



Department for  
Communities and  
Local Government

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Our Ref: APP/E2001/A/13/2200981  
and APP/E2001/A/14/2213944  
Your Ref: LE50132/01 & LE50132

25 June 2015

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY ST MODWEN DEVELOPMENTS LTD  
LAND TO THE EAST AND WEST OF BRICKYARD LANE, MELTON PARK,  
EAST RIDING OF YORKSHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs K.A. Ellison BA, MPhil, MRTPI, who held a public local inquiry which sat for 15 days over a four week period from 29 April 2014, for a further two days on 6 and 7 August 2014 and closed in writing by letters dated 2 September 2014, into your client's appeal against the decisions of East Riding of Yorkshire Council (the Council) to refuse planning permission for

**Appeal A:** residential development of up to 510 dwellings, 50 bed care home, 20 sheltered apartment units for elderly persons, 16 dormer bungalows for elderly persons, a local centre maximum 680sqm (total internal floor area) to include retail; community and leisure uses within use classes A1, A3, A5 and D1, informal and formal recreation open space including children's play areas and sports pitches, sports changing block, landscaping, drainage works including ponds, cycle way and footway links, new highways access, internal roads and car parking area (access to be considered); in accordance with application DC/12/04849/STOUT/STRAT dated 30 November 2012.

**Appeal B:** residential development of up to 390 dwellings, 50 bed care home, 20 sheltered apartment units for elderly persons, 16 dormer bungalows for elderly persons, a local centre maximum 680sqm (total internal floor area) to include retail; community and leisure uses within use classes A1, A3, A5 and D1, 7.7ha of employment land use class B1 and/or B2 and/or B8, informal and formal recreation open space including children's play areas and sports pitches, sports changing block, landscaping, drainage works including ponds, cycle way and footway links, new highways access, internal roads and car parking area (access to be considered); in accordance with application reference DC/13/02860/STOUT/STRAT dated 23 August 2013.

2. The appeals were recovered on 15 July 2013 and 17 February 2014 respectively, for determination by the Secretary of State, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, on the grounds that they involve proposals for residential development of over 150 units or 5ha which would significantly impact on the objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

### **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeals be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Events following the Close of the Inquiry**

4. The Secretary of State is in receipt of representations submitted following the close of the inquiry as listed at Annex A. He has taken account of all this correspondence in reaching his decision on this appeal, and is satisfied that it does not raise any new issues which would either affect his decision or require him to refer back further to parties prior to determining the appeal. Copies may be obtained on written request to the address at the foot of the first page of this letter. This correspondence includes the representations received in response to the Secretary of State's letter of 10 April 2015 to the main parties inviting representations on any effects arising from the Council's publication for consultation of their modifications to the Local Plan on 30 March 2015 and which included an invitation to comment on the impacts on the area of the publication of the 2012-based household projections in England.

### **Procedural matters**

5. The Secretary of State is satisfied that, although the proposals fall within the description at paragraph 10(b) of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011, for the reasons given at IR1.8 and IR13.2 they are not EIA development.

### **Policy considerations**

6. 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.
7. In this case, the adopted development plan for the area comprises the Beverley Borough Local Plan (1996) and the saved policies of the Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire (2005); and the Secretary of State agrees with the Inspector that the most relevant policies are those detailed at IR4.2-4.3. Like the appeal Inspector, and given that the Examination is still on-going, the Secretary of State has given limited weight to the emerging Local Plan; and he agrees that the most relevant policies from the Proposed Submission

Strategy Document and the Proposed Submission Allocations Document are those described at IR4.5-4.8.

8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) and the associated planning practice guidance; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

### **Main issues**

9. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR13.5.

### **The development plan and national planning policy**

10. The Secretary of State notes (IR13.7-13.9) that there is no dispute that the proposals conflict with the adopted development plan and the emerging local plan and he agrees with the Inspector with regard to the weight that this conflict should be given. However, he also agrees with the Inspector's conclusion at IR13.10 that, in accordance with paragraph 49 of the Framework, so long as the appeal proposals can be accepted as a sustainable form of development, the planning balance to be applied would be that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

### **The provision for housing in the East Riding of Yorkshire**

11. The Secretary of State has carefully considered the Inspector's reasoning on housing provision at IR13.11-13.62 and, for the reasons given at IR13.63-13.65, he agrees with her conclusions that the Council's figures of a requirement for just over 10,000 dwellings for the housing market and just under 14,000 for the Council's administrative area are to be preferred over those put forward on behalf of your client, as is the Council's assessment of overall supply, at almost 15,000. Overall, therefore, the Secretary of State agrees with the Inspector that, whether the analysis is based on the Housing Market Area or the Council's area, it has not been shown that there is any pressing need for additional sites to come forward to sustain the local supply of housing. However, he also agrees with the Inspector's conclusion that substantial weight should attach to the proposals in proportion to the contribution they would make to the supply of affordable housing.

### **The employment land supply and wider economic development objectives**

12. Having carefully considered the Inspector's discussion at IR 13.66-13.86, the Secretary of State agrees with her conclusion at IR13.87 that, as the appeal site comprises a substantial proportion of the highly accessible Melton site, it represents a logical choice in relation to the spatial strategy of the emerging local plan with regard to employment land which would be much diminished if the appeal site were to be developed for housing – thereby having a significant detrimental effect on the portfolio of employment land. The Secretary of State also therefore agrees with the Inspector that, although there is potential for other land to come forward, this would have to be on an ad hoc basis rather than as part of a plan-led approach, potentially causing harm to economic development objectives.

## Contamination

13. For the reasons given at IR13.88-13.95, the Secretary of State agrees with the Inspector's conclusion at IR13.95 that, although the concerns of local residents are understandable, there is nothing in the technical evidence to indicate that any contamination persists at such a level as to indicate that residential development should not be permitted on the appeal site.

## Effect on character

14. Having considered the Inspector's reasoning at IR13.96-13.102, the Secretary of State agrees with her conclusion at IR13.103 that, when considered against the scope for employment development on the site, the appeal proposals are unlikely to give rise to any greater visual or landscape character impact. However, he also agrees with her that the appeal proposals would have an urbanising impact on the character of North Ferriby.

## Other matters

15. The Secretary of State has carefully considered the other matters raised by residents and other groups as described by the Inspector at IR13.104-13.108, and he agrees with her conclusions on all of them.

## Planning conditions and Unilateral Undertakings

16. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed planning conditions at IR12.1-12.7. The Secretary of State is satisfied that the proposed conditions set out at Annex C to the IR are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that the conditions would overcome his reasons for dismissing the appeal.
17. The Secretary of State has also considered the Inspector's comments at IR12.8-12.17 on the proposed Obligations and, with the exception of the Bridge Contribution, he is satisfied that these would meet the tests in CIL regulation 122. However, the Secretary of State does not consider that the terms of the Undertaking would overcome his reasons for dismissing the appeal. He also agrees with the Inspector at IR12.14-12.16 that it has not been shown that the bridge would be necessary to make the development acceptable or that it has been shown to be fairly and reasonably related in scale and kind.

## Overall Conclusions

18. Although the provision of new homes, including affordable housing, would be an important social and economic benefit, the Secretary of State concludes that granting permission for either of the appeal schemes would be contrary to the development plan, so that it is necessary to consider whether there are material considerations sufficient to warrant a decision contrary to that.
19. With regard to **Appeal A**, the Secretary of State concludes that the benefits of the scheme are significantly and demonstrably outweighed by the adverse impacts including that on the Council's overall spatial strategy for housing, their economic objectives and the portfolio of employment land, and the urbanising impact on North Ferriby. In the case of **Appeal B**, the Secretary of State concludes that these disbenefits would be compounded by the reduced quantum of housing while the

funding for a bridge across the railway line would not be a proportionate or reasonable response to any harm to the supply of employment land.

### **Formal Decision**

20. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations on both Appeal A and Appeal B and he hereby dismisses your client's appeals and refuses planning permission for

**Appeal A:** residential development of up to 510 dwellings, 50 bed care home, 20 sheltered apartment units for elderly persons, 16 dormer bungalows for elderly persons, a local centre maximum 680sqm (total internal floor area) to include retail; community and leisure uses within use classes A1, A3, A5 and D1, informal and formal recreation open space including children's play areas and sports pitches, sports changing block, landscaping, drainage works including ponds, cycle way and footway links, new highways access, internal roads and car parking area (access to be considered); in accordance with application DC/12/04849/STOUT/STRAT dated 30 November 2012; and

**Appeal B:** residential development of up to 390 dwellings, 50 bed care home, 20 sheltered apartment units for elderly persons, 16 dormer bungalows for elderly persons, a local centre maximum 680sqm (total internal floor area) to include retail; community and leisure uses within use classes A1, A3, A5 and D1, 7.7ha of employment land use class B1 and/or B2 and/or B8, informal and formal recreation open space including children's play areas and sports pitches, sports changing block, landscaping, drainage works including ponds, cycle way and footway links, new highways access, internal roads and car parking area (access to be considered); in accordance with application reference DC/13/02860/STOUT/STRAT dated 23 August 2013;

at land to the East and West of Brickyard Lane, Melton Park, East Riding of Yorkshire.

### **Right to challenge the decision**

21. 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.

22. Copies of this letter have been sent to East Riding of Yorkshire Council and Save Our Ferriby Action Group. Notification has been sent to all other parties who asked to be informed.

Yours faithfully,

*Jean Nowak*

**Jean Nowak**

Authorised by the Secretary of State to sign in that behalf

## Annex A

Date	From	Subject
11/04/2015	E Reid-Chambers, Save our Ferriby	Acknowledge receipt of ref back letter
24/04/2015	Michael Hepburn, Nathaniel Lichfield & Partners	Ref back response
24/04/2015	Richard Harris, East Riding of Yorkshire Council	Ref back response
27/04/2015	E Reid-Chalmers, Save our Ferriby	Ref back response
5/05/2015	Gemma Percy, East Riding of Yorkshire Council	Ref back recirculation response
9/06/2015	Cllr S Parnaby, East Riding of Yorkshire Council	Letter to Secretary of State: Melton Park site.

Richborough Estates

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

by Mrs K.A. Ellison BA, MPhil, MRTPI

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

Date: 2 March 2015

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Town and Country Planning Act 1990

East Riding of Yorkshire Council

Appeals by

St Modwen Developments Ltd

Richborough Estates

Inquiry opened on 29 April 2014

Land to the East and West of Brickyard Lane, Melton Park, East Riding

File Refs: APP/E2001/A/13/2200981 and APP/E2001/A/14/2213944

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Richborough Estates



## Abbreviations

Appeal A	510 dwelling scheme
Appeal B(i)	390 dwelling scheme with 40% affordable housing
Appeal B(ii)	390 dwelling scheme with 25% affordable housing and £6m bridge contribution
BBLP	Beverley Borough Local Plan
D&B	Design and Build
EA rates	economic activity rates
EIA	Environmental Impact Assessment
ELR	Employment Land Review
ELMR	Employment Land Monitoring Report
ERY	East Riding of Yorkshire
ERYC	East Riding of Yorkshire Council
EZ	Enterprise Zone
FEA	Functional Economic Area
FOAN	Full Objectively Assessed Need
GSJ	Grade Separated Junction
HA	Highways Agency
HMA	Housing Market Area
HRA	Habitats Regulation Assessment
JSP	Joint Structure Plan
LEP	Local Economic Partnership
LHS	Local Housing Study
LPA	Local Planning Authority
MMC	multi modal corridor
MYE	mid-year estimate
NPPF	National Planning Policy Framework (the Framework)
OEM	Original Equipment Manufacturer
ONS	Office of National Statistics
PAS	Planning Advisory Service
PD	Permitted development
PDL	previously developed land
PINS	The Planning Inspectorate
PP	planning permission
PSAD	Proposed Submission Allocations Document
PSSD	Proposed Submission Strategy Document
REM	Regional Econometric Model
RS	Regional Strategy
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoCG	Statement of Common Ground
SOF	Save Our Ferriby Action Group
SNPP	Sub National Population Projections
SPA	Special Protection Area

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**Appeal A: File Ref: APP/E2001/A/13/2200981****Land to the East and West of Brickyard Lane, Melton Park, East Riding, HU14 3RS**

- 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 St Modwen Developments Ltd against the decision of East Riding of Yorkshire Council.
- The application Ref DC/12/04849/STOUT/STRAT dated 30 November 2012 was refused by notice dated 21 May 2013.
- The development proposed is residential development of up to 510 dwellings, 50 bed care home, 20 sheltered apartment units for elderly persons, 16 dormer bungalows for elderly persons, a local centre maximum 680sqm (total internal floor area) to include retail; community and leisure uses within use classes A1, A3, A5 and D1, informal and formal recreation open space including children's play areas and sports pitches, sports changing block, landscaping, drainage works including ponds, cycle way and footway links, new highways access, internal roads and car parking area (access to be considered).

**Summary of Recommendation: The appeal be dismissed.**

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**Appeal B: File Ref: APP/E2001/A/14/2213944****Land to the East and West of Brickyard Lane, Melton Park, East Riding, HU14 3RS**

- 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 St Modwen Developments Ltd against the decision of East Riding of Yorkshire Council.
- The application Ref DC/13/02860/STOUT/STRAT dated 23 August 2013 was refused by notice dated 27 January 2014.
- The development proposed is residential development of up to 390 dwellings, 50 bed care home, 20 sheltered apartment units for elderly persons, 16 dormer bungalows for elderly persons, a local centre maximum 680sqm (total internal floor area) to include retail; community and leisure uses within use classes A1, A3, A5 and D1, 7.7ha of employment land use class B1 and/or B2 and/or B8, informal and formal recreation open space including children's play areas and sports pitches, sports changing block, landscaping, drainage works including ponds, cycle way and footway links, new highways access, internal roads and car parking area (access to be considered).

**Summary of Recommendation: The appeal be dismissed.**

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**1. Procedural Matters**

1.1. Appeal A was made on 1 July 2013. By letter dated 15 July 2013, it was recovered for determination by the Secretary of State on the grounds that it involved proposals for residential development of over 150 units or 5ha which would significantly impact on the objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. The inquiry opened on 19 November 2013 but, for various reasons, was adjourned on 21 November until 29 April 2014. The Save Our Ferriby Action Group (SOF) sought Rule 6(6) status, which was attained through the submission of its Statement of Case dated 2 January 2014.

1.2. Appeal B was made on 17 February 2014. It was recovered for determination by the Secretary of State by letter dated 27 February 2014 for

the same reason as Appeal A. On the same date, the parties were advised that the two appeals had been conjoined.

1.3. The inquiry resumed, as arranged, on 29 April 2014, albeit under myself rather than the original Inspector and to consider both appeal proposals. At various points prior to and during the course of the resumed inquiry, I issued procedural notes to address matters which had arisen (PC 01 – 05). In particular, Appendix 3 of PC 02 sets out the main considerations for the appeals (with matters (iv) and (xvii) being further amended on the first day of the resumed inquiry). These were (as amended):

- i) relevant policies of the development plan and the emerging local plan; the weight to be accorded to the emerging plan
- ii) relevant national planning policy and guidance
- iii) the particular contribution which the appeal site can be shown to make to the supply of employment land in the East Riding of Yorkshire, to the Hull Functional Economic Area and to wider economic development objectives, including the potential of the Humber to become established as a centre for renewable energy
- iv) whether development of the site for non-employment related uses would adversely affect the competitiveness and economic growth of the East Riding
- v) the scope for use of alternative land in the M62/A63 corridor
- vi) the basis for the Council's assessment of the housing requirement for the East Riding of Yorkshire and, arising from this, the weight which can be accorded at this stage to the housing requirement which informs the emerging local plan
- vii) the weight which can be accorded to the Council's assessment of the supply of land for housing within the East Riding of Yorkshire
- viii) whether the Council can demonstrate a five year supply of land for housing
- ix) the weight to be accorded to the contribution of either proposal to the supply of affordable housing
- x) the effect of the proposals on the character of the area, with particular reference to the identity of the settlements of Melton and North Ferriby
- xi) the effect of the proposals on land and facilities for recreation and open space in the Melton/North Ferriby area, including in relation to Long Plantation Wood
- xii) the impact of the proposals on the living conditions of existing and future residents, particularly with regard to levels of noise, dust, road traffic and concerns over the evidence as to potential contamination within the site
- xiii) the relationship of the site to the Humber Estuary SSSI, SPA, SAC and RAMSAR site
- xiv) whether any likely impacts of the proposals are capable of being mitigated by the imposition of appropriately worded conditions or planning obligations
- xv) the benefits of the proposals
- xvi) the adverse impacts of the proposals
- xvii) overall conclusions: assessment of the proposals against the Development Plan, the emerging Local Plan and national policies, including whether a grant of permission for either or both proposals

would undermine the plan-making process and whether the presumption in favour of sustainable development is engaged.

- 1.4. The resumed inquiry sat for 15 days over a four week period from 29 April. It then sat for a further two days on 6 and 7 August. I heard the closing submissions for SOF on Thursday 7 August. In accordance with arrangements agreed at the inquiry, closing submissions for the Council were provided in writing on the same day. The inquiry then adjourned until 8 September. Closing submissions for the Appellant were provided in writing on Monday 11 August. The Council responded the following day in respect of issues of law and factual disputes and a final response was made by the Appellant on 15 August 2014<sup>1</sup>. The three completed Unilateral Undertakings were received on 1 September 2014<sup>2</sup>. The inquiry was closed in writing by letters dated 2 September 2014<sup>3</sup>.
- 1.5. I carried out an accompanied inspection of the appeal site on 5 August. Also, during the course of the inquiry I made a number of unaccompanied visits within the Melton/North Ferriby area as well as to various employment and residential locations along the M62/A63 corridor between Goole and Hull. As requested by the parties, I also visited the recreational area south of the Humber Bridge and viewed the location of the Able Marine Energy Park near Immingham.

*The Rule 6(6) Party - Save Our Ferriby Action Group (SOF)*

- 1.6. Although SOF elected not to seek Rule 6(6) status in relation to Appeal B, I ran the inquiry along the lines that SOF enjoyed such status in relation to both appeals. The two main parties raised no objection.
- 1.7. At the opening of the resumed inquiry, SOF made an application for a stay of proceedings on a number of grounds in order to pursue various matters through the High Court. These included objections to the decision to conjoin the appeals and to the selected inquiry venue being in Beverley rather than North Ferriby. Although SOF undoubtedly encountered many challenges during its participation in the appeal proceedings, I was satisfied that the procedural decisions which had been taken had not led to substantial prejudice. The inquiry therefore continued as programmed<sup>4</sup>.

*Environmental Impact Assessment*

- 1.8. The proposals fall within the description at paragraph 10(b) of Schedule 2 of the 2011 Regulations (Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824) and they exceed the threshold in column 2 of the table in that Schedule. Screening Opinions were issued by the LPA on 20 November 2012 and 18 October 2013 which concluded that the proposals were not EIA development<sup>5</sup>. The Secretary of State considered the matter and, having taken into account the criteria in Schedule 3, came to the

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<sup>1</sup> ID37-42

<sup>2</sup> ID43-45

<sup>3</sup> ID46

<sup>4</sup> ID03

<sup>5</sup> CDs G34 and J26

view that the proposals would not be likely to have significant effects on the environment by virtue of factors such as their nature, size or location. Accordingly, in exercise of the powers conferred by Regulations 12(2) and 4(8), the Secretary of State issued a Screening Direction on 24 April 2014 to the effect that the developments are not Environmental Impact Assessment (EIA) development. The Appellant requested a further formal opinion from the Secretary of State on 5 August 2014 with regard to Appeal B. The request was considered in relation to both appeals and, on 6 November 2014, a further direction was issued that the proposed developments were not EIA development<sup>6</sup>.

### *The Council's decisions*

- 1.9. The Council gave five reasons for refusal in relation to Appeal A, referring to loss of employment land, conflict with the settlement hierarchy, prejudice to the emerging local plan, impact on amenity and absence of demonstrated need for a care home in this location. On 18th October 2013 the Council advised that the issues relating to amenity and the care home could be satisfactorily dealt with by way of conditions so that it would no longer pursue those two reasons for refusal. It should be noted, however, that these issues continued to form part of the case for SOF and the two Parish Councils.
- 1.10. With regard to Appeal B, the reasons for refusal related to loss of employment land, conflict with the settlement hierarchy and prejudice to the progress of the emerging local plan.

### *The appeal plans*

- 1.11. The plans for Appeal A consist of the Application Site Boundary Plan, the Application Masterplan, the Illustrative Masterplan, the Landscape Layout, the Proposed Junction Drawings and the Care Home Plan<sup>7</sup>. The submitted plans for Appeal B consist of the Site location plan [Ref: W2144 (PL)101], the Application Master Plan [Ref: W2144 rev A], the Landscape Masterplan [Ref: MP-LA-0201 revision 5] and the Proposed Junction drawings [Ref: P2002-065/23/C]<sup>8</sup>. However, it was confirmed at the inquiry that the proposed care home would be identical to that proposed under Appeal A.

## **2. The Site and Surroundings**

- 2.1. The appeal site is almost 38ha in size and consists of three parcels of land. The main site, parcel 1 (35.2ha), lies to the south of Monks Way and sits either side of Brickyard Lane. There are also two smaller pieces of land north of Monks Way: the small site east, or parcel 2 (1.4ha); and the small site west, or parcel 3 (1ha). Access to the area is taken from the A63 via a grade separated junction (GSJ). The land is relatively flat but there is a gentle slope from east to west. Although the site lies within the area of Melton parish, Melton village lies to the north of the A63 so that, physically, the site is more directly related to North Ferriby village. The nearest town is Elloughton-cum-

<sup>6</sup> ID47

<sup>7</sup> CD G25-30

<sup>8</sup> CD J1-4

Brough some 2km to the west and the City of Hull is approximately 13km to the east.

- 2.2. In terms of its immediate surroundings, the site is bounded by the A63 trunk road to the north; an area of woodland known as Long Plantation to the east; the Hull/Doncaster main railway line and various employment uses to the south and south-west; and Gibson Lane South and various employment uses to the west and north-west. Facilities close to the site or within nearby settlements include: employment, a rail station, primary and secondary schools as well as shops, leisure and community facilities.

### 3. The Proposals

- 3.1. Both proposals are made in outline with all matters reserved except for access. In each appeal, the details of access relate only to the proposed roundabout on Brickyard Lane to serve Parcel 1.
- 3.2. Appeal A is for residential development of up to 510 dwellings including 35% affordable housing (179 units) and a 50-bed care home with 36 sheltered apartments and dormer bungalows. There would be an area of formal sports provision and playing pitches in the north eastern corner of Parcel 1, including changing facilities and a small local centre on that section of Parcel 1 west of Brickyard Lane to provide retail, community and leisure uses within use classes A1, A3, A5 and D1 (maximum floorspace of 680 sqm gross in an area of 0.36 ha). The proposal also allows for landscaping and creation of ecological features and wildlife habitats as well as a range of pedestrian and cycle routes. A possible connection from the site through Long Plantation to Plantation Drive was the subject of discussion at the inquiry. The proposal is accompanied by a Unilateral Undertaking which provides for affordable housing as well as contributions towards primary and secondary education, sustainable transport, public open space and an operational plan for the care units<sup>9</sup>.
- 3.3. Appeal B is for residential development of up to 390 dwellings on a smaller proportion of the site. That part of Parcel 1 which lies to the west of Brickyard Lane (originally said to be 6.4ha in area, subsequently agreed to be 7.7ha) would be developed for employment uses, with the local centre being located on the section of Parcel 1 which is east of Brickyard Lane. As with Appeal A, there would be a care home, sheltered apartments and dormer bungalows as well as formal sports provision and playing pitches, landscaping, creation of ecological features, pedestrian and cycle routes. A possible connection to Plantation Drive was also a feature for this proposal. The affordable housing would be provided at 40% (156 units); alternatively, it would be provided at 25%, (98 units) together with an infrastructure contribution of £6m for the provision of a bridge over the adjacent railway line<sup>10</sup>. These alternatives are reflected in the accompanying Unilateral Undertakings, which also provide for contributions towards primary and secondary education, sustainable transport, public open space and an operational plan for the care units<sup>11</sup>.

<sup>9</sup> ID43

<sup>10</sup> For ease of reference, the proposal which consists of 40% affordable housing is termed 'Appeal B(i)'; that for 25% affordable housing and the railway bridge is termed 'Appeal B(ii)'

<sup>11</sup> ID44 and ID45; see also ID32.4 for explanatory note

## 4. Planning Policy

### *The existing development plan*

- 4.1. Relevant policies from the current development plan can be found in the Beverley Borough Local Plan (1996) (BBLP) and the Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire (2005) (JSP).
- 4.2. Within the BBLP, policy E2 identifies development limits and states that land outside those limits will be treated as open countryside. Policy E3 then seeks to protect the open countryside from development except for certain purposes. The appeal site lies outside the defined development limit for North Ferriby. Under policy In1r and In1s, some 16.6 ha of Parcel 1 is identified for industrial use (B1, B2 or B8). Policy In8 states, among other things, that proposals to develop such land for other uses will be approved only if employment use is no longer practicable and there is an adequate supply in the locality. The Appellant also identifies some 0.2ha of parcel 2 (small site East) as being allocated by policy In2c for employment and complementary uses<sup>12</sup>. The effect of these allocations is illustrated in the SoCG, p 14.
- 4.3. In the Structure Plan, policy DS4 sets out the development strategy for the countryside and allows for limited development to meet the local needs of existing settlements. Policy H7 then expects housing development in existing villages to meet identified local need and to be limited in scale. Policy EC2 identifies a number of locations for Strategic Employment Sites within the east-west multi-modal freight transport corridor, including at Melton. Policy T3 identifies the M62/A63 as part of the strategic highway network.

### *The emerging Local Plan*

- 4.4. The East Riding Local Plan (comprising the Proposed Submission Strategy Document (PSSD) and the Proposed Submission Allocations Document (PSAD)) was submitted for examination on 28 April 2014. At the time of the inquiry, the Inspector's Report was expected in early 2015.
- 4.5. PSSD policy S3 sets out the development strategy for the District. The 5 Major Haltemprice Settlements, 4 Principal Towns and 7 Towns are identified as being the major centres of population. The policy then identifies 14 Rural Service Centres and 24 Primary Villages. North Ferriby falls within the latter group. Policy S3 also identifies several key employment sites along the East-West multi-modal transport corridor, including at Melton. Policy S4 seeks to balance development and protect the intrinsic character of the countryside. Proposals in the countryside, outside of development limits, should respect the intrinsic character of their surroundings.
- 4.6. The overall amount and distribution of new housing over the plan period is established under Policy S5 (23,800 (net) 2012-2029). This equates to an annual requirement of 1,400 units. The majority are to be provided in the higher order settlements, with some 12% being provided in the 14 Rural Service Centres and 24 Primary Villages. Commensurate with the place of North Ferriby in the settlement hierarchy, this policy makes provision for 85

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<sup>12</sup> JG PoE, #5.6

new dwellings in the village over the plan period. The policy also identifies (part E) that approximately 45% of the total housing provision will be located in the East Riding part of the Hull Housing Market Area, reflecting the aim of supporting the regeneration and development of the City of Hull. Part F to policy S5 identifies that the Council will seek to support the provision of an average of 310 new affordable homes as part of the additional homes provided each year.

- 4.7. Policy S6 is concerned with the delivery of employment land and states that future needs are to be met through the allocation of at least 235ha of employment land. In addition, up to 205ha is allocated at Hedon Haven specifically to cater for the Port of Hull and the expansion of the offshore renewable energy sector. Under policy S8 the role and function of the East-West Multi-Modal Transport Corridor, which services the transport needs of the Key Employment Sites, is to be protected and enhanced. With regard to affordable housing, policy H2 requires that it is provided as part of housing developments above a specified size. The proportion varies across the East Riding but for the area of the appeal site it is set at 25%. Policy EC1 is concerned with supporting the growth and diversification of the East Riding economy. Among other things, it safeguards Key Employment Sites, allows for employment development outside of development limits in certain circumstances and expresses qualified support in the event of a substantial proposal for employment development which cannot be accommodated on allocated sites.
- 4.8. The PSSD also identifies six sub-areas and places the appeal site within the Beverley and Central sub-area. Policy A1 carries forward the approach of the strategic policies, including that new housing should support housing market interventions within the City of Hull and that development should make maximum use of the sub-area's location and infrastructure assets by supporting the role and development of the Key Employment Site at Melton. Parcel 1 of the appeal site is included in the Proposed Submission Allocations Document as part of a larger area under employment allocation reference MELT E. Allocation MELT-D identifies Parcel 2 for mixed use.

#### *National planning policy*

- 4.9. Although proposals for development must be determined in accordance with the development plan, NPPF sets out a presumption in favour of sustainable development which means that, where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (paragraph 14).
- 4.10. In support of building a strong, competitive economy, the planning system is encouraged to do everything it can to support sustainable economic growth including supporting existing business sectors and, where possible, identifying and planning for new sectors likely to locate in the area. However, NPPF seeks to avoid the long term protection of sites for employment use where there is no reasonable prospect of a site being used for that purpose. Applications for alternative uses should be treated on their merits having regard to market signals and the relative need for different land uses. (paragraphs 18-22).



- 4.11. In order to deliver a wide choice of homes, the Framework seeks to boost significantly the supply of housing. LPAs are expected to ensure that the Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies in the Framework. They should identify a supply of specific, deliverable sites sufficient to provide five years worth of housing against their housing requirements. Housing should be considered in the context of the presumption in favour of sustainable development and policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five-year supply of sites (paragraphs 47 & 49).
- 4.12. Planning Practice Guidance (PPG) provides further advice on the preparation of housing and economic development needs assessments and on housing and economic land availability assessments.

## 5. Planning History

- 5.1. The appeal site, together with adjoining land, has a lengthy history of B1/B2/B8 employment use. Details dating back to 1992 are provided in the Statement of Common Ground (SoCG) as well as Mrs Hunt's appendices 5 and 6. The most recent outline permission was granted in 2011 and allowed 7 years for submission of reserved matters. It was for B1/B2/B8 uses on 39 ha between Gibson Lane and Long Plantation (including all of Parcel 1 as well as land beyond the site boundary to the west). A permission granted in 2010 for a hotel, B1 office use and small retail units together with a children's play area on Parcel 2 (Melton Fields) expired in September 2013<sup>13</sup>.
- 5.2. The parties have also referred to an application submitted in 1998 for a mixed use development including 700-800 dwellings, employment uses, a new grade separated junction to the A63 dual carriageway and a railway station. That proposal related to a larger site of almost 150 hectares. It was recommended for approval by Officers, subject to various matters including completion of a Section 106 Agreement. However, Members resolved to defer the application and it was eventually withdrawn in 2003<sup>14</sup>.

## 6. Other Agreed Facts

- 6.1. A Statement of Common Ground (SoCG) between the Appellant and the Council was agreed on 2 May 2014. A further SoCG was also provided relating to objectively assessed housing requirements<sup>15</sup>.
- 6.2. With regard to amenity and incompatibility issues, there was agreement that there would be room within the site for appropriate noise mitigation measures for both proposals and that these could be resolved by the imposition of suitable conditions and by consideration in relation to the design and layout of the development, as part of the reserved matters.
- 6.3. There was no issue between the parties with regard to highway or railway matters, landscaping, archaeology, flood risk and drainage, air quality or ground contamination, subject to relevant planning conditions being imposed.

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<sup>13</sup> Statement of Common Ground appendices 14 & 19

<sup>14</sup> Statement of Common Ground appendix 4

<sup>15</sup> ID35 & 36

The pedestrian/cycle link through Long Plantation to Plantation Drive was agreed to be acceptable in technical terms subject to measures to prevent use by motorised traffic and to protect trees although the means of implementation was not agreed. In addition, the quantum of green space provision was agreed to be 15.11ha for Appeal A and 11.41ha for Appeal B.

- 6.4. In relation to ecological matters, the parties agreed that no adverse residual effects were expected and that, subject to recommended mitigation and the sensitive design and management of green infrastructure, net gains for biodiversity could be achieved. They also agreed that the proposals would have no Likely Significant Effect upon the Humber Estuary SSSI/SAC/SPA/Ramsar site, having regard to measures that seek to avoid potential impacts so that an Appropriate Assessment was not necessary.
- 6.5. It was agreed there was a confirmed need for accommodation for specialist dementia care and that occupation of the care home, apartments and bungalows could be controlled by condition or planning obligation. Also, it was agreed that the need for additional affordable housing remains high throughout the local authority area and comprises a benefit.
- 6.6. With regard to calculation of the housing requirement, the parties agreed that the figure should be informed by an employment-led approach based on the emerging local plan period 2012-2029. It was also agreed that a 20% buffer should be applied, to reflect the record of persistent under-delivery during the period 2008-2013 and that any shortfall should be included in the housing requirement for the immediate five year period (ie that the 'Sedgefield' approach should be adopted).

## 7. The Case for East Riding of Yorkshire Council

The material points are:

### *Introductory Remarks*

- 7.1. The Appellant's review of post-NPPF decisions by the Secretary of State could not identify a case where permission had been granted on high quality, readily available employment land on the basis of an inadequate supply of land for housing. The only relevant appeal decision was that for Trentham Lakes. This exhaustive trawl through past decisions does however reveal that whilst the lack of a 5 year supply is a matter to which substantial weight can be afforded, nonetheless each case turns upon its own merits and other material considerations have on occasion been considered to outweigh even the sort of benefits relied upon by the Appellants in this case<sup>16</sup>.
- 7.2. There are a number of issues raised between the parties, and each reason for refusal is separately maintained as a basis to dismiss the appeal, but the central issue which lies between the parties is that St Modwen have got the balance wholly wrong as between the weight to be afforded to the loss of employment land as against the need for housing land. The two reasons that they have got it wholly wrong are that: firstly they have misjudged the value

<sup>16</sup> see e.g. CD N/D25: APP/M1520/A/12/2177157, Thundersley

of the appeal site to the borough in employment land terms; and secondly they have misjudged the value of the site as a housing site.

- 7.3. On the former, the LPA's point is very simple indeed. Melton (including both Melton Park, the subject of this appeal, and Melton West, the adjacent site) is agreed to be a high quality employment site. It should be protected for the wellbeing of the sub-regional economy to facilitate the economic component of the objective of sustainable development. Whether one looks at the matter through the lens of recent take up at the adjacent Melton West, the overall employment land requirement or on the basis that the local economy has just received a substantial and 'game changing' boost by the investment of hundreds of millions of pounds into the renewables industry, it would be gross folly to allow the loss of this important and readily available parcel of employment land for uses which can be readily accommodated on far less important sites.
- 7.4. On the latter, there is no deficit against the 5 year land supply, but even if there was this is a truly rotten site to accommodate housing. It is proximate to but not adjacent to the small settlement of North Ferriby, with its limited facilities, with which it is wholly out of scale (on either appeal). Linkages with everything apart from employment (accommodated on the ironically successful adjacent Melton West site) are poor and, if permitted, it will therefore act as a free standing housing estate in the open countryside.
- 7.5. On the five year land supply, the Appellant's case appears to be that the emerging Local Plan has got the figure wrong and that supply has been overstated. Both matters are hotly contested. However even if they were correct then given the clear importance of this site to the future of the Borough it is obvious that before it is released for any non-employment use that a comparative exercise ought to be undertaken to assess whether the housing need can be better met without resulting in such an obvious disbenefit. That exercise is best done through the Local Plan process. The hearing sessions commenced in October and the Inspector's conclusions will be available only very shortly after a decision is made in this case, so there is no public benefit in 'jumping the gun'. And, whilst the Appellant suggests that the emerging local plan is an intellectual car crash, that is plainly not the view of the examining Inspector, who has issued preliminary questions but has not asked for an exploratory meeting or even a pre-examination meeting.
- 7.6. Thus overall this is a proposal which is agreed to be in conflict with relevant policies of the development plan which seek to protect the location as a strategic employment location (Structure Plan) and allocate much of the site for employment (Local Plan); those policies remain substantially up to date and consistent with the emerging Local Plan and its evidence base; and there are no material considerations anything like substantial enough to outweigh that strong presumption against these appeals. Ultimately the Appellant's case is that housing need trumps everything, an argument that simply has no support on any rational reading of the relevant planning framework.

### *The Applications*

- 7.7. Although the issues in the two appeals necessarily overlap, each must be considered on its merits. In both instances what is proposed is the loss of significant areas of land which have been identified for employment use, and

each involves substantial housing proposals. However, the differences are not simply in the quantum of development proposed. Both appeals deal with the same parcel of land and both involve the retention of a broadly triangular area to the west of the appeal site in employment use. Appeal A is straightforward, comprising simply housing development. Appeal B involves less housing, with the residue being devoted to employment use. Given that the entirety of St Modwen's land north of the railway already benefits from an extant planning permission for employment development it is less clear why that element of the scheme is proposed, but for the record that aspect of Appeal B is unobjectionable, albeit of little practical utility in contrast to the baseline position.

- 7.8. One can see how it is that St Modwen when reviewing the merits of Appeal A have understandably sought to improve their prospects of success by reducing the loss of land to housing and including (or on the basis of the extant permission, retaining) an element of employment land so as to be able to recast the appeal as 'genuinely mixed use'. Given the extant consent this is no more than a debating point since even if all of the St Modwen land was given over to housing, there would still be a mixture of uses in the area. However, the issue is whether the loss of additional employment from an area which already benefits from a mixture of uses is acceptable in land use terms.
- 7.9. It is at this point that the Appellant's case takes something of a strange turn, proposing the alternatives of a new railway bridge or enhanced affordable housing provision. As the inquiry progressed, the reason for the promotion of this somewhat strange idea has become less clear, and it remains baffling to the LPA as to why this matter is still being pursued. The way the case is put is that Appeal A proposes 35% affordable housing which is in excess of the 25% required by the interim policy. By contrast Appeal B proposes 25% with the bridge contribution and 40% if the bridge contribution is not considered by the SOS to be "necessary". It was accepted that "substantial weight" should be afforded to the provision of affordable housing in the overall planning balance – ironically going further than the Appellant's assessment of "significant weight". What is difficult to understand is why it is said in either case that the excess in the proportion of affordable housing over and above the policy requirement, and however welcome, could be said to be 'necessary' in the sense of NPPF §204.
- 7.10. JG in XX said that the way to approach the complex way in which Appeal B is put is as follows: (i) if Appeal A is allowed then Appeal B ought to be too since it involves a reduction in the loss of employment land and wider benefits; (ii) if Appeal A is dismissed then one turns to the individual merits of Appeal B; (iii) rather than consider the bridge first, JG advised that first consideration should be given to the 40% provision of affordable housing, and only if that is not considered sufficient to warrant the grant of permission should one turn to consideration of Appeal B with the bridge. The problem with that is that it isn't the way that the case has been put in either the s.106 or JG's proof §12.1-12.9. Moreover, as a matter of logic the bridge would only be 'necessary' if it actually achieved something in land use terms. It is far from clear that that would be the case.
- 7.11. Although no XX was put forward on the issue of the specialist accommodation for the elderly subject to the entering into of a satisfactory

s106, the LPA accepts that this element of both schemes is a benefit of the proposals.

- 7.12. Finally, the suggestion that Appeal B was a compromise to avoid the appeal simply doesn't stand up to scrutiny. The scheme which now comprises Appeal B was originally being promoted by the Appellant in its rule 6 statement on Appeal A as a possible Wheatcroft application with which the LPA took issue. The adjournment on day 2 of the inquiry last year gave the Appellant the chance to appeal the refusal of the parallel application and have the two appeals conjoined.
- 7.13. There has never been a wish on the part of the LPA to secure a compromise scheme since it is opposed in principle to any part of the appeal site being released for housing. It notes with interest however that the Appellant, whilst promoting Appeal A as its preference, has nonetheless sought to promote the lesser scheme of Appeal B as a fall back position. That does not demonstrate the reasonableness of its stance at inquiry. Rather, it evidences recognition of an inherent weakness in its primary case in that there is a fundamental market need for employment land at Melton.

### *Policy*

- 7.14. **Development Plan:** It has throughout been fully accepted by the Appellant that the proposed development under both Appeals fails to comply with the development plan. What is said by the Appellant is that the development plan is of an age which means that it is clearly out of date. That is simply untenable, albeit that the position is complex.
- 7.15. Firstly it is accepted that the Regional Strategy is revoked, that the Local Plan is of some vintage and that the Joint Structure Plan, whilst still in date, was nonetheless prepared some time ago, and all were based upon evidence which has long since been updated and overtaken. It is also accepted that some of the references within the text of the development plans reflect the timing of the plans and the evidence base and that matters have moved on. However, the big point is that the identification of Melton as a key/strategic parcel of employment land remains a key part of local policy making and is secured by both the policies of the extant and the emerging local plan. That is underscored by the extant planning permission for the site as well as the clear concession that the site is indeed properly identified as a key employment site.
- 7.16. In short, whilst some aspects of the reasoned justification are no longer relied upon, and whilst some of the policy wording of the Local Plan and Joint Structure Plan do not reflect current thinking for the site, the big picture is that the policy identification of the appeal site as a key employment site which warrants protection from alternative uses remains every bit as valid now as it did then. Any submission that the development plan should be treated as 'out of date' for the purposes of §14 of NPPF is simply wrong.
- 7.17. **NPPF:** All of the witnesses have made extensive reference to NPPF, but it is nonetheless important to draw out a number of important points of interpretation:

- (i) NPPF advises that objectively assessed needs ought to be assessed and then met, not just in relation to housing but in relation to other areas as well including employment; (NPPF §17 3rd bullet “Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth”)
- (ii) the economic component of sustainable development does not extend to the provision of housing per se (see glossary);
- (iii) §47 and the need to meet objectively assessed housing needs does not ‘trump’ the obligation to meet other needs, and should not be seen as superior to the economic objectives set out in §21 of NPPF;
- (iv) JG expressly disavowed any suggestion that he was seeking to make out a case under §22 of NPPF that there was no reasonable prospect of employment development coming forward on the appeal site – it follows that the identification of the appeal site as protected employment land is agreed to be consistent with NPPF;
- (v) LPAs should plan positively and proactively to meet economic growth and should identify strategic sites for local and inward investment to both match the LPA’s strategy and to meet local needs, those two objectives not being synonymous;
- (vi) LPAs should plan to accommodate, identify and plan for “new or emerging sectors likely to locate in their area” - which in this case plainly would encompass the emergent renewables sector;
- (vii) LPAs should ensure that policies are flexible enough to accommodate unexpected employment needs; and
- (viii) LPAs should plan to accommodate knowledge based, innovative businesses as well as clustering.

7.18. The Council, in partnership with the City of Hull, is seeking to meet indigenous employment needs, facilitate inward investment generally and facilitate the rapid expansion of the renewables sector in the sub-region. There are considerable uncertainties about the land take required by each component of that approach, in particular given the infancy of the renewables sector in this sub-region. However §21 of NPPF could not be written more clearly: a Local Planning Authority is required to plan positively so as to enable its needs, anticipated, potential and aspirational, to be met so as to facilitate the economic component of national policy. Given the circumstances of the ERYC, benefitting as it does from the game-changing investment by Siemens and ABP, §21 could have been written with this area in mind and strongly underscores the Council’s approach in this case.

7.19. By contrast it is wholly inconsistent with the approach being taken by the Appellants i.e. to limit land allocations via a pessimistic view based upon past take up rates and to take an even more pessimistic view as to the likelihood of either further large scale investments at Melton (indigenous or inward) as well as a very narrow view of the likelihood of whether lower tier renewable businesses will locate on the site. Such an approach is the antithesis of national guidance – little wonder therefore that JG fails to mention it at all in

his proof of evidence. That said, in XX JG accepted that significant weight ought to be afforded to furthering the economic objectives of NPPF and that the case being advanced under both appeals was in tension with at least §22 of NPPF.

- 7.20. JG failed to grasp the logic of his housing case when viewed through the prism of NPPF however. His position on employment is that meeting Objectively Assessed Need for housing is a crucial element of national guidance and that if there is a need for additional employment land of the scale that would be lost at Melton then there are lots of other parcels of land around the Borough that could be considered for compensatory provision to replace it. However, what he hasn't apparently grasped is that precisely the obverse is true for housing. That is to say, the provision of sufficient employment land to meet the objectives of §17 and §21 of NPPF is a crucial part of national guidance, and if there is a need for additional housing that cannot be met at Melton then there are many other, more suitable locations around the Borough which could be considered to accommodate that need.
- 7.21. True enough that in the Trentham Lakes appeal a much smaller parcel of land than is proposed here was released for housing. However, each case necessarily turns upon its own merits and there are obvious differences between that case and this (the scale of loss, the availability of other sites, the absence of a 'game changing' local investment into Stoke, not a comparably 'prime' site, since surrounding land uses include housing, hotel, restaurants, retail, football stadium etc). What that appeal decision is not authority for is the proposition that housing need ought to 'trump' employment need. NPPF does not say so. JG does not allege such a proposition. Yet it is that proposition that (wrongly) underlies the entirety of the St Modwen case on these appeals.

#### *The Grade Separated Junction*

- 7.22. Back at the turn of the century the appeal site lay in an area which had an atrocious junction with the A63 and yet had the benefit of employment development, permissions and allocations. The junction had a poor safety record and the LPA were exceptionally keen to see something done to resolve the issues of highway safety and access to development land.
- 7.23. Alan Menzies was part of the delegation that met central government and he made it clear that part of the motivation for the ministerial go ahead for the road scheme was the creation of jobs by freeing up high quality employment land. Before that go-ahead was given, officers of the LPA had recommended granting permission for a vast mixed use development which would involve housing and employment, thereby generating sufficient land value so as to facilitate substantial improvements to that same junction. Members were not convinced and the application was ultimately deferred and withdrawn. It is simply incorrect to draw any conclusions from such a recommendation for residential development in the context of a no-GSJ world.
- 7.24. What happened next was the roads inquiry<sup>17</sup>. It is abundantly clear that:

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<sup>17</sup> CD M20 see SOS decision §7 & 8; and Inspector's report §4.2, 4.3, 4.9, 4.12 to 4.20, 4.40, 6.15, 6.26, 6.29, 6.30, 7.5, 7.6, 7.21, 7.102

- facilitating economic development by the creation of access to the employment areas was a key motivation of the HA in promoting the scheme & ERYC in supporting it;
- the GSJ was over-engineered specifically to produce the dual carriageway access to the appeal site from the GSJ; and
- the Inspector and Secretary of State in approving the scheme strongly endorsed the case for the HA and, in particular, endorsed the over-engineering to facilitate access.

7.25. Thus the factual position is that one of the primary benefits of the appeal site being promoted for employment use is that a bespoke access to it has been provided at huge public expense (£22M at 2001 figures) with the specific objective of bringing that site forward for the economic benefit of the area, and not to facilitate a high value land use for a commercial organisation which has been outcompeted for tenants by its adjacent neighbour for the last 7 years. This is of relevance for the obvious reasons that such sums are not invested by the Exchequer lightly but only where it is in the public interest to do so. If a party is coming forward with the objective of specifically frustrating that objective in whole or part and seeks permission to do so then any rational decision maker ought to be very slow indeed to accede to such a request without the clearest possible evidence that the primary objective is unlikely to materialise. And yet in this case the Appellant does not seek to make out a case under §22 of NPPF and indeed recognises through the nature of Appeal B that it is not in a position to do so.

#### *Employment Issues*

- 7.26. The Correct Approach – NPPF: The appeal site is a key/strategic employment site within the portfolio of the ERYC and is viewed as important by ERYC, Hull CC the LEP and others. This has been the historic position of the Appellants in their previous representations to this site and as part of their 2011 planning application. Furthermore, it is agreed to be a prime employment site. It is precisely the sort of site therefore that §22 of NPPF requires LPAs to identify to meet future needs and to take advantage of future opportunities.
- 7.27. NPPF requires a review of employment allocations and if there is no realistic prospect of their being delivered in the near future then they should not be continued. JG has expressly said that he does not make that case. NPPF does not suggest that such sites should be released for other uses other than in the circumstances set out in §22. Curiously JG in his evidence sets himself an entirely non-NPPF test to judge whether the appeal site can be released for non-employment use – i.e. would there be a serious undermining of the competitiveness of the district. With respect, whilst that may be a component of the correct test it manifestly is not the test that NPPF invites one to apply.
- 7.28. The starting point is that there is no NPPF-compliant case which is being run by the Appellants that warrants the release of this land from its current employment designation. At its lowest, the release of this site to fulfil another objective (i.e. §47 of NPPF if there is no 5 year housing land supply) is not an objective expressly recognised as an exception to §21 or §22. However, whilst JG recognises that the appeal site has value as a prime employment



site, the Appellant doesn't just seek to rely upon the benefits of using the site for other uses which it contends are needed. Rather it has sought to challenge the LPA's case as to why this parcel of land is an important part of the portfolio of employment land within ERYC.

7.29. The case is a curious one since St Modwen has itself hitherto recognised the importance of the appeal site. Moreover whatever confusing arithmetic one may engage in, the simple fact is that at Melton since the GSJ opened, Wykeland has successfully competed for occupiers to the detriment of St Modwen and is seeking through the Local Plan to expand its land portfolio to accommodate yet more. Thus it is literally untenable to argue that there is or has been no market for occupiers at this location. It is also wholly unconvincing to raise wider arguments that, looking at the figures for the East Riding of Yorkshire overall, there is no need to protect this site from other uses (either based upon the geographical distribution of requirements or past take up) since that is not the basis upon which NPPF invites consideration of such an issue.

7.30. Finally it is odd that the Appellant has sought to minimise the likely impacts of the renewable business to this area when it is such an obvious economic 'game changer' for the East Riding and the Humber economy generally and provides precisely the sort of potential opportunities that NPPF advises one ought to be planning for (§21)<sup>18</sup>. Odd because the lines of attack have been comparative – i.e. how Melton compares to other sites – when in fact there is a need for a portfolio of sites. And odd because they have placed reliance upon a renewables report which ends in 2020 and a commercial market witness who professes no particular expertise in the renewables sector and has the experience (at the time of giving evidence) of precisely one approach and one deal in this area. To draw conclusions from that shaky evidential foundation is forensically optimistic, as well as ill considered.

#### *Past History*

7.31. St Modwen acquired the appeal site in 2006, with the benefit of planning permission granted in November 2001 and just before the GSJ was opened. JG explains that although some development was brought forward by St Modwen, it didn't realise until 2010 that planning permission had expired. As a result DPP were instructed to apply for permission for employment development of the entire site, which was granted as recently as July 2011. Within 3 months of the grant of permission St Modwen had engaged NLP to explore the prospects of higher value land uses, since JG was instructed in October 2011 and the following month met AM with a proposal for 600 houses on the appeal site. Thus within 3 months of securing planning permission for employment use St Modwen have been assiduously and enthusiastically pursuing alternative uses for the appeal site. Whilst that is not to suggest that St Modwen somehow took their foot off the marketing pedal, the public face of the appeal site for the last 3 years has been one that the owners would rather not have employment uses upon it.

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<sup>18</sup> The point is especially ironic when it comprises a fundamental part of SC's analysis in promoting the Policy on approach to housing land requirement.

- 7.32. Up to the point of the application St Modwen had had the experience of competing with Wykeland for tenants and had presumably had the benefit of the expertise of Mr Garness as to the likely importance of the site. It is therefore of interest to consider how its agents (within an approved document) characterised the appeal site's employment value back in the summer of 2011. Within the DPP supporting representation the appeal site is described as being of strategic importance, the proposal would be a 'significant investment into the local economy' providing 'enhanced employment' and attract 'additional investment'. Significant job creation was claimed to be likely to arise, such that the development was of "regional importance" comprising an 'overwhelming case for permission' providing for up to 4,000 jobs<sup>19</sup>.
- 7.33. Interestingly at §8.3 DPP observed that given the size of the site, market conditions and, importantly, "relative take up rates" a consent was being sought which would allow implementation within 10 years and 15 years for the approval of reserved matters so as to link to the core strategy timescale. Thus there was an express recognition by St Modwen that the delivery of this site might be long term with commencement of development potentially being delayed by a decade and approval of reserved matters taking up to 15 years. That single paragraph gives the game away. To judge Melton on the performance of St Modwen in securing occupiers for only the last couple of years during which time it has been pursuing other uses is obtuse. This is a wider site which took the introduction of the GSJ to open up development which has enabled Wykeland to successfully deliver nearly 20Ha of land. So far St Modwen haven't achieved anything like that BUT critically, especially when considering §22 of NPPF, it was never expecting to when it secured permission.
- 7.34. If the yardstick of success at Melton is St Modwen's own aspirations then it is far too early to conclude that Melton Park is not needed. Similarly if the yardstick of the importance of Melton is St Modwen's own words back in 2011 then it is a regionally important site which will deliver over 4,000 jobs, secure millions of pounds of investment locally and will attract "additional" investment into the area. The position that DPP were asked to promote in 2011 for St Modwen mirrors the case now being promoted to the inquiry by the LPA.

#### *Take Up Locally – the Wykeland Experience*

- 7.35. Very often at inquiries involving the development of designated or protected employment land, a large part of the evidence will focus upon the evidence of marketing and the contention that there is no realistic prospect of the site being brought forward for employment use (ie the §22 type approach). In this case the position is somewhat different. Firstly such a contention would be untenable since St Modwen and Wykeland both had comparable sized land portfolios back in 2006, both served by the same infrastructure (albeit that St Modwen's was much closer to the A63) and by-and-large both have competed for the same tenants. Yet Wykeland have managed to secure the development of over 16Ha, whereas St Modwen have

<sup>19</sup> CD M5, §7.13, §7.21, §7.26, §7.51, §9.2 & §9.3

developed a meagre proportion of that amount. There has been some exploration in the evidence as to why particular deals were secured by Wykeland rather than St Modwen but in essence there has been competition between the two and it is conceivable that, had St Modwen been more successful, that it would be they who would be benefitting from over 16Ha of developed land and opposing any attempt by Wykeland to release their land for alternative use.

7.36. The point is that land in this location has been taken up as a result of marketing and competition. Whilst neither the take up rate nor the level of inquiries over time have been at the same level year on year<sup>20</sup>, overall it has averaged between 2 to 3 Ha per annum (Accepted by JG in XX as the right message to take from the information before the inquiry), and there is no reason to suspect that it will not continue at least at that level in future.

7.37. JG accepted the following in XX:

- the appeal site comprises valuable/prime employment land;
- it is available now and is being actively marketed;
- it is very well served by the GSJ providing direct access onto the principal EW route in the district (ie the A63-M62 corridor);
- it is therefore well placed to provide direct access to both Hull as well as the motorway network of the UK more generally;
- it is in a location which has exhibited clear demand over the last 10 years;
- it is important for a LPA to have available a portfolio of quality employment sites and one does not diminish the importance of one parcel of land by being able to point to another parcel of land of comparable quality.

7.38. Importantly JG accepted that in the light of the above if the appeal is dismissed then there is no reason to think that the appeal site will not in due course come forward for employment use in line with the extant planning permission – i.e. it is no part of his case that the appeal site would lie fallow and unused if the appeal is dismissed. Given the timescales identified in the DPP report one might also add that the fact that the site may take a number of years to deliver in full is hardly the issue if it is anticipated that development of the appeal site was always going to take some time. Tellingly, Wykeland do not take a pessimistic attitude to the delivery of employment land in this area and, building upon their success, are promoting a substantial expansion of their landholdings to develop land for employment use via the Local Plan.

7.39. In the circumstances it is simply untenable to contend that the site will not be largely taken up for development within the remainder of the plan period. That is based upon the experience of development thus far as well as simple maths – if there are around 40Ha left in total at Melton and take up is 2 to 3

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<sup>20</sup> For employment land take up see NR rebuttal proof Table 6.1; for the level of inquiries see XX of Garness on his appx 3

Ha per annum then for the next 16 years of the local plan (to 2030) 32-48 Ha would be needed even if based solely upon that past experience.<sup>21</sup>

7.40. In short, for all of the detail about what has happened at Melton and why for the last 7 years based upon past experience there is a need to retain the appeal site in employment use to accommodate those locally generated needs. On this basis, this is true even if no inward investment happens, no renewable based interest arises or there is no other unforeseen eventuality. The Wykeland experience substantially undermines any case of minimising the prospect of future take up at Melton. Indeed it is of note that the majority of the take up in the ERYC part of the Hull Functional Economic Area since 2006 has been at Melton<sup>22</sup>.

#### *Take Up Generally in ERYC*

7.41. There is no issue between the parties that ERYC quantitatively has a substantial oversupply of employment land. Much of that land is in locations which are remote from the principal highway network or otherwise unsuitable for modern needs (e.g. former WW2 airfields). The agreed position is that the issue is the qualitative contribution made by Melton to the high quality supply of the Borough. Thus the trawl through the evolution of ELRs and different figures and whether particular figures are policy or not is fascinating but irrelevant to the actual determinative issue. This is not whether or not the overall employment land supply should be 235ha (JG) or 297ha (ELR Table 5.2 sum of FEA totals). Rather, it is whether it is necessary to keep the appeal site in employment use to maintain a good supply of land – i.e. a good portfolio to meet foreseeable needs and unforeseen opportunities as required by NPPF §21.

7.42. The inquiry has been treated to a long winded but ultimately sterile exercise of considering almost every other employment site along the M62-A63 corridor with the presumed intention to suggest that there are lots of other sites where inward investment or indigenous growth might be able to go if the land at Melton Park is lost. What the exercise has done is to eloquently demonstrate that there are a number of sites along the corridor each with different locational and site specific characteristics which may appeal to different aspects of the employment market. A few examples may suffice:

- Bridgehead: primarily an office environment with some limited R&D, positioned for B1a not B2 uses in the market, some minimal overlap with Melton but a different type of site entirely;
- Capitol Park, Goole: pitched at the large scale distribution end of the market due to the proximity to the motorway network; again quite different in the market since it appeals to the big shed/logistics industry for which Melton is too far away;

<sup>21</sup> NR Rebuttal Proof Table 6.1, annual average take-up of 2.97Ha multiplied by 16 years equates to 47.52ha

<sup>22</sup> ELR identified that within the ERYC part of the Hull FEA take up has been 4.8Ha/annum (quoted JG §4.8); of that, 2.6 or 2.96Ha/annum has been at Melton ie 57% to 62%

- BAe Brough: predominantly a brownfield site, with substantial second hand lettable sheds, poor access to be improved in due course, but even then less well related to the A63 than Melton and a very different environment, despite some limited opportunity for Design and Build.
- 7.43. The Appellant also pointed to undeveloped land around motorway junctions and contended that if there is a need for land to accommodate an investment then it can always be made available. To illustrate this, they placed strong reliance on the example of JZ Flowers. However, this was an existing user that expanded, not a footloose investor, so it would never have considered Melton. The reality is therefore as the Appellants themselves have observed, that once the GSJ had been constructed the latent demand which could not be accommodated elsewhere was accommodated at Melton.
- 7.44. The delivery of employment uses at Melton and the level of interest has varied considerably over time (irrespective of the economic cycle). Nonetheless, it has been steady and regular and as the country moves out of recession it is unlikely to diminish. That other sites exist with different characteristics shows nothing more than a policy compliant flexible supply position, with a reasonable portfolio of sites available to accommodate a range of needs (and markets). On the evidence, Melton fulfils an important part of that portfolio and there is no good reason to think that the offer of the East Riding and Hull FEA would be other than seriously diminished were it to be lost.
- 7.45. That then leaves the somewhat strange observation that the emerging plan over provides for development in the Hull FEA compared to the Goole FEA and that there may be a need to raise the proportion of land directed to Goole. Such a contention is a matter of indifference to the outcome of this case and is a matter for the Local Plan examination. Similarly, whilst a calculation of the total amount of land identified within the ERYC part of the Hull FEA against past take up rates showed a surplus, this ignores the fact that the majority of take up in recent years in that part of the Hull FEA has been at Melton and there is no reason for that not to be the case in future. That there is a quantitative surplus overall tells one nothing about qualitative issues, and indeed ignores the exhortation of NPPF to plan for unexpected needs and future needs more generally. Furthermore, the ELR shows that there is likely to be a shift in demand towards the Hull FEA, linked to the renewables sector, which justifies the shift in the emerging plan. To simply rely on past take up rates in the manner expounded by the Appellant in their XX runs contrary to the NPPF's focus on positive planning for the future.
- 7.46. In short for all of the complexity of the information presented to the inquiry there is no proper basis to displace the contention that the appeal site is high quality land in an area where take up has been reasonably good in the recent past and there is no reason to expect that it will not be in future. Melton offers readily available development with potentially large and therefore flexible plot sizes well related to the transport network, benefitting from the GSJ and in a location where the market has historically delivered – it is an excellent site that should remain available.

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*Renewables*

- 7.47. DG professed no particular knowledge of the renewables sector and had experience of only one deal, yet on the basis of that very limited experience he confidently asserted that the availability of land at Melton will be an irrelevance to the renewables industry. NP another local agent of repute is of precisely the converse view, albeit that he fully recognises that ERYC is at the start of the process and that there is much learning to be done.
- 7.48. Colliers have wider national experience and Siemens are one of the world's leading manufacturers of primary components for the wind energy industry. It is assumed that Siemens has undertaken substantial research before investing eye-watering sums of money into the local economy and that it has been advised in property matters by Colliers. Thus, set against the view of DG is the unequivocal view of Siemens and others in the content of the much maligned draft prospectus that Melton is one of a portfolio of sites which will be of interest to other investors. That other sites are available closer to the Port and within Paull is not the point; if Melton was an irrelevance to Siemens' prospective suppliers then neither the company nor its advisors would have promoted it as part of the proposals. For all that the draft document has been attacked in evidence it comprises the clear view of the public authorities and those who are best placed to know that there is the potential for Melton to also contribute to the range of sites which could accommodate future renewable based spin off businesses.
- 7.49. That is not to say that such industry would be the mainstay of future investment at Melton, but rather that there is the clear prospect that it might be an additional source of investment to what has come before and that this underscores why to release this site at this time is grossly ill advised. Moreover the catalytic effect of the game changing investment by Siemens and ABP means that there is the prospect that the local economy would be materially healthier in future than it might otherwise have been as a result of the investment and that would also (albeit indirectly) have the potential to result in increased demand at Melton.
- 7.50. That is not to say that turbines and towers will be turning off the A63 on the back of lorries at North Ferriby. It may only attract manufacturers of components of components. By way of illustration GEV Offshore have announced (ERYC 37) they will be leasing an office and warehouse unit at Priory Park, Hessle to provide administration and logistics support for the company's wind turbine maintenance team. This is a site not at the Port, not an Enterprise Zone, is the 'other side' of Hull, and is in the East Riding, thereby clearly indicating there is demand for sites from renewables-associated businesses. Consequently the point is that it would be absurdly counterproductive for ERYC to lose one of its premium employment sites just at the time when its economy has received such a major boost from the Siemens and ABP announcement. It would be a very odd signal for the Secretary of State to send, and would be in the teeth of the plain spirit of §21 and 22 of NPPF.
- 7.51. Finally, properly understood and read, the 4C reports do not actually help the Appellants since they only address the immediate future to 2020 and say nothing about the world thereafter. Even before then, whilst a cautious view

is taken and it is concluded that clustering is limited, it goes a long way short of the proposition that Melton is irrelevant to the renewables industry. Indeed its conclusions do not come anywhere close to ruling out Melton as a site for a "lower tier" occupier even prior to 2020.

### *The Status of the Site*

- 7.52. Melton does not have Enterprise Zone status, so it will not benefit from a simpler planning regime<sup>23</sup>. However there is no evidence at all that the grant of permission for employment use has ever been a difficulty at Melton, well illustrated by St Modwen's own successful application in 2011. Also, there would be no rate relief available for a new building and yet the LPA's unchallenged evidence from Mr Pearce (NP) is that such relief would be of comparatively limited financial benefit and would certainly not compare with the much larger capital cost which would be helped by Melton's Assisted Area Status (ERYC 35). The absence of EZ status was then relied upon to somehow evidence a lack of commitment to identifying Melton as being of particular value locally or with regard to the renewables sector in particular. Such a contention is simply absurd. None of the Wykeland development has been facilitated by public sector money therefore there is no reason to think that any of the St Modwen future development would need to be if it follows a similar model. Also, insofar as Melton does not have EZ status as one of the ticks in the box at p14 of the draft prospectus, it is still within the list and this is not as a second tier of importance.
- 7.53. JG at §4.18 concludes that the lack of EZ status is indicative of the fact that neither ERYC, nor the LEP nor anyone else involved considered Melton relevant to the renewables sector. With respect that is simply not true on the express evidence and therefore it is baffling how it could be a proper conclusion to draw by inference, and secondly it is palpably not true from those at the heart of the renewables sector debate since the draft prospectus contains more than just Melton without EZ status.
- 7.54. The XX of AM revolved around the contention that the draft prospectus was a self serving document, produced by the public sector and not the renewables sector. That was always odd since one of the authors of the document was Siemens' own consultants, Colliers. ERYC24, produced in response to the XX, makes it clear Siemens were involved throughout and that the document has been produced with their authority. Had the absence of EZ status been thought to be critical or even important then Melton would not have appeared in the list.
- 7.55. The next point of attack in XX was that there is a lot of land available for these uses so that Melton is not important. There is a lot of land, much of it around the Paull site and the Port itself. If one is looking for a site on the western side of the City, close to the strategic road network, yet also close to the workforce of Hull, with excellent road links and ready to go now, then Melton is plainly ideal. Brough may come forward once the infrastructure is improved, but it will be a very different offer, just as Goole will offer something to those who are keener on closer links to the M1. The point is

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<sup>23</sup> JG proof §4.12 & §10.74

that Melton is viewed by the proponents of the transformational change in the local economy to be an important and integral part of their portfolio. It is difficult to view these circumstances in any other way.

### *The Bridge*

- 7.56. Following the adjournment of the inquiry a meeting took place in December 2013 with Alan Menzies ('AM') and representatives of St Modwen during which the prospect of funding a bridge across the railway to replace the current substandard bridge was proposed. At that meeting AM neither encouraged nor discouraged the promotion of the bridge.
- 7.57. In his proof AM reported that he understood that the bridge was intended to serve the land to the south of the railway for employment purposes which includes the greenfield land promoted by St Modwen through the emerging local plan (MELT12). It was put to him that this was not so, a contention which was vigorously rejected.
- 7.58. When the same point was pursued with JG he unequivocally accepted that the bridge could provide access to the St Modwen land but was primarily aimed at providing access to the brownfield land to the SW of the appeal site. When pressed in XX, JG indicated that whilst the St Modwen land was indeed being promoted, he had advised his clients that there were obvious constraints to bringing that site forward. Curiously, that is not a qualification that one finds anywhere within JG's proof which instead makes clear that the objective is to open up land to the south of the railway which is presently constrained, including that within the control of St Modwen<sup>24</sup>. At §3.27 of his rebuttal he points out that it is to access "more than [his] client's land", and at §2.15 of the representations to the LP appended to his proof (Appendix 14) he makes a direct reference to the land to the south being accessed by the proposed bridge. Even the email put to AM in XX makes reference to "not just" the St Modwen land.
- 7.59. The already thick plot thickens further by the fact that on day 8 of the inquiry St Modwen announced that it was seeking a screening opinion from the Secretary of State on the bridge and that it intended to submit an application the following week. That came as something of a surprise since only 10 days before it had requested a pre-application meeting with Mrs Hunt. She had replied that she could only respond quickly in writing given her involvement in the inquiry. She then contacted relevant colleagues and outside consultees for their views. Those responses [EYRC 27] express a series of intrinsic concerns with the proposal for the bridge and also raise wider concerns with the implications of the effect of the bridge cumulatively with the proposed release of 142 Ha of land, especially that within St Modwen's ownership.
- 7.60. The LPA made it clear that it considered that the issue of whether or not the bridge was EIA development was a live issue and indicated that it would make representations to the Secretary of State if a screening request was

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<sup>24</sup> JG proof §10.73 refers to the bridge providing access to 142Ha of land which (by reference to plan 8 of 12 at appx 5 of the ELR) plainly includes the St M land referenced as MELT12



made, or would address the issue directly if the application was made to them.

- 7.61. Inexplicably it appeared to have only occurred to St Modwen part way through the inquiry that to have any realism that there would be a need for an application for planning permission to be made for the bridge. Even then, it was not until the end of the inquiry that an application was submitted. Thus, at the close of the inquiry, the position is that the Council is now seized of an application which may or may not be validly made and which it is simply unknown whether it will be positively or negatively screened as EIA development.
- 7.62. That said, one might legitimately ask what on earth has any of this to do with an inquiry which doesn't even include an application for permission to construct the bridge. The answer is twofold. First of all the substantive point: for many reasons, the bridge proposal is deeply flawed and there are so many uncertainties that if it ever gets to the point of considering its merits, no weight can be afforded to its prospective delivery as a benefit of the proposals. Secondly, the forensic point: this really is an odd proposal whose consequences have not been well thought out, but evidences an implicit recognition on the part of the Appellant that even on the smaller appeal B proposal that there is a need to throw something pretty substantial into the overall planning balance in order to outweigh the serious public disbenefits of the appeal proposals. That St Modwen has even felt the need to explore this issue, let alone propose it, evidences a serious weakness in its case to this inquiry.
- 7.63. What is therefore proposed? It would seem from JG's evidence that what is intended under appeal B is that the Secretary of State should first consider the proposal for 40% affordable housing and only then consider the proposal for the bridge. That is not what the s.106 proposes (which is drafted the other way around), however at some point in the exercise consideration has to be given to see if the bridge proposal is 'necessary' – i.e. is it a benefit which outweighs some planning harm – which in this case can only be the loss of employment land. Given JG's evidence, the bridge is plainly intended to facilitate the improvement in local infrastructure so as to bring forward compensatory employment provision in due course.
- 7.64. If Appeal B is allowed what will actually happen is that employment land which is readily available now will no longer be available. However the s.106 obligation is not triggered until permission is actually implemented. Thus if a three year consent is granted, then it may be that the obligation may not be triggered until 2018 (assuming a decision on the appeal in early 2015). There is no obligation upon St Modwen to build the bridge or even delay the delivery of housing until it is built. Rather, the responsibility is given to the LPA to deliver the bridge within a finite period of time or the monies 'may' be used in respect of affordable housing (check ref in planning obligation - Paragraph 6.2 schedule 6 Option B s.106, subject to an express conclusion that such an obligation is within Reg 122 of the CIL Regulations 2010, a necessary precondition by reason of clause 4.1(d)). Thus at the point when the s.106 is triggered it will start a process which will include the following:
- a decision by the LPA as to whether or not it wishes to proceed with the bridge;

- if it does, whether there is a detailed planning permission in place which meets the requirements of the local highway authority and Network Rail;
- whether there is a need to provide further infrastructure (e.g. to link Gibson Lane and Brickyard Lane) so as to facilitate the closure of the level crossing;
- whether funding is in place to facilitate the latter;
- whether land ownership can be secured to facilitate the latter (or even accommodation works);
- detailed engineering drawings and a full costing based upon land investigations;
- securing necessary permissions including 'possession of the tracks';
- letting the contract and building the bridge.

7.65. None of the above is controversial but all of it means that it will be a process of years before the ribbon will be cut to open the new bridge. Thus even if everything goes to plan what is proposed will manifestly not be compensatory provision for what is lost because it will be years before similarly 'oven ready' land is available to the south of the railway of anything like comparable quality to that to the north. On St Modwen's best case therefore the bridge payment will not achieve what is needed.

7.66. However, as will have been obvious throughout the inquiry there are a number of very serious concerns that all will not go to plan and that the delivery of the bridge would be more than uncertain if permission is granted. The following comprises a non-exclusive list of problems:

- (i) Planning Status: There is no planning permission for the bridge. Appeal B, when it was no more than an application, could have been cast as an application to encompass the provision of the bridge. That it wasn't tells its own story. In the absence of a validated application, it remains unknown exactly what is proposed, who may object or whether planning permission may be forthcoming. Interestingly, the response from the Local Highway Authority not unreasonably asks what exactly the bridge is intended to serve, in order to advise whether or not it is up to standard to meet its expected flows. As matters stand, the response to that question appears to be: potentially, 142Ha of employment development. Yet no Transport Assessment has thus far been produced which properly addresses whether the proposed bridge is sufficient for such development, as opposed to whether it is better than the current bridge, which is manifestly not the test.
- (ii) EIA development: Appeal B has been screened by the LPA and has been concluded not to comprise EIA development. No cumulative assessment of the bridge was included as part of that assessment. St Modwen appears to contend that the bridge should be viewed as a stand alone proposal and that no cumulative concerns arise. That is simply wrong. It is plainly associated not only with the Appeal B proposals but will facilitate, on its own case, the potential release of up to 142 Ha of employment land south of the railway. That is to say, land next to an estuary which has international value for its avian life and contains

internationally important archaeological remains on the MELT19 site. Given the scale of land that would be released and the manifest ecological concerns, there is a very strong prospect that an EIA would be required, especially given the concerns of the consultees who have provided a view at the pre-application stage. It is impossible to say what its outcome might be but this is a matter of substantial concern to the prospects of a bridge ever being consented.

- (iii) Network Rail – technical: JG has produced email correspondence in which Network Rail’s engineer has been contacted by an engineer on behalf of St Modwen. The extent to which the engineer was properly briefed is somewhat concerning since he has misnamed his client and identified the wrong road. Nonetheless Network Rail has evidenced a will to engage in a preliminary discussion which has not taken place yet. The email barely provides support other than for the proposition that Network Rail would be willing to discuss the issue with St Modwen and is prepared to provide generic advice. There has not even been an initial feasibility meeting so it is simply unknown what, if any, problems might arise. Of course, Network Rail would be willing to engage since a privately funded bridge proposal could very well save public money upon electrification and might also facilitate the removal of the at-grade crossing at Gibson Lane. However, the latter will not be achieved by the proposal and the former would only be achievable if a technical solution is agreed to Network Rail’s satisfaction.
- (iv) Network Rail – ransom: In AM’s evidence he notes that none of the costings of St Modwen for the bridge have factored in the prospect of having to reach a commercial agreement with Network Rail to facilitate the bridge. In XX AM was disparaged for putting such a suggestion without evidence (though in fact he did since he drew specific attention to the experience at Brough). As St Modwen did not ask Network Rail’s asset management team about the idea, then ERYC has done so. The response (contained at ERYC 22) makes it abundantly clear that Network Rail would negotiate on a commercial basis for the rights to cross the track. That leads to an obvious problem for St Modwen. Upon implementation of the permission St Modwen would be entitled to build the housing, and the LPA would be entitled to use the Bridge Contribution to build the bridge – but ERYC would have absolutely no leverage over St Modwen to encourage it to arrive at a commercial negotiation with Network Rail to deliver the right to construct the bridge. Indeed, whilst St Modwen could of course be assumed to use their best endeavours to secure any such consents it would be in the invidious position of seeking negotiation for consent to construct a bridge crossing the railway which would provide access to land that JG considers to be a long shot to develop, when Network Rail would be looking for commercial value and St Modwen would know that if it did not deliver an agreement then it would receive its £6M back.

7.67. Little wonder then that when JG was asked in XX whether he was proposing a Grampian condition to secure the bridge he replied with an emphatic no.

7.68. Even in respect of improving access to the brownfield land, and putting aside any concerns over the delivery of land which was the site of the former

Capper Pass development, there is substantial uncertainty over the delivery of that land in any event. No planning applications have been made in respect of that land, no land bids have been made in respect of the emerging Local Plan, it is close to the SPA and gives rise to environmental considerations in any event. Whilst there are landowners who (obviously!) are happy to support the bridge – there is no evidence that they have taken any active steps in the promotion of that land. That is not to say that the delivery of such PDL would be unwelcome, rather it is a profoundly optimistic contention that it could ever be thought to amount to compensatory provision for the loss of employment land at Melton.

7.69. It follows from the above that no weight can properly be afforded to this and it is odd that it remains any part of the Appellant's case. Thus if the Inspector gets to this point in JG's contrived flow diagram then it is firmly submitted that the proposal to fund a bridge should be afforded no weight, even if it was necessary and that the appeal ought at that stage to be dismissed.

7.70. Finally in respect of the bridge it was suggested in XX that the bridge actually arises from an aspiration of the Council in a very early iteration of the ELR and that the Local Planning Authority is being inconsistent by opposing the idea now. That misses the point by a country mile. The Council in principle welcomes an improvement to the access of the existing sites south of the railway (noting that such improvement may be achieved anyway upon electrification albeit not for some years hence). However, this is not a proposal for a bridge but a promise of funding for a possible bridge whose delivery is manifestly uncertain and it comes at a cost too high to justify.

#### *Conclusions on Employment Issues*

7.71. In his rebuttal (§3.61) JG accepted that to allow Appeal A would involve the loss of 30% of the employment land within the ERYC part of the Hull FEA on the site which has provided the majority of delivery within that part of the Hull FEA over the last 8 years. On a site identified as being of crucial importance to the local economy (existing and prospective) by the LEP, the Council and Hull CC, to conclude that its loss would be a matter of comparatively little moment would be hopelessly misconceived. It is strongly submitted that there are very powerful reasons to warrant the retention of this site in employment use, not outweighed even if there was a deficit against the 5 year land requirement.

#### *Housing Issues*

##### *The Nature of the Appeal Site*

7.72. The appeal site is separated from the settlement of North Ferriby by a substantial area of woodland which provides visual and physical separation. Whilst St Modwen has a lease over the woodland, it is for particular purposes and does not entitle it to create routes through the woodland<sup>25</sup>. On the evidence therefore St Modwen does not have the right to provide such a link

<sup>25</sup> ERYC 31: Advice of Mark Halliwell of Counsel dated June 2014 which, at the time of writing, remains uncontradicted

and the evidence of Mrs Hunt is clear that the Council will not engage with the Appellant to enable what it considers to be an unacceptable proposal. There is no prospect of a Grampian condition being fulfilled so that a condition should not be imposed (NPPG Paragraph: 010 Reference ID: 21a-010-20140306).

- 7.73. JG was strongly of the view that there is no requirement to make the permission contingent upon the delivery of those routes which do not lie within the gift of his client to deliver.<sup>26</sup> Thus, his case is that the appeal site is one which is very well suited to housing and is “highly accessible” (Proof §4.23 & §7.7) despite the fact that one has to walk to the extreme NE of the site to catch the bus. To use the limited services of North Ferriby one would have to walk almost to the trunk road roundabout, walk just to the south of the slip road and then along the north side of settlement before plunging south to enter the eastern side of North Ferriby where most of the services are located. The train station sits even further away and the opportunity to link with it is only on foot or by cycle since it lacks a car park. As for the scale of the facilities, North Ferriby is reasonably well served but lacks the sort of services and facilities of other centres which are scheduled to take significant development in the emerging Local Plan (e.g. it lacks even a proper centre).
- 7.74. Great play was made of the link to the secondary school which is indeed capable of being walked but is hardly on the doorstep of the appeal proposals. The only facility that it is well related to is the existing employment development and that is because what is proposed is the development of half of an industrial estate. In short the appeal site if developed for housing will be predominantly a car borne development and will function as an isolated community which is visually and physically distinct from North Ferriby – a matter of considerable concern in general but even more so for the occupants of the affordable housing. It is about as far from a sustainable form of development as one could imagine.

#### The Nature of North Ferriby

- 7.75. It is presumably for that reason that St Modwen have made objection seeking to elevate North Ferriby to a higher status in the emerging Local Plan. Quite where this issue gets anybody in the determination of this appeal is difficult to understand since JG rightly accepts in his proof that this is a matter to be determined in the context of the LP examination (JG §7.8). However the debate illustrates just how inappropriate it would be to locate a very large “allocation” such as this alongside North Ferriby given its comparatively lowly status in the settlements of ERYC.
- 7.76. The first point to note that is that most allocations are directed to settlements which are plainly much larger and comprise proper towns with a range of facilities and services, such as Beverley, Bridlington, Brough and even Howden. The latter is interesting since in his written work JG seeks to draw comfort from the comparative population level of Howden and North

<sup>26</sup> Little wonder since that would either create a ransom situation in favour of the LPA or give the LPA power to veto the delivery of the development. Since the Council is not willing to enter into negotiations with regard to the delivery of such routes if the appeals are allowed, no reliance can be placed upon them.

Ferriby to support the contention that North Ferriby ought to be a town in the overall hierarchy. It is difficult to see how anyone, let alone a professional planner could have drawn the comparison if they had actually been to Howden. Howden has a vibrant 'proper' town centre serving both its immediate population and a rural hinterland as well as a wide range of services which leaves North Ferriby standing.

7.77. In his rebuttal evidence JG doesn't refer to North Ferriby as a 'town' but as a 'large village' (JG Reb 3.74). SH in his proof (SH §2.34 ) analyses that NLP have made different representations as to the status of North Ferriby over the currency of plan preparation but it is only at the end, with the inquiry looming and presumably the recognition of how out of scale such a development would be with a large village, that JG has changed tack and now seeks to argue that North Ferriby is a town. With respect it just isn't and it does the Appellant's credibility no good to assert the contrary. Thus unlike all of the other towns in ERYC, North Ferriby lacks a supermarket of over 500sqm, a dentist and a district or local retail centre. It also lacks a hospital, leisure centre, police station, full time library and secondary school, unlike many of the 'towns' in the district. In addition all of its facilities are small scale.

7.78. Whilst JG wasn't prepared to accept the point in XX, it is with respect obvious that if the LPA are right that North Ferriby is no more than a large village then the proposed level of housing is demonstrably out of scale with it, comprising as it does, an increase of 32% in housing for the whole settlement for appeal A or 25% for appeal B, with no significant improvement in the level of services.

#### *Housing Land Requirement*

##### *Backlog*

7.79. As Mr Coop recognised in XX, the approach taken in the 2014 Local Housing Study ('LHS') is not in addition to any backlog as against previous policy, but is rather the sort of free standing exercise envisaged by PAS in its advice note (CD L13, Principle 8). The point is confirmed at §4.2 of the LHS and confirmed as unchallenged by SC in XX. Rather it follows the methodological approach of assessing the housing needs from a certain base date (here April 2012) and therefore the OAN is based at a point in time where the only "shortfall" of relevance is to assess whether anyone as at that base point is in housing need. Thus the SHMA assesses what affordable need exists and how it should be met in addition to other needs over the next 5 years. This analysis of affordable housing need has been considered through the LHS.

7.80. This is entirely consistent with the approach advocated by the PAS but is inconsistent with the assertion of JG that the study doesn't take account of the backlog (§8.25). He is completely wrong as to that and he has added in an entirely erroneous component to his requirement. (It is to be noted that a similar challenge failed on this issue see: *Zurich v Winchester* [2014] EWHC 758 (Admin)). Given SC's clear acceptance of this issue, it is baffling that NLP continues to promote that a backlog needs to be worked into the overall housing requirement. Such a contention is manifestly misconceived.

##### *Changing Position*

- 7.81. What really matters is the figures now being relied upon by the Appellant, which SC confirmed in XX is contained within his Supplementary Proof. However it is interesting to note how matters have changed over time. SC's evidence in November last year was that the OAN was within a range 1715 - 1955. In NLP's Local Plan representations in March of this year the same evidence was relied upon, and yet in its evidence produced 3 weeks later it was higher, within the range of 1967 to 2217. During evidence it became clear that SC hadn't addressed the LHS properly and had somehow missed the obvious reference to the adjusted project-on jobs-led figure of an increase in employment across the ERYC of 1001 per annum<sup>27</sup>. As a result of that, SC sought to revisit his figures arriving in a further addendum at figures which then went even higher. The highest figures of all are to be found in his most recent Supplementary Proof (which still increase in the face of falling population projections).
- 7.82. The differences between the figures are complex and will be debated as part of the Local Plan examination, but it is of considerable note that SC's figures have varied significantly over time, always upwards. This should lead to a degree of scepticism when considering the reliance that can be placed upon them.

#### Housing Market Areas and the Borough

- 7.83. There is an obvious geographic factor about the ERYC which is that it wraps around the City of Hull like an annulus. Whilst there is an inter-relationship with other adjacent districts, the major influence by far is the relationship of the Borough to the City (accepted in terms by SC in XX). Thus, when considering the overall requirement of the Borough it is illogical not to take account of the whole of the Hull HMA. §47 of NPPF requires the full, objectively assessed need of the HMA to be met, not the district. Whilst in many cases that does not require one to transgress borders when assessing housing land supply, it is firmly submitted that in the particular circumstances of ERYC it would defeat the intention of §47 if one does not take proper regard of the Hull HMA.
- 7.84. NLP's approach has deliberately set its face against having any cognisance of the very close relationship of Hull and the ERYC, and has treated ERYC as if it were an island despite the fact that the underlying employment approach of ERYC is intended to deliver employment to meet the needs of both ERYC and the City. The LPA's approach is to recognise the symbiotic relationship of the Borough and the City in housing and employment terms, and to arrive at a figure which has been mutually agreed, consistent with the duty to co-operate (ie 1400) and which recognises that the "Policy on" employment scenario seeks to achieve employment growth for both the District and the City.
- 7.85. To characterise the approach of ERYC as using the aggregation of the Borough and the City as if that geographic area was being treated as a proxy for the Hull HMA misses the point. Rather, ERYC recognises that there are

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<sup>27</sup> This is a scenario which takes into account potential job creation across a number of sites across East Riding (see NR PoE para 5.21).

real difficulties in producing an OAN for a HMA rather than a Borough<sup>28</sup>. However there are good reasons to start with assessing what the aggregated OAN should be for Hull and ERYC and then to look at a proper apportionment when establishing what the OAN is for ERYC consistent with §47 of NPPF:

- (i) Whilst there are a number of HMAs which overlap with the Borough of ERYC, only those of York and Hull are of any significance in influencing housing issues (See 2014 LHS §1.10, 2.14, 2.31 etc.)
- (ii) Of those two, the influence of the Hull HMA is overwhelmingly more important than the York HMA (Accepted by SC in XX ). The former encompasses around 50% of the population of ERYC whereas the latter includes only around 10% (The only town of any real size within the York HMA is Market Weighton);
- (iii) City of York Council is pursuing a strategy of meeting its own OAN within its own borders within its emerging LP (confirmed by SC in XX, and referenced in 2014 LHS §6.9 & 6.56);
- (iv) in contrast, policy within ERYC and Hull CC has consistently been to recognise the close relationship of the City and the Borough (2014 LHS §6.53) which is continued with the Joint Position Statement (ERYC 2.7);
- (v) the level of housing provision within ERYC has the clear potential to impact adversely upon regeneration aspirations for the City (LHS 2014 §6.54);
- (vi) the policy-on employment approach which is relied upon by both SC and RW is expressly seeking to provide for expanded employment provision within the ERYC to meet both the needs of Hull CC and ERYC (LHS 2014 §6.55).

7.86. Thus to assess OAN using that figure alone but ignoring the need to apportion the housing requirement in part to the City would comprise an obvious and potentially damaging over estimate of the housing required for the ERYC. Rather the two authorities have assessed that the appropriate approach is to apportion the overall policy-on requirement of the aggregate of the two districts on the basis of 1/3 to Hull and 2/3 to ERYC<sup>29</sup>.

7.87. To ignore the above approach and to focus solely on the housing implications of an employment scenario (arrived at pursuant to the Duty to Co-operate to meet the needs of both City and Borough) but to then ignore the equally important policy implications for the apportionment of that implied housing growth is a logical absurdity. That would result in an outcome which would be manifestly in excess of the OAN for the ERYC and would be to ignore the policy requirement of §47 of NPPF as well as the import of §2a-18 of NPPG

<sup>28</sup> Sub-regional population and housing figures are based upon Local Authority areas not HMAs, as is the Popgroup modelling of Edge (see LHS §6.57)

<sup>29</sup> Without evidential support, in ReX SC contended that he doubted that Hull had the capacity to deliver over 700 units per annum. With respect that is evidentially of limited utility since it must be set against the view of Hull CC that it can – underpinning both the Joint Statement (ERYC 2.7) and its Issues and Options paper.



which expressly endorses the fulfilment of the duty to co-operate when 'feeding in' the employment component of the OAN into an overall figure.

- 7.88. It is right to say that the apportionment has not yet been tested in a Local Plan examination, but there is no evidence before this inquiry that any other apportionment is to be preferred, nor indeed that the apportionment is demonstrably wrong. Rather NLP have sought to argue that such an apportionment is actually an impermissible 'constraint' forbidden by Hunston; and to argue that such an exercise is actually for the Local Plan examination. As to the latter – yes of course it is – but in the particular circumstances of this case the implied employment growth in the project on scenario adopted by both parties goes hand in hand with the need to form a view on apportionment otherwise the decision would be based upon a figure which is manifestly in excess of the OAN for the ERYC.
- 7.89. Thus the LPA's case on OAN, if one were to focus only upon ERYC and ignore Hull, is 1888 units per annum<sup>30</sup>. However, its firm case is that pursuant to the joint position statement (ERYC2.7) of the two authorities, approved by both as a means to formulate their plans, and consistent with both NPPG and NPPF, that the actual figure that should be planned for in ERYC is 1400 and for Hull 725; and that cumulatively those amount to the OAN for the Hull HMA and the rest of ERYC. Therefore the figure against which to assess 5 year land supply is the ERYC component (1400), which has the strong support of the LEP and the City. In *ReX of SC*, it was argued that the LPA's case was flawed since in considering the supply side of the exercise ERYC had only looked at its own district and not Hull. With respect, that is not a criticism since the requirement against which the supply is to be judged is that of the agreed apportionment for the Borough of 1400.
- 7.90. It follows that even if the Secretary of State concludes in the unusual circumstances of this case that the OAN against which the 5 year supply should be judged is 1888 not 1400 then it remains a strong material consideration that such a requirement involves substantially over providing for housing as against combined view of the two authorities<sup>31</sup>. Thus any shortfall against the higher figure which is in the teeth of the joint position statement ought to be afforded significantly less weight.
- 7.91. Such an approach might be said to offend against the approach of the court in *Gallagher & Lioncourt v Solihull* [2014] EWHC 1283 (Admin), which endorses the principle that RSS figures cannot be used as a proxy for OAN, and that OAN must be robustly evidenced and examined. The interest of the case is the observations made by Hickinbottom J. on his interpretation of the meaning of Hunston in practice:

*"88. I respectfully agree with Sir David Keene (at [4] of Hunston): the drafting of paragraph 47 is less than clear to me, and the interpretative task is therefore far from easy. However, a number of points are now, following Hunston, clear. Two relate to development control decision-taking.*

<sup>30</sup> §3.3 LP technical note No2 (EYRC40), based upon the 2012 Revised Population figures (ONS 2014) –this replaces the 1933 figure in the LP technical Note 1 (ERYC32) as well as the former figure of 1875 in the LHS and original evidence.

<sup>31</sup> In *XX SC* accepted that this was an important material consideration in any event

- (i) *Although the first bullet point of paragraph 47 directly concerns plan-making, it is implicit that a local planning authority must ensure that it meets the full, objectively assessed needs for market and affordable housing in the housing market, as far as consistent with the policies set out in the NPPF, even when considering development control decisions.*
- (ii) *Where there is no Local Plan, then the housing requirement for a local authority for the purposes of paragraph 47 is the full, objectively assessed need."*

7.92. It will be immediately spotted that the emphasis is upon the HMA and not the borough and it is this bit that the Appellants have missed. Neither Gallagher nor Hunston dealt with the apportionment of an aggregated OAN between two authorities – and the stance of ERYC is consistent with both – an apportionment of an OAN is not a constraint in the sense of Hunston etc. Thus, the only proper basis upon which the housing requirement can be considered in this context is that contained in the Joint Position Statement.

7.93. Finally, in this regard there has been repeated reference made to the City Plan for Hull as to job creation and the outturn of the Hull SHMA. It is wrong to compare the 10 year objective of Hull City Council in its City Plan to deliver 7500 jobs (ie 750 pa)<sup>32</sup> with the Project On OAN figure produced from Hull's SHMA of 246pa<sup>33</sup> and set out in the Local Plan joint background paper agreed with Hull for three obvious reasons:

- (i) The first is that the reference to jobs in the City Plan is not a reference to jobs in the City of Hull alone, but jobs available for all local jobseekers whether in the geographic boundaries of the City Council or not, so this is not comparing like with like. That is obvious from reading §3.1 of the Hull statement in full which includes: "Hull City Council recognizes to deliver the aspirations within the City Plan it will be reliant on job opportunities being created **beyond our administrative boundaries.**" (emphasis added by LPA). The 246 figure is obviously based upon job creation **within** the Administrative boundaries of Hull CC – thus the exercise invites a comparison of apples and pears;
- (ii) secondly it was never part of the development plan and is an aspirational figure with no formal policy status; and
- (iii) thirdly even if these points had been right, they are superseded by the Joint Position Statement in any event.

#### *OAN – technical issues*

7.94. With regard to the housing land requirement, there is much evidence before this inquiry but there are only a few points which will make a real difference to the outcome of this debate.

<sup>32</sup> See NR appx 11 §3.1 of attached statement to letter from Hull City Council dated 21st October 2013

<sup>33</sup> RW proof table 5.2 p31; and the basis of the joint OAN figure contained in the Joint Planning Statement (ERYC2.7) page 27

- 7.95. There is the habitual issue in this case of what one should do with the 2008 household projections, the 2011 interim projections and the 2012 population projections (A standard or even a South Worcestershire based approach cannot be applied as a matter of course, without looking at the particular circumstances of the East Riding, which is demonstrably different to other parts of the country, as evidenced by the McDonald and Williams research paper (tables 2 to 4, ERYC 17.3)). However the consequences for the debate are in reality very limited.
- 7.96. Both parties agree that one has to have regard to all three and that the demographic scenario is the appropriate starting point, but not the end of the exercise<sup>34</sup>. However, there is virtual unanimity as to what the demographic led figure is from both parties<sup>35</sup>.
- 7.97. Even applying the different assumptions on the Policy-on approach the difference is principally explained by the commuting assumptions. Thus SC's preferred stance is his index figure of ~2200 in his supplemental proof, whereas the LPA's stance is 1888. SC helpfully in his Addendum identifies that the dynamic which makes most difference is that of the commuting assumptions applied by the two experts. Thus it is not intended to do other than to note that there are differences between SC and RW on issues such as unemployment rates (despite adding in further job creation SC has made no further adjustments for reduced unemployment rates), headship issues and economic activity rates (which are hercically high for the elderly in SC's work), but rather to do no more than to say a few words about the dynamic that really makes a difference (in addition to the apportionment issue).
- 7.98. On commuting rates, RW assumes that the urban concentration policies and sustainability led allocations of York and Hull will achieve some impacts. He has made the modest assumption of a 5% reduction in commuting rates. Such an assumption is consistent with York's self contained OAN approach and particularly Hull's regeneration led strategy. By contrast SC assumes precisely nothing, despite agreeing that this is an appropriate sensitivity test to apply. That is to say that the combined efforts of local plans in this sub-region and the strong emphasis upon securing sustainable development will achieve a zero impact in reducing out-commuting.
- 7.99. With respect, to assume that the combined effects of the authorities in delivering one of the most critical aspects of sustainable development will be nugatory would be the antithesis of the sort of positive planning that is now required by NPPF. Thus whilst the Appellant may seek to make the forensically sterile point that 5% is a judgment-based figure rather than an empirical figure, it has the substantial advantages of being both modest and consistent with the aims of all of the relevant public authorities in delivering national policy. By contrast, to use a zero percentage assumption is to assume failure and is not a proper basis to assess OAN. The differences in

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<sup>34</sup> The difficulties of using the 2008 long term trend were explored in XX by reference to the McDonald and Williams RTPI study ERYC 17.3, but in reality the differences that it makes to the outcome relied upon by both parties are marginal, though the import of the work undermines the confidence placed upon reliance upon the 2008 long term rates by SC.

<sup>35</sup> SC Supplementary Proof – approx. 1100 (1081) versus LHS figure of around 1100 (1069) and LP Tech Note 2 1200 (1263 – p4 ERYC 40)

approach of the respective sides could hardly be put in a more stark fashion than this consciously pessimistic approach.

- 7.100. For all of the above reasons, the OAN should be based upon the 1400 apportionment, which is based upon the up to date 2014 LHS, using the most up to date information<sup>36</sup>. The 1400 apportionment is evidenced and clearly stated in both the Housing Requirements and Joint (with Hull) Local Plan Background Papers. Far from being a recessionary-led approach, it delivers important policy objectives and will have the obvious effect of boosting housing locally.

### *Housing Land Supply*

- 7.101. The point was made that the LPA's position on 5 year supply has changed over time, with the suggestion that this has somehow not been well thought out. Aside from the fact that the issue is what the LPA's case is now that is important and not what it was at some past point in time, in fact the changes have been entirely warranted, and evidence nothing more than the LPA doing its job properly in a fair and even handed manner.
- 7.102. SH's proof before the last inquiry correctly reported that the 2012 SHLAA noted that the LPA could only demonstrate a 4.9 year supply. However he was aware that the 2013 SHLAA was in production and when published on the day before the adjourned inquiry it showed that the figure was 7.3 years supply based upon a wholesale methodological change and a review of all sites. In his proof (provided in advance of the SHLAA) he undertook a sensitivity analysis to show what the supply would be if one were to include all of the emerging LP and SHLAA sites and came out with a 12.4 year supply – which if one reads the proof fairly is not the case he was putting.
- 7.103. The only actual changes to the LPA's case arose from firstly the production of the new SHLAA and secondly the subsequent consideration of all of the sites which is an ongoing exercise as part of the LP examination preparation. As to the former, SH explained that some of the big changes between the two SHLAAs were the dropping of around 80% of the old allocations from the supply, the adoption of the Sedgefield approach to housing supply calculation and the acceptance of a 20% buffer.
- 7.104. Following the base date of his assessment he made the compelling point in his evidence that very many of the assumptions which underpin his assessment of sites have since been borne out by applications coming forward and starts being made on site. Similarly some sites where little or no supply has come forward are now coming forward – providing a substantial degree of comfort to any decision maker that ERYC is firmly doing its job to boost housing where appropriate, as well as to resist it where it is not. As set out in Mr Hunt's update of 11 July 2014, 4,840 dwellings on draft Allocations have been approved, or deferred at Planning Committee with delegated powers to approve. This figure has increased by 2,638 dwellings (219%) since proofs of evidence for this inquiry were first exchanged in October 2013, demonstrating

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<sup>36</sup> even the 2011 NLP LHS argued that there was a need to rebalance the housing market in favour of Hull – p30 §5.6. The point is also made in other key documents including Local Plan Joint Background Paper and the Housing Requirements Background Paper

the positive and proactive approach of the LPA in actively promoting and supporting proposals on draft allocations to significantly boost supply. Indeed, even since Mr Hunt's July update, a further 180 dwellings on an emerging Local Plan allocation in Cottingham have been deferred to delegated approval<sup>37</sup>.

#### The Differences

- 7.105. The Appellant has argued that it is for the LPA to prove its case on supply when it comes to reliance upon non-permissions. In fact the obligation is upon the LPA to provide evidence capable of displacing the presumption established by footnote 11 of NPPF, so as to enable the decision maker to form a view. In this instance the LPA has done so – within the SHLAA Appendix B and within SH's Appendix L & M as updated. By contrast JG has provided only information to set against it.
- 7.106. For the permissions and resolutions to grant, JG has undertaken a comprehensive trawl of the sites and provided a view. In respect of the SHLAA sites and the emerging sites he has provided a view in respect of only some of the sites (his rogue Appendix 16) which apparently is not intended to convey NLP's position under the column marked 'NLP position'. Had that column done what it said it was doing then there would be limited scope for the Appellants to argue that there was not a 5 year supply. The appendix looks at 71 draft allocations and only concludes that 7 are not deliverable (total 734 units) whereas 64 are concluded to be deliverable in whole or part (total 6,708 dwellings). Three of the planning permission list are also draft allocations (6th, 7th and 8th) and total 319 units. Thus on the face of JG's spreadsheets, 7027 units are ostensibly assessed as deliverable. In addition 94 further draft allocations have not been assessed at all in JG's appendices (mainly the smaller ones), which ERYC has assessed as totalling 1800 units. Taking the documentation at its face value, it is perhaps clearer why the Appellant was circumspect about its disclosure since it is strongly supportive of the LPA's stance. This was why the ERYC team thought that the table may have been disclosed in error especially after the ballyhoo raised about it when it was first referred to in Mr Hunt's XinC. However the following day the inquiry was told that the document had always been intended to be disclosed.
- 7.107. Happily the inquiry has not been taken on a site by site trawl of sites as sometimes happens at inquiries of this nature, rather there are a number of in-principle issues which lie between the parties. Most importantly, there is no issue on the use of the 20% buffer, the Sedgfield method (though there is dispute as to the backlog it applies to), no dispute about the inclusion of permissions, nor resolutions to grant. Rather the big issue between the parties is the extent to which the draft allocations are included within the figures<sup>38</sup>. As to that, the following points are made:
- (i) Weight: The draft LP is in two parts and is at a very advanced stage as it has been submitted. SH has undertaken an exhaustive trawl through the policies

<sup>37</sup> Planning application 14/01325/STOUTE 'Erection of residential development at playing fields, Castle Road, Cottingham' reported to Planning Committee on 24 July 2014

<sup>38</sup> On JG's assessment 11,156 out of 14,971 sites are draft allocations (74.5%), JG includes none of them in his supply, SH assesses each in detail and includes most

and sites to identify which can be afforded weight and why. For the overwhelming majority of draft allocations there is little or no 'in principle' objection to the site, let alone a "knock out" technical objection. Thus the weight to be afforded to the draft allocations is significant in the light of the relevant guidance within NPPG.

- (ii) **Evidential Support:** The Wilts case<sup>39</sup> held that reliance can properly be placed upon emerging allocations and that even the inclusion within the AMR/SHLAA is some evidence of delivery because one has to assume that the LPA is doing its job properly. However to displace the footnote presumption some evidence is required. Here again there is clear evidence. SH has provided evidence in the form of Appendix B to the SHLAA in which every site has been considered. He has also gone back and reconsidered some sites and revised his yield assumption in the light of subsequent information. Moreover he has informed the inquiry that for the overwhelming majority of cases there is documentary support to substantiate the conclusions in the SHLAA and in Appendix M/L, which can be inspected by anyone at the LPA offices. That has not been reproduced for the inquiry since it is manifestly disproportionate to do so. Nonetheless SH and his team has gone through it and others could have done so. It is an absurd suggestion that because it has not all been reproduced for the inquiry that it ought to be disregarded. This is information which has neither been withheld nor hidden and forms the basis for the professional judgment of SH. There is no proper basis not to act upon it.
- (iii) **Subsequent verification:** the base date of the latest SHLAA is November 2013, thus one can consider what has happened since as a means of ex post facto checking the assumptions reached back in 2013 about a variety of sites. Happily for the ERYC its assumptions have been borne out time and again as robust and if anything on the cautious side. SH produces an up to date

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<sup>39</sup> *Wainhomes (SW) Ltd v Secretary of State and Wilts* [2013] EWHC 597 held that the approach was essentially an evidential one when looking at the components of supply. For sites within emerging plans the following is especially apposite:  
"35. I would accept as a starting point that inclusion of a site in the [emerging plan] or the [annual monitoring report] is some evidence that the site is deliverable, since it should normally be assumed that inclusion in the AMR is the result of the planning authority's responsible attempt to comply with the requirement of [47] of the NPPF to identify sites that are deliverable. However... inclusion ... is only a starting point. More importantly, in the absence of site specific evidence, it cannot be either assumed or guaranteed that sites so included are deliverable when they do not have planning permission and are known to be subject to objections. To the contrary, in the absence of site specific evidence, the only safe assumption is that not all such sites are deliverable. Whether they are or are not in fact deliverable within the meaning of [47] is fact sensitive in each case; and it seems unlikely that evidence available to an inspector will enable him to arrive at an exact determination of the numbers of sites included in a draft plan that are as a matter of fact deliverable or not. Although inclusion by the planning authority is some evidence that they are deliverable, the weight to be attached to that inclusion can only be determined by reference to the quality of the evidence base, the stage of progress that the draft document has reached, and knowledge of the number and nature of objections that may be outstanding. What cannot be assumed simply on the basis of inclusion by the authority in a draft plan is that all such sites are deliverable. Subject to that, the weight to be attached to the quality of the authority's evidence base is a matter of planning judgment for the inspector, and should be afforded all proper respect by the Court."

schedule at his para 4.42 and 4.43 which demonstrates that literally hundreds of units have been resolved to be granted since last November on SHLAA sites<sup>40</sup>, a further 12 schemes (1,737 dwellings) have been subject to pre-application consultation or screening and the Council is aware of ongoing work to prepare applications for a further 33 sites (2,924 dwellings). There was no real challenge to that exercise which substantially underscores the weight to be afforded to the judgments in the SHLAA.

- (iv) Site Specific Challenges: For the limited number of sites for which there was any pressing in XX, both Mr and Mrs Hunt (in the case of Brough) provided clear and compelling evidence as to why their stance was to be preferred.

#### The LPA's position on Supply

7.108. ERYC's evidence to the Inquiry clearly demonstrates the existence of a 5 year housing land supply. Throughout the course of the inquiry despite the regular tinkering, revisions and recalculations by the Appellants (often arising as a result of their misunderstanding of the evidence before them), ERYC have not seen anything to cause them to query the robustness of their own evidence. In fact the contrary is true. As the inquiry has progressed so too has the background evidence base which has simply strengthened the ERYC's position that they have a 5 year housing land supply. The latest position statement at ERYC 38a shows that in all 6 housing requirement scenarios the Council can demonstrate a 5 year supply. The update to SH's proof of evidence, ERYC 39, illustrates that a significant number of permissions have already been granted and continue to be granted on housing allocations in the Proposed Submission Allocations Document. The Appellant has presented no good evidence to suggest why such sites will not continue to be delivered and to argue so simply flies in the face of the evidence of what is actually happening in reality. Quite simply the only conclusion to be drawn from the evidence before the Inquiry is that the Council has a robust 5 year land supply.

#### *Affordable Housing*

7.109. There is an interesting intellectual debate as to whether or not RT has overstated the extent of the shortfall in respect of affordable housing in the district. However even if he has, the LPA do not demur from the evidence of Mrs Hunt that substantial weight ought to be given to the provision of affordable housing in this case, which she accepts is the primary benefit of the proposals. This goes beyond the weight that RT affords it in his proof where he merely says that 'significant' weight ought to be given to this element.

7.110. What did come as something of a surprise was that determinative weight ought to be given to this issue. That is to say that even if there is a 5 year housing land supply then the need for affordable housing would (in each appeal) outweigh the loss of employment land. Following XX of RT it appears that the difference between himself and Mrs Hunt does not relate to the weight to be attached to the importance of affordable housing but rather the

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<sup>40</sup> As of July 2014 38 applications (2,282 dwellings) approved, 16 resolved to be granted (2,551 dwellings), 15 pending (1,062 dwellings)

outcome of the planning balance. This is interesting as it is not RT who carries out the planning balance on behalf of the Appellants.

- 7.111. Whilst what weight is to be attached to affordable housing is what really matters, it is important to note that although the Council has not presented its own witness to deal with affordable housing matters this does not mean that the evidence of RT is accepted. Given the picture painted by RT in XinC regarding the affordable housing need in ERYC it is necessary to pass brief comment on whether this picture is actually supported by his evidence.
- 7.112. RT relies on a number of 'indicators' to show that the ERYC is in an affordable housing 'crisis' which he seemed to suggest is as bleak as he has ever encountered. The first of these is the lower quartile house prices to lower quartile income ratio, which in ERYC currently stands at around 6.46 (RT § 5.24). In XX RT accepted that this was actually below the national average. The next indicator RT relied on was the housing register. His XinC demonstrated how easily this is affected by policy that can result in rapid, dramatic changes to its figures and so clearly it cannot be relied upon in isolation as an indicator of affordable housing need.
- 7.113. At §4.46 of his PoE RT states "The SHMAs contain objectively assessed need and so are the most appropriate bases to use." In XX RT accepted the 2011 SHMA is the most up to date assessment of housing need and that it has been produced in accordance with the relevant CLG guidance. Albeit he caveated his answer suggesting it wasn't an NPPF compliant SHMA, it is obviously a significant piece of evidence upon which he relies. Unfortunately it is a document he has failed to understand, not recognising that it takes into account the backlog of affordable housing need in ERYC. As a result of this his calculation of there being an affordable housing shortfall of 8729 is wildly inaccurate.
- 7.114. As a result of the above, it is simply not credible for the Appellant to maintain that the affordable housing position in the ERYC is as grim as they seek to suggest. It is clear that the threshold for requiring affordable housing has fallen to 10 housing units or more, or 0.33 hectares or more, in the Major Haltemprice Settlements, Principal Towns and Towns. This fall in threshold means more sites will be caught by the requirement to provide affordable housing. RT stated in XX that the foundations for improvement may well have been laid but it will be a while before the results are seen. Well if one looks at his Appendix RT27 it can already be seen that in real numbers there has been an increase in recent years of the delivery of affordable dwellings.
- 7.115. RT alleges at 4.52 that the ERYC will not be able to meet their targeted levels of affordable housing under the Emerging Local Plan. However, as he conceded in XX the basis on which this statement is made is not how the Council proposes to meet this target. The method by which this target will be achieved is set out at Appendix H of SH's PoE. The extent of RT's criticism of this seems to be that it has not yet been tested by examination. The tables attached to this show all recent planning decisions that have been taken by the Council and clearly demonstrate a positive approach towards meeting affordable housing delivery.
- 7.116. Usefully RT has provided, in his addendum proof, two very recent appeal decisions that show the SoS' latest thinking on this matter. In the Offenham



decision at para 8.125 (Appendix RT29, internal page 134) the inspector draws attention to the Council's inability to identify a solution to the area's affordable housing need. That is not the case here. The ERYC has a solution to deal with affordable housing. That solution is found at SH Appendix H, it is a solution that went unchallenged in XX and it is a solution that is already beginning to show results.

### *Prematurity*

- 7.117. The test for prematurity in policy is agreed between the parties (recited at JG §11.2), and it is agreed that a refusal on this basis is rarely justified. That said the four examples cited at JG table 11.1 are all plainly distinguishable: Gretton Road, Marriott Road and Armthorpe<sup>41</sup> all involved Core Strategies at very much earlier stages of preparation whereas the Hatchfield Road appeal<sup>42</sup> is strongly supportive of the LPA's case in this appeal. Moreover recent case law has confirmed that prematurity can properly be a reason for refusal even if there is a demonstrable five year supply deficit<sup>43</sup>. However given the importance of this site to the overall strategy of the Borough it is strongly submitted that prematurity is engaged in this case.
- 7.118. Firstly the hearing sessions are to commence on 7 October 2014 and therefore plan preparation is at an advanced stage. Indeed it seems likely that the future of the appeal site will be debated at the examination in advance of the consideration of this matter by the SOS, creating the paradox of the inspector potentially being asked to report on the same issue almost contemporaneously with the SOS arriving at a conclusion upon the s.78 appeal.
- 7.119. As for scale, one needs to step back and look at the effect of allowing of the appeal upon the housing strategy of the plan. It is not enough to point to the total housing requirement over the plan period and say that that the appeal proposals are only a small element of it. In a rural context a new village the size of North Ferriby (1571 houses) would only comprise 6% of the planned requirement, so that cannot be the yardstick to judge scale. Rather the appeal proposals would comprise 41% of all of the new housing proposed in all of the 24 Primary Villages in the Local Plan (31% for Appeal B) and would involve either a 33% or 25% increase in the overall size of North Ferriby (thereby predetermining its position in the settlement hierarchy, currently tier 5).
- 7.120. It also comprises a 600% increase in the Local Plan allocation for North Ferriby and would be an 1100% increase over the extent of development that the village has accommodated over the last 10 years. Indeed only 11 out of all of the 168 housing allocations in the entire Borough would be larger.
- 7.121. In absolute terms the loss of employment land would be 34.76Ha or 27.04Ha of prime employment land which has been identified as crucial to the economic growth of the City, and for which even the Appellant appears to concede there would be a need to consider looking in a Local Plan context for

<sup>41</sup> CDs E22, D2 and D3

<sup>42</sup> CD E25 - see §25 of the SOS DL and IR §12.14.13 & §12.14.21

<sup>43</sup> CD N/C9 Bloor Homes v SOS [2014] EWHC 754 (Admin)

compensatory land (e.g. the Wykeland objection site or the land south of the railway).

7.122. The considered view of Mr Hunt is that if either of these appeals were to be allowed it would in reality derail the plan preparation process and require a radical rethink of the Borough's strategy in this part of the district and at this tier of settlement. It is about as clear a case of prematurity as one could imagine. The comparative merits of competing land uses simply cannot be assessed at appeal and yet that is precisely what is being pressed at the heart of the Appellant's case, to prefer housing need over employment need. The LP examiner is in a far far better position to judge that. A prematurity reason for refusal is wholly warranted.

### *S.106 & Conditions*

7.123. The LPA's position on the s.106 obligations and the conditions has been set out in correspondence as well as during the inquiry. The points are not repeated here, save to point out that concerns remain with regard to the substance of the obligations, which are flawed in respect of the following:

- (i) the absence of a ready means of enforcing the Unilateral Undertakings against the Luxemburg based owner St Modwen Properties I SARL. The Council considers that if permission is to be granted subject to a UU then it should be backed by an enforceable mechanism, whether by way of bond, guarantee or some other mechanism<sup>44</sup>;
- (ii) the current mechanism which addresses the inter-relationship between Appeal B(i) and (ii) is not drafted with the requisite degree of clarity;
- (iii) the mechanism for the bridge proposes the payment of a finite sum and places the burden of delivery upon the LPA with substantial uncertainties left unresolved<sup>45</sup>. Irrespective of its merits, the mechanism proposed could have been drafted so as to place the burden of delivery (and the risk of the costs of doing so) squarely upon St Modwen. It is also intrinsically defective since it proposes no means of delivering a route to Gibson Lane which is necessary in order to achieve closure of the level crossing;
- (iv) the timescale for delivery of the bridge (5 years) is considered to be unrealistic given the substantial uncertainty as matters stand.

### *Conclusions*

7.124. This is a case which was ill considered when it was originally appealed and has got ever weaker with time. The housing case for the LPA has

<sup>44</sup> It is noted that schedule 7 of appeal B(ii) unilateral undertaking places St Modwen Properties PLC in the position of guarantor of the bridge monies. If the Appellants consider this to be a mechanism which is appropriate in this regard it is unclear why it has not been applied to other obligations. That said it is not altogether clear that this company falls within s.106(1) of the Act, which provides: "...Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation...".

<sup>45</sup> E.g. lack of detailed knowledge of ground conditions, provision of only an initial costing schedule the detail of which has not been discussed let alone agreed with Network Rail, no specifications or plans have been agreed (and even the non-validated application has not yet been considered), the costings of securing rights and consents are unknown.

strengthened over time, as has its employment case with the publication of the ELR and the more recent Siemens and ABP announcement. Moreover the now advanced emergent Local Plan means that a prematurity reason for refusal is now entirely warranted.

7.125. Thus the proposal is in conflict with the development plan, and whilst there are some factors which help to weigh in its favour it is submitted that the planning balance falls decisively in favour of dismissal of both appeals.

## **8. The Case for the Save Our Ferriby Action Group (SOF)**

The material points are:

8.1. On 9th December 2011 St Modwen went to Press with a Press Release concerning the appeal site which claimed, amongst other things :

“... We are already aware from previous consultation we have undertaken during our period of ownership of the land, that there is broad support locally for this type of development”

8.2. No one from St Modwen has given evidence - that statement forms part of the evidence submitted by Mr Garness. He was asked about this in cross-examination for at no point has anyone ever said that there was a demand for housing on this site – it was not put by the ERYC, not a single Ward or Parish Councillor, not the residents. The question was not answered properly. Further Mr Garness could not explain any change of circumstances from the St Modwen Press Release of 10th June 2011 where Mr Bannister is quoted as saying:

“Leasing one of our final units is further evidence of the attraction that Melton Park has to businesses across the region. The multi-purpose site is located within ten minutes of Hull City centre, on one of the city's main routes. It provides our tenants with excellent access to the motorway network and has good transport links to the city”

8.3. Nor could Mr Garness explain any change from that of the St Modwen Press Release of six months later on 9th December 2011.

8.4. This then raises the issue of why St Modwen PLC would then make such a statement, having bought the land in 2006 from Ashtenne with planning permission for light industrial usage. The answer appears to have come from the evidence of Mr Coop.

8.5. The Save Our Ferriby Action Group was not allowed to cross-examine the witnesses from ERYC. This has affected the way the case has been put and the evidence presented, which has prevented the proper and normal testing of the evidence and putting of a case. Therefore, the first opportunity to put to a witness questions about the fact that NLP – the agents and providing the majority of the expert witnesses for St Modwen at this Inquiry - had been employed by ERYC to do the “Local Housing Study” September 2011 was Wednesday 6th August 2014. The witness, Mr Coop, said in cross-examination that:

a. he was not involved but knew how these things work; NLP were appointed probably 2011 – the final report date was September 2011 – it

was a Local Housing Study – it was not based on prime data research – he did not believe there is a conflict because it was updated by GVA later

b. he believed there was no conflict due to it being a ring-fenced piece of work and he also agreed that GVA were competitors to NLP.

- 8.6. In June 2011 St Modwen were successfully leasing an industrial unit on the same industrial development area yet by December 2011 were saying there was “broad support locally” for residential. In fact, there is not and has never been any such support.
- 8.7. It is not disputed that the area in question is one of the most expensive postal codes in the district – Mr Coop agreed that but could not say whether that meant St Modwen had targeted the area and he also agreed that they were a business for making profit like all companies. It is submitted that NLP are also a company working for profit within the world of planning which is relatively small and everyone knows everyone.
- 8.8. Further it is clear from Mr Coop’s answers to cross-examination that NLP are not taking a holistic view of the democratic planning process considering that the hearing sessions into the emerging Local Plan are listed for October and November 2014 and in view of the requirements of the duty to co-operate between areas such as Hull City Council and ERYC. Mr Coop was clear that the case they were putting forward was on the basis that the Plan was in Draft and yet to go through the examination process. It is submitted that without the current situation with the Local Plan, these applications would not have been submitted or the appeals pursued.
- 8.9. For completeness Mr Coop also confirmed that none of the work undertaken to show housing need either for ERYC or their work for St Modwen was based upon prime research. In other words there is no resident/tax payer based data on which they can rely other than the evidence submitted by ourselves and the residents. They have not asked us. This explains why there is no consideration in the Appellant’s evidence or case of the four sites to meet the local housing needs already identified within the emerging Local Plan or the North Ferriby Village Parish Plan 2011. The Appellant has not considered or balanced that freely available evidence within its applications or appeals.
- 8.10. It is submitted that this failure to consult the actual residents of an area with regard to their housing needs is exactly the issue this government sought to remedy with the Localism Act and Neighbourhood Plans. It is of note that North Ferriby Village has a Parish Plan 2011. There are various difficulties with the democratically elected officials for our area some of which is apparent from the statements already before the Inquiry. This has led to the Save Our Ferriby Action Group liaising directly with the Secretary of State Department over obtaining a mandate from residents to lead a Steering Group to achieve a Neighbourhood Plan for the area. In the last two weeks every household has received a leaflet explaining this and asking what they want to happen with responses due 1st September 2014. From those already received there is overwhelming support.
- 8.11. Further evidence to the fact that St Modwen PLC have not undertaken any prime research is that they have failed to undertake due diligence into the site and the contamination issues surrounding it. In cross-examination Mr

Gartland said that the two contamination reports submitted were: "to give the regulatory authority comfort that an appropriate level of ground investigation work had been undertaken to give the statutory authority including the Secretary of State confidence in granting outline planning permission based on the ground conditions".

- 8.12. There are no letters of instruction with either of the reports. SOF regards this as unusual as, without the letters of instruction, no one can work out the basis for the work being done and its parameters. Mr Gartland could not explain the reports submitted and no witness has been brought forward to substantiate or answer for either or both. Mr Gartland could not, for example, explain why the only testing done was so limited not only in terms of area but also substances given the information available and the history of Capper Pass.
- 8.13. What has come to light – bearing in mind the Save Our Ferriby Action Group evidence was heard before that of the Appellant – is that the Appellant has now, as of 11th July submitted STM 29. This is the first statement from the consultants Atkin, is subsequent to an unsigned letter from them dated 30th April 2014 submitted within the Inquiry process by the Appellant, and is, in effect an admittance that they have not investigated properly at all the issues of contamination on this site and that adjoining.
- 8.14. They are now responding to the Save Our Ferriby Action Group evidence of contamination contained primarily in the statements and exhibits of Mr Towse and Mr Dykes. It is clear that they have not addressed the issues from publicly obtainable information – a desk top survey that could have included the information on our own website – and have not even tested properly or at all for the substances listed by the HSE following the closure of the RTZ/Capper Pass smelting works.
- 8.15. Further they have, as of Tuesday 5th August 2014, put in an application for a bridge which is referred to in Appeal B. It was at the end of the Friday 9th May 2014, after hearing half of our oral evidence, that the Appellant said a request for screening of the bridge application would be put to the Secretary of State but that, as Appeal A and Appeal B had not been found to be EIA development, that he did not envisage it being required for the bridge. Both these Appeals should have been subject of EIA. The evidence submitted by the Appellant is, quite bluntly, wrong.
- 8.16. As night follows day, if the Appellant's position after hearing the evidence of the Rule 6 party is that the bridge application should have an EIA screening then it follows that these appeal applications should too, in particular Appeal B. Something has gone dangerously wrong within these proceedings with regard to the health and safety of the public. This cannot be remedied via the use of conditions. The conditions cannot be accurate because the underpinning information is inadequate and wrongly undertaken by a company whose instructions are opaque and whose involvement is seriously compromised by their failure to address the issues – which are after all their expertise – before the Rule 6 party was ever involved.
- 8.17. The remedy or remedies concerning the RTZ/Capper Pass site and surrounding land cannot be achieved within these proceedings. It is for another place and time. So this is NOT over, for we are all still living here and

are not passing on to another generation this apparent contempt for human life and the pain and suffering this contamination has already caused. The contamination issue cannot be understated and we will not stand by and see that legacy of misery and suffering passed on through incompetence, negligence, greed, inertia and an attitude of profit regardless of the cost to others.

- 8.18. It is enough to remind all that within the evidence of Mr Towse dates and amounts in tonnes of contaminated dust swept up from Brickyard Lane which would have blown, due to the prevailing wind, over the surrounding area are detailed together with the failings of no less than 20 public bodies over the decades to prevent the contamination and no fewer than four Early Day Motions in Parliament. No evidence of remediation of the site has been provided by the ERYC to support the bald statement only in writing of Mr Menzies that there has been £6 million remediation of the site. There is no rebuttal evidence at all to that asserted by the Save Our Ferriby Action Group by either party.
- 8.19. The reference within the statement of Mr Menzies is not supported by any documentation. It was not pursued in Evidence in Chief or Cross Examination. SOF has not been allowed to cross examine any ERYC witness. There is nothing in support of that statement at all from ERYC, and there is nothing in the public domain (bearing in mind Save Our Ferriby Action Group has been researching this for 3 years, a resident for over 10 years and we have the benefit of documentation from Rilba Jones who, as a Health Visitor, was the original whistle blower on the contamination and has been campaigning for decades to get the site and surrounding area issues resolved).
- 8.20. It should be noted that there are three parts to dealing with such a site: demolition, clearance and remediation. From the ERYC minutes, ERYC documents held within the public domain and the conditions attached to a planning application by Ashtenne, subsequently withdrawn and not pursued (the planning application itself has been referred to by the Appellant but not the conditions) it is clear that any reference to remediation would in fact be demolition and clearance and making safe NOT remediation and that the land contamination within both the factory site and surrounding area has not been addressed.
- 8.21. The lack of remediation of the land is further supported by the £6 million claim of Mr Menzies – it is simply nowhere near enough money even back then in the 1990s – the money should be tens to hundreds of millions of pounds in terms of remediation costs and also the land value when sold was not enough for the size of site and its location had it been fully and properly remediated.
- 8.22. Further issues not addressed or considered by the Appellant include the impact of a rise in interest rates on the housing market (evidence of Mr Coop), the concerns of MPs as reported in Hansard 24th October 2013 (Mr Tetlow, RT3), there is no criminal impact statement and no explanation for the ongoing breaches by St Modwen as leaseholder regarding the management of Long Plantation Wood. In addition there are no costings for

the contamination issue and the issues raised with the Save Our Ferriby Action Group Statement of Case 3rd January 2014 have not been addressed.

- 8.23. In short, no evidence has been brought by the Appellant, to undermine the case of the Save our Ferriby Action Group so that the evidence of the Rule 6 party is to be preferred.
- 8.24. In addition the self-serving nature of the evidence for and on behalf of the Appellant and its errors whether by omission or otherwise is not to be given weight. Of particular concern is the way in which the Appellant has sought to manipulate the planning system to its own financial profit without acting responsibly.
- 8.25. It has been a long held principle that no party to proceedings should be permitted to profit from doing wrong. The principles are laid down within case law under what lawyers would know as estoppel. The Save Our Ferriby Action Group has, without its case or evidence being undermined in any way by either of the other parties, acted at all times with 'clean hands'. The Appellant has manipulated both the market and conditions for their own benefit.
- 8.26. It is commended to the Secretary of State to reject the appeals and particularly Appeal A, to which the Save Our Ferriby Action Group is a Rule 6 party.
- 8.27. Further in addition to the evidence given over the land being of amenity value to residents and the wider community as reflected in the signs put up by St Modwen, at the site visit attention was drawn to the red and white health and safety tape around the hay stack. Of course if the fields were not in public use then the tenant farmer would not have to tape off the hay stack.

## **9. The Case for St Modwen Developments Ltd**

The material points are:

- 9.1. This case is about:
- New housing development on employment land
  - New housing in a high demand area
  - Mixed use development
  - Delivery of significantly above policy levels of affordable housing
  - Opening up brownfield land for employment use
  - Private sector funding of road and rail infrastructure
  - An out of date local plan
  - A huge shortfall in the five year supply of housing land.
- 9.2. The Council's arguments are high on hyperbole and rhetoric but low on actual evidence. For example, the issue of employment land take up is glibly dismissed as "confusing arithmetic" yet it is tangible evidence of take up rates and completely undermines the Council's case. It is suggested the site is a truly rotten site for housing yet this major family housing proposal is 1 mile from a major popular secondary school, within walking distance of a main line

railway station and located on the multi-modal corridor into Hull with regular bus services.

#### *Failure of the Development Plan*

9.3. The local plan was adopted in 1996, the better part of two decades ago. It had such a long gestation period that it actually became time expired in 2002. If ever there was an example of a failure to ensure an effective and up to date development plan for the area, it must surely be this one. The JSP with Hull City Council is an old strategic document, but a Core Strategy/Local Plan it is not. The Saving Letter makes clear that the Secretary of State was not endorsing those policies. He was simply saving them. That letter was a full decade after the plan was adopted and makes clear the Council should adopt a new Core Strategy as soon as possible. That was nearly 7 years ago. In the absence of an up to date plan, the policy to follow is the NPPF. That is the focus of the Appellant's case and these submissions.

#### *The Presumption in Favour of Sustainable Development (the presumption)*

- 9.4. The Council accepts there is a presumption in favour of sustainable development. The absence of an effective development plan for the area means the presumption applies to both of the appeal proposals. For any LPA that is extremely damaging to their prospects of winning any appeal. The Council recognised that and tried to wriggle out of it at the 11th hour. It remains in there and in the XX of Mrs Hunt, she properly accepted it does apply to these appeals. But that episode was most revealing because the Council recognises what the presumption means both literally and in terms of the signal that it sends to the Secretary of State.
- 9.5. Under the presumption, the test is one in which the adverse impacts of the appeal proposals must significantly and demonstrably outweigh the benefits. As agreed with Mrs Hunt in XX, that does not simply mean the Council have to demonstrate significant harm. Even if there is found to be significant harm, the proposals are still capable of being outweighed by the benefits. That is very evident from the Burgess Farm SoS decision (CD D18), which was only the second one to be determined under the NPPF. The Secretary of State rejected the Inspector's recommendation for refusal and granted planning permission, despite accepting that there were substantial environmental disbenefits (DL, para 28).
- 9.6. The presumption in favour of sustainable development is a very high hurdle but that is surely the point of why it was introduced. Any development which delivers benefits therefore already begins with a head start. Where a proposal significantly over-provides on key material benefits, the hurdle becomes close to insurmountable for an LPA. An Appellant who understands the effect of the presumption can elect to enhance the already significant benefits of a new housing proposal with, as here, very substantial over-provision of affordable housing. The Secretary of State plainly believes such over-provision is critically important<sup>46</sup>.

<sup>46</sup> see the Sandbach appeal decision: (APP/R0660/A/10/2141564, RT, Appx 20, pp 54 -55 paras 26 and 27)



9.7. The extensive benefits of the appeal proposals include:

- the delivery of significant affordable housing on both schemes, in the face of an acute need (1,008 units each year<sup>47</sup>); where there has been dismal past performance on affordable housing (45 units a year<sup>48</sup>); and where the York, North Yorkshire and East Riding LEP Strategic Economic Plan acknowledges that the lack of affordable housing will constrain local economic growth, provision needs to be “tripled” and availability is critical to a strong labour supply<sup>49</sup>;
- significant new market housing to add competition and choice in the local market area and price benefits to the community in that part of the Borough with the highest house prices<sup>50</sup>;
- specific dedicated housing for the elderly and care facilities again offering competition and choice in the area;
- the construction jobs, as acknowledged by local business leaders<sup>51</sup>;
- - net additional expenditure generated by new households each year of £1m (£805,000 for appeal B)<sup>52</sup>;
- very large areas of publicly accessible open space, with significant ecological enhancements;
- a local centre facility to serve not only new residents, but existing residents at Melton (especially south of the A63) and all those employed on the industrial estates and office developments; and
- support for local shops, services and facilities in North Ferriby (which have been diminishing in number).

9.8. Add further to the equation an Appellant willing to compromise on the alleged harm (even when it is not accepted to exist), as with St Modwen who have put in a revised appeal scheme retaining all of the land west of Brickyard Lane for future employment purposes, and even the Council’s own case on alleged harm is significantly and materially diminished.

9.9. In this context and applying the presumption, the case in favour of the Appellant is overwhelming from the outset. One only needs to look at the decisions of the Secretary of State since the NPPF was issued. He has effected a volte face and has granted the vast majority of proposals which have come before him, which has given great encouragement to the development industry. These include the two most recent decisions at Long Marston and Droitwich, both in Wychavon (RT AAPoE, Apdx 28 and 29). It is important to note that Wychavon is a Council which is further on in the development plan process than EYRC. At the time of both inquiries, it had already begun the Examination process and by the time of the decision had

<sup>47</sup> CD F13, SHMA, pages 42- 44: Figures 5.8 to 5.10

<sup>48</sup> RT PoE para 2.19, page 4

<sup>49</sup> CD N/M27, page 33

<sup>50</sup> Launceston decision, STM2, para 52; CD F13, SHMA, pages 42- 44: Figures 5.8 to 5.10

<sup>51</sup> York, North Yorkshire and East Riding LEP Strategic Economic Plan (N/M27, page 33):

“Housing construction itself provides investment and a flow of skilled jobs both directly and in the supply chain. This local workforce then spend their incomes on local goods and services.”

<sup>52</sup> JG PoE para 7.19 and 12.26

already received approval of the housing requirement from the Local Plan Inspector.

- 9.10. In terms of the application of the presumption, add to this equation the Appellant's emphatic view that the Council does not only have a shortfall in the supply of housing land, but a shortfall of over 10,000 houses (Table 3c, Index Approach) then it is little wonder that the Appellant believes the 510 scheme is completely justified and if the Secretary of State grants permission that is the permission which will be implemented (Section 106). It was the clear view of RT in EIC that he felt the 510 scheme is the one which should be granted.

*An Agreed Persistent Record of Under Delivery of Housing*

- 9.11. The Council accepts that it has a persistent record of under delivery of housing. Each and every year since 2008 it has failed to deliver even the requirement of just 1,150 in the RS<sup>53</sup>. The Council has not formally published the figures for 2013/2014. Mr Hunt confirmed that it will be yet another year in which they have failed to meet the target which is supported by the Interim gross housing figure in the 2014 SHLAA methodology consultation paper. That is now six years of persistent under-delivery in the face of a significant upturn in the housing market in 2013 and 2014.

*Acute Problem with the Delivery of Affordable Housing*

- 9.12. The significance of this proposal is not just the over-provision of affordable housing, but also the context for that over provision. Delivery of affordable housing has virtually collapsed in ERYC. In the period from 2004/2005 in the height of the housing boom until the latest figures published by the Council in 2012/2013, the Council has delivered on average only 45 units a year<sup>54</sup>. That is a dismal performance. The decision to reduce affordable housing provision in the emerging Local Plan to a figure which is 15% below that set out in the RS, and up to 35% lower than the RS in Goole, raise such concerns that RT considers it "wholly inadequate" (RT end of EIC).
- 9.13. The reason "dismal" is an appropriate description is that the rate of long term delivery has to be measured against the Council itself having identified an annual need for 1,008 units a year for the period 2011 to 2016 and delivered only 385 in the first two years.
- 9.14. RT highlighted the language of the Inspector in the Secretary of State's most recent decision from Droitwich<sup>55</sup>. In granting planning permission the Secretary of State was accepting the Inspector's reasons<sup>56</sup>. As RT observed, this was an Inspector being overtly critical and aware of the reality and consequences of the affordable housing problem. RT's view is that the position in ERYC is worse (RT EIC). Yet his words are entirely appropriate in the context of the (former) Planning Minister having made clear that there is a

<sup>53</sup> SCG, para. 9.2

<sup>54</sup> RT AAPoE, para 2.19

<sup>55</sup> RT AAPoE, Apdx 29, pages 133- 134 – paras 8.122 – 8.126

<sup>56</sup> Ibid SoS DL para 23

national housing crisis<sup>57</sup>. That is precisely why the NPPF is explicit that each and every LPA in the country needs to boost the supply of housing delivery and to do so significantly.

- 9.15. The crisis is relevant to ERY because the Council needs over 1,000 affordable housing units a year; its past track record is 45 a year set against the backdrop of a persistent record of under-delivery of housing. As the LEP notes, lack of affordable housing also creates problems for business<sup>58</sup>. Moreover, the lack of a local labour force was specifically highlighted as a concern about Melton in the 2009 ELR<sup>59</sup>. As RT observed in XX, no one is talking about a crisis in the delivery of employment land in this country.

#### *Housing on Employment Land*

- 9.16. Whilst the Council might think that the loss of employment land to housing is a concern, the Government seems very much less concerned. It clearly envisages housing where some LPAs would prefer to see employment, as a way of addressing the housing crisis. That this is Government policy is very clear from NPPF<sup>60</sup> Paragraph 51. It is qualified by LPAs being able to show there are "strong economic reasons why it would be inappropriate", but the direction of travel in Government Policy is obvious. Changing purpose-built buildings from employment use to housing is one solution. Using employment land before the buildings are erected is obviously much more straightforward. Decisions for major housing proposals under the NPPF have released sites in a variety of locations<sup>61</sup>. But what STM12 reveals is there has not been a decision by the Secretary of State in respect of a major housing proposal on employment land. The industry looks for such a decision here.
- 9.17. A major housing development was allowed on a prime employment site earlier this year, the Trentham Lakes case. It is a document to which the Appellant invites the Secretary of State to have particular regard in the context of this case<sup>62</sup>. As JG observed, there are clear similarities with this appeal (labelled within STM22.2 as Trentham West). The number of houses was similar in scale to the appeal proposals, particularly Appeal B. The land was considered to be oven ready for development and to make a significant contribution to employment land (para 1 of the appeal decision). It was "widely regarded by other respondents as offering the best 'oven-ready' general employment site in Stoke at present<sup>63</sup>". It is interesting to note that the Inspector only thought it necessary to examine the supply in the short to medium term (para 34). Worrying about the end of a plan period is over cautious. Towards the end of the plan period one should of course be looking to potentially de-allocate land not yet developed.

<sup>57</sup> RT PoE Apdx 3, page 20, 2nd Column (highlighted text)

<sup>58</sup> CD N/M27 pages 73 and 74

<sup>59</sup> CD F7, page 127, paragraph 8.63

<sup>60</sup> Para 51: 'They should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area...'

<sup>61</sup> Eg greenfield land in the Cotswold AONB; CD D6 and D12

<sup>62</sup> STM 01, 08, 09 and 22.2

<sup>63</sup> STM09 para 3.2.32; STM 01, paragraph 54

*St Modwen Developments: Major New Entrant to the Housing Market*

9.18. St Modwen is the UK's leading regeneration specialist and is experienced and successful in delivering large, long term and often complex regeneration projects<sup>64</sup>. It controls large areas of land across the UK, including brownfield land. Whilst it is new to the housing market, as at November 2013 St Modwen had a total of 1,400 acres of largely brownfield land either allocated or with planning permission for residential development, representing almost 22,000 homes<sup>65</sup>. St Modwen Homes has already won the "Best Small House Builder of the Year" Award in 2013, as well as "Best House Design"<sup>66</sup>. If permission is granted, St Modwen Homes will develop the site with two other housebuilders<sup>67</sup>. St Modwen however looks to deliver both housing and employment. That is also what they are doing elsewhere. St Modwen has developed land north of Monks Way for employment units and with the 510 dwellings scheme (Appeal A) would retain 10 hectares of land, most of it in a single large 9 hectare parcel on its land between Brickyard Lane and Gibson Lane to the west<sup>68</sup>. With Appeal B, what would be retained is 18 hectares of employment land, mostly between Brickyard lane and Gibson Lane<sup>69</sup>. The availability of employment land to create extensive mixed use in this area is enhanced further by the position of Wykeland.

*Mixed Use Development*

9.19. The appeal site already lies in a zone of transition between existing housing and employment uses<sup>70</sup>. There is housing to the east (North Ferriby) and north (Melton) of the site and employment development to the west and south. The NPPF is clear that the Government wishes to see the promotion of mixed use developments<sup>71</sup>.

9.20. Appeal B is a genuine mixed use development. It is revealing that on behalf of the Council, Mr. Hunt had such difficulty in accepting this completely uncontroversial proposition in XX. The 390 dwellings and 7.7 hectares of employment development would be in addition to the 10 hectares of other employment land. The land use would therefore divide between 27 hectares of housing land, leaving 18 hectares of employment land<sup>72</sup>. That is in addition to around 20 hectares at Melton West and a further 10 hectares accepted to form part of the supply south of the railway line: a total of around 50 hectares. Mixed use can be achieved across a site or across a wider area. The 510 scheme is also mixed use, but is more accurately described as a largely residential scheme. Genuine mixed use, in the context of this larger housing application, would need to be considered at the Melton-wide level, rather than the site level. The employment land remaining available to the west, north and south of this site would still be 40 hectares.

<sup>64</sup> JG RPoE, para 3.54, p 27 and JG RPoE, Apdx 16-18; Apdx 15, first page, third para.

<sup>65</sup> JG RPoE, para 3.52, page 26 JG RPoE, Apdx 19, page 2, third paragraph

<sup>66</sup> JG RPoE, page 26, para 3.52

<sup>67</sup> JG RPoE page 26 para 3.52 and Apdx 19

<sup>68</sup> JG PoE, page 81, Fig 10.4

<sup>69</sup> JG PoE, page 81, Fig 10.4

<sup>70</sup> JG, PoE, page 41, para 7.13

<sup>71</sup> NPPF para 17(8)) - twelve core land use planning principles

<sup>72</sup> JG, PoE, pages 81, Figure 10.4 and 82 at 10.49

- 9.21. This is on top of all the employment development which already exists. It is therefore appropriate to say the area already has significant employment development at Melton West, some at Melton Park and Melton South (south of the railway).
- 9.22. Only 16.59 ha of the appeal site is allocated for employment in the adopted Development Plan. It has been allocated since 1996. Through the emerging Local Plan, very significantly more is now proposed - over 60 hectares. Against this, the emerging Local Plan proposes to develop only 5 houses a year at North Ferriby for the next 17 years and none at Melton. In the context of the NPPF and the core planning principle of promoting mixed use, it is simply perverse. In the context of much existing employment use north and south of the railway, and more particularly with so much more planned, the idea that 5 houses a year is a good match is not credible, particularly for a settlement the size of North Ferriby containing a population similar to towns such as Howden.
- 9.23. Developers should not have to await the expiry of an 18 year period to develop land for mixed use. The Secretary of State has demonstrated on many occasions he is perfectly willing to grant planning permission for housing outside of the plan process. Mixed use on the appeal site should of course be completely uncontroversial. Development including 800 new homes on the appeal site (and beyond it) was recommended for approval by the planning officers of the Council in 2000. Whatever the justification for partial funding of the GSJ, professional planning officers do not recommend approval for 800 houses on a site which is inherently unsuitable and unsustainable.

#### *Highly Sustainable Location for New Housing*

- 9.24. The site is in an appropriate location for residential development occupying a highly sustainable location on the multi modal corridor (the MMC). The corridor is highly urbanised with major transport infrastructure, large employment areas and strong connections to Hull and is fundamentally more sustainable than other more rural areas to the north<sup>73</sup>. It is next to North Ferriby which has an existing population of nearly 4,000 people, well established shops, facilities, pubs, churches and a primary school. There is also a main line railway station, bus services and a secondary school within walking distance. There is also access to employment opportunities throughout the area. In nearby Brough there is already a superstore and soon to be a significantly greater retail offer. Higher order goods and services, plus extensive employment opportunities are available in Hull.
- 9.25. The majority of these facilities and services are within walking distance. Modern lives are more complicated than simple linear movements, with linked trips and time constraints making the car an attractive option for those that have access to one. Not everyone would walk but there would be the opportunity to use alternative modes of transport. Serious questions will be raised as to the settlement hierarchy as part of the Local Plan examination. Little weight can be attached to that hierarchy and North Ferriby's position within it at this stage. SH's attempts to dismiss most representations to the

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<sup>73</sup> JG PoE, page 39, para 7.7

emerging local plan on the basis they are made by developers with vested interests fails to recognise that concern works both ways. LPAs controlled by elected members have equally significantly vested interests to their electors, especially the most vociferous. RT made the point in EiC that in his considerable experience the appeal site is a good location for those in need of affordable housing because it is highly accessible to the MMC, a secondary school, employment and retail. But the recipients of this housing and others in need have not been heard at this inquiry. Sadly, that is often the case. RT's conclusion in EiC was that there is a real opportunity for the development to be very sustainable, in contrast to the Secretary of State's most recent permission at Pebworth<sup>74</sup>.

9.26. The Council has not presented balanced and credible evidence on the issue of the sustainability credentials of the site for housing. This was revealed in the XX of Mr Hunt. Despite the fact the site is close to a secondary school, his evidence sought only to emphasise that the school was not in North Ferriby. In the context of East Riding, this must be one of the best located sites in terms of proximity to a secondary school. That has no relevance to the proposed employment use. But for a housing site it is exceptionally important because it is a facility which families with secondary school children would use every day for most parts of the year. Rather more important one might think than proximity to a GP.

9.27. Direct access to North Ferriby is provided along the existing modern purpose built walkways and cycleway. The Appellant owns two properties on the Plantation Drive and has a long lease of Long Plantation and can provide access through to the appeal site. It strongly refutes the suggestion that it cannot be provided on the basis of the Long Lease. Mrs Hunt made clear in XX the Council would need to consider the issue in the light of permission being granted and accepted there is a further public benefit for residents in North Ferriby having direct access from Plantation Drive area to the employment areas and the large areas of public open space within the site. The Appellant's case is that this access is not considered necessary, but if the Secretary of State believes it to be a major benefit then it will be provided and can be secured by way of a Grampian condition.

*No Technical or Amenity Objections:*

9.28. There are no technical objections from the Council or statutory consultees. There are no objections on grounds of highway capacity, highway safety, flooding, drainage, contamination, noise, air quality or archaeology. There is also no objection from the Council or statutory consultees in terms of ecological impact, landscape impact or visual impact or residential impact.

*An Oversupply of Employment Land*

9.29. The weakest aspect of the Council's case is actually the very reason it was refused: the concern about the loss of employment land. This is a Council with so much employment land that it has to de-allocate employment land through the Local Plan process.

<sup>74</sup> RT AAPoE, Apdx 28, page 56 of 132, para 193

- 9.30. The ELR, published in March 2014, refers to East Riding having 443.02ha of available employment land. This figure includes 79.6ha of land at Hedon Haven, which the Council seeks to ring-fence for the renewable sector, but then wishes to rely on the renewable sector when it comes to the site at Melton. That is not credible. There is no real attraction for any business in the renewables sector going to Melton. Removing the near 80 hectares from Hedon Haven leaves 373.54ha of employment land in the District. Moreover, there are others who are actively promoting excellent employment land in the well-established employment market at Goole and Howden, which the Council is refusing to allocate.
- 9.31. The Council narrows the category down even further suggesting only prime employment land should be looked at. But even this tightly defined category enjoys ample sites across the ERYC and Hull, as at Trentham Lakes<sup>75</sup>. Some of those sites are in the EZ, including Brough which is located only 2 kilometres away. As for the renewable sector, the proposed allocations of land at Hedon Haven are due to be extended to cover an area of around 200 hectares.
- 9.32. The Council sub-divides the District and would prefer attention to be only focused on the area around Hull, thereby seeking to ignore the clear market signals about the strength of Goole as a location for new employment. In the prime category in the Hull FEA the appeal site is in direct competition not only with all the land at Melton West, but also office development at Bridgehead, where it is clear some non-office use has been permitted, and Kingswood<sup>76</sup>. Land also remains at Priory Park (also allocated as a Strategic Employment Site in the Joint Structure Plan), a sizeable proportion of which has been lost to car showrooms, retail and leisure uses in response to limited demand for employment premises<sup>77</sup>.
- 9.33. The fact is that in East Riding there are huge amounts of employment land. The Council's case seems to reduce to the absurd because they end up arguing the Appeal site is the only available prime employment land in the Hull FEA, but only that part of the Hull FEA that is in the East Riding which is not designated for the renewable sector and is not in a EZ, which is in a location called Melton. Only it's not. There is of course Melton West and then the rest of Melton Park. Wykeland is actively promoting more employment land at Melton West which the Council is actually resisting. That makes a complete nonsense of the Council's entire case. Add to that the 10 hectares to the south of the railway line, which had to be pointed out to the Council that it should have been included.
- 9.34. That is even before all the employment land identified in the ELR<sup>78</sup>. Whilst there are a variety of constraints identified, the common theme across the sites south of the railway line is of access constraint whereby the land is marked down because of the difficulty of crossing the railway. The need for a bridge has been known for years. It is set out very clearly in the 2009 ELR, 5

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<sup>75</sup> STM1 paragraph 29

<sup>76</sup> allocated as a Strategic Employment Site in the Joint Structure Plan; proposed employment site in the Hull Local Plan Issues and Options Consultation Document NR PoE, Apdx 5A p19

<sup>77</sup> DG PoE, paragraph 10.7

<sup>78</sup> JG PoE, page 87: Figure 10.5

years ago. The Council has already discussed the matter with Network Rail who are recorded as saying:

“Finally, NR are reluctant to see any increased traffic over their level crossing and stated that any sizeable allocation south of the railway should seek an alternative means of crossing the railway than by the existing level crossing with their preference being a bridge though this would have a significant cost implication.” (emphasis added by Appellant)<sup>79</sup>.

#### *A new Bridge over the Railway*

- 9.35. The Appellant does not accept the Council’s claim that to replace the land north of the railway with housing would seriously undermine the competitiveness and economic growth of East Riding, due to the plentiful supply of other employment land. The Appellant promotes the scheme for 510 houses on the basis that there is no real harm. In the event that the Secretary of State is not persuaded by the Appellant’s position, the revised proposals seek permission for significantly less housing, retaining all of the land west of Brickyard Lane for employment purposes (18 hectares). It is only if the Secretary of State is not content with even this revised proposal that the Appellant proposes that, instead of significantly over providing affordable housing, the additional cost of such over-provision (£6m) will be used to fund the Bridge.
- 9.36. A planning application for the Bridge has been submitted following 6 months of work, complete with a detailed ecological report, a Habitat Regulations Assessment, an archaeology report, a noise and vibration report, an air quality report, a transport statement and a contamination report. This has all been as a result of formal pre-application discussions with the Council.
- 9.37. Funding for the full costs of the bridge plus a £1m contingency is to be achieved through the unilateral undertaking. The bridge proposal has been established with the involvement of two firms of solicitors acting on St Modwen’s behalf. For the last 3 months the Council has consistently and persistently refused to engage in this issue. That is not taking a positive attitude to new development.

#### *Rationale for the Appeal Schemes*

- 9.38. St Modwen, having purchased the site in January 2006, has marketed it ever since. Speculative development did take place, but the market for that then collapsed. It is only in the context of the absence of demand for the site for employment; the granting of permissions for speculative employment developments elsewhere; the granting of Enterprise Zone status for sites elsewhere, showing the priority being given to other locations (including Elloughton-cum-Brough); the approval of housing on employment sites; and the clear absence of a 5-year housing land supply that St Modwen decided that use of part of their landholding for housing would be appropriate. The context of the proposal is a really serious shortfall in the supply of housing in the District. That the Council is in a completely unacceptable position is

<sup>79</sup> CD F-7, page 130



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demonstrated by the fact that it has had to concede that there is a persistent record of under-delivery<sup>80</sup>.

- 9.39. The Council's case is that the emerging Local Plan is the answer. But that plan is too little and far too late. Even when the plan is adopted that does not ensure the delivery of houses. Development proposals take a significant time to progress. That is the very reason why there is not meant to be any break in the continuity of plan coverage, let alone 14 years and counting.
- 9.40. With no up to date adopted development plan in place and a persistent record of under delivery, it is hardly surprising that the delivery of affordable housing has virtually collapsed. It has become a separate major and serious problem in East Riding. The Appellant has responded to this problem through the appeal scheme. The Council has decided to significantly reduce the quantum of affordable housing on new development from the RS figure of 40% to just 25% for reasons which are opaque.
- 9.41. Between 2004/5 and 2011/12 there was a net delivery across the whole District of just 178 affordable dwellings, which is just 22 a year. The 179 proposed on this site is over eight times the annual average over those past 8 years. The 510 dwellings scheme would deliver 51 dwellings over and above the Council's stated requirement. At Brough, the level of affordable housing is set at just 10% in the section 106, although it is to be reviewed after the first phase, meaning for those first 200 dwellings just 20 affordable homes will be delivered.
- 9.42. It now seems the Council's approach to the delivery of this enhanced level of affordable housing is to question its viability. This argument is baffling. It may be that the Council has looked at the situation at Brough and drawn a parallel. But that fails completely to appreciate that whilst Brough is laden with infrastructure costs, no such costs impact on the appeal schemes. The Council's case on this matter is unconvincing and is simply an attempt to undermine an application in which the Appellant will be legally bound to provide 35% affordable housing.
- 9.43. The Hull Borders HMA where the appeal site is located has the highest house prices in East Riding. It is also a preferred destination for newly forming households and those on the housing register. There is a clear and specific need for affordable housing in the locality. Between 2004/5 and 2011/12, affordable housing has accounted for only 8% of all housing completions resulting in an accumulated backlog of almost 7,945<sup>81</sup> affordable housing dwellings. The Council's SHMA (2011) shows the housing market is dysfunctional.
- 9.44. The delivery of housing and the delivery of affordable housing is a major problem in the ERYC area. That is having really serious implications for local people who want and need new housing. The former Planning Minister has made his views very clear, especially when expressing his real concern about the average age of first time buyers creeping up and in part of the country is now nudging at 40. His view is that in this country we are suffering a housing

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<sup>80</sup> see SCG para 9.3

<sup>81</sup> Inspector's note: This was amended to 5360 in RT's evidence

crisis. Those Councils without appropriate development plans in place, who have a persistent record of under-delivery are compounding the problem very significantly. This proposal responds with a real commitment from the Appellant to deliver.

- 9.45. The proposals would also deliver housing and high quality care facilities for the older generation. The SHMA estimates that by 2028 a total of 30% of the population will be aged 65 plus and more significantly the percentage over 80 will double. The ageing population will be a key strategic challenge.
- 9.46. Appeal B offers less housing to solve the housing problems and affordable housing problems of the Council, leaving more of the land for employment use. The Council is wrong to suggest the Appellant is not committed to the 510 scheme because it looked to substitute the 390 scheme at the start of the inquiry in November last year. The Appellant only did that out of necessity.

#### *The Development Plan*

- 9.47. The Beverley Local Plan was finally adopted in 1996 and its end date was 2002. Part of the appeal site is allocated for employment. It is accepted there is conflict with this part of the development plan but limited weight should be given to this conflict. It is important to record that a very significant part of the site is not allocated for employment purposes in the Development Plan.
- 9.48. The appeal site is identified as strategic employment land in the Structure Plan. The Appellant accepts that there is conflict with the development plan in this regard. The issue is whether this site is really needed in the context of the supply in East Riding. Furthermore, even if the Council is right about this site being important because it is strategic employment land, there is also the need to consider, especially with an emerging local plan, if other land could take its place because there is no denying that in the context of East Riding this site is very well located as a sustainable site for major housing development.
- 9.49. Key aspects of the emerging plan are subject to very extensive objections, including to many of the policies upon which the Council's objections appear to be based.
- 9.50. There has been no independent examination of the emerging Local Plan. There are 325 responses stating that the overall Strategy is unsound and 300 which state that the Proposed Allocations are unsound. The overall housing number is subject to extensive objection. Fundamental to that objection is the actual housing requirement itself. Simon Coop's evidence makes clear the Council's overall housing numbers need to be significantly increased to be credible. The veracity of that argument has now been very significantly strengthened by the contents of the PPG. This is the issue over which many local plans have been abandoned either because they have been withdrawn, found unsound, delayed or successfully challenged in the High Court.
- 9.51. The Council had to tone down evidence as to the weight to give emerging policies during the inquiry. Draft allocations have been released ahead of the plan for some considerable time now. But where is the delivery? This Council says nothing about its completion data for April 2013/ April 2014, other than

it has been yet another year to add to the record of persistent under delivery of housing.

9.52. In the emerging Local Plan, the Council classifies North Ferriby as a Primary Village and therefore capable of taking only 85 houses over the period to 2029. It is completely implausible because:

- (i) The most sustainable locations for new housing development are self-evidently close to Hull especially along the A63 rail and road corridor.
- (ii) North Ferriby is actually larger than nearly every single one of the Council's 14 Rural Service Centres, which is the next tier up in the hierarchy.
- (iii) It is the same size as Howden, one of the settlements classified as a town.

9.53. The reason the Council says that North Ferriby should only have 5 additional houses a year is that it is too close to Brough. But with all the additional facilities that it has to offer, that is surely all the more reason to have more development at North Ferriby, not less. New development proposals at Brough involve very large scale retail and leisure development, making the Council's argument even less credible.

9.54. The Council's case is that allowing housing development on the appeal site would seriously undermine the competitiveness and economic growth of East Riding. To imagine any housing development in East Riding would have such an effect is unconvincing. But to imagine that at single location where there would remain a substantial amount of other employment land available is frankly, absurd. The East Riding is over 400 square kilometres in size, and has mile upon mile of land along the multi-modal corridor, including at several grade separated junctions and all of it as flat as a pancake. There is so much land available already that the Council is having to de-allocate employment land in the emerging Local Plan. It is also actively refusing to allocate more employment land, including at Goole, Howden and even, unbelievably, at Melton where Wykeland want to expand the Melton West business park. It is against this background that the suggestion that allowing housing on the appeal site will seriously undermine the competitiveness and economic growth of East Riding is appropriately described as absurd.

9.55. If that were not bad enough, what the York, North Yorkshire and East Riding Economic Partnership Strategic Economic Plan identified<sup>82</sup> was that the serious lack of housing and the very serious lack of affordable housing is what is hurting the local economy and local businesses.

#### *Employment Land Requirement*

9.56. The issue of loss of employment land (as with housing) begins with the issue of the requirement. This has been the subject of much detailed analysis. The Council has produced a whole series of Employment Land Reviews. Serious methodological errors artificially inflated the need for employment land over the plan period. Whilst the Council has maintained

<sup>82</sup> CD – N/M27: pages vii and 31, 32, 73 and 74)

throughout that the evidence base used to inform the draft policies in the emerging Local Plan was robust, it should be noted that the January 2014 ELR explicitly addressed a number of the problems previously raised on behalf of the Appellant. For example; an inappropriately long time period was used because of inconsistent base dates, take up data failed to take account of the period of economic downturn, and employment densities were poorly evidenced. Whatever the Council may say in explanation, changes were thereafter made to the 2014 ELR<sup>83</sup>.

- 9.57. Revised employment densities for B2 and B8 led to manufacturing and warehouse/distribution job requirements falling. Inquiry time has not been spent on these issues. The Council plainly sought and/or desired higher figures, which was one of the problems in the Trentham Lakes appeal. A further errata copy of the ELR was published in January 2014, addressing the base date error. This resulted in the projected need being factored down.
- 9.58. The problem is that the Council's approach does not fill one with confidence any more than the suggestion from its principle author NR, that "Specifically of relevance to Melton...potential manufacturing opportunities to be generated off-site from Paull, including for example, blade manufacturing, tower manufacturing, and jacket foundation manufacturing."<sup>84</sup> This claim for tower and blade manufacture at Melton was unfortunate. It was withdrawn by NR during XX. For anyone who has ever driven across Hull to Paull, including the twisting bridge in the centre of Hull, the reason it is wrong is obvious. But this professional opinion appeared in NR's proof for the inquiry in April 2014. The ELR, the focus on Melton and the importance of Melton has been predicated on these views. To instil even less confidence in the content of the ELR, a further Errata report was published in March 2014.
- 9.59. In addition, the Council published a further "ELR Addendum Note: Implications of Siemens/ABP Announcement" in April 2014. It should be noted that it is the Appellant's view that the implications of this investment have already been taken into account within the November 2013 ELR, as well as the January 2014 and March 2014 Errata reports. The whole ELR process may be appropriately characterised by errors and a constant desire to inflate the figures.
- 9.60. In considering the requirement for employment land to 2029, the 2014 ELR considers six scenarios (excluding Hedon Haven). The Council rejected the lower scenarios and instead favoured the Commercial Floorspace change and Adjusted Project-On scenarios.

#### Demand and the Functional Economic Areas

- 9.61. The historic take-up scenario is not used by the Council for the total demand but it has been used to identify take up rates in the four Functional Economic Areas (FEAs). The Appellant wholeheartedly agrees with the appropriateness of this approach. Over the 16 year period 2013-2029 the ELR shows that by far the greatest take up has been at Goole and Selby

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<sup>83</sup> JG PoE pages 66 to 71

<sup>84</sup> NR PoE, page 59, para 5.94

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(147.68ha), twice the level of the Hull FEA (76.8ha). That is where the market has sought employment land.

- 9.62. The proportionate share by FEA implied by historic take up rates has been applied to the Commercial and Industrial Floorspace Scenario, which is the top end of the Council's employment requirement range at 262ha over the plan period. This was subsequently revised to 251ha. On this basis the requirement in the Goole and Selby FEA is agreed to be 125ha as compared to 67ha for the Hull FEA<sup>85</sup>.
- 9.63. The other end of the range is derived from the Adjusted Project-On Scenario. This is based on the job assumption of the Local Enterprise Partnership Skills Study (August 2012) and figures provided by ERYC to the Regional Economic Intelligence Unit at the time of the production of the forecasts. The scenario is predicated upon the delivery of a number of projects identified within the Skills Study.
- 9.64. The Adjusted Project-On Scenario 'holds' employment change at zero for a number of sectors forecast to decline by the REM analysis, as this forecast decline was considered by GVA to contradict other sources of evidence presented within the ELR. The scenario originally identified a requirement for 143ha, but this has been updated to 128ha in the SCG. The figure for the Selby and Goole FEA is 65 hectares. Hull FEA is just 33 hectares, excluding Hedon Haven.
- 9.65. Against that 33 hectare figure for the whole of the Hull FEA, it is worth observing that even with the 510 dwellings scheme there is still 40 hectares of employment land available at Melton and 50 hectares with the 390 dwelling scheme. That is 50 hectares of land all in one location, despite the availability of very significant areas of land at Bridgehead and now Brough. In this context requiring the preservation of employment land at Melton makes no sense whatsoever.
- 9.66. Instead of recognizing the empirical evidence, the Council seeks to allocate far less in the Goole and Selby FEA than the take up rate demonstrated whilst at the same time allocating more land in the Hull FEA. The Council has carried out detailed and repeated analysis of the demand for employment land, critiqued and corrected by NLP, which shows the need for employment land in the Hull FEA of between 33 and 68 hectares. It then allocates 122 hectares. It then deliberately under-allocates land at Goole to the tune of nearly 50 hectares. The amount allocated has nothing to do with the evidence. The Council's closing submissions fail to focus on these figures. These figures are hard evidence. Evidence is what this decision should be made upon.
- 9.67. The Council argues that the Goole & Selby FEA take up rates are distorted by some very large developments at Goole with new facilities for Tesco and Guardian Glass. The Council also wants to place jobs nearer to Hull. But all this demonstrates is the Council ignoring the market and the evidence. All that allocating less land at Goole will do is ensure that other potential investors in East Riding are discouraged from coming to the ERYC area. As

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<sup>85</sup> SCG, table below paragraph 9.8: Source ELR January 2014

for the huge over-allocation of land in the Hull FEA, the only answer offered by the Council is to suggest it is justified on the basis of a shift in demand towards the Hull FEA, linked to the renewables sector (para 4.4.6). There are several major flaws with that:

- (i) 80ha is already allocated for the renewables sector in the Hull FEA at Hedon Haven - this land has EZ status – (“the VIP lounge”) a further 120ha of land is proposed for allocation in the emerging local plan;
- (ii) there is no evidence of the renewables sector being located at or attracted to Melton;
- (iii) it would make no sense for a renewable energy business to locate or relocate to Hull and not go to Green Port/ Hedon Road/ Hedon;
- (iv) NR’s evidence that tower and blade manufacturers would look to locate at Melton demonstrates how contrived the argument is, to the point where it had to be withdrawn during XX.

9.68. Turning the evidence of demand on its head for both the Goole/Selby FEA and the Hull FEA and doing exactly the opposite of what the empirical market evidence requires is complete nonsense. It makes no sense at all, unless one wanted to stop new housing development on employment land at Melton. After promising residents of North Ferriby just 5 houses a year for the next 17 years, the Council has nowhere to go. The offer of such low figures will have inevitably stoked the fire of vociferous opposition.

9.69. The matter will be debated through the examination of the Local Plan. The Inspector may be reluctant to de-allocate employment land at Melton, even though in that process the Appellant (as in this appeal) is only asking for mixed use development across its landholding. But even if it were to remain allocated, what matters is the weight the Secretary of State should give to the land which is allocated on the basis explained above. The answer must be diminished weight. The alternative is to simply ignore all the actual evidence. If that is the case, then the decision runs the risk of being Wednesbury unreasonable.

9.70. Trying to protect as much prime employment land as possible is not unusual for an LPA. In the Trentham Lakes case, the Inspector recognised that it was sufficient if there was adequate land in the short to medium term to meet prime employment needs. If more land is needed to meet sensible requirements it can be provided. The Local Plan, when finally adopted can and should be reviewed regularly. More land was considered necessary at Hedon Haven. So a further 120 hectares was allocated. That is how it is meant work. What is not meant to happen is the over allocation of land on the basis of possible long term needs unrelated to past take up, especially in the context of a competing land use, namely housing, where the Government is looking for the supply to be boosted significantly.

#### Employment Land Supply

9.71. On the basis of the requirement, the Council’s argument on the loss of employment land is unconvincing but it is when one turns to the evidence of supply that it becomes implausible. In the 2013 ELMR the supply stood at a breathtaking figure of nearly 500 hectares (485.52ha). In the ELR March

2014, the figures reduced to 443ha but the Council accepted that it had omitted 10ha at Melton itself. That takes the supply back up to 453.14 ha. Excluding Hedon Haven, this leaves 373.54 ha of general employment land available in East Riding<sup>86</sup>.

9.72. This figure is the present supply. It does not include all the proposed allocated land. That represents even more land, including in respect of Hedon Haven, a further 120 ha of employment land. The figures are huge both for the renewable sector and for the rest of the local economy. At this scale, the parallels with Trentham Lakes continue.

#### Hull FEA (in East Riding)

9.73. At the Hull FEA level the supply (including land at Gibson Lane/Brickyard Lane) totals 223.29ha. Removing the 79.6ha of land at Hedon Haven, this equates to 143.69ha of 'general' employment land. That is actually in excess of the Council's own requirement figure, and double the rate demonstrated by the market evidence. This includes land at Bridgehead, Melton and Brough<sup>87</sup>.

9.74. The Council only wants to look at the part of the Hull FEA in East Riding but there is the other half in Hull. The Hull and East Riding market is largely indigenous. The evidence shows that developments of circa 2ha would be considered large in the local market context. Occasional exceptions are unlikely to exceed 5-6ha<sup>88</sup>. The small scale nature of demand in and around Hull is supported again by firm and long term empirical evidence. At Priory Park, developments have taken 23 years to deliver and land is still available. Development has been an unplanned mix of B class, retail, leisure and sui generis car showroom development, demonstrating slow demand in the local market over a prolonged period. Sutton Fields, in its time the equivalent of Melton Park, has been developed over 35 years and still has land remaining.

9.75. Much is made by Mr Menzies, Mr Pearce and Ms Rigby of the importance of Hull's Western Corridor. However, development has largely been small scale here. Manufacturing occupiers have traditionally gravitated towards the central and eastern parts of Hull due to proximity to skilled labour and dock facilities. Warehousing occupiers typically favour more central locations. It is clear that the businesses attracted to Melton have been Hull-based firms, rather than national or international firms. The extent of this market is limited.

#### Melton: Supply

9.76. Even at Melton, there is a very ample supply. Appeal A would involve the loss of 31.75ha of the existing employment land supply as defined by the ELR but would still leave some 42.43ha of land for employment use. Appeal B would result in the loss of 24.03ha. Double that amount (50.15ha) would remain for employment use<sup>89</sup>. The Appellant has been unable to agree these figures with the Council but what is set out above is the Appellant's firm belief

<sup>86</sup> SCG, page 16, para 9.9 and 9.10

<sup>87</sup> DG PoE appendices K and L

<sup>88</sup> such as 1999, See AM PoE, para 4.23

<sup>89</sup> JG PoE, Fig 10.4 p81

about the supply at Melton, subject only to the new police building which is believed to take up around 2.5 ha of land. That would reduce the figures to around 40ha (Appeal A) or 48ha (Appeal B).

- 9.77. Part of the appeal site at Melton has been allocated since the time of the last local plan back in the 1990's. Yet the Appellant has not sought to look at take up rates at Melton since then. That is despite what is said in paragraph 22 of the NPPF. In fact the Appellant has only sought to look at take up rates since the opening of the GSJ at Melton in October 2006<sup>90</sup>. The data is presented on the basis of monitoring years, with take-up recorded on the basis of the commencement of development. It can be seen that, from October 2006 to July 2014, take-up at Melton has totalled 20.77ha. That is over 7.8 years and represents an average take up of 2.7 ha per year. It is an important table if one is considering hard evidence.
- 9.78. There has been a great deal of debate about these figures at the inquiry. The evidence shows that Heron Foods and to a lesser extent House of Townend had been looking for premises for some considerable time. Their occupation was therefore partly a demonstration of pent up demand. In fact all the major businesses have been Hull based. The Council has even allowed the land to be used for a church (with a very big car park). Equally, there appears to have been a significant slow down in the take up of employment land at Melton in recent years. That is despite the upturn in the market. The only development to have taken place in the last two years is the Police building. It may be that the EZ at Brough is having an effect.
- 9.79. Empirical evidence, which now extends through period of both upturn and downturn, reveals that on present availability Appeal A would leave nearly 15 years of employment land and Appeal B nearly 18 years at Melton. That is more than enough to meet the short term and medium term need. These are the numbers that matter.
- 9.80. There is so much land at every level that the Council is
- (i) forced to de-allocate employment land across the ERY Borough as a whole
  - (ii) forced to de-allocate land in the Hull FEA
  - (iii) forced to not allocate land south of the railway at Melton, despite the fact it scores higher than some other allocated sites;
  - (iv) unwilling to allocate employment land where the market is strongest at Goole and Howden despite specific requests through the local plan process by the owners and promoters of those sites; and
  - (v) unwilling to allocate land at Melton despite the specific requests through the local plan process by Wykeland, who wish to extend their Melton West business park.
- 9.81. Mr Hunt sought to highlight the fact that the Council was de-allocating land at old airfields or other less desirable locations. That does not explain the failure to allocate enough land at Goole and Howden. It also fails to explain

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<sup>90</sup> Employment land take-up at Melton is summarised in document STM 21



why when other land is being promoted at Melton this is not being allocated as well.

- 9.82. DG's evidence records that, at the time of the proof of evidence, there was some 572 hectares of employment land available on the open market within the Hull and East Riding ready for development.
- 9.83. Policy EC1 of the emerging local plan will allow ERYC to grant planning permissions for new employment development close to existing employment areas on undesignated land. Thus, even in the face of the overwhelming evidence of oversupply, the Council proposes a new policy that would render any concerns in this regard redundant. Mr Hunt informed the Inquiry that few objections had been received in relation to draft Policy EC1.
- 9.84. There are huge areas of undeveloped land along the A63/ M62 corridor at locations next to grade separated junctions<sup>91</sup>. The Council has already allowed significant new employment development at one of these locations with the very substantial expansion of JZ Flowers on an unallocated site at Newport, next to the junction. It shows that if there ever was a shortage of allocated land at Melton in the future, there is no need for the land to be allocated for it to be developed. Concerns that the land at Melton might run out towards the end of the plan period are hopelessly misplaced. All that is needed is planning permission. And the best evidence of that is the appeal site itself. A large part of it is not even allocated, but that has not stopped St Modwen marketing it.

#### The Existing Stock: Vacant Buildings

- 9.85. There also exists a huge second hand market for existing employment buildings. The evidence shows nearly 6 million sq feet of second hand employment buildings in the Hull and East Riding area<sup>92</sup>. Nearly 5 million sq feet of this is industrial space with a further 1 million sq ft of office space. This again is substantial and significant evidence. NP's attempts to undermine these figures really were unconvincing and amount to no more than fiddling at the edges, or trying to suggest that this is not that much if one looks at the occupied stock. 5 – 6 million sq feet of vacant space is an enormous amount of vacant stock, which is in direct competition with design and build but at significantly less cost. This second hand market directly affects the market for design and build.
- 9.86. The reality is that most businesses make use of existing buildings. It is more sustainable in both financial and a resource terms. Most is on industrial parks and office blocks. It explains why take up rates are not higher, and why evidence of a take up rate of just 2.7ha of land at Melton (which has dropped significantly in recent years) is something to which significant weight must be attached<sup>93</sup>. The problem was the same in the Trentham Lakes appeal.

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<sup>91</sup> DG PoE, Appendix T shows some of the locations where flat land is located next to grade separated junctions

<sup>92</sup> DG PoE Appx H

<sup>93</sup> DG PoE pages 16 and 17, section 8.6

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## Qualitative Need for Employment Land

9.87. St Modwen accepts that, just as at Trentham Lakes, the land is prime employment land. The Council's case on the lack of quality employment land is not made out at all. The appeal site is facing competition in the prime market, much of it very close to the site<sup>94</sup>. Whatever the argument about the extent of high quality land elsewhere, the fact is that at Melton alone nearly all of the land which will remain if the appeals are granted is prime employment land. That is most of the 40 or 48 hectares of land identified above. There is also a huge amount of employment land south of the railway. Some of it is being used for the cheaper uses, such as waste disposal. But it has also attracted an aerospace business in an impressive modern building. The location south of the railway is therefore not to be dismissed.

9.88. A consistent reason given by the Council for not allocating much of the land south of the railway is the issue of access. Sites south of the railway typically score 32-36 in the ELR, despite being consistently marked down on strategic access. Numerous sites elsewhere in ERYC were awarded scores of low-mid 30s and retained as employment allocations. Land of a similar score has been allocated and if the access to this land was improved it would be better than some of the allocated sites in other locations. In the context of the need for prime employment land, the Council's protests about the lack of it at Melton are completely hollow. The main developers at Melton are willing to significantly expand the area of prime employment land (Wykeland at Melton West) or to provide access to vacant and under utilised brownfield land south of the railway (St Modwen at Melton Park).

9.89. There is an abundance of other prime employment land in East Riding, the Hull FEA and most especially at Melton. If the appeals are allowed the Secretary of State can be reassured that such land remains available at Melton to meet all realistic short term and medium term needs<sup>95</sup>. Furthermore, even more can be provided in all these locations if the market requires it either now or in the long term.

## Logistics

9.90. The Council has sought to highlight the need for large flexible plots. It suggests that Melton Park is the only oven ready site which can offer large flexible plots to suit all sizes with AA status<sup>96</sup>. Melton West and the plots at Melton Park could take some very large industrial buildings. The only building of comparable size to have been attracted to Melton is Heron Foods after many years of searching. Most of the demand has been for much smaller buildings.

9.91. The Council's claim that the appeal site is the best large plot in East Riding assumed that the site was suitable for blade and tower manufacture. That is simply wrong and was withdrawn. The Council has always harboured a view that it might attract large logistics companies to Melton. This began when the Council took St Modwen and Mr Garness to the aptly named Big Shed Show

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<sup>94</sup> DG PoE esp Appx F

<sup>95</sup> as per the judgment of the Inspector in the Trentham Lakes appeal – STM1 para 34

<sup>96</sup> see ERYC35

many years ago. But although in the unsustainable over heated market of the mid to late 2000's, large scale logistics was attracted to Goole (Tesco), it was never going to travel as far east as Melton. The evidence of Mr Binks is completely unchallenged. He makes clear that the logistics market saw a significant change from the late 1980s. This led to consolidation, with companies looking to operate from a single national distribution centre or a small network of regional distribution centres. This change was given further impetus by the introduction of EU Working Time Directives and resulted in the development at Capitol Park, Goole. No activity of this kind was observed further east. Melton was unable to attract any such investment and since the downturn of 2008, occupiers have refocused on the traditional logistics locations of the East/West Midlands.

- 9.92. Melton offers a large site with access to the A63 but its location means it has not been able to attract any large scale operations where occupiers have been searching on a regional basis. It offers limited scope for onward distribution to the east, whilst the River Humber limits access to the south (other than via the toll charging Humber Bridge). Melton is therefore viewed by many occupiers as being located at the end of a cul-de-sac and an inefficient location for the distribution of goods at anything other than a local level. This inefficiency gives rise to significant extra transport costs. Melton's proximity to the Port of Hull is unlikely to result in any significant benefit. The site's distance from the port means it is not possible to benefit from any operational savings arising from a Port Centric logistics mode. Hull Port is primarily a bulk handling facility (as is Immingham) with limited container traffic. This further reduces the opportunities for Port-linked storage operations.

#### The Renewable Energy Sector: Offshore Wind

- 9.93. The Council's evidence is now focused on the renewable sector following the Siemens announcement. The main Tier 1 supply chain opportunities generated by Siemens are expected to gravitate to EZ sites with water frontage and proximity to the OEM. This is what the evidence shows.
- 9.94. The emerging Local Plan and the ELR take account of renewable (wind) energy land requirements. The advice provided to St Modwen by 4C Offshore<sup>97</sup> is consistent with the evidence relied upon by the Council itself<sup>98</sup>, that these businesses require port side locations. Hedon Haven/Green Port is consistent with this requirement. The experience in Germany is that the lower tiers of the supply chain do not need to relocate to be able to trade with Siemens. They may well have other customers and clients, perhaps many. There will be some clustering as the example in Germany shows. But there is no real evidence to suggest that lower tier supply chain businesses will relocate to Hull/ERYC. If this was to be the case, the vast areas of land at Hedon Haven/Green Port as well as other EZ sites could accommodate this. Furthermore, as noted above, both HCC and ERYC have granted Enterprise Zone status to sites in part to be attractive to the renewable supply chain.

<sup>97</sup> JG Rebuttal PoE, pages 36 and 37, paragraph 4.10 onwards/JG Rebuttal PoE, Apdx 20

<sup>98</sup> see evidence of AM and the Catapult Report

Melton was not designated as an Enterprise Zone and was never identified as being relevant to it.

- 9.95. Tier 2 and 3 suppliers appear to have no strong commercial imperative to relocate. Any opportunities that do emerge will self-evidently favour Enterprise Zone sites, nearly all of which are clustered around the docks and Hedon Haven. The EZ is designated specifically for all tiers of the wind turbine supply chain. All of the evidence demonstrates they will cluster exactly where DG has suggested in the EZ along Hedon Road and out to Hedon Haven<sup>99</sup>. These businesses will want to cluster around their client benefitting from both physical and social proximity. There is land enough at Hedon Haven.
- 9.96. Hedon Haven is where the renewable energy sector will go. The emerging Local Plan seeks to allocate more land in this location. Photographs of the Paull Reserve Site<sup>100</sup> show it is absolutely enormous and will take the total supply of available land at Hedon Haven to 200 ha. The quantum of land available for the renewable sector is more than enough and to the credit of the Council it is in the right place to the east of Hull. There is no evidence of any risk it will run out, when one looks at the South Bank Enterprise Zone on the south side of the Humber<sup>101</sup>. The Able Marine Energy Park is a further 328.3 ha of land with Simplified Planning Zone all around it. The only exception to the location of all the EZ's to the east of the City is the BAE site at Brough. That, DG believes, is having an effect at Melton because it is creating unfair competition. AA status at Melton is not on a par with the EZ status at Brough.
- 9.97. The Council has seized on comments by DG about potential investment in Melton. That has plainly not happened. DG explained that he was referring to the potential displacement of businesses around the docks to accommodate the renewable investment in the area. That relocation has already occurred and the evidence shows the displaced businesses have remained within the main commercial centres of Hedon Rd and Sutton Fields Estate close to existing workforces and the docks<sup>102</sup>.
- 9.98. If a lower tier wind power business did look to relocate it is improbable they would select a site on the west of the City of Hull. They would go to the VIP lounge on the east of the City. It was suggested in XX to DG they might want to 'stay west' to be closer to their suppliers. As DG explained, the commercial reality is they are most unlikely to be concerned with their own suppliers. But if they were so concerned that would surely see them remain where they are in Doncaster or Sheffield etc.
- 9.99. Both ERYC and Hull City Council are heavily involved in the production of the draft Greenport Hull Investment Prospectus. There is an obvious need to be cautious about its content. It identifies 500ha of land for the offshore supply chain, with the support of Siemens, although their Head of Real Estate did not seem to know anything about it when RB of St Modwen raised it with

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<sup>99</sup> DG Apdx B

<sup>100</sup> DG Apdx F

<sup>101</sup> DG Apdx B

<sup>102</sup> DG page 34

him. Most of the land in the brochure has EZ status, awarded to support the offshore wind and renewables opportunity. Melton is in the brochure but was not awarded EZ status. The loss of land at Melton would correspond to the loss of 5.6%-7.5% of all land identified in Greenport Investment Prospectus (on the basis of Appeal B and Appeal A respectively). The draft brochure also identifies land at Goole, yet the Council is looking to restrict the level of new employment land at Goole well below past trends and before any mention of the renewable sector.

- 9.100. The logic of the Council's position on the renewable sector is that so much land is needed for potential employment use and the renewable sector, that none of it should be allowed to be developed for housing. That sounds strikingly similar to the argument from some London LPAs who argue that offices in the Capital have to be preserved to meet the needs of the service sector, and should not be permitted to change to housing. It is a common theme with many LPAs, yet in the Trentham Lakes appeal decision, the Inspector saw straight through the argument even on prime employment land. It results in a lot of land which could sensibly be used to significantly boost the supply of housing sitting idle for years, as has been the case at Melton Park. The difference is that in East Riding there is no shortage of land which could be used for employment purposes. Far from it. There is a very ample supply of land, and plenty more where it came from.

#### Conclusion on Supply

- 9.101. The position of the Appellant on supply is simple and clear: There is "plenty of vacant land available to accommodate realistic take-up rates across this market"<sup>103</sup>. That seems pretty obvious from all numbers on both the demand and supply side. The Appellant's case is based on the evidence. The Council's case much less so.

#### Marketing of the land by St Modwen

- 9.102. The only thing that does concern the Appellant is the suggestion that somehow they have not been engaged in the proper marketing of their land. That is actually quite an insult to Mr Garness and those working at St Modwen who have over many years committed a huge amount of time and resources promoting this land for employment purposes and they continue to do so. Discussions with Rofin Sinar<sup>104</sup> have continued up until the time DG gave evidence and beyond. Criticism is misplaced. The Kohler Mira incident was brought to the attention of the inquiry<sup>105</sup>. Although it was said that the Council was not arguing that the land had not been properly marketed, NP still made various other criticisms, for example he suggested that more money could have been spent. That is contradicted by his own evidence which sought to emphasise that there was no need for a national agent in this location. He felt it was just a local need. DG agrees. There is very little national interest in the Hull area. But the point is that St Modwen did indeed market Melton Park to both the national and local market.

<sup>103</sup> para 13.4, DG Summary PoE

<sup>104</sup> A company which located on Melton west

<sup>105</sup> Another company which located on Melton West

- 9.103. As DG explained, the internet has changed the way in which marketing is done. If people want land in a particular area, they will find it on the internet without the need for newspaper adverts. In making these criticisms the Council fails to appreciate just how much time and effort goes into trying to secure a deal. DG was able to explain the process of what happens with new design and build projects. In a local market such as this, the real effort relates to the time and consideration given to trying to match aspirations for new build with financial constraints<sup>106</sup>.
- 9.104. It is interesting to note that the Council's case was predicated without the benefit of an agent's evidence. The Council did not seek to call any market agent evidence in November. NP was only brought into the case this year. The lack of market facing evidence from the outset is yet another example of the way in which the Council's case has been predicated on a lack of commercial understanding.
- 9.105. The Appellant has marketed the land and done so rigorously. It has landed deals including the Council's Services department who will have had to act on the basis of best value through an appropriate bidding process. No criticism is made of that deal or the price of it. But what the Council fails to recognise is that all of the criticism over the marketing helps their case not one bit. The empirical evidence of take up at Melton is as set out above: it therefore matters not whether the deals were done on Wykeland's (Melton West) or St Modwen's land (Melton Park). If St Modwen had won the deals, it would be all Wykeland's land which would be sitting empty.

#### Overall Conclusion on Employment Land

- 9.106. The Council's case is that allowing housing development on the appeal site would seriously undermine the competitiveness and economic growth of East Riding. It is not remotely credible. There is in truth an abundance of riches in terms of employment land at every level in the Borough as a whole, in the Hull FEA and at Melton in particular. No amount of ignoring market signals to create contrived requirements especially for the Hull FEA will allow the Council to hide from this. The most generous supply lies with the land allocated and proposed for the renewables sector much of it in the UK's largest EZ area. In this part of the world, there is flat land, especially along the multi-modal corridor as far as the eye can see. The JZ Flowers site demonstrates that land does need to be allocated to be oven ready.
- 9.107. Loss of employment land was the Council's main objection to the proposal. Without that, there is very little left by way of a case against the appeal proposals. The presumption in favour of sustainable development and the test that imposes means planning permission should be granted in this case even before one turns to the consider the housing land supply position.

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<sup>106</sup> see the main PoE of DG at pages 29 and 30 and section 8.6 at page 16-17

## *The Housing Requirement*

### The Law and its Consequences

- 9.108. The housing requirement figure used at this inquiry should provide an up-to-date indication of the housing requirement figure for ERY alone. This appeal is not intended to repeat, and will not prejudice, the Local Plan process. It is common practice at appeal for the housing requirement figure to be based on the individual local authority area rather than the wider HMA. It was also the approach used in the seminal case of *City of St Albans and District v SSCLG and Hunston Properties* [2013] EWHC CIV 1610 and confirmed in the Hunston judgment in the Court of Appeal<sup>107</sup>.
- 9.109. The Court of Appeal Hunston judgment makes clear the housing requirement figure for testing at appeal should be unconstrained – i.e. the full, objectively assessed need. That is what paragraph 47 of the NPPF requires. The Council's proposed figure of 1,400 dwellings p.a. is constrained and appears to have been selected on the basis of the conclusions of the Sustainability Appraisal (PoE and EiC of SC). Hunston makes clear that it may be possible to use a constrained housing figure if it is part of the Local Plan. The fact that should not take place until a Local Plan is adopted was confirmed in *Gallagher v Solihull MBC* (hereinafter "Solihull")<sup>108</sup>. The FOAN needs to be identified at appeal unless there is a recently adopted Plan in place. That is the corollary of the Hunston and the Solihull cases. The Appellant must follow it, as a matter of law.
- 9.110. Some LPAs seek to rely on constrained figures in a revoked RS. That was the subject matter of the Hunston Judgments. Here in the ERY, the Council seeks to rely upon another figure which is also constrained. The 1,400 figure is accepted by the Council to incorporate housing need which the Council is seeking to transfer to the neighbouring authority of Hull. The merits and realism of that aspiration will have to be debated through the Local Plan process. But for now what it demonstrates is that that figure plainly is constrained and as such is not a figure which can be used at this stage. In assessing FOAN, constraints cannot be imposed<sup>109</sup>.
- 9.111. The issue of the FOAN has been the subject of a plethora of recent appeals, including those involving the Secretary of State. It has also been the subject of other decisions from the High Court. At Stratford<sup>110</sup> the Council unsuccessfully challenged the use of a figure for the FOAN which was not the figure in the emerging Local Plan. The Court upheld the Secretary of State's approach as determined by the Inspector. The Judge made clear that the Inspector in that case was right to consider the appropriate housing requirement for the District based on the assessment of FOAN (see paragraph 38 and 43 in the Judgment). In that case, Stratford upon Avon District Council tried to argue that the identification of a FOAN figure which was different from that in the emerging Local Plan was inappropriate. The Council

<sup>107</sup> CD C1 and N/C10

<sup>108</sup> ERYC 07: [2014] EWHC 1283 (Admin), para 88(ii)

<sup>109</sup> para 4, Chapter 2a of the PPG

<sup>110</sup> CD n/C9: *Stratford upon Avon DC v SSCLG and JS Bloor and Hallam Land Management* [2012] EWHC 2074 (Admin) (hereinafter "Stratford")

argued that it would both prejudice the emerging Local Plan and dictate the number that would be used at all subsequent appeals. Neither of those arguments found favour with the Court. Inspectors and the Secretary of State decide cases on the basis of the evidence before them and the same applied to the Local Plan Inspector.

9.112. But the FOAN is not just the figure in the latest DCLG household projections. That is clear from the content of chapter 2a of the PPG which makes plain the DCLG projections are just the starting point in the identification of FOAN. All that SC has done on behalf of the Appellant is to follow the guidance in the PPG. As the Inspector in the Offenham appeal decision observed, it is the coming together of the revocation of the RS, the Hunston Court Judgments and the PPG (albeit in draft form at that stage) which mean that a different approach is required with regard to the identification of the housing requirement<sup>111</sup>.

#### Economic Forecasts as part of the FOAN for Housing

9.113. Both the NPPF at para 158 and now also the new PPG (para 18 of Chapter 2a) highlight the important link that exists between housing need and economic growth. Both require the FOAN to be integrated with the economic future for the area and to take account of relevant market signals. At this inquiry, the importance of an economic-led approach has been acknowledged by RW. But it is important to record as SC explains that neither the figure that was recommended by the 2014 Local Housing Study, nor the Council's proposed 1,400 dwellings p.a. requirement figure appear to consider the implications of employment growth. The Council's attempts to 'retrofit' the figure with an economic led approach derive from the fact it has no answer to the correctness of the analysis of SC.

9.114. The need to address an economic led scenario figure for the FOAN is not in issue. The effect is that even the Council accepts that nearly 1,900 new homes are needed in ERY each year on the basis of FOAN. The difference between the parties is therefore about 300 dwellings per year. For the avoidance of doubt, SC's figures only account for part of the potential future employment growth in the renewable energy sector. Depending upon the scale of growth that might come from this sector, they might therefore be viewed as conservative.

9.115. The difference of around 300 is very important in the context of this appeal. It is clear from STM30 that even on its own methodology and supply figures the Council cannot demonstrate a five year housing land supply on the Appellant's housing requirement figure. The Council's methodology seeks to ignore most of the past shortfall and the supply assumptions (a shortfall of around 10,000 homes). The Appellant wins the five year housing land supply issue convincingly on the application of its requirement figure alone. This is very telling indeed.

9.116. No doubt recognising the problem, the point was put during the XX of SC that an economic led housing need figure was a "policy on" approach and therefore not the FOAN. But the Council has already accepted that the figure

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<sup>111</sup> CD N.E43: paragraph 21 to 24 and then paragraph 25 in particular



for FOAN is 1,875 dpa (now 1,888 dpa), which is of course predicated on an economic led scenario.

### Suppressed Household Formation Rates

- 9.117. The 2011-based interim household projections do not provide a reliable basis for establishing future housing requirements because they are trend based and based on a period of suppressed household formation<sup>112</sup>. It has since been confirmed in Holman's research for the RTPI. Household projections published by DCLG "should provide the starting point estimate of overall housing need" but "the household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends"<sup>113</sup>.
- 9.118. The 2011-based DCLG Interim Household Projections will therefore serve to underestimate housing requirements in a time of economic recovery and growth. Household formation rates set out in the 2008 household projections are less constrained and more importantly follow the long term trend of increased household formation in this country, in which average household size has fallen consistently (derived from various well known trends such as an aging population, more single people and an increase in divorce rates). The LHS considered the impacts of the 2008 and the 2011 SNHP but the figures that are contained within the conclusion are based on the 2011 SNHP. Edge Analytics (in its note appended to RW's rebuttal proof) stated that "we have not made a recommendation for either the 2008 or the 2011-based headship rates".
- 9.119. RW's evidence justifies the retention of 2011 SNHP over the long term by reference to data on the low level of concealed households in ERY. This approach fails to take account of the fact that the official definition of concealed households is very narrow (e.g. friends sharing and single people living with parents/others not defined as concealed households). Census and SNHP data shows how many households have formed rather than how many have been unable to form; it is therefore difficult to obtain a good measure of household suppression. This serves to undermine the veracity of RW's evidence as a justification for retention of the 2011 SNHP rates.
- 9.120. SC's work has recognised this. He has sought to address this by pulling the household formation rate back towards what it would have been under the 2008 household projections, following the gradient of the 2008 projections from 2021 to the end of the plan period in 2029. This is his Index Approach. It gives rise to a figure of 2,200 dwellings per annum. It is lucidly clear and completely transparent, specifically addressing a well recognised problem. Yet it seeks to address the issue in a conservative way<sup>114</sup>. SC has looked at two other methods of addressing suppressed household formation including the Accelerated Index and Partial Catch Up but SC confirmed to the Inspector that it was the lower Index Approach which he favoured.

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<sup>112</sup> PPG paragraph 15, Chapter 2a

<sup>113</sup> *ibid*

<sup>114</sup> SC EIC – his own words

9.121. This is a new area for planning. At South Worcestershire, SC's approach was considered the most convincing of a multitude of different approaches and figures from consultancies acting for the development industry, as well as GVA and Edge Analytics acting for the South Worcestershire Councils. RW for the Council has not addressed suppressed household formation, other than to deny that it is a feature in the ERY. SC's evidence demonstrates why it plainly is a feature. The evidence is clear. The DCLG 2011-based Interim Household Projections indicate that the number of households in ERY will increase by 9.4% from 143,230 in 2011 to 156,650 in 2021. This is equivalent to an average increase of 1,340 households per annum. This compares to a 15% increase from 149,450 to 171,900 that was previously projected by the 2008-based household projections for the same period (2,245 per annum). This 40% reduction provides clear evidence of suppressed household formation.

9.122. Both the PPG (2a-016) and the Quality Report that accompanied the release of the SNHP (SC Appendix 5, p9) state that those interested in understanding household growth and housing requirements during the period after 2021 should "make an assessment of whether the household formation rates in that area are likely to continue". It was suggested for the Council that the use of the 2008 household projections post 2021 was inappropriate given the recent decision at Pulley Lane, Droitwich had suggested they were out of date (para 8.43). Yet the preceding paragraph states:

"8.42 As I perceive it the most recent objectively assessed evidence is that contained within the recent 2011 Interim Sub National Household Projections (SNHP). These state that they should be used for a 10-year period, but beyond that there is a need to determine whether household formation trends are likely to continue. After the 10-year period, following the advice of the SWDP Examination Inspector, and reflecting the need to revise Household Representations Rates (HRR) due to an improving economy, the more optimistic 2008 SNHP HRRs should be used. This approach accords with the Holman Paper, the conclusions of the Inspector in relation to the Lichfield Core Strategy and also current planning policy which aims to 'plan for growth'. I note that this is the approach Mr Bateman has followed."<sup>115</sup>

9.123. That paragraph is of course a complete endorsement of what SC has done in this case.

9.124. The Council's latest ELR shows that there is a requirement for between 2,200 and 2,500 dwellings p.a. in the District between 2012 and 2029. (SC SPOE). SC judges all three of his figures in this range to be conservative, given none attempt to fully catch up with the trend in the reduction in average household size in the 2008 based national household projections, which follow a long term trend. But he favours the Index Approach for being the most conservative of the three. The Appellant presents evidence on the consequences of using all three of SC's scenarios. As is clear the shortfall in the 5YS grows with each.

<sup>115</sup> RT AAPOE, Apx 29– Pulley Lane, Droitwich, SoS decision, Inspector report

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## The Hull HMA

- 9.125. Perhaps the most unconvincing aspect of the Council's case on the housing requirement was the argument that SC's figure of 2,200 was incorrect because it looked at the District and not the HMA. It is argued that because housing need should be assessed on the basis of HMAs (para 47 of the NPPF), the calculation of the 5YS on the basis of a District or Borough only basis is not permissible. With the greatest respect, that is a submission which is difficult to reconcile with the approach taken in the Courts on the issue of five year housing land supply. The Hunston, Solihull and Stratford cases all involved authorities where the HMA is larger than the authority area. That is in fact completely usual. Yet the Courts had no difficulty in accepting propositions which were predicated on the assumption that the figure should be examined on a District wide basis.
- 9.126. The Council argues that the calculation should be made on the basis of the figure for the Hull HMA. The argument appears to be that there is a need to adopt only the figure of 1,400 for ERY because the remainder will go into Hull which is part of the same HMA and that is what para 47 of the NPPF requires. The main difficulty with this argument, as SC pointed out in EIC and XX, is that there is no evidence before the inquiry on what that figure should be for just the Hull part of the HMA. It is plainly not 1,888 dpa. Moreover, the Hull HMA covers Hull and part of East Riding. But approximately half of ERY is outwith that HMA. The 1,400 figure for ERY is more than just the ERY component of the Hull HMA.
- 9.127. In the absence of an up-to-date development plan, consideration of the FOAN becomes even more important as it forms the basis of the calculation of the 5 year supply. The Local Plan process will examine the housing requirement for the HMA. But the detailed analysis is yet to be undertaken in order to assess the specific housing requirement for the HMA. In this situation, the only basis for the consideration of s.78 appeals must be that of the individual local authority. Even though more than half the population of ERY is located within the Hull HMA area, that still leaves a very substantial amount, including the main towns of Goole, Bridlington and Driffield<sup>116</sup>.
- 9.128. An added difficulty for the Council in seeking to interpret paragraph 47 of the NPPF in this way, is it ignores the rest of paragraph 47 of the NPPF. The assessment of 5 year housing requirement and the application of 5% /20% uplift are done only at the Local Authority level.
- 9.129. This is an obviously poor point, given the map which shows that the Hull HMA is only part of the East Riding is actually contained in RW's PoE<sup>117</sup>. The logic of the Council's case, which adopts an economic led housing figure (as it must), together with the law (the Hunston and Solihull cases) means that the Council is saddled with a figure of around 2,000 dpa as the housing requirement in this appeal. If the Appellant's figure of 2,200 is used, the Council simply loses the argument on whether it can demonstrate a five year supply of housing land on its own methodology and supply figures<sup>118</sup>.

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<sup>116</sup> SC in XX and RE

<sup>117</sup> RW PoE Fig 3.1, p7

<sup>118</sup> Table 1 of STM30 – 7th August version

9.130. The Council's FOAN housing requirement figure has fluctuated. It was 1,875 until the Council discovered an error in the figures and increased it to 1,933. The latest 2012 population projections led to a reduction to 1,888. That is the Appellant's understanding of the Council's figure.

9.131. As the evidence of SC makes clear, the approach he has taken to the issue of supply is that which has been taken in most other cases. His evidence highlights some of the cases in which this can be demonstrated<sup>119</sup>.

#### RW's Argument on the Hull Figure

9.132. Even aside from the fact that it cannot be done on the evidence before this inquiry, ERYC's suggestion that a Hull HMA figure can be used as the basis for its housing requirement ignores completely the evidence of Mr Codd on behalf of Hull City Council. His evidence and the Hull Local Plan Issues and Options Paper, both refer to the FOAN for Hull as 760 dwellings p.a. rather than the 246 dwellings p.a. that underpins the approach that has been adopted by RW and which is necessary if the transfer of housing from ERY to Hull is to be achieved:

- (i)  $1,875$  (ERYC) +  $246$  (Hull) =  $2,112$  dpa for Hull and ERY. If  $1,400$  are to be provided in ERY, then the figure for Hull would be  $712$ . BUT...
- (ii)  $1,875$  +  $760$  =  $2,635$  dwellings p.a. for Hull and ERY, not  $1,875$  (although now  $1,888$ ). If  $1,400$  are to be provided in ERY, then the figure for Hull would be  $1,235$  p.a.
- (iii) Making any assumptions about Hull's housing requirement is specious at this stage as there is no recently adopted Local Plan for the Hull City Council area. The City Plan, which Mr Codd explained is important, sets out an employment growth target of  $7,500$  new jobs, which at  $750$  a year is far more than the  $236$  which RW's approach has to assume to arrive at his housing requirement.
- (iv) Had the two Councils really wanted to make a convincing case for off-loading ERY's requirement to Hull (especially at the scale proposed) there ought to have been a Joint Development Plan.
- (v)  $1,235$  dwellings a year is four times the past trend figure for Hull CC area<sup>120</sup> and above the capacity identified in the Hull SHLAA<sup>121</sup>.
- (vi) P26 of the Hull Issues and Options Paper refers to: only a limited number of large sites suitable for residential development; identifying new housing sites in Hull is a challenging task; Hull is constrained by its boundary and is largely built up; and there is considerable demand for other uses.

9.133. It cannot be assumed that Hull will be able to take all of the surplus housing from ERY in the event that it holds on to its unjustified and not tested constrained figure of  $1,400$ dpa. A Duty to Co-operate paper is not sufficient to evidence compliance with paragraph 18 of chapter 2a of PPG.

<sup>119</sup> SC Reb, para 2.10

<sup>120</sup> RW PoE, table 6.1, p35

<sup>121</sup>  $15,105$  between 2013 and 2030, compared to a requirement of  $21,000$  ( $1,235 * 17$ )

## Commuting Rates

- 9.134. The other key reason for the difference in the housing requirement figure is commuting rates. The Council has altered this against the trend as a way of reading the housing need. Commuting rates within ERY have been increasing over the last 5 years. It is really just a device for reducing the housing requirement, and there is no robust or tangible evidence before the inquiry as to why that trend is likely to change.
- 9.135. SC's approach was to hold commuting rates steady at 1.36 (2012 level) which is perfectly reasonable. This represents a conservative approach in the context of the steady increase in net out-commuting rates that has been evident in ELR since 2009. RW on behalf of the Council has applied a 5% reduction in net out-commuting levels (from 1.28 to 1.23) over the Plan period. Edge Analytics (in its note appended to RW's rebuttal proof) stated that "variations in the pattern of commuting are difficult to forecast but the sensitivity scenario which elevates a greater degree of 'self containment' for ERY is perfectly legitimate". It is therefore put forward as a sensitivity test just as SC has put forward his partial catch up and accelerated index approach to the requirement figure as sensitivity tests.
- 9.136. Moreover, as RW confirmed in XX (and SC highlighted in his XX), RW was not able to point towards any initiatives in place to achieve a 5% reduction in net out-commuting and was also unable to point to any evidence regarding past commuting trends. The Council suggested that the allocation of land for residential and employment development would be sufficient to ensure that the anticipated reduction in commuting could be achieved. But SC challenged this assertion, stating that the planning process can only do so much: non-planning changes are also necessary and there is no evidence that these would be forthcoming.
- 9.137. Whilst SC's sensitivity assessment shows that the differences in approach to commuting accounts for a large difference in the FOAN figures, his evidence demonstrated that the assumption that has been adopted by ERYC and its advisors is unsubstantiated and its achievement cannot be assured. It is therefore unsafe to rely upon it at this stage.

## Historic Shortfall

- 9.138. For the avoidance of any doubt, it is important to point out that SC's figures do not incorporate the backlog in housing that has emerged. Using the Sedgfield method (of applying it to the five year requirement in a five year housing supply calculation) the shortfall needs to be separately identified and then applied to the overall 5 year requirement. RW claims the Council's figure of 1,888 addresses the historic shortfall. But SC can find no evidence of that and without that evidence it is not right to simply assume it is in the 1,888 dpa. There is no reference to backlog in the Local Housing Study. The Council's FOAN assessment only considered the future period (i.e. did not take account of backlog), so it is appropriate to apply a separate allowance for it as part of the assessment of 5 year supply. This is the Appellant's approach.

### *Conclusions on the Housing Requirement*

- 9.139. For the purpose of this inquiry, the evidence of SC should be preferred over that of RW. SC's figure is robust. RW's main answer is to say whatever the figure for FOAN in the ERY, the appropriate figure for assessing the five year housing supply is 1,400. That is no matter what figure is used by the Council in respect of its own FOAN figure: be it 1,875, 1,888 or 1,933. That approach, that Hull is big enough to take whatever spills out of ERYC, raises serious problems of its own. That debate is for the Local Plan process and it only serves to demonstrate why anything other than FOAN cannot be used for calculating the five year housing supply at this stage.
- 9.140. But it is important to record that given ERY only want to accommodate 1,400 dpa (23,800 new homes over the plan period) and SC's figure identifies a FOAN requirement for ERYC of 2,200 dpa (37,400 new homes), the difference of 13,600 from ERY going straight into Hull even before one looks at Hull's requirement based on its own economic strategy, provides some stark evidence on why the emerging Local Plan for ERY faces a momentous task and why it would be pure folly to assume it will be adopted in its present form. Although the Inspector examining the Local Plan has not called a preliminary meeting, he has not heard the evidence yet, let alone decided on the merits of the Council's case.
- 9.141. The approach adopted by SC is reasonable as it:
- a) is based upon an assessment that the 2011-based rates are unlikely to be maintained over the long term;
  - b) takes account of evidence regarding increased household formation trends (towards the long term average) as the economy improves;
  - c) follows the approach that was specifically endorsed by the South Worcestershire Inspector;
  - d) is conservative when compared to the 2008-based SNHP rates; and,
  - e) relies on the trend in commuting patterns rather than making assumptions unsupported by evidence.

### *Housing Land Supply*

- 9.142. Until recently, the Council claimed to have a five year supply of housing of 15,576 dwellings. What immediately strikes one about the Council position is that it is utterly implausible on the available evidence. Alarm bells start ringing as soon as any number as high as 15,000 is suggested. The reasons are obvious:
- (i) this is a supply of over 3,000 houses a year. The Council's past track record shows it has never delivered houses in that quantity.
  - (ii) as the Appellant understands it, that is the number anticipated to be delivered between November 2013 and November 2018. The Council is therefore already well into the first year of that period and the available evidence from SH is that completions up until April 2014 are still below the RS requirement of 1,150 although that number has not been provided. That will put the requirement up to about 3,500 a year.

- (iii) against that 3,500 figure, the Council has delivered an average of just 635 a year over the last 5 years. That is in fact just 3,174 in the last 5 years. Now they are meant to deliver 3,000pa in the next 5 years, possibly 3,500 in the next 4 years.
- (iv) even allowing for higher delivery rates in years 2004/05 to 2007/08, the SHLAA 2014 (Table 1) sets out that ERYC delivered 5,979 new homes (net) between 2004/05-2007/08 (pre-recession). This is equivalent to an annual delivery rate of 1,495 (or 7,474 over 5 years).
- (v) ERYC delivered 9,153 new homes (net) 2004-2013, equivalent to an annual delivery rate of 1,017 (or 5,085 over 5 years).
- (vi) the Council's supply figure has fluctuated to such an alarming degree that it lacks any credibility. In terms of the supply, ERYC had declared a 4.9 year housing land supply prior to the inquiry last year. Then Mr Hunt changed his position. But not marginally. He genuinely believed the Council had a 12.4 year supply. His evidence to the inquiry was predicated on this basis. We are now back down to a figure of around 7 years, although on the FOAN requirement figure it is barely 5 years. Fluctuations in the supply should be an obvious cause for concern, as was observed by the Inspector in the Brixnam decision<sup>122</sup>.

9.143. The Council persists in a supply figure as high as this because of the requirement figure. It accepts the record of persistent under delivery, the use of the Sedgfield method and it surely must recognise that recent legal authorities mean that the FOAN is likely to be preferred so it has little alternative but to allege such a high supply figure. That much became very clear during the XX of SH. When it was suggested to him that the figure of 15,000 was absurd he tried to suggest that it was in fact a 7 year supply. That is plainly wrong as the 15,576 figure is clearly put forward as the figure available in the next 5 years. It is the Appellant's understanding that the Council's new supply figure is around 14,000. But that makes little difference to the overall concern.

9.144. Another major problem with the credibility of the Council's own housing supply figures is the trajectory in the Housing Implementation Strategy, which shows delivery in 2013-2014 at less than 1,000 units (and closer to 800), followed by less than 1,400 for the following two years. The figure is 1,500 for 2016-17 and marginally higher than that in 2017-2018<sup>123</sup>. That is a supply of about 6,500 to 7,000 in the next 5 years on the basis of its own evidence to the Local Plan examination.

9.145. Raising such a figure has of course required the Appellant to have to investigate it all. JG's evidence to the last inquiry was based on investigation of the efficacy of SH's previous claim of a 12.4 year supply. The revised SHLAA, took account of JG's evidence and abandoned the 12.4 year supply and most of the draft allocations on which it was based. The Council introduced a whole range of new, entirely unsupportable draft allocation sites into a new 7.3 years claimed supply. SH's table in his appendix L simply does

<sup>122</sup> CD E5 para 63

<sup>123</sup> ERYC 32 Page 7

not provide any reliable evidence that the claimed supply is available 'now' under the requirements of the NPPF and the PPG.

9.146. The Appellant has examined the Council's delivery on the basis of just sites with planning permission and no discounting and projecting forward past delivery. The latter is a useful "reality check" against how much will be delivered<sup>124</sup>. However, having looked into the matter in detail, the Appellant takes the view the realistic supply in the relevant 5 year period is 4,734 dwellings<sup>125</sup>. This is comprised of:

- (i) 1,394 dwellings on large sites with planning permission
- (ii) 528 dwellings on small sites with planning permission
- (iii) 66 dwellings on existing deliverable LP allocations with permission
- (iv) 947 dwellings on emerging LP allocations with permission
- (v) 789 dwellings coming forward as windfalls
- (vi) 528 dwellings with permission or a resolution from SH's Apdx M
- (vii) 482 dwellings with permission granted between 21 May and 10 July 2014

9.147. The supply of housing should be assessed on what is available now and that will largely be sites with planning permission. The supply of housing in the next five years is not simply everything which has planning permission, as it needs to be examined carefully in terms of delivery within the timescale to 2018, a burden which the *Wainhomes v Wiltshire* case places on the Appellant. Previous appeal decisions under the NPPF have sought to emphasise the importance of a deliverable supply which is available now. All have stopped short of suggesting the supply is only that for which planning permission has been granted. But there are some interesting observations on the interpretation of the paragraph 47 of the NPPF on this issue<sup>126</sup>.

9.148. The PPG does not exclude sites without planning permission. It is appropriate depending on the evidence to include sites with a resolution to grant. But it is inappropriate to include sites without planning permission or even a resolution to grant unless there is very clear evidence supporting the delivery of that site in the next 5 years. The *Wainhomes* case placed that burden on the LPA. Yet the evidence in this regard is simply that contained in Mr Hunt's appendix M, as updated in ERYC 39. This contains very little detail about actual delivery. There may be no objection to many of the sites (although there are plenty with outstanding objection) but there is very little else to demonstrate a site will deliver in the next 5 years. Technical and viability evidence is not provided.

<sup>124</sup> an observation made by the Inspector in the *Brixham* appeal decision (paragraph 63 - CD E5) and the Inspector in the *Offenham* appeal decision (para 36 – RT Apdx)

<sup>125</sup> STM30 tables 2c and 3c of

<sup>126</sup> CD E15, para 10, *High Peak*; and CD-E16, *Ottery St Mary*: para 23 concerned sites which the Council said had potential "However, only one of these sites has planning permission for housing.."; and para 29 and 30 with regard to emerging allocations "However, these sites do not have planning permission and are not available now. There could be technical and /or viability issues which could delay them coming forward within the five years."



- 9.149. The Appellant has elected not to accept any of the sites without planning permission or a resolution to grant. That put the Council on notice that it had to demonstrate the deliverability of sites without planning permission and that was clear from JG's PoE. Yet there is virtually no tangible evidence to this effect for all the sites without permission or a resolution. For example there is no evidence whatsoever of the delivery record of developers or landowners as suggested by paragraph 20 of the PPG, Chapter 3.
- 9.150. The PPG also makes clear that in terms of sites without planning permission or which are allocated for development in a development plan, the LPA will be required to provide robust, up to date evidence to support the deliverability of sites<sup>127</sup>. A summary against each site which largely involves speaking to the developer is not remotely close to robust evidence. SH suggested more evidence was all in his files in the Planning Department. That is not before the inquiry and it is up to an LPA to provide the necessary evidence to support the case at inquiry. The geographical size of the authority's area is no excuse for the absence of such robust up to date evidence.
- 9.151. The NPPF requires delivery. It is the failure to actually deliver which has caused the national housing crisis in the first place, to the point where it now threatens to destabilise our national economy (RT EIC).
- 9.152. The lead-in times and delivery rates adopted have to be realistic. The lead-in times in the 2013 SHLAA (CD N/E37) are excessively optimistic. The previous lead-in times applied in the 2012 SHLAA are more realistic<sup>128</sup>. However, the 2013 lead in times have been used to allow comparison with ERYC's figures. The Council's approach to delivery is not on the basis of uniform figures from an agreed Panel depending on site size. They are said to relate to individual sites. Overall past delivery in ERY is therefore the only real way to judge delivery.
- 9.153. Mr Gartland calculates that<sup>129</sup>:
- (a) looking at sites with planning permission and resolutions to grant permission, the 5 year supply is: 1.8 years against the Index approach of 2,208dpa and 2.1 against the Council's figure of 1,888dpa;
  - (b) looking at a supply based on past delivery rates, the 5 year supply is: 1.1 years against the Index approach of 2,208dpa and 1.2 against the Council's figure of 1,888dpa;
  - (c) looking at sites with planning permission and resolutions, the 5 year supply is: 1.5 years against the Index approach of 2,208dpa and 1.8 years against the Council's figure of 1,888dpa;
  - (d) even if the Council's methodology is adopted, the shortfall is very substantial at around just 1 to 2 years supply.

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<sup>127</sup> : paragraph 32 of Chapter 3 of the PPG

<sup>128</sup> see JG RPoE, section 3

<sup>129</sup> STM 30 – 7 August, tables 2 and 3

9.154. The Appellant believes that the Council's supply of housing land is around 5,000 dwellings. It is woefully inadequate. Conscious there are arguments on both sides, some Inspectors look to split the difference. The Appellant firmly rejects that. But even if that is done in this case, rather than an analysis of the detail, it is clear the Council has nothing like a five year supply of housing land.

9.155. Finally, even on the Council's own supply figure, if SC's Index approach is adopted there is still a significant shortfall – 4.3 years<sup>130</sup>. That is an appropriate description for a shortfall of this scale<sup>131</sup>. In the context of East Riding, that shortfall is still over 2,000 houses<sup>132</sup>. As long as that is accepted, the need to examine the extent of the shortfall in supply is very much less pressing. There is an obvious sensitivity about a LPA being found to have a very substantial shortfall in supply at a time coincidental with a Local Plan examination<sup>133</sup>. Moreover, a five year housing supply is a minimum requirement and in the context of significantly boosting the supply of housing, is not to be seen as a ceiling<sup>134</sup>.

### *Affordable Housing*

9.156. The affordable housing provision will be secured via the Section 106 Undertaking. This will include provision for a mix of tenures tailored to local needs, including affordable rented housing. As is the Council's preference, this will be agreed at the time of any reserved matters application. The proposal includes the provision of a 50 bed dementia care home with 36 sheltered apartments/dormer bungalows. This proposal was amended during the application in response to comments from the Adult Services and Business Management Unit.

9.157. Since 2001, house prices in Yorkshire and Humber have risen 110%, which is more than any other region. There were 272,407 families on Yorkshire and Humber housing waiting lists in 2011, a rise of 81% over the last 10 years. That is one in every eight households. Average house prices in East Riding have been consistently higher than the regional average. The SHMA acknowledges that "East Riding is faced with many challenges, including: meeting the housing and support needs of an older population and other vulnerable groups; the need for affordable housing in rural areas and market towns". The Council's record on delivery has been awful. The SHMA 2007 identified an annual need of 1,455 dwellings. Since then, the Council has managed to deliver only 402 affordable dwellings, an average of just 45 affordable dwellings per annum. It represents a very low level of affordable housing delivery. The latest SHMA identifies a need for 1,008 affordable dwellings per annum for the five year period 2011-2016. Delivery continues to be woefully inadequate. These are real people with real lives and the problem in East Riding is painful to look at. This recent assessment identifies a very significant level of housing need in the District.

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<sup>130</sup> *ibid*, table 1

<sup>131</sup> para 13: CD – N/E45

<sup>132</sup> STM 30 Table 1, Index figure, shortfall row T

<sup>133</sup> CD E 24 paragraphs 18 to 29 and the conclusion at paragraph 30

<sup>134</sup> para 51- STM 2

9.158. The Appellant is willing to accept that this relates to the present backlog and future demand, albeit as RT observes it does rather suggest that what is happening is that people in need are leaving the area. The need is also only for the next 5 years. It is not clear why the Council has failed to identify the need for the plan period as required by paragraph 47 of the NPPF. In the latest update from the Council on 25th July 2014 there were 6,752 applicants currently on the housing register.

#### The Council's Approach

9.159. When the application was determined, the delivery of affordable housing was given very little weight (EiC RT). The Council was not looking to balance the merits and benefits of the proposal. It was only when XX that Mrs Hunt accepted that it was to be given substantial weight.

9.160. But the Council continues to argue over the issue, suggesting the need is not as bad as the picture RT paints. It points out that the historic backlog is less than the backlog identified by RT<sup>135</sup>. That is accepted but the shortfall is still desperate. The Council then relies on this to emphasise there has been under delivery only against the last 2 years, with the shortfall being around 1,600. That is just not right. The shortfall is thousands more. The Council's own waiting list includes nearly 7,000 people.

#### The Correct Approach

9.161. The Appellant's case is that the appeal proposals make very substantial over provision of affordable housing. The Appellant draws attention not only to the problem but also the consequences<sup>136</sup>. Anyone can say they give the provision of affordable housing very significant weight. The real issue is whether that is actually done. The Council still does not really do so and that is evidenced by the questioning of whether overprovision can be said to meet the CIL tests (see para 7.64 above). The Appellant's proposal delivers significantly more affordable housing than the Council is seeking, even in the emerging Local Plan. The Council has had real problems with delivery on the site at Brough where large scale infrastructure costs have swallowed up the finance available. The offer at Brough is just 10%, at present. It is understood public money is also involved in that scheme. RT's evidence demonstrates a lack of 'policy compliant' affordable housing delivery on a variety of sites in East Riding. Such infrastructure constraints do not affect the appeal site. Access and highway capacity is not an issue.

9.162. The GSJ was promoted primarily for highway safety reasons but that junction capacity can also deliver mixed use development which is what the Government is seeking to encourage (para 17 (8) NPPF) with a very significant proportion of affordable housing.

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<sup>135</sup> SHMA page 81 (RT XX)

<sup>136</sup> Apdx 29 RT AAPOE paras 8.122-126, Droitwich: the Inspector's observations make a refreshing change from the dismissal of affordable housing, particularly by LPAs, as just another material consideration.

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*A new Bridge over the Railway Line*

- 9.163. In the event that the Secretary of State has any residual concerns about the supply of employment land, then rather than dismiss the appeal the Appellant is willing to undertake a commitment to fund a new two-way bridge over the railway. This is a private sector solution. The Council has not allocated any of the land south of the railway for employment purposes, despite the fact that large areas are previously developed. Network Rail highlighted to the Council the need for a new bridge 5 years ago. The Council has done nothing about it and continues to allocate large areas of greenfield land instead. This land south of the railway generally scores well against the Council's own rating because it is a recognised employment area. One of the main reasons it is not in a higher category is the issue of access.
- 9.164. The Appellant is involved in some of the biggest regeneration projects in the country. It promotes and builds both housing and employment development on brownfield land on a huge scale. St Modwen knows how to deliver infrastructure and how to deliver mixed use development. Letters of support from land owners demonstrate an appetite to develop this land. The Council dismisses this proposal and suggests it is all too complicated to progress, citing the need to reconsider EIA screening and Habitat Regulations. That is now a matter for the Secretary of State, before he makes his decision in this case later in the year.
- 9.165. The cost of the proposed bridge is £5 million including a 5% contingency. This has been assessed by civil engineers, some of whom have been involved in a similar bridge over the same railway line at Brough 2 kilometres to the west. The Council's Civil Engineering Department has already said that the overall bridge estimate of £5m appears reasonable<sup>137</sup>. The Appellant is willing to provide a further £1million of funding to cover any other contingencies. The Council confirms its position that neither the bridge application, nor the contribution to the bridge, make Appeal B EIA development<sup>138</sup>.

*Background to the offer*

- 9.166. Presently, an existing flat-bed bridge carries Brickyard Lane over the railway. Brickyard Lane is a single track lane. The existing bridge is very narrow, lacks footpaths or cycleways and has very poor forward visibility. It is completely out of character with the new infrastructure to the north of the railway. The existing bridge is presently used by HGVs and other traffic accessing some employment uses south of the railway. The existing bridge is also not of sufficient height above the track to allow for the proposed future electrification of the line.
- 9.167. The new bridge would be built as a free standing structure immediately to the east of the existing bridge. It would allow for full two way traffic movements for all vehicles including HGVs. It would also provide pavements on each side of the bridge and a cycle lane. From the perspective of Network Rail, there are obvious substantial financial benefits in having the funding provided for a "future proof" replacement bridge capable of accommodating

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<sup>137</sup> Richard Lewis, email dated 13 May 2014 – give ref

<sup>138</sup> ID 40

the proposed electrification of the line without any recourse to the public purse.

- 9.168. The Council's formal response in a pre-application letter of 10 June 2014 makes clear that "[t]he principle of a new bridge is supported, as it would replace an existing structure and would improve the safety of the road and railway. The visual impact would be acceptable and subject to conditions and suitable mitigation it would have minimal impact on the amenities of the area during construction." The letter also says "detailed considerations relating to ecology, archaeology and contamination require further information". These have all been commissioned and are provided as part of that application, together with additional reports on noise, vibration, air quality, arboriculture and transport. The Council's pre-application letter is also clear that "[t]he proposal would generally meet both existing Development Plan and emerging East Riding Local Plan policies subject to such detailed considerations."
- 9.169. South of the railway, there are large areas of vacant and underused land. The owners are actively encouraging the funding of the bridge. Mr Neale, Chairman of Leisure Techniques, has highlighted the fact that his land was rejected as an employment allocation partially due to access constraints so that the provision of a new bridge would certainly be a significant factor in bringing the redevelopment forward. Mr Reynolds of Melton Industrial Park Limited makes clear that development of his land is "currently being held back by the size and weight restriction on the existing bridge." Between them, these two landowners have control of around 35 hectares of previously developed ex-industrial land with direct access on Brickyard Lane. Both have actually taken the trouble to write letters of support for the bridge. A third landowner and local employer, Draytec Limited also supports the proposal for a new bridge and is actually a signatory to the Unilateral Undertaking for the Appeal proposals.
- 9.170. If the Secretary of State has any concerns about the loss of employment land even on the smaller Appeal Scheme B, the private sector can deliver important infrastructure to open up additional sites and capacity. The Council fails to grasp the positive approach to new development which the NPPF requires, instead raising as many proposed problems as possible. The suggestion that Network Rail will seek a ransom fails to understand that they would get a bridge they need for free. Also, the proposals do not involve any development proposals south of the railway. If Network Rail wants to close the level crossing, it will have to deal directly with Mr Reynolds.

#### *Prematurity*

- 9.171. The Council now raises this as a late concern. It is not credible in the context of the emerging local plan. The Secretary of State has been unconcerned about prematurity for some time now including many large scale proposals of up to 1,000 dwellings coming forward outside of the plan system.

#### *Sustainable Development*

- 9.172. NPPF paragraph 15 is unequivocal that development which is sustainable should be approved without delay. The appeal proposals constitute sustainable development as set out in NPPF paragraphs 7 and 8, performing a positive economic, social and environmental role. Paragraph 14 of the NPPF

confirms that in the context of the presumption in favour of sustainable development, planning permission should be granted where the development plan is absent, silent or relevant policies are out-of-date unless any adverse impacts would significantly and demonstrably outweigh the benefits.

- 9.173. With regard to the environmental benefits, the appeal site is an appropriate location for residential development. It occupies a highly sustainable location within a highly urbanised corridor with major transport infrastructure, large settlements, large employment areas and strong connections to Hull and the M62 and is fundamentally different to other more rural areas to the north. North Ferriby is served by a regular bus service, an excellent network of footpaths and cycleways and a railway station providing direct trains into Hull, Doncaster, Sheffield and York. It provides a good range of services and facilities including the North Ferriby Primary School and South Hunsley Secondary School.
- 9.174. The appeal site lies in an area of transition between residential and commercial uses. The area to the north-west comprises a mix of commercial and residential uses. The proposals would complement this mix. Residential development can be readily accommodated within the site and would be compatible with existing and potential surrounding uses. It would provide an attractive and desirable place to live with generous green infrastructure and good connections as an extension to a popular and sought after settlement. Furthermore, the smaller parcels 2 and 3 sit within an area which is already mixed use with housing, employment and other uses sat successfully alongside each other.
- 9.175. North Ferriby can be accessed on foot or bicycle via the existing route through the Long Plantation, or proposed footpaths and cycleways within the development, connecting to the existing network to the north along Melton Road (B1231) and High Street. The appeal site is also well served by local bus services with stops within 30m.
- 9.176. With regard to other aspects of environmental sustainability, the appeal site is located in Flood Zone 1 and any landscape or visual impacts could be mitigated. There is no evidence to suggest the presence of any potential ground contamination and the Council's Environmental Health Officer raised no objection in this respect.
- 9.177. The appeal proposals would deliver significant economic benefits for East Riding. Economic benefits of the 510 unit scheme include some 54 jobs being supported on site throughout the duration of the construction stage and 21 spin-off jobs. Construction activity could be expected to deliver a £6m boost to GVA. The new households would generate £1m of net additional expenditure in the local economy each year. A New Homes Bonus payment would be generated for ERYC of around £6.7m and there would be an increase in Council Tax revenues of over £1.1m per annum. Further, the increase in the locally resident population would help support existing businesses in the local area.
- 9.178. From the perspective of social sustainability, the Transport Assessment concludes that the development would bring operational and safety benefits compared with the corresponding committed employment-led Melton Park Development. It would deliver a choice of well-designed homes to meet

needs identified through the SHMA and the Affordable Housing Viability Assessment including affordable homes, family homes and elderly persons accommodation. The affordable housing provision would make a significant contribution to the Council's target of at least 310 (gross) affordable homes per annum across the Borough. This should weigh considerably in favour of the appeal proposals.

9.179. St. Modwen has met with The Heads of North Ferriby CE Primary School and South Hunsley (Secondary) School, Governors and Schools Admissions Officers of the Council with regard to the need and scope for extensions to local primary and secondary schools as a result of the proposed development. It has been confirmed that extensions could be accommodated to address the additional pupil demand.

9.180. The development proposals will ensure that the amenity of the area will be improved by the provision of extensive areas of new publicly accessible recreational space including linear parks, play areas, incidental open space, trim trails and a 3.08ha area for formal sports provision / playing pitches. These facilities will be accessible to the residents of North Ferriby and other surrounding areas as well as the new residents of the proposed development. This is in line with section 8.0 of the NPPF which supports the creation of healthy and inclusive communities.

#### *Local Residents Concerns*

9.181. The residents of North Ferriby have provided their views on the appeal proposals to the Inquiry both through the Save Our Ferriby organisation and directly at sessions in County Hall, Beverley and the Hallmark Hotel in North Ferriby. The Appellant's position can be summarised as:

9.182. **Access for recreation:** Long Plantation and the adjoining agricultural land, including the appeal sites, are used by local residents for a variety of recreational pursuits including cycling and dog walking. Residents have raised concerns that the proposed developments would prevent these activities. Whilst the context of the footpaths would inevitably change with the development of the sites, Long Plantation would be maintained in its entirety and broadened with additional planting. Existing hedgerows within the site would be maintained wherever possible. The footpath running east/west through the site from Brickyard Lane to Long Plantation alongside a mature hedgerow would also be maintained as part of a key pedestrian route connecting with a network of existing and proposed paths through the site and the surrounding area. Although the applications are in outline form, illustrative details of how these features could be incorporated are provided in the revised Design and Access Statement (CD J5) and delivery is secured via planning conditions.

9.183. Both appeal schemes also incorporate additional opportunities for recreational activities through the provision of children's play areas and playing pitches and sports facilities in the north eastern part of the main site. This would fulfil an objective to provide such facilities identified by the community through the North Ferriby Parish Plan.

9.184. **Impact on biodiversity:** Residents have provided details of the wildlife that has been identified at the appeal sites and in the surrounding area. The

perceived destruction of the habitats within the site and the harm caused by additional activity in the surrounding area are cited as concerns by residents. The Ecological Assessments (CDs G19 and J20) and the Habitats Regulations Assessment including Breeding Birds Survey (CDs J17 and G33) provide details of the surveys and assessments of the existing habitats and potential impacts of the proposed developments. They conclude that the appeal schemes would not have a significant detrimental impact on any protected habitats or species (paragraph 6.2 of G16 and Section 5 of G19). These documents and the Design and Access Statement (CD J5) also provide details of proposed mitigation to ensure net long term benefits through the creation of new habitats for example as part of the SUDS area and the bolstering of Long Plantation.

- 9.185. **Proximity to former Capper Pass site:** The pollution and contamination associated with the activities at the former Capper Pass site and the impact on the health of local residents is understandably a highly emotive topic. Very moving statements have been made to the Inquiry on this matter. The appeal sites have no direct connection to the former Capper Site which lies to the south west of the appeal site on the opposite side of the railway line. Thorough site investigation surveys into ground conditions at the site have been undertaken by Atkins on behalf of St Modwen (CD G24 and J5). They conclude that there is no evidence to suggest a widespread issue of contamination of shallow soils at the site. Across the site, contaminants have been detected at levels below what is considered to be a very conservative / protective set of screening criteria (Page 4, Section 6 of J25). Further detailed investigations will be carried out should these be necessary, in accordance with an agreed planning condition.
- 9.186. **Buffer between village and industrial development:** Correspondence from local residents refers to a perception that the appeal sites and some adjoining land should be protected from development in the long term as an amenity buffer. This is not reflected in either the adopted or emerging Local Plans, both of which identify large parts of the appeal sites as allocations for industrial development and an extant planning permission exists for such uses on part of the site. The proposed residential development would not introduce any amenity issues for existing residents of North Ferriby and ERYC's Environmental Health Team has concluded that suitable residential amenity standards could be achieved in the new development. A condition requires further assessment to identify any specific measures to be incorporated in to the development to achieve appropriate standards.
- 9.187. **Loss of prime agricultural land:** Statements have referred to the perceived loss of high quality agricultural land as a result of the appeal proposals. The extant planning permission for employment uses confirms that the site can be developed and that the loss of the site from agriculture would not have a significant detrimental impact on the supply of food.
- 9.188. **Maintenance and retention of Long Plantation:** There are no proposals to alter Long Plantation as part of the appeal proposals, other than the provision of a footpath link to Plantation Drive if required. St Modwen's long term role in the maintenance of the Plantation will not change. Long Plantation will be broadened as part of the appeal proposals, thereby enhancing its role as a wildlife habitat and recreational resource.



- 9.189. **Access to Plantation Drive:** Some residents have misinterpreted the proposed link from Long Plantation to Plantation as a potential vehicular route. This is not the case. If provided, the route will be designed in such a way as to prevent use by vehicles.
- 9.190. **Noise, dust and disturbance during construction:** Should planning permission be granted it is inevitable that the construction process will result in some disturbance. However, an agreed planning condition requires that a detailed Construction Method Statement is provided and agreed with ERYC prior to the commencement of development. This will provide details of the methods that will be taken to suppress dirt and dust and minimise noise disturbance. A further condition limits the period during which construction activity can take place to protect residential amenity.
- 9.191. **Noise and disturbance from existing industrial uses:** Whilst noise associated with the nearby commercial uses is audible at times from the appeal sites and within North Ferriby the appeal proposals would not worsen the situation for existing residents and suitable amenity standards would be achieved for occupiers of the new homes.
- 9.192. **Neighbourhood Plan:** On the last day of evidence SOF raised the possibility of progressing a Neighbourhood Plan. In Tarporley (CD D5) the Secretary of State rejected the Inspector's recommendation that the appeal be refused because of prejudice to progress on a draft Neighbourhood Plan. That is one of two decisions where the Secretary of State has rejected a recommendation for refusal by an Inspector (STM12). The other case was the Burgess Farm appeal, the Secretary of State made clear that despite the emphasis on encouraging the effective use of land by re-using previously developed land (para 17(8)) the policy in NPPF did not seek to apply a sequential test to the release of greenfield sites (CD D18).

*The Full Extent of the Benefits of the Appeal Schemes*

- 9.193. The benefits of the 510 dwelling scheme include not only significant affordable housing in the face of dismal past performance and acute need, where the lack of which is acknowledged to constrain local economic growth; but also significant new market housing to add competition and choice in the local market area and price benefits to the community (please see the Launceston decision, STM2, para 52); in that part of the Borough with the highest house prices (CD F13, SHMA, pages 42- 44: Figures 5.8 to 5.10); specific dedicated housing for the elderly; care facilities, again offering competition and choice in the area; the construction jobs which will be created over many years; very large areas of publicly accessible open space with significant ecological enhancements; a local centre to serve not only new residents, but existing residents at Melton (especially south of the A63) and all those employed on the industrial estates and office developments; support for local shops, services and facilities in North Ferriby (which have been diminishing).
- 9.194. Economic benefits of the 510 unit scheme include: 500 person years of direct employment in construction equating to 54 direct jobs and 21 spin-off jobs; construction activity could be expected to deliver a £6m boost to GVA; the new households will generate £1m of net additional expenditure in the local economy each year; a New Homes Bonus payment would be generated

for ERYC of around £6.7m; and an increase in Council Tax revenues of over £1.1m per annum.

- 9.195. The benefits of the revised proposals include support for 485 person years of direct employment, equating to 75 direct jobs and 90 spin-off jobs; construction activity could be expected to deliver a £5.6m boost to GVA; the new households will generate £805,000 of net additional expenditure in the local economy each year; a New Homes Bonus payment for ERYC of around £4.8m; and an increase in Council Tax revenues of over £780,000 per annum.

### *Overall Conclusion*

- 9.196. For the reasons set out above and in written and oral evidence of JG, DG, SC, RT and the written evidence of CB, the Appellant respectfully invites the Inspector to recommend to the Secretary of State that both appeals be allowed. If they are, the Appellant will implement the 510 dwelling scheme. If only Appeal B is allowed the Appellant will implement the scheme with the 40% affordable housing (as made clear in the UU). Only if the Secretary of State considers it necessary to mitigate the loss of employment land does the Appellant invite him to grant permission for Appeal B with the bridge contribution of £6million.

## **10. The Cases for Interested Parties who addressed the inquiry**

- 10.1. This section summarises the points made by those persons who addressed the inquiry. Some were accompanied by written submissions which have been included as inquiry documents, in which case the reference is given in parentheses (IDxx).

### *Hull City Council (Mr A Codd)<sup>139</sup>*

- 10.2. The City Council's policies have been prepared with a close understanding of how the sub-regional economy operates. In particular the adjacent areas of the East Riding are closely associated with the economy of the City and crucial to its ongoing regeneration
- 10.3. In 2013 the City Council published the City Plan, setting out its aspirations for the future of the City. This is not a development plan document however it is significant to the consideration of the appeal and has been endorsed by the City Council and key public and private sector partners including the Humber LEP. The plan aims to create 7,500 jobs for local job-seekers over the next 10 years, to bring claimant levels down to national level. Amongst its priorities, it seeks to make Hull the leading UK Energy City, the UK hub for renewable energy industries and investment. Projects and proposals include a potential £200m development for the manufacture of off-shore wind turbines at Alexandra Dock, part of the Green Port Hull initiative.
- 10.4. To deliver these aspirations, the City will be reliant on job opportunities being created beyond its administrative boundaries, particularly given the large floorspace requirements associated with the renewable and port industries and the limited amount of large sites available within the city. An

<sup>139</sup> The City Council's response was set out in its letter of response to Appeal A dated 21 October 2013, also available at NR Appx 11.

example of where this is already occurring is the joint work with ERYC regarding the securing of RGF funds for the Enterprise Zones in the East of the city and the Local Development Orders adopted for both the Hull Docks and Paull sites.

- 10.5. Recently approved applications for developments at Alexandra Dock (Green Port Hull) include factory and office space, a vessel crew facility, a helicopter landing site and open areas for the storage, handling, assembly and testing of wind turbine components. Also, the Port of Hull Local Development Order May 2012 covers both General Industrial uses and uses associated with renewable energy and low carbon industries. As part of the Newington and St Andrews (NaSA) Area Action Plan, planning permission has been granted for a total of 1,518 houses in the NaSA regeneration area.
- 10.6. The Council's objection to the proposed development at Melton relates to the potential impact on the housing market regeneration in the NaSA area and the loss of employment land and the potential impact of this on Green Port Hull and the Council's City Plan aspirations.

### Housing

- 10.7. The NaSA area was identified in 2005 as an area where intervention was required to seek to resolve social and economic issues in the area, including high levels of unemployment, high levels of deprivation, and small, poor quality and crowded housing. An Area Action Plan was produced to champion the renaissance of the area and coordinate its regeneration. The City Council has been working closely with the East Riding to ensure the ERYC draft local plan includes a level of housing within the Haltemprice settlements which supports the continued regeneration of NaSA. The Council supports the specific levels identified within the East Riding of Yorkshire draft local plan in supporting this objective. The Melton site would release a substantial level of housing onto the market which would directly compete with the regeneration proposals within NaSA and to a degree which exceeds the requirements of the East Riding of Yorkshire Council's draft local plan, and conflicts with its strategy. Had the appeal proposals been promoted as part of the emerging local plan then it would have met with the strongest possible objections on the part of the City.
- 10.8. Many of the NaSA sites are currently under construction. The housing market remains fragile and the City Council and East Riding of Yorkshire are continuing to work closely to ensure local plan policy and decisions on planning applications fully reflect the importance of supporting housing regeneration within Hull. This is a particular issue embedded within the councils' approach to fulfilling the duty to cooperate and draft Joint Planning Statement.
- 10.9. A study in 2005 identified a Hull-focused Strategic Housing Market Area which included the City of Kingston Upon Hull and the south-eastern parts of the East Riding. This extended to Beverley in the North, North Cave in the West and the Holderness Coast. Melton clearly falls within this Housing Market Area. This definition of the housing market area was further tested by the 2008 Hull HMA (GVA Grimley, 2008) through analysis of migration and travel to work patterns. This highlighted net in-commuting – particularly with 23.9% residents of the East Riding (who were in employment) commuting

into the City. GVA Grimley defined on this basis an 'Outer Hull Travel to Work Area' extending over broadly a similar area to that identified in the DTZ Study – and again including Melton.

- 10.10. The SHMA states that between 1981 and 2001 the population of Hull had fallen by 6% while that of the East Riding had increased by 23% (para 9.6). The SHMA notes that the housing offer in the East Riding (larger family homes in more attractive neighbourhoods) is an important driver of out-migration in the city (para 5.37). To help counter this, it recommends that almost two-thirds of new market homes in the city should be family sized properties with 3 or more bedrooms (para 11.7).
- 10.11. The NaSA AAP aims to provide family sized houses, aiming to widen the choice of housing in the area. There will therefore be a direct conflict between the provision of family housing at Melton on this scale, well within the Hull housing market area, and the AAP policy aims of securing family housing in West Hull. The suburban/rural location of the West Hull villages will be more attractive to prospective house buyers than parts of the City, which have been perceived for many years as run down and in need of regeneration. Approval of the Melton site would therefore have serious adverse consequences for the future of this ongoing and currently successful regeneration scheme of this area of West Hull.
- 10.12. Hull and the East Riding of Yorkshire Councils have worked together for a number of years to ensure that housing developments in the area surrounding Hull are of an appropriate scale, and are phased to ensure Hull's housing regeneration areas are supported. Hull City Council considers that this development, if approved would have a significant adverse impact on the housing regeneration proposals in the West of the city that are being supported by Regional Growth fund monies.

#### Employment land

- 10.13. The NPPF states at paragraph 19 that significant weight should be placed on the need to support economic growth through the planning system. At paragraph 21 it recommends the identification of strategic sites and for local authorities to identify and plan for new or emerging sectors likely to locate in their area.
- 10.14. The saved Joint Structure Plan policies identify the area to the east of Melton for employment use, and emphasise its economic importance to both the East Riding of Yorkshire and Hull. This is reinforced in the East Riding of Yorkshire Council's draft Site Allocations document, which stresses the economic and employment importance of Melton. There have been substantial job losses in the Hull and East Riding area in recent years and incoming investment is required to offset such losses and sustain the economy of the area as a whole.
- 10.15. The Council's City Plan has recently been launched and has an objective of securing 7,500 local jobs, to reduce the number Job Seekers Allowance (JSA) claimants in the city to nearer the national average. There will continue to be a need for a range and quantity of employment land supply. In addition, there are currently significant efforts being made to attract renewable and low carbon industries into the region in particular in relation to wind turbine and

component manufacture, given the impending development of very large areas of the North Sea for offshore wind farms. In addition to the Greenport Hull site at Alexandra Dock (Siemens) and the Hull LDO, there is also the Paull LDO in the East Riding. These aspirations are supported by the Humber Local Enterprise Partnership's, whose priority is to create growth and jobs in the renewable energy, ports, logistics and chemicals sectors, with a vision for the Humber to become a national and international centre for renewable energy.

- 10.16. To secure jobs and to encourage the renewables industry in the Hull and Humber sub-region it is essential that there is a supply of readily available employment land in both the City itself and in the surrounding area. The Enterprise zones in the East of the City and Paull are focused predominantly on the renewable sector but, if successful, sites for supply chain firms and other related industrial and logistical businesses will also be required. Melton Park and Melton West has been included in a prospectus as potential sites providing linkages with the emerging renewable and low carbon industries. It is unique in having a very large amount of readily available land that can support such industries. It has good transport links to Hull and via the A63 to the remainder of the country. Its development for primarily residential purposes would result in the loss of a significant opportunity to support economic growth, develop new industries within the area and regenerate the economy of the City, the East Riding, and of the region as a whole.
- 10.17. The Councils have a proven track record of working together in marketing the A63-Hull-Hedon Road corridor as a successful corridor for employment development. This is evidenced through the development of Priory Park jointly by both authorities (the former railway sidings are partially within the East riding and partially within Hull) and has proven a highly successful site in terms of job creation. The City Council recognises the key location benefits of Melton for businesses looking to reach beyond the immediate city. It has worked with the East Riding to ensure Mira showers when relocating from a site on National Avenue in Hull did not leave the sub-region completely and instead moved to an area just beyond the city boundary. Current indications from another major manufacturing business within the City is that their existing site may no longer be appropriate for them so the council is looking at what sites are available within the city but are also working with the East Riding to determine if an A63 corridor site is preferred given the national and international reach of the company.
- 10.18. The Western employment corridor within Hull has been largely developed out in recent years. Evidence demonstrates a strong market interest in the western part of Hull which it is expected would also be evident within the Haltemprice settlements and this site at Melton.

### Conclusion

- 10.19. To conclude, Hull City Council considers the development would adversely impact on the City's regeneration of its housing market and limit the opportunities to support new and emerging industries associated with the renewable sector. Allowing the appeal would compromise many years of joint working between Hull City Council and the East Riding of Yorkshire Council in the delivery of sustainable communities across the sub region.

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*Welton Parish Council (Alison Peck) (ID 06):*

- 10.20. The unanimous view of the Parish Council was to strongly oppose the appeal proposals. The Parish Council fully supports the emerging Local Plan, in which Melton is designated a "rural village". Although no land has been designated for housing in Melton, between 200 and 300 of the houses to be constructed on the Brough South site are within the Parish and will increase the Parish's population and pressures on all local services significantly. The area has a great need for further employment so Welton Parish Council fully supports the development of this land for employment purposes.
- 10.21. With regard to character, the building of either of these developments would be completely out of proportion to Melton, which at present comprises only 300 houses, only a small number of which are south of the A63. The first proposal for up to 510 houses, plus other residential accommodation would almost triple the size of Melton. Even the second proposal of 390 houses would more than double the size of the village and completely change its character not only by such a huge increase in size but also by splitting the village into north and south, new and old, divided by the A63 70mph dual carriageway. To have any coherent village community would be extremely difficult, if not impossible. The impact of the division of Melton by the A63 and the proposed development's close geographical proximity to North Ferriby would be that the new part of Melton would in effect form an annex of North Ferriby, putting pressure on its facilities but for council purposes etc would not be part of that village. Were the development to go ahead, it would effectively create an elongated conurbation from North Ferriby, through Melton and Welton, and into Brough and Elloughton. The separate characters and identities of each of those settlements would be lost.
- 10.22. The Parish Council is concerned about the care home and sheltered housing. There is no easy access to village facilities in either Melton and Welton or North Ferriby for those whose mobility is reduced. It has seen no evidence of the need for such facilities in this area.
- 10.23. With regard to recreation, open space and Long Plantation Wood, the area of land in question forms part of the separation between North Ferriby and Melton/Welton. The woodland is very popular with walkers as a substantial area of undeveloped countryside and as part of the Wolds Way, which is a great East Riding asset. To overshadow this with either of the large developments proposed would be destructive and a serious loss to the area and would not be compensated for by the small open spaces, lit and surfaced tracks etc shown in the outline plans. "Cultivated" spaces would also require upkeep and maintenance at a significant and on-going cost.
- 10.24. As to living conditions, Melton would greatly increase in size, with the obvious increase in road traffic and its effects on safety, pollution etc. The A63 is frequently closed by accidents and traffic is then diverted through Melton and the conservation area of Welton. The difficulties this causes would be greatly exacerbated if the normal traffic of the villages had already been doubled. The access roads were not constructed with a view to sizeable residential development and subsequent domestic car usage. There is also a very strong likelihood of the living conditions of the occupants of the proposed new houses being badly affected by the heavy traffic leaving the A63 to reach

the substantial industrial development already in Melton south. The inadequacy of the A63 Welton/Brough junction, already dangerously overcrowded and leading to A63 tailbacks at peak times can only be made worse by any further development in the parish.

- 10.25. The pressure on school places in the area is already immense and as the schools serve a rural area, especially the secondary school in Melton, the traffic problems at school opening and closing times are considerable and will only get worse with any further housing development. The secondary and primary schools are full and a new primary school is part of the Brough South plans, but it will be filled by the children from the 800 or so new houses. The secondary school is one of the largest in the County, if not the largest. There is a limit to its ability to expand, even if such expansion were acceptable in terms of the increased traffic etc.
- 10.26. Both Melton/Welton but more so North Ferriby suffer from intermittent noise and smell pollution from the industrial areas. Any new housing nearer to the industrial development would be highly likely to be much more seriously affected.
- 10.27. Welton Parish Council does not believe that planning conditions would mitigate the negative impact of the development. Those areas of agreement already established between the East Riding and St Modwen were done so without any reference to the local community. The Parish Council is very concerned indeed that the proposal to build a railway bridge to the south of the site would lead to proposals to develop a further area, with a further loss of local character and amenities.

*North Ferriby Parish Council - Mr J Mabbett, Chair (ID16); Mr J Halmshaw, Vice Chairman (ID07); Mr C Swindin (ID 12)*

- 10.28. At an early stage the Parish Council resolved to rely on the ERYC to present the case for the dismissal of the appeals and to appear as Interested Parties on behalf of all residents of the village. That decision has been vindicated given the strength of the case the ERYC has presented, notwithstanding the points of disagreement, for example the removal of reasons 4 and 5.
- 10.29. The Parish Council's particular concerns relate to effect on the character of North Ferriby and the lack of community input into such a substantial addition to the village. The Parish Council considers that an employment use of the site is to be preferred over housing. The arguments for an industrial development in this location do not support its use for housing. It considers there is little further capacity within the village for housing and that priority should be given to meeting needs from within the village.
- 10.30. On character, the setting of the village is where the Wolds come down to the Humber and there is active farmland on the other three sides of the village. Work on the Parish Plan (attached to the Parish Council's written objection) showed that the rural setting is highly valued by residents, who wish to see it protected. The proposals would lead to development of land to the south, right down to the Humber, so that North Ferriby would become part of a suburbanised sprawl.

- 10.31. There is an urgent need to address the shortage of playing fields. If development is inevitable, the Parish Council would be willing to work with others to develop suitable projects to create public open space alongside Long Plantation, the Wolds Way and the Pennine Way. However, such a need should be addressed as part of the local plan, so that the local communities can be involved.
- 10.32. The development will rely on the existing facilities in North Ferriby. This 33% increase in the population (23% for Appeal B) would make most of their trips by car, exacerbating existing problems within the village. The Parish Council has found it difficult to persuade current residents to use the bus service so there is little reason to expect residents of the proposed development to do so. It will not be sustainable in transport terms.
- 10.33. Residents fear the effect of the proposal on local educational facilities. Additional classrooms at the primary school might lead to the loss of playing fields, which the Parish Plan identifies as important open spaces in the village. The development will add to existing problems of indiscriminate and illegal parking around the school. It may also add to suggestions that North Ferriby may no longer be able to send children to the secondary school at Hunsley. Other schools such as at Hessle are less accessible by foot or bicycle so that the development would not promote sustainability in this respect.
- 10.34. North Ferriby needs affordable housing and housing for the elderly but the numbers involved here are excessive and the dwellings, particularly for the elderly, would not be well placed in relation to the village. Work currently in progress is likely to identify the need for two small developments, which could be accommodated within or close to the village.
- 10.35. An EA has not been required so that local people fear that only lip service is being paid to environmental protection, as it is hard to believe that such an extensive development will not have some impact on the Humber Estuary's nature conservation sites. Once again, the lack of involvement leaves the local community feeling ignored.

#### North Ferriby Parish Plan

- 10.36. The Parish Plan for North Ferriby was published in April 2011. There was a high level of residents' participation in the process and support for the results. The Parish Plan did not come about as a result of St. Modwen's development proposals; it was decided upon, researched and completed well before St. Modwen entered the scene with their housing plans.
- 10.37. Beginning in 2007, the steering group arranged public meetings, which resulted in the recruitment of an ancillary team of over forty volunteers. An extremely detailed and wide-ranging questionnaire was distributed to every household in the village and had provision for every member of every household, including children, to contribute views on each of the 70 questions. As a result they had comprehensive data from over 40% of the Ferriby residents. The data formed the basis of the Plan.
- 10.38. A separate questionnaire obtained the views of local businesses, to cover every aspect of life in North Ferriby. A further Open Day was held, to help add flesh to the results and to develop action plans. The final version of the Plan



was the result of thousands of hours of entirely voluntary work which ensured that the Plan was a true picture of the aspirations of residents and the East Riding of Yorkshire Council adopted the Plan as supplementary planning guidance.

- 10.39. The principal reasons people gave for choosing to live in North Ferriby were: suitable housing (47%); its rural character (38%); working locally (35%); and quality of schooling (25%). The attractiveness of the village and its surrounding area was what people most liked about living here, as well as its good communications. 81% of the respondents insisted on the character of the village being preserved, 64% liked the friendly atmosphere and 59% liked the fact that the village was not too big. The Plan noted that there was no desire for anything other than small-scale development (46% in fact did not want any development at all). There was, however, recognition that there was a shortfall in provision of low-cost starter or affordable homes in the village itself (which scored 22%) and also of accommodation for the elderly (both independent and warden-supervised, which were asked for by 38%); the Parish Council is currently working on a project to address these issues. In contrast, fewer than 20% favoured the building of executive or family homes.
- 10.40. Respondents did not want new development to be allowed to degrade the village character and setting or, specifically, to cause increased traffic or congestion problems in the village. They highlighted the importance of the open spaces in and around the village and, in particular, the land separating North Ferriby from nearby communities - Hessle to the East, Melton/Welton/Brough and Elloughton to the West, and Swanland to the North. This landscape setting was a huge factor for 80% of respondents - which is a major reason for the unacceptability of these proposals to North Ferriby residents. It led to the recommendation that the land to the west of Long Plantation should be given specific recognition and protection in the emerging Local Plan by insisting on the retention of a substantial green space between the plantation and the designated employment use of part of the land. It is this village character and its landscape setting which are most at threat from St. Modwen's proposals.
- 10.41. Villagers were increasingly concerned about the growing parking problems and traffic congestion in the village, especially in the central area of High Street, Church Road and New Walk, and 53% felt that this already justified traffic reduction or calming measures, and this was even before any additional load were to fall on the road network from outside development.
- 10.42. The Plan concludes with a summary of specific recommendations. Of the five under the Housing and Planning heading, the St. Modwen proposals are in direct conflict with three and unhelpful to the other two. Under Conservation and Environment, the proposals are inconsistent with the principal recommendation that the surrounding area should be included in the Green Belt.
- 10.43. In conclusion, the fact that such a large proportion of North Ferriby's residents spent so much time thoughtfully answering such a complex questionnaire shows that they had faith in their elected representatives on the Parish Council and the East Riding of Yorkshire Council listening to their views and giving due weight to them in deciding how North Ferriby and its setting

should develop. It would be a sad reflection of the true value placed on "Localism" - which is supposed to mean local input into local development strategy - if these strongly supported and well-accepted local recommendations were just to be trampled underfoot for purely commercial considerations or the blanket application of a "one size fits all" national preference that ignores local variations in conditions.

- 10.44. Although published in 2011 the Parish Plan remains the guidance to which the Parish Council turns when delivering the aspirations of our community. Amongst other things, residents said;

"An affordable housing project should be explored, to address the needs of young people and families who wish to stay in the village but cannot afford to buy in the present market" and "A sheltered or communal housing project should be explored to provide for the needs of elderly or disabled people who wish to stay in North Ferriby"

- 10.45. The Parish Council, on its own initiative, is beginning a project involving specialist housing officers from North Yorkshire Council. Together we are exploring ways of assessing the demand within the village for suitable accommodation for the elderly and affordable housing for the young. If such a demand is identified then we will pursue ways of meeting it. Housing of this type embedded in a mass development that will overwhelm the village will do nothing to resolve any demand identified.

- 10.46. The Plan identifies that capacity in respect of playing fields is an issue. There are not enough playing fields for 4000 people. There are limited options for expansion. A recommendation within the plan is for exploration of the feasibility of using land to the west of Long Plantation for this use.

- 10.47. The appeal plans indicate provision for playing fields in such an area. This will not be the answer to the problem as the main usage would be by the residents of the proposed houses. The provision of these facilities would not be worth the price paid by the village, namely the destruction of its identity.

#### The East Riding Local Plan

- 10.48. It has become clear during the inquiry that the emerging East Riding Local Plan and the ability of the ERYC to demonstrate the delivery of the prescribed number of houses has become a pivotal issue.

- 10.49. North Ferriby Parish Council has taken every opportunity to participate in the development of the Local Plan, trying hard to raise awareness of its significance within the community through public meetings and publications. It has contributed views from the overall strategic aspects of the Plan right through to the allocation of individual sites in the village. Under the Plan, the village will have to accommodate 85 new dwellings between now and 2029. That is a great deal of new housing for a village this size. But, pragmatically, no fuss was made, recognising that new houses need to be built. In accommodating such development, the village will have more than played its part. The Parish Council is even active in identifying potential for affordable housing for the young and suitable accommodation for the elderly. Residents are not NIMBIES.

10.50. The Local Plan is close to fruition. It has been advocated at the Inquiry that all of this could count for nothing in the eyes of the Secretary of State if the process has not been completed before the appeals are considered. How jaw-droppingly unjust would that be if, despite the overwhelming logical reasons against this development and for the dismissal of these appeals, that logic were to be cast aside because a dogmatic, myopic and perverse policy decision was taken in favour of the commercial aspirations of a developer.

10.51. The community, the Parish Council and the Ward Councillors have done all the right things. Now we ask that the right thing be done by us.

*Elected Members of ERYC*

10.52. Cllrs Abraham (ID 08) and Gilmour (ID14), ERYC Members for South Hunsley ward and Cllr Aitken, Member for Howdenshire ward (ID 25) addressed the inquiry.

10.53. Matters raised included concerns over the effect on the Local Plan, the sustainability of the site, potential conflict between existing industrial uses and the new residential area and the effect on education provision.

The Local Plan

10.54. Many years of work have gone into getting the Local Plan to its present stage. If development of this scale was considered appropriate for a village the size of North Ferriby, it might mean that a radical overhaul of the settlement network in the Local Plan would have to be carried out. This would leave a policy void and make communities vulnerable to development on sites already discounted during public consultation. It may also lead to the loss of those potential sites in North Ferriby already in the Draft Local Plan, which have the support of residents. This plan has seen months of consultation. It has been through the democratic process and will determine the future development of our communities in a way that is acceptable to our residents. These appeals have the potential to remove all credibility from the local planning process.

10.55. The site is not sustainable as it would be difficult to live there without motorised transport. It would have no identity and few facilities. Residents would veer towards North Ferriby, especially in view of the proposed footpath link through Long Plantation Wood. That link would spoil the character of the woodland. The existing pedestrian route from Monks Way East is through an underpass and uses a footway which can be difficult to navigate in winter, due to ice and snow. It would not be a safe route, especially for elderly people. In recent weeks it has seen vandalism to the fencing on top of the entrance. It is unpleasant and unsafe for users of the underpass who are in danger of having objects dropped on them as they emerge from the tunnel. There has also been extensive graffiti in the underpass and it is a popular haunt for skateboarders at any time of the year. None of this will encourage residents to use the underpass and especially not in the evenings or late at night.

10.56. The existing industries operate 24 hours a day. The sound from machinery or reversing beepers can be heard in North Ferriby, so it will affect the proposed dwellings even more, especially if compensatory land to the south of

the railway line is also opened up. Such noise and disturbance cannot be suitably controlled by conditions.

- 10.57. A leaflet was provided which lists the issues that residents have raised. Gibson Lane in particular is developing a status as a waste park with several companies handling waste from building sites, commercial businesses and household skips. Waste is being blown off the vehicles and some rubble and glass is dropping from the vehicles, particularly around the roundabouts. Vehicles are also taking the processed or semi-processed waste away from the sites and similar issues are occurring on the return journeys.
- 10.58. Windblown litter, plastics and polystyrene, is a constant source of complaint. There is also evidence of food packaging and coffee cups being jettisoned along the way, not to mention plastic bottles containing suspect liquid. This is further exacerbated by the fact that some HGV drivers park up overnight in the area and leave evidence of their presence long after they have gone. Sometimes several HGVs are parked up overnight at various points along Monks Way. These are doing manoeuvres and churning up grass verges in wet weather and the footpaths in Gibson Lane are permanently covered in mud from the industrial areas that road sweepers cannot get at. Other issues include the speed of vehicles along Monks Way East coming down the hill and offensive odours emanating from commercial premises in Gibson Lane.
- 10.59. These two proposals will add to the situation that already exists whereby residents are struggling to live with the impact of living alongside an industrial area. With further industrial development due to happen regardless of the outcome of these appeals, it is totally wrong to be placing more households in close proximity to commercial neighbours that can have such a profound impact on their day-to-day living amenity. Also it is unfair on the existing businesses that have chosen to locate in an area that allows for 24 hour trading to allow the construction of homes that could result in many more complaints to those already being received.

#### Education

- 10.60. Local families are concerned about the impact on South Hunsley school which is a popular, successful school and is already oversubscribed. There has been a recent planning approval for over 700 new homes in Brough, in the centre of the catchment area, and there is potential for more than 1300 other new houses to be added to the catchment area, excluding the 510 at Melton Fields. North Ferriby is on the fringe of this catchment area and pupils would need free transport to an alternative school. The primary school in North Ferriby would also need to expand which, since it is on two sites, would create difficulties and be relatively more costly.
- 10.61. Residents of Howdenshire are also very pleased to be served by South Hunsley School and have for generations travelled from the North and South Cave area to go to this school. They will be extremely concerned if because of this development, the catchment area should change and their children could no longer continue to use the amazing facilities provided to pupils, families and the wider community. The local connections are colossal. The desirability of a school does influence house buyers.

10.62. Serious consideration must be given to the views of elected members who represent the voice of the community. The planning committee members, when taking careful consideration over this application did overwhelmingly agree this application should be refused and this was an across party decision. It is extremely important that this decision takes into account the potential disastrous consequences, which may well unfold if the development is approved.

*Mr Bannister, Chairman, Ferriby Conservation Society (ID 28)*

10.63. The Conservation Society has always tried to be reasonable in its reaction to planning applications is gratified that developments have been achieved without destroying the village character, which is so attractive to residents. The Conservation Society is strongly opposed to the proposed developments.

10.64. Every Plan drawn up by the ERYC and their predecessors has placed great emphasis on the need to protect and enhance the character and distinctiveness of existing settlements. However, the enthusiasm for the A63 Corridor has meant that the need to protect the existing settlements of North Ferriby and Melton has been almost completely overlooked and the remaining open land separating North Ferriby from Hessle has been nibbled away.

10.65. Many organisations and individuals in the village have recently devoted a lot of time and energy to assisting the ERYC in the drawing up of coherent plans for this area. They are not perfect plans but the proposals under consideration make no sense at all in view of those plans. The proposed development, whether of 500 houses or 390, would constitute an artificially created, soulless collection of dwellings, too far from the existing settlements to be assimilated, yet near enough to radically damage their characters.

10.66. The developer is driven by profit and, if successful in this application (and the further planned application south of the railway to turn North Ferriby into a town), will completely destroy these villages. The developer will then move on to some other unlucky area.

10.67. This is a village settlement, some 4000 years old - it wishes to remain a village and will never agree to becoming a town.

*Rosie Woodward, Best for Brough (ID 09)*

10.68. She opposes the development due to what has happened to Elloughton-cum-Brough. She has lived and worked in this area most of her life together with her family.

10.69. The residents of Elloughton-cum-Brough have been completely overwhelmed by the latest large housing development. They have lost their communities and community identity. They have lost much of the established industry of BAE systems, which was good for the community. Workers used the Village facilities but not at night time and at weekends and workers did not impact on the GP and other essential services.

10.70. South Hunsley is the largest secondary education establishment in the East Riding. It is an Academy and Sixth Form College. There are almost 2000 students and there is a danger with the increased building to accommodate the further housing development that the intensity of children on the site

would be hazardous should an emergency situation arise. Children living in excess of three miles from the school are entitled to a free bus pass but children living within three miles, (an increasing amount with the current proposed development) have to pay £1.80 per child return per day. The cost of this, together with parents working, will increase the road traffic at school times as they drop off and collect their children. The congestion over the single line of traffic to go anywhere eastwards out of the villages of Elloughton-cum-Brough is already at gridlock. ERYC has already acknowledged that Cowgate in Welton will be gridlocked by 2021 and this is without any additional development.

- 10.71. Because the Draft Strategic Plan has still not been adopted, this has left residents vulnerable to development and left Parish and Town Councils unable to formulate Neighbourhood Plans. The Parish or Community Led Plans do not appear in the Draft Strategic Plan. It appears they are at the mercy of developers who are profit motivated.
- 10.72. She is a founder member of the Best for Brough Residents' group and is also on the Community Led Planning Team. They have been liaising with the Save Our Ferriby Action Group working across boundaries as envisaged by the Localism Act. They are supporting them in trying to get a better outcome or the best outcome for the whole of our area.
- 10.73. The development proposals are totally unrealistic. For the 1000 houses already allocated to Brough only an additional 35 car parking spaces are being created at the railway station. Residents living in properties around the station now have to have car parking permits and permits on an hourly basis for any visitors because rail users park outside their houses. This is not a satisfactory solution.
- 10.74. Travel plans contained within the development proposals are ridiculous and unenforceable, people make their own decisions on how to travel based on their circumstances. The theory does not match the practice. For example no one walks from North Ferriby or the surrounding area along the A63 to use Morrisons at Brough. It is impractical to expect people to cross through an industrial estate which is busy now and includes 24/7 HGV traffic in addition to construction traffic. For many, the bus times are not convenient and for some, even if they were, mobility or convenience issues means they would rather drive.
- 10.75. In addition, she has seen no evidence of demand of further housing in the area especially of the type which is planned. Between 2001 and 2011 there was an increase in population in the East Riding of only 20,000. The empty properties in this region have not dropped below 6000 since 2010 and there are a similar number in Hull. The redevelopment of sites and properties should be looked at, rather than building on undeveloped sites.
- 10.76. The wrong type and style of properties are currently being put forward for this area. West Hull Villages were something to be aspired to. Currently anyone looking into the area who wishes to buy a house under £200,000 has a choice of over 80 houses in Brough alone. Anyone looking to purchase a property between £300-£500,000 in the area has a choice of only 7. People see their properties as long term investments, older people are staying in their houses longer as they see it as a way of balancing out their savings and

income, they receive little returns from interest rates in the Banks and are therefore not downsizing. There are enough first and second time buyer houses in this area.

*Mr Walton, Wawne Residents Group (ID13)*

- 10.77. His village has also been changed from a Hinterland Village to a Primary Village without consultation. Residents have been dismayed at the development proposals. There are many similarities with the situation in North Ferriby - development has not taken account of flood risk or sewage; village maps and information are ignored; village documentation and local knowledge supports alternative ways of doing things which would be to be common benefit of all; properties or businesses are likely to be devalued, uninsurable or undesirable in the medium to long term (due to flooding) being unsustainable development purely for the greed or profit of a developer; neither the developer nor ERYC has properly thought through the plans and difficulties; the developer will be long gone by the time the issues come to light; residents do not believe in ERYC to enforce or check up on the developer or any measures put in place to protect either the established Village community or the future residents; residents are concerned as to who pays in the end and where the liability falls.
- 10.78. The Wawne Residents Group strongly opposes the proposed development on Melton Fields and commends the alternative view of the Save Our Ferriby Action Group.

*Individual Residents*

- 10.79. **Mrs C Woodcock (ID 04)**: is dismayed at the plans to develop land south of the railway line and is horrified that North Ferriby could be turned into a town, without any consultation with the villagers. The vast amounts of new house building at Brough and Elloughton have devastated those villages. Both appeals should be refused. They would undermine the high level of work-life balance which the community has. The land is used by the community, as evidenced by the notices at various points which permit its use for recreation. It attracts many walkers and bird watchers and protects the local environment.
- 10.80. Long Plantation Wood has not been properly maintained by the Appellant. It joins up Riverside Walkway and Welton Waters and its proximity to the foreshore, the Pennine Way and the Wolds Way make it very accessible. Its loss would be devastating. The wood should not be used as an access to the development and St Modwen should return the two affordable houses to the housing market.
- 10.81. She lives in the south of the village, where the land has a saucer shape. Any decision must seriously consider the risk of flooding to this part of the village, in view of the frequent presence of standing water on the bottom field and the effects of coastal erosion. She is also concerned that pollution issues associated with the Capper Pass site have not been properly investigated. She believes she has a human right for her village to stay as a village.
- 10.82. **Mr T Abbott (ID 05)**: has lived in North Ferriby for 42 years, over which period many green spaces have been taken away by development. He and

many other villagers regularly walk through Long Plantation Wood. He thinks a care home alongside a pub is most unusual. However he is particularly concerned about the lack of proposed drainage. He provides photographs taken in January and February 2014 which show standing water on the site and support his case that the whole area has drainage problems. Although North Ferriby is in Flood Zone 1, the lower end is in Flood Zone 3. He draws attention to the flooding which took place in 2007 and following the recent tidal surge. He is concerned that the southern area of the proposed development would suffer the same fate

- 10.83. **Mrs Chapman (ID10)** (on behalf of herself and Mr Chapman): they have been following St Modwen over the past two years with interest and a great deal of worry over what may happen to the lovely village which their family has lived in for more than 60 years. They were very unimpressed with the Public Consultation Event for the 510 houses by St Modwen. The questionnaire will not give an accurate representation of the feelings of the residents. The maps on display did not indicate that St. Modwen also owned the land across the railway line. It would then have been obvious to residents that there was every chance this land would also be developed for housing. At the Consultation Event in September 2012 the questionnaire was again loaded in favour of the re-submitted amended plans.
- 10.84. As residents of Ferriby High Road, they are well aware that accidents on the A63 cause much of the traffic to detour through the village which causes chaos. The general increase in traffic is ridiculous around this area and Brough, and will only increase when the Brough South development gets underway. The streets around the village are already congested due to vehicles parking on both sides of the road, leaving space for only one car to pass. It is particularly busy during school arrival and leaving times and will only be exacerbated should the Developer get the go-ahead for housing.
- 10.85. They also worry about the problems the emergency services may face with increased traffic and more chance of road closures due to the frequent incidents and highway maintenance on the A63. The Hull Daily Mail reports that the Clive Sullivan Way section of the A63 is ranked Number 4 in the top ten most traffic clogged roads in Britain.
- 10.86. They have been made aware that planning has already been approved for two huge Wind Turbines to be built by Seneca and Transwaste on the Transwaste Site off Gibson Lane South. This development is called the Seneca Wind cluster and to give an idea of scale, the Humber Bridge Towers are 163m high and the Wind Turbines will be approximately 130m high, so these are huge! St. Modwen wrote a strong letter to ERYC in opposition to the application but planning was approved. St Modwen does not appear to have mentioned this yet but surely this will affect residents in the area and any development of the St. Modwen land. Now Seneca with Omya Limited (neighbours of Transwaste) are shortly to be putting in an application for three more Wind Turbines called the Melton Common Wind Cluster in the surrounding area. These Turbines will be approximately 119m high. Should this also be passed, it will have a huge negative impact on the land owned by St. Modwen.



- 10.87. Finally, the Capper Pass Tin Smelter and possible land contamination is a strong reason for objection. This land has been owned by Capper Pass and then Rio Tinto since the 1930's and they worry greatly as to what toxic substances are in the ground and what would happen if the land is disturbed by digging.
- 10.88. **Paul Moore, local resident (ID11)**: was born in North Ferriby. He now lives here with his family, although for most of his life he lived in the city of Hull, with all the attractions and opportunities that a City can offer. He decided upon North Ferriby as he wanted Village life, to be away from populated cities, away from pollution, away from excessive car use, away from congested roads. He wanted countryside, fresh air, good quality small schools, nice places to walk with the children; a generally better environment and way of life for the family.
- 10.89. The proposed developments and the proposal to turn the Village into a Town are shocking. St Modwen has no interest in the area and communities other than for opportunistic financial gain by piecemeal development. It is using the Government's initiative to boost house building by suggesting it is a licence to build housing wherever the location and whatever the consequences. The fact and truth of it is new houses are required in towns and cities. This truth should not be twisted to suggest existing villages should be converted into towns or existing towns converted into cities. Elloughton-cum-Brough, previously lovely Villages are now ruined by excessive house building. It has also happened to Beverley. New houses are required in London and the South East with Social housing being the specific requirement. There is no such shortage or requirement for new houses in the North of the country and in particular this corner of East Yorkshire. Anybody could go out today, in this part of East Yorkshire, and have a choice of houses to purchase ranging from as little as £100,000 and right up to £2,000,000 and everywhere in between.
- 10.90. This piecemeal development is a most damaging type of development. It is not planned. 600 houses now. Next another 400 houses. Build a bridge and how many more thousands of houses - the local opposition will have been defeated by then.
- 10.91. Piecemeal development is not sustainable. People from Brough, Elloughton and Beverley would not agree that what has happened to their communities is sustainable. The people speak of lack of services, existing services overstretched, difficulties with school places, lack of car parking, excessive traffic, lack of infrastructure, lack of employment opportunities. Sustainable development should be planned by local people with an inherent interest in their area.
- 10.92. The land subject to the proposals has been ear marked as land for development for employment opportunity and a walk through the estate completed so far would indicate this to be very successful to date. It is interesting to note that most of the development has been carried out by an alternative local developer to London based St Modwen. On the other hand, there is a nearby City, the City of Hull, the City of Culture that has swathes of land requiring redevelopment that, if and when required, would be ideal for

housing. The City is begging for investment and particularly in its time as the City of Culture it surely deserves that investment.

- 10.93. He asks how these outrageous proposals can be allowed to happen in a democratic country and whether the people and communities involved have rights in these matters. He does not want this development, his wife and family do not want this development, the residents of the Village do not want this development, the residents of the surrounding villages do not want this development, the Save Our Ferriby Action Group does not want this development, the local Parish Councils do not want this development, East Riding of Yorkshire Council; the Planning Authority, does not want this development, local business does not want this development and the housing market does not want this development. The only people that want this development is a very large property development company based 130 miles away and their only reason for wanting this development is financial gain.
- 10.94. **Mr Strachan (ID15)**: has lived in the village for thirty years. In his professional career as a Fellow of the Institution of Civil Engineers he has been involved in construction of major projects such as large bridges, power stations, nuclear waste, Planning for Third London Airport (1973) and major roads. There are two factual matters which need clarification.
- 10.95. The existing Sewage works are located at the South east corner of the village whilst the residential proposals are at the western extremities. He asks if existing sewage arrangements are capable of handling the increase from the "new town" and whether new sewers would be installed through the village.
- 10.96. School numbers: the numbers of 72 primary and 63 secondary places have been considered for the 510 development and 55 and 49 for the 390 development, ie 135 school places from the 510 houses and 104 for 390. This would imply that at least 375 or 286 houses will have absolutely no school attendees. He suggests that the number of school places may need to be reviewed upwards.
- 10.97. The Parish, the Planning Department and other Agencies have incurred costs in promoting the Parish Plan in 2011. The Planning Department is now producing a very comprehensive Local Plan. Indeed the preparations for the Local Plan started in 2004 and there have been 8 public consultations. This demonstrates a recognition of democracy and a keenness to get it right. These Plans show major developments to communities to the west of Ferriby and major developments to communities to the east of Ferriby. These Plans must have incurred many hundreds of hours and many tens of thousands of pounds. Neither the Parish Plan nor the Local Plan considers a major increase in housing of approximately 33% or 23%. He asks if these plans are to be thrown into the waste paper bin and all this very significant ratepayers' expenditure to be written off.
- 10.98. St Modwen reported a profit of £80.5 million pounds in 2012 during a period of National austerity. It therefore has major resources and experience to promote its proposals and would appear to be prepared to play the planning "long game" at North Ferriby. Initially they introduced a scheme for approximately 600 houses. This was then reduced to about 500. In round numbers they have gone from 600, to 500 and now 400 houses. They are

now throwing into the melting pot further proposals for a bridge over the railway and to reclassify North Ferriby as a Town. He wonders if the Developer is perhaps using these new submissions as a bargaining ploy or perhaps the developer is envisaging a New Town called St Modwen with North Ferriby as its suburb.

- 10.99. The proposals are completely disproportionate to existing Parish and Local Plans. So far no speaker has been in support of St Modwen. The infrastructure of schools and sewage may need radical reappraisal but these are relatively small matters when considered against the principles of proportionality and the credibility of the Local Plan. The land is already designated for industrial use and recent press announcements would appear to indicate that this may be needed to support the Off Shore Wind Industry. The only beneficiary would be the Developer.
- 10.100. **Susan Rowden (ID17)**: has lived in North Ferriby from the early 70's and has various relatives living there. She is a founder member of the Save Our Ferriby Action Group.
- 10.101. From being a teenager she has played in Long Plantation Wood, ridden her horse down Long Plantation Wood (Wolds Way) and the riverbank (Transpennine Way). For at least the past 10 years she has walked dogs on Long Plantation Wood and the riverbank several times a day and before that was walking her parents' dogs. She has seen a wide range of wide life, including a harbour porpoise in the river. Also of note on the river bank and across the proposed development site including on the north side are Lapwings which she has seen with their chicks.
- 10.102. Her home on The Triangle is the most ideally placed for seeing the use of the Wood and Wolds Way. It is regularly used by residents and people travelling into Ferriby. It is a very popular area and route for walkers, cyclists, families, dog walkers, photographers, bird and wildlife watchers and those interested in the flora of the area as there are rare species. Some people come for the bluebells and others twice a year for the change of colours due to the seasons.
- 10.103. St Modwen has not maintained the Wood. Her husband has done the maintenance of the ditch which runs adjacent to Long Plantation Wood, by way of keeping it clear of vegetation and placing a chalk bed to aid drainage and water flow. Frogs and appropriate planting have been encouraged. Trees have been kept free of ivy and dangerous branches. In about 2008 over a period of approximate 5 days there was continual digger movement in the north field. The noise was dreadful. This resulted in a very large mound of rubble and soil. The digger noise highlighted the noise if the proposed development was to occur.
- 10.104. Currently, and increasingly over the last two years, she has suffered a great deal of noise from the industrial site in Melton. It interferes with her life and enjoyment of her home to a significant extent. She has not been consulted or informed about what is going on at the Industrial Park or on the old Capper Pass factory site. As recently as Friday 16th May 2014 she could not sit out in the garden or use the outside space to my home as normal. She has an ongoing complaint (along with other residents) regarding Transwaste which works 24 hours. The noise and smell has been very intrusive and

worrying. Long Plantation Wood is a screen but it is nowhere near enough. The proposed new development would not and the noise from the industrial site and traffic noise would be intolerable to live with.

- 10.105. For the SOF she has collated data from leaflet drops and questionnaires. In March 2013 at least 422 households responded, answering 40 questions which gave us a database of 13,130 definite yes or no answers. She can confidently state that people are happy with the Village as it is, and the Parish Plan. She has appended a copy of the summary sheets.
- 10.106. She has also analysed all the objection letters for both the 510 proposed development and the 390 development. St Modwen did not consult over the 390 houses but sent out unsolicited letters (the second correcting the first) October 2013 which caused some residents to feel intimidated. There was no public consultation. Residents were confused as to what was being proposed and why there was a separate second application alongside the first. It was a tight timeframe to turn around objection letters to the 390 application. Between the two lots of objection letters nearly all the households of North Ferriby Village have responded and no one wants either development. Over 300 residents have opposed the housing, over 160 have commented about Capper Pass and its legacy of pollution, nearly 160 on flooding and sewage, in excess of 200 over the Long Plantation Wood and the proposed footpath/boundary and access, over 250 about traffic and over 260 about schools/medical/amenities and services. There were 33 specific criticisms of St Modwen.
- 10.107. The responses are not all from the same households. The objection to development though is consistent across all of the responses along with the high value placed on both Long Plantation Wood and the adjoining land for recreation and amenity. There is also high value placed upon the Village remaining as a Village with substantial green space around it.
- 10.108. She wonders who is going to buy these houses as this area is already catered for. They are building for profit, asset stripping the established Village of North Ferriby. The postcode is not for sale. It has taken a hundred years to establish this successful community and she is not prepared to see it and the futures of those yet to come, stolen.
- 10.109. **Mr M Johnson** referred to his knowledge of Co Durham, Tyne and Wear and the Tees Valley, where past industrial decline had been changed by the investment by Nissan, leading to demand for prime business sites. He felt there would be a similar situation here with the Siemens investment. The A63 corridor would be the logical place to look. The land needs to be kept for industry and job creation.
- 10.110. **CA Hemingway, PhD, FRSA, (ID 23)**: has some expertise on stakeholder management and responsible business. She attended the inquiry on 6th May and heard the barrister for St Modwen speaking about "the market" and how, despite the availability of a lot of land at a choice of different development sites, these are not good enough for St Modwen, because these available sites are not, according to St Modwen, attractive to "the market." What was meant by this was that our green space at North Ferriby is regarded by St Modwen as being more profitable for them.

- 10.111. She has worked for 12 years in management, working at the headquarters of major multi-national corporations prior to her university career, and so is certainly not anti-business. This is a question of getting priorities right and remembering that the market exists to serve people, not the other way around.
- 10.112. This area of land represents a nature reserve which hosts many species, including lots of migrant birds that can be seen regularly along the riverside: such as Oystercatchers, Plover, Redshank and others. She has watched the Noctule Bats at dusk, darting beneath the field along the riverbank and has also been lucky enough to watch a young seal feeding very near to the riverbank, as she stood at the end of Brickyard Lane. But more development - bringing with it air pollution, noise pollution, light pollution, more traffic and people and many more dogs being walked — would have a dramatically adverse effect on the peace and quiet and desecrate this area.
- 10.113. Whilst green space and nature is valuable for its own sake, it is also of use. Indeed, a study in *The Lancet* (Mitchell and Popham 2008) showed the associations between health and proximity to green space and also an important study by Barton and Pretty which was published in *Environmental Science and Technology* (2010). Both very reputable and highly regarded scientific journals.
- 10.114. This latter study comprised a meta-analysis of ten studies and a total of 1252 participants. The researchers looked at the effects of nature on self-esteem and mood, because these are key determinants of mental health, indeed, 'Mood is linked with physical health and is known to affect the immune system and the onset of certain diseases.' The authors found that exposure to the green environment improved both self-esteem and mood and that the presence of water (i.e., seaside or river) provided even greater effects. Importantly, this sort of environment provides an important health service. The article states: '...green space is important for mental health and regular engagement is linked with longevity and decreased risk of mental ill-health. Yet as more than half of the world's population now live in urban settlements, daily environmental contact is becoming rarer, suggesting the growing importance of access to green space for both quality of life and the sustainability of towns and cities.' They concluded: 'In economic terms, there should be cost savings if natural places are both protected and used as sites for [physical] activity, this generating health benefits.'
- 10.115. Moreover, the UK National Ecosystem Assessment published their Technical Report in 2011, and Chapter 23 states that 'Local green spaces or nearby natural habitats are vital for all individuals. There is a clear link between the amount of accessible green space and psychological well-being. The more frequent the visits to nearby green spaces, the lower the incidence of stress.' (Page 1154).
- 10.116. The fields and riverbank that are proposed for development by St Modwen are a valuable public amenity: not just for the physical and psychological well-being of the people of North Ferriby, but also for the surrounding communities living in Melton, Brough and Swanland. Building a buffer zone between new development and the river and the Wolds way is not the answer. The space needs to be preserved.

- 10.117. When other sites have been offered to St Modwen for development and when Hull City councillors are battling to regenerate the city of Hull and curtail its migration, it is only the profits of St Modwen - up 56% in 2013 to over £82m according to the Financial Times- that are driving these unwanted and short-sighted development plans. The two planning authorities should be allowed to continue to do the right thing and work together for the good of this area. These proposals to develop on this piece of green space and area of natural beauty should be rejected.
- 10.118. **Mrs J Dalton (ID24)** has a son in sixth form at South Hunsley School. Parents at this end of North Ferriby are most concerned about the building of so many new houses in the catchment area for the school. Around the time that her son was due to start at North Ferriby School there was the possibility that East Riding Council was to look at the catchment area for the school and there was a very real prospect that North Ferriby children could have to go to Hessle High School and Swanland children would have to go to Wolfreton School in Willerby. There was a lot of opposition to this and it resulted in parents demonstrating at County Hall in Beverley, as a result of which the Council agreed to take the matter no further.
- 10.119. Parents at this eastern edge of the catchment area are very afraid that this matter could raise its head again with so much new housing being built in Brough and Welton and with maybe 510 new family homes to come as a result of these appeals. Children will be displaced to Hessle High School which does not have a safe route for children to walk to. They would have to walk around this sweeping bend which is very busy with a lot of heavy goods vehicles and cars and which will get even busier when the Bridgehead sites are developed. Children would also have to cross the eastbound slip road onto the A63 which is very busy with commuters travelling to Hull at the time that they would be walking to school.
- 10.120. Residents from this end of the village would like to see these two appeals dismissed so that South Hunsley School is able to continue to take all North Ferriby children as it has done for generations.
- 10.121. **Mr Corse (ID26)**: has lived in North Ferriby for twenty four years and appreciates the village ambience, the semi rural status of a village in the true sense of the word. Villages are disappearing fast and when they are gone there is no way back. People are dead set against this rapacious act by St. Modwen. It is not that the residents of North Ferriby are against change. Gradual well planned change is to be embraced. They are, however, against such monstrous schemes as will change at a stroke and for ever the village status of North Ferriby.
- 10.122. He objects in the strongest manner to both schemes to build houses on the land west of Long Plantation. This is nothing more than a project to maximise profit for St. Modwen.
- 10.123. St Modwen claim to be "Mindful of the impact of our developments on the communities in which we operate". If that were the case then St. Modwen would not have done an about turn five years after obtaining the land for industrial, office and warehouse development and then proposed using the land for housing. Their only desire is to maximise their profit. They did not develop the land even though another company Wykeland managed to attract

a number of clients to develop the land next door. There is nothing wrong with making a profit. Nothing at all. Providing it is done in a legitimate and honourable manner. He sees no sign of the latter in St Modwen's current approach to the land holding at Melton Park.

- 10.124. It will end up with a continuous ribbon of housing from Hull in the East to Newport and beyond. North Ferriby will no longer be a primary village but will become a town. It will then no doubt become swallowed up in a boundary expansion of Hull City Council, already casting an eye on the surrounding villages. Brough is a clear example as to what happens when vast building schemes are imposed on villages.
- 10.125. There is a shortage of housing in the country at large. A situation which has persisted for many years. However that does not mean that every piece of available land must have houses crammed on to it. St. Modwen apparently feel they should not be constrained by the NPPF, in spite of their claim that they are "Mindful of the impact of our developments on the communities in which we operate". Hollow words indeed.
- 10.126. He suggests St. Modwen is probably not at the top of its potential, for the Government wishes to see nationally, more houses and more affordable homes and land on which houses can be built is worth so much more than if it is used for industrial purposes. Mr. Gartland during his evidence to this Appeal stated that St. Modwen Homes Ltd had received a national award for their Locking Parklands (Weston Super Mare) housing scheme 2013. However, he draws attention to a press report of water coming through a bedroom ceiling. St. Modwen is probably no better or no worse than any other large organisation whose primary aim is to maximise its profits for its directors and share holders.
- 10.127. He makes the strongest representation that this land be used for the purpose it was intended for. Housing is very important but if you don't have employment you won't have a house for very long. A good sustainable planning structure is needed, not a monstrous housing scheme which will overwhelm existing services and residents' lives.
- 10.128. **Mr Jackson (ID27)**: stated that North Ferriby is an outstanding village in the East Riding of Yorkshire. The village has always been a safe, spacious and friendly environment for his children while he served away from home in the Royal Navy. He now regularly spends time away with work so his family can afford the cost of living in the village. An estate development would overwhelm the character of the village. In turn this development would lack any sense of association with Welton, Melton or North Ferriby. It is in the interest of Elloughton cum Brough, Welton, Melton, North Ferriby and Hessle that this area remains for commercial use with the proposed buffer zone.
- 10.129. The proposed area is open farmland and at times of heavy rain there appears to be water logging and localised flooding of Long Plantation and fields south of the proposed development. Should rainwater be unable to drain away efficiently, the existing properties backing onto the East of Long Plantation dyke may be at increased risk of flooding. Over the past year he has observed a large amount of erosion from rainwater draining from fields south of the railway line. The most obvious effect can be seen in the vicinity of grid 976 248 approx 20 ft of land has fallen away in only 18 months.

- 10.130. Additional concerns relating to the development include the availability of school places at South Hunsley; insufficient work in the surrounding area to sustain the need for additional homes outside of Hull, compounded by the job losses at Seven Seas, British Aerospace and Kimberly-Clark; reduction in area property value; increased road traffic; poor rail links from North Ferriby; lack of available parking at North Ferriby Railway station; the risk that people would attempt to park on Plantation Drive to access Long Plantation for recreation; the suggestion that the land adjacent to what was Capper Pass has been contaminated so that any work on the land could release pollutants.
- 10.131. He has further significant concerns regarding the following: the desire to redefine a Primary Village into a town; the proposed new bridge over the railway to alleviate the ever increased demand on Brough's ill-conceived highway arrangement; potential development of the land South of the Railway, it is inevitable that once planning is gained north of the railway and infrastructure is in place then this land will be developed for commercial gain.
- 10.132. **Mr Pearson:** was concerned about the risk of development due to the contamination associated with the former Capper Pass site.
- 10.133. **Mr J McCann:** was opposed to the suggestion that North Ferriby should change from a village to a town.
- 10.134. **Penny Joseph:** emphasised the village status of North Ferriby, as indicated in the name of the football team. The houses being proposed would not feel part of the village and would be damaging to it.
- 10.135. **Mr J Cumming** has lived in North Ferriby for more than 50 years. Although it has doubled in size over that time, development has largely been within the original boundaries, integrated with what was already there. There is nothing to suggest the village needs a development of this size. He wishes North Ferriby to remain as a village.
- 10.136. **Mr & Mrs Verity:** local residents have lived in North Ferriby for more than 30 years. There is overwhelming support for North Ferriby to remain as a village. They reiterate the concerns of others as to fears from contamination, effect on schools, pressure on local facilities and increased congestion on local roads.
- 10.137. **Joy Sanderson:** saved up to come and live in North Ferriby primarily to enjoy benefits such as the open countryside and clean air. She does not wish the village to become a town. The thought of touching the land at Caper Pass scares her.
- 10.138. **D Lidgett:** has lived in North Ferriby for more than 50 years and has family living here too. Residents living next to Long Plantation Wood fought to retain access to the woods, which are not being well maintained. He also fears for the risks from the possible remaining contamination of the Capper Pass site. He likes the village as it is and says it should be kept that way.
- 10.139. **Mrs P Jackson:** has lived in North Ferriby since 1967. She lived in Redcliffe Drive and recalls the film of whitish dust which was always there. Her eldest child died of cancer at the age of 7 and there were many other children affected. 17 children in the Ferriby area died of cancers. She is concerned for the children of future residents, playing in the gardens of any



houses that might be built. She has seen how such cancers have affected her own family and those of other women of a similar age.

- 10.140. **Christopher Taylor:** wants North Ferriby to stay as a village where people know each other and there is a good community. This development will not help the village.
- 10.141. **M Snow:** local resident moved from Hull to North Ferriby a year ago because it seemed a good place to bring up a family. He is opposed to these proposals due to the strain that will be placed on facilities such as the school.
- 10.142. **Margaret Rant:** has lived in North Ferriby for 30 years. She is concerned at the impact on South Hunsley school and whether children from North Ferriby will be displaced by this development. It is difficult at the moment to get an appointment with the GP so the additional demand from this development would add to the burden on already overstretched services.
- 10.143. **Jane Crea:** has lived in Melton for 4 years. She is impressed by the community spirit such as the way the local community cleaned the village pond. The Long Plantation Wood area has a feeling of open countryside. There are already waiting lists for various activities and this will get worse if the development goes ahead. As at North Ferriby, facilities in Melton such as GP and dentists are also under strain.
- 10.144. **Sally Scholes:** chose to live in North Ferriby over Brough because it was a village. She agreed with previous comments about fears of contamination and pressure on local facilities.
- 10.145. **D Barber:** has lived in North Ferriby for more than 40 years and agrees with previous comments about the quality of the village. There will be no benefit to residents, children or the Council from this development. There is no need for it. Only the developer will benefit.

## 11. Written Representations

- 11.1. At appeal stage, there were 16 representations against Appeal A and one in support. All of the 3 representations received against Appeal B restated the points made against Appeal A. The points made are broadly reflected in the matters covered by SOF and the representations of those who appeared in person. The representation from North Ferriby Parish Council also included a complete copy of the North Ferriby Parish Plan, April 2011. The representation of support related to the care home and sheltered units for the elderly.
- 11.2. In the period between September and November 2013, a substantial number of representations were made objecting to the venue for the inquiry being in Beverley rather than North Ferriby. These objections were considered further when the inquiry resumed. My ruling (ID03) sets out the reasons as to why Beverley should be the main inquiry venue.
- 11.3. With regard to the planning applications, some 1200 responses and a petition with over 1400 signatures were made to the first application. These raised concerns similar to those made by individuals who spoke at the inquiry.

## 12. Planning conditions and Unilateral Undertakings

- 12.1. The main parties provided a list of conditions for the two appeals which had been discussed between them and which formed the basis of the discussion at the inquiry (ID31). However by the time of that discussion, it was agreed that suggested condition 9 (Appeals A and B) dealing with affordable housing would be unnecessary since the matter would be covered within the planning obligation. The Appellant did not agree with the Council's suggested condition 26 (Appeal B only) which would require the new bridge over the railway line to be open to traffic before any of the dwellings were occupied. I note that the offer is to provide the finance to enable others to construct the bridge. There are many uncertainties as to the point at which such a bridge might be open to traffic, including matters which would be beyond the control of the Appellant so that the imposition of such a condition would not be reasonable. [7.64-67]
- 12.2. The Appellant suggested a Grampian condition concerning the proposed pedestrian link through Long Plantation to Plantation Drive. The Appellant considers the link is unnecessary. The Council contends it has ultimate control over whether the link could be provided and avows an intention not to engage in discussions on this matter. If the Appellant was correct, the condition would fail the test of necessity. If the Council was correct, the condition would be unreasonable since it would have no prospect of implementation. The footpath would provide a link to another residential street in North Ferriby but would offer little tangible improvement in pedestrian links with the village for most residents of the proposed housing. It would not achieve any material gain in sustainability. It should not be regarded as necessary and I have not recommended that it be imposed. [7.72, 9.27]
- 12.3. The conditions set out at Annex C accord with relevant national policy and advice contained in NPPF and PPG. Should planning permission be granted, I recommend that the conditions be imposed for the reasons set out below.
- 12.4. The standard conditions for an outline proposal are necessary (conditions 1-3). Given the scale of the proposals, a phasing plan and further design details will be necessary to allow for the structured development of the site and to ensure it is of an acceptable standard (conditions 4 and 5). The scale of commercial development should be specified so that the retail element does not have an adverse impact on nearby town centres (condition 6). It will be necessary to secure the phased provision of adequate areas of open space and facilities for children's play areas in order to achieve a satisfactory form of development (condition 7). Details of works during the construction phases should be provided and operational hours controlled so as to protect the amenities of existing and future residents (conditions 8 and 10). Those measures necessary to protect the railway, as recommended by Network Rail, are reflected in condition 9.
- 12.5. Given the proximity of the appeal site to areas of known nature conservation value and the intended ecological benefits to be delivered as part of the proposals, details should be provided through an Ecological Construction Method Statement (dealing with the construction phases) and an Ecological Enhancement and Management Plan (to cover the longer term

management of the site) (condition 11). The site has known archaeological value so that arrangements will be necessary to secure a programme of archaeological work (condition 12). The measures set out in the Travel Plan and arrangements for a link between Gibson Lane and Brickyard Lane should be secured in the interests of sustainable travel and highway safety (conditions 13 and 22).

- 12.6. Further details are required with regard to drainage, to secure a satisfactory form of development (conditions 14-16). A further noise and vibration assessment will be needed to establish those measures necessary to protect the living conditions of future residents (condition 17). Given the history of other uses in the locality, measures are necessary to minimise the risk from land contamination (condition 18). Details of the management arrangements for the care home and bungalows and measures to control their occupation are necessary to ensure that these elements of the development remain available to meet identified need (conditions 19-21).
- 12.7. Each proposal contains elements based on the number of dwellings to be provided such as the provision of affordable housing and open space and contributions to education and transport facilities so that it is necessary to set out the scale of the development (conditions A23 and B23). The roundabout access to the land south of Monks Way is for determination at this stage but further details will be required to secure a satisfactory form of development (conditions A24 and B24). In relation to Appeal B, it is also necessary to set out the proportion of employment floorspace which may be developed for office use, to reflect the role of the locality in the portfolio of land for employment development (condition B25).

#### *The Unilateral Undertakings*

- 12.8. Three Unilateral Undertakings have been submitted in relation to Appeal A, Appeal B(i) and Appeal B(ii) respectively. The Undertaking for Appeal B(i) would take effect if planning permission was granted on the basis of that proposal only (Clause 4.1(d)); that for Appeal B(ii) would not take effect if planning permission was granted for Appeal B(i) (Clause 4.2(a)). In this way, effect is given to the Appellant's case that Appeal A would be implemented in preference to B(i) and B(i) in preference to B(ii).
- 12.9. All the Undertakings address matters of affordable housing, education contributions, a sustainable transport contribution, the transfer of the public open space and a guarantee from the Appellant's parent company. Appeal B(ii) also addresses arrangements for the funding of a railway bridge.
- 12.10. The Council questions whether any element of affordable housing over and above the policy requirement could be said to be 'necessary' in the sense of NPPF §204. In a context where a high level of need for affordable housing has been demonstrated and a proposal provides more such housing than necessary to meet policy requirements, that additional element should be weighed in the overall planning balance. If that benefit helped tip the balance in favour of the proposal, it could be deemed necessary to make the development acceptable in planning terms.
- 12.11. Given the evidence as to the need for affordable housing, the offer of 35% under Appeal A would represent a considerable benefit and should carry

substantial weight, particularly since this would be materially in excess of the 25% expected under the most up to date requirement (PSSD policy S2). The 40% offer made with Appeal B(i) should, likewise, attract substantial weight. The 25% offer under Appeal B(ii), which would be in accordance with that policy, should carry significant weight.

- 12.12. The contributions to primary and secondary education and the sustainable transport contribution would address changes in demand arising from the proposed development so that they are necessary to make the development acceptable in planning terms.
- 12.13. With regard to public open space, a scheme would be submitted to the Council and the Unilateral Undertakings provide for its future by transfer either to the Council or to a management company together with funding for future maintenance. This would address demand arising from the proposed development and so is necessary to make the development acceptable in planning terms.
- 12.14. The Unilateral Undertaking for Appeal B (ii) requires the Appellant to fund a new bridge over the railway line for a sum of £6,000,000. The mechanism for delivery would be that the Council, as Highway Authority, would be obligated to deliver the Bridge if it served the Bridge Construction Notice within five years of commencement of the development. If the Council served the Bridge Construction Notice, the developer would have to exercise an Option over the land to the south of the railway so as to acquire the freehold title of that land and to transfer that land plus the Northern Bridge Land to the Council.
- 12.15. Evidence has been provided as to a likely cost of £5,000,000 including a 5% contingency. The sum would be index linked. The Unilateral Undertaking provides for any excess monies to be used towards the provision of affordable housing. Payment of the contribution would be in instalments according to occupation of the dwellings so that they would be made regardless of whether the Bridge Construction Notice was served. The final instalment would be paid five years after commencement of development in any event, so that full payment of the Bridge Contribution would not be dependent on all dwellings being occupied.
- 12.16. In the discussion of Issue 3, I have set out my reasons for concluding that the bridge has not been shown to be necessary to make the development acceptable, nor has it been shown to be fairly and reasonably related in scale and kind. As such, I consider that no weight should attach to this element of Appeal B(ii).
- 12.17. With the exception of the Bridge Contribution, the requirements in NPPF §204 and Regulation 122 of the Community Infrastructure Levy Regulations 2010 are met so that account should be taken of the Unilateral Undertakings in these decisions.

### 13. Inspector's Conclusions

13.1. The figures in square brackets [ ] refer to relevant paragraphs in earlier sections of this report.

#### *Environmental Statement*

13.2. The proposals were screened by the Local Planning Authority prior to it making its determinations. They were screened by the Secretary of State prior to the resumption of the inquiry and again when the inquiry closed. On each occasion, it was found that the proposals were not EIA development. Various parties to the appeal have drawn attention to factors such as the scale of the proposals and the possible implications of the bridge proposal given the proximity to sites of ecological importance on the Humber Estuary. These matters have been considered through the various screening exercises, which have all come to the same conclusion. It is for the Secretary of State, as decision maker, to conclude on this issue but there have been no other matters identified in the course of the inquiry which indicate to me to that the proposals are EIA development. [8.16, 10.35]

#### *The Humber Estuary SSSI, SPA, SAC and RAMSAR site*

13.3. The appeal site lies some 600m north of the Humber Estuary, an internationally important site for wildlife (the relationship is shown on Grid 50 of the PSAD Policies Map). Subject to the appropriate design of green infrastructure and a range of measures including the management of recreational pressure, the two Habitats Regulation Assessments (HRA)<sup>140</sup> conclude that neither of the proposals would lead to a likely significant adverse effect on the Humber Estuary SAC/SPA/RAMSAR, either alone or in combination with other projects. Again, it will be for the Secretary of State to conclude on this issue but nothing emerged during the inquiry to indicate otherwise.

#### *The appeal proposals*

13.4. The Appellant describes Appeal A as a predominantly residential development whereas Appeal B is said to be 'genuinely mixed use'. In terms of quantum of development, it is self evident that under Appeal B there would be fewer dwellings and a larger area of land for employment uses than under Appeal A. National policy is generally supportive of mixed-use developments, seeing them as a means of promoting healthy, successful communities with easy access to facilities<sup>141</sup>. It should be noted, however, that no development is actually proposed on the area of employment land within Appeal B. Thus, their impacts on their surroundings and the extent to which various facilities could be accessed from the respective residential areas within Appeal A and Appeal B would be broadly the same. In addition, the central theme of the inquiry concerns the relative merits of the use of the appeal site for housing as opposed to employment. As will become clear in the discussion of employment land matters in issue (iii) below, the core dispute concerns the characteristics of this particular site rather than the quantity of employment

<sup>140</sup> CDs G33 and J17

<sup>141</sup> See NPPF paragraph 69; PPG paragraph ID: 26-018-20140306

land. As a result, the planning policy implications of Appeal B would not be greatly different from those for Appeal A. For these reasons, I consider that the differences between the two schemes or the extent to which one may be considered more of a mixed use than the other, are of limited relevance to the main issues in these appeals.

## Main Issues

13.5. Drawing on the main considerations set out at [1.3] and in the light of the evidence presented, I consider that the main planning issues in relation to these appeals could be defined as:

- (i) the relationship of the proposals to the current and emerging development plan and to national planning policy;
- (ii) the adequacy of the provision for housing in the East Riding of Yorkshire, including for affordable housing, and the contribution which either proposal could make to that supply;
- (iii) the particular contribution made by the appeal site to the supply of employment land and to wider economic development objectives, including the potential of the Humber to become established as a centre for renewable energy;
- (iv) whether development of the site should be permitted, having regard to the evidence of contamination in the locality;
- (v) the effect of the proposals on the character of the area, with particular reference to the identity of the settlements of Melton and North Ferriby;

13.6. In this section of the report I address each of those issues. I then consider various other matters which were raised, before setting out my overall conclusions and recommendation.

### Issue 1: the development plan and national planning policy

13.7. There is no dispute that the proposals conflict with the adopted development plan and the emerging local plan. However the Appellant contends that they are sustainable development and accord with national policy. Thus the key policy points at issue are the weight which should be attached to any conflict with the development plan in the light of NPPF paragraphs 215 and 216 and whether the presumption in favour of sustainable development might be engaged. [7.14, 9.4-10, 9.47-48]

13.8. The proposals are contrary to the employment land allocations In1r and In1s in the BBLP, where the supporting text records that Melton was considered a strategic location in the (then) Structure Plan. As the Appellant points out, the BBLP makes generous provision for employment land and the sites at Melton have been allocated for many years. However, whilst the age of a plan certainly raises the need to assess whether policies continue to be of relevance it does not, in itself, diminish their importance. These allocations were confirmed in 2005 through the JSP and have been reviewed once again in the light of NPPF paragraph 22. The 2005 JSP notes that Melton was then considered to still be of strategic importance<sup>142</sup>. Similarly, the site

<sup>142</sup> JSP p90, para 7.19; also, the GSJ opened the following year, in 2006

assessment process for the emerging local plan has also found that Melton should serve as a key employment site. Moreover, although the Appellant makes much of the fact that the land remains undeveloped, it was confirmed in XX that the Appellant was not making the case that there was no reasonable prospect of the site coming forward for employment use. Indeed, as recently as 2011 the Appellant company was arguing for an enlarged site at Melton, arguing that there was an overwhelming case for permission. Notwithstanding the age of the BBLP and the JSP therefore, I consider that the conflict with the employment land policies BBLP In1r and In1s and JSP policy EC2 should continue to carry full weight. There are, however, objections to the larger allocation made through PSAD policy MELT-E so the conflict with this policy of the emerging local plan should carry limited weight. [7.15-16, 9.49-50]

- 13.9. Both proposals would lie outside the limits to development, contrary to BBLP policies E2 and E3. They would also conflict with PSSD policy S5, in that they would be significantly in excess of the 5% growth envisaged for Primary Villages. Policies E2 and E3 in the BBLP, which identify development limits for settlements and seek to protect the countryside, rely on an evidence base which has long since been overtaken, as do JSP policies DS4 and H7. Although the emerging local plan follows a similar spatial strategy in relation to North Ferriby, the Council accepts that PSSD policies S3 and S5 can carry limited weight at this stage, due to the number and nature of representations to be considered during the Local Plan examination. I agree. The conflict with both the existing and the emerging development plan in respect of the location of housing should therefore carry limited weight. [7.15, 9.51]
- 13.10. Although not all relevant policies are out of date, paragraph 49 of NPPF expects housing proposals to be considered in the context of the presumption in favour of sustainable development. Moreover, that presumption is expected to be a feature in all planning decisions. Thus, whilst it may be arguable, on a strict textual reading of paragraph 49, that the presumption may not be engaged where the Local Planning Authority is able to demonstrate a five year housing supply, it seems to me that in this instance it could nevertheless be engaged by virtue of the fact that some of the relevant policies are out of date. As such, providing the proposals were accepted to be a form of sustainable development, the planning balance to be applied would be that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. [9.4-9.6]

## **Issue 2: provision for housing in the East Riding of Yorkshire**

- 13.11. Where the existence or otherwise of a shortage of land for housing is relevant to an appeal, it is a necessary to have regard to NPPF paragraph 47. That paragraph seeks to boost significantly the supply of housing and requires the LPA to ensure that the Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies in the Framework. As part of this process, the LPA must identify sufficient sites to provide five years worth of housing against their housing requirements.
- 13.12. The Council's and Appellant's positions as regards housing requirement and housing land supply underwent a number of revisions during the course

of the inquiry, reflecting the centrality of this point to the merits of their respective cases. Each party also offered various permutations, drawing on the other's data (see ERYC 16 and StM 13). For clarity, towards the end of the inquiry I asked that each party should set out its own position and these are contained in ERYC 38a and StM 30 Table 3c.

- 13.13. Mr Coop very helpfully noted that, in the light of the Hunston judgement, 'one is plainly looking for the best available figure' (SC PoE p27, # 4.1). Thus, although the Appellant provided data according to four scenarios (Index, Accelerated Index, Partial Catch up and Affordable Housing) when Mr Coop was asked to identify which figure he regarded as the best available, he stated this was his Index figure<sup>143</sup>. These alternative scenarios provide useful illustrations of how the housing requirement might be affected by even quite modest changes in the underlying assumptions. In the interests of clarity, I have used the Index scenario to represent the Appellant's position in this section of the report, although the Secretary of State may wish to bear in mind that the Accelerated Index and Partial Catch up scenarios each result in a higher requirement, with the Affordable Housing scenario being slightly lower<sup>144</sup>.
- 13.14. Consequently, the respective positions of the parties by the end of the inquiry can be summarised as:

	Council (ERYC area)	Council (HMA area)	Appellant (Index)
'raw' housing requirement pa	1888	1400	2208
Shortfall, pa <sup>145</sup>	438	275	344
Annual residual housing requirement	2326	1675	2552
Requirement plus 20% buffer <sup>146</sup>	2791	2011	3062
<b>Five yr requirement incl 20% buffer</b>	<b>13,957</b>	<b>10,053</b>	<b>15,312</b>
<b>Housing land supply</b>	<b>14,971</b>	<b>14,971</b>	<b>4,734</b>

<sup>143</sup> Response to Inspector

<sup>144</sup> The Index, Partial Catch up and Accelerated Index scenarios make different assumptions as to the likely pattern of household formation beyond 2021. The Index makes use of the 2008-based projection, the Partial Catch up increases the rate of change between 2021-2029 and the Accelerated Index applies an increased rate of change from 2015 instead of 2021. The Affordable Housing scenario takes the required affordable housing figure from Mr Tetlow's evidence.

<sup>145</sup> The total shortfall, divided by 5 to produce an annualised figure.

<sup>146</sup> NPPF paragraph 47 states that where there has been a persistent record of under delivery, the housing land supply should be increased by a buffer of 20%. For the purposes of these appeals, the parties adopted a common approach of including the 20% buffer as part of the calculation of the housing land requirement.



13.15. The key areas of difference in relation to the five year requirement fall under the following headings: the approach to be taken to the identification of the full, objectively assessed need; the interpretation and application of the data underlying the raw housing requirement; and the level of housing shortfall up to 2013.

*The approach to be taken*

- 13.16. As the Appellant points out, the question of full, objectively assessed need has been the subject of several planning appeals as well as Court judgements<sup>147</sup>. From these, the key point which arises in relation to this appeal is that, since there is no up to date Local Plan, it is necessary to identify the full, objectively assessed need, unconstrained by policy considerations, in order to arrive at the housing requirement. The fundamental point of disagreement between the Council and Appellant was whether, in this context, the starting point for establishing the housing requirement should be the LPA administrative area or the housing market area (HMA). The Appellant favours a figure based on the local authority's administrative area. The Council commends the use of the figure for the housing market area. [7.83-93; 9.108-112, 9.125-133]
- 13.17. The Appellant's case on this point could be summarised as being that the HMA-based figure amounts to a policy constraint since it is a matter to be tested as part of the examination of the Local Plan. The use of the LPA area has been common practice in other planning appeals and was also the approach used in Hunston and Gallagher. As such, it is argued, the figure for this appeal should be that for the LPA administrative area. [9.108-112]
- 13.18. On the other hand, the Council's case is that those legal judgements were directed towards principles such as the source of the figure for objectively assessed need and the importance for such a figure to be tested robustly. Thus, the courts have not yet dealt with the particular principle of whether the proper application of NPPF paragraph 47 in the development management context might reasonably be understood to envisage use of a figure based on the housing market area. [7.85-7.93]
- 13.19. In this respect, Mr Young's advice is that the Courts have been alive to the wording of this paragraph and to the reference to the housing market area. There is no explicit ratio that supply must be decided by reference to the LPA area but this has been the basis for the preceding judgments. This reflects the fact that the LPA area is also the basis on which the housing supply has to be calculated. In further support, he refers to an (undefended) appeal decision where it was conceded that there had been an error of law whereby supply had not been assessed on the basis of the LPA area<sup>148</sup>.
- 13.20. The interpretation of policy is a legal matter. However, when a decision-maker comes to apply a policy, it should be read objectively and in context. In relation to plan-making, the Government requires LPAs to have a proper understanding of housing needs in their area (NPPF paragraph 159). At

<sup>147</sup> see esp CD N/C10: St Albans and Hunston Properties [2013] EWCA Civ 1610 (Hunston); and ERYC7: Gallagher & Lioncourt v Solihull [2014] EWHC 1283 (Admin) (Gallagher)

<sup>148</sup> CDs C3 and C4: Richborough Estate v SSCLG and Cheshire East,

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paragraph 47, the policy framework is set out for the delivery of housing to meet that need in full.

- 13.21. It seems to me that the use of the term 'housing market area' in paragraph 47 should be understood in relation to the later advice at paragraph 159 as to the evidence base for plan-making. Paragraph 159 states that it is the SHMA which should provide evidence of that need, recognising that the SHMA may cross administrative boundaries. Moreover, the importance of the housing market area as a unit for analysis is illustrated by the guidance in PPG as to how it should be defined and to its use in relation to assessments of need<sup>149</sup>. In order to conform to national guidance and to produce a development plan which meets the test of soundness, the LPA must address the situation within the housing market area.
- 13.22. In addition, it is inherent in the activity of spatial planning that it must have some regard to local context, it cannot be undertaken in a vacuum. In this case, the key factors would include the functional relationship between the administrative areas of the two Councils and the longer term direction of strategic planning for the area. The East Riding of Yorkshire is a predominantly rural authority, wrapping around the City of Hull, whose own boundaries are quite tightly drawn around the urban area. The extent of the interrelationship has long been recognised for planning purposes, such as through the existence of the JSP. It is clearly expected to continue, as indicated by the defined FEA and HMA as well as the joint working arrangements in place for the preparation of the respective Local Plans for the two Authorities. Thus, notwithstanding the absence of an up to date development plan, it would run counter to the established approach to the strategic planning of the area, as endorsed by the respective Councils, to adopt an approach in relation to these appeals which looked only at the ERYC area and disregarded any consideration of the implications for the City of Hull. [10.7-10.12]
- 13.23. In my view, therefore, a figure based on the HMA should not be understood as having been subject to policy constraint in the same way, for example, as a figure which has been affected by other planning policies such as the existence of designated green belt, as was the case with Hunston. As regards the Richborough Estates case, it is relevant to note that it took place in 2011, prior to publication of NPPF. Under the then *PPS3 Housing*, the focus was on the LPA area rather than the housing market area (a point also noted in CD C3 paragraph 21). This indicates a material shift has taken place in the underlying policy approach since that time, with NPPF placing increased emphasis on planning's role of assisting and supporting the market provision of housing. Mr Young's further point, that supply is calculated on the basis of the LPA area, I consider to be a pragmatic reflection of the fact that a Council's plan-making powers do not extend beyond its administrative area.
- 13.24. Whilst acknowledging Mr Young's views, I consider that an assessment of need based on the HMA should be understood as an integral requirement arising from national planning policy for housing, rather than the outcome of a second stage of policy-making at the local level.

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<sup>149</sup> PPG 002a, # 10-11 and PPG 002a # 003, 007

13.25. However, although I accept Mr Tucker's point as to the proper application of NPPF paragraph 47, especially in the context of the East Riding, I am also conscious that NPPF has been framed in the context of a plan-led system. At the time of the inquiry, the HMA–apportioned figure was untested in two respects, firstly as regards the influence of the York HMA on the ERYC area and secondly as to the appropriate distribution between ERYC and Hull. The Council's evidence to the inquiry on these points, although somewhat thin, nevertheless indicates that they have received due consideration as part of the overall planning strategy<sup>150</sup>. The HMA-based figure for full, objectively assessed need cannot be given full weight since it is not contained in a duly adopted Local Plan. Even so, I consider that it should be taken as the starting point for the assessment of the housing requirement for these appeals. However, until the Local Plan is in place, the figure for the whole of the ERYC area should serve as an important consideration.

#### *The raw housing requirement*

- 13.26. The analysis from both parties originally drew on the 2011-based Sub National Population Projections (SNPP) as well as the 2011-based Interim Household Projections and the ONS Mid-Year Sub National Population Estimates (MYE). However, the evidence was revised to take account of the publication of the 2012-based SNPP<sup>151</sup>.
- 13.27. The issues around the use of projections based on 2011 census data have been recognised within the planning profession<sup>152</sup>. This suggests taking steps such as making a comparison between 2001 and 2008 based projections, looking closely at household formation rates and considering a range of outcomes beyond 2021 rather than a simple extrapolation of numbers. Various other documents were also provided which discuss the merits of the range of possible adjustments to the data<sup>153</sup>, further indicating the extensive scope which exists for differing figures to be arrived at.
- 13.28. It is perhaps only to be expected, therefore, that both Mr Wood and Mr Coop point out that the process of identifying housing need is not an exact science<sup>154</sup>. In spite of this, there was agreement that the housing requirement should be calculated on an employment-led rather than a demographic-only basis and that this should take into account projected levels of job creation ('the adjusted Project-on Scenario'). There was also agreement that the deficiencies in the 2011 SNPP meant that various adjustments were required. There was, however, disagreement as to the application of these adjustments. The key areas of disagreement concerned economic activity, unemployment, commuting and household headship rates.

<sup>150</sup> With regard to York/ERYC, see for example N/F40 where the LHS (#3.22-3.30) examines spatial linkages; for Hull/ERYC see eg Wood PoE (#7.5-6 p 37) where he notes that, without the planning strategy, the balance between ERYC and Hull would be 88%/12% but with the strategy it is set at 65%/35%; ERYC 2.5 #4.18-4.20, the Joint Background paper, also discusses this point.

<sup>151</sup> ERYC 40, StM 28

<sup>152</sup> ERYC 17.3 RTPI research report no.1 January 2014, Planning for housing in England

<sup>153</sup> see eg SC Appx 5-16

<sup>154</sup> RW Reb #2.7 P2; SC PoE #4.1 p27

*Economic activity (EA) rates*

13.29. It was agreed that planned changes in the state pension age are likely to lead to higher levels of economic activity for older age groups. However the level of increase within the Council's model is lower than in the Appellant's model. Mr Coop estimated that use of the Council's approach would have reduced the Appellant's housing requirement figure by 64 units a year or 3%<sup>155</sup>. He points out that his approach was found to be robust by the Local Plan Inspector at South Worcestershire<sup>156</sup>. On the other hand, the assumptions on EA rates within the Council's model are higher than the original ONS figures. It appears that this approach was also accepted as robust at recent Local Plan examinations not only for South Worcestershire but also at North Somerset<sup>157</sup>.

*Unemployment Rates*

13.30. The Council's figures are based on an assumption that unemployment rates will fall from 5.5% to 5%; the Appellant's figures assume a fall from 6.55 to 5.1% (it is pointed out that the long term average is 5.3%). According to Mr Coop, this has the effect that the Appellant's housing requirement figure would have been 100 units a year or 5% higher<sup>158</sup>.

*Commuting*

13.31. The Council assumes that the commuting ratio will fall from 1.28 to 1.23 whereas, for the Appellant, it is assumed this will stand at 1.36 throughout the plan period. Mr Coop estimates this would account for a difference in his assessment of the housing requirement of 360 fewer units a year or 17% lower<sup>159</sup>. The Appellant's approach is justified on the basis that there are no clear strategies directly aimed at reducing levels of out-commuting. From the Council's point of view, the commuting ratio is intended to reflect the strategy of York City Council that it will meet its own housing need and that agreed with Hull City Council for the Hull HMA, to direct housing towards the City. [7.97-8; 9.134-137]

*Household headship rates*

13.32. The Appellant contends that the Council's approach understates the likely future level of household formation rates since it is a projection of the trend according to the 2011-based SNPP. As such, it rolls forward trends experienced during the economic downturn. The Council explains that its data is based on a five year period up to 2011, which includes market highs as well as lows. It takes this approach in preference to use of the 2008-based headship rates since these are unrepresentative due to their having originated at a time of an unsustainable market high. According to Mr Coop, this difference in approach would have produced a housing requirement figure 105 units or 5% below his own figure.

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<sup>155</sup> StM 26 Table 2

<sup>156</sup> SC Appx 4 #34

<sup>157</sup> see Local Housing Study (CD N/F40, Appx 1) and appendix to RWReb

<sup>158</sup> StM 26, Table 3

<sup>159</sup> StM 26, Table 6

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*Conclusions on the raw housing requirement*

13.33. Mr Coop's data indicates that, had he applied the same assumptions as the Council, the Appellant's annual housing requirement figure would have been 100 units higher due to the assumptions on unemployment rates but 529 units lower on the basis of the assumptions around EA, commuting and headship rates, a net difference in the region of 430 or about 20% of the (then) figure of 2172. The net effect is that the Appellant's annual housing requirement may be some 20% higher than it should be. The corollary of this, of course, is that the Council's figure might have underestimated need by a similar margin.

13.34. This raises the issue of how far it is reasonable or realistic to take the exploration of such assumptions in the context of a planning appeal. It is to be expected that such matters will be thoroughly tested as part of the Local Plan examination, where other interpretations of the data may well be offered by other respondents<sup>160</sup>. Given the timetable for the ERYC Local Plan, these matters are likely to be resolved in the near future and may be available to the Secretary of State by the time he comes to make this decision. However at this stage, I offer the following advice:

- on economic activity rates, the Council's use of rates above those in the ONS data does not mean that it has failed to provide a full, objective assessment of need in this regard;
- on unemployment, if it transpired that a lower rate should have been used, this would mean that the Council has currently provided a figure which overestimates housing need, so that this does not diminish the status of the Council's figure for the purposes of these appeals;
- on commuting, a development plan which sought to direct housing development to a neighbouring Authority in response to projected patterns of employment development but then failed to take this into account in its assessment of housing need would be vulnerable to a finding of unsoundness due to its internal inconsistency. As such, I consider that the Council's assessment of housing need is not undermined by the fact that no strategies to achieve this have been presented to this inquiry;
- on household headship rates, this is an area of considerable uncertainty. It seems to me there is some merit in Mr Coop's analysis that the impact of the recession may well have led to an underestimate of household formation rates in the longer term. It is notable that the Index scenario is the most conservative of the three he has examined. In this particular regard therefore, I consider that there is a reasonable possibility that the Council's figure does not represent a full assessment of need.

13.35. It may well be that the Council's assessment of housing need is some 5% higher than it should be, owing to the use of a somewhat conservative rate for unemployment. On the other hand, its figure may underestimate demand in the longer term owing to the effect of the recession on rates of household

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<sup>160</sup> for example, the South Worcestershire Local Plan examination dealt with a number of scenarios – SC Appx and ERYC 17

formation, by a similar margin. Clearly, the respective merits of these models, possibly along with others, will be considered more fully as part of the Local Plan examination. However, when taken in the round, in my judgement the evidence does not demonstrate that the Council's assessment of housing need as presented to this inquiry is materially in error or lacking in robustness. [7.94-100; 9.113-124]

#### *Housing shortfall/backlog*

- 13.36. There was agreement that the 'Sedgefield' method was the correct approach to meeting any identified shortfall up to 2013. The disagreement related to how the shortfall itself should be identified.
- 13.37. Reflecting the work carried out as part of the SHMA, the Council takes 2012 as the starting point for assessing the shortfall and bases its calculations on the housing requirement in the emerging local plan. The Appellant takes the requirement in the former Regional Strategy and compares this to actual delivery over the previous five year period. It is worth bearing in mind that the Council's method produces a higher shortfall (450 dwellings a year, Borough-wide) than the Appellant's method (344 dwellings a year).
- 13.38. PAS advises (CD L13, Principle 8) that the use of up to date information may avoid the need to consider the issue of shortfall against previous plan requirements, although this depends to some extent on whether the projections make allowance for pent up demand due to past shortfalls. I have indicated that the Council's housing requirement figure may not take full account of the effect of the recession on rates of household formation. Nevertheless, it clearly makes some allowance in this regard so that a shortfall figure which refers back to a housing requirement from the previous plan would result in some level of double counting.
- 13.39. In further support of the Appellant's case, attention is drawn to an appeal at Tetbury where the Inspector noted that use of a five year period seemed reasonable<sup>161</sup>. However that was for a different purpose, namely to establish whether there was a record of persistent under delivery. It was also in a context where the emerging local plan for that Authority was at a very much earlier stage than the East Riding's.
- 13.40. In the circumstances of these appeals therefore, I consider that the Council's figure provides the most appropriate assessment of the backlog. [7.94-100; 9.138-141]

#### *Housing land supply*

- 13.41. With regard to housing land supply, the parties' final positions were: (ERYC 38a and StM30a):

	Council	Appellant
Windfall allowance	789	789

<sup>161</sup> Mr Gartland 8.26 p50 (APP/F1610/A/12/2173305 CD D12)

PPs (small sites)	528	528
PPs (large sites)	1886	1394
Emerging Local Plan	11,156	947
Existing Local Plan allocations	612	66
PPs (Mr H Appx M)		85
resolutions to grant (Mr H Appx M)		443
PPs 21/5 – 10/7 2014		482
<b>Total five year supply</b>	<b>14,971</b>	<b>4734</b>

13.42. From the table, it can be seen that the principal area of disagreement related to allocations in the emerging local plan. To a lesser extent, there was also disagreement as to allocations in the existing Local Plan and to larger sites with planning permission.

*The approach to allocations in the emerging local plan*

13.43. Footnote 11 of NPPF paragraph 47 states that deliverable sites should be available, in a suitable location, achievable and have a realistic prospect of being developed. Further advice is set out at PPG #3.19-23, which suggests various other factors to consider such as impact on surroundings, ownership and viability, all of which are site-specific. Both the Appellant and the Council draw attention to the Wainhomes judgement<sup>162</sup>. From this, it appears there are two key points to note with regard to the interpretation of NPPF paragraph 47: firstly, that whether or not a site is deliverable is fact sensitive; and secondly, that inclusion of a site in an emerging local plan is some evidence of deliverability, since it should normally be assumed that an LPA will make a responsible attempt to comply with national planning policy. Nonetheless, there are other relevant factors including the plan's evidence base, the stage the draft plan has reached and the nature of any objections.

13.44. Pointing to the strong emphasis in NPPF on delivery, the Appellant has taken the position that supply will largely consist of sites with planning permission, putting forward a figure of just over 4,700 as the realistic supply. However if the exercise is to be fact-sensitive as indicated in the Wainhomes judgement, it follows that sites should not be discounted simply on the basis of a general characteristic such as their planning status. Moreover, there is a fundamental lack of credibility in a figure for a period looking five years ahead which fails to acknowledge the likelihood that the Council will grant at least some planning permissions during that period. In this respect, it should be noted that the Appellant's own supply figure has had to be revised upwards by a substantial margin<sup>163</sup> in the relatively short period between the submission of proofs in April 2014 and the holding of the inquiry only a few weeks later,

<sup>162</sup> CD C6: Wainhomes (SW) Ltd v Secretary of State and Wilts [2013] EWHC 597, especially paragraph 35

<sup>163</sup> I calculate this to be more than 25% (528+482=1010 or from 3724 to 4734)

in order to reflect this very fact. The Appellant's approach to deliverability does not achieve the intended aim of providing certainty over the projected five year period.

- 13.45. On the question of the status of sites without planning permission, the Appellant draws attention to various appeal decisions, particularly High Peak and Ottery St Mary. In the High Peak appeal the Inspector discussed issues of deliverability for sites both with and without planning permission, indicating that she did not view the existence of a permission as a determinative factor in itself<sup>164</sup>. As to Ottery St Mary, the discussion related to whether strategic sites in an emerging local plan should be included in the housing land supply where further consultation on the plan was yet to take place<sup>165</sup>. In contrast, for the two appeals currently under consideration, the Council's case is based on all the sites identified in a submission draft allocations document rather than a small number of strategic sites. The relevant local plan is in the process of being examined and provides a much clearer picture as to technical or viability issues and the nature of any objections. The circumstances are not comparable and a different approach is warranted here, due to the different characteristics of the evidence base and the availability of public responses to the emerging plan. In addition, it seems to me there is a fundamental flaw in an approach to the assessment of housing land supply which fails to entertain the possibility that a Local Planning Authority with an identified need of at least 1400 dwellings a year and an emerging local plan which provides for 23,800 dwellings may grant at least some planning permissions for residential development over a five year period.
- 13.46. On its own, the absence of a planning permission is not sufficient reason for a site to be categorised as undeliverable. On that basis, I consider that very little weight can be attached to the Appellant's figures for supply from the existing and emerging local plans. [7.107; 9.147-8]
- 13.47. The second point arising from the Wainhomes case is that, in a plan-led system, regard needs to be had to the evidence base of the emerging plan, albeit this depends on context. In this instance, the emerging ERYC local plan makes detailed provision for development over the plan period. Whilst the Appellant protests that the detailed evidence base for those allocations was not put to the inquiry, it seems to me that the proper arena to test such detail is indeed the Local Plan examination. For the purposes of this inquiry, it is sufficient to establish the extent to which reliance may be placed on the emerging local plan.

#### *Supply from the emerging local plan*

- 13.48. The emerging local plan makes provision for 23,800 additional dwellings over the plan period. The Council contends that some 11,000 should be considered deliverable over the next five years. The Council's evidence to this inquiry on this point comprises the PSAD dated January 2014<sup>166</sup>, the SHLAA,

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<sup>164</sup> CD E15 paragraph 13

<sup>165</sup> CD E16 paragraphs 29-31

<sup>166</sup> CD N/F35



which sets out the position at November 2013<sup>167</sup> and the evidence of Mr Hunt, particularly appendices L and M (as updated by ERYC 14 and ERYC 25).

13.49. Sites in the PSAD have been subjected to a four-stage assessment which includes deliverability<sup>168</sup>. An example of this can be seen in the discussion of potential sites at Melton at Chapter 3 of Mr Hunt's PoE. However, although this methodology may support inclusion of a site within the emerging local plan, it does not demonstrate the likelihood of its delivery in the next five years, as indicated by the Council's own acceptance that some sites should be discounted.

13.50. Turning to the SHLAA, two key assumptions underpin its reliance on emerging local plan allocations in the five year housing land supply figures: that, since few sites require infrastructure to be provided prior to commencement of development, most of the allocations in the emerging local plan can be regarded as being free from significant constraints; and that the Council is committed to affording weight to the emerging local plan when determining planning applications<sup>169</sup>.

13.51. Infrastructure constraints are identified in the emerging local plan (see eg PSSD policy A1). Although the responses to the PSAD have resulted in comments on many of the allocations, the general tenor of these does not indicate a failure to identify constraints<sup>170</sup>. In addition, the Appellant's scrutiny of these allocations during the course of the inquiry indicated a need for relatively little change in the Council's assessment of sites which should be discounted (from 373 in ERYC 16 to 419 in ERYC 38a). As such, I consider that the first key assumption has been shown to be reasonable<sup>171</sup>.

13.52. As to the second, a comparison between the information provided in April 2014 and the update to the inquiry three months later provides a useful illustration of the extent to which the Council is standing by its commitment to afford weight to the emerging local plan. The table below shows that the number of sites with planning permission or expected to obtain such permission has risen significantly (by almost 1100 in three months) and the trend for those under consideration is also upward. On that basis, I consider that the second key assumption in the SHLAA is also reasonable.

	No of dwellings, April 2014 <sup>172</sup>	No of dwellings July 2014 <sup>173</sup>
approved	1759	2282
deferred with powers to approve	1997	2558
Total with/expected to	3756	4840

<sup>167</sup> CD N/F 37

<sup>168</sup> ERYC Site Assessment Methodology CD F26

<sup>169</sup> CD N/F 37 #2.13 & #3.16

<sup>170</sup> ERYC 14 and 25

<sup>171</sup> It should also be noted that a separate exercise conducted by JG but not referred to in his evidence appeared to indicate that some xxx sites from the emerging local plan should be considered deliverable.

<sup>172</sup> MrH PoE # 4.41-4.44 and Appx M

<sup>173</sup> ERYC 39

obtain pp		
in process of being determined	993	1062
at pre-application stage	1644	1737
in preparation	2838	2924
total under consideration	5475	5723

13.53. Clearly, given the number of sites involved, it may well turn out that not all allocations currently identified as deliverable will in fact be delivered. However I consider that, overall, the Appellant has not shown that this part of the evidence base is lacking in robustness. As a result, the Council's figure of 11,156 dwellings on sites identified in the emerging local plan should carry substantial weight. [7.104-107; 9.147-151]

#### *Sites in the existing Local Plan*

13.54. The Council advises that its review of the as yet undeveloped allocations in existing Local Plans has shown that 34 of the 60 can be regarded as deliverable. The Appellant's position that only sites with planning permission should be included is untenable, for the same reasons set out in paragraph 13.43 above in relation to sites in the emerging local plan. The Council has followed the same process of assessing whether there is a realistic chance of delivery. As such, I consider that its assessment that 612 dwellings could be delivered on these sites is reasonable.

#### *Lead-in times*

13.55. The Appellant suggests that the revised lead-in times in the current SHLAA (CD N/F37) are excessively optimistic<sup>174</sup>. The basis for the revision is set out in the SHLAA, which notes that the approach was agreed by the core working group<sup>175</sup>. This group includes representatives of local housebuilders, indicating that the revision is regarded as acceptable by those with good knowledge of the local housing market. The Council's figure of 1886 dwellings to be delivered on larger sites therefore appears to be reasonable. [9.152]

#### *The credibility of the supply figure*

13.56. Whilst the Council's supply figure has fluctuated over the period of the inquiry, a fair reading of Mr Hunt's first proof shows that the discussion of a 12 year supply took place in the context of the weight which could be attached to sites in the emerging local plan (StM16). In a situation where a Local Plan is under preparation, it is not surprising that data will be subject to revision. As such, the fluctuations of themselves should not be seen as indicative of a lack of reliability. It is also suggested that the 15,000 figure should be seen as absurd in comparison with the housing trajectory. However, the assessment of supply is distinct from that for delivery. [7.101-103; 9.142-144]

<sup>174</sup> The lead-in times were reduced from 18 and 30 months in the 2012 SHLAA (F5) to 10 and 24 months in the current SHLAA (N/F37) and the threshold was lowered from sites with 50 plots to sites with 15 plots (JGReb Table 3.3)

<sup>175</sup> N/F37 paragraphs 3.37-40

*The need for affordable housing*

- 13.57. Under Appeal A, 35% of dwellings or 179 units would be delivered as affordable housing. Under Appeal B(i) the 40% figure would yield 156 units. Under Appeal B(ii) the 25% figure would yield 98 units. The Appellant's position was that the need for affordable housing was so great that it was capable of being a determinative factor in its own right; the Council's was that it should be afforded substantial weight.[7.109-110; 9.159, 9.161]
- 13.58. The Appellant's position on the level of need underwent significant revision during the course of the inquiry. Having contended that total need stood at some 16,500<sup>176</sup>, it was accepted that the 2011 SHMA annual target of 1008 dwellings for 2012-2017 had taken into account housing need up to that point. The Appellant's reliance on the 1008 figure from the 2007 SHMA had therefore led to double counting. It was also acknowledged that it may not be appropriate to apply a 20% buffer to allow for choice (as applied to the calculation of housing land supply) when dealing with affordable housing<sup>177</sup>. In evidence, the Appellant's position was that current need stood at 5360 (based on a backlog of 3736), to which a 20% buffer could be applied if appropriate, which would produce an annual requirement of 1286<sup>178</sup>. On the Appellant's own figures therefore, the affordable housing need stands at about a third of that previously identified (5,400 as against 16,500).
- 13.59. Based on the evidence provided, my view is that, if net need at 2011 was 3259<sup>179</sup> and if the need arising for 2012-2013 was 712<sup>180</sup>, the requirement as at 2013 would have stood at 3971. From this it would be necessary to deduct the net gain to 2013<sup>181</sup> of 385 so that the backlog would be 3596. I do not agree that a 20% buffer should be applied since, unlike market housing, delivery of affordable housing is intended to be made in response to identified need. At the inquiry, the Council confirmed its agreement with these figures<sup>182</sup>.
- 13.60. The Appellant also went on to suggest that weight should be accorded to the affordable housing offer on the basis of a past record of under-delivery of affordable housing and the likelihood that this pattern would continue. However, the Mr Tetlow's estimate of likely future provision of affordable housing was derived from Mr Coop's housing land supply figure<sup>183</sup>. Given the failings already identified in that approach, little reliance can be placed on the Appellant's contention that total delivery of affordable housing over the next five years would be less than 1200 units.

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<sup>176</sup> RTAdd Updated Fig 4.15, p5

<sup>177</sup> RT in response to Inspector's question

<sup>178</sup> RT in response to Inspector's question

<sup>179</sup> CD F13 SHMA 2011 Fig 7.1 pp 80-81

<sup>180</sup>  $969-613 = 356$ ;  $356 \times 2 = 712$  (ie newly arising need of 969pa minus the estimated supply of affordable housing from existing stock of 613pa)

<sup>181</sup> See RTAdd Fig 4.10 p4

<sup>182</sup> Confirmed by Mr Humphries

<sup>183</sup> At the time of RT's Addendum this was 5621 which, at 21.4%, gave an expected supply of 1203 (see StM30 Table 3a and RTAdd p5, updated Fig 4.15)

- 13.61. The emerging local plan seeks to deliver 310 new affordable homes each year (PSSD policy S5 part F). The Appellant drew attention to the low proportion of affordable housing to be provided on some sites such as the redevelopment at Brough, for example. However, the evidence suggests that a good proportion of recent and current planning applications are achieving the desired percentage of affordable housing<sup>184</sup>. Nevertheless, bearing in mind that newly arising need has been assessed at 356 per annum, even if the affordable housing strategy in the emerging local plan is achieved, there still appear to be limited prospects for any significant progress towards meeting the backlog.
- 13.62. Despite the substantial correction necessary in relation to the Appellant's position, the evidence still indicates that there is a significant need for affordable housing in the East Riding. That situation has existed for some time and, even on the Council's own figures, the position is unlikely to improve in the short term. The Council suggested that, in effect, the proposed affordable housing would be too much and in the wrong place, points also echoed by the Parish Council and many local residents. Even if that was accepted to be the case, it would not lessen the weight which should be accorded to this element of the proposals. [9.160, 10.34]

#### *Conclusion on housing*

- 13.63. With regard to the five year housing requirement, I consider that the Council's figure of just over 10,000 for the housing market area is to be preferred, on the basis that it accords most closely with the relevant national policy and offers a reasonably robust, full, objective assessment of need. Use of an HMA-based figure should be understood as part of the first stage of formulating the requirement according to national policy rather than the second stage of applying a constraint on the basis of local policy making. The Secretary of State may conclude that the requirement should be based on the ERYC administrative area, in which case the Council's figure of just under 14,000 is to be preferred over the Appellant's figure of 15,300.
- 13.64. The Appellant's approach to the assessment of housing land supply is fundamentally flawed so that the Council's assessment of supply, at almost 15,000, is also to be preferred. Thus, whether the analysis is based on the HMA or the ERYC area, I consider that the Council has demonstrated the existence of a five year housing land supply. Even if the Appellant's five year housing requirement of 15,300 is taken, the shortfall of 300 would be modest in the context of the overall requirement, making it debatable whether any adverse effect on housing delivery due to supply constraints would be identifiable in practice.
- 13.65. Since it has not been shown that there is any pressing need for additional sites to come forward to sustain the local supply of housing, I consider that the appeal proposals would not deliver additional benefits by virtue of their contribution to that supply. The contribution of the proposals to the supply of affordable housing is a different matter. Here, significant need has been demonstrated and it seems likely that such need will persist. For that reason,

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<sup>184</sup> Mr Hunt Appx H

substantial weight should attach to the proposals, in proportion to the extra contribution they would make to the supply of affordable housing.

### **Issue 3: employment land supply and wider economic development objectives**

13.66. The parties agree that Appeal A would result in the use of almost 32ha of existing employment land for non-employment purposes, or 24ha under Appeal B. Appeal A would result in the use of almost 35ha of the proposed Key Employment Site identified in the emerging Local Plan, or just over 27ha in the case of Appeal B<sup>185</sup>. In addition, the Appellant notes that some 21ha of the appeal site is currently unallocated land, with the remaining 17ha or so being allocated for employment under the policies of the existing Local Plan. These figures should be understood in the context of an existing overall supply of some 370ha in the East Riding as a whole<sup>186</sup>, or about 140ha in the Hull FEA<sup>187</sup>. Under the emerging local plan, some 260ha is proposed, of which about 120ha would be within the Hull FEA<sup>188</sup>. Looking specifically at the Melton area, the Council's assessment indicates that some 43ha of land would remain available in the case of Appeal A, or 50ha for Appeal B<sup>189</sup> (the Appellant's figures are 40ha and 48ha respectively). [9.71]

13.67. The data as to employment land availability makes clear that, whether supply is considered in terms of the East Riding, the Hull FEA or the immediate locality of Melton, the area is well served for employment land, certainly in quantitative terms. This would be the case even taking into account the proposed de-allocation of some land through the local plan process. Indeed, the Council makes no bones about there being a substantial oversupply of employment land. As the Appellant points out, a range of alternative sites would be available to potential businesses seeking a site within the East Riding. For those willing to consider second hand premises, the Appellant notes the existence of some 560,000sqm (6million sq ft) of vacant office and industrial space. There is no basis therefore to conclude that the proposals would have any material adverse effect on the overall supply of employment land. [7.41; 9.76, 9.85-86]

#### *Wider economic development objectives*

13.68. The Council's case on employment land stems from the approach which underpins the planning strategy in the emerging local plan, namely the maintenance of a portfolio of sites geared to known and anticipated development needs (which has, in turn, evolved from earlier plans). In this context, the key considerations in relation to the composition of the portfolio are the expected pattern of development and the likely drivers of demand for employment land. The key characteristics of the site itself are its location, accessibility and availability. [7.3]

<sup>185</sup> SCG 8.3-8.4

<sup>186</sup> agreed between the Council and Appellant at inquiry and given in answer by Ms Rigby during evidence in Chief)

<sup>187</sup> NR Reb, pp21-22

<sup>188</sup> NR Reb, pp25-26. (NR, 5.39, explains that all of these figures exclude land at Hedon Haven, which is reserved for port activities)

<sup>189</sup> NR Reb Table 6.4

*Portfolio - expected pattern of development:*

- 13.69. In terms of area, the East Riding is one of the largest authorities in the country, covering over 930 square miles, and is predominantly rural in character. (PSSD 2.1, 2.12). As has been noted, it wraps around the city of Hull. The A63/M62 corridor has long been a major focus for economic activity. [7.83]
- 13.70. Whereas the BBLP is concerned only with the former Beverley Borough, the JSP and the emerging local plan both take a wider view. Thus where the BBLP merely allocates sites for business use, the JSP identifies strategic employment sites along the corridor from Hull to Goole, including Melton<sup>190</sup>. These were intended to serve as the focus for most new employment development. That approach has been further refined through the emerging local plan (drawing on the economic strategy), with policy S3 identifying four key employment sites along the East-West multi-modal transport corridor, again including Melton. The PSSD notes that this corridor has proved the most attractive location for investment and has seen consolidation of activity over recent years. The key employment sites are seen to be vital to the growth aspirations of the East Riding, offering significant opportunities for key employment sectors, being variously directed towards development as a business park (Hessle), manufacturing, storage and distribution (Goole and Melton) and port-related development, including the low carbon and renewable energy sectors (Hedon Haven)<sup>191</sup>.
- 13.71. At this stage it is worth noting that the plan preparation process, with its systematic evaluation of existing and proposed sites has not led to the identification of any other sites along the East-West multi-modal transport corridor as being of strategic value in land use planning terms<sup>192</sup>. This is in spite of their recognised value on the part of those concerned with economic development<sup>193</sup>. It is also of note that in its response to the PSSD, the Humber LEP expressed particular support for the key employment sites and referred to the importance of a good land and premises offer with the potential for a Humber-wide impact<sup>194</sup>.

*Portfolio - known and anticipated development*

- 13.72. Employment land at Melton is under two main ownerships. Melton Park, to the east, is owned by the Appellant company with Melton West being owned by Wykeland. The GSJ opened to traffic in October 2006. Since then, some 20ha of land has been developed at Melton for employment purposes<sup>195</sup>. [7.35-36, 9.77]
- 13.73. Estimates of future employment land requirements often draw on past rates of take up. However, whilst this method may illustrate broad trends at the level of an FEA or larger area, it is of less assistance at the local level

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<sup>190</sup> CD A2, JSP policy EC2

<sup>191</sup> CD N/F34, PSSD, policy S3 and explanatory text

<sup>192</sup> see Mr Hunt, pp22-44

<sup>193</sup> See, for example, the sites identified by Mr Menzies Fig 1, p7 (also shown in ID01)

<sup>194</sup> NR PoE Appx 10

<sup>195</sup> StM21, NR Reb p49 and PoE Appx 19

where take up may be more episodic, with fluctuations being due to factors other than demand. Consequently, a simple projection of future take up at Melton based on the annual average of past rates, in isolation, is of limited value. [9.79]

- 13.74. What the data does show quite clearly however is that, having regard to economic conditions, take up at Melton over this period has been reasonably consistent, even taking into account that there may have been a surge in demand after completion of the GSJ, as suggested by the Appellant. The data also shows that some 75% of the land taken up over this period has been at Melton West<sup>196</sup>. At the inquiry, various possibilities were explored to explain this disparity, including the supply of enquiries from the Council, the expertise and marketing activities of the agents, the relative visibility of plots from the A63 and events during the marketing process. Whilst any of these may have been a contributory factor in a particular case or at a specific time, overall they do not affect the fundamental point that Melton has already demonstrated its suitability to serve as a key employment site. In turn, this record of development provides a firm foundation for the reliance on Melton as a key employment site in the emerging local plan. [7.31-32, 7.35; 9.78, 9.102-105]
- 13.75. NPPF paragraph 21 expects that a Local Plan will identify strategic sites to match its strategy and to meet anticipated needs over the plan period. Also, where possible, the plan should identify and plan for new or emerging sectors likely to locate in the area. Policies should allow a rapid response to changes in economic circumstances. Taking its lead from the Economic Development Strategy<sup>197</sup>, the emerging local plan lists those key employment sectors and clusters to be supported, including renewable energy. It also makes provision for proposals outside development limits or which cannot be accommodated on allocated sites (policy EC1). [7.27]
- 13.76. In March 2014, after publication of the PSSD, Siemens and ABP announced they were to jointly invest £310m to deliver wind turbine assembly and installation facilities at two sites in Hull and East Yorkshire. The Council sees this as important not only due to its scale but also as a signal of the arrival of the renewable energy industry in the locality. It expects this sector to have wide ranging implications for the economy of the area including impacts upon land demand and supply, as the Siemens supply chain is formed. [7.47-51; 9.93-100]
- 13.77. The manufacturing hub for Siemens will be at Alexandra Dock, in the City of Hull. Tier 1 suppliers, manufacturing the turbines, towers and foundations, are likely to seek to co-locate for reasons of cost and the logistics of transporting such large components. Significant provision for this has already been made in the emerging local plan, with the 205ha Hedon Haven/Paull key employment site (PSSD policy HAV-A). Any Tier 2 suppliers moving into the area are also likely to seek a site in this location, given the scale of components such as nacelle covers and blades<sup>198</sup>. The extent and nature of

<sup>196</sup> Rigby p49, which shows 12.53ha at Melton West, compared with 3.60ha

<sup>197</sup> CD F19

<sup>198</sup> accepted by NR in xx

interest from lower tier suppliers is not yet clear but the Council points to a recent decision by GEV Offshore to locate at nearby Priory Park, Hessle<sup>199</sup>.

13.78. The focus for this cluster will be offshore wind generation, whether manufacturing, installation or maintenance. As such, I agree with the Appellant that onshore demand for land and premises is likely to be concentrated in areas which afford good access to the sea. Access to the rest of the mainland would be a secondary consideration. However, the full implications of such a major investment have yet to become clear. Consistent with its strategic role, Melton is included within the draft prospectus prepared for the Siemens supply chain. The Council's suggestion that Melton may attract a manufacturer of small components which counted the renewable energy industry amongst its customer base is, in my view, a tenuous one. Nevertheless, it would be imprudent at this early stage in the development of the offshore renewables industry to remove a site which has proven to be attractive to other industries from the pool of potential sites for lower tier suppliers. This would be likely to seriously hamper efforts to gain the maximum benefit from an investment of the magnitude of the Siemens project.

#### *The possibility of replacement land*

13.79. Melton is available, can offer flexible plot sizes, is well related to the transport network and is well located both for business purposes and in terms of proximity to the main residential areas of Hull and the Haltemprice settlements.

13.80. The Appellant's suggestion that any adverse effect on the supply of employment land could be remedied by the substitution of other land should be rejected for two main reasons: firstly, such a course of action would fly in the face of a plan-led system; and secondly, because it fails to recognise that Melton plays a particular role as part of a portfolio of employment land.

13.81. One of the core planning principles is that planning should be plan-led, thus empowering local people to shape their surroundings. Local and Neighbourhood Plans are expected to enable planning decisions to be made with a high degree of predictability and efficiency<sup>200</sup>. As the Council makes clear, the emerging local plan has been through several iterations and reflects joint working and co-operation on the particular question of allocations of employment land – a point also made in other representations such as those from the Parish Councils and elected members. The plan-making process provides a forum for the consideration of alternative uses of land. The appeal process only allows consideration of a particular proposal for a specific piece of land. The scale of the proposed development and the quantum of land identified as a potential substitute lend some force to the expressions of concern from SOF and others as to the lack of scope for public involvement. Hence, acceptance at this stage of the principle that substitute land could be made available would not sit well with a plan-led system. [7.26, 10.15-10.18, 10.48-50, 10.54, 10.64]

<sup>199</sup> ERYC 37

<sup>200</sup> NPPF paragraph 17



13.82. In addition, the specific land identified by the Appellant is that to the south of the appeal site and across the railway line. The offer of funds to improve the accessibility of this land is made to overcome any harm associated with the use of 24ha of land within the appeal site for non-employment purposes (Appeal B(ii)). The area of land to benefit from improved access would be in the region of 142ha, some six times greater than that proposed for use for housing. Even allowing for the fact that some of this land is already in use, the scale and cost of this compensatory measure appears disproportionate to the potential harm it is intended to address. In addition, as Mr Garness' evidence makes clear, there are several other locations along the East-West multi-modal transport corridor which could be seen as candidates for a key employment site, not least of which would be the proposed extension to Melton West being promoted by Wykeland through the Local Plan process.

13.83. For these reasons, I consider that the offer of funding for a bridge across the railway line would not be a proportionate or reasonable response to any harm to the supply of employment land. However, for completeness, I set out my assessment of the case as made. To do so it is necessary to evaluate the substitute land in terms of its location and deliverability.

#### *Location*

13.84. In terms of location, with a new bridge in place the land to the south of the railway would generally enable comparable access to the strategic route network and the potential labour force in Hull and the major Haltemprice settlements. On the other hand, it is closer to the Humber estuary and areas subject to specific protection for ecological reasons. Investment has already taken place in this area by companies such as Transwaste/Thermeco Yorkshire and Bayram Timber and the Appellant provides evidence of further interest. However, irrespective of whether a particular proposal might trigger the need for an Environmental Assessment or Appropriate Assessment, the fact that such considerations would have to be borne in mind would be likely to reduce the appeal of this land to potential investors. In this respect, although the Appellant points to the sites south of the railway line as being of average quality (JG Proof, p86, 10.65), it should be noted that they have been assessed as part of the Local Plan process for general use rather than as a key employment site. In terms of location therefore, I consider that the land south of the railway line is not of equivalent quality. [7.56-70; 9.163-70]

#### *Deliverability*

13.85. The land south of the railway line could only be regarded as an acceptable substitute once the improved access had been delivered. The Appellant gives no timescale as to when this would occur. The Council highlights several obstacles to the success of such a scheme. This absence of agreement in itself signifies the difficulties this project may face, indicating the likelihood of a lengthy delay between a grant of planning permission for Appeal B(ii) and the compensatory land south of the railway line being brought up to the same standard of accessibility.

13.86. In terms of actual obstacles to delivery, the main one at the time the inquiry closed was the planning status of the proposed bridge. The picture may well be clearer by the time the Secretary of State comes to make his

decision. Either the application will have made good progress, as the Appellant suggests it should, in which case there should be greater certainty that the further steps to construction of the bridge might also proceed smoothly, so that the land south of the railway line would attain a comparable standard of accessibility to the appeal site within a short period. Or the application will not have progressed well, as the Council fears, perhaps due to regulatory requirements or local opposition, in which case there would be a much more lengthy delay until that comparable standard of accessibility could be attained.

#### *Conclusion on employment land*

13.87. The appeal site comprises a substantial proportion of the Melton site, one of only four key employment sites in the East Riding and one of only two identified for general industrial uses. Melton is highly accessible and is available now, capable of responding to any interest arising either directly or, more likely, indirectly as a result of the Siemens investment. It represents a logical choice in relation to the spatial strategy of the emerging local plan. If the appeal site was developed for housing, whether along the lines of Appeal A or Appeal B, the status of Melton as a key employment site would be much diminished so that it would have a significant, detrimental effect on the portfolio of employment land. The likelihood of a lengthy delay in delivery of the suggested bridge over the railway line and the characteristics of the land itself mean that it would not immediately represent a comparable substitute for the land at Melton. Although there is potential for other land to come forward, this would have to be on an ad hoc basis rather than as part of a plan-led approach. As such, the proposed developments would be likely to cause substantial harm to wider economic development objectives, with some scope for more limited harm to the aim of assisting the Humber to become established as a centre for renewable energy.

#### **Issue 4: Contamination**

13.88. In his review of the history of the Melton area, Mr Menzies states that in 1934 a company by the name of Capper Pass & Son Ltd developed a tin works, which later became a subsidiary of the Rio Tinto Zinc Corporation. He goes on to note that the site closed in 1991, following which there were compensation claims relating to emissions from the site. Finally, he records, there was a £6 million exercise to clean up the site<sup>201</sup>.

13.89. SOF has investigated the history of the campaign to obtain compensation and has provided copies of documents from the Capper Pass Claims Review Scheme<sup>202</sup>. In the absence of details of the remediation works, SOF has doubts as to the quality of any scheme and is concerned that contaminants remain in the locality. During the inquiry, a glass jar was produced containing material collected from the area<sup>203</sup>. However, no chemical analysis of the contents was provided. [8.11-14, 8.17-21]

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<sup>201</sup> AM PoE 3.20-22

<sup>202</sup> Mr Towse PoE, TT10-47

<sup>203</sup> Described in Mr Towse's evidence

- 13.90. SOF pointed out that neither the Appellant's own investigations nor those carried out by the previous owners tested for all of the substances contained in the list of specified substances compiled by the Capper Pass Claims Review Scheme<sup>204</sup>. Some residents recalled incidents which indicated poor practices within the site, which they regarded as being likely to have given rise to contamination or as being indicative of emissions over nearby residential areas, well outside the boundary of the tin works<sup>205</sup>. With great dignity, others gave moving accounts of their personal losses, including their memories of the ill health and medical conditions suffered by friends and family<sup>206</sup>. In the aftermath of the compensation proceedings, many in the local community feel they have good grounds to be fearful that any disturbance of the appeal site will give rise to health risks. They are also highly distrustful that, if development takes place, the necessary measures would be put in place to ensure proper protection of their health. [LW PoE; 10.139<sup>207</sup>]
- 13.91. The site of the former Capper Pass tin works lies to the south of the railway line. Thus it is important to note that the bulk of the appeal site (Parcel 1), although at one time in the ownership of Capper Pass, has been in agricultural use. Consequently, a detailed review of any remediation works on the former tin works site itself would be unlikely to be of direct assistance in assessing the levels of any contamination within the appeal site.
- 13.92. The Appellant has provided a Supplementary Investigation Report (the Geocore report)<sup>208</sup>. This was a limited investigation for the purposes of obtaining a characterisation of shallow ground chemistry on site and to inform development options. It consisted of 12 trial pits to a maximum depth of 2m. The Report records that raised levels of arsenic were found at a location outside the site but within the study area. It suggests further investigation so that remediation works can be carried out if necessary.
- 13.93. The Supplementary Investigation Report also includes, at Appendix D, a more detailed investigation report carried out in 2004 (the Fugro report). This consisted of 26 boreholes up to 21m depth and 30 trial pits and included testing of 27 soil samples for contamination. It found no concentrations which could be regarded as presenting an unacceptable risk to health and concluded that remedial measures were not required. The Council's Public Protection team accepts the findings of the Supplementary Investigation Report and recommends that conditions should be imposed requiring more detailed site investigation and remediation if necessary.
- 13.94. In response to concerns raised during the inquiry, the Appellant has provided two additional statements. These confirm that the investigations were conducted according to Environment Agency standards and that the range of substances tested for were selected to determine whether there was

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<sup>204</sup> Mr Towse PoE, TT10; CDG24, Appx C

<sup>205</sup> See, for example, Mr A Rowden (ID21), Mrs P Jackson

<sup>206</sup> See, for example, Lezyle Wallis PoE, Mrs Jackson [10.142], Rilba Jones radio broadcast

<sup>207</sup> Also recounted in the radio interview with Rilba Jones

<sup>208</sup> CD G24/J25

any evidence of contamination across the site as a result of grounding of the dispersion plume from the Capper Pass chimney<sup>209</sup>.

- 13.95. Given the history of the Capper Pass works, the harmful health effects identified and the lengthy campaign to obtain compensation, the concerns of local residents are perfectly understandable. However, there is nothing in the technical evidence to indicate that any contamination persists at such a level as to indicate that development of this site should not be permitted. On that basis, it would be reasonable to conclude that the site is suitable for residential use taking account of former activities such as pollution arising from previous uses, as required by NPPF paragraph 121. [9.185; 10.87, 10.132]

#### Issue 5: Effect on character

- 13.96. Administratively, the appeal site lies within the boundary of Melton parish although geographically it is nearer to North Ferriby. Both parish councils expressed significant concern at the scale of the proposals compared to the size of either Melton or North Ferriby and the limited scope for integration into either settlement. [10.21, 10.29]
- 13.97. Melton is a small village (some 300 houses, according to the Parish Council). The main part of the village lies on the opposite side of the A63 to the appeal site. Parcel 1 of the appeal site also lies to the south of Monks Way. This dual carriageway would represent a further barrier to integration with Melton village. If the appeal proposals were to be assessed in relation to Melton therefore, I consider that they would have an adverse effect on that village, since it would take on a highly dispersed character.
- 13.98. Although Long Plantation provides a strong visual boundary along the western edge of North Ferriby, there are many responses from residents indicating they regularly make informal recreational use of the wood and its environs (residents also drew attention to the permissive notices at various points around the site). The pedestrian route along Monks Way via Melton Road to the High Street<sup>210</sup> has an engineered, somewhat unwelcoming feel to it. Nevertheless, there appear to be well-used routes from the properties on Long Plantation Drive through the wood and into or across the appeal site. Given the proximity of the site to North Ferriby and the apparent connection between the site and that settlement, I consider that the proposed development should be assessed in relation to its impact on North Ferriby.
- 13.99. North Ferriby is described as a village in the Parish Plan. It is identified as a Primary Village in the emerging local plan (policy S3). It is a settlement of modest size, having a population of almost 4,000 in some 1600 households or dwellings<sup>211</sup>. The emphatic view of residents was that North Ferriby is a village, not a town. As the Parish Council points out, the proposed addition of either 510 or 390 dwellings would represent a significant enlargement, in the

<sup>209</sup> StM11 and StM29

<sup>210</sup> SOF very helpfully provided a street plan of the locality at SOF05

<sup>211</sup> See the Parish Plan (p3) provided with the representation from North Ferriby Parish Council; JG Rebuttal p11; StM14

order of 23-33% of the population. Moreover, the Parish Plan seeks to protect the open and rural setting of the village. [10.30, 10.39-40]

- 13.100. The Appellant contends that North Ferriby is comparable to other settlements which have been placed in the category of 'town' in the emerging local plan, such as on matters of population and number of facilities. An analysis to that effect has been carried out, as part of a case being made to the Local Plan examination, particularly in comparison with Howden<sup>212</sup>. However, whilst the statistics may suggest that the two settlements are broadly comparable with regard to size and facilities, having visited Howden I consider that it is immediately evident that the general character of that settlement, together with the scale and central location of its facilities, mean that it is qualitatively different from North Ferriby<sup>213</sup>. Consequently, in my judgement, the distinction between the two settlements appears reasonable.
- 13.101. The Local Plan examination is the appropriate forum for consideration of the merits of this particular argument. For the purposes of this appeal however, it is sufficient to note that whereas North Ferriby is widely regarded as a village at present, it would be unlikely to retain that status if either of the appeal proposals was implemented. Indeed, such an outcome was one of the very rare points on which all parties to this rather fractious inquiry were in agreement. [7.75-78; 8.1-10; 9.30, 9.52; 10.36-47, 10.63, 10.67, 10.81, 10.83, 10.89, 10.99, 10.107, 10.121-124, 10.128, 10.133-140, 10.143-145]
- 13.102. With regard to the setting of North Ferriby, the Committee Report quite rightly notes that parcel 1 has an extant consent for development for business use so that the principle of development for the bulk of the appeal site has already been established<sup>214</sup>. However, whilst this would support a finding of no significant landscape impact over and above development for employment use, I consider that this debate over the status of the settlement in the Local Plan hierarchy indicates that residential use would be likely to have an urbanising effect on the character of North Ferriby. The larger size and more dispersed character of North Ferriby would be likely to give rise to higher levels of vehicle use within the settlement as residents sought to make use of day-to-day facilities, indicating there is some basis for concerns as to higher levels of congestion. [10.32, 10.55]
- 13.103. The proposals are unlikely to give rise to any greater visual or landscape character impact, when considered against the scope for employment development. However they would have an urbanising impact on the character of North Ferriby.

### Other matters

- 13.104. Representations from residents and other groups covered a wide range of other matters. Those of particular note were:

<sup>212</sup> JG PoE Appx 14 pp5-10; JG Rebuttal pp11-14

<sup>213</sup> Inspector's note: North Ferriby has a population of 3,893 and Howden's is 4,412.

However, it is important to note that Howden is materially smaller than all the other towns listed in PSSD policy S3, whose populations range from 6,159-10,075 (see StM14)

<sup>214</sup> CD 11, paragraph 9.6.1, which also records that there was an outline consent for parcel 2 which expired in September 2013

*Long Plantation*

- 13.105. Concerns were expressed as to the proximity of residential development to Long Plantation, especially in view of the representations by SOF and residents highlighting what they regard as shortcomings in the maintenance of the wood. However, both layouts indicate there would be a substantial area of formal and informal recreational open space on the eastern part of the site. As such, there are reasonable grounds at this stage to conclude that the built form of the proposed development could be managed so as to ensure there were no unacceptable effects on the character or ecological value of the wood. [8.22; 9.182-4, 9.186-8; 10.80, 10.101-3, 10.106, 10.112-7, 10.138, 10.143]
- 13.106. The possibility of a footpath link through Long Plantation to Plantation Drive also caused much consternation. Although the SoCG states that each proposal includes such a link, the position of the main parties altered during the course of the inquiry. By the time of closing submissions, the Appellant's position was that the link was not necessary and the Council's that the link could not be provided. For the reasons given in the discussion of conditions, I consider that it would not be possible to require provision of this link by way of a condition imposed on a planning permission. [7.72, 9.27, 12.2]

*Noise, dust and road traffic and living conditions*

- 13.107. A number of representations note that existing residents are affected by some of the industrial activities in the locality. Others expressed concern as to the living conditions for occupants of the care home. However, it is not unreasonable to expect that measures could be incorporated into the layout and design of any development so as to ensure that any impacts such as by way of noise or HGV traffic would be kept to an acceptable level. Conditions have been suggested by which these objections could be addressed. Although the care home would not be centrally located for use of facilities within the village, the additional facilities to be provided as part of the proposed developments would be close at hand. [9.191; 10.22, 10.26, 10.33, 10.56-59, 10.82, 10.84, 10.104]

*Educational provision*

- 13.108. Increased competition for places at South Hunsley school was referred to frequently, with many fearing that pressure for places could lead to North Ferriby being placed outside the school's catchment area. The response from the school itself indicates the need could be met providing funding was available for the expected additional demand for school places. This would be delivered through the Unilateral Undertakings. [10.25, 10.33, 10.70, 10.96, 10.118-20, 10.130, 10.141, 10.142]

**14. Overall Conclusions***The Trentham Lakes decision*

- 14.1. The Appellant draws particular attention to a recent appeal at Trentham Lakes, identifying similarities in terms of it having been a proposal for housing on employment land, on a site which also had prime status and was over ready and was of recognised value to those involved with economic development activities. The existence of a large surplus of supply over

expected demand is a further similarity. There are, however, important differences. The wider area was not expecting significant change in the pattern of economic development following a major inward investment on the scale of Siemens. The Trentham Lakes site was not allocated in a development plan and it appears that it was not central to a portfolio approach, as is the case with East Riding. Most importantly, I have not been convinced by the evidence as to a significant shortfall in housing land supply. For these reasons, I consider that the merits of these appeals are materially different from those in the Trentham Lakes decision. [9.17, 9.31, 9.57, 9.70, 9.86, 9.100]

#### *The development plan*

14.2. The proposals run counter to local planning policies in three respects: the use of employment land for housing; the strategy of maintaining a portfolio of employment land; and the location and distribution of residential development. With regard to employment land, they are contrary to policies In1r and In1s of the BBLP. These policies are consistent with NPPF, it being accepted by the Appellant that the land has a reasonable prospect of use for the allocated purpose. The conflict with these policies should carry full weight. There are, however, objections to PSAD policy MELT-E so the conflict with this policy of the emerging local plan should carry limited weight. With regard to the portfolio, the outdated nature of the evidence base for JSP policy EC2 means that the conflict with that policy should also carry limited weight. In terms of location and distribution, the defined development limits and countryside protection measures contained in BBLP policies E2 and E3 and in JSP policies DS4 and H7 were not formulated in the light of current development needs so that the conflict with those policies should carry limited weight. The conflict with the spatial strategy of the PSSD, as set out in policies S3 and S5, should also carry limited weight. Nonetheless, the proposals are contrary to the existing and the emerging development plan.

#### *The presumption in favour of sustainable development*

14.3. With regard to national policy, the Council contends that the Appellant's case is not NPPF-compliant since NPPF does not privilege the meeting of housing need over the meeting of economic objectives. The Appellant, on the other hand, relies on the presumption in favour of sustainable development, essentially arguing that, in meeting such an urgent need for housing, any adverse impacts would not be sufficient to significantly and demonstrably outweigh the benefits. [7.17, 7.28; 9.4-6, 9.17]

14.4. NPPF expects the economic, social and environmental roles to be sought jointly and simultaneously through the planning system so that I agree the meeting of housing need is not given any greater weight than that for economic need. Nevertheless, the presumption in favour of sustainable development is at the heart of decision-taking and NPPF paragraph 51 indicates there may be circumstances where the need for housing may be more urgent than other land uses, especially where relevant policies have been found to be out of date. It is necessary therefore, to consider the proposals within the terms of the presumption in favour of sustainable development.

### The benefits of the proposals

- 14.5. The urgency of the need for housing development relies on two propositions: that a significant shortfall exists in the availability of land for housing; and that there is an acute need for affordable housing.
- 14.6. The first of these has not been demonstrated. The Council's assessment of the position as to the housing requirement and the housing land supply has been shown to be reasonably robust when tested at this inquiry. This would be the case whether the housing requirement was taken as that for the housing market area or the ERYC administrative area. In either case, a five year supply of sites exists. Since the identified supply already satisfies the test of boosting significantly the supply of deliverable sites, the proposals would not deliver any additional benefit in this respect.
- 14.7. Although the situation as regards affordable housing is not as acute as had been claimed, the second proposition has been demonstrated. The delivery of affordable housing at levels above the policy requirement should therefore carry substantial weight.
- 14.8. Other benefits which weigh in favour of the proposals include: housing for the elderly; care facilities; construction jobs; additional expenditure generated by new households; publicly accessible open space with ecological enhancements; a new local centre; support for facilities in North Ferriby; a New Homes Bonus payment and an increase in Council Tax revenues. In combination, these should carry considerable weight. [9.7, 9.193-5]

### The adverse impacts

- 14.9. In delivering housing development at this scale in this location, the proposals would undermine the spatial strategy for the delivery of housing for the Hull HMA. Since this strategy is not yet part of an adopted development plan, this should carry moderate weight.
- 14.10. The proposals would have a significant, detrimental effect on the portfolio of employment land. They would also undermine wider economic development objectives including, to a modest extent, the aim of the Humber to become a centre for renewable energy. This would be contrary to the aim of building a strong, competitive economy. The Appellant suggests that the degree of harm under Appeal B would be less than under Appeal A on the basis that less land would be developed for housing, leaving more for employment use. However this fails to recognise the strategic nature of the Melton site and its role in the land portfolio. Where employment development is the predominant use, priority can be given to the needs of prospective developers for similar uses. Under the appeal proposals, the Melton industrial area would take on a mixed use character. In such circumstances, the needs of prospective industrial developers would become only one consideration amongst others, including the protection of residential amenity. In this respect therefore, I do not agree that the harm would be materially less in the case of Appeal B. In both instances, this harm should carry substantial weight.



- 14.11. The urbanising impact of the proposals on North Ferriby should carry moderate weight because the future role of North Ferriby has yet to be confirmed in an up to date Local Plan.
- 14.12. The Council also identifies harm on grounds of prematurity. Whether such harm exists relies on a twofold test: whether the grant of planning permission would undermine the plan-making process by predetermining decisions about new development that are central to an emerging Local Plan; and the stage that plan has reached<sup>215</sup>.
- 14.13. On the first test, NPPF makes clear that the plan-making process is about more than just which land should be allocated for which use. Its role is also to allow local people to shape their surroundings and to assist joint working and co-operation to address larger than local issues. There are many unresolved objections to the emerging local plan but the contributions to the inquiry from the two Parish Councils and others do express a fair degree of support for the plan as it stands. This indicates the plan does reflect local views as to the preferred pattern of development to some degree. There is also clear evidence of joint working, as illustrated by the very strong opposition to the appeal proposals from the City of Hull, arising from the scale and location of the proposed housing development and the implications for Hull if Melton was no longer available as a key employment site. On the implications for economic development, the Humber LEP's strong opposition is a further indication that the plan reflects joint working arrangements.
- 14.14. On the second test, the emerging local plan is in the process of being examined. Whilst the examination is a high hurdle, it is nonetheless an advanced stage to have reached in the plan preparation process. Even though the hearing sessions were scheduled for October 2014, the examination of this plan actually began when it was submitted in April 2014. By the time this inquiry adjourned in August, there had been no indication from the local plan Inspector that there were any fundamental difficulties with this Plan. It is true that only limited weight can be accorded to individual policies within the Plan due to the existence of specific objections. However, unless new information emerges which suggests that the plan contains fundamental flaws, I consider that its spatial approach to development should carry considerable weight.
- 14.15. It is then necessary to identify in what way a grant of planning permission would cause prejudice to the outcome of this plan-making process. The Council suggests the proposed developments would require a 'radical rethink' in the strategy for this part of the ERYC area and at this tier of settlement. North Ferriby is large for a Primary Village and is not much smaller than Howden so that the implications for the settlement hierarchy may not be so bad as the Council fears. However, given the proximity and accessibility of the appeal site to Hull, the provision of a large quantity of housing at North Ferriby would have implications for those PSSD policies concerned with either the distribution of housing between the East Riding and Hull or its distribution across the Major Haltemprice Settlements. There would also be implications

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<sup>215</sup> NPPG Paragraph: 014Reference ID: 21b-014-20140306

for the strategy of relying on this particular portfolio of employment land. This, in turn, would require a review of the allocations contained in the PSAD.

- 14.16. Given the stage which the plan has reached and bearing in mind it includes a full suite of allocations for housing and employment and the centrality of the relationship between East Riding and Hull to its spatial strategy, I am satisfied that a grant of planning permission for either proposal would strike at the heart of key strategic decisions in the emerging ERYC Local Plan, thus undermining the plan-making process. For these reasons, I consider that the harm by way of prematurity should carry considerable weight.

#### Whether the proposal would represent a sustainable form of development

- 14.17. As the Appellant makes clear, the location of the appeal proposals would offer many attractions as regards accessibility. This would be particularly so for the employment opportunities available at Melton and the improved recreational and retail facilities to be provided as part of the developments. Other facilities at North Ferriby, South Hunsley, Brough and Hull would not be an unreasonable distance away. The location is thus not quite so rotten as the Council paints it. However, NPPF expects sustainability to be judged on the much broader basis of economic, social and environmental considerations. Whilst the proposals would undoubtedly bring certain benefits, this would be at the expense of undermining attempts to ensure that land of the right type will be available in the right place at a time when the local economy is poised to undergo growth as a result of a substantial inward investment. On balance therefore, in my view, the proposal would not represent a sustainable form of development.

#### The overall planning balance

- 14.18. In the event that the Secretary of State considers the proposals should be seen as a sustainable form of development, the presumption in favour of sustainable development requires an assessment of adverse impacts and benefits. The provision of 35% affordable housing as part of the 510 dwellings proposed under Appeal A would deliver the substantial benefit of 179 units as compared with 128 units if it had simply satisfied the target of 25% in PSSD policy H2. It would also deliver the range of benefits set out above. Against this should be weighed the adverse impacts with regard to the spatial strategy for housing, the portfolio of employment land and economic objectives, the urbanising impact on North Ferriby and the undermining of the plan-making process. I consider that these adverse effects would significantly and demonstrably outweigh the benefits associated with Appeal A.
- 14.19. In providing 40% affordable housing, the 390 dwellings proposed under Appeal B would deliver the substantial benefit of 156 such units as compared with 98 units if it had simply satisfied the target of 25% in PSSD policy H2. Again, it would deliver the range of benefits set out above, in proportion to the reduced quantum of housing. Against this should be weighed the adverse impacts with regard to the spatial strategy for housing. There would be no lesser harm in relation to the portfolio of employment land and economic objectives either as a result of the reduced area given over to residential development or from the funding of a bridge over the railway line. There would also be adverse effects from the urbanising impact on North Ferriby and

the undermining of the plan-making process. These adverse effects would significantly and demonstrably outweigh the benefits associated with Appeal B.

14.20. The proposals are contrary to the development plan. When considered in the context of the presumption in favour of sustainable development contained in NPPF, these adverse effects would significantly and demonstrably outweigh the benefits of each proposal. The material considerations are not sufficient to warrant a decision contrary to the development plan.

### **Recommendation**

14.21. At the heart of this inquiry was the question of whether the best use for the appeal site at this time would be to continue to hold it in reserve for employment development or to bring it forward now for housing. On the evidence provided, I consider that the planning case for housing has not been made so that neither appeal should succeed.

14.22. I recommend that both appeals be dismissed.

*K.A. Ellison*

Inspector

Richborough Estates

## APPENDIX A: APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Paul Tucker QC  
assisted by Freddie Humphries

Instructed by:  
East Riding of Yorkshire Council

They called Alan Menzies	Director of Planning and Economic Regeneration, East Riding of Yorkshire Council
Nicola Rigby, BA (Hons) MTPL, MRTPI	Associate GVA Grimley
Richard Wood BA (Hons) BPI MBA MRTPI	Director O'Neill Associates
Nick Pearce, FRICS	partner PPH Commercial
Stephen Hunt, BA(Hons), MA, MRTPI	Planning Policy Manager East Riding of Yorkshire Council
Susan Hunt, BA(Hons) Geog; MA:URP	Principal Development Control Officer East Riding of Yorkshire Council

### FOR THE APPELLANT:

Christopher Young of Counsel	Instructed by: Nathaniel Lichfield & Partners
He called Justin Gartland BA(Hons) BPI, MRTPI	Chairman, Nathaniel Lichfield & Partners
David Garness	Garness Jones
Simon Coop BA MSc MRTPI MIED	Planning Director, Nathaniel Lichfield & Partners
Robin Tetlow MSc Dip Surv FRTPI FRICS FCIH FRSA	Tetlow King Planning

### FOR THE SAVE OUR FERRIBY ACTION GROUP:

Emma Reid-Chalmers of Counsel	Instructed by the Save Our Ferriby Action Group
She called S Baldwin	local resident
Peter Dykes	local resident
Lee Collingwood	local resident
Lezlye Wallis	local resident
Ted Towse	local resident

INTERESTED PERSONS:

Ms C Woodcock	local resident
Mr T Abbott	local resident
Ms A Peck	Welton Parish Council
Mr J Halmshaw	North Ferriby Parish Council
Cllr J Abraham	Member, South Hunsley ward, ERYC
Mr A Codd	Hull City Council
Rosie Woodward	Best for Brough
Mrs Chapman	local resident
Paul Moore	local resident
Mr Swindin	North Ferriby Parish Council
Mr Walton	Wawne Residents Group
Cllr Gilmour	Member, South Hunsley ward, ERYC
Mr Strachan	local resident
John Mabbett	Chair North Ferriby Parish Council
Susan Rowden	local resident
Mr M Johnson	local resident
Dr C Hemingway	local resident
Mrs J Dalton	local resident
Cllr Aitken	Member, Howdenshire ward, ERYC
Mr Corse	local resident
Mr Jackson	local resident
Mr Bannister	Chairman, Ferriby Conservation Society
Mr Pearson	local resident
Mr J McCann	local resident
Penny Joseph	local resident
Mr J Cumming	local resident
Mr & Mrs Verity	local residents
Joy Sanderson	local resident
D Lidgett	local resident
Mrs P Jackson	local resident
Christopher Taylor	local resident
M Snow	local resident
Margaret Rant	local resident
Jane Crea	local resident
Sally Scholes	local resident
D Barber	local resident

## APPENDIX B: LISTS OF INQUIRY DOCUMENTS

### **B1 PROCEDURAL NOTES**

PC 01	14/4/14 - Procedural and administrative arrangements
PC 02	25/4/14 - Update in relation to preparations
PC 03	6/5/14 - Guidance for inquiry sessions at North Ferriby, 20/5/14
PC 04	23/7/14 - Guidance on documentation received during adjournment
PC 05	4/8/14 - programme and documents, 6-8 August 2014

### **B2 PROOFS AND REBUTTALS**

Alan Menzies (AM)	Proof; Rebuttal
Nicola Rigby (NR)	Proof; Rebuttal
Richard Wood (RW)	Proof; Rebuttal
Nick Pearce (NP)	Proof; Rebuttal
Stephen Hunt (Mr Hunt)	Proof
Susan Hunt (Mrs Hunt)	Proof
Justin Gartland (JG)	Proof; Rebuttal; Melton pro-formas (2 volumes)
David Garness (DG)	Proof
Simon Coop (SC)	Proof; Rebuttal
Robin Tetlow (RT)	Proof; Addendum
Charles Binks (not called)	Proof
S Baldwin (SB)	Proof
Peter Dykes (PD)	Proof and supplementary information
Lee Collingwood (LC)	Proof
Lezlye Wallis (LW)	Proof
Ted Towse (TT)	Proof

### **B3 INQUIRY DOCUMENTS**

ID 01	Plan of site and nearby nature conservation designations
ID 02	Letter of notification of inquiry arrangements and list of persons notified
ID 03	Inspector's ruling on application for stay of proceedings
ID 04	Statement by Ms C Woodcock, local resident
ID 05	Statement by Mr T Abbott, local resident
ID 06	Statement by Ms A Peck, for Welton Parish Council
ID 07	Statement by Mr J Halmshaw, North Ferriby Parish Council
ID 08	Statement by Cllr J Abraham, member, South Hunsley ward, ERYC
ID 09	Statement by Rosie Woodward, local resident
ID 10	Statement by Mrs Chapman, local resident
ID 11	Statement by Paul Moore, local resident
ID 12	Statement by Mr Swindin, local resident
ID 13	Statement by Mr Walton, local resident
ID 14	Statement by Cllr Gilmour, member, South Hunsley ward, ERYC
ID 15	Statement by Mr Strachan, local resident
ID 16	Statement by John Mabbett, Chair North Ferriby Parish Council
ID 17	Statement by Susan Rowden, local resident
ID 18	Statement by Marcus Robinson, local resident

- ID 19 Statement by Mr Lindow, local resident  
 ID 20 Statement by R Featherstone, local resident  
 ID 21 Statement by Andrew Rowden, local resident  
 ID 22 Representation from Bethan and Olivia, local residents  
 ID 23 Statement by Dr C Hemingway, local resident  
 ID 24 Statement by Mrs J Dalton, local resident  
 ID 25 Statement by Cllr Aitken, member, Howdenshire ward, ERYC  
 ID 26 Statement by Mr Corse, local resident  
 ID 27 Statement by Mr Jackson, local resident  
 ID 28 Statement by Mr Bannister, local resident  
 ID 29 Statement by Mr & Mrs Olnier, local residents  
 ID 30 Statement by M Snow, local resident  
 ID 31 Suggested conditions  
 ID 32 32.1 Unilateral Undertaking, Appeal A } working  
 32.2 Unilateral Undertaking, Appeal B(i) } drafts  
 32.3 Unilateral Undertaking, Appeal B(ii)} 1/8/14  
 32.4 Background note to Unilateral Undertakings 18/7/2014  
 ID 33 Agreed list of appeal plans  
 ID 34 Site visit locations  
 ID 35 Statement of Common Ground between the Council and Appellant,  
 April 2014 (signed 2 May 2014)  
 ID 36 Statement of Common Ground (housing) between the Council and  
 Appellant, April 2014  
 ID 37 Closing submissions on behalf of Save Our Ferriby Action Group  
 ID 38 Closing submissions on behalf of East Riding of Yorkshire Council  
 ID 39 Closing submissions on behalf of St Modwen Developments  
 ID 40 ERYC Response to Appellant's Closing Submissions  
 ID 41 SOF Response to Appellant's Closing Submissions  
 ID 42 St Modwen Developments' response to ERYC and SOF  
 ID 43 signed Unilateral Undertaking, Appeal A, 29 August 2014  
 ID 44 signed Unilateral Undertaking, Appeal B(i), 29 August 2014  
 ID 45 signed Unilateral Undertaking, Appeal B(ii), 29 August 2014  
 ID 46 Closing letters dated 2 September 2014  
 ID 47 Secretary of State's Further Screening Directions 6 November 2014

#### **B4 DOCUMENTS SUBMITTED BY EAST RIDING OF YORKSHIRE COUNCIL**

- ERYC 01 Extract from SI 1625 the Town and Country Planning Appeals  
 (Determination by Inspectors) (Inquiries Procedure) (England)  
 Rules 200: Rule 16  
 ERYC 02 The submission East Riding of Yorkshire Council Local Plan  
 (bundle)  
 ERYC 02.1 Covering letter 28 April 2014  
 ERYC 02.2 Schedule of Proposed Changes  
 ERYC 02.3 Appendix 7G (extracts)  
 ERYC 02.4 Appendix 7H (extracts)  
 ERYC 02.5 Hull and East Riding Joint Background Paper  
 ERYC 02.6 Ninth AMR  
 ERYC 03 Update to Mr Hunt's PoE Appendices C and J  
 ERYC 04 2013 ELR Addendum note April 2014  
 ERYC 05 Plan showing sites along the M62/A63 corridor  
 ERYC 06 Letter 30/4/14 from DBIS: 2014-20 Assisted Areas Map

	Consultation
ERYC 07	EWHC 1283 Gallagher Homes/Solihull MBC 30/4/14
ERYC 08	APP/E2001/A/13/2202944 Nursery View
ERYC 09	07/06693/STPLF, Committee Report 7/2/2009: Gospel Hall
ERYC 10	Humber Assisted Areas Map
ERYC 11	Email 23/4/14 RGF funding (speaking note)
ERYC 12	Correction to paragraph 12 of Ms Rigby's summary
ERYC 13	Letter ERYC – NLP 6/5/13 re Unilateral Undertakings
ERYC 14	Updated schedule of weight to emerging policies (Mr Hunt, Appx J)
ERYC 15	Extract from Hull Daily Mail 3/5/14
ERYC 16	Five-year supply scenarios (7/5/14)
ERYC 16a	Revised Five-year supply scenarios (13/5/14)
ERYC 17.1	South Worcestershire Local Plan (SWLP) covering letter 31/3/14
ERYC 17.2	SWLP Inspector's Further Interim Conclusions
ERYC 17.3	RTPI research report no.1 January 2014: Planning for housing in England
ERYC 18	East Riding Local Plan –letter to PINS dated 8/5/13 listing further supporting documents
ERYC 19	Hull City Council: Employment Land Review 2014 – report to Planning Committee 13/5/14
ERYC 20	Hull City Council: Joint Planning Statement for Hull and East Riding of Yorkshire, March 2014 – report to Planning Committee 13/5/14
ERYC 21	Letter re Melton Bridge, Mr Menzies to Network Rail 7/5/2014
ERYC 22	Response re Melton Bridge, Network Rail to Mr Menzies 8/5/2014
ERYC 23	Email exchange R Devlin-S Hunt, concerning statement by Brad Balmer (StM 11)
ERYC 24	East Riding Proposed Submission Local Plan - Hull and East Riding Joint Planning Statement April 2014
ERYC 25	Update to Mr Hunt's Proof, Appendix L, site deliverability
ERYC 26	Melton Enquiries 2007 – 2014
ERYC 27	Bundle of responses re Melton Bridge, 12-14/5/14
ERYC 28	APP/E2001/A/14/2212584 Cottingham, 13/5/14
ERYC 29a	Letter Colliers to ERYC Melton Park, 15/5/14
ERYC 29b	Email, B Medhurst to N Pearce, 15/5/14
ERYC 30	Garness Jones news 9/2/11, Siemens
ERYC 31	Legal Advice re: land at Long Plantation Wood 20/5/14
ERYC 32	East Riding Proposed Submission Local Plan – housing implementation strategy April 2014
ERYC 33	Manufacturing Advisory Service: Siemens, 4/4/14
ERYC 34	Report on Offshore Wind Sector 2013, 4C Offshore
ERYC 35	Note on Assisted Areas Map
ERYC 36	not used
ERYC 37	News release 9/7/14 Wind power specialist chooses Yorkshire
ERYC 38	ERYC housing supply position statement update
ERYC 38a	ERYC housing supply position statement 7/8/14
ERYC 39	update to paras 4.42 and 4.43 of Mr Hunt's evidence: planning applications and permissions 11/7/14
ERYC 40	East Riding Local Plan Technical Note 2: 2012-based SNPP



**B5 DOCUMENTS SUBMITTED BY ST MODWEN DEVELOPMENTS LTD**

- StM 01 APP/M3455/A/13 2199404 Trentham Lakes
- StM 02 APP/D0840/A/13/2207957 Launceston
- StM 03 Appellant's response to application for stay of proceedings
- StM 04 Email 31/3/14 Siemens/St Modwen
- StM 05 Email 14/4/14 Kohler Mira/St Modwen
- StM 06 Email 14/1/14 St Modwen/ERYC
- StM 07 Extract PPH website 21/1/2013
- StM 08 Trentham Lakes – policy comments on planning application
- StM 09 Trentham Lakes – employment land review – extracts
- StM 10 Planning Practice Guidance - extracts
- StM 11 Statement (No. 1) of Brad Balmer on contaminated land
- StM 12 Summary of outcome of Major Housing Appeals, 2012- 2014
- StM 13 Housing supply and requirement Tables 1-3c, as updated 22/5/14
- StM 14 East Riding Settlement Hierarchy
- StM 15 North Ferriby Parish Plan 2011, extracts
- StM 16 Original Proof of Mr Hunt, October 2013, extracts
- StM 17 Email Mrs Hunt to others, 7/5/14, Melton Bridge
- StM 18 Habitat Regulations Assessment for NSIPs, PINS Aug 2013
- StM 19 Update to Mr Gartland's Proof, corrected figures on employment land
- StM 20 Update to Mr Gartland's Proof, corrected Tables 10.6 & 12.1
- StM 21 Employment Land Take-up, year of commencement
- StM 22.1 Photographs, land S of railway line, Melton
- StM 22.2 brochure for Trentham Lakes, Stoke on Trent
- StM 23 Update to Mr Gartland's Proof, housing supply
- StM 24.1 Update to StM13 Table 2c
- StM 24.2 Update to StM13 Table 3c
- StM 25 Addendum Proof – Coop – Revised Scenario
- StM 26 Addendum Proof – Coop – Sensitivity Analysis
- StM 27 Addendum Proof – Tetlow – as amended, received 1/8/14
- StM 28 Supplementary Proof – Coop 8/7/14
- StM 29 Statement (No. 2) of Brad Balmer on contaminated land
- StM 30 Housing supply and requirement Tables 1-3c, 11/7/14
- StM 31 Letter dated 5 August 2014 requesting further Screening Opinion

**B6 DOCUMENTS SUBMITTED BY THE SAVE OUR FERRIBY ACTION GROUP**

- SOF 01 Application for stay of proceedings
- SOF 02 Updated folder containing witness list, statements and running order
- SOF 03 Supplement to Mr Dykes' statement
- SOF 04 Photographs and date relating to Statement of Lee Collingwood
- SOF 05 extract, A-Z, pp50-51 North Ferriby
- SOF 06 selection of photographs from Facebook site
- SOF 07 not used
- SOF 08 Extract, Hull Daily Mail, 7 August 2014

## **B7 CORE DOCUMENTS**

### *Development Plan Documents (A)*

- A1 The Beverley Borough Local Plan (1996)
- A2 The Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire (2005)
- A3 Beverley Borough Local Plan (1996) Proposals Map 3 (Melton)

### *Supplementary Planning Documents (B)*

- B1 The Provision of Outdoor Playing Space on New Residential Developments (December 2007)
- B2 Interim Approach on Affordable Housing (December 2007 – as amended December 2013)

### *High Court Cases (C)*

- C1 High Court Judgement (5 September 2013), Hunston Properties Ltd vs Secretary of State for Communities and Local Government, and St Albans City and District Council (Neutral Citation Number: 2013 EWHC 2678 (Admin))
- C2 High Court Judgement (April 2013), Richborough Estates vs Secretary of State for Communities and Local Government, and Cheshire East Council (Neutral Citation Number: 2013 EWHC 1022 (Admin))
- C3 Claim Form (CPR Part 8) Richborough Estates vs Secretary of State for Communities and Local Government, and Cheshire East Council
- C4 Consent Order Richborough Estates vs Secretary of State for Communities and Local Government, and Cheshire East Council
- C5 Grounds of Challenge Richborough Estates vs Secretary of State for Communities and Local Government, and Cheshire East Council (see C3)
- C6 High Court Judgement (25 March 2013), Wainhomes (South West) Holdings Limited vs Secretary of State for Communities and Local Government, and Wiltshire Council (Neutral Citation Number: 2013 EWHC 597 (Admin))
- C7 High Court Proceedings – Stratford Upon Avon District Council vs Secretary of State for Communities and Local Government and JS Bloor (Tewkesbury Limited)
- C8 High Court Judgement, Stephenson Green (11 October 2013) William Davis Limited and Jelson Limited vs Secretary of State for Communities and Local Government and North West Leicestershire District Council. Neutral Citation Number: [2013] EWHC 3058 (Admin)

### *Secretary of State Decisions (D)*

- D1 APP/Y3940/A/11/2166277 – Ridgeway Farm, Purton (26 November 2012)
- D2 APP/R0660/A/10/2140255 and APP/R0660/A/10/2143265 – Marriot Road, Sandbach, Cheshire (6 December 2012)
- D3 APP/F4410/A/12/2169858 – Land East of Hatfield Lane, Armthorpe (6 December 2012)

- D4 APP/Z2830/A/12/2183859 – Catch Yard Farm, Silverstone (24 July 2013)
- D5 APP/A0665/A/11/2167430 – Fox Land, Nantwich Road, Tarporley (29 August 2013)
- D6 APP/F1610/A/11/2165778 – Highfield Farm, Tetbury, Gloucestershire (13 February 2013)
- D7 APP/B3410/A/13/2189989 – Lichfield Road, Branston, Staffordshire (3 October 2013)
- D8 APP/P1133/A/12/2188938 – Shutterton Lane, Dawlish, Devon (10 September 2013)
- D9 APP/H1705/A/12/2188125 and APP/H1705/A/12/2188137 – Marnel Park, Popley, Basingstoke (11 September 2013)
- D10 APP/C3105/A/12/2184094 – Bourne Lane, Hook, Norton (23 September 2013)
- D11 APP/G1630/A/11/2146206 and APP/G1630/A/11/2148635 – Bishops Cleeve, Gloucestershire (16 July 2012)
- D12 APP/F1610/A/12/2173305 – Land to the South of Berrells Road and the West of Bath Road, Tetbury, Gloucestershire (13 February 2013)
- D13 APP/J3720/A/11/2163206 – Land south west of Shottery, South of Alcesker Road, Stratford Upon Avon, Warwickshire (24 October 2012)
- D14 APP/F21830781610/A/10/2130320 – Todenham Road, Moreton in Marsh, Gloucestershire (12 April 2011)
- D15 APP/C1760/A/10/2140962 – Picket Place, land at Andover (30 June 2011)
- D16 APP/C1435/A/10/2130580 Land at Honey Farm, Eastbourne Road, Polegate, East Sussex (17 May 2011)
- D17 APP/V0728/A/13/2190009 Land West of Galley Hill Estate, Stokesley Road, Guisbrough (26 September 2013)
- D18 APP/U4230/A/11/2157433 – Land at Burgess Farm, Worsely (16 July 2012)
- D19 APP/C3105/A/12/2178521 – Land East of Bloxham Road, Banbury (23 September 2013)
- D20 APP/N0220/A/07/2039047 – Dukeminster Trading Estate, Church Street, Dunstable, Bedfordshire (4 December 2007)
- D21 APP/X0415/A/07/2051624 Bell Lane, Little Chalfont, Buckinghamshire (30 April 2008)
- D22 APP/R3515/A/09/2115949 – Westerfield Road, Ipswich (30 September 2010)
- D23 APP/G2435/A/11/2158154 - Land North of A511 Stephenson Way, Coalville, Leicestershire (20 August 2012)
- D24 APP/M2325/A/13/2192188 and APP/M2325/A/13/2196027 Little Tarnbrick Farm, Blackpool Road, Kirkham, Preston (7 November 2013)

*Inspector Decisions (E)*

- E1 APP/D1835/A/08/2088567 Former Shop Direct Depot, 250 Bransford Road, Worcester (20 April 2009)
- E2 APP/F1610/A/12/2173097 – Land at Top Farm, Kemble (9 January 2013)

- E3 APP/C3430/A/12/2189442 – Land off Elmwood Avenue, Essington (11 April 2013)
- E4 APP/W1145/A/09/2117379 – Holswothy Showground, Trewyn Road, Holswothy, Devon (13 May 2010)
- E5 APP/X1165/A/11/2145178 – Former Pontin's Holiday Centre, Wall Park Road, Brixham, Devon (19 December 2011)
- E6 APP/D2320/A/12/2172693 – Land to the north and west of Lucas Lane, Whittle-le-Woods, Chorley (19 September 2012)
- E7 APP/T2405/A/13/2193758 (Appeal A) – Land east of Springwell Lane, Whetstone, Leicestershire (1 August 2013)
- E8 APP/T2405/A/13/2193761 (Appeal B) - Land east of Springwell Lane, Whetstone, Leicestershire (1 August 2013)
- E9 APP/D0840/A/10/2141605 – Treceus Farm, Padstow (8 June 2011)
- E10 APP/T3725/A/11/2155266 – Plot 8002, Tournament Field Hill Drive, Warwick (22 December 2011)
- E11 APP/G0908/E/11/2152403 and APP/G0908/A/11/2151737 – Milestone on Low Road, Cockermouth, Cumbria (19 June 2012)
- E12 APP/A0665/A/11/2159006 – Land bounded by Ash Road, Chester Road and Forest Road, Cuddington, Northwich, Cheshire (20 February 2012)
- E13 APP/C1625/A/11/2165865 – Seltars Farm, Hardwick, Gloucestershire (28 May 2012)
- E14 APP/H1840/A/12/2171339 – Station Road / Dudley Road, Honeybourne, Worcestershire (24 August 2012)
- E15 APP/H1033/A/11/2159038 – Land at Manchester Road / Crossing Road, Chapel-En-Le-Frith, High Peak, Derbyshire (25 August 2012)
- E16 APP/U1105/A/12/2180060 – Land East of Butts Road, Higher Ridgeway, Ottery St. Mary, Devon (14 December 2012)
- E17 APP/Y3940/A/13/2192636 - (Former) Bureau West, Horton Road, Devizes, Wilts (31 July 2013)
- E18 APP/Q4625/A/12/2169840 – Land off Leys Lane, Meriden, West Midlands (4 September 2013)
- E19 APP/H1840/A/12/2172588 – Land off Station Road, Honeybourne, Worcestershire (18 September 2012)
- E20 APP/H1840/A/12/2171973 – Land rear of Sunnyhill House, Stoke Road, Wychbold, Droitwich (25 September 2012)
- E21 APP/Z3825/A/12/2183078 – Land east of Duax Avenue, Billinghamurst, West Sussex (18 April 2013)
- E22 APP/G1630/A/12/2183317 – Land adjacent Gretton Road, Winchcombe, Gloucestershire (14 May 2013)
- E23 APP/K2420/A/12/2181080 – Lane east of Groby cemetery, Ratby Road, Groby (22 January 2013)
- E24 APP/P0119/A/12/2186546 – Land between Iron Acton Way and North Road, Engine Common, Yate, South Gloucestershire(8 April 2013)
- E25 APP/H3510/A/10/2142030 – Land at Hatchfield Road, Newmarket (22 March 2012)
- E26 APP/X3025/A/10/2133133 – Land at Clipstone Road East and

- E27 Crown Farm Way, Forest Town, Mansfield (10 May 2011)  
APP/R0660/A/12/2173294 – Rope Lane, Shavington Cheshire  
(18 September 2012)
- E28 APP/R0660/A/13/2189733 - Land north of Congleton Road,  
Sandbach, Cheshire (18 October 2013)
- E29 APP/E2001/A/12/2185323 - Lakeminster Park, Hull Road,  
Woodmansey, Beverley (17 July 2013)
- E30 APP/E2001/A/13/2191132 - Land at Gowthorpe Lane,  
Fangfoss, East Riding of Yorkshire (27 June 2013)
- E31 APP/E2001/A/12/2186784 - Fir Tree House, Meltonby Road,  
Meltonby, Yorkshire (21 March 2013)
- E32 APP/E2001/A/12/2177800 Land south of 19A Horsefair Lane,  
Little Driffield (30 October 2012)
- E33 APP/E2001/A/12/2170713 Walled Garden Cottage, Camerton  
Hall Lane, Camerton, Hull (2 July 2012)
- E34 APP/X0360/A/12/2179141 Land at The Manor, Shinfield,  
Reading
- E35 APP/E2001/1/13/2195678 - Land south east of 96 Beverley  
Road, South Cave, East Riding of Yorkshire (19 September  
2013)
- E36 APP/E2001/A/13/2190763 - Golden Imp Chalet Park, Cliff  
Road, Hornsea (24 July 2013)
- E37 APP/E2001/A/13/2191132 - Land at Gowthorpe Lane,  
Fangfoss, East Riding of Yorkshire (27 June 2013)
- E38 APP/E2001/A/12/2182658 - Land south east of roundabout,  
Woodhall Way, Molescroft, East Riding of Yorkshire (11 March  
2013)
- E39 APP/E2001/A/11/2152171 - Land to the rear of Ivy House,  
Station Road, Hutton Cranswick (28 October 2011)
- E40 APP/W4705/A/12/2177560 Land west of Allerton Lane,  
Allerton, West Yorkshire (27 December 2012)
- E41 APP/K2610/A/12/2177219 Land on the north side of Yarmouth  
Road, Blifield, Norwich 19 March 2013

*Emerging Plan Documents and Evidence Base (F)*

- F1 East Riding Local Plan Draft Strategy Document (January  
2014)
- F2 East Riding Local Plan Draft Allocations Document (January  
2014)
- F3 East Riding Local Plan Proposed Major Changes Document  
(August 2013)
- F4 East Riding Local Plan Policies Map Part 1 and 2 (January  
2013)
- F5 2012 Strategic Housing Land Availability Assessment (January  
2013)
- F6 ERYC Employment Land Review (2007)
- F7 ERYC Employment Land Review Partial Update (2009)
- F8 ERYC Employment Land Review Demand Assessment Update  
(2011)
- F9 ERYC Positive About Life: Strategy for Older People (2010-

	2015)
F10	ERYC Draft Older People's Housing Strategy (2012)
F11	ERYC Employment Land Monitoring Report (2012)
F12	ERYC Landscape Character Assessment (November 2005)
F13	Strategic Housing Market Assessment (SHMA – 2011)
F14	ERYC Housing Strategy for Vulnerable People (2012)
F15	Open Space Review and Playing Pitch Strategy (2010)
F16	Strategic Flood Risk Assessment Level 1 (2010)
F17	Local Housing Study (September 2011)
F18	Draft East Riding Local Plan Policies Map (Melton x 2) and North Ferriby
F19	East Riding Economic Development Strategy 2012-2016
F20	East Riding Local Economic Assessment 2011
F21	ERYC Core Strategy Issues and Options Paper (2005)
F22	ERYC Local Development Scheme 2012-2015 (September 2012)
F23	ERYC Local Development Scheme 2011-2014 (November 2011)
F24	ERYC Local Development Scheme 2009-2012 (May 2009)
F25	ERYC Local Development Scheme 2007-2011 (October 2007)
F26	ERYC Site Assessment Methodology (2011)
F27	East Riding Housing Strategy (2011)
F28	Interim Approach on Affordable Housing Background Notes (2007) Updated 2012
F29	ERYC Affordable Housing Viability Assessment and Addendums 1 and 2
F30	East Riding Issues and Options Core Strategy (April 2008)
F31	East Riding Preferred Approach Core Strategy (May 2010)
F32	East Riding Core Strategy Further Consultation (October 2011)
F33	East Riding Allocations DPD - Potential Sites (May 2010)

*Planning Application Documents (12/04849/STOUT) (G)*

G1	Cover Letter
G2	Application Form
G3	Planning Statement
G4	Planning Summary Statement
G5	Design and Access Statement
G6	Draft Heads of Terms
G7	Economic Statement
G8	Employment Land Assessment
G9	Community Involvement Statement
G10	Marketing Report Letter 1
G11	Marketing Report Letter 2
G12	Flood Risk Assessment and Drainage Strategy
G13	Transport Assessment and Travel Plan
G14	Archaeology Assessment and addendum
G15	Arboricultural Constraints Report
G16	Habitat Regulations Assessment including Breeding Bird Survey
G17	Bat Report

G18	Great Crested Newt Survey
G19	Ecological Assessment
G20	Reptile Report
G21	Noise and Vibration Assessment
G22	Foul Sewerage Assessment and Utilities Assessment (Technical notes)
G23	Site Waste Management Plan
G24	Ground Investigation and Contamination Report
G25	Application Site Boundary Plan
G26	Application Masterplan
G27	Illustrative Masterplan
G28	Landscape Layout
G29	Proposed Junction Drawings
G30	Care Home Plan
G31	Air Quality Assessment
G32	Site Access Capacity Analysis
G33	Revised Habitats Regulation Assessment
G34	EIA Screening Opinion

*Consultee Responses (12/04849/STOUT) (H)*

H1	Statutory Consultations
H2	Neighbour Consultations

*Reporting and Decision (I)*

I1	Planning Officers Report to Planning Committee (16 May 2013)
I2	Minutes of Planning Committee 16 May 2013
I3	Formal Decision Notice 21 May 2013
I4	Report and Minutes of East Riding Cabinet Meeting 22 May 2012
I5	Minutes of East Riding Cabinet Meeting 11 December 2012
I6	Minutes of East Riding Cabinet Meeting 30 July 2013
I7	Minutes of East Riding Cabinet Meeting 26 February 2013

*Revised Planning Application Documents (13/02860/STOUT) (J)*

J1	Site location plan [Ref: W2144 (PL)101]
J2	Application Master Plan [Ref: W2144 rev A within Design and Access Statement]
J3	Landscape Masterplan [Ref: MP-LA-0201 revision 5]
J4	Proposed Junction drawings [Ref: P2002-065/23/C]
J5	Design and Access Statement
J6	Planning Statement including Affordable Housing Statement and Town Centre Use Impact Assessment
J7	Planning Summary Statement
J8	Draft Heads of Terms
J9	Economic Statement
J10	Employment Land Assessment
J11	Marketing Report Letter
J12	Statement of Community Involvement
J13	Flood Risk Assessment and Drainage Strategy
J14	Transport Assessment and Travel Plan
J15	Archaeology Assessment
J16	Arboricultural Constraints Report

J17	Habitat Regulations Assessment to include Breeding Bird Survey
J18	Bat Report
J19	Great Crested Newt Survey
J20	Ecological Assessment
J21	Reptile Report
J22	Noise and Vibration Assessment
J23	Foul Sewerage Assessment and Utilities Assessment (within FRA)
J24	Site Waste Management Plan
J25	Ground Investigation and Contamination Report
J26	EIA Screening Opinion

*Revised Planning Application Consultation Responses (13/02860/STOUT) (K)*

K1	Statutory Consultations
K2	Neighbour Consultations

*National Policy and Guidance (L)*

L1	National Planning Policy Framework (2012)
L2	Draft National Planning Practice Guidance (2013) [Economics, prematurity, weight to plan, 5 YHLSA]
L3	Ministerial Statement – Planning for Growth (2011)
L4	Laying the Foundations: A Housing Strategy for England (2011)
L5	Ministerial Statement – Housing and Growth (2012)
L6	House of Lords Select Committee on Public Service and Demographic Change “Ready for Ageing” (14 March 2013)
L7	ODPM Employment Land Reviews: Guidance Note (2004)
L8	OffPAT / HCA Employment Densities Guide 2nd Edition (2010)
L9	Circular 05/05 Planning Obligations
L10	SHLAA Practice Guidance Strategic Housing Land Supply Assessments: Practice Guidance, Communities and Local Government (July 2007)
L11	DCLG Land Assessment Supply Check (2009)
L12	Planning Inspectorate’s Procedural Guidance (Planning Appeals and called in Planning Applications – England) (3 October 2013)
L13	Planning Advisory Service: Ten principles for owning your housing number (2013)

*Other (M)*

M1	Regional Strategy for the Yorkshire and Humber (2008) (Partially revoked)
M2	Barton Willmore Humber North Bank Employment Land Analysis and Clarification Note (2012)
M3	Statement of Common Ground (6 September 2013)
M4	ERYC Site Areas map
M5	DPP Planning Statement submitted with 11/00613/PLF
M6	ERYC Annual Monitoring Report (AMR) 2005
M7	ERYC AMR 2006
M8	ERYC AMR 2007
M9	ERYC AMR 2008
M10	ERYC AMR 2009
M11	ERYC AMR 2010
M12	ERYC AMR 2011



M13	ERYC AMR 2012
M14	Humber LEP 'A Plan for the Humber 2012-2017' (2012)
M15	Hull Employment Land Review (2008)
M16	Hull Employment Land Review Update March 2012 Committee Report
M17	Brough Committee Report 26 April 2012 (11/04104/STOUTE)
M18	Skirlaugh Committee Report 18 April 2013 (13/00438/STOUT)
M19	Arup Strategic Employment Sites Report for the East of England Development Agency (2009)
M20	GOYH decision letter and Inspectors Report 09/07/02 – Melton Grade Separated Junction

*Documents added post November 2013 (N)*

N/C9	High Court Judgement (19 March 2014) Bloor Homes East Midlands Ltd vs Secretary of State for Communities and Local Government and Bosworth Borough Council. Neutral Citation Number [2014] EWHC754 (Admin.
N/C10	Court of Appeal Judgement St Albans and Hunston Properties Neutral Citation Number [2013] EWCA Civ 1610
N/D16	APP/C1435/A/10/2130580 (17 May 2011) Land at Honey Farm, East Sussex (SoS) (Included by ERYC but already in CDs)
N/D25	APP/M1520/A/12/2177157 Glebelands, Thundersley (26 June 2013)
N/E42	APP/V2004/A/13/2195233 Former Birds Eye Factory Site, Hessle Road, Hull 2 December 2013
N/E43	APP/H18401A/13/2203924 Land between Leasowes Road and Laurels Road, Offenham, Worcestershire (7 February 2014)
N/E44	APP/J3720/A/13/2202961 Land at Gaydon Road, Bishops Itchinton, Warwickshire (12 December 2013)
N/E45	APP/R0660/A/13/2192192 Land opposite Rose Cottages, Holmes Chapel Road, Brereton Heath, Cheshire (12 February 2014)
N/E46	APP/E2001/A/13/2195061 Nags Head, Main Street, Burstwick (27 January 2014)
N/E47	APP/E2001/A/13/2202567 43 Bacchus Lane, South Cave, Brough (4 February 2014)
N/E48	APP/R0660/A/12/2188001 Hassall Road, Alsager, Stoke-on-Trent ST7 2SL (12 December 2013)
N/E49	APP/T2350/A/12/2176977 Barrow Brook Business Village Clitheroe (30 November 2012)
N/E50	APP/W1850/A/13/2192461 Home Farm, Belmont (10 January 2014)
N/E51	APP/X1165/A/11/2165846 Land at Area 4 South, Riviera Way, Torquay, Devon (1 June 2012)
N/E52	Appeal - APP/E2001/A/13/2210841 - Glebe Farm, Bull Lane, Harswell, York
N/F34	East Riding Local Plan Proposed Submission Strategy Document (December 2013)
N/F35	East Riding Local Plan Proposed Submission Allocations Document (December 2013)

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N/F36	East Riding Local Plan Policies Maps (December 2013) Inset 33 - Melton Key Employment Site; Inset 114 – Melton; and Inset 38 - North Ferriby
N/F37	2013 Strategic Housing Land Availability Assessment (November 2013) (Updated January 2014)
N/F38	ERYC Employment Land Review (2013) (Updated January 2014)
N/F39	ERYC Employment Land Monitoring Report (2013)
N/F40	Local Housing Study (January 2014)
N/F41	East Riding Local Plan: Sustainability Appraisal of the Allocations Document Volume II Appendices - Melton (Key Employment Site) (pp.796 - 825) & North Ferriby (p883 -898)
N/F42	ELR 2013 Second Errata (Update March 2014)
N/G35	Pre-application advice - Susan Hunt to NLP 20/11/12
N/J27	Planning Update Statement and Appendices
N/J28	Section 106 Heads of Terms
N/J29	Letter from Halcrow Transport Consultants regarding Highways Agency Comments
N/J30	Cover letter regarding Consultation Responses
N/K3	Decision Notice (revised scheme)
N/K4	Committee report (revised scheme)
N/M21	ERYC Likely Significant Effect Record (November 2013)
N/M22	not used
N/M23	Joint Planning Statement for Hull and East Riding of Yorkshire Council (March 2014)
N/M24	ERYC Local Plan (2012-2029) Rejected Sites North Ferriby
N/M25	NLP representations to Proposed Submission East Riding Local Plan March 2014
N/M26	Humber LEP Strategic Economic Plan 2014-2020
N/M27	York, North Yorkshire and East Riding Enterprise Partnership Strategic Economic Plan 31st March 2014
N/M28	Application 11/00613/STPLF Design and Access Statement
N/M29	Pre application advice letter (Susan Hunt to NLP) 20/11/12

## APPENDIX C CONDITIONS

### *Conditions common to both appeals*

- 1) Approval of the details of the layout, scale, appearance and landscaping of the development (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced 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 before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development shall take place in accordance with a phasing plan to be submitted and agreed as part of the first of the reserved matters to be submitted for approval.
- 5) The details to be submitted at phase shall include a supplement to the Design and Access Statement with regard to layout, scale, appearance and landscaping.
- 6) The local centre hereby approved shall be limited to a maximum of 680 square metres gross internal floor area and shall be limited to uses falling within classes A1, A3, A5 and D1 of the Town and Country Planning (Use Classes) Order 1987 (as amended), with no single unit exceeding 250 square metres gross internal floor area.
- 7) No residential development shall take place on any specific phase of the site until details of a scheme for the phased provision of outdoor play space within the site have been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include provision for all equipped children's play areas within the site. The submitted scheme shall also include a programme of implementation and arrangements for future maintenance. The development shall be carried out in accordance with the approved details.
- 8) No development shall take place on any phase of the development 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 and amended as necessary for each phase as agreed in advance with the Local Planning Authority. The Statement shall provide for:
  - i) The parking of vehicles of site operatives and visitors
  - ii) Loading and unloading of plant and materials
  - iii) Storage of plant and materials used in constructing the development
  - iv) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v) Wheel washing facilities
  - vi) Measures to control the emission of dust and dirt during construction

- vii) A code of good working practice for protecting the nearest residential dwellings, including measures to control noise and vibration arising from on site activities, as set out in British standard 5228 part 1: 1997 – Noise and vibration control on construction and open sites. The code of practice shall include the use of vehicles, plant and equipment including generators, piling operations, excavations, earthmoving, site communication systems and the loading and unloading of raw materials.
- viii) A scheme for recycling/disposing of waste resulting from demolition and construction works.
- 9) No development shall take place until a scheme for the protection of the railway has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be adhered to throughout the construction period and amended as necessary for each phase as agreed in advance with the Local Planning Authority. The scheme shall:
- i) ensure that no materials or plant will be capable of falling within 3.0 metres of the nearest rail of the adjacent railway line
  - ii) provide details of any excavations/earthworks/piling to be carried out within 10 metres of the adjacent railway line.
  - iii) demonstrate that all excavations/earthworks carried out in the vicinity of the railway line will be designed and executed such that no interference with the integrity of the line can occur
  - iv) provide details of barriers to be erected on any highways or parking areas within 10 metres of the adjacent railway line
  - v) provide details of trespass proof fencing at least 1.8m high, to be erected adjacent to Network Rail's boundary the railway
- 10) No construction or demolition and no site deliveries or removal of materials from the site should take place outside the hours of 08.00 – 18.00 Monday to Friday and 08.00-13.00 on Saturdays, and at no time on Sundays or Bank Holidays.
- 11) Prior to the commencement of development an Ecological Construction Method Statement (ECMS) and Ecological Enhancement and Management Plan (EEMP) shall be submitted to and approved in writing by the Local Planning Authority. The ECMS and EEMP shall be compiled by a suitably qualified ecologist and provide full details of all ecological mitigation, enhancement and management measures and a timetable for their implementation and monitoring for each element. Development shall be carried out in accordance with the approved measures and timetable of the ECMS and EEMP. The ECMS and EEMP shall include:
- i) Details of appropriate habitat and species surveys (before and during construction), and reviews where necessary, including all survey work set out in the Ecology Assessment prepared by FPCR Environment & Design dated July 2013;
  - ii) Measures during construction to ensure protection and suitable mitigation to all legally protected species and those habitats and species identified as being of importance to biodiversity; consideration and avoidance of sensitive stages of species life cycles, such as the bird breeding season: protective fencing and phasing of works to ensure the

- provision of advanced habitat areas and minimise disturbance of existing features;
- iii) measures for the protection of existing hedgerows and trees to be retained;
  - iv) Plans and full details showing the layout and design of biodiversity enhancement measures for wetland areas (part of SuDS) including details of meadows, temporarily wet areas, permanent wet areas and open water habitats (if applicable);
  - v) Plans and full details for the layout and design of biodiversity enhancement measures for green corridors and open spaces, which should include the use of native species from within the Yorkshire region and be of local provenance. The scheme shall be designed for biodiversity enhancement, including foraging opportunities for a range of species;
  - vi) measures for the creation and establishment of new habitat features including a method statement for site preparation and establishment of target features, the extent and location of proposed works and details of aftercare and long term management. Such details shall include measures for incorporating bird nesting boxes/features and bat boxes/bricks/tiles within the site; details of a lighting strategy which secures dark corridors for bat foraging and nesting birds; details of relevant on site working practices, including action to be taken if protected species are found during construction; and a programme for Monitoring/Environmental Audits during the construction phase.
- 12) No development shall take place on any phase of the site where archaeological potential has been identified in the submitted archaeological report until a programme of archaeological work has been secured in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The Scheme shall include:
- i) The programme and methodology of site investigation and recording, to provide for proper identification and evaluation of the extent, character and significance of archaeological remains within the site ;
  - ii) An assessment of the impact of each phase of the proposed development on the archaeological remains;
  - iii) Proposals for the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the publishing of the findings, it being understood that there shall be a presumption in favour of their preservation in situ;
  - iv) The programme for post investigation assessment of the results of the on-site evaluation;
  - v) Provision to be made for analysis of the site investigation and recording, following the post-excitation assessment;
  - vi) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - vii) Provision to be made for archive deposition of the analysis and records of the site investigation;

- viii) Nomination of a competent person or organisation to undertake the works set out within the Written Scheme of Investigation. Sufficient notification and allowance of time to archaeological contractors nominated by the developer to ensure that archaeological fieldwork as proposed in pursuance of (i) and (ii) above is completed prior to the commencement of permitted development in the area of archaeological interest; and
- ix) Notification in writing to the Curatorial Officer of the Humber Archaeology Partnership of the commencement of archaeological works and the provision of reasonable opportunity to monitor such works.

Within 12 months of completion of the entire site, the site investigation and post investigation assessment must be completed in accordance with the programme set out in the Written Scheme of Investigation and the analysis, publication and dissemination of results and archive deposition shall have been secured.

- 13) The development shall be carried out in accordance with the approved Travel Plan Frameworks dated 27th November 2012 and letter from Halcrow dated 8th February 2013.
- 14) No development approved by this planning permission shall take place until such time as a scheme to manage the surface water drainage from the site, including works to provide a satisfactory outfall for surface water, has been submitted to and approved in writing by the local planning authority. The drainage scheme must be able to contain up to a 1 in 100yr storm, plus an allowance for climate change). It must also be based on a sustainable drainage technique. All soakaways must be located so as to discharge away from the railway infrastructure. The scheme shall be fully implemented according to the scheme's phasing arrangements.
- 15) No development shall take place until details of the proposed means of disposal of foul water drainage, including details of any balancing works and off-site works, have been submitted to and approved by the local planning authority. No buildings shall be occupied or brought into use prior to completion of the approved foul drainage works for each plot.
- 16) Surface water from vehicle parking and hardstanding areas for all non-residential plots shall be passed through an interceptor of adequate capacity prior to discharge.
- 17) Development shall not commence until a further noise and vibration assessment has been submitted to and approved in writing by the LPA. The noise and vibration assessment should identify measures to protect future occupiers of the dwellings and care facility from road, rail, commercial and industrial noise, having regard to BS4142, BS8233 and BS6472. The development shall be carried out in accordance with the approved details.
- 18) Development other than that required to be carried out as part of an approved scheme of remediation must not commence until Parts (a) to (d) have been complied with. If unexpected contamination is found after the development has begun, development must be halted on that phase of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until Part (d) has been complied with in relation to that contamination.
  - a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- i) a survey of the extent, scale and nature of contamination.
- ii) an assessment of the potential risks to human health, property, adjoining land, controlled waters, ecological systems, archaeological sites and ancient monuments.
- iii) An appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11'.

b) Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historic environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

c) Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report to demonstrate the effectiveness of the remediation should be submitted to and approved in writing by the Local Planning Authority.

d) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part a, and where remediation is necessary a remediation scheme must be prepared in accordance with the

requirements of Part b. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with Part c.

- 19) The development of the care home facility, bungalows and apartments on Parcel 2 of the application site shall not commence until an operational plan setting out the following has been submitted to and approved in writing by the Local Planning Authority:
- i) details for the use of the care facility for complex dementia care and;
  - ii) details of how the bungalows and apartments are to provide for older people's changing care and support needs
- The management of the care home, bungalows and apartments shall be carried out and retained in accordance with the approved management plan.
- 20) The occupation of the bungalows and apartments on Parcel 2 of the site shall be restricted to:
- i) persons aged 55 years or older; or
  - ii) other persons who are living as part of a single household with a person or persons aged 55 years or older
- 21) Prior to commencement of any phase of the development on parcel 2 a scheme shall be submitted to and agreed in writing with the Local Planning Authority to include details of how the apartments and bungalows will have regard to the Lifetime homes standard and have regard to HAPPI principles. All of the bungalows and apartments shall have two bedrooms. The development shall be constructed and retained as approved.
- 22) No development shall take place until a Scheme has been agreed in writing with the Local Planning Authority for a footpath to be dedicated from Gibson Lane to Brickyard Lane. The footpath shall be constructed in strict accordance with the approved scheme, prior to the first occupation of any phase of the development.

*Conditions unique to Appeal A*

- A23) A maximum of 510 dwellings, 20 sheltered apartment units for elderly persons, and 16 dormer bungalows for elderly persons, shall be constructed on the site as whole.
- A24) The roundabout which provides access to land south of Monks Way shall be constructed in the location detailed on drawing no. MP-LA-0201 rev 4. Full design details shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any part of the development to the south of Monks Way. The roundabout shall be constructed as approved prior to the first occupation of any part of the development located to the south of Monks Way.

*Conditions unique to Appeal B*

- B23) A maximum of 390 dwellings, 20 sheltered apartment units for elderly persons, and 16 dormer bungalows for elderly persons, shall be constructed on the site as whole.



- B24) The roundabout which provides access to land south of Monks Way shall be constructed in the location detailed on drawing no. MP-LA-0201 rev 5. Full design details shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any part of the development to the south of Monks Way. The roundabout shall be constructed as approved prior to the first occupation of any part of the development located to the south of Monks Way.
- B25) Not more than 25% of the floorspace (in total) hereby permitted under Use Class B of the Use Classes Order 1987 shall comprise B1 office use.

Richborough Estates



## 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.