



Appeal Decision

Hearing held on 18 February 2025

Site visit made on 19 February 2025

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th August 2025

Appeal Ref: APP/W0734/W/24/3351886

Nunthorpe Grange, Nunthorpe, Middlesbrough TS7 0PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Persimmon Homes Teesside against the decision of Middlesbrough Council.
 - The application Reference is: 20/0658/FUL.
 - The development proposed is described as: Erection of 69 residential dwellings with associated access, landscaping, and infrastructure.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 69 residential dwellings with associated access, landscaping, and infrastructure at Nunthorpe Grange, Nunthorpe, Middlesbrough TS7 0PD in accordance with the terms of the application, Reference: 20/0658/FUL, subject to the conditions in the attached schedule.

Applications for costs

2. An application for an award of costs has been made by Persimmon Homes against Middlesbrough Council. In addition, Middlesbrough Council have made an application for an award of costs against Persimmon Homes. These applications form the subject of separate decisions.

Preliminary Matters

3. Whilst the planning application as originally submitted sought permission for 77 dwellings, during the course of its consideration the proposal was amended to reduce the number of dwellings proposed to 69. It is common ground that the Council determined the planning application on the basis of the revised scheme, and I have, therefore, also considered the appeal on this basis.
4. A draft Unilateral Undertaking in favour of the Council (hereinafter this document is referred to as the UU) and a draft of an agreement under Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 between the appellant and the Council were provided before the hearing. A further draft Unilateral Undertaking in favour of Hartlepool Borough Council was also submitted. Subsequently, following the close of the hearing, the Section 33 Agreement and the two Unilateral Undertakings were finalised. A second version of the undertaking to Hartlepool Borough Council was submitted following comments from that Council. I have had regard to these undertakings and the agreement in my consideration of the appeal.

Main Issue

5. The main issue in this appeal is whether the proposed development makes suitable provision for alternative travel options to the private car and promotes alternative means of travel.

Reasons

6. The appeal site comprises approximately 5.35 hectares of land adjoining the south-eastern boundary of the existing built form of Nunthorpe, to the south of Middlesbrough. The site is currently rough grassland with a lower lying pond/wetland area on part of it. It is bounded to the south and southeast by the A1043 road and to the northeast by a railway line. Beyond the A1043 is open countryside. West of the appeal site boundary are open fields.
7. The current settlement of Nunthorpe predominantly developed during the twentieth century around an earlier railway station that is located to the north west of the appeal site. Next to the railway station, on Guisborough Road, is a small local centre with amongst other things a convenience shop, pharmacy, hairdresser and hot food takeaways. There are also schools, a second small local centre, and a number of other local services elsewhere in the village. In addition to the railway station, bus services run through the settlement on Guisborough Road.
8. The site is part of a wider allocation for residential development at Nunthorpe set out in Policy H29 of the Middlesbrough Housing Local Plan 2014 (the HLP). The principle of residential development on the site is not at issue between the main parties and nearly all detailed matters relating to the development are agreed as common ground.
9. The sole matter in dispute between the parties is whether there is a requirement for a pedestrian and cycle link between the new development and the existing residential development on Nunthorpe Gardens to facilitate pedestrian and cyclist movements and encourage the use of alternative means of transport to the private car. At the end of the cul-de-sac road of Nunthorpe Gardens, there is a strip of land that runs between numbers 18 and 19 and adjoins the appeal site boundary, where there is a field gate. The field gate is reached by a "grasscrete" access track which runs from the metalled road and footway. At the time the application was made and at the time of the hearing, this area of land was in the ownership of a third party.
10. In essence, the appellant's position is that there is no policy requirement for such a link but, in any event, the appellant can either provide the link, or a suitable alternative route. The Council contend that such a link is necessary, there is doubt over the appellant's ability to provide the link, and that the alternative proposal is not a suitable route.
11. The Middlesbrough Local Development Framework Core Strategy 2008 (the Core Strategy) at Policy CS4 addresses Sustainable Development and expects *inter alia* that new development ensures everyone has access to the health, education, jobs, shops, leisure and other community and cultural facilities that they need in their daily lives; and is located so that services and facilities are accessible on foot, bicycle, or by public transport. This is so that reliance on the private car is reduced or minimised, and the use of sustainable forms of transport encouraged. Policy

CS5 of the Core Strategy expects new development to be of a high standard of design that it is well integrated with the immediate and wider context.

12. HLP Policy 29 sets out that development proposals will be expected, amongst other matters, to retain and integrate existing footpaths, which should be combined with additional cycle and footpath routes. Policy H29 is accompanied by an indicative site layout for the wider allocated site at Figure 3.4. This shows an existing Public Right of Way to the south west of the appeal site that runs generally north west across the allocation from the A1043 to Guisborough Road and an annotation “pedestrian links” indicated by a black double ended arrow that runs generally north east to south west across the allocation from the appeal site to Stokesley Road. It does not, however, indicate a link to Nunthorpe Gardens from the part of the allocated site containing the appeal site.
13. In January 2019, the Council adopted the Nunthorpe Grange Design Code (the Design Code). This document sets out more detailed design requirements for the housing area which are to be read alongside the more general policies in the Core Strategy and HLP. These include noting that, to be successful Nunthorpe Grange must be well connected to the existing homes and community in Nunthorpe and setting out an expectation that a meandering network of footpaths and cycleways would cross the wider housing area linking the new green spaces and connecting back to the existing Nunthorpe community. The Design Code also notes that “The location of the Nunthorpe Grange site at the edge of Nunthorpe and in close proximity to major transport routes could lead to an isolated development if the concepts of community and connectivity are not integrated into the development”.
14. Included within the Design Code is an indicative masterplan which states that it was produced in response to the site analysis carried out in previous sections of the document, and the requirements set out in the HLP. It also states that the masterplan shows the essential elements to be incorporated into any design¹. The masterplan shows a pedestrian and cycle link from the appeal site to Nunthorpe Gardens in addition to other internal site paths which are more extensive than shown on Figure 3.4 of HLP Policy H29.
15. The National Planning Policy Framework (the Framework) encourages the preparation of design guides and codes to provide maximum clarity about design expectations at an early stage of the development but notes that to carry weight in decision making design guides or codes should be produced either as part of a plan or as supplementary planning documents. Whilst not styled as a supplementary planning document, the Design Code has been subject to public consultation, and consultation with relevant stakeholders, and has been formally adopted by the Council. Consequently, I am of the view that at the very least moderate weight can be given to the Design Code.
16. Paragraph 109 of the Framework sets out the overarching objective that transport issues should be considered from the earliest stages of plan-making and development proposals, using a vision-led approach to identify transport solutions that deliver well-designed, sustainable and popular places by amongst other matters identifying and pursuing opportunities to promote walking, cycling and public transport use

¹ Middlesbrough Council - Nunthorpe Grange Design Code 2019 pp 18-19

17. Framework Paragraph 115 expects that sustainable transport modes are prioritised, taking account of the vision for the site, the type of development, and its location. Framework Paragraph 117 sets out that applications for development should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second to facilitating access to high quality public transport. It also expects development to create places that are safe, secure, and attractive, and minimise the scope for conflicts between pedestrians, cyclists, and vehicles.
18. The Development Plan allocation indicates that the wider site covered by the H29 allocation is broadly well located in terms of the potential to access shops, schools, employment opportunities, services and other facilities. It is not explicitly set out in either Core Strategy Policy CS4 or HLP Policy H29 that a pedestrian and cycle link to Nunthorpe Gardens is required. Nevertheless, Core Strategy Policy CS4 requires development to be located so that services and facilities are accessible on foot, bicycle, or by public transport to reduce reliance on the private car. Policy CS5 requires development to be well integrated with the immediate and wider context and HLP Policy H29 requires additional cycle and footpath routes to be combined with existing ones. The Framework expects walking, cycling and public transport to be prioritised with the highest priority given to pedestrian and cycle movements.
19. Within this context, the guidance in the Design Code in respect of the provision of a pedestrian and cycle link, although it is not policy *per se*, would achieve these policy requirements and make the development compliant with the requirements of Policies CS4, CS5 and H29. Taking all of the relevant policy factors together, the link between the appeal site and Nunthorpe Gardens is required to make the development acceptable.
20. I have noted the appellant's point that new bus stops of the A1043 are being provided as part of the development and that Core Strategy Policy CS4 g) refers to services being available by foot, cycle, or public transport. Nonetheless, it is not at all clear when bus services might be diverted or routed via the A1043 to serve the new bus stops. The appellant accepted at the hearing that it is not yet known which bus service would be diverted to serve the Nunthorpe Grange allocation. The submitted UU does contain a provision for the payment a sum towards strategic highways improvements towards the provision of highway works to improve the accessibility of the site for non-car users. However, these works are unspecified in the UU (but likely refer to certain requirements set out in the Design Code), and the phrase strategic highways improvements would not necessarily imply the subsidising of the diversion of a bus service. If this were the intention, I would expect it to be more explicitly stated. I would agree with the view expressed by the Council at the hearing that the bus operators would be unlikely to divert a bus route to serve a relatively small number of dwellings and that, as such, it may be some years before public transport becomes a viable alternative for residents of the new development to access facilities in Nunthorpe. Consequently, I do not consider that there would be a public transport option available from the outset of the development which would compensate for there not being a pedestrian or cyclist connection to the wider settlement.
21. The appellant also proposed an alternative route in the event that a link between the proposed development and Nunthorpe Gardens was not achievable. This alternative route proposed a link from the south of the appeal site, alongside the

A1043 to join an existing Public Right of Way Footpath, Footpath 114/9/1, to the east of the appeal site. Footpath 114/9/1 commences on the A1043 and terminates on the adopted highway of Morton Carr Lane to the north from whence access can be gained to Guisborough Road to the north east of the station and local centre.

22. This alternate route is approximately twice the length of the walking route from the site via Nunthorpe Gardens. Depending on the point within the site from which the distance is measured, the length of the proposed alternative route would be between 1.4 and 1.7 kilometres to the local centres on Guisborough Road as opposed to approximately 0.6 kilometres via Nunthorpe Gardens. It would also involve walking a considerable distance adjacent to the A1043, which is subject to a 60mph speed limit at this point. Due to changes in land levels between the A1043 and adjacent land to the north, the practical width of the grass verge adjacent to the carriageway varies and it is encroached into by gullies for the highway drainage. The available width also narrows where the road is bridged over the railway line. A combined footway/cycleway requires a minimum width of 3 metres in order to safely accommodate both types of user. From measurements taken during the site visit, and agreed by the parties, this 3 metre width could not be achieved along the whole of the relevant part of the A1043. The section of the route along Footpath 114/9/1 is enclosed by trees to each side and is generally secluded. At present it is not surfaced. Neither the A1043 nor Footpath 114/9/1 has lighting although I note that if this option were to be pursued it is proposed that lighting would be installed to the A1043, and lighting and a sealed surface provided to Footpath 114/9/1.
23. During the site visit I walked from the appeal site via Nunthorpe Gardens to the station/local centre and from there back to the appeal site via the proposed alternative route. I observed during the site visit that traffic speeds on the A1043 were generally high. During periods of inclement weather, the combination of the proximity to the carriageway and the high vehicle speeds would lead to significant amounts of road spray being experienced by any pedestrian/cyclist route alongside. Due to the presence of tree planting alongside the A1073, and the presently undeveloped area around Morton Carr Lane, the suggested route has an isolated feeling and appearance and, because the tree belt is to be retained, would not benefit from much casual surveillance from the proposed housing. Whilst the appellant suggests that distances of up to 2 kilometres are acceptable for walking, whether that option is taken up would very much depend on the attractiveness of the route. From what I saw when I visited the site, I am not persuaded that such an exposed and isolated route would be attractive to pedestrians or cyclists.
24. Although not determinative, Footpath 114/9/1 currently only has public rights over it on foot and there are no rights over this route for cyclists. This footpath is located in the neighbouring Redcar and Cleveland Borough and the views of the relevant Highway Authority in respect of any upgrade to Bridleway status, or if any higher rights may exist, are not known. This casts further doubt on the potential efficacy of the proposed route in genuinely prioritising pedestrians and cyclists and providing an alternative to the use of the private car.
25. Overall, based on the submitted evidence and what I saw when I visited the site, due to its length and physical characteristics, the suggested alternative route would be unlikely to encourage walking or cycling from the appeal site to facilities within Nunthorpe and would result in most, if not all journeys being made by

private car. As a result, I do not find the argument that the suggested alternative route would be a suitable or attractive route for pedestrians and cyclists a persuasive one. Consequently, in my view, the provision of a link from the appeal site to Nunthorpe Gardens as set out in the Design Code is the only practical solution to make the development compliant with the requirements of Policies CS4, CS5 and H29.

26. The appellant considers that a Grampian style condition could have been imposed to achieve this. The Planning Practice Guidance advises that it may be possible use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken. However, it also advises that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. At the time of the determination of the planning application the appellants position was that the land required for the link was not available for purchase and, consequently, that link could not be delivered². On this basis, it could reasonably be concluded that there was no prospect of the action in question being performed within the 3 year time limit normally imposed on planning permissions and, as such, it would not be appropriate to utilise a Grampian style condition.
27. In their appeal submissions the appellant sets out that through negotiation they have reached an agreement with the 3rd party landowner to purchase the land required for the pedestrian/cycle link to Nunthorpe Gardens. Shortly before the hearing opened the appellant provided a copy of an undated letter from the landowner stating that the landowner has agreed in principle, although subject to contract, to either; transfer the land to the appellant; or grant an easement over the land for pedestrian access only.
28. At the hearing the appellant's representative advised that the purchase of the land had been agreed, and that the price had been agreed, but the transfer of title to the land was pending. It was further stated that appellant is acquiring the land regardless of the outcome of the appeal. I have not received any further update in respect of this since the hearing closed and have to assume that any prospective purchase has not yet been finalised.
29. This notwithstanding, the appellant's statements at the hearing do clarify that there is now no longer "no prospect at all" of the action being carried out within time limit of any permission granted. On the basis of the evidence that has come forward at appeal, there is at least a reasonable expectation that the appellant would be able to secure the land required for the footway/cycleway link. This does not, however, necessarily make a Grampian style condition appropriate.
30. The land over which the footway/cycleway link would pass is outside the planning application site boundary. Presently there are no public rights over the land. In order to ensure that there would be permanent public rights to pass and repass over this land, that the route is properly maintained in the interests of safety, and that the development would be well integrated with the immediate and wider context and combined with existing footway and cycle routes, it is necessary that the footway/cycleway link be dedicated as a highway.

² Appellant's Committee Handout at Appendix 1J to the Council's Statement of Case.

31. A planning condition cannot be used to require that land be dedicated as a public highway³. The finalised UU contains a provision that a scheme be submitted to the Council demonstrating that pedestrian and cyclist access from the appeal site to the existing highway on Nunthorpe Gardens for all persons has been secured in perpetuity, when it will be delivered, and that it would be offered for adoption by the Highway Authority. This obligation would meet the tests in Paragraph 58 of the Framework and the requirements of Section 122(2) of the Community Infrastructure Regulations 2010 in that it is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
32. Although the appellant has not yet obtained legal ownership of the necessary land, the terms of the obligation are such that the development could not proceed unless and until the obligation is met. In this respect the obligation offered at the hearing would address the objection by the Council in respect of the connectivity of the proposed development for pedestrians and cyclists.
33. That said, on its face the wording of the obligation does not provide certainty with regard to when the footway/cycleway link would be implemented and made available. It does require a timescale for delivery to be submitted before development commences but goes no further than that. Although point 10.2 of the Schedule to the UU specifies that the development shall come forward in strict accordance with the approved details, point 10.1 does not suggest that the details are to be approved by the Council, merely that they are submitted to it.
34. It is not within the scope of my powers to amend the submitted unilateral obligation beyond finding that any obligation contained therein does not pass the statutory tests and, consequently, does not have any effect. However, the implementation of the footway/cycleway link could be secured by way of a planning condition requiring it to be delivered at a specific trigger point, e.g. before any completed dwellings are occupied.
35. Drawing the above points together, I have found that, in order to comply with the requirements of the development plan and the framework and to ensure that the proposed development makes suitable provision for alternative travel options to the private car and promotes alternative means of travel, it is necessary for there to be a footway/cycleway link from the appeal site. I have also found that the route proposed by the appellant via the A1043 and Morton Carr Lane would not be a suitable alternative to a link from the appeal site to Nunthorpe Gardens. At the time that the application was determined, the appellant's position was that it was not possible to provide the link to Nunthorpe Gardens due to land ownership issues.
36. Since the determination of the application and during the course of the appeal, the circumstances in respect of the land ownership have changed. The evidence before me at the hearing indicates that although these are not finally resolved, there is a reasonable likelihood that the appellant will in fact be able to acquire the required area of land to provide the link within the time limits of any planning permission granted and a planning obligation is offered requiring the details of that link and when it would be implemented to be provided. Subject to a suitably

³ *DB Symmetry Ltd & another v Swindon Borough Council* [2022] UKSC 33 applying the judgement in *Hall & Co Ltd v Shoreham by Sea UDC* [1964] 1 WLR 20 which found that a condition that sought to establish a right of passage over land to all persons was *ultra vires*.

worded condition, the link could be provided at an appropriate time. Within this context, I am satisfied that the proposed development would make suitable provision for alternative travel options to the private car and promote alternative means of travel. It would therefore comply with the relevant requirements of Core Strategy Policies CS4 and CS5, HLP Policy H29, the Guidance in the Design Code, and the requirements of the Framework.

Other Matters

37. Concerns were raised by interested parties regarding the effect on the living conditions of the occupiers of number 18 Nunthorpe Gardens in terms of overshadowing and loss of light caused by the erection of a two storey house on plot 46 of the proposed development. 18 Nunthorpe Gardens is a two storey detached house the gable of which faces the appeal site. A conservatory has been constructed on the gable end of the house and extends to approximately 1.9 metres from the current property boundary fence, which is approximately 1.8 metres high at this point. The proposed development includes a two storey house on Plot 46. This house would have an L-shaped plan form with the longer leg running parallel to the common boundary with 18 Nunthorpe Gardens. The front gable end of the proposed new house would be approximately level with the frontmost part of the house at 18 Nunthorpe Gardens and the rear wall of the proposed house would be sited beyond the rear wall of number 18. The new house would be positioned close to the common boundary.
38. Although it was suggested that Number 18 Nunthorpe Gardens has acquired a right to light, no evidence was provided to me to demonstrate that an easement in respect of light has been registered at the property or the appeal site. Nonetheless, Policy DC1 of the Core Strategy expects development proposals to have a minimal effect on the amenities of occupiers of nearby properties both during and after completion.
39. Reference has been made to the guidance published by the Building Research Establishment (BRE) with regard to effects on sunlight and daylight⁴. Whilst this document is used by many local planning authorities in assessing proposals, it is not planning policy but rather guidance.
40. The 25° and 43° tests set out the BRE guidance give an indication of whether there will be an effect on sunlight and daylight received at a neighbouring property. They do not, however, give an indication of the magnitude of that effect or whether that effect will be adverse. The magnitude of the effect is assessed by further calculations to determine the difference between the pre and post development situation and the extent of any reduction. No further assessment of the extent of the effect has been put to me.
41. The proposed house on Plot 46 would be located to the south east of number 18 Nunthorpe Gardens. As a result of the relative positions and height of the proposed house, there would a reduction in the amount of daylight and sunlight received by the conservatory at number 18 during the course of the day. Nevertheless, because of the extent of the glazing in the structure, it would still receive direct sunlight for part of the day, notably in the afternoon and evenings once the sun has passed the position where the new house would intervene. Whilst there would be a change, this is not synonymous with harm. The overall

⁴ Site layout planning for daylight and sunlight - A guide to good practice. Littlefair *et al* 3rd Edition 2022

context also needs to be taken into account. The proposed new dwelling on Plot 46 would affect the conservatory at number 18 which is just one of the principal habitable rooms. It is not suggested that the proposed new house would affect daylight or sunlight to any of the other rooms in the house. There is no substantiated evidence that the extent of the reduction in sunlight and daylight would be so great as to constitute an adverse effect.

42. Also due to the extent of the glazed area of the conservatory the proposed new dwelling on Plot 46 would be visible from there. The wall of the new house would be approximately 4.5 metres from the end wall of the conservatory. At present the outlook from the south-eastern side of the conservatory is partly occluded due to its proximity to the existing boundary fence. This would be increased by the presence of the new house. However, the outlook from the front and rear of the conservatory would be unaffected and the proposed new dwelling would not be visible from any of the other habitable rooms within number 18. Taken overall, although there would be an effect on number 18 this would be limited to just one room and, consequently, the effect would not be so severe that the house would be a notably less pleasant place to live.
43. It should be borne in mind that Core Strategy Policy DC1 does not require there to be no harm to nearby properties, only that the effect of the development be minimal. The Policy accepts that new development may have some minor adverse effects on nearby properties and yet still be acceptable. I find that to be the case here and that the proposal would not conflict with Core Strategy Policy DC1.
44. Due to the topography of the site and a high water table making infiltration drainage for surface water impractical, it would be necessary to incorporate a pumping station for both foul and surface water into the overall design of the development. It is proposed that this would be located in the northern part of the site within the area of open space. Concerns were raised by interested parties with regard to the visual appearance of the pumping station.
45. Although it would be located within an open part of the site, the majority of the facility would be located below ground. The only significant above ground elements would be a small area of hardstanding and an equipment cabinet measuring 3 metres wide, 1.2 metres in depth and 2.2 metres high. The vehicular access and the majority of the interior of the pumping station compound would utilise "grasscrete" or a similar pre-cast product that allows grass to grow through a weight-bearing surface. The compound would be enclosed by 1.05 metre high metal railings⁵ combined with a native species hedge⁶.
46. Once established, this hedge would provide an element of screening to the relatively small equipment cabinet. The submitted Landscape Masterplan illustrates other areas of planting and new trees within the proposed open space area together with pathways. Within this context I find that the location, design, and layout of the proposed pumping station would not result in an incongruous or unsightly feature.
47. The UU made in favour of the Council, in addition to securing pedestrian and cyclist links to the existing built up area of Nunthorpe, covers financial

⁵ As shown on Boundary Treatment Layout, Drawing No: NUN/GBR/004 Revision Y

⁶ Landscape Masterplan, Drawing No: JBA 20/084/SK01, Revision C

contributions to off-site affordable housing, the provision of community facilities, and strategic highways improvements. The UU also makes provisions for a sustainable travel voucher to be given to the first occupier of each new dwelling; entering into an agreement under Section 33 of the Local Government Miscellaneous Provisions) Act 1982 in respect of nutrient neutrality mitigation for the development; the provision of a temporary access from the A1043 and its subsequent removal when no longer required; the provision and future maintenance and management of public open space within the site; and provision for the future transfer of the public open space land to the Council at, or before, the end of a five year maintenance period.

48. Core Strategy Policy C6 sets out that the Council will seek contributions towards the cost of providing infrastructure and of meeting social and environmental requirements where necessary. Policy H12 of the HLP requires developments of five or more dwellings to provide 15% of the proposed units as affordable housing and on sites of 30 or more, a minimum of 5% must be provided on site with the remainder provided as a financial contribution to fund affordable housing on regeneration sites. The appeal scheme proposes that the 15% requirement for affordable housing is met entirely through off site provision. This aligns with Policy H29(k) of the HLP and Policy H12 does allow for flexibility where other policies indicate that this can be so. The requirement for the affordable housing contributions is therefore necessary to make the proposal compliant with HLP Policies H12 and H29.
49. The submitted UU includes a sum of £50,000 as a contribution towards the provision of new community facilities or the improvement of existing community facilities in the Nunthorpe Ward. Although this figure is agreed by the Council⁷, no evidence has been put to me regarding how this figure was arrived at or the purposes to which it might be put. Core Strategy Policy C6 sets out that contributions towards the cost of meeting social requirements will be sought where necessary. Nevertheless, in order to meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) and Paragraph 58 of the Framework, the obligation must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. The introduction of new residential development may increase demand for community facilities. However, in the absence of any evidence as to what this contribution would be used for, what facilities are lacking or are required in Nunthorpe, or whether the sum sought is proportionate, it has not been demonstrated that the obligation for a contribution towards community facilities is necessary to make the development acceptable or to fulfil a policy requirement. As such this obligation does not meet the relevant tests and cannot be taken into account.
50. The Design Code sets out off-site works and contributions which are required in connection with the development of the site⁸. These include the provision of the choice of a free bicycle/bicycle accessories or bus pass to the maximum value of £200 to first residents in order to promote sustainable travel; connection of a shared surface path to the existing A1043 roundabout and creation of crossing points on all arms of the roundabout; improvements to the two local bus stops on Guisborough Road; and provision of a footpath along Guisborough Road with a

⁷ Statement of Common Ground - Section 9.2

⁸ Nunthorpe Grange Design Code- Page 21

safe crossing point to link to the existing bus stop. It also requires a contribution towards local strategic road improvements at a rate of £159,295 per net developable hectare. The application was also accompanied by a Framework Travel plan that seeks to encourage the use of alternative modes of travel to the use of private cars.

51. The obligations to provide a sustainable travel voucher and make a financial contribution to strategic highways improvements to improve the accessibility of the development for non-car users are therefore necessary to make the development acceptable in planning terms, meet the requirements of Policy H29 and the Design Code, and to facilitate the implementation of the Travel Plan.
52. The appeal site lies within the catchment of the River Tees and has the potential to impact on the Teesmouth and Cleveland Coast Special Protection Area (and Ramsar Site) (SPA) which Natural England consider to be in an unfavourable condition due to nutrient enrichment, in particular with nitrates. Consequently, in order to be acceptable, it is necessary for the development to provide mitigation. The obligation to enter into a legal agreement to provide a nutrient neutrality mitigation strategy is required to secure this. This matter is considered further later in this decision.
53. With regard to the provision of the temporary access, planning permission has been granted for a roundabout junction on the A1043 which will ultimately provide the main vehicular access to the site although construction of this has not yet started, and in any event, it is located further west than the appeal site boundary. It is unclear whether this access would be provided before any dwellings are completed on the appeal site. As a result, in order to ensure that there is a proper vehicular access to the appeal site, it is necessary to require the construction of the temporary access prior to the construction of any new dwellings. The Nunthorpe Grange Design Code sets out that there should only be one access from the A1043 and, therefore, the temporary access should also be removed once the roundabout junction is provided. Whilst some of these requirements could potentially be dealt with by way of a planning condition, the timings for removal of the temporary access are tied to the completion of legal agreements by a third party with the highway authority. In these circumstances it is more appropriate that they form part of an obligation.
54. The development includes a large area of open space. HLP Policy H29 requires that the development of the wider Nunthorpe Grange site sets aside approximately 3 hectares of land for public open space and recreational purposes. The open space element of the proposal is necessary to allow the development to contribute towards meeting this requirement. The obligation is necessary to ensure that the open space is provided at an appropriate time and to an appropriate standard and made available to the public. The UU also contains an obligation to offer to transfer the open space to the Council at or before the end of the required initial maintenance period. This is necessary to secure future access by the public for the lifetime of the development.
55. I therefore find that the submitted UU meets the relevant tests in the CIL Regulations and Paragraph 58 of the Framework, except where noted in Paragraph 51 *ante* of this decision in respect of the contribution to community facilities.

56. An agreement made under Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 between the appellant and the Council was submitted in draft before the hearing and finalised shortly after the hearing closed. This agreement relates to land owned by the appellant in the administrative area of Hartlepool Borough Council (hereinafter HBC). The land in question forms part of a site being developed by the appellant that was formerly farmland and also lies within the River Tees catchment area. As farmland, this contributed to the nutrient loading in the Teesmouth and Cleveland Coast SPA but because it is being taken out of agricultural use part of the resulting reduction in nutrient loading is to be used to offset the additional load from the appeal site. The Agreement sets out a mitigation strategy that effectively requires that the land bound by the agreement remains as residential urban land. This approach is agreed with Natural England and the Section 33 Agreement in combination with the UU secures this.
57. There has been some correspondence from the parties and from HBC following the close of the hearing in respect of a further unilateral undertaking under S106 of the Town and Country Planning Act 1990 made by the appellant in favour of HBC. This unilateral undertaking has currently been submitted in two forms with slightly different wording "Version A", dated 13 March 2025 and "Version B", dated 7 April 2025. Although HBC comments that the Section 33 Agreement will secure the necessary nutrient mitigation it questions the need for the obligations made to it.
58. Version A of the obligation requires *inter alia* that monitoring reports on the effectiveness of the Nutrient Neutrality Mitigation Strategy be provided to HBC, sets out steps to be taken in the event that the strategy is not meeting the nitrate offsetting requirement, and requires the site owner (who is the appellant in the case) to apply to the Council to have the unilateral undertaking registered as a land charge against the site. Version B of the undertaking is essentially similar in wording apart from the monitoring reports and steps to address any deficiencies identified are required to be reported to Middlesbrough Council.
59. HBC assert that the drafting of Version A in Paragraph 1.4 of Schedule 2, in effect, places an obligation on HBC to approve a remediation plan in the event that the Nutrient Neutrality Mitigation Strategy is failing, which a unilateral undertaking should not do. I would agree that, on a straightforward reading, this would be the case. Version B shifts the monitoring and agreement of remediation to Middlesbrough Council, and to all intents and purposes echoes the requirements in Schedule 1 to the Section 33 Agreement. HBC agree that Middlesbrough Council are the appropriate body for those requirements but question if this does not render the unilateral undertaking to HBC somewhat moot.
60. There is some traction in that argument. However, Paragraph 1.5.2 of Schedule 1 is an obligation to seek the registration of the unilateral obligation as a local land charge against the mitigation site at Hartlepool. The Nutrient Neutrality Mitigation Strategy is in connection with a site in a different local authority administrative area to the appeal site, is required to make the appeal proposal acceptable, and is intended to last for at least 80 years. Given this, it is necessary to take account of any future changes in landownership, any future changes to local government administrative areas, and the fact that the people who are aware of the arrangements made at present may not be involved in the future and, in any event, are unlikely to be involved for the entire term of the agreement. The registration of the undertaking as a land charge would ensure that the requirements of the site are recorded and secure the necessary continuity of the Nutrient Neutrality

Mitigation Strategy. For this reason, I find that Version B of the Unilateral Undertaking to HBC dated 7 April 2025 is necessary, but that Version A is not.

61. I have had regard to all of the representations made by interested parties in respect of the planning application and the appeal. However, the points raised therein do not lead me to a different overall conclusion.

Conditions

62. I have had regard to the list of suggested conditions provided by the parties. A number of these conditions are pre-commencement conditions, and the appellant has agreed to these conditions being imposed if the appeal is allowed.
63. The proposal has been through a number of iterations since it was originally submitted to the Council and in order to provide certainty with regard to what has been granted planning permission, I have attached a condition specifying the approved drawings, which are set out in a separate Schedule.
64. The appeal site is adjacent to a residential area, but vehicular access would be from the A1043. The A1043 is a busy main road subject to a 60 mph speed limit. It is necessary to manage the development of the site by way of a method of works statement in order to ensure that construction traffic and site operatives do not attempt to access the site through the existing residential street of Nunthorpe Gardens or park in the residential area. Similarly, it is necessary to ensure that construction related vehicles do not wait on or park on the verges of the A1043 and obstruct traffic on this road. It is also necessary, in the interests of road safety, to ensure that mud and debris is not tracked onto the A1043 from the construction site and that any damage to the carriageway caused by the passage of heavy construction vehicles is accounted for. As the measures in the method statement would need to be in place for the entire duration of the construction period it is necessary that this condition be a pre-commencement condition.
65. Parts of the appeal site are within Flood Zones 2 and 3 and Low Gill, a watercourse identified as a statutory Main River, originates within the site and flows north west out of the site through residential areas to ultimately drain into the River Tees. The development of the site for residential purposes will alter the drainage characteristics of the site. It is necessary that surface water run-off is properly managed in order not to increase the risk of flooding downstream of the development site and minimise the risk of increased flooding and contamination of the sewerage system and the watercourse during the construction period. As only limited details of the proposed drainage arrangements were submitted with the application it is necessary to impose a condition requiring that the full technical details and arrangements for their subsequent management and maintenance be provided. Because measures to manage surface water during construction would need to be in place at the commencement of the development and drainage systems are installed early in the construction process, it is necessary that these be pre-commencement conditions.
66. No formal assessment for the potential of contamination being present on the site has been undertaken as part of the application process. Part of the site was formerly occupied by a dwellinghouse and stables, with the remainder in agricultural use. There is, consequently, the potential for contamination to be present which has not been identified and given the proposed future use of the site for residential development, the land must be in a suitable condition for that use. It

is, therefore, necessary to impose a condition requiring that the site to be investigated for any potential contamination in order that it can be suitable remediated if required. Because the site investigation and any required remedial works would have to be carried out before the site is disturbed by development activities, it is necessary that this condition is a pre-commencement condition.

67. Policy MWP1 of the Tees Valley Joint Minerals and Waste Development Plan Policies & Sites Development Plan Document 2011 expects all major developments to carry out a waste audit that identifies the amount and type of waste which is expected to be produced by the development, both during the construction phase and once it is in use. The audit is required to set out how this waste will be minimised and where it will be managed to promote the recovery of value from it. As this was not included in the application submission, in order to meet the requirements of this policy it is necessary to secure the audit through a planning condition. Because the audit is required to cover waste produce during the construction period, it is necessary that this be a pre-commencement condition.
68. Although an indicative landscape masterplan has been submitted, this lacks the necessary detail to be an implementable scheme. To ensure that the landscaping is properly and appropriately integrated with the built form of the development, it is necessary to attach a condition requiring that the details of the landscaping is submitted for approval before each phase of the development commences.
69. The appeal site contains a number of existing, established trees mainly around the perimeter which it is proposed to retain. In order to ensure that these trees are not damaged during the construction period it is necessary to attach a condition requiring the developer provide appropriate protection for the duration of works on the site. For this reason, it is necessary that this also be a pre-commencement condition.
70. There is evidence of the presence of Great Crested Newts at the site. To ensure that waterbodies and habitats on the site are protected during the construction period it is necessary to require by condition the submission, approval, and implementation of a Construction Environment Management Plan. As these measure would need to be in place for the duration of the construction period, this necessitates the condition being pre-commencement.
71. To ensure that each new dwelling is served with suitable vehicular access and appropriate parking facilities, it is necessary to impose conditions that prevent the occupation of any dwellings on the site until such time as these have been provided.
72. As set out under the main issue, it is necessary that the footway/cycleway link from the site to Nunthorpe Gardens be provided. Although elements of this are covered by the UU, in order to ensure that it is provided and available for all residents of the new development it is necessary to impose a condition requiring that this be in place before the first occupation of any dwellings.
73. Core Strategy Policy CS4 expects new developments of more than 10 dwellings to incorporate on-site renewable energy facilities or energy saving technologies to provide a minimum of 10% of the predicted energy requirements. This information was not included within the application, and it is therefore necessary to secure compliance with Policy CS4 that a condition is attached requiring this.

74. The scheme includes extensive areas of landscaping, the precise details of which are required by other conditions. To ensure that this landscaping becomes established and remains, it is necessary to attach a further condition requiring details of the management and maintenance of this to be submitted for approval and thereafter implemented.
75. Whilst some details of the proposed external materials have been submitted with the application, the proposed facing bricks and roof tiles are a proprietary product manufactured by the appellant and little information in respect of these is publicly available. Precise information has also not been provided in respect of detailing elements such as doors, windows or fascia boards beyond a general indication of the proposed colour. Consequently, in the interests of the visual appearance of the development it is necessary to impose a condition requiring samples of these materials to be submitted to the Council for approval.
76. The proposed dwelling on Plot 46 is the only new dwelling which would be located adjacent to existing houses. In order to meet the requirements of Core Strategy Policy DC1 to minimise the effect on the living conditions of nearby properties, it is necessary to impose a condition requiring that the first floor window in the elevation of the new dwelling is fitted with a suitable level of obscure glazing and maintained as such.
77. In order to ensure that the site is developed in a manner that does not compromise highway safety, provides accesses and connection points for pedestrians and cyclists at an appropriate time, and minimises the effect on the living conditions of existing residents, it is necessary to include a condition requiring that a Phasing Plan for the development be submitted for approval.
78. To ensure that the estate roads, footpaths and footways and adoptable open spaces are constructed to the correct specification, it is necessary to attach a condition requiring fully detailed drawings of these are submitted for approval as these details were not included with the application.
79. In the interests of highway safety on the A1043, it is necessary that the proposed temporary site access is assessed through a road safety audit. I am advised that this has been partly undertaken, and the condition requires this to be completed.
80. A number of the paths within the proposed open space area are proposed as future Public Rights of Way footpaths⁹. A condition has been suggested that requires the submission for approval by the planning authority of a Public Rights of Way Dedication plan or plans to be submitted to the Council for approval showing the phasing, proposed signage and furniture, structures, construction details and maintenance arrangements. The condition would require the development to be implemented in accordance with these details. The condition further requires that within 6 months of the commencement of the development a draft Dedication Agreement for the Public Rights of Way is to be submitted to the Highway Authority. Core Strategy Policy CS4 expects new development to promote a healthy community and reduce or minimise reliance on the private car and the provision of new Rights of Way, along with other measures proposed in the Travel Plan would secure compliance with this Policy.

⁹ Shown on Drawing Number: NUN-GBR-014 Revision F

81. Most of the aspects of this condition are therefore necessary in order to meet the requirements of Policy CS4. However, the final clause requiring the submission of a draft Dedication Agreement to the Highway Authority is problematic. The Planning Practice Guidance sets out that a positively worded condition which requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990, or an agreement under other powers, is unlikely to pass the test of enforceability.
82. Whilst a new Public Footpath can be created by agreement, those provisions sit within Section 25 of the Highways Act 1980 or, in the alternative, Section 38 of the Highways Act 1980 makes provision for a person to offer a highway for adoption by the Highway Authority. The suggested wording of the condition effectively requires the developer to enter into such an agreement. As such the final clause runs counter to the Planning Practice Guidance. As set out previously in this decision,¹⁰ a planning condition requiring land to be dedicated as a highway would be *ultra vires*.
83. The majority of the suggested condition would meet the relevant tests in the Framework and the Planning Practice Guidance in that it requires a design to be submitted and then implemented. The final requirement of the condition would, however, not be lawful, and I have consequently amended the wording to omit this. This is not to say that the proposed paths should not in due course become Public Rights of Way. The UU contains a clause that confirmation that the link would be offered for adoption is provided. It is open to the appellant to enter into an agreement under Section 25 of the Highways Act or, alternatively, include the paths in question in any subsequent Section 38 Agreement for the adoption of the roads within the development as highways maintainable at the public expense. Equally, if the ownership of the open space is transferred to the Council at the end of the required maintenance period the Council itself could dedicate the routes as Public Footpaths. It is simply a matter that this cannot be required by a planning condition.
84. Parts of the site are identified as being at risk of flooding and the development of the site has the potential to reduce flood water storage capacity. It is therefore necessary to impose a condition requiring that the development be implemented in accordance with the mitigation measures set out in the submitted Flood Risk Assessment.
85. In order to ensure that the site is properly drained, ensure that there is separation of foul water and surface water discharges, and that these are discharged to the correct locations, it is necessary to attach a condition requiring that the submitted drainage strategy is implemented.
86. The appeal site is located next to an active railway line that has the potential to give rise to intrusive noise at some of the new dwellings. To ensure that suitable living conditions are provided for the future occupiers of the dwellings, it is necessary to impose a condition that requires the development to be implemented incorporating the mitigation measures set out in the submitted noise assessment.
87. Similarly, the site is located next to the A1043 road which also has the potential to give rise to intrusive noise at some of the new dwellings. Although a general specification and position of an acoustic fence is included in the application, in the

¹⁰ See Paragraph 31 *ante* and Footnote 3.

interests of the appearance of the development and the outlook from the properties that it would be located in proximity to, it is necessary that the full details of this noise barrier be submitted for approval.

88. The proposal includes the planting of new trees. In the interests of the visual appearance of the development and to ensure that the tree planting becomes established, it is necessary to include a condition requiring the replacement of any new tree that dies, is removed, uprooted or destroyed, or becomes seriously damaged or defective.
89. There are a number of established hedgerows on the site boundaries which are to be retained as part of the development. In the interests of the appearance of the development and to preserve the ecological value of these established hedges, it is necessary to impose a condition requiring their retention and protection during the construction period and the rectification of any damage to them that may occur during the construction period.
90. Due to the presence of protected species at the site and the requirements to make ecological enhancements where possible as expected by Core Strategy Policy CS4 it is necessary to include a condition that requires that agreed mitigation and enhancements be implemented as part of the development.
91. The Council have suggested a number of conditions that purport to remove various permitted development rights afforded by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). These specifically relate to replacement doors and windows, new and approved means of enclosure, front and side extensions, conversion of garages, provision of hardstandings, and means of access to the highway. Paragraph 55 of the Framework makes it clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. This is re-iterated by the Planning Practice Guidance¹¹ which states that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The Planning Practice Guidance also sets out that the scope of conditions removing national permitted development rights needs to be precisely defined, by reference to the relevant provisions in the GPDO, so that it is clear exactly which rights have been limited or withdrawn.
92. The reason given for the proposed imposition of these conditions is “To adequately control the level of development on the site to a degree by which the principle of the permission is based, to protect the visual amenity of the area and in the interests of resident’s amenity having regard for policies CS4, CS5, DC1, the Nunthorpe Grange Design Code and section 12 of the NPPF”.
93. None of the suggested conditions refer to a specific Part or Class of Schedule 2 to the GPDO or a particular paragraph of Chapter 12 of the Framework. Core Strategy Policies CS4, CS5 and DC1 although they refer to development being required to achieve a high standard of design make no mention of the development being retained as built. Nor do they refer to the removal of permitted development rights, or any circumstances where it would be sought to do so.

¹¹ Planning Practice Guidance – Use of Planning Conditions Paragraph: 017 Reference ID: 21a-017-20190723

94. In addition to this, the suggested conditions which purport to remove permitted development rights for replacement doors and windows, the conversion of garages to habitable rooms and which require the retention of the means of enclosure which are approved as part of the original permission do not relate to any permitted development that is defined in Schedule 2 of the GPDO. Arguably, these actions may not be development at all having regard to the definition of development in Section 55 of the Town and Country Planning Act 1990 and the exceptions set out in Section 55(2). Whether such works would only affect the interior of the building or would materially affect the external appearance of the building would be a matter of fact and degree in each particular case.
95. Although the Framework also sets out that local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme, it does not go so far as to require that elements of the development should remain unchanged over its lifetime.
96. I am mindful that the appeal site is subject to a Design Code that is intended to deliver a development of a certain standard of design. Nevertheless, the Design Code states that it is intended to ensure that a high quality development is created at design stage which is then retained throughout the approval and construction process. It does not mention removal of permitted development rights to constrain future changes.
97. Small, incremental, changes over time would inevitably alter the appearance of an area. However, those changes are not inevitably harmful and, ultimately, the character of an area is the result of the evolution of its built form. Whilst they are no doubt well-intentioned, the suggested conditions do not have any basis in policy, some seek to prevent works that may not fall within the definition of development and the remainder are not sufficiently clear with regard to which parts of the GPDO they seek to suspend the operation of.
98. From the evidence before me I do not find that there is a clear justification for imposing those conditions and have, therefore, omitted them.

Conclusion

99. I have found that subject to the legal agreements and undertakings and the imposition of planning conditions, the proposed development would comply with the relevant requirements of the development plan for the area. No material considerations have been identified which would indicate that a decision should be made other than in accordance with the development plan.
100. For the above reasons, I therefore conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Cairnes KC	Advocate for the appellant
Joe Smith	Savills
Neil Morton	Savills
Darran Kitchener	Milestone Transport Planning Ltd.
Richard Holland	Persimmon Homes

FOR THE LOCAL PLANNING AUTHORITY:

Shelley Pearman	Principal Planner Middlesbrough BC
Andrew Glossop	Development Control Manager Middlesbrough BC
Ryan Howard	Solicitor Middlesbrough BC
Simon Thompson	Transport Development Lead Middlesbrough BC

INTERESTED PARTIES:

Adrian Walker	Nunthorpe Parish Council
Bill Wells	Local Resident
Glyn Markley	Local Resident
David Swales	Local Resident

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the Schedule of Approved Plans attached to this decision.
- 3) Prior to the commencement of the development on site, a detailed method of works statement shall be submitted to, and approved in writing by, the Local Planning Authority. Such statement shall include at least the following details;
 - (i) Routing of construction traffic, including signage where appropriate;
 - (ii) Arrangements for site compound and contractor parking;
 - (iii) Measures to prevent the egress of mud and other detritus onto the public highway;
 - (iv) A jointly undertaken dilapidation survey of the adjacent highway;
 - (v) Programme of works; and,
 - (vi) Details of any road/footpath closures as may be required.

The development shall be carried out in accordance with the approved details.

- 4) Prior to the commencement of the development on site, a detailed surface water drainage scheme (design and strategy) shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be designed, following the principles as outlined in the Flood Risk Assessment, reference no. 18134.100/FRA/1 version 6, dated November 2018, and Drainage Statement, reference no. 18134.200/DS/1 version 8. The development shall be completed in accordance with the approved scheme.

The design of the drainage scheme shall include but not be limited to:

- (i) The surface water discharge from the development must be limited to a Greenfield run off rate (Qbar value) with sufficient storage within the system to accommodate a 1 in 30 year storm.
- (ii) The method used for calculation of the existing greenfield run-off rate shall be the Interim Code of Practice for Sustainable Drainage Systems method.
- (iii) The design shall ensure that storm water resulting from a 1 in 100 year event, plus climate change surcharging the system, can be stored on site with minimal risk to persons or property and without overflowing into drains, local highways or watercourses.
- (iv) Provide an outline assessment of existing geology, ground conditions and permeability.
- (v) The design shall take into account potential urban creep.
- (vi) The flow path of flood waters for the site as a result on a 1 in 100 year event plus climate change (Conveyance and exceedance routes).

- 5) Prior to the commencement of the development on site, details of a Surface Water Drainage Management Plan shall be submitted to, and approved in writing by, the Local Planning Authority.

The Management Plan shall include:

- (i) A build program and timetable for the provision of the critical surface water drainage infrastructure.
- (ii) Details of any control structure(s) and surface water storage structures.
- (iii) Details of how surface water runoff from the site will be managed during the construction Phase.
- (iv) Measures to control silt levels entering the system and out falling into any watercourse or public sewer during construction.

The development shall, in all respects, be carried out in accordance with the approved Management Plan.

- 6) Prior to the commencement of development on site, a full and competent site investigation including risk assessment shall be undertaken and submitted to, and approved in writing by, the Local Planning Authority. This must identify any contamination present and specify adequate remediation. The development shall be carried out in accordance with the approved risk assessment and remediation scheme.

Validation of the remediated site shall be provided in the form of a detailed completion statement confirming that works set out and approved were completed and that the site is suitable for its intended use.

- 7) Prior to the commencement of the development on site a Waste Audit must be submitted to, and approved in writing by, the Local Planning Authority. The Waste Audit must identify the amount and type of waste which is expected to be produced by the development both during the site clearance, construction phases and once it is in use. The Audit must set out how this waste will be minimised and where it will be re-used on site.

The development shall thereafter be undertaken in complete accordance with the approved Waste Audit.

- 8) Prior to the commencement of construction of each phase of the development, a scheme showing full details of both hard and soft landscape works and a programme of works shall be submitted to, and approved in writing by, the local planning authority and these works shall be carried out on site as approved.

Details must include all services and physical entities that would impact on landscaping. These details shall include but are not limited to: footpath and cycleway links; proposed finished levels or contours; means of enclosure and boundary treatment; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials, minor artefacts and structures (e.g.; furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g.; drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant.

Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass

establishment); schedules of plants, noting species, plant sizes and proposed numbers, densities where appropriate; implementation programme.

- 9) Prior to the commencement of the development on site the following shall be submitted to, and approved in writing by, the local planning authority:
- (i) A plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter measured over the bark at a point of 1.5m above ground level exceeding 75mm showing which trees are to be retained and the crown spread of each retained tree.
 - (ii) Details of the species, diameter (measured in accordance with paragraph a) above and the approximate height and an assessment of the general state of health and stability of each retained tree and of each tree which is on land adjacent to the site and to which paragraph c) and d) below apply.
 - (iii) Details of any proposed topping or lopping of any retained tree or of any tree on land adjacent to the site.
 - (iv) Details of any proposed alteration in existing ground levels and of the position of any excavation within the crown spread of any retained tree or of any tree on land adjacent to the site equivalent to half the height of that tree.
 - (v) Details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

The development shall thereafter be carried out in accordance with the details approved under (iii), (iv), and (v) above and the development shall not commence until the tree protection measures approved under (v) have been implemented.

- 10) Prior to the commencement of the development on site, a Construction Environmental Management Plan (CEMP) to ensure waterbodies nearby are protected during construction shall be submitted to, and approved in writing by, the local planning authority. This shall include the following as a minimum:
- Sediment Management plan: The Sediment Management Plan should describe how works will be undertaken to reduce the release of fine sediments and minimise the transport of material downstream. The plan should describe the monitoring that will be completed as part of the plan.
 - Biosecurity plan: The biosecurity plan should detail biosecurity and invasive non-native species (INNS) management best practice, utilising the check-clean-dry procedure across the site. The biosecurity plan should also identify specific actions and mitigation for known INNS. In addition, a procedure should be outlined in the event of new INNS being discovered whilst on site; in the event of which a strategy for containment and removal should be enacted.
 - Pollution Prevention Plan: to include spill procedures and pollution response.
 - Vegetation clearance, habitat and tree protection plan.
 - Protected Species Protection Plan.

Thereafter, the development shall be carried out in accordance with the approved CEMP.

- 11) No dwelling to which this planning permission relates shall be occupied unless or until the carriageway base course and kerb foundation to the new estate road

and footpath to which it fronts, is adjacent to or gains access from, has been constructed. Road and footway wearing courses and street lighting shall be provided within 3 months of the date of commencement on the construction of the penultimate dwelling of the development.

- 12) No part of the development hereby approved shall be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles (and cycles, if shown) associated with that plot/use have been constructed and laid out in accordance with the approved plans, and thereafter such areas shall be retained solely for such purposes.
- 13) The development hereby permitted shall not be occupied until the highway works detailed below have been carried out on site in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
 - a) provision of a lit footway/cycleway link of minimum width of 2m linking Nunthorpe Gardens to the internal site infrastructure.
- 14) The development shall not be occupied until a Management & Maintenance Plan for the surface water drainage scheme has been submitted to, and approved in writing by, the Local planning Authority; the plan shall include details of the following;
 - (i) A plan clearly identifying the arrangements for the adoption of the surface water system by any public authority or statutory undertaker (i.e. s104 Agreement) and any other arrangements to secure the operation of the scheme throughout its lifetime.
 - (ii) Arrangements for the short and long term maintenance of the SuDS elements of the surface water system.
- 15) The dwellings/buildings hereby approved shall not be occupied until details of compliance with a scheme of renewables or a fabric first approach has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall detail the predicted energy requirements of the development post completion and under normal operating use and will detail how 10% of the predicted energy requirements will either be generated on site by renewable technologies or how the fabric of the building shall be constructed to reduce the predicted energy demand (in exceedance of the current Building Regulation Standards) by 10%.
- 16) A Landscape Management Plan(s) covering the relevant phase(s) of development, including long term objectives, management responsibilities and maintenance schedules in perpetuity for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the first occupation/use of a building, or within 12 months of commencement of works on the relevant phase(s) of the development to which it relates, whichever is the sooner. Thereafter the Landscape Management Plan must be implemented on site.
- 17) Notwithstanding the details set out in the approved drawing Materials Layout, drawing no. NUNGBR-002 rev. H, prior to the construction of the external elevations of the buildings hereby approved samples of the external finishing materials to be used shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details.

- 18) First floor windows on the northwest elevation of plot 46 hereby approved must be opaque glazed to a minimum of level 3. The opaque glazing must be implemented on installation and retained in perpetuity.
- 19) The development shall be carried out in accordance with a phasing plan to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction (excluding site clearance). The phasing plan shall include the build route and the creation and use of access points including roads, footpaths, cycle paths and bridleways.
- 20) Fully detailed drawings illustrating the design and materials of roads, footpaths and other adoptable open spaces shall be submitted to and approved in writing by the Local Planning Authority prior to the start of construction on site. The development shall be carried out in accordance with the approved details.
- 21) A full 4 stage road safety audit carried out in accordance with guidance set out in the DMRB GG119 and guidance issued by the council, will be required for the temporary site access junction and associated works as specified in submitted drawing(s) Planning Layout, Drawing no. NUN-GBR-001 rev. Y or such plans which are subsequently submitted to and approved in writing by the Local Planning Authority. Stages 3 and 4 of said audit shall be submitted to, and approved in writing by, the Local Planning Authority prior to work on the temporary site access commencing on site. Any remedial works required within the audit shall be implemented within 6 months following the remedial works being identified and agreed.
- 22) Notwithstanding the details in the approved Public Right of Way Plan, drawing no. NUN-GBR-014 rev. F, within 6 months of commencement of the development hereby approved, a Public Rights of Way Dedication plan(s) to a scale of 1:200 showing the following information must be submitted to and approved in writing by the Local Planning Authority.
 - Phasing Plan
 - Signing and furniture i.e. Stiles and Gates
 - Structures i.e. Bridges and Boardwalks
 - Construction Details
 - Maintenance PlanThereafter the development must be carried out in full accordance with the approved details.
- 23) The development hereby approved shall only be carried out in accordance with the Flood Risk Assessment, reference no. 18134.100/FRA/1 version 6 dated November 2018, received 26th July 2022 and the following mitigation measures detailed within the FRA;
 - (i) Finished floor levels shall be set no lower than 0.3 metres above Ordnance Datum (AOD);
 - (ii) No buildings used for dwelling houses shall be in flood zones 2 or 3 as shown in appendix B;
 - (iii) No loss of capacity of the floodplain – through any means including ground raising.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the local planning authority.

- 24) The development hereby approved shall be implemented in line with the drainage scheme contained within the Drainage Statement document, reference no. 18134.200/DS/1 version 4. The drainage scheme shall ensure that foul flows discharge to the foul sewer at manhole 0805 and ensure that surface water discharges to the existing watercourse.
- 25) The development hereby approved shall be carried out in accordance with the Assessment of Noise and Vibration Levels and Noise Amelioration Measures, Report no. LAE1045.1, dated 8th July 2020. Any deviations from the recommendations made in the report shall be submitted to the local planning authority for approval prior to the occupation/first use of the dwellings/buildings and will thereafter be implemented on site. Any mitigation works must be retained on site in an operational state for the lifetime of the building.
- 26) Notwithstanding the details set out in Boundary Treatment Layout, drawing no. NUN-GBR-004 rev. Y; Site Sections, drawing no. NUN-GBR-SEC-001, rev. A; and, Jakoustic Commercial and Highway Barrier System details, received on 27th July 2022, prior to the erection of the noise attenuation fence full details of the design and appearance of the fence to be installed along the boundary with the A1043 must be submitted to, and approved in writing by the Local Planning Authority. The mitigation must be suitable to achieve the necessary noise levels as set out in the Noise and Vibration Levels and Noise Amelioration Measures, Report no. LAE1045.1, dated 8th July 2020, but must also be high quality in terms of its visual appearance.
- 27) If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.
- 28) All hedges or hedgerows on the site, unless indicated as being removed, shall be retained and protected on land within each phase in accordance with details submitted to, and approved in writing by, the local planning authority for the duration of works on land within each phase unless otherwise agreeing in writing by the local planning authority. In the event that hedges or hedgerows become damaged or otherwise defective during such period the local planning authority shall be notified in writing as soon as reasonably practicable. Within one month of such notification a scheme of remedial action, including timetable for implementation shall be submitted to the local planning authority for written approval. The approved scheme shall be implemented in accordance with the approved timetable. Any trees or plants which within a period of 5 years from the date of planting die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 29) The recommendations/mitigation measures/Wildlife Enhancement Plan as set out in the documents detailed below must be carried out on site in accordance with a programme of works to be submitted to and approved in writing by the Local Planning Authority:
- a) Ecology Masterplan, reference no. 101.53 rev. 01 dated November 2021
 - i. Wildlife Enhancements detailed in section 2
 - b) Preliminary Ecological Appraisal, reference no. 101.53 rev. 01, dated October 2018;
 - i. Recommendations detailed in section 4.2
 - c) Bat and Great Crested Newt eDNA Survey, reference no. 101.53 rev. 01, dated July 2019
 - i. Mitigation Strategy and Compensation Strategy section 4.2.2.
 - d) Great Crested Newt Survey Report, reference no. 101.53 rev. 01, dated July 2021;
 - i. Recommendations section 4.2; and,
 - ii. Great Crested Newt Mitigation and Compensation Strategy section 4.3
 - e) Quants Environmental Letter dated 8th June 2020 re. Great Crested Newt Survey; and,
 - f) Additional Information – GCN, reference no. 101.53 dated 12th March 2021.
- Thereafter the mitigation/enhancement works shall be retained on site in perpetuity.

Schedule of Approved Plans

Drawing number	Title
NUN-GBR-000 rev. A	Location Plan
NUN-GBR-001 rev. Y	Planning Layout
Bw_MADet_CtP_R21G 901 rev. C	The Barnwood – Detached, Proposed Plans, Construction
Bw_MADet_CtP_R21G 902 rev. C	The Barnwood – Detached, Compliance_Plans, Construction
Bw_MA-Det_CtP_R21G 905 rev. B	The Barnwood – Detached, Proposed Elevation – Contemporary, Construction
Ch_MADet_CtP_R21G 901 rev. B	The Charnwood – Detached, Proposed Plans, Construction
Ch_MADet_CtP_R21G 902 rev. B	The Charnwood – Detached, Compliance_Plans, Construction
Ch_MA-Det_CtP_R21G 905 rev. B	The Charnwood – Detached, Proposed Elevation – Contemporary
Gw_MADet_CtP_R21G 901 rev. B	The Greenwood – Detached, Proposed Plans, Construction
Gw_MADet_CtP_R21G 902 rev. B	The Greenwood – Detached, Compliance_Plans, Construction
Gw_MA-Det_CtP_R21G 904	The Greenwood – Detached, Proposed Elevation – Village, Construction
Bt_MA-Det_CtP_R21G901	The Brampton – Detached, Proposed Plans, Construction
Bt_MADet_CtP_R21G 902	The Brampton – Detached, Compliance_Plans, Construction
Bt_MA-Det_CtP_R21G 905	The Brampton – Detached, Proposed Elevation – Contemporary, Construction
Bs_MADet_CtP_R21G 901 rev. A	The Brightstone – Detached, Proposed Plans, Construction
Bs_MADet_CtP_R21G 902 rev. B	The Brightstone – Detached, Compliance_Plans, Construction

Bs_MA-Det_CtP_R21G 905 rev. B	The Brightstone – Detached, Proposed Elevation – Contemporary, Construction
Ke_MA-Det_CtP_R21G 901 rev. A	The Kennet – Detached, Proposed Plans, Construction
Ke_MADet_CtP_R21G 902 rev. B	The Kennet – Detached, Compliance_Plans, Construction
Ke_MADet_CtP_R21G 905	The Kennet – Detached, Proposed Elevation – Traditional, Construction
HeD_MA_Det_R21 901	The Hendon – Detached, Proposed Plans, Construction
HeD_MA_Det_R21 902	The Hendon – Detached, Compliance Plans, Construction
HeD_MA_Det_R21 907	The Hendon – Detached, Proposed Elevation – RS-Nunthorpe, Construction
TuN_MA_Det_R21 201	The Turnberry – Detached, Ground Floor GA Plan, Construction
TuN_MA_Det_R21 210	The Turnberry – Detached, First Floor GA Plan, Construction
TuN_MA_Det_R21 907	The Turnberry – Detached, Proposed Elevation – RS-Nunthorpe, Construction
HeY_MA_Det_R21 901	The Heysham – Detached, Proposed Plans, Construction
HeY_MA_Det_R21 902	The Heysham – Detached, Compliance Plans, Construction
HeY_MA_Det_R21 907	The Heysham – Detached, Proposed Elevation – RS-Nunthorpe, Construction
BaR_MA_Det_R21 901	The Barmouth – Detached, Proposed Plans, Construction
BaR_MA_Det_R21 902	The Barmouth – Detached, Compliance Plans, Construction
BaR_MA_Det_R21 907	The Barmouth – Detached, Proposed Elevation – RS-Nunthorpe, Construction
OxW_MA_Det_R21 901	The Oxwich – Detached, Proposed Plans, Construction
OxW_MA_Det_R21 902	The Oxwich – Detached, Compliance Plans, Construction

OxW_MA_Det_R21 907	The Oxwich – Detached, Proposed Elevation – RS-Nunthorpe, Construction
WiT_MA_Det_R21 901	The Walcott – Detached, Proposed Plans, Construction
WiT_MA_Det_R21 902	The Walcott – Detached, Compliance Plans, Construction
WiT_MA_Det_R21 907	The Walcott – Detached, Proposed Elevation – RS-Nunthorpe, Construction
SGD-06	Single Garage Store – Plans and Elevations
SGD-01, rev. B	Single/Double Garage – Plans and Elevations
NUN-GBR-002 rev. H	Materials Layout
NUN-GBR-004 rev. Y	Boundary Treatment Layout
NUN-GBR-014 rev. F	Public Right of Way Plan
NUN/GBR/007 rev. A	Link Foot Path
18134-D100 rev. 4	Levels Plan Sheet 1 of 3
18134-D101 rev. 5	Levels Plan Sheet 2 of 3
18134-D102 rev. 5	Levels Plan Sheet 3 of 3
PS1080-001	Topographical Survey
PS1080-002	Topographical Survey
NUN-GBR-005 rev. E	Tree Protection
18134 D001 rev. 7	Proposed Drainage Schematic
18134-D900 rev. 2	Flood Exceedance Plan
18134-D901 rev. 1	Pumping Station Details
156414/8001	Landscape Proposals Plan
101.53 rev. 01	Ecology Masterplan
GTC-E-SS-0011_R1-8_1_of_1	Close Coupled Substation, Front Gabled Roof Detail, General Arrangement
NUN-GBR-SEC-001, rev. B	Site Sections
	Jakoustic Commercial and Highway Barrier System details



Costs Decision

Hearing held on 18 February 2025

Site visit made on 19 February 2025

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th August 2025

Costs application in relation to Appeal Ref: APP/W0734/W/24/3351886

Nunthorpe Grange, Nunthorpe, Middlesbrough, TS7 0PD

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Persimmon Homes Teesside for a full award of costs against Middlesbrough Council.
 - The appeal was against the refusal of planning permission for a development described as: Erection of 69 residential dwellings with associated access, landscaping and infrastructure.
-

Decision

1. The application for an award of costs is refused.

Preliminary matters

2. Both parties have made applications for an award of costs in this appeal. The Council's application for costs is the subject of a separate decision.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The appellant's costs application is predicated on the substantive grounds of preventing or delaying development which should clearly be permitted; imposing a condition which does not meet the relevant tests; requiring a planning obligation which does not meet the relevant tests; refusing planning permission on a ground capable of being dealt with by condition; and not determining similar cases in a consistent manner.
5. I have found that the pedestrian and cyclist link between the appeal site and Nunthorpe Gardens is required by the overall policy context. Whilst the Council only referred to Policy CS4 of the Middlesbrough Core Strategy in the reason for refusal, which was perhaps an omission on its part, it does not preclude from consideration any other relevant policies.
6. The matter of whether a "Grampian" style condition would have been appropriate is covered in the main decision and was clear that at the time that the planning application was determined the appellant's position was that the land required for the link to Nunthorpe Gardens was not available to them. The Council had also considered the appellant's proposed alternative link and concluded that it would not be

a suitable route to meet the policy requirement irrespective of any practical difficulties or uncertainties in providing this. I have also found this to be the case. In these circumstances it could reasonably be held that there was no reasonable prospect of a link being provided within the time period for commencing the development and that a “Grampian” style condition would not be appropriate.

7. Consequently, at the time the Council was considering the planning application it was by no means clear that the permission should be granted or that it could be made acceptable through planning conditions. Notwithstanding that between the decision by the Council’s planning committee and the hearing circumstances changed, it was not unreasonable for the Council to refuse planning permission having regard to the circumstances at the time.
8. The appellant’s arguments that the Council sought a condition and a planning obligation which did not meet the relevant tests are reliant on the grounds that the footpath/cycleway link is not required by policy. As I have found that the link is required by the overall policy context, these arguments must fail.
9. With regard to the final ground for seeking costs, not determining similar applications in a similar manner, I have had sight of the Committee report for the previous application and the associated appeal decision. The matter of the lack of a footway/cycleway link to Nunthorpe Gardens and the potential difficulty in achieving this was considered in the Committee report although it did not ultimately form part of the reason for refusal.
10. Although I have not been provided with all of the documentation in respect of the previous appeal, it does not appear that the matter of the footway/cycleway link was expressly put before or considered by the Inspector in that case. Whilst the Council at that time appear to have considered that a Grampian style condition may have been appropriate at that time, I have no information regarding what that decision was based on beyond a statement in the Committee report that the appellant (at that time the applicant) was in negotiations to enable the footpath link to be provided and the appellant was of the view that this point could be covered by a suitably worded Grampian condition.
11. What is clear, however, is that during the course of the current application, this transpired to be more easily said than done. When the current application was first considered by the Council’s Planning Committee in December 2022 the situation was much the same as at the time of the previous appeal although it was anticipated that an agreement would be reached in 2023. In these circumstances, it was not unreasonable for the Council to defer making a decision to allow the matter to be resolved. Despite the passage of time, at the time the application was finally determined in 2024 the appellant’s position was that the required land was not available. Whilst the two schemes may both have been for residential development on the same site, the material considerations were different, and it was not unreasonable for the Council to come to the decision that it did.

Conclusions

12. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

John Dowsett

INSPECTOR



Costs Decision

Hearing held on 18 February 2025

Site visit made on 19 February 2025

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th August 2025

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 - The application is made by Middlesbrough Council for a full award of costs against Persimmon Homes Teesside.
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-

Decision

1. The application for an award of costs is refused.

Preliminary matters

2. Both parties have made applications for an award of costs in this appeal. The appellant's application for costs is the subject of a separate decision.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The Council's application is on both procedural and substantive grounds. The procedural grounds are that the appellant supplied information at the appeal stage which was not provided during the consideration of the application; that information was provided late in the appeal stage; the appellant did not respond to comments on the draft legal agreements in a timely manner; and that the appellant attempted to pressure the Council into conceding the appeal by threatening an application for an award of costs shortly before the hearing was due to sit.
5. The Council's application on substantive grounds is that the appellant has failed to provide any conclusive evidence that a safe, secure and attractive route for pedestrians and cyclists could be achieved.
6. With regard to the procedural grounds, although the appellant's appeal statement sets out that agreement had been reached with the landowner to purchase the land to become the legal landowner, it was not until shortly before the hearing opened that an undated letter was provided which sets out that the landowner had agreed in principle and subject to contract) to either; transfer the land to the appellant or grant an easement over the land for pedestrian access only. It was not until the

hearing itself that verbal confirmation was given by the appellant's representative that the purchase of the land required for the link and the price to be paid had been agreed. Whilst this was extremely late in the appeal process, it was, to an extent, foreshadowed in the appellant's Appeal Statement.

7. Circumstances can change during the course of an appeal and it is important that decisions are made on the basis of the most up to date information. That said, the appellant's principal argument throughout the appeal was that the link was not necessary at all or that it could be provided on an alternative route. These arguments did not change. Whilst it is inconvenient that new information became available late in the process, it does not to my mind cross the threshold into unreasonableness.
8. In terms of the negotiations in respect of the legal agreements, from the information provided, taking account of the fact that the drafts were provided to the Council after normal working hours on Friday 20 December 2024 the Council responded with comments on these in 12 working days. I have not had sight of the comments made, however the appellant submitted revised drafts in 16 days working days. This is not an excessively long time. It is unfortunate that the timings were such that the revisions were sent back to the Council the day before the deadline for the drafts to be submitted to the Planning Inspectorate. However, at this stage the legal agreements were still in draft form and were still subject to discussion at the hearing. Had there been remaining concerns these could have been raised prior to the hearing and discussed at the hearing itself if required. I do not find this to be unreasonable.
9. With regard to the matter of the timing of the appellant's application for costs, I have considered the email from the appellant to the Council in respect of the costs application. It is open to the parties at an appeal which is to be heard before an Inspector to make an application for costs at any time up until the close of the hearing. The costs regime should absolutely not be used as a mechanism to put pressure on the opposing party in an appeal. However, having regard to all of the evidence put to me in this case and what I heard at the hearing, although the email from the appellant sails fairly close to the wind in this respect, I do not consider that this was the actually the intention here.
10. Turning to the substantive ground regarding the adequacy of the appellant's evidence. I have found that the appellants arguments that the footway/cycleway link is not required and that a suitable alternative route is possible have not been made out. Nonetheless, the appellant has demonstrated through other subsequent written and oral evidence and the submitted Unilateral Undertaking that the proposal can be made policy compliant. Whilst this came at a late stage in the proceedings, I have found above that this was not unreasonable. Similarly, I do not find unreasonable behaviour on the substantive grounds.

Conclusions

11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

John Dowsett

INSPECTOR