

# BOSTON BOROUGH COUNCIL

## Planning Committee – 27<sup>th</sup> April 2021

Reference No: B/19/0040

Expiry Date: 20-May-2019

Extension of Time: 17-Sep-2019

Application Type: Full Planning Permission

Proposal: Residential development consisting of 139 dwellings, including associated roads, public open space and drainage infrastructure

Site: Land off London Road, Kirton, Boston, PE20 1JE

Applicant: Ashwood Homes

Agent: Mrs Natalie Wallinger, NKW Design Ltd

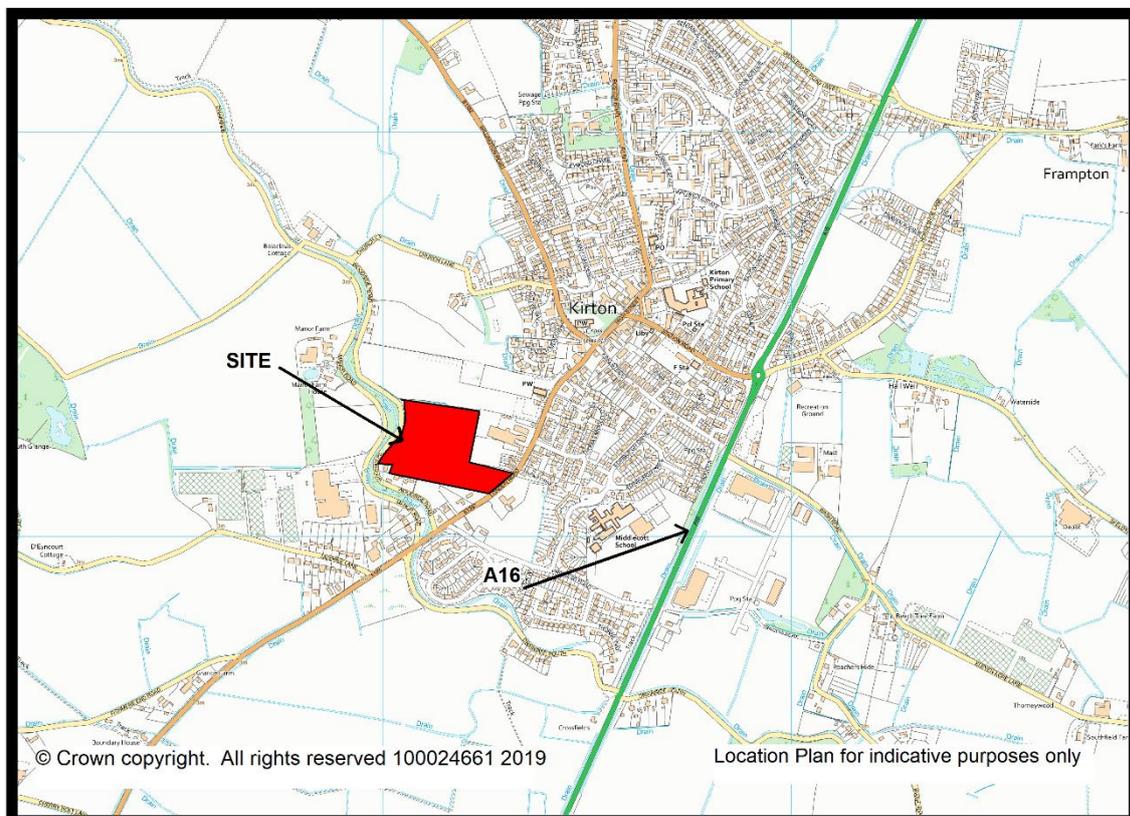
Ward: Kirton & Frampton

Parish: Kirton Parish Council

Case Officer: Grant Fixter

Third Party Reps: As per original report – Appendix 1

**Recommendation: APPROVE**



## **1.0 Reason for Report**

- 1.1 This report is presented to the Planning Committee as a supplementary report following the previous consideration of the application to the Committee.
- 1.2 The Committee resolved, at its meeting on the 17<sup>th</sup> September 2019, to grant conditional permission for the application subject to the satisfactory conclusion of a legal agreement under Section 106 of the Town & Country Planning Act (report attached as Appendix 1).
- 1.3 Since that time, the Applicants presented a material change to the scheme through the submission of a viability report, which sought to reduce/remove those matters which would have formed the basis of the S106 agreement. This was presented on the basis of concerns relating to scheme viability, and significant changes in economic circumstances since the resolution was reached. This matter has been subject of considerable discussion between Officers (and the Councils external viability advisors) and the Applicant. This has now reached a point where the application is reported back to the Planning Committee to seek an updated, and final resolution in respect of the application.
- 1.4 The scheme in overall terms remains largely unchanged from that previously considered by Members, save for some very minor amendments – which principally relate to the distribution of the proposed affordable dwellings. Therefore the report attached at Appendix 1 remains relevant, and this report should be read in conjunction with that earlier report. That earlier report clearly set out the overall policy context for the development, the consultation responses, and a full evaluation of the scheme. It also set out recommended conditions. The minutes of the meeting are provided at Appendix 2
- 1.5 The application site remains as per the previous report, it is located within the settlement boundary of Kirton and consists of a parcel of land measuring approximately 4.26 hectares that extends from the western side of London Road to Woodside Road. The application site has been included within the South East Lincolnshire Local Plan (2011-2036) as a housing allocation under the reference Kir041. This allocation also includes two smaller parcels of land that are not included within the application site.
- 1.6 To provide clarity, phase 1 of the allocation has been approved and is under construction (this provided 21 affordable units in a scheme of 105 dwellings under reference B/15/0391 as a policy compliant scheme), this site comprises phase 2 where permission is sought for 139 dwellings, and phase 3 relates to a separate planning application (B/19/0146) which has been subject to constructive discussions and comprises a policy compliant scheme. Across all 3 sites, a total of 312 dwellings would be provided.
- 1.7 As Members will recall, and see from Appendix 1, the scheme previously made commitments to providing the full 20% affordable housing contribution and the requested educational financial contribution. The scheme was found to be

acceptable in all respects and members were in agreement with the officer's recommendation of approval.

- 1.8 Initial progress was made on the legal agreement, however, the Applicants began to raise some concerns with respect to viability due to on-site issues they were encountering on phase 1, and these included unknown additional costs relating to groundworks as a result of ground conditions. The applicant's approached the Council in March 2020, post the onset of the COVID-19 pandemic to discuss the viability of the scheme, owing to experiences encountered during phase 1 which is now well underway, in particular the costs around the de-watering of the site, coupled with the economic uncertainty that the pandemic had created, and increased development costs including materials and finance. A detailed viability appraisal was subsequently presented.
- 1.9 As is normal practice, the Council consulted its external viability advisors to assess the details presented. Considerable and lengthy dialogue has been held between Officers, the consultants, and the Applicants and their advisors. This has included detailed consideration of the content of the reports and the provision of evidence from the Applicants all of which are discussed further in this report.
- 1.10 Following this dialogue, it is agreed between Officers and our external advisors that the development cannot support the policy compliant position previously presented, whilst still allowing a viable development to come forward. The Councils external advisors have recommended scenarios which identify when contributions could be received without prejudicing the viability of the scheme. As a consequence, discussions have been held with the Applicant and a revised set of Heads of Terms for the development have been presented.
- 1.11 The revised position for the site is to now provide 9 affordable housing units (6.47% contribution comprising 6 rented and 3 shared ownership properties) and the full education contribution. These are the final Heads of Terms.
- 1.12 The report that follows sets out before members the basis for the revised position, and a recommendation that this is accepted, particularly when considering its relationship with phases 1 and 3, the wider context of the development. The report also sets out the general context for viability assessment, and how this should be viewed in the planning balance alongside matters such as ensuring housing delivery. Finally, it summarises alternative options for members, and the reasons these are not recommended.
- 1.13 It is important to note and highlight to members that the purpose of presenting this submission to planning committee is to solely discuss viability matters and the S106 agreement. The scheme is acceptable in all other regards so discussion and consideration should be limited to the viability matters outlined in this report. The recommendation before Members is that the revised viability position is accepted, the Heads of Terms are amended, and that conditional permission be granted, subject to the conclusion of a legal agreement under S106 of the Town & Country Planning Act.

- 1.14 The report concludes by recommending that permission be granted, subject to conclusion of a S106 agreement based on the final Heads of Terms.

## **2.0 Relevant Policy**

The overall policy context of the development was set out in detail within the original report (Appendix 1), thus this section seeks only to elaborate on the planning policy context relating to viability matters.

### **South East Lincolnshire Local Plan**

- Policy 6 – Developer Contributions;
- Policy 18 – Affordable Housing;
- Appendix 5 – Infrastructure requirements, constraints and mitigation - Housing Allocations in Kirton;
- Appendix 8 – Developer contributions for education.

### **National Planning Policy Framework**

- Section 2 – Achieving Sustainable Development
- Section 4 – Decision Making
- Section 5 – Delivering a Sufficient Supply of Homes
- Section 11 – Making Effective Use of Land

### **Planning Practice Guidance**

*“Where a viability assessment is submitted to accompany a planning application this should be based upon and refer back to the viability assessment that informed the plan; and the applicant should provide evidence of what has changed since then.*

*The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, and site circumstances including any changes since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment.” - Paragraph: 008 Reference ID: 10-008-20190509*

## **3.0 Previous Heads of Terms (Policy compliant position)**

- 3.1 As set out in Appendix 1, the scheme originally proposed 20% Affordable Housing units (equating to 28 affordable homes on the site) and a contribution of £430,531 towards one additional general teaching classroom at Thomas Middlecott Secondary School and a new sports hall at Boston Grammar School.

## **4.0 Viability submissions by applicant**

- 4.1 A full Viability Report dated 12/06/20 was submitted to the Council which outlined the costs associated with delivering the scheme with the full affordable housing and education contributions.

4.2 In short, when accounting for the conditions of the site, experiences from phase 1 on the adjacent land, and the change in costs since the adoption of the SELLP (and its associated Whole Plan Viability report) in 2019, the applicants deemed the development of the site as proposed would not be viable. It could not feasibly be brought forward for development with the required Heads of Terms.

4.3 In short, they presented a position which outlined:

- 20% affordable housing provision and S106 cash contributions of £430,531 would show significant financial deficit based on the current market value, affordable rents of proposed units, projected costs and profit level within the appraisal and the BLV (benchmark land value);
- No affordable housing and no financial contribution would still equate to a financial deficit but one which a developer would still deliver the site and accept a marginally reduced profit;
- Affordable housing and financial contributions should be removed.

4.4 The viability submissions outlined above were referred for independent assessment for the Council.

## **5.0 Independent viability findings**

5.1 The Councils external advisors considered a range of factors including the reasons why a viability position is presented in light of the allocation in the Local Plan; and also examines all of the standard inputs in to the viability model. They also advise on the wider consideration of viability as set out in Local Policy and National Planning Guidance.

5.2 A Quantity Surveyor (QS) was also engaged to advise specifically in relation to the costs associated with the development. All of these contributed to an independent appraisal model being built by the advisors, which was then used to evaluate the viability of the scheme and also offered up alternative scenarios which could be tested. This allowed for full analysis of all inputs, including those of the Applicants.

5.3 The key points of note from the assessment are as follows:

- The build density of the scheme is lower than assumed in the Local Plan Study.
- The build costs adopted have increased by around 30% compared with the Local Plan viability study, which was conducted around 3 years ago, therefore a significant uplift is expected. Additions for wider strip foundations and increasing the slab level, are considered reasonable.
- The sales values are around 16% higher than the figures used in the Local Plan viability study, and this is reasonable considering price inflation since 2017. The values adopted for are based on what has been achieved on other Ashwood Homes sites in the locality. The difference between increased costs and sales values results in considerable increased pressure on the viability position.

- There is difference in externals and abnormals since the Local Plan, taking in to consideration on site, and planning policy factors such as EV charging and Flood Risk (i.e. extra fill and de-watering).
- The factors above combined result in a different viability position compared with the Local Plan whole viability study, and thus results in the need to revisit the viability position in order for the development to be delivered.

In terms of the inputs in to the model the Councils advisor has identified:

- Sales values are considered reasonable
- The Benchmark Land Value is considered reasonable
- The inputs for Affordable Housing and Education are reasonable
- The majority of Costs are agreed with. Noting that there is variance between the QS position and the Applicants in respect of some External costs and Abnormals in particular.
- Profit, Professional Fees, Finance etc are all within standard ranges.
- The key matter of disagreement is around Abnormal and External costs.

5.4 Abnormal costs (c£1.4m) included within the Applicants viability include: Wide strip foundations; Increase slab levels; Filling site levels; Well point dewatering; Electric charge points; SUDS & storm attenuation; Foul pumping station & rising main. In summary, there is disagreement with the Applicants allowances which are based upon actual costs incurred to date and based on local experience, as opposed to the advice from the QS which is based upon RCIS Build Costs and hypothetical costs. Clearly the extent to which these inputs are used has an impact on the viability model for the scheme.

5.5 When taken as a whole, there is circa £525k difference between the Applicants position on costs, and those advised by the QS. Which is equivalent to circa 2% of GDV for the development.

5.6 In short, the independent assessment concluded that whilst they agreed with the applicant's view the full 20% affordable housing and education provision cannot be viably delivered by the subject scheme, they are of the view some level of provision can be provided. This is due to some disagreement regarding some inputs in to the appraisal as set out above.

5.7 The modelling outlined that four potential scenarios could be provided which would allow the development to come forward. However, these scenarios are caveated in that they are dependent on the assumptions with respect to external costs, abnormals and benchmark land value:

Scenario	Affordable housing	Education
Scenario 1	20 units (15.11%), 13 afford rent, 8 shared ownership	£430,531
Scenario 2	9 units (6.47%), 5 afford rent, 4 shared ownership	£430,531
Scenario 3	17 units (12.23%), 11 afford rent, 6 shared ownership	£430,531
Scenario 4	28 units (20.14%), 20 afford rent, 8 shared ownership	£430,531

5.8 The Council's advisors also acknowledged sympathy with the Applicants, in that larger schemes can sometimes be less viable when compared to smaller sites, particularly in relatively low value areas. There was acknowledgement that given the experiences encountered with phase 1 and the change in costs and values, there can be changes in viability.

5.9 The advice to the Council from the viability advisor was that a compromised position, as identified by Scenario 3, would be a reasonable way forward as this sought to strike a balance between the developers position and that required by planning policy.

## **6.0 Applicants final position**

6.1 Discussions between the applicant and Council followed, where the applicant's maintained their disagreement with some of the findings outlined above, in particular the figures relied upon by the QS which did not reflect local circumstances. The applicant's also believe they would have good grounds to challenge such findings if the matter went to appeal as their costs are based on evidence related to development on Phase 1. This is, however, not their intention and they agree with the Council's view that there has now been extensive back and forth with no real progress. In short, continued dialogue is not effective for either party and the matter needs to be brought to a conclusion.

6.2 Being eager to break the deadlock, the applicant confirmed that whilst they do not agree wholly with the findings, their best and final offer would be to carry out a scheme in line with scenario 2 outlined above. This is a positive move from their original position.

6.3 In addition, the Applicant has also made a commitment to the Council that should scenario 2 be agreed, delivery of the site would commence within 18 months, with an anticipated start date of December. The basis being that they are a local builder, with a clear track record of delivery in the area, they are committed to development in the Borough (having nearly completed a scheme at Swineshead) and wish to press on with Phases 2 and 3 of this development in Kirton subject to gaining deliverable permissions. The Applicants also drew attention to an adjacent site (B/20/0293) which is intended to be delivered as 100% Affordable Housing, and thus, in the general context of this part of Kirton there are sufficient sites to ensure that affordable housing is delivered, alongside market products, thus meeting the full range of needs.

6.4 For Members wider awareness, they have highlighted that they have delivered a policy compliant scheme on Phase 1, and have also since withdrawn their viability challenge on the Phase 3 scheme (68units) and have committed to a policy compliant scheme on that phase.

## **7.0 Officer Assessment and Planning Balance**

- 7.1 Section 38(6) of the Act requires that proposals are determined in accordance with the development plan unless material considerations indicate otherwise. It is well-defined in case law that the development plan (in this case the SELLP) should be taken as a whole and it is for the decision-maker to weigh up compliance/lack of compliance with policies of the development plan, along with all relevant material considerations. The weight attributed to each of these factors within this exercise is known as the 'planning balance'.
- 7.2 Both the Local Plan, and National Planning Policy, allow for the consideration of viability matters, to ensure that developments are enabled to come forward and are not unduly prejudiced by expectations regarding delivery of developer contributions. This must be carefully balanced with the need to ensure the effects of development are duly mitigated. This is further elaborated upon in the Planning Practice Guidance as set out earlier in this report.
- 7.3 In this case, the scheme as a whole was found to be acceptable. The only remaining matter therefore is whether or not the Council accepts the viability position proposed by the Applicant, and accepts their revised Heads of Terms. This matter has been ongoing for some time, as set out above, and a conclusion needs to be reached.
- 7.4 It is considered that sufficient evidence has been presented to demonstrate, that in the round, there is a viability pressure with regard to this development. It is accepted that the scheme as originally proposed could not provide the contributions as previously set out, whilst allowing a viable form of development to come forward. That is to say, that even if the original terms were agreed, the development on this allocated site would be unlikely to come forward. Noting in particular the differences in cost inflation (30%) and value increases (16%) since the viability for the Local Plan was undertaken.
- 7.5 Given the above, this matter turns on the extent of External and Abnormal costs and the effect that they have on the viability of the proposal. Officers have considered both the Applicants position and the advice provided to the Council. It is clear that one approach is based upon actual costs incurred locally, and the other is based upon a theoretical approach based on a standard methodology. These two are clearly at odds. Officers have sympathy with the Applicants in this instance, as it is understood that there have been significant unknown challenges with the existing Phase 1 site (in particular dewatering and fill costs), equally however, some costs such as Flood Risk mitigation are not uncommon within this area. That said, these costs do add to the overall costs of development, and as agreed by the Councils advisor, costs have generally risen at a greater rate than sales values within the local area. This as a starting presumption does place significant added pressure on development viability within the Borough.
- 7.6 With this in mind, the main consideration is whether or not the offer, as set out in Scenario 2, is acceptable. This is:
- 6.47% Affordable Housing (9 units) and

- Education contribution totalling £430,531
- 7.7 Scenario 2 was discussed with Housing Strategy who confirmed when considering the site, proposed contributions and wider development, the revised contributions are acceptable. Housing Strategy did, however, request the mix of affordable units was changed from 5 rented and 4 shared ownership to 6 rented and 3 shared ownership. This is because there is a more pressing need for affordable rented units in the Borough and the Applicant agreed to the requested change. Therefore the mix to be provided would be in accordance with the Councils requirements – 6 rented, 3 shared ownership.
- 7.8 In this instance, it is important to consider the viability of the development, along with the contributions proposed, as part of the overall planning balance.
- 7.9 The full Education contribution will still be provided. Thus this policy requirement would be met. This weighs in favour of the scheme.
- 7.10 For Affordable Housing, whilst the proposals would not at face value be policy compliant, by virtue of the provision of 6.47% as opposed to the required 20%, the relevant policies of the local plan do allow for a lesser provision where it is appropriately justified. In this case, it is considered that a clear and appropriate justification has been presented, which has been independently assessed. Therefore despite some lack of compliance, overall, the proposals would remain in accordance with the objectives of the Local Plan and National Policy and the mix proposed would reflect the Councils requirement. This weighs in favour of the proposal.
- 7.11 The proposed arrangements are a compromised solution, which seek to balance the Applicants position, and that of the policy requirement. This is considered to be appropriate and justified in this instance and would enable the delivery of this development on an allocated site in the Local Plan. Additionally, the Applicants have committed to commencing delivery on the site within the next 18mths, with an aspiration to commence works in 2021 subject to permission being granted. These factors weigh in favour of the proposals as this site would contribute significantly to the objectives of the Local Plan due to its allocation, and its contribution to housing supply for the Borough.
- 7.12 Finally, it is important to consider the delivery of affordable housing on site as part of the wider allocation and within the immediate context for Kirton. Phase 1 is already under construction and was policy compliant in respect of affordable housing. Phase 3 forms a separate application and this will also be policy compliant. Adding in the proposed position for Phase 2 would deliver a blended position over the 3 sites which equates to approximately 14% affordable (compared to 20% requirement). In addition, there is also a fully affordable scheme to the north for 42 units which has been recently consented, further raising the affordable housing provision in the area. As such, it is considered that cumulatively there are sufficient opportunities to deliver affordable housing in this area, which would meet the needs of residents of the Borough, alongside the provision of market products. This again weighs in favour of the proposals.

- 7.13 Clearly an alternative would be for the Council to stand firm, and seek to either refuse permission, or continue to negotiate. However, this course of action is unlikely to be beneficial, and could expose the Council to risks through the Appeal process if a refusal is chosen. In this context, whilst the provision of Affordable Housing is clearly an important matter, this must be carefully balanced with the overall benefits of housing delivery and also be based upon sound evidence. Officers do not consider that the Applicants position is an unreasonable one, and in the context of the overall scheme, the amounts involved are relatively small, therefore it is considered that the position put forward by the Applicants are acceptable in this instance. Members will also note that this does not set a precedent for an approach in respect of this matter on other sites as each site and development must be based upon its own merits, and informed by its own evidence and circumstances.
- 7.14 For the reasons outlined above, Officers are of the view this is an acceptable compromise which will still obtain some affordable housing and the full education contribution. It is therefore recommended that the Committee resolve to approve the development on this basis, subject to the completion of a legal agreement, and in accordance with the conditions recommended.

## **8.0 Alternatives**

- 8.1 Whilst it was agreed by Officers (and our external consultants) that the scheme could not support full affordable housing contribution and education contributions, the modelling did, however, show some form of contribution was still possible. With the suggestion that scenario 3 was an appropriate compromise. The applicant heavily disagreed with the figures outlined, but they were willing to compromise with scenario 2 and this is their final offer. This has been subject to some lengthy dialect between both parties, with both recognising an agreement was needed. The willingness to negotiate and compromise when in disagreement with the independent findings should be acknowledged.
- 8.2 At this stage, it is important to outline the potential alternatives to members.
- 8.3 Option 1 - We do not accept the applicant's compromise of scenario 2 and seek further negotiation. These negotiations have essentially been going on for over 6 months and we are finally at an agreed position, with both parties compromising. Furthermore, the applicant is unlikely to be forthcoming given the extent of discussions already and the compromise reached. Further independent assessment would be required which would pose the risk that all contributions could actually be undermined. There would also be further time delays and the outcome would likely be the lack of delivery on an allocated site. If this is an option members wished Officers to explore, it is requested that that the Committee give a clear steer on which option they wish Officers to pursue. However, for the reasons set out above, and linked to the wider content of this report this option is not recommended.
- 8.4 Option 2 - We do not accept the compromise of scenario 2, or indeed the overall viability argument, and seek to refuse planning permission. Such a refusal would have to be solely on the grounds of a lack of infrastructure provision against the requirements of SELLP Policies 6 and 18. This would raise the potential of an appeal

which could see the removal of all contributions, and would come with added burdens and risks in terms of costs and delays which would affect the Council as well as the Applicants. This approach would also risk the lack of delivery on an allocated site, in addition to the potential for an inspector to remove all contributions. For the reasons set out above, and linked to the wider content of this report this option is not recommended.

## **9.0 Conclusion & Recommendation**

9.1 For the reasons set out above in this report, read in conjunction with the earlier report and committee minutes as set out in Appendices 1 & 2, Officers consider that the proposals are in accordance with the development plan when taken as a whole, and that significant positive weight should be attached to the provision of housing on this allocated site.

9.2 Thus, it is recommended that Committee RESOLVE TO GRANT PLANNING PERMISSION subject to the following conditions and the completion of the section 106 agreement relating to affordable housing and contributions towards education as detailed in the report.

9.3 The conditions are to be transferred from those set out within Appendix 1, save for those which are amended as follows:

Condition 1 is the Time Limit condition and it is recommended that this is amended to reflect the commitment to commence delivery on site within 2 years.

Condition 2 from the 17/09/21 Planning Committee report has been amended below to include the revised Planning Layout which outlines which units will be affordable.

The development hereby approved shall be carried out in accordance with the following approved plans:

- Ref: 1197/LP/SP – ‘Location Plan - Southern Phase’
- Ref: 90A-PL-01 Rev E – ‘Planning Layout - Southern Phase’
- Ref: 90A-HOL-001 – ‘Design Sheet - Holland’
- Ref: 90A-DEE-01 – ‘Design Sheet - Dee’
- Ref: 90A-EDN-001 – ‘Design Sheet - Eden’
- Ref: 90A AV-001 – ‘Design Sheet - Avon’
- Ref: 90A-CLY-001 – ‘Design Sheet - Clyde’
- Ref: 90A-SPAR-01 – ‘Design Sheet - Sparta’
- Ref: 90A-CORO-001 – ‘Design Sheet - Coronation’
- Ref: 90A-CORO-002 – ‘Design Sheet - Coronation’
- Ref: 90A-LCK-001 – ‘Design Sheet - Lock’
- Ref: 90A-MER-001 – ‘Design Sheet - Mere’
- Ref: 90A-MER-002 – ‘Design Sheet - Mere’
- Ref: 90A-NENE-001 – ‘Design Sheet - Nene’
- Ref: 90A-BAL-001 – ‘Design Sheet - Balmoral’
- Ref: 90A-BAL-002 – ‘Design Sheet - Balmoral’
- Ref: 90A-RIBB-001 – ‘Design Sheet - Ribble’

- Ref: 90A-HUM-001 – ‘Design Sheet - Humber’
- Ref: 90A-HUM-002 – ‘Design Sheet - Humber’
- Ref: 90A-A516-001 – ‘Design Sheet - A516’
- Ref: 90A-A516-002 – ‘Design Sheet - A516’
- Ref: 90A-A732-001 – ‘Design Sheet - A732’
- Ref: 90A-A902-001 – ‘Design Sheet - A902’
- Ref: 90A-A1336-001 – ‘Design Sheet - A1336’
- Ref: 1197/LA1 Rev A – ‘Landscape Proposals - Sheet 1 of 11’
- Ref: 1197/LA1 Rev A – ‘Landscape Proposals - Sheet 2 of 11’
- Ref: 1197/LA1 Rev A – ‘Landscape Proposals - Sheet 3 of 11’
- Ref: 1197/LA1 Rev A – ‘Landscape Proposals - Sheet 4 of 11’
- Ref: 1197/LA1 Rev B – ‘Landscape Proposals - Sheet 5 of 11’
- Ref: 1197/LA1 Rev B – ‘Landscape Proposals - Sheet 7 of 11’
- Ref: 90A-SG-01 – ‘Design Sheet - Single Garage’
- Ref: 90A-DG-01 – ‘Design Sheet - Double Garage’
- Ref: 90A-DSG-01 – ‘Design Sheet - Double Shared Garage’
- Ref: 90A-TSG-01 – ‘design Sheet - Triple Shared Garage’

And read in conjunction with the various recommendations of the supporting documents which accompany the application unless varied by other conditions attached to and forming part of this decision.

Reason: To ensure that the development is carried out in accordance with approved plans in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan (2011-2036).

- 9.4 The remaining conditions in Appendix 1 remain unchanged and should be attached to any subsequent permission.

## **APPENDICES**

Appendix 1 – Planning Committee report from 17/09/2019

Appendix 2 – Planning Committee minutes from 17/09/2019