager, Russell Clarkson, simply to answer any questions that I, or members of the public present at the inquiry, might have. Mr Clarkson confirmed that the Council could not identify a five-year housing land supply and explained that the search for sites would mainly be aimed at the urban areas and larger villages of the Borough.

26. The Council's fairly brief statement dated 7 February 2014, (Inq5) to which I have already referred, explains in adequate detail the reasons why they now consider the scheme to be acceptable.
27. In very brief summary, the first reason, concerning possible nature conservation issues, has been overcome by the provision by the appellants of an ecology report which shows that the scheme would have no adverse impacts on sites of ecological importance. Reason 2, which has already been mentioned, is outweighed by the lack of an identifiable five year land supply; reasons 3, 4 and 5 are traffic and highway related reasons which have been overcome by the appellants' provision of further information and their agreement to provide commuted sums to the Council for mitigation works. Reason 6, related to the appellants' original proposal to provide off-site affordable housing, is now overcome by their agreement to make 20% of the dwellings on site affordable. Reason 7 related to the original proposal to safeguard a part of the site for provision of new education facilities. This has been overcome by the appellants' agreement to provide a commuted sum to the Council for off-site upgrading of existing education facilities. The final reason, relating to archaeology, has been overcome by the appellants undertaking a geophysical survey of the land. This has shown there to be limited archaeological potential for the majority of the site but a high potential in the south-eastern corner of the proposed development area. The Council is satisfied that, as siting and layout are reserved matters in respect of the part of the site with greatest archaeological potential, the layout can be designed at reserved matters stage to ensure that any archaeological interest is preserved or dealt with appropriately.

### **The Case for the appellants**

28. The case for the appellants was made in the opening and closing submissions of their counsel. In addition, evidence on the design of the scheme was given by Mark Hodson, the scheme's architect and by Jay Everett on general planning matters. Neither witness was cross-examined by the Council and they were called primarily to answer any questions that I or members of the public present at the inquiry might have.
29. The Council's decisions to withdraw all of its reasons for refusal and to present no evidence against the scheme at the inquiry means that it is implicit that the reasoning in the appellants' proofs of evidence is accepted by the Council. Four key points arise. Firstly, withdrawal of all of the reasons for refusal means that these are no longer before the Secretary of State for his consideration. Secondly; the only evidence for consideration is that of the appellants. Thirdly, there is no challenge to that evidence or its conclusions and, finally, both the appellants and the local planning authority agree that planning permission should be granted for the scheme.
30. It is common ground that the Council cannot identify a five-year supply of deliverable housing land. The Council claims a 3.9 year supply whereas the appellants say that there is only a 3.7 year supply. Neither figure takes into account any provision for a 20% over-supply as required by the National Planning Policy Framework. Neither figure takes into account the need to catch up on the backlog of housing need that has arisen because of historic under-supply of housing land.

31. The appeal site is in a sustainable location, close to the urban area with good access to a wide range of facilities. The scheme includes a generous provision of open space which would be available for the enjoyment not just of residents of the scheme but for residents of the wider area. There are no environmental objections to the proposals, with Natural England having withdrawn its objections in the light of the additional evidence supplied by the appellants since the refusal of planning permission (CD 9). Further work on the assessment of traffic and highway impacts of the scheme together with proposals to mitigate any adverse impacts through the provision of commuted sums for highway and other improvements have overcome any objections on those grounds. Proposals for the improvement of off-site educational facilities and for on-site affordable housing provision have overcome objections on those grounds.
32. The results of the Geophysical Survey commissioned by the appellants show that there is an area of potential archaeological significance in the south-eastern corner of the site. However, as the need to make provision for the upgrading of the educational infrastructure to meet the needs generated by the proposed development are now to be met off-site, the area of land which was to be reserved for a new school is no longer needed for that purpose. The illustrative revised master layout plan produced as CD25 shows that the area of likely archaeological interest could be incorporated as additional open space, thus ensuring that any remains can be retained in situ.
33. The detailed scheme of 46 dwellings for phase 1 of the development is sensitively designed and will create a sense of place. It proposes a mix of houses and bungalows of different sizes, with landscaped areas and parking courts incorporated into the layout. The principles of designing out crime have been applied in the design of the layout so that communal parking courts and landscaped areas are overlooked from the dwellings. The scheme does not attempt to copy local designs which, in any case are so varied that there is no distinctive architectural style or character apparent on Humberston Avenue. The scheme nevertheless responds to local architectural influences and uses the palette of local materials to produce a high-quality and safe residential environment. This has been subjected to pre-submission peer review by the Yorkshire Design Review Board, which was generally complementary about the proposals. Some of the Board's suggestions have been incorporated into the scheme that was subsequently submitted to the Council and which is the subject of this appeal.
34. As the Council is not opposing the scheme and it would have no substantial and demonstrable harmful impacts that would outweigh the benefits of the scheme in providing much-needed market and affordable housing, planning permission should be granted.

### **Interested parties**

35. Mrs Steele, a local resident from New Waltham spoke against the proposals. She acknowledged that a lot of hard work had gone into the scheme and that it would provide benefits. She accepts that the enforcement notice has been withdrawn but she was concerned that, by demolishing 54 Humberston Avenue in breach of planning legislation, the appellants would benefit from their own wrongdoing. She had asked a question earlier about the unauthorised demolition and was informed by the Council that there were still ongoing legal proceedings under

other legislation, which were not relevant to this appeal. However, she considered that the appeal should be dismissed because of the unauthorised demolition, especially as there were still outstanding legal matters.

36. Mrs Steele asked whether the housing quota had now been met and asked whether it was right to build on greenfield sites. In reply, on behalf of the Council, Mr Clarkson confirmed that the Council cannot identify a five year supply of housing land as required by the National Planning Policy Framework.
37. Mr Kerr lives in a cul-de-sac off Humberston Avenue, beyond which lies the appeal site. He felt that the opinions of local residents into this and other nearby schemes had not been taken into account. Many people wrote in to object to the scheme but this was not reflected in the public presence at the inquiry. He felt that the appeal process had worn people down, rather than that people were now in favour of the proposals.
38. He was concerned that until the Council could identify a five-year housing land supply, any schemes for residential development anywhere in the local authority area would obtain planning permission. He asked when the new Local Plan would be ready. Mr Clarkson said that the timetable was on the Council's website but there had already been slippage and the target date of May 2015 for adoption was optimistic.
39. Mr Mackrell, who lives in a house adjoining one of the main accesses into the site was concerned about the possibility of flooding of his garden from the access road and also about the possible conflict between traffic using the access road and his use of his driveway. Mr Everett responded to say that traffic engineers appointed by the appellants had agreed with the local Highway Authority engineers that the access roads into the site provided a safe engineering solution, subject to some local junction improvements which would be enabled through the provision of the proposed commuted sums to the Council from the developers. The detailed design of the access roads would ensure that they would be constructed to adoption standards and drainage would be part of that detailed design.

### **Written Representations**

40. Four letters of representation were received for the appeal. One from the adjoining local planning authority, East Lindsey District Council, points out that the open space at the southern end of the appeal site is within East Lindsey and their only concern is that, if arrangements need to be made for it to be maintained, East Lindsey would not be prepared to adopt it and any such arrangements would need to be the responsibility of the developer. The illustrative site master plan (Drawing no. 2187.P102.1 Rev A included in CD 1 part 1) shows the constituency boundary and it can be seen that the part of the site within East Lindsey would be retained as open space and for GHoPA's activities. East Lindsey District Council have granted planning permission for the part of the scheme that lies within their administrative area (CD18).
41. Other representations are concerned with the likely effect of the development on local infrastructure, the need for the development and conflict with planning policy. However, this latter objection relies on withdrawn or superseded policies and does not take into account the National Planning Policy Framework.



42. Over 50 letters of objection were received from local residents at application stage together with a petition with over 250 names. Objections were received also from New Waltham Parish Council, Grimsby and Cleethorpes Civic Society and the Campaign for the Protection of Rural England. The content of all of these objections is summarised at pages 4 and 5 of the officer's report on the application (CD2) and the objections are within the bundle at CD7. The main objections are based on the capacity of the local infrastructure to support the development, especially the local road network; the need for the development; the loss of green fields and the unauthorised demolition of 54 Humberston Avenue to facilitate the development.
43. A letter was received after the close of the inquiry from Councillor Alex Wallace, the Chair of the Council's Planning Committee (Inq9)) concerning the amendments to the scheme post-refusal and whether acceptance of those amendments would deprive any interested parties of their right to be properly consulted. I will deal with this matter in my conclusions.

### **S106 Agreement**

44. The proposed development is subject to a S106 Agreement dated 20 February 2014 between the landowners and the Council (doc Inq10). The principal terms of the agreement are as follows:
- 20% of the dwellings are to be affordable dwellings, constructed to the same standard as the market dwellings and with phased release to a Registered Provider, keeping pace with the development as a whole;
  - Phased financial contributions towards education provision;
  - Requirement to submit an Open Spaces Management Scheme before any houses are occupied. Transfer of Public Open Space (POS) to Humberston Parish Council together with a commuted sum for management of the POS;
  - Inclusion of an equipped children's play area within the POS;
  - Phased payment of a Transport Contribution for highway and transport works shown in the plan attached to the Agreement (Sixth Schedule);
  - Retention of the existing public rights of way (PRoW) through the site and the provision for formal adoption of a PRoW to be incorporated into the formal approved landscaping scheme;
  - Submission and completion of a Highway Works Scheme;
  - Transfer of amenity land to GHoPA and provision of a suitable access to that land at a cost of up to £25,000;
  - Putting in place a bond of £250,000 for use by GHoPA for the provision of a community building.

### **Conditions**

45. The Council and the appellants have agreed a list of 17 conditions which they regard as being reasonable and necessary if planning permission were to be granted for the scheme. The agreed list is included as Inq11.
46. The suggested conditions relate to the early commencement of Phase 1 of the development (1); submission of reserved matters (2); compliance with approved plans for Phase 1 (3); submission of a landscape management plan (4); surface and foul water drainage (5 and 6); submission of and compliance with a Construction Method Statement (7); temporary landscaping of the site of the demolished 54 Humberston Avenue (handwritten 8); submission and implementation of a scheme of archaeological investigation before any

- development outside of Phase 1 is undertaken (9); screening of site and lighting management scheme to prevent disturbance to birds and minimisation of light spill to adjacent ecological habitats (10 and 11); acoustic mitigation to protect the properties adjacent to the vehicular access routes into the site (12); construction of access roads prior to first occupation of any dwellings (13); measures for dealing with any land contamination discovered during the development (14); implementation of the measures detailed in section 5 of the submitted Travel Plan (15); submission of and adherence to an Arboricultural Method Statement (16) and protection of trees and hedges on the site (17).
47. It should be noted that proposed condition 2 lists landscaping as a reserved matter. In view of the lack of detailed landscaping proposals, if minded to allow the appeal, the Secretary of State may wish to include landscaping as a reserved matter given that the parties have agreed the condition.
48. I was particularly concerned with the agreed condition 8, the aim of which is to secure temporary improvements to the site of the dwelling that was unlawfully demolished. The problem with the condition is that it is triggered by the granting of planning permission but would only be enforceable if such planning permission had been implemented. Agreed condition 1 allows up to 18 months before the permission has to be implemented, but the suggested condition 8 requires action to be taken within 1 month of permission being granted, i.e. at a time when the planning permission might not yet have been implemented. I would suggest, therefore that the condition is unenforceable. I expressed these concerns at the inquiry, but neither main party could suggest an alternative approach.
49. My view is that the condition cannot be imposed. 54 Humberston Avenue was demolished without compliance with the condition A.2(b) (i) to (vii) in Part 31 of the second schedule to the Town and Country Planning (General Permitted Development) Order 1995. It seems to me, therefore, that this particular breach of planning control should be addressed via the enforcement powers available to the local planning authority. The withdrawn enforcement notice required the house to be rebuilt, so it is not surprising that the appellants chose to appeal against the enforcement notice rather than comply with it.
50. I believe that with goodwill on both sides, an amenable solution could be found without having to resort to enforcement action. If that is not the case, an enforcement notice requiring lesser steps in order to overcome the injury to amenity could be considered. However, this is a separate matter that is beyond the scope of this appeal.

## Appraisal

### *Post-decision amendments to the scheme*

51. Dealing with the point raised by Councillor Wallace (Inq9), it should be noted that the scheme is unchanged insofar as it relates to a detailed proposal for the erection of 46 dwellings and an outline proposal, with only means of access and landscaping being for consideration at this stage, for a residential development of a further 339 dwellings. The change to the outline scheme is that it is no longer proposed to reserve a part of the site for the erection of a primary school. Instead, the developer would make a financial contribution towards the upgrading of the existing educational infrastructure. This financial contribution is a subject of the S106 Agreement between the appellants and the Council.

52. The removal of the school site from the outline scheme has not resulted in any change to the number of houses that would be constructed. The scheme would include additional public open space, thereby protecting an area that has been found to have potential archaeological importance. Furthermore, the layout of the proposed residential development is not a matter for consideration as part of the outline scheme. Both the original and revised master layout plans (CD 25) should only be regarded as illustrations of how the site might be developed. If outline planning permission were to be granted, the final layout would be the subject of a reserved matters application and any representations concerning the layout would be taken into account at that stage.
53. Other matters that are relevant to this appeal are not changes to the scheme itself. Further information has been supplied in respect of those reasons for refusal which arose because the Council was unable to assess the likely effects of the scheme. Agreement has been reached about how affordable housing provision would be made within the scheme as it stands and agreement has been reached regarding developer contributions to off-site traffic and highway mitigation measures.
54. I am satisfied that none of these matters represents a major change to the proposals upon which interested persons should have been reconsulted.

## Issues

55. This proposal is perhaps unusual in that the local planning authority has withdrawn all of its reasons for refusing to grant planning permission for the scheme. By implication, if they were able to deal with the matter now, they would grant planning permission subject to conditions. Nevertheless, there are local concerns about the scheme, in particular, the need for additional residential development in this location and the effect of the development on the local highway infrastructure. Whilst these are not issues between the local planning authority and the appellants, I will address them in this report. I will also briefly report on other matters.

## *Need for the development*

56. The position regarding housing land availability in North East Lincolnshire is set out at pages 8 and 9 of the Officer's Report on the scheme (CD 2). The now-revoked Regional Spatial Strategy (RSS) set an annual target of 510 homes per annum for the Borough. However, historically, between 2005 and 2012, build rates have never exceeded 400 dwellings per annum and more recently have been below 300 dwellings per annum. The evidence therefore shows a consistent under-delivery of housing within the Borough. In accordance with the second bullet point in paragraph 47 of the National Planning Policy Framework (CD 24), a 20% buffer needs to be added to the five-year land supply figure.
57. Following the revocation of the RSS, the Council is preparing its Strategic Housing Land Availability Assessment (SHLAA). The 2012 Draft SHLAA (CD 13) indicates that the Council could only identify 1.67 years supply of residential sites based on the RSS figure of 510 dwellings per annum. The Initial Issues and Options Paper of the New Local Plan (CD 20) suggests a lower locally derived figure of 410 dwellings per annum until 2017, rising to 520 dwellings per annum thereafter. Using those estimates, the Council could identify 3.9 years supply, but this does not take into account the requirement for a 20% buffer.

58. On page 120 of the Draft SHLAA, the appeal site is identified as site HOU146. The Council continues to monitor its Five-year Housing Land Assessment (FHLA) and the most recent information is provided in the October 2013 update of the August 2013 FHLA (CD 14 and 14b). It is only by including informally-identified sites (which includes the appeal site HOU146) into the equation that the Council can show the potential for more than a five year housing supply. HOU146 is also identified on the plan attached to CD 20.
59. It is therefore common ground between the Council and the appellant that there is not a five-year supply of housing land, as required by the National Planning Policy Framework. In this respect, policy GEN 2, which resists development outside development boundaries, is out of date. The Council accepts this.

*Effect on the local highway infrastructure*

60. Following the refusal of planning permission, the appellants' and the Council's highway engineers have been in further discussions on the scheme. The Council was particularly concerned that several local road junctions are already at or near capacity and that the proposed development would exacerbate any resultant problems. In response, a revised Transport Assessment has been submitted by the appellants, the findings of which are agreed by the Council's highway engineers. No highway witnesses appeared at the inquiry and nobody raised any matters of substance that led me to suppose that there is any reason to dispute the agreed findings of the respective highway professionals.
61. The Transport Assessment is highly specialised and predicts the likely impact of the proposed development on the local highway network. Where potentially adverse impacts have been identified, mitigation measures are proposed. These include such things as altering access widths, increasing flare lengths to allow the storage of more vehicles per lane at certain junctions and alterations to signal timings where necessary. The full list of proposed mitigation measures can be found at pages 2 and 3 of the revised Transport Assessment.
62. On the strength of the agreed Transport Assessment and the proposed mitigation measures, the Council is satisfied that the local highway network has sufficient capacity to accommodate the proposed development. That does not necessarily mean that the development would have no effects, just that any such effects would be within the capacity of the local road network.
63. The Council's other concern with regard to highway matters was that the scheme proposed nothing to ensure safe access to and from the site by other road users such as pedestrians and cyclists. The revised Transport Assessment identified a number of measures that could be introduced in this respect. These include measures such as upgrading bus stops (including the provision of two bus shelters), providing additional crossings on Humberston Avenue, providing a footway along a section of Humberston Avenue, introduction of tactile paving and reducing the speed limit from 40mph to 30mph on a section of Humberston Avenue adjacent to the two access points into the site. The full list of agreed mitigation measures can be found on Page 4 of the revised Transport Assessment. On the strength of these proposed mitigation measures, the Council is satisfied that the proposed development would make satisfactory provision for other road users such as pedestrians and cyclists.

### *Other matters*

64. The application documentation is comprehensive and includes detailed assessments of several matters that have never been in dispute. These include a sustainability assessment (CD1/13); a flood risk assessment (CD1/11); a tree report (CD1/14); a utilities assessment (CD1/15) and a Travel Plan (CD1/16). No issues with regard to any of these matters were raised at the inquiry.
65. The Council was concerned that the submitted information was deficient in some respects, notably the potential of the scheme to have effects on protected species and habitats and the potential of the site to have archaeological interest that had not been identified in desk-based assessments. They were also concerned that the noise of the traffic using the roads into the scheme would harm the living conditions of the occupants of the houses adjacent to these accesses. The appellants responded post-decision by undertaking further work to provide the necessary information with regard to archaeology (Geophysical Survey CD 17); to the potential effects on protected species (CD8) and they also commissioned a noise assessment (CD30). CD9 is Natural England's response, withdrawing their previous holding objection to the scheme. As already noted, the Geophysical Survey found an area of potential archaeological interest to the south east of the appeal site. This can be taken into account at detailed layout stage as illustrated in the revised master layout plan CD25. The Council was satisfied that the results of the noise assessment demonstrated no unacceptable impact on residential amenity and withdrew the relevant reason for refusal.
66. The Council's concerns about affordable housing provision have been addressed by the appellants' agreement to make 20% of the dwellings affordable. Their concerns about the speculative nature of the primary school proposal have been overcome by the appellants' agreement to provide a commuted sum for the improvement of the local education infrastructure.
67. Although the enforcement notice with regard to the demolition of 54 Humberston Avenue has been withdrawn, the demolition is still a source of considerable concern to local residents. The Secretary of State may consider that this is a matter that is not relevant to the appeal scheme and may choose not to comment. If he feels otherwise, it might be appropriate to point out that the demolition of 54 Humberston Avenue could have been undertaken as permitted development if the developer had first applied to the Council for a determination as to whether or not their agreement to the method of demolition and the after-treatment of the site was required. In short, the developers were entitled in principle to demolish the house, they just went about it the wrong way, resulting in a breach of planning control.

### *Inspector's conclusions*

68. The appeal site is on the edge of the urban area and lies within close proximity of a wide range of local services. Humberston Avenue is a bus route. The appeal site is within a sustainable location and the scheme represents sustainable development. In accordance with the advice at paragraph 14 of the National Planning Policy Framework, where relevant development plan policies are out of date, as in this case, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

69. The Secretary of State's recent decision on the Keystone Development scheme (CD29), which is a short distance to the east of the appeal site, is a material consideration to which significant weight should be placed. The appeal scheme is similar in many respects to that scheme in that it relies on access being taken from Humberston Avenue, it involves agricultural land of similar character and appearance to the appeal site and its location relative to local facilities is similar. The Keystone scheme proposed to provide a proportion of the dwellings as retirement homes for the over 55s. This appeal scheme proposes to make 20% of the homes affordable. There is a serious shortage of affordable dwellings in North East Lincolnshire, as reported in paragraphs 1.12 and 1.13 of the North East Lincolnshire Interim Planning Statement on Affordable Housing (CD11). The requirement for 20% affordable housing in new developments is stated in paragraph 4.2 of that report.
70. The inability of the Council to identify a five-year housing land supply was a key factor in the Keystone decision, leading to the conclusion that Local Plan policy GEN2, which would have resisted development outside development limits, cannot be regarded as being up-to-date. The benefits that the Keystone scheme provided in terms of contributing to the supply of housing land and to much-needed retirement homes were considered to outweigh the effect on the character and appearance of the area. The Council has accepted this and does not seek to re-run arguments that the Secretary of State has already considered.
71. It would be inconsistent to suggest that the benefits of this scheme do not outweigh any harm that would be caused to the character and appearance of the countryside, although that was no longer a claim made by the Council. All other potential adverse impacts of the scheme can be adequately mitigated and I am satisfied that the s106 Agreement would secure the necessary funds to enable the required works to be undertaken. The provision of a commuted sum for the upgrading of local education facilities would address the needs of the proposed development in that regard.
72. The detailed part of the application, which relates to the provision of 46 dwellings as phase 1 of the overall scheme, has not resulted in any objections of substance to the design or mix of the dwellings. The scheme would provide a balanced mix of two, three and four bedroom family houses and bungalows. Provision is made for a home office above a double garage in two of the dwellings. The scheme has been architect-designed and submitted for peer review prior to submission of the application. The comments of the Design Review Board were generally positive and some suggestions they made were incorporated into the scheme that was submitted for planning permission. I have no reason to doubt that the design elements of the scheme are inspired to some extent by existing local development in the wider Grimsby and Cleethorpes area and draw on the palette of local materials. I also agree that there is no consistent architectural style or influence in the existing houses along Humberston Avenue which might otherwise have been a constraint to the design of the proposed dwellings.

## Recommendation

73. For the reasons given above, I conclude that the proposals are satisfactory. I therefore recommend that planning permission be granted subject to the conditions set out in Appendix 1 to this report.

*David C Pinner*  
**Inspector**

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Matthew Reed	Of Counsel
He called	
Russell Clarkson	Senior Development Manager, North East
BA(Hons) DipTP MRTPI	Lincolnshire Council

### FOR THE APPELLANT:

Clive Newberry QC	
He called	
Mark Hodson BA DipARB	Director of Hodson Architects Ltd
RIBA FRSA	
Jay Everett BSc (Hons)	Partner Addison Planning LLP
MRTPI	

### INTERESTED PERSONS:

Maureen Steele	17 Wayside Drive, New Waltham, Grimsby, DN36 4LW
Bob Kerr	4 Old Paddock Court, Humberston, Grimsby, DN36 4SQ
Dennis Mackrell	38 Humberston Avenue, Humberston, Grimsby DN36 4SP

## INQUIRY DOCUMENTS

Inq1	List of those present at the inquiry
Inq2	Council's letter of notification of the appeal and list of those notified
Inq3	E-mail from Council to the Planning Inspectorate dated 4 February 2014 confirming that the enforcement notice had been withdrawn
Inq4	E-mail from Council to the Planning Inspectorate dated 5 February 2014 confirming that reason for refusal 2 had been withdrawn
Inq5	Report dated 7 February 2014 explaining the Council's reasons for withdrawing all of its reasons for refusal of planning permission
Inq6	Statement of Common Ground with updated Highways and Transportation Report
Inq7	Mr Hodgson's proof of evidence and appendix 1
Inq8	Mr Everett's proof of evidence and appendices JE1 to JE15
Inq9	Letter from Councillor Alex Wallace, submitted after the close of the inquiry asking whether amendments to the scheme could be accepted without interested persons being reconsulted
Inq10	Signed and sealed s106 Agreement
Inq11	List of agreed conditions



**CORE DOCUMENTS**

CD1	Application Documents and plans (Listed on first two pages of CD1 Part 1)
CD2	Officer's application report on appeal scheme
CD3	Council's Decision Notice
CD4	Planning Appeal Form
CD5	Appellants' grounds of appeal
CD6	Bespoke timetable and appeal recovery letters
CD7	Refusal Notice; Officer's Report; Representations and consultation responses
CD8	Additional Bird Information – Quants Environmental Ltd
CD9	Natural England response to additional ecological information, withdrawing objections
CD10	Design Review Report
CD11	North East Lincolnshire Interim Planning Statement – Affordable Housing
CD12	North East Lincolnshire Strategic Housing Market Assessment
CD13	North East Lincolnshire SHLAA 2012
CD14	North East Lincolnshire Five year housing land supply assessment with October 2013 amendment (CD14b)
CD15	North East Lincolnshire Supplementary Planning Guidance – Developer Contributions to Education Facilities
CD16	Heritage Impact Assessment
CD17	Archaeological Evaluation Report – Geophysical Survey
CD18	Planning Permission granted by East Lindsey District Council with regard to the part of the appeal scheme that is in their area.
CD19	East Lindsey Local Plan policies A4 and A5
CD20	North East Lincolnshire New Local Plan – Issues and Options Paper
CD21	North East Lincolnshire New Local Plan –Local Development Scheme 2012
CD22	Location Plan
CD23	2013 Review of available sites form
CD24	National Planning Policy Framework
CD25	Revised master site layout plan with school site omitted
CD26	Enforcement Notice etc. (No longer relevant as enforcement notice

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	withdrawn)
CD27	Landscape Character Assessment
CD28	CD28/1 to 28/4 - planning permission and associated documents for the Par 3 site
CD29	CD29/1 to 29/4 Officer's application report, plan and Secretary of State's appeal decision regarding Keystone Developments scheme
CD30	Enzygo Noise Modelling report

Richborough Estates

## Appendix 1 – Conditions

- 1) The development hereby permitted shall commence within a period of 18 months from the date of this permission;
- 2) Details of the appearance, landscaping, layout and scale (hereinafter called the reserved matters) for development within the site taking place outside phase 1 (as shown on drawing 2187.P102.1 Revision A) shall be made to the local planning authority not later than two years from the date of this permission. Development outside of phase 1 shall not commence without approval in writing of the local planning authority of the reserved matters and the development shall be carried out in accordance with the approved details;
- 3) Insofar as it involves phase 1, development hereby permitted shall be carried out in accordance with the following approved plans, all by Hodson Architects, insofar as those plans relate to matters not reserved for future determination:

Location Plan as Existing	2187 E001
Topographical Survey by David Cotterrell	2187 E002
Existing Location Plan	2187 E002 Rev A
Existing Location Plan	2187 E003 Rev A
Proposed Site Plan	2187 P102 Rev A
Proposed Site Plan	2187 P102.1 Rev A
Site Plan (full)	2187 P103 Rev A
Block Plan and Topographical Survey	2187 P104
Boundary Treatments	2187 P108
Proposed Location Plan	2187 P150 Rev A
Proposed Location Plan	2187 P151
Floor Plans: Detached Type A	2187 P200 Rev A
Elevations: Detached Type A	2187 P201 Rev A
Floor Plans: Detached Type B	2187 P210 Rev A
Elevations: Detached Type B	2187 P211 Rev A
Floor Plans: Semi-detached Type B	2187 P410 Rev A
Elevations: Semi-detached Type B	2187 P411 Rev B
Floor Plans: Semi-detached Type C Bungalow	2187 P420 Rev A
Elevations: Semi-detached Type C Bungalow	2187 P421
Bungalow Type A Floor Plans	2187 P600 Rev A
Bungalow Type A Elevations	2187 P601 Rev A
Bungalow Type B Floor Plans	2187 P610 Rev A
Bungalow Type B Elevations	2187 P611 Rev A
Bungalow Type C Floor Plans	2187 P620 Rev A

Bungalow Type C Elevations 2187 P621 Rev A  
 Plans: Mews Houses Type F1 (2.5 storey) 2187 (P800 Rev A)  
 Elevations: Mews Houses Type F1 (2.5 storey) 2187 P801 Rev A  
 Floor Plans: Mews Houses Type F2 (2.5 storey) 2187 P900 Rev A  
 Elevations: Mews Houses Type F2 (2.5 storey) 2187 P901 Rev A  
 Floor Plans: Mews Houses Type F3 (2.5 storey) 2187 P1000 Rev A  
 Elevations: Mews Houses Type F3 (2.5 storey) 2187 P1001 Rev A  
 Floor Plans: House Type J1 (3 storey bookend) 2187 P1100 Rev A  
 Elevations: House Type J1 (3 storey bookend) 2187 P1101 Rev A  
 Floor Plans: House Type J2 (3 storey bookend) 2187 P1120 Rev A  
 Elevations: House Type J2 (3 storey bookend) 2187 P1121 Rev A  
 Floor Plans and Elevations Double Garage Work Live 2187 P1300  
 Elevations – Views 1 to 4 2187 P1350  
 Elevations – Views 5 and 6 2187 P1351

- 4) No development shall take place until a landscape management plan has been submitted to and approved in writing by the local planning authority. The landscape management plan shall set out management responsibilities and maintenance schedules for all landscaped areas, inclusive of trees, hedges, ditches and balancing ponds; a Biodiversity Enhancement Scheme setting out measures for habitat creation and management, including the provision of bat roosts and bird boxes, a statement on the sustainability performance of the dwellings, based on the Code for Sustainable Homes. Development shall be undertaken in accordance with the approved details;
- 5) No development shall take place until a scheme for the provision of surface water drainage, based on sustainable drainage principles and an assessment of the hydrological and geo-hydrological context of the development, has been approved in writing by the local planning authority. The scheme shall include details of any ground level raising and a strategy for management of the surface water drainage scheme. Development shall be carried out in accordance with the approved details;
- 6) No development shall take place until a scheme for the provision and implementation of foul drainage works has been approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details;
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) The routing and management of construction traffic;
  - ii) The parking of vehicles of site operatives and visitors;
  - iii) Loading and unloading of plant and materials;
  - iv) Storage of plant and materials used in constructing the development;

- v) The erection and maintenance of security hoardings, including decorative displays and facilities for public viewing, where appropriate;
  - vi) Wheel cleaning facilities;
  - vii) Measures to control the emission of dust and dirt during construction;
  - viii) Details of noise reduction measures;
  - ix) A scheme of recycling/disposing of waste resulting from demolition and construction works;
  - x) The hours during which machinery may be operated, vehicles may enter and leave the site and works may be carried out on the site;
  - xi) Measures to protect and maintain access along the Public Right of Way (Humberston FP59);
  - xii) Measures to protect breeding/nesting birds habitats (including any vegetation removal);
  - xiii) Measures to safeguard the area of high archaeological potential identified within the Architectural Evaluation Report.
- 8) No development shall take place outside phase 1 until a written Scheme of Investigation (or Specification of Works) for a programme of archaeological work in respect of the south-eastern quarter of the site has been submitted to and approved in writing by the local planning authority, and the Scheme of Investigation (or Specification of Works) has been implemented in accordance with the approved details. None of the dwellings hereby permitted outside of phase 1 shall be occupied until the findings resulting from the programme of archaeological work have been published and the archive resulting from the programme of archaeological work deposited with an organisation first approved in writing by the local planning authority;
- 9) No development shall take place until a scheme to screen the site from neighbouring fields in order to prevent disturbance to estuary birds has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details;
- 10) No development shall take place until a lighting management scheme, designed to minimise light spill from the site to adjacent ecological habitats, both during the construction period and once the development is occupied, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) Before development commences, details of a scheme of acoustic mitigation to protect properties neighbouring the vehicular access routes from Humberston Avenue to the site shall be submitted to and agreed in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details prior to the occupation of any dwellings hereby permitted;
- 12) None of the dwellings hereby permitted shall be occupied until the access road has been constructed to at least base course level and lit, in accordance with details that shall have first been submitted to and approved in writing by the local planning authority;

- 13) If, during construction of the development, contamination is discovered that has not been previously identified, the local planning authority shall be notified immediately and no further work carried out until a Method Statement, detailing a scheme for dealing with the contamination discovered, has been submitted to and approved in writing by the local planning authority. Development shall thereafter proceed only in accordance with the approved details. If during construction, no contamination is found, a written statement confirming that fact shall be submitted to the local planning authority upon completion of the construction works;
- 14) The package of measures detailed in Section 5 of the submitted Travel Plan shall be implemented in their entirety. Contact details for the Travel Plan Coordinator shall be provided to the local planning authority before any of the dwellings hereby permitted are occupied. A review of the Travel Plan, including the results of the annual travel report, shall be submitted to the local planning authority at the end of every three year period following the occupation of the first dwelling. Each Travel Plan Review shall include a revised set of targets and an action plan linked to the results of the travel report, which shall thereafter be implemented;
- 15) No development shall take place until an Arboricultural Method Statement, prepared in accordance with BS 5837:2012 *Trees in Relation to Design, Demolition and Construction* has been submitted to and approved in writing by the local planning authority. Works shall thereafter be carried out only in accordance with the approved details. The Arboricultural Method Statement shall include the specification, location and phasing for the installation of tree and hedge protection measures and a schedule of all proposed tree and hedge works, including the reason for such works;
- 16) No trees on the site shall be wilfully damaged, cut down, uprooted, pruned, felled or destroyed without the prior written consent of 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.