

## **APPENDIX 1**

### **PLANNING COMMITTEE 1<sup>st</sup> JULY 2025**

#### **SUPPLEMENTARY INFORMATION**

##### **Application B/23/0379 – land east of Gaysfield Road, Fishtoft**

Since the completion of the main Committee report further information has been received and is summarised below. This supplement to the main agenda contains matters notified to officers up to 11am on Monday, 23<sup>rd</sup> June 2025. Matters are summarised in this supplement – for the full text of all comments received please access the correspondence via the Borough Council website.

#### **1. Boston Borough Council Housing Land Supply**

Boston Borough Council has published its formal assessment of its future housing land supply. This states that the supply represents 4.6 years. When the main report was completed, the published housing land supply was over five years.

National planning policy and guidance requires local authorities to be able to demonstrate a minimum of a five year supply of housing land plus an appropriate buffer. The National Planning Policy Framework (NPPF) states in footnote 8 to Paragraph 11 that where ‘the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78) the Local Plan must be considered ‘out-of-date’ ’.

This is significant for the present application. Paragraph 11 makes clear that planning policies and decisions should include a presumption in favour of sustainable development, and that decisions should be made in accordance with an up-to-date development plan. However, when the Local Plan is out-of-date, as the South East Lincolnshire Local Plan is now shown to be, paragraph 11(d) sets out further considerations describing how this affects planning decisions:

*‘For decision-taking this means...*

*...where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the*

*policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination’*

This means that unless the criteria set out in subsections (i) and (ii) apply, permission should be granted. Those subsections will now be assessed in relation to the present application.

Subsection (i) refers to ‘areas or assets of particular importance’, and these are defined in footnote 7 as ‘habitats sites (and those sites listed in paragraph 194) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 75); and areas at risk of flooding or coastal change’. Three matters from the above list are relevant to the present case.

Beginning with the first of those, designated heritage assets, the situation regarding Fishtoft Manor, a designated heritage asset, has been thoroughly examined in the main report and elsewhere in this supplement. Historic England does not object and the advice from the Council’s Conservation Officer is that the scheme may proceed subject to certain safeguards and conditions.

The second involves archaeological assets. The site is a known area of archaeological interest, and any permission would be subject to protections secured by condition which have been agreed by the Council’s archaeology advisor and which will secure ensure archaeological investigation and recording by appropriately qualified experts.

The third item is ‘areas at risk of flooding or coastal change’. The site is in Flood Risk Zone 3, and flood risk and drainage have been extensively assessed in this application and its predecessors. The Council’s expert advisors, including the Lead Local Flood Authority, the Environment Agency and the local drainage board are content for the application to proceed subject to the conditions recommended in the main report.

It follows that in the circumstances of this case the NPPF policies relevant to those areas do not provide ‘a strong reason for refusing the development proposed’ for the reasons set out in the main report, namely that mitigations are available which deal effectively with the risk of harm.

Subsection (ii) requires that to justify a refusal where the Local Plan is out-of-date, it must be demonstrated that allowing the application ‘would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-

designed places and providing affordable homes, individually or in combination'. Whilst decisions must be taken when judged against 'the Framework as a whole', decisions must pay 'particular regard' to certain specified policies. Footnote 9 states that 'the policies referred to are those in paragraphs 66 and 84 of chapter 5; 91 of chapter 7; 110 and 115 of chapter 9; 129 of chapter 11; and 135 and 139 of chapter 12' [of the current iteration of the Framework].

Paragraph 66 relates to affordable housing and paragraph 84 to the control of isolated dwellings in the countryside. Paragraph 91 refers to the retail sequential test which seeks to preserve the vitality of town centres, and paragraph 110 refers to sustainable transport considerations. Paragraph 115 sets out criteria to be applied in assessing the transport implications of allocations or development proposals.

Paragraph 129 sets out criteria requiring planning policies and decisions to support the efficient use of land. Paragraphs 135 and 139 set out considerations relating to design and local character.

Of these, paragraphs 110, 115, 129, 135 and 139 are relevant to this application. They cover matters which have been extensively discussed in the main report (and are in some cases also covered in this supplement). As is set out in detail in the Committee report, based on the assessment of the planning balance when the Local Plan was up-to-date any negatives associated with the matters relating to those paragraphs (taken together with all other material planning considerations) did not outweigh the benefits. Those benefits include the addition of 89 dwellings to the housing supply of the Borough incorporating an affordable housing contribution meeting the requirements of the Local Plan. Hence the recommendation to approve at the 6<sup>th</sup> May Committee meeting.

What has been changed because of lack of a five year supply is essentially the way in which the planning balance is assessed, and in particular the much greater weight in effect now given to the presumption in favour of sustainable development. To justify a refusal the Local Planning Authority must show that 'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits' when assessed against the provisions of the NPPF. Your officers have been clear that the planning balance has always been positive. With greater weight in favour of (in the words of paragraph 11) 'granting permission' consequent on the lack of a five year supply, it is now even more difficult to show that any negatives of the scheme 'would significantly and demonstrably outweigh the benefits'.

In summary, the Council's inability to demonstrate a five year supply of housing land does not change the recommendation, but it changes the context for that recommendation in a way which makes a decision to refuse the application significantly more difficult to sustain.

## **2. Petition**

A petition has been received with the following header:

'REFERENCE: BOSTON BOROUGH COUNCIL PLANNING APPLICATION  
b/23/0379 – 89 HOUSES TO BE BUILT TO THE REAR OF SCOUTS HUT,  
GAYSFIELD ROAD, FISHTOFT PE21 0SF

APPLICATION CONSIDERED BY BOSTON BOROUGH COUNCIL PLANNING  
COMMITTEE 6<sup>TH</sup> MAY 2025

The following persons petition Boston Borough Council to honour the original vote taken at the Planning Committee on 6<sup>th</sup> May 2025 which was a free, open and democratic vote taken after full consideration of the Application put forward by Planning committee with the result: 5 members approve, 6 members reject and 1 member abstained.

No legal reason was given as to why a revote should be cast at the same meeting'.

A total of 169 signatories are appended to the petition.

Officers are not in a position at the time of writing to validate every signature, but the petition is accepted in good faith. It is for members of the Committee to decide what weight to give to the petition, but it should be noted that it refers to procedural matters in 6<sup>th</sup> May Committee, and does not raise any new material planning considerations. The Committee is required to make its decision based purely on material planning considerations. Officers therefore note the submission of the petition, but it does not contain any planning reason to amend the recommendation set out in in the main Committee report.

### **3. Historic England**

An objector questioned why Historic England was not included in the original consultation process. This was because the nature of the nearby heritage asset (Grade II Listed Fishtoft Manor) did not trigger a requirement to consult Historic England under that organisation's own protocols.

To verify that this was the correct approach the Authority contacted Historic England with details of the case, and on 18<sup>th</sup> June a letter was received from Historic England including the following statement:

'Historic England provides advice when our engagement can add most value. In this case we are not offering advice. This should not be interpreted as comment on the merits of the application. We suggest that you seek the views of your specialist conservation and archaeological advisers. You may also find it helpful to refer to our published advice at <https://historicengland.org.uk/advice/find/>

It is not necessary to consult us on this application again, unless there are material changes to the proposals'.

Members should note that the application has been discussed in detail with the Council's conservation and archaeological advisors (and where appropriate their advice has been incorporated into planning conditions), that the application has been

assessed in keeping with Historic England guidance, and that no error was made in not consulting that body when the application was originally publicised.

#### **4. Fishtoft Manor**

A further objection has been received from the occupant of Fishtoft Manor.

The stated grounds of objection are not restricted to impacts on the Manor itself, and include:

- 1. Severe Flood Risk to Lower-Lying Homes on Gaysfield Road. ‘The submitted FRA fails to prove that displaced water will not flow directly onto Gaysfield Road properties. This omission breaches both national policy and the Council’s legal obligations to protect existing residents’.

This objection introduces no new matters, and the issues around flood risk and drainage have been extensively considered and are set out in the main report. The site drainage scheme and the interceptor drain are designed to protect the existing dwellings on Gaysfield Road (and indeed the Manor), and those provisions are reinforced by the recommended conditions which require additional scrutiny and approval of all final engineering and construction drawings and calculations. The Council’s expert advisors, including the Lead Local Flood Authority, the Environment Agency and the internal drainage board are content that the scheme should go forward subject to appropriate conditions as recommended in the main report.

The above ground of objection requires no amendment to the recommendation.

- 2. Threat to Fishtoft Manor – A Grade II Listed Building with a Basement. The objector asserts that risks of damage by flooding and by any means to the basement of the building have not been assessed.

The objection introduces no new matters, all impacts on the Manor having been considered from the outset and the objector having specifically raised the matter of the basement some months ago. Drainage has been fully taken into account, and the main report details measures including the interceptor drain which address risk by water to the Manor. Regarding the basement and indeed the fabric of the whole building, other risks have been considered carefully. For example, a condition is recommended to ensure that if piling is to be used in the construction phase, prior approval of the LPA to the methodology of any piling is required to ensure no vibration damage will threaten Fishtoft Manor. Members should also note the correspondence from Historic England in Section 3, above.

The above ground of objection requires no amendment to the recommendation.

- 3. Risk to a Local Primary School on Gaysfield Road. The objector asserts that the school will be put at increased risk from flooding because of the development.

This ground of objection introduces no new matters, all flood risk impacts having already been considered. The objector perhaps misconstrues the proposed drainage plan, which at the insistence of the Council will see all surface water directed to the

site attenuation pond and thence to a drainage board-maintained watercourse. A condition to secure this forms part of the recommendation. The school is located on the west side of Gaysfield Road, well separated from the application site. No flows from site surface water drainage system will enter the Gaysfield Road public surface water drainage system and hence there is no way in which the development could impact on flood risk to the school.

It is noted that this objection is made by a private resident referring to the school and no endorsement of the objection has been received to date from the school itself. The school has commented separately that it has no objection to the development.

The above ground of objection requires no amendment to the recommendation.

- 4. Legal Obligations, Procedural Failures, and Potential Negligence. The objector states that approving the application in its current form 'would likely breach the Council's: - Duty of Care to protect residents from foreseeable harm - Statutory planning duties under the NPPF and Listed Buildings Act - Legal obligation to apply the Sequential and Exception Tests thoroughly'.

The objector states: 'Failure to meet these responsibilities could expose the Council to judicial review, negligence claims, and public authority liability should damage occur. Past procedural issues – including an alleged unlawful re-vote – cannot be used to justify approval or avoid lawful scrutiny'.

It is noted that the objector frames this ground in conditional terms: 'potential'; 'would likely'; 'could'; 'alleged', and does not make a firm allegation that such breaches have taken place. Officers have at all times at all times followed due procedure in assessing the case, the Council is confident that it has acted properly and in keeping with legal and constitutional requirements and that the application has been handled transparently with public scrutiny. The Council's legal officers was present at the Committee meeting on 6<sup>th</sup> May.

The above ground of objection introduces no new material planning considerations and requires no amendment to the recommendation.

- 5. Urgent Call for Site-Specific Planning Conditions. The objector calls for planning conditions relating to a drainage strategy, physical means of protecting neighbouring properties, a Construction Management Plan and prevention of discharges to third party land without consent. In fact, the recommendation already includes conditions dealing with all those matters, although perhaps not quite in the wording the objector suggests – for example, discharge to drainage board watercourses will be covered by separate legal consents under Board by-laws as well as by planning conditions securing the drainage strategy and plans. However, in substance all those matters are already secured.

The objector also calls for a legal agreement from the applicant indemnifying neighbouring residents from any damage arising from the site through flooding or other means. This is not a planning matter but a legal issue between landowners.

The above ground of objection introduces no new material planning considerations and no amendment to the recommendation is required.

## 5. LCC Highways/SUDS

Lincolnshire County Council Highways/SUDS copied the Local Planning Authority on its response to issues raised directly with LCC by an objector who is a resident of Gaysfield Road, Fishtoft. These can be summarised as follows:

- Overlooking of existing properties. LCC replied: 'This is a planning matter, so I have copied in the generic email address for Boston Borough Council'. Overlooking and other potential amenity impacts are discussed extensively in the Committee report.

This ground of objection raises no new material planning considerations and requires no amendment to the recommendation.

- Risk of flooding from the application site to existing properties on Gaysfield Road. LCC replied: 'The Interceptor Drain was agreed and would be graded to get the water off the site. That with the combined system, capacity of attenuation and the existing drainage will work so as not to cause an adverse impact off site. At this stage we need to be content that the principle of the drainage will work and will not increase flood risk. The drainage condition requested to be attached to any planning decision notice will provide assurance that a further detailed drainage design is submitted'.

Flood risk and drainage are discussed extensively in the Committee report. This ground of objection raises no new material planning considerations and requires no amendment to the recommendation.

- The resident refers to a figure of 47 additional vehicular movements arising from occupants of the development and queries that figure. LCC replied: 'Peak hours are the hours that are the busiest – in the traffic generation section of the submitted Transport Assessment it details that within the hours of 0800-0900 and 1700-1800 47 vehicles will arrive/depart. These are figures generated by the TRICS database for residential houses privately owned filtered by the site location and the size of the proposed development. Other vehicles will come and go throughout the day but this gives us an idea of the impact on the highway network at peak times (when the network will be busiest)'.

Highways matters are discussed extensively in the Committee report. This ground of objection raises no new material planning considerations and requires no amendment to the recommendation.

- Poor condition of existing roads in Fishtoft. LCC replied: 'Under planning legislation, we are governed under the policies contained within the National Planning Policy Framework. As a council we have a duty to maintain the county's adopted roads therefore if you have any maintenance issues please can you log them at FixMyStreet. We cannot refuse planning on the maintenance of the road. There is no precise definition of "severe" with regards to NPPF Paragraph 116, which advises that "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe." Planning Inspector's decisions

regarding severity are specific to the locations of each proposal, but have common considerations:

- The highway network is over-capacity, usually for period extending beyond the peak hours
- The level of provision of alternative transport modes
- Whether the level of queuing on the network causes safety issues

In view of these criteria, the Highways and Lead Local Flood Authority does not consider that this proposal would result in a severe impact with regard to NPPF'.

This ground of objection raises no new material planning considerations and requires no amendment to the recommendation.

## **6. Local objector #1**

A resident of Gaysfield Road, Fishtoft, objects on grounds including unsafe pedestrian and cycle links to Boston and challenges the estimates of vehicle movements.

Highways matters are discussed extensively in the Committee report. This ground of objection raises no new material planning considerations and requires no amendment to the recommendation.

The objector also complains that in the 6<sup>th</sup> May Planning Committee an officer referred to the site as being 'about a mile' from Boston Town Centre when according to the objector Google maps give that distance as 3.4 miles, and that a member of that Committee stated that he did not know where Gaysfield Road or Fishtoft were.

As a matter of record, the Committee Report for 6<sup>th</sup> May clearly showed the location of the site, the village and its relationship to the edge of the Boston settlement in a map, as does the report for the 1<sup>st</sup> July Committee. Google maps shows the distance as the crow flies from the north west corner of the application site to the Town Bridge as 2.48 miles, and to the nearest residential point in the continuous built settlement of Boston as exactly one mile (1.61 km).

## **7. Local objector #2**

A resident of Marshall Close, Fishtoft, objects on a number of grounds including overlooking/loss of privacy; loss of light/overshadowing; parking provision; number of vehicle movements generated by the development; highway safety; condition of local roads; traffic levels in the locality; effect on listed building/conservation areas; layout and density; design, appearance and materials; central Government and Local Plan policy; disabled access; surface water drainage; previous planning decisions B/20/0488 and B/20/0489 which 'should have never been approved'.

With the exception of disabled access, all these matters have been extensively considered and are addressed in the main Committee report and elsewhere in this supplement. No new material planning considerations have been raised and no amendments to the recommendation are required.

Under the heading 'Disabled Persons' Access' the objector refers to the possibility of there being 'some sort of step' outside some of the dwellings. It is not clear that such steps are shown on the submitted drawings, though a single step may be implied in some cases by a gap between the illustrated door sill and the indicated ground level. No drawing shows or could be interpreted as implying a staircase entrance at the front or back.

However irrespective of whether is to be a front or rear step (not uncommon in new dwellings), disabled access is a matter covered by Part M of the Building Regulations. Since it is specifically part of a different regulatory framework it is not a material planning consideration in this case. The South East Lincolnshire Local Plan covering Boston does not make any policy provision regarding disabled access to new buildings. Disabled access is of course a very important matter, but because it is the subject of other regulations it is not a planning matter. If the application is approved the applicant would have to demonstrate to the Building Control officers dealing with the development that it complied with relevant regulation.

## **8. Conclusion**

All of the above have been taken into account and the officer recommendation remains to approve subject to conditions and the signing of a Section 106 legal agreement.