



Appeal Decision

Inquiry held on 6, 7 and 8 May 2015 and 30 June 2015

Site visit made on 8 May 2015

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 24 November 2015

Appeal Ref: APP/V2004/A/13/2195233

Former Birds Eye Factory Site, Hesse Road, Hull HU4 6SH

- 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 Iglo Foods Group Limited against the decision of Kingston-upon-Hull City Council.
 - The application Ref 12/01063/OUT (00031194A), dated 19 November 2012, was refused by notice dated 6 March 2013.
 - The development proposed is a mixed use development of 5ha of residential land comprising up to 185 units and 2.1ha of employment land comprising serviced plots for the potential of between 6,040m² and 8,360m² of B1 (c) light industrial floorspace.
 - This decision supersedes that issued on 2 December 2013. That decision on the appeal was quashed by order of the High Court.
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Procedural Matters

1. The appeal was submitted in outline with all matters other than access reserved. However, at the previous inquiry it was agreed that access should also be a reserved matter; the appeal is considered on that basis, there being no reasons why an appropriate access cannot be provided. The Section 106 document submitted for the previous inquiry remains relevant and addresses green space, the third reason for refusal, employment and training scheme and recycling bins. It was agreed at the previous inquiry that the development is more clearly considered as a mixed use development comprising up to 185 dwellings on 5ha and 6,040-8360m² of B1(c) light industrial floorspace on 2.1ha.

Decision

2. The appeal is dismissed.

Main Issues

3. The main issues are:
 - The effect of the proposed development on employment land supply.
 - Whether there are other material considerations related to the development with particular reference to housing supply and sustainable development in the terms of the National Planning Policy Framework (The Framework).

Reasons

4. The development plan includes the Hull City Plan (2000) [LP]. It is common ground that 'little if any' weight should be attached to those relevant saved policies of the joint structure plan. It is also common ground that the policies of the LP pertinent to the main issues in this case are LP Policies E2, E4, E8 and E12. Also relevant is The Framework and the appellant particularly refers to paragraphs 14, 18-22, 47 and 49. Following the last appeal it is now common ground that LP Policy E12 accords with The Framework and in particular paragraph 22. It is also agreed The Framework provides a national policy Framework with further guidance in the Planning Practice Guidance [PPG].
5. With regard to LP Policy E12 the Western Corridor consists of the relevant areas in Hull and the East Riding as identified in the statement of common ground.
6. LP Policy E2 indicates that the council will seek to ensure an adequate supply of land for employment development over the period of the City Plan to meet strategic requirements and demand for employment land. LP Policy E3 identifies where the supply of employment land will be primarily provided.
7. LP Policy E8 indicates that business and science park development with a high quality setting will be allowed in predominantly employment areas if it has good access to public transport, with priority being directed to Priory Park and Kingswood.
8. LP Policy H1 provides for housing where the location and detailed planning considerations are acceptable.

Employment Land

9. LP Policy E12 relates to employment land and indicates that non-employment development will not be allowed (i) on strategic employment locations or on readily available employment land, unless it is small scale ancillary development supporting employment use or (ii) on readily available employment land, unless there is existing adequate provision of such land nearby. Text to the policy indicates that quantity and quality are relevant. The appellant, in answer to questions, confirmed in relation to (i) that the proposal did not constitute small scale ancillary development supporting employment use. The site is clearly readily available for employment use should a developer come forward, and this would be lost on the residential part of the proposed development, so there would be a loss of readily available employment land. The issue is whether there is existing adequate provision nearby.
10. Policy 22 of The Framework notes that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose and that land allocations should be regularly reviewed. Reviews have been undertaken. Policy 22 goes on to note that where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.
11. It is common ground that the Hull Employment Land Review 2014 [ELR] and the November update [ELRU] provide a robust basis for looking at employment

land supply and need in the city, with a further unpublished update following the March Survey of 2015. The employment land Monitoring report by East Riding of Yorkshire Council provides the most up to date information for the relevant part of the Western Corridor in its area.

12. The ELR looked at need in 5 ways. Some of those ways indicated that there could be a decline in manufacturing employment possibly because the need for space is not always directly correlated with employee numbers. The scenarios did indicate a range of results, but with a degree of consensus relating to office and distribution, with the main difference relating to manufacturing. It was concluded that the city should plan for economic growth, suggesting a need for about 50 – 70ha for the plan period. While I have noted all the scenarios, I accept that planning for growth is appropriate and would accord with guidance in The Framework to promote economic growth. During the process there were recommendations to remove some sites from supply, but not the appeal site.
13. The ELRU noted at the time that revised projections remain broadly in line with the previous report and identifies that land supply in the Western Corridor has reduced by 1.87ha. It also identifies that *land generally available on larger sites over 2ha including the EZ sites, and so those that provide the best opportunity for supporting inward investment and economic growth, has reduced by approximately 5ha net. This represents a significant shift in terms of the portfolio available to support significant investment opportunities. It notes that the previous study concluded that it is appropriate and necessary to maintain a larger portfolio of land than projections would necessarily indicate, particularly because of the qualitative nature of supply, including location, and the way in which different sites will be able to meet the requirements of the different economic growth sectors identified for the city.*
14. It is common ground that the Employment Land Supply in the Hull Western Corridor as of November 2014 was 20.51ha and in March 2015, 19.68ha. In the East Riding Western Corridor the remaining allocation for employment sites was 19.72 at April 2014 and at April 2015 was 17.04ha. While the loss of this site in comparison with employment land in the whole of Hull would be relatively small, in relation to the Western Corridor part, relevant to LP Policy E12 the loss of employment land to housing would be a considerable proportion of the about 36ha in the Western Corridor generally and almost 25% of that in the Hull part of the Western Corridor.
15. The appellant provides evidence which it considers demonstrates its conclusion that over the longer term (approximately 2003 – 2013) employment levels have been falling across Hull and in the Western Corridor, with a westward shift of jobs along the Western Corridor. While I do not dispute those findings, it must be borne in mind that a considerable part of this time there was a severe recession and the appellant notes some reversal in this trend, with employment increasing between 2011 and 2013, and that some of the sites that became available for use were at the western end. So I give little weight to decline/location identified by projecting this into the future, particularly as the aim of The Framework is to promote economic growth, indicating that it should be ensured that there is sufficient land of the right type available in the right places at the right time to support growth and that trends now indicate growth. That is consistent with LP Policy E12.

16. The appellant looks at the whole of Hull in considering employment land need, which is not unreasonable as a general principle and it is recognised in the Planning Practice Guidance that employment land markets can overlap. However, in the context of this appeal, that the aim of Policy E12 is to retain a reasonable amount of land available to employment in this area, unless there is other adequate provision of such land nearby. It is common ground that is, for the purpose of this site, land in the Western Corridor of Hull and East Riding. This is presumably to ensure that there remains a choice of location and to maintain economic activity in the different parts of the city which is reasonable. However, I do accept that if land in another part of the city, is particularly attractive it could have an impact on other parts of the city.
17. The Humber Enterprise Zone is a factor. It was essentially to be limited to businesses associated with off-shore wind energy, but recent changes to rules mean that other businesses can go there and obtain advantages and reliefs, although some restrictions still remain. However, I do not consider that the evidence submitted is sufficient to indicate that the Western Corridor would not remain a desirable place to locate businesses, as identified in the ELR and I attach little weight to this. It is clearly a good location, with close access to the road network and well served by nearby housing areas.
18. I acknowledge that the site is unlikely to receive 'outside' funding and has no special status in this respect. However, I do not consider that this counts against the site being available or developable without 'outside' funding, particularly as there have been recent credible offers for the site by developers, which I will consider further below. I consider that the lack of outside funding or special status does not add weight against the potential for full employment use at the site.
19. The council provides graphs that show that while there has been a slump in take-up rates for the whole of Hull within the period shown, the current trend is clearly an increase in take-up rates. With this and the appellant's concern that non B Class use development had not been accounted for, the council has produced graphs to demonstrate that this has been considered.
20. The appellant's graph at fig 4.4 demonstrates the drop in employment over the period, but again shows that there is in the last years an upward trend in the Western Corridor in general and also in the Hull part. To my mind, the decline over part of this period is to be expected given the national economic situation at that time.
21. The parties have analysed the figures produced by the ELR and associated updates at great length and in great detail, putting forward subtle changes in the way that the figures might be interpreted. It must be remembered, as noted in the ELRU, that the models are an 'informed' guide to determining land supply in Hull.
22. The appellant in its analysis uses the 70.5ha figure from the ELRU and provides the proportion for the Western Corridor as being about 27% of this, giving a figure of about 19.2 ha need or about 1.2ha per annum
23. The council has looked at the past net development of floorspace and net take-up of land as a general basis for its calculations, but it argues that in order to properly account for future need you should analyse the data for anomalies that might affect the outcome. In this case it says that the very low take up in

2012/13 needs to be adjusted. I agree with this. There is little point in basing a future model, where growth is the government's aim, on past performance that appears to have been affected by the economic situation. Basing the future projections purely on the past performance is potentially going to limit future growth and I therefore reject the appellant's argument that this is not a sound basis for considering the need. I also think that where the past take up rates for non-business uses in the area are clearly much higher than the 'notional' 66% used in the ELR, it is not unreasonable to factor that in. Overall, I therefore consider that the council's anticipation of take is to be preferred to that of the appellant.

24. In addition, the appellant notes that there has been a considerable take-up in the East Riding part of the Western Corridor, mainly associated with Bridgehead Development where the council estimates a development rate of about 1.84ha. It could also become more popular with the increase in public transport links to the site, since the previous inquiry. I note that this take up may be a particular result of the qualities of and development at the Bridgehead site itself and that some relocations have occurred, but that shows that with a good development, such as could occur at the appeal site, there has been and could continue to be a considerable take-up in the Western Corridor at Bridgehead and the appeal site.
25. There was some suggestion that the council has somehow mixed up losses to non-employment uses as well as extensions to existing businesses. However, the appendices to the proof clearly shows that these matters were identified. The council estimates that the annual take up rate if properly calculated now would be in the region of 1.56ha for the Hull part and about 2.1ha for the East Riding part and I consider that this is reasonable.
26. In summary, I do not consider that any of the methods of analysis can be considered as the 'one' that should be followed. In addition, I do not think there is much between the parties, with the appellant considering the need over 15 years for about 18.1ha whereas the council suggests about 20 ha over the next 16 years. It is clear that the residual element of the appeal site, without the residential element, would leave only about 14.4ha in the Hull part. So even if there is say a 12 year supply, which is nearer that put forward by the appellants, I do not consider, given the limitations of such analysis, that this reasonably represents an adequate supply of available land to meet the council's policies or to promote economic growth identified by government guidance in The Framework.
27. The ELR notes that it is important to ensure that the city has a supply of general employment sites capable of meeting requirements for sites of 3ha or more and goes on to refer to the importance of the supply of large sites which are defined as being over 2ha.
28. The appeal site is a large, previously used employment site and could be readily available. It is very well located to housing, other employment areas and to the road network. The appellant notes that larger sites account for about 20% of the mix of sites, and it considers there is a smaller requirement for these sites in the city. I consider the quality of this site to be very high because of its size and location and established past employment use. It would enable a wide variety of uses and size of uses to be provided. It could be a location for larger uses, it could be a high quality location for a variety of users,

as has been achieved at Bridgehead or could provide the smaller units that will be required in the area. I appreciate that the employment aspect of the appeal proposal would meet the 2ha defined by the ELR for larger sites, but the diminution of the site from the current size would be a substantial loss in terms of the qualities of the site.

29. The ELR notes the Western Corridor as being a predominant area of employment land uses, particularly attractive to the industrial and business market and is a popular area of choice, with a limited available sites remaining. The ELRU also concludes on the need to allocate a small number of larger sites in order to address, amongst other things, the need for the perceived shortage of larger sites for general employment development in Hull. I consider these to be important observations, indicating substantial weight in favour of employment use of the whole appeal site in qualitative terms alone.
30. Overall, I do not consider that the appellant has demonstrated that there is existing adequate provision of such land nearby in qualitative or quantitative terms and on each basis the development would not accord with the aims and objective of LP Policy E12 and would not accord with some aims and objectives of The Framework.

Valuation and Viability

31. The appellant undertook a viability appraisal in 2012 and the council arranged for a valuation of the land to be undertaken by the District Valuer in March 2015. This did identify a small increase in value from the appellant's assessment. A viability appraisal of the appeal site was undertaken in April 2015. This viability appraisal concludes that based on the assumptions made, the site if sold for employment purposes would generate a net land value of about £1,627,000. This falls within the valuation range identified as between £1,500,000 and £2,000,000. The appellant's specialist through a supplemental proof, challenged some of the assumptions made and the council's specialist responded in a letter dated 26 March 2016. This concluded that, even with some increase to the 'abnormals' or matters specific to the site, the study remains reasonable. They point to the fact that if they had adopted the lower quartile build rates from the BCIS (lower than their cost allowances) the scheme could sustain about £1,100,000 of abnormal costs, more than enough to cover any outstanding issues.
32. However, I am not going to go through all the comments and observations in detail as there is not the evidence on the potential for abnormalities for me to come to any reasonable conclusion. A viability study inevitably involves assessments by those that undertake them and the emphasis on assumptions that are made will not always be the same between assessors. I note the study was undertaken by a chartered surveyor together with a local developer who has made an offer on the site. To some extent I can see that there could be a conflict in someone wanting to develop the site also advising on viability. However, it seems to me it would be in their interest to up the costs of the development and potential abnormal costs, not downgrade them.
33. The cost of grubbing up concrete pads on the site has not been allowed for, but the valuer notes that this was also the case for the appellant previous viability study for housing/employment use at the site and there was only an allowance of about £100,000 for re-grading. Having undertaken a site visit it is evident that there are large areas of concrete that are likely to need attention, so there

will be some cost associated with removal of concrete pads and slabs at the site. Some of these could perhaps be incorporated in parking areas, so it is difficult to conclude on a specific figure at this stage. In addition, were it necessary to build up the land to take account of any flooding, some of the concrete may be buried. While the appellant puts forward costs from another site, there is nothing available to show whether this is a reasonable comparison as each will be individual. There are also open concrete ringed soakaways, but it seems to me that this type of drainage facility may well be able to be incorporated into a new scheme and could effectively be a cost saving and not an expense.

34. I also find it hard to comment about not making an allowance for abnormal foundations, as there is little evidence of substance that would suggest there could be a need for this. The appellant's previous study for the residential/employment use did make an allowance of about £660,000 for the dwellings, but I cannot see any particular reason given for this.
35. GVA conclude that even with some increase to the abnormal at the site the study remains reasonable. They point to the fact that if they had adopted the lower quartile build rates from the BCIS (lower than their cost allowances) the scheme could sustain about £1,100,000 of abnormal costs, more than enough to cover any outstanding issues.
36. There has been a comparison with the BCIS building costs index. Again, while different parameters will lead to different outcomes, I consider the assumptions made are reasonable. The viability exercise results are not substantially different from those gained through use of the costs index, and although all potential costs have not been identified, at this stage it is a reasonable guide.
37. However, more importantly to me, there have been two offers made for the appeal land. Any developer making such an offer will have made its own assessment of the viability of development before committing to an offer. I accept that the offer by Stoneferry Estates had some caveats relating to ground conditions, but they would be fully aware of the concrete remaining on site. That offer generally accords with the valuation range for the site produced by the council.
38. I accept that this offer was not followed up by the appellant or Stoneferry Estates, and there was some suggestion that this should count against the appellant. However, it seems to me obvious for the appellant to try to maximise the value of the site, which would involve the proposed housing development, and that until this planning issue is resolved it would not want to waste time negotiating about something that might not occur. Similarly, I can see why Stoneferry Estates would not follow up on the offer, as they would fully appreciate the appellant's position and effect the permission could have on value. However, it is relevant that the appellant has not been active in trying to sell the site for employment use and should a 'comprehensive' market strategy be undertaken it is quite possible other developers could come forward with different offers.
39. It seems to me that, should the appeal be dismissed, negotiations on the current value of the site could be undertaken in the future and it may well be that there have been some changes in values that would warrant upward or perhaps downward adjustment of the offer. I consider the offer is a robust demonstration at the time of the site being of interest for employment

development, and that does not directly relate to the concerns the appellant has over the costs allowed for in relation to remedial works at the appeal site. Therefore, in terms of The Framework Policy 22, I consider that there is a reasonable prospect of the site being used for employment purposes.

40. The appellant has corresponded with Stoneferry Estates and it was suggested that it had agreed the site was best suited to housing, which was why they had not been in touch since making the offer. However, they did also confirm they would still be interested in the site on a speculative basis, having no end users identified. The council say that Stoneferry Estates did not get in touch because of the appeal and that the value of the land for housing would obviously be much greater. That seems to me to be the most likely reason, given the offer and the confirmation that the site is still of interest for employment use.
41. The potential developer also noted in correspondence that it considered there was current demand for industrial space but focused on Heddon Road and the eastern side of the city. While that may be the case, the developer must also see demand for the appeal site, or an offer would not be made. Overall I conclude, while acknowledging the potential for different outcomes to the valuation and viability study as identified by GVA and CBRE, that the whole site is viable for employment use, particularly as indicated by offers made. I accept that Stoneferry Estates also indicated that it would be interested in the employment land resulting from this proposal, but that does not take away from the viability of developing the whole site.
42. My conclusion on the first issue is that the proposed development would adversely affect, to a material degree, the supply of employment land in both the City and the Western Corridor, contrary to the Council's adopted Development Plan policies, and to relevant provisions of The Framework.

Other Material Considerations

Objectively Assessed Need for housing

43. Recently the government issued the latest demographic data and identified that this should be used to inform objectively assessed need for housing. The council had undertaken the Hull Strategic Housing Market Assessment [November 2013] prior to the release, which identified an OAN of about 760. Following the release of the data and latest advice in the planning policy guidance the assessment was updated by the Updated Objectively Assessed Need for Housing in Hull [April 2015]. This identifies that the OAN should be about 640.
44. The appellant notes that it cannot be assumed that this figure will be taken forward. It has not been the subject of any consultation and not even been before the council. Clearly there are likely to be changes to the OAN during the process, but at this stage I consider it reasonable that this assessment following release of the latest demographic projections and advice is the most up-to-date and most reasonable figure to take into consideration.
45. In updating the OAN the report looked carefully at the figures and various scenarios to ensure that figures arrived at would be a reasonable estimate and be an objectively assessed need figure and this was ably explained by the council's witness in evidence in chief and under cross-examination.

46. The appellant also notes that the OAN needs to be considered on the basis of the housing market area, which in this case includes large parts of the East Riding. There was consultation at the time of the November Strategic Housing Market Assessment, but at the inquiry it was indicated that consultation on the latest figures had not yet occurred. East Riding has carried out its own assessment dated March 2015. This looks at the whole area and comes to an OAN of about 1589 dwellings per annum for East Riding and in addition to the assessment for the Hull area of about 133, giving an overall figure of about 1722. East Riding indicates a provision in the order of 1400 dwellings per annum, which on that basis would leave Hull with about 322. This would not indicate that the Hull figure of 640 is unreasonable. While the appellant questions this, the council's witness agreed the two areas would need to work together, but suggested ultimately this might well lead to a lower OAN for Hull. I do not consider it is indicated at this stage that adjustment is needed in relation to this.
47. The way migration has been considered was also questioned but I accept that this matter is not a science and careful consideration is necessary of background factors. In this case it seems plain to me that the changes to the European Union Border protection and the recession will have had particular effects that should be allowed for and I consider the approach is therefore reasonable.
48. It is also criticised that the OAN has not been based on average 10 year migration, which would give an OAN of about 917. However, it was explained that there were two corrections that needed to be taken into consideration. The aim of the objectively assessed need is to identify in the most realistic way what future need will be. It is therefore reasonable that the basis of any projections is considered carefully. If it is found that there are anomalies in past statistics caused by what are likely to be one off factors, these should be considered and adjusted if relevant to reach a requirement figure. In this case looking at the OAN it was considered the unusually high figures for international migration between 2003 and 2005 should be discounted as this related to the specific issue of EU enlargement and associated surge in migration.
49. There was also some acknowledgement that the collection of data in the early part of the 2000s was not as good as it should have been and was subsequently greatly improved by the Office for National Statistics. In my opinion these correction are reasonable.
50. When the population trend is looked at on the graph in Figure 10 of the updated Strategic Housing Market Assessment it shows that the 10 year migration population growth projection is substantially higher than the past general trend and that adjustment is reasonable. There is also a suggestion that if the housing need were to be considered in relation to ambitions for employment projection, the OAN would be higher. However, the updated Strategic Housing Market Assessment has looked at two scenarios informed by the 2014 Employment Land Review which takes scenarios from the Regional Economic Intelligence Unit. It concluded that the level of housing provision needed to support various scenarios for employment growth is lower than that based on past population trends and following the approach of the Planning Practice Guidance there was no need to adjust upwards the overall assessment of housing need to support growth in jobs. At the inquiry it was accepted that

things could change in the future, but it would be a matter for monitoring and this does not indicate to me that the OAN as assessed is unreasonable.

51. It is common ground that demolition of properties is occurring in Hull as part of the on-going housing regeneration programme, with a reduction in the functional housing stock through a programme of acquisition. I appreciate that there could be some potential for double counting, depending on the timing of the various actions as found by the previous inspector. However, where the council has taken houses out of the functional housing stock before 2011 and later assessments of need and they were empty, I cannot see how these could be double counted. The occupiers who were removed, leaving an empty house, would either have been re-housed or if not would contribute to the later identified housing need. Should the house then be brought back into use by refurbishment, and not demolished it would then be available either to accommodate those waiting for a property or those that moved out. Either way it would then make a 'new' contribution to supply. It would be unreasonable not to include these.
52. I have taken into consideration the PPG note that this needs to be considered through a local plan inquiry process. It is not for the inspector on a S78 appeal to seek to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure; an inspector is not in a position to carry out such an exercise in a proper fashion, since it is impossible for any rounded assessment similar to the local plan process to be done, but it is still expected that an assessment is made in the course of a Section 78 appeal and I consider that it is reasonable to include demolitions.
53. For those reasons in terms of requirement I would consider the best available information indicates that Table 6b of the appellant's document handed in to the inquiry is appropriate to be followed and indicates a requirement of 4706.
54. In terms of supply, I have looked at concerns about a number of the sites that have been predicted to provide houses in the 5 year period, particularly in relation to phasing and when the first dwellings could reasonably be expected to come forward. The appellant suggested there could be a notional 20% or some other figure to allow for some reduction in the expectation. That would be an approach, but here I consider that it is reasonable to look at the sites in dispute and for this I look at the latest table submitted on the last day of the inquiry. The background is that each party is predicting a considerable need for housing in the area; the appellant arguing the council has under estimated need, so there should be a buoyant market for any houses constructed.
55. Sites 60 and 331 have planning permission and I consider that there is a reasonable expectation that they will come forward generally as predicted. I accept that the build out rate would be high at Kingswood, but there have in the recent past been many more developers building out in the area and that this will soon reduce, leaving two remaining developers. I note that Barratt Homes indicates its historical build out rate in Hull over 40 years is 125 per annum. The plots are not all on one parcel of land and there have been some higher build out rates in the past by the developer. I have taken note of the developer's letter, but find it not unequivocal in terms of potential output. I particularly find it odd that on an active site there is an anticipation that in

- 2016 there would be no completions at all. Overall, I consider it reasonable for the council to have an expectation of these coming forward in the period.
56. The fact that there are 51 conditions on site 331 does not mean that it will take an unreasonable time to complete the permission process. There is no reason why conditions cannot be discharged at the same time. The fact that there is this number of conditions does not mean that it is unreasonable for the council to expect them to contribute to the 5 year requirement.
57. Site 373 has planning permission, but the appellant identifies that the permission will expire in about 4 weeks if reserved matters are not submitted and it is not being marketed. While little has occurred in the considerable time that the permission has been extant, I consider the appellant is right in considering that some caution should be taken in considering delivery from this site. However, The Framework notes that sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer demand for the type of units or sites have long term phasing plans. As this site has planning permission I still consider that it is reasonable to expect development of the relatively small number of 32 units to come forward within the period, even if most are towards the end. It was accepted by the appellant in cross examination that the 36 unit at site 327 could come forward.
58. Other sites identified do not have planning permission, but some have applications being considered. The Planning Practice Guidance notes that planning permission is not a prerequisite for a site being deliverable in terms of the five-year supply. If there are no significant constraints to overcome, such as infrastructure, sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a five-year time frame. The Framework notes that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable.
59. Sites 54, 198 and 234 are council owned sites and it is indicated that the council is a willing seller with applications recently submitted. The sites are in a suitable location and available. It is not unreasonable to expect units from site 54 between 2017 and 2019. Some housing is already under construction at site 198, so again the expectations of some units being available between 2015/16 is not unreasonable with others to follow on between 2018/19. Similarly the anticipation of 3 units in 2016/17 with others following in 2017/19 is not unreasonable. I do not think there is clear evidence that these will not be delivered and it seems reasonable to consider they could be achievable in the time scale.
60. Site 195 has been reviewed by the council in terms of deliverability and while for both sites 195 and 198 there is a net change of about -15 units, the anticipated delivery of the units is still to programme. With the change anticipated, I find this to be a suitable location, available and it seems reasonable to consider they could be achievable in the time scale, with no clear evidence that these will not be delivered.
61. The appendix to the statement of common ground shows site 232 is not on the appellant's list and arguments against the council's information is recorded.

The appellant indicated at the inquiry the same concern about sites without planning permission; without clear evidence there is no reason to consider why the small number (12) units should not come forward in the required period.

62. Site 329 is a vacant former employment site and is a suitable location, available and it seems reasonable to consider some units will come forward in the time scale. It is anticipated that the build-out would be at a rate of about 36 units per annum, which is reasonable. However, the first year when 36 units are anticipated is 2015/16. Given that we are now halfway through 2015 and there is no planning application and the inevitable lead in times, I consider it is not reasonable to consider that 36 units would be achievable between 2015/16.
63. In relation to site 721, the main point of contention is the time that units are likely to come forward. The appellant suggests 2017 is optimistic in bringing forward the first units and suggests pushing the trajectory back by 1 year. This would mean a reduction of about 30 units. The council notes that funding has been secured with the Humber Local Enterprise Partnership and this is to support delivery of 10 sale units by 2017/18. In my view, while I note the appellant's concerns, I do not consider that there is clear evidence that the required number of units will not come forward in 2017/18.
64. Essentially the appellant does not think the site should be included in supply without planning permission, particularly as there are no potential purchasers and it is not in an area action plan. The site has been identified for disposal for housing to the private market and is marketed for sale subject to gaining residential planning permission. The appellant has no evidence of particular restraints and as it is in a suitable location and available, it seems reasonable to consider that the 27 units could be achievable in the time scale.
65. I have also taken into consideration the general concern that many of the proposed developments would, at least in part, be undertaken by the same developers. While I note that this could have an impact on supply and build-out rates, the developments are on different sites and likely to be attractive to different clients and as already noted there is a considerable need in the area. While there will be logistical matters to be considered for more developers there is no clear evidence that this cannot be achieved. I do not consider that this should mean that the sites should not be included on the supply side.
66. Overall I consider that the supply side as indicated by the council from table 6b (5333) should be reduced by 36. This means that the supply figure of line g of table 6b should be a little below 5300, so the five year supply in line h would still be well above 5 years and I consider that the council can demonstrate an up to date 5 year supply.

Other Matters

67. LP Policy NE6 requires provision of urban green space and play areas and these would be provided through the planning obligation. I acknowledge that this would ensure the needs of the housing development would be properly met in relation to the provisions of the undertaking. If the existing green space were to be improved as part of this process, there could be some benefits to the local community, to which a little weight should be attached in favour of the development.

68. I have taken into consideration the considerable local support for the proposal, but the decision also takes into consideration the planning policy and the need for employment land and the evidence provided does not indicate that employment use, some of which is proposed with this development, could not be achieved while also providing a satisfactory environment for all.

Planning balance

69. The Framework notes that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and The Framework does not change the statutory status of the development plan.

70. I have taken into consideration the potential benefit from the planning obligation, particularly of enhancing existing green spaces. I have also taken into consideration the proposed planning conditions and general public support for the proposal.

71. In relation to The Framework and particularly Paragraph 22, it has not been shown that there is no reasonable prospect of the site being used for the allocated employment use. Therefore this is not a situation where applications for alternative uses of land should be treated only on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities. LP Policy E12 remains particularly relevant.

72. The council acknowledges that housing policies in the development plan are out of date and therefore paragraph 14 of The Framework is engaged and provides guidance to grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in The Framework taken as a whole. However, I have found that the council can now demonstrate an up-to-date 5 year housing supply, which is not the same as with the previous appeal and this diminishes the weight that I attach to the need for housing.

73. In my view, the site is in a very sustainable location, being close to services and facilities and would be suitable for housing and employment use, so the proposal is sustainable development in terms of location. It would also, as outlined by the appellant, make important contributions to the local economy, during construction and after completion. The housing and employment would also perform important social functions. Overall, I conclude that the proposed development would be sustainable development in accordance with paragraph 7 of The Framework. Therefore, as well as the weight associated with paragraph 14, in accordance with paragraph 49 of The Framework, housing applications should also be considered in the context of the presumption in favour of sustainable development.

74. The Framework notes that pursuing sustainable development involves seeking positive improvements in the quality of the built environment and people's quality of life, including making it easier for jobs to be created. Every effort is to be made to objectively identify and then meet the housing and business needs of an area. To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business. Therefore, it is necessary to balance the competing needs of business and housing development.

75. In this case, taking into account the non accordance with the development plan, the important role employment land can play in the economic growth of the city and the benefits of having available a high quality large site in the Western Corridor area of the city, I conclude on balance that these factors far outweigh the need for, and benefits of, the proposed residential/employment development, even accepting the positive benefits these would also provide in terms of sustainable development, and the weight to be attached to this as promoted by paragraphs 14 and 49 of The Framework do not swing the balance in favour of the proposed development.
76. I have taken account of all other matters raised in evidence at the Inquiry and in the written representations, but they do not outweigh the conclusions I have reached in respect of the main issues of this appeal.

Graham Dudley

Inspector

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mrs M Griffiths	DWF LLP Solicitors, Bridgewater Place, Leeds
She called	
Mr S Nicol BA MA	Regeneris Consulting
Mr J Everett MRTPI	CBRE

FOR THE LOCAL PLANNING AUTHORITY:

Mr I Ponter	Of Counsel, instructed by Mr N Chester, Solicitor at Kingston Upon Hull City Council
He called	
Mr R Gray MRTPI	
Mr J Gardner BSc MSc	Justin Gardner Consulting
Mr C Cumberlin MA TRP MRTPI	Principal Planner, Kingston upon Hull City Council
Mr J Wright Dip URP MRTPI	Principal Development Management Officer, Kingston upon Hull City Council

DOCUMENTS

Document	1	Appellant's appearances
	2	Supplemental proof of Mr Everett
	3	Appendices JE31 – JE33
	4	Council's appearances
	5	Notification letter
	6	Appellant's opening submissions
	7	Council's opening submissions
	8	Email dated 5 May 2015 from R Lowther to R Gray
	9	Draft statement of common ground
	10	Details of Mr J Gardner
	11	Draft statement of common ground
	12	Extracts from Planning Practice Guidance
	13	Secretary of State Decision APP/R0660/A/13/2209335
	14	Letter from GVA dated 26 March 2015
	15	List of conditions
	16	Revised list of sites for supply of housing
	17	Agreed Statement of Common Ground
	18	Plan showing housing sites
	19	Revised list of sites for supply of housing
	20	Revised tables from Mr Everett
	21	Council's closing submissions
	22	Appellant's closing submissions