

BOSTON BOROUGH COUNCIL

Planning Committee – 10 January 2017

Reference No: B/16/0380

Expiry Date: 30 December 2016 (extension of time to 13 January 2017)

Application Type: Outline Planning Permission
Proposal: Outline application for the erection of up to 215 dwellings with all matters (scale, layout, landscaping, and appearance) except access reserved with public open space and drainage infrastructure

Site: Land north of Middlegate Road (West), Frampton, Boston

Applicant: Larkfleet Ltd T/A Allison Homes

Ward: Kirton and Frampton
Parish: Frampton

Case Officer: Paul Edwards

Third Party Reps: Sixty-nine

Recommendation: REFUSE

1.0 Reason for Report

1.1 This application is called in for Committee consideration by Councillor Rylott on the basis of how it relates to the emerging South East Lincolnshire Local Plan (SELLP).

2.0 Application Site and Proposal

2.1 The application site is open arable agricultural land to the north of Middlegate Road West, Frampton. The site area is 10.02ha (24.76 acres) and it extends to the A16 in the east (north of the Middlegate Road West and East junction with the A16) and to the west as far as to the rears of 12/14 Middlegate Road West. It is essentially flat with a slight fall from south east to north west (3.7m AOD in the north east corner to 2.65m AOD in the north west corner). Parts of the southern site boundary are open to Middlegate Road West or abut the rears of properties on the north side of the Road. The northern site boundary strikes approximately north west to south east across the fields between 90m and 190m from the rears of Middlegate Road properties.

- 2.2 This application is in outline for up to 215 dwellings (~21 dph) with only access to be considered at this time. The other matters of layout, landscaping, scale and appearance are reserved for future submission and consideration. The two access points are shown from Middlegate Road, either side of the Lighton Avenue junction on its south side. The indicative site layout shows individual housing zones, drain and retention ponds in a central landscape area which follows the current open IDB drain and there is a ~10m wide landscape buffer along the northern boundary. A 3.3m high landscape bund is proposed along the eastern boundary with the A16 to address any noise impact. The existing green track (which is not a public right of way) between Nos 34 and 36 Middlegate Road is shown as a footpath link.
- 2.3 The site is in the open countryside for Local Plan purposes; the northern settlement development limits of Kirton (Inset Map 27) includes Middlegate Road and the properties on its north side, together with the south side of Middlegate Road east of the A16 and including Lenton Way. Frampton's Inset Map (Map 8) is centred on Frampton Hall and St Mary's Church, almost a kilometre to the east of Lenton Way. The site is therefore outside of but abuts Kirton's development limits.
- 2.4 The frontage trees to the north side of Middlegate Road, and some behind, are the subject of a Tree Preservation Order, and three would be removed to facilitate the access points. There are no other landscape or other statutory designations across the site. There are listed buildings on the outskirts of Frampton centre on Clatterdykes Road to the east and to the west on London Road and West End Road in Frampton West. It is considered that there will be no effects upon the setting of listed buildings or their special architectural or historic interests but distant views of St Botolph's are available to the north out of the site. The drains across the centre, to the south and to the eastern boundary along the A16 are IDB maintained drains and connect to the Frampton Town Drain.
- 2.5 The site is predominantly in Flood Zone 3 with predicted maximum flood depths not exceeding 1.6m. The Flood Risk Assessment which accompanies the application anticipates that all finished floor levels will be raised 1m above existing ground levels with 300mm flood resilient construction and removable barriers.
- 2.6 Foul drainage would connect to the Frampton WRC some 400m to the north via a pumped system either into the existing foul sewer network or direct to the WRC with a new direct link sewer. Perimeter land drains may be needed to intercept water from the raised land levels and the SuDS pond structure and surface water features will be adopted by a private management company which will be funded from new residents secured through their deeds.
- 2.7 The site is in Frampton Parish and in the Kirton and Frampton Ward. For plan policy purposes it is the settlement development limits for Kirton that are relevant and are defined in the Local Plan. Middlegate Road is contiguous with Kirton and is perceived as all part of the same built up area.

3.0 Relevant History

- 3.1 There is no history of previous planning applications on this site. A Screening Opinion that this is not EIA development was given in August 2016. Although some representations refer to historical application(s) for 500 houses, there is no record of this.
- 3.2 A Tree Preservation Order to cover the group of 28 trees to the north side of Middlegate Road along its frontage and three individual trees was issued in September 2016. As a result of issues with its service and an objection from the current applicant, the Order was re-issued in late October. This authority has six months to confirm this Order, after which it will cease to have effect.

4.0 Relevant Policy

Boston Borough Adopted Local Plan

- 4.1 The development plan consists of the saved policies of the Boston Borough Local Plan (Adopted 1999). S.38 (6) of the 2004 Act requires that determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 4.2 The land is outside the Frampton/Kirton settlement boundary so for plan policy purposes it is in the open countryside. As such it is to be considered against the following policies.
- Policy G1 – Amenity
 - Policy G2 – Wildlife and Landscape Resources
 - Policy G3 – Surface and Foul Water Disposal
 - Policy G6 – Vehicular and Pedestrian Access
 - Policy T2 – Roads and Footpaths in New Development.
 - Policy H3 – Quality of housing developments
 - Policy H4 – Open Space on Housing Estates
 - CO1 – Development in the Countryside
- 4.3 Policy H2: Windfall Housing Sites begins with 'Within settlements..'. The application site is entirely outside of settlement development limits. At the Monarchs Rd appeal the Council successfully argued that Policy H2 applied since the new access road through the existing open space was within the settlement development limits, before it reached the housing parts of the site outside Sutterton. Here it is concluded that Policy H2 does not apply but the criteria, for example to do with loss of open space or frontage which contributes to character can be a general amenity or landscape consideration under Policies G1 or G2.

National Planning Policy Framework

- 4.4 Committee will be aware of the NPPF guidance in respect of housing applications being considered in the context of the presumption in favour of sustainable development. In addition, it goes on to state that policies for the supply of housing “should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites”. In the absence of a five year supply in the Borough (figures to September 2016 show a 3.2 years supply), the presumption in favour of sustainable (housing) development applies.
- 4.5 It is inevitable in the light of the lack of a five year supply that greenfield sites in sustainable locations will be candidates for new housing supply. To this end the authority has previously considered the weight to be afforded to Policy CO1 since Inspectors at appeal have questioned the conformity of Policy CO1 with the NPPF. In the Monarchs Road appeal decision (reported to Committee in April 2016) the Inspector concluded that conflict with CO1 should be afforded only limited weight (para 9 decision 3010682). More recently, at your meeting on 6 December 2016, in considering the appeal decision at Park Lane, Freiston, it was reported that ‘whilst such policies are out of date and thus trigger the presumption in favour of sustainable housing development, the Courts have also confirmed that ‘out of date’ policies may still have some weight attributed to them...and that weight is a matter for the decision maker (*Suffolk Coastal District Council and Hopkins Homes Ltd and S of S / Richborough Estates Partnership LLP and Cheshire East Borough Council and S of S [2016] EWCA Civ 168*)’.
- 4.6 Consequently since lesser weight should be given to CO1, the fact that the proposed development would be within countryside does not by itself make it unacceptable in principle. However, the aims of the NPPF include the protection of the countryside so Policy CO1 can still attract some weight. It is considered that the other general development control saved policies are not ‘housing supply’ policies and full weight can be given to them subject to compliance with the NPPF.
- 4.7 The weight to be given to the emerging SELLP features in many of the representations. Annex 1 to the Framework advises that from the day of publication, decision-makers may also give weight to relevant policies in emerging plans according to:
- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
 - the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

4.8 The Planning Practice Guidance (PPG) goes further by stating:

“.. in the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan... and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination.... Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.”

4.9 Appeal decisions that had been recovered by the Secretary of State from elsewhere show that even when a plan has been submitted for examination and hearings have commenced, the Minister found that they may not be afforded significant weight – or may only be afforded limited weight since there is still potential for a plan to change (Appeal refs: 3128707, 3100555 and 3129954, for example).

4.10 On Flood Risk, paragraph 103 of the Framework says that ‘when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, it can be demonstrated that:

- within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and
- development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems’.

5.0 Representations

5.1 As a result of publicity sixty-nine letters of objection have been received at the time of writing. There is one amongst them which has no objection in principle. Some of the representations were copied directly from objectors to all members of Committee.

12, 18, 21, 21A, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36 (x2), 37, 38, 40 (x3), 41, 45, 47(x2), 51, 55, 59, 63 and 69 Middlegate Road (West), Frampton
Farthings, Middlegate Rd (East), Frampton
1, 2 (x2), 3, 9, 11, 15, 25, 33 (x2) and 37 Lighton Avenue, Frampton
6, 11, 22 and 73 Sentance Crescent, Kirton
1, 3, 5, 8, 22, 33, 35 and 36 Grosvenor Road, Frampton
83, Wyberton West Road
10, Jubilee Close, Kirton
2 and 12 Ash Drive, Kirton
14, Lenton Way, Frampton
6 and 15 Peartree Road, Kirton
2 and 8 Walnut Road, Kirton
Fairways and Park-holme, London Rd, Frampton
8, Pools Drive, Sutterton
15 and 45 Boston Road, Kirton
75 Dennis Estate, Kirton

5.2 The objections and comments can be summarised under general headings as follows:

Plan policy

- The South East Lincs Local Plan does not support this location (Fra024) since it was dropped after the last round of consultation and any variance from the plan would be against democratic decisions already taken. Housing needs for Kirton/Frampton will be met by the Local Plan, other sites are closer to amenities, at a lower level of flood risk, a gas main crosses this site and this is surplus to requirements and far exceeds the need
- Although the Plan is yet to be adopted the arguments against this site are none the less valid. A number quote from the SELLP Housing papers
- If the Council had acted quicker in promoting a housing plan this application would not have happened
- Contrary to current Plan policies G1, G2, G3, G4, G5, G6, H1, H2, H3, R1 and CO1. It is outside of the village envelope
- This development goes against the Neighbourhood Plan that is being developed for Frampton & Kirton
- There are other, better sites and planned developments in Kirton through the local plan and The Quadrant is only two miles away, why do we need more; how will the roads cope with this and the Quadrant. Once it is gone it is gone forever. Yet to see the impact on the highway network of the Windmill site, the Quadrant and other planned sites. Boston has better facilities for more homes.

Foul and surface water

- The drains cannot cope, any rainfall leads to flooding, not with rain water but with foul sewage which comes up through drains, pushing up manhole covers and entering gardens and homes; homes have been flooded at least three times this year (2016), most serious in June 2016. This event lasted for over 48 hours
- The last sewer collapse led to the road being closed for several months, and there are sink holes. This is most definitely a real issue with a decaying, Victorian sewerage system that has been ongoing for several years. Will the contractor ensure it is improved? Present system cannot cope and the slightest rainfall causes pooling of water. Some residents plug the foul drain to stop it happening again. Pooling of water in Sentence Crescent after rainfall
- It is understood the Frampton WRC cannot cope in extreme conditions and no extra capacity has been built into it since development to the south of Middlegate Rd connected in. Sometimes the smell is dreadful
- Other homes committed or being built (Windmills scheme) have to be placed on existing water and sewerage infrastructure, the system cannot cope with those being built even without a further 215, the road is subsiding through drains failures
- All utilities under the road (gas, water, sewerage) have been damaged at one time or another, history of carriageway collapses due to running silt...they all need to be checked for suitability of extra loadings and the carriageway constantly has new cracks appearing, Council would fail in its duty of care if this is passed. Any excavations will further compromise the sewerage system.
- No amount of ponds and swales will stop the movement of water; this is a flood plain, more impermeable material and houses higher out of the ground means that Middlegate Rd and its surrounds will have to endure waste water from a new estate. Open ponds will constitute a drowning risk and existing soakaways in rear gardens will be affected. Some detailed critiques of the applicants' FRA
- Lifting of ground levels by as much as 1.5m will cause overlooking, even with bungalows; will require pile foundations and risks of property damage and run off from raised roads will find its way to Middlegate Rd. Noise from pump house will have an impact. Bungalows are undeliverable with this level of flood risk
- Anglian Water must confirm that they are upgrading the system(s), lived with smell for years.

Highways

- Location of site entrances causing noise and disruption and conflict with Lighton Avenue where there is poor visibility for emerging traffic; dangerous to bring in two more junctions which will add unsafe obstacles. Better to form two crossroads with Grosvenor and Lighton
- the public consultation meeting in July was told that Lighton Avenue is not affected but it is, the application papers make lots of references to it and there should have been more consultation in Lighton Avenue
- This is a country road lane with a 30mph limit and streams of delivery vehicles and the amount of traffic using and breaking the speed limit would make it unbearable, already damage to kerbs and pavements, there will be serious problems if this is granted
- Middlegate Rd is not wide enough since it quickly narrows to 4.6m from the A16 junction and there is a risk of collision/near misses, particularly between Grosvenor Rd and the A16. It was not built for such extra traffic usage of 200 to 300 more cars possibly four times a day, and the safety of pedestrians, site is near to three residential care homes, children playing, waiting for school buses would be put at risk. Transport Assessment does not show a true picture, the A16 junction is inadequate and substandard, with deep shadow and poor visibility. The footpath on Middlegate Rd is not 1.8m wide and the fact that there is only a footway on one side indicates what kind of road it is
- The Travel Plan is badly flawed, buses are expensive, infrequently used, and people use their cars..why will this be any different? Bus passes and bike locks, for how long?
- The left turn into Middlegate Rd, north bound on the A16 and the right turn southbound cannot accommodate extra traffic.
- There should be direct access onto the A16; the junction with the B1397 London Rd has a blind spot and will be even more dangerous
- Impact from heavy construction traffic
- There is a public footpath between Nos 34 and 36 and neighbours have rights of way, concern about activity and access in these locations.

Area character

- Frampton is a lovely little village and does not need expanding. The site is in Frampton parish, not Kirton, it has its own identity and is not a sustainable location, and although it spans both sides of the A16 it has no facilities. It presently has 350 houses so this would be out of all proportion to the size of Frampton and completely dominates it; the BBC Landscape Character Assessment says any development should be designed to fit organic pattern and intimate scale
- One of the last open fields in the area & will extend the Kirton footprint towards Wyberton. The northern boundary does not appear correct, how is the straight line and its position explained

- Housing mix looks mostly for larger family homes; there is a need for affordable homes for first time buyers. A detailed layout should be prepared for the whole site
- Even more traffic would use Grosvenor Rd into Kirton as a rat run; people will not walk to drop children off at school and pick-up. Buses are often full and more would lead to more congestion and road damage
- Setting and amenities of this area with open views over fields would be lost forever
- Entrances cannot be created without considerable disruption to trees, now they are mature they should be retained. Holland House is home to the oldest tree in Frampton which helps support variety of wildlife.

Infrastructure

- Overloading of school and doctor/medical facilities at capacity already now and as a result of the extensive building in Kirton. School classes will have to be larger, effects upon pre-school child care and elderly care. Closure in Frampton put more strain on Kirton. What plans are there to expand the Primary and Middlecott schools, Kirton cannot cope with more houses without increase in services as well. Difficult to get a GP appointment within three weeks. Depletion of services and shops over the years
- Will the Police and ambulance services be assisted to support the extra population
- Low water supply pressure.

Other matters

- Difficulties in attracting professional people even if money for expansion was available
- Loss of views or loss of views of the Stump, visually damaging, conflict with character and poor relationship to adjoining buildings. More houses cramped together will be an eyesore. The loss of unrestricted views across open fields affects mental health making them feel trapped, ill and stressed
- Threats to wildlife, negative impact on pink footed geese linked to The Wash SPA, swallows, buzzards, swan and finches, presence of bats in nearby barn – at the very least there should be a full bat survey, and there is evidence of hedgehogs, shrews and voles and amphibian life – unsure if Great Crested Newts are present but there are recorded colonies in the surrounding area, and geological features of SSSI; effects upon ecology and loss of trees whilst estate development would overwhelm it. Frampton is a dispersed settlement, infilling will ruin its character. Pile driving will affect the trees and damage properties
- The land is grade 1 agricultural land, some of the best in the country, capable of two annual crops and alternative brown field land is available in Kirton with lesser flood risk. Morally wrong to not use brownfield sites. PPS11 refers to such quality land as an important resource and policy should be to avoid its loss

- This outline application cannot adequately address all the issues
- Photographic evidence of farm of buildings on these fields with asbestos
- People chose to live here in an 'outskirts of the village' location but this would put them in the middle of a large housing area.

6.0 Consultations

- 6.1 Frampton Parish Council has advised that the Council unanimously objects to this application and requests that the application is considered by the Planning Committee. It says the sewerage system on Middlegate Road has been collapsing for years, plenty of brown/in-fill sites that are superior to this, no amenities in Frampton and there is a surface water pond shown next to a play area.
- 6.2 In detail the Parish Council adds a further list of observations, summarised as:
- Free bus passes for each household is preferential treatment
 - Poor visibility looking east from Lighton Avenue
 - Difficult to enter/ negotiate the A16/Middlegate Rd junction
 - Likelihood of sewage overflows from Middlegate Rd into new estate
 - Wrong scale of development for Frampton which is small scale and distinct from Kirton, there are views of Boston Stump and culs de sac could lead to further development. This is not as the applicants state, a negligible effect
 - Questions over landscape and ponds maintenance, control of discharge, insurance
 - The public consultation at Kirton Town Hall saw only one out of fifty in favour.
- 6.3 The County Council as Local Highway Authority and Lead Local Flood Authority advises that any permission should include a number of conditions relating to the provision of bus stops; construction of highways to standards; formation of the estate road and estate road entrance before dwellings are commenced, submission for approval of a revised Travel Plan and a scheme of surface water drainage. In response to representations that have been shared with that authority to do with the width of Middlegate Rd at its eastern end adjacent to the A16, it is acknowledged that the road does narrow but that busses run through it daily and there is no evidence from collision data to show a safety issue. Any cumulative impact is not regarded as severe and the advice is that it cannot be resisted for this reason.
- 6.4 Lincolnshire County Council Strategic Development Officer requests a part education contribution since it would have a direct impact on local schools, in this case the school-based sixth forms that serve Frampton. The pupil product ratio illustrates that eight sixth form places will be required and there is insufficient capacity available. It is requested that there is a s.106 agreement to the value of £147,420.00 to be spent on a scheme to be specified prior to the signing of an obligation pending a review of sixth form provision in the Boston area.

- 6.5 NHS England – Midland and East Midlands has replied with a request for a financial contribution based upon the likely impact of the new population. Primary Care Support advises that an increase in population of an estimated 516 persons would place extra pressure on existing premises and add additional demand for extra consulting/treatment room requirements. A contribution of £95,460.00 is requested based upon the needs of the Primary Care Team to help the Kirton Medical Centre to upgrade its records room and to upgrade clinical rooms so that procedures can be carried out in these rooms without using the treatment room. This would be subject to a full business case and approval by NHS England.
- 6.6 The Environment Agency objects to the application on the grounds that there is no evidence that the sequential test has been passed. The Agency does not agree with the applicants' conclusions that this application site is sequentially preferable to site Kir037 which is a South East Lincolnshire Joint Planning Unit's preferred site. In receiving this authority's confirmation that the Sequential Test has not been passed, the Agency has maintained its objection.
- 6.7 Anglian Water's first response was that the foul drainage from this development is in the catchment of the Frampton WRC that will have available capacity for these flows. In this case, investigations have highlighted recorded flooding incidents in the local area. It is concluded that the development will cause an unacceptable risk of flooding downstream if a connection is made to the existing network. The alternative proposed by the applicant, to connect flows directly to Frampton WRC, is the subject of a strategy being prepared by AW. Since this strategy is yet to be finalised, a planning condition is recommended if the planning authority is mindful to grant approval, in order to determine the mitigation measures required.
- 6.8 The Black Sluice Internal Drainage Board advises the watercourses on the east boundary, across the centre of the site and the piped watercourse along the southern boundary are all Board maintained and the 9m byelaw distance will apply and no trees or planting will be allowed within that distance. Surface water discharge into watercourses should be limited to greenfield run-off rates. Ground levels should not be raised unless measures are taken to prevent possible flooding or waterlogging of neighbouring land.
- 6.9 Environmental Protection advise that there are no objections in principle subject to conditions relating to noise remediation and contaminated land remediation.
- 6.10 Lincolnshire Fire and Rescue object to the application on the grounds of inadequate water supply for firefighting purposes. The authority seeks fire hydrants to be installed within the development at the developer's expense but that it is not possible to determine the number until the water planning stage.
- 6.11 The Consultant Archaeologist had advised there is insufficient information to establish the significance of archaeological remains. Following consideration of the geophysical survey results, it is agreed that the further investigation of any significant archaeology can be dealt with by condition on any approval.

- 6.12 Natural England advise that there is insufficient information to be able to provide a substantive response. No assessment of the potential impacts upon the Wash SSSI and insufficient information to be able to undertake a Habitats Regulations Assessment on the effects upon the site as a feeding and roosting area for Pink Footed Geese which is functionally linked to the Wash Special Protection Area.
- 6.13 Further correspondence and assessments by the applicants are underway and the outcomes of this will be reported verbally to your meeting.
- 6.14 The Local Housing Authority advises that there is a strong need for affordable housing in both Frampton and Kirton. Confirms that the offer of 20% affordable housing on this scheme is realistic and reasonable, advice is given on the likely housing mix. The applicant is advised to engage with a Registered Housing Provider.

7.0 Planning Issues and Discussions

The Development Plan

- 7.1 There are no outstanding allocations (in Kirton) or up to date policies to guide the location of housing development in the saved policies of the 1999 Local Plan. The lack of a five year supply means that any policies that are to do with housing supply are 'out of date' and thus lesser weight must be given to Policy CO1.
- 7.2 The general development control policies at para 4.2 above remain valid; principal amongst them are Policies G1, G2, G3, G6, T2 and H4.
- 7.3 The extent to which those policies relating to, for example, access, or satisfactory disposal of foul and surface water are satisfied are considered below. At this point however the development plan is either silent or out of date on the question of the in-principle development of this site.

Weight to be afforded to the SELLP

- 7.4 The SELLP is not a part of the development plan and s.38 (6) does not apply until it has been adopted. The exercise in September 2016 when the SELLP Steering Group considered consultation responses on the preferred sites in Kirton and other settlements resulted in this application site (Fra024) not being taken forward as a Preferred Housing Site. Sites Fra005, Kir036 and Kir013 were also all deselected from the January Potential Housing Site list.
- 7.5 Presently the single Preferred Housing Site for Kirton/ Frampton is Kir037 (land to the west of London Road, part of which has outline consent for 105 homes). This is on the basis that although it has the second worst score in the sustainability appraisal of the potential housing sites, compared to this application site which had the second best score out of five; Kir037 has attracted significant support and is at a lower flood risk than, for example, the application site ('danger for some' and lesser flood depths compared to 'danger for most'). The identification of a Preferred Housing site is a material consideration and, in view of other commitments, the residual requirement for Kirton is 199 dwellings.

- 7.6 However, based upon national guidance in the Framework and the PPG set out in paras 4.6 to 4.8 above, it is considered that it is not possible to advance a case on prematurity..that an approval here would prejudice the preparation or outcome of the SELLP-making process. This has been confirmed by separate legal advice taken in respect of this application. The fact that the Minister has only afforded limited weight to a Plan that has commenced its examination (para 4.9 above) is confirmation of this.
- 7.7 It is not known at this point what the final form of the (SELL) Plan will be and how it might change as a result of further necessary publicity and examination. Thus limited weight may be given to the emerging plan at this stage but it is not sufficiently advanced to be able to say that this application is premature.

Loss of agricultural land ('best and most versatile')

- 7.8 The Framework encourages the effective use of land by re-using previously developed land (para 111) and that authorities should take into account the economic and other benefits of the best and most versatile (bmv) agricultural land (para 112). If significant development is demonstrated to be necessary, authorities are to seek to use areas of poorer quality in preference to that of higher quality.
- 7.9 The nature of, particularly outline approvals over the last ~ two years means both that Policy CO1 must attract little weight and the housing need is such that your officers have concluded that it is inevitable that housing permissions will be given in sustainable locations, often outside of development limits on agricultural land. Policy G9 to do with resisting development on bmv land is not a saved policy.
- 7.10 This application does not include any evidence on the likely agricultural grade of the site and the Planning Statement does not refer to agricultural land. The DEFRA information available to the Council indicates the site to be Grade 1 but we know that this is a particularly coarse assessment and does not take account of local variations. Local evidence is however that the land takes two crops per year.
- 7.11 Committee will recall its consideration of the Sibsey/Wainfleet Rd appeal decision in October last year when the Inspector, in response to the Council's view on the inevitability of greenfield development stated (para 32):
- “ 32.The officer report to Committee suggests that any new housing around the existing development limits of Boston would need to use agricultural land. However, I have seen no evidence to demonstrate the level of development proposed could not be accommodated without involving the loss of 3.75 hectares of Grade 1 agricultural land. Hence, I am unable to conclude that there would be no conflict with the advice in paragraph 112 of the Framework that poorer quality land should be used in preference to the best and most versatile agricultural land. The loss of that land must, therefore, be regarded as a significant adverse effect of the proposal.”
- 7.12 Committee may also recall in its debate thereafter that it believed that the Sibsey/Wainfleet appeal site was unlikely to be Grade 1 land since it was lying fallow.

7.13 In addition, in the Monarchs Rd appeal decision the Inspector concluded that

“55. I note that the Council no longer relies on loss of agricultural land as a reason for refusal. I also take account of the fact that the site is not particularly large and that it is likely that some BMV land will be needed to meet the Council’s housing requirements. Even so, I consider that the loss of BMV [best and most versatile] land is a disadvantage of the scheme to which some weight should be attached.

7.14 The application would bring wholesale change to an undeveloped open site which, in the absence of evidence to the contrary is amongst the best and most versatile grade of agricultural land. There is thus a conflict with para 112 of the Framework.

Landscape and visual impact

7.15 The application site is just south of the boundary between Character Areas B1 and B2, being within the B2 area in the *Landscape Character Assessment of Boston Borough 2009* (LCA). The description of the wider ‘Settled Fen’ character type refers to an irregular organic pattern of winding roads and watercourses. This B2 character area is described as having a distinctive small scale landscape with tree cover being generally sparse with short rows of poplars and repeated coniferous shelter belts. Kirton is acknowledged as having a high level of tree cover. On Landscape Sensitivity, it continues that development should be designed to fit the organic pattern...’in order to fit in with its distinctive character’ (LCA p.41).

7.16 The views of the site and its appreciation are only from the environments to the north of Kirton/Frampton. The applicants’ Landscape and Visual Appraisal (LVA) refers to the ‘local topography and high level of screening provided by existing development’ (p.4) of this site and it continues to conclude that the development of the site would have a negligible or minor adverse effect upon the Character Area. The overall landscape effect at completion is regarded as moderate adverse.

7.17 The northern site boundary as proposed is a very long straight and regular line across the landscape that is not informed by any feature on the ground, natural or otherwise. This concern of introducing an almost alien feature which is not characteristic of the Fen has been raised with the applicants since it has the effect of serving to further emphasise the very large incursion of development into the open countryside as a large, crude sharp line of development. Your officer does not agree with the applicants’ assessment that the site is screened by existing development or that the landscape effect is negligible or minor. Since there are little or no existing features which inform the northern boundary the applicants’ analyses understates the impact of the linear tree belt.

7.18 The northern boundary of the settlement defined by Middlegate Road is a mature edge and although tree lined in part it is a pleasant mix of the natural with glimpses of properties but which do not dominate the view and it is perceived as a gentle settlement edge.

- 7.19 In reply, the applicants have acknowledged that the linear edge requires mitigation and that since the application is outline, positions of dwellings can be staggered to give a less rigid edge. In addition, an alternative landscape strategy is proposed which would have more variation in shape by following the watercourse which extends to the north out of the site and providing some variation in width.
- 7.20 These alterations are outside of the current red line boundary and the applicant did not wish to amend the red line which might then delay presentation to Committee. Therefore since this extra land is under the same ownership as the application site, the applicant has indicated that applicant and owner would be willing to enter into a planning obligation to secure the amended landscape belt and its implementation.
- 7.21 It is considered that the northern application site boundary – bearing in mind that this is an outline application, will detract from the established settlement limit and introduce a sharp regular, manmade line which fails to take account of either the Character Area or the way in which settlements are perceived in the landscape. Any organic edge will be destroyed and the establishment of any agreed landscaped edge will take time to establish and the harm in the interim will be significant.
- 7.22 The suggested amendments will create a planted incursion north of the site which will help to interrupt direct or stark views of new housing. Its ability to mitigate is however quite limited in the overall length of this boundary since longer stretches of a straight planted line, on the indicative layout, remain. No public access is intended beyond the red line boundary but the housing layout would be such to give natural surveillance by design.
- 7.23 To a similar extent the bund to the A16 will close down those wider views but could also be in danger of being perceived as an unnatural feature or, at least before establishment, a heap of spoil. These are problems with the application and these shortcomings raise a conflict with Policy G2.

Highways

- 7.24 The Highway Authority does not object to the application and although there is a pinch point on Middlegate Road close to the A16, the advice on the collision data is that it would not support intervention on these grounds. The existing perceptions of traffic volumes, speeding traffic or the ability of the carriageway to take current traffic volumes are not relevant to this application.
- 7.25 The Transport Assessment provided with the application has been assessed by the Highway Authority and account taken of the Framework guidance which states that 'development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe' (para 32).
- 7.26 Since the application and any conditions may only deal with mitigating the impacts that might arise from this development, in the absence of any substantive evidence to show a severe impact arising from this development, there is no highway objection.

Foul and surface water disposal, flood risk

- 7.27 The Lead Local Flood Authority has not raised any objection and has requested that surface water is dealt with by condition on any approval. The surface water proposals are contained in the preliminary strategy as part of the applicants' Flood Risk Assessment. The use of SuDS will enable a regulated outfall to the IDB drain that crosses the site north to south and the Drainage Board has indicated that subject to greenfield run-off rates, they would have no objection to this. It is normal practice at outline to condition a surface water strategy on any approval.
- 7.28 The situation with the foul drainage is that Anglian Water are preparing a development impact assessment which will inform whether the new sewer direct to the WRC is acceptable or if a connection to the existing system can be mitigated in the knowledge that AW advise that it could lead to flooding downstream, i.e. between any connection and the WRC.
- 7.29 In respect of the existing problems with the overcharging of the sewerage system at times of rainfall, this is happening at present and all the applicant can be required to address is to demonstrate that this proposal will not exacerbate the current situation. The applicant has also offered to assist with these current flooding problems if Anglian Water could identify a solution or an area where the applicant can assist, but to date AW has not replied to this particular offer.
- 7.30 However, it does appear that if a new sewer direct from the site to the Frampton WRC was requisitioned, this would address the foul water disposal questions for this application. Thus, as this outline stage, it is reasonable to condition this for future addressing and consideration.
- 7.31 The Environment Agency's objection to the application is based on their belief that there is a sequentially preferable and available site (the single Preferred Housing Site for Kirton/Frampton - site Kir037) (para 7.5 above). An unresolved objection from the Environment Agency on an application of this nature means that any resolution to approve must be forwarded to the Minister to give him the opportunity to 'call-it-in' for his own determination. The authority cannot approve this application until the Minister has declined to call-it-in. You are able to refuse the application and it would not need to be referred.
- 7.32 The Sequential Test is based upon the premise that development is to be directed to sites at a lower risk of flooding. Although the applicant contests that this application site and the Preferred Housing Site (Kir037) have the same level of risk, the evidence behind the emerging SELLP and the views of the Environment Agency is that there is a difference between the sites. Thus the application fails the sequential test and the Agency has maintained its objection.

Protected trees

- 7.33 The three trees that are proposed to be removed to facilitate the accesses (T45, 44 and 34) are assessed in the applicant's Arboricultural report as being in fair physiological and structural condition. This is a straight consideration of allowing three healthy trees that still have a reasonable life expectancy – there is no reason for their removal at this point – to be removed to make way for development. Although covered by a TPO this should not be seen as an embargo on works to them or their removal; the purpose of a TPO is to enable controlled management. The trees in question are a birch and two horse chestnuts and if the development was otherwise acceptable, it would be unlikely that development should be prevented over the loss of trees when the majority of the protected trees will remain and any approval would enable more to be planted.
- 7.34 It is thus considered that the loss of trees should not be a reason to resist this development.

Protected species and Ecology

- 7.35 The Wash Special Protection Area (SPA) is a European site for the purposes of the Habitat Regulations 1994. The designated areas in The Wash are approximately 4.5km to the east south east. An SPA is, along with Special Areas of Conservation, a network of protected sites across Europe and the Birds Directive aims to protect all European wild birds and the habitats of listed species, particularly through the designation of SPAs.
- 7.36 In assessing development proposals, the decision maker must determine whether the proposal is likely to have a significant effect upon a European site. An 'appropriate assessment' is then required where there is a probability that a proposal will have a significant effect upon a site. The assessment should then look at each of the interest features for which the site was classified.
- 7.37 This application site is not a protected site and the applicant's appraisal is that the potential for the site to be utilised by pink footed geese is low. The likelihood of any link to protected species is not mentioned in the January 2016 Housing Papers to support the SELLP and the June 2016 papers record that Natural England has some concern that the site is where pink footed geese have been known to forage. Evidence from the Lincolnshire Environmental Records Centre is that the last recorded incidence of pink-footed geese, in 'Kirton Village' (not further specified) was in 2000 when c.250 was present. This compares to the estimated population on The Wash of some 23,000.
- 7.38 The test is whether there is likely to be a significant effect upon a European site. At this point, this effect seems to be difficult to substantiate but is the subject of ongoing investigations and will be the subject of an updating verbal report to Committee.

8.0 The Nature of any Conditions/ Planning Obligation

- 8.1 In addition to the standard outline conditions on any approval, the applicants have agreed that the standard 'submit the reserved matters within three years' of the outline approval can be amended to require submission within one year. This, the applicants say, is clear evidence of the deliverability of the site in order to meet housing needs since the site is in single ownership and the applicant is a house builder with a proven track record. By comparison, they say, the entire Kir037 'preferred site' does not benefit from permission across it all and it is in multiple ownership.
- 8.2 The applicants also confirm that they will enter into a s.106 planning obligation to cover those items requested through consultation, namely:
- 20% affordable housing
 - Education contribution of £147,420.00
 - Health care contribution of £95,460.00, and
 - to secure the landscape belt outside of the northern site boundary
- 8.3 It is considered that the offer of the obligation would meet the tests that govern the connection between applications and obligations and thus this must be a weighty consideration to be taken into account in favour of the application.

9.0 Conclusions and Recommendation

- 9.1 The application site is wholly outside the settlement development limits of a high order settlement. In view of the lack of a five year supply and that Policy CO1 may only attract limited weight; the countryside location should not be used as a reason to resist this application. The development plan is essentially silent or out of date in terms of being able to be used to direct housing development and given that housing sites in and around Kirton must be considered to be sustainable locations, it is clear that the presumptions in favour of sustainable development in paras 14 and 49 of the Framework are triggered.
- 9.2 The emerging South East Lincolnshire Local Plan has been referred to by a number of respondents and although it is quite advanced in its preparation, the guidance is clear that a case on prematurity cannot be made until a Plan has been published for Examination. Thus, this application is unable to be refused on the grounds of prematurity.
- 9.3 There is a conflict with para. 112 of the Framework in respect of the loss of agricultural land and this must be a part of the planning balance. It is considered however that this would not normally be a reason for refusal given the decisions of this authority in the past where it has consistently allowed many applications on farmland.

- 9.4 The fundamental issue raised by this application is the impact and encroachment into the landscape by this scale of application. Although it is not a loss of agricultural land argument per se, it is more to do with the character and context of the area and how it would be irreversibly changed, to the detriment of the landscape, if this application was approved.
- 9.5 The matters of the present difficulties with the foul sewerage systems and the ability or otherwise of the road surface or the highway network as a whole to cope with increases in traffic are by far the issues most raised by residents in their responses. There is however no recorded objection from the Highway Authority (or as the Lead Local Flood Authority) and although Anglian Water are undertaking a development impact assessment, this will inform the best way of dealing with foul discharges from the site and there remains no evidence or ability to demonstrate that this application will impact upon the current situations. Thus, reasons for refusal relating to highways or foul water drainage are not being recommended. Thus the fact that foul water may be dealt with by condition, is a further indication why a reason for refusal on this ground would not be appropriate.
- 9.6 The flood risk Sequential Test has not been satisfied since there is a preferable site better suited in flood risk terms evidenced through the SELLP work. The outstanding objection from the Environment Agency confirms this.
- 9.7 The likelihood of a significant effect upon the Wash SPA as a result of this application appears unlikely. If an appropriate assessment is required, the Frameworks' para 14 presumption in favour of sustainable development does not apply if one is being considered, planned or determined. This will be the subject of a further verbal update to Committee.
- 9.8 The final part of the report above refers to the applicants' agreement to enter into a planning obligation to secure the funds and affordable housing set out by consultees. There is also agreement that any approval should be limited to one year for the submission of reserved matters, by way of the applicants demonstrating that the site can be commenced in a relatively short space of time to assist housing numbers. Significant weight should be given to the offer of the obligation in support of the application.
- 9.9 However, it is concluded that the adverse impacts of this application on the landscape, the character of this part of the Fen and that there does appear to be a sequentially preferable site are adverse impacts that significantly and demonstrably outweigh the benefits.

Recommendation

- 9.10 It is therefore considered that this application should be refused for the following reasons:
1. The development of the application site would constitute a significant incursion into open countryside which would detract from the open fen character and landscape of this open agricultural land to the north of Kirton where the settlement development limits are clearly constrained by the extent of Middlegate Road. The impact of development would be exacerbated by the arbitrary nature of the northern site boundary which is not influenced by and has no respect for the existing open landscape. The mitigating indicative landscape and planting proposals including a raised bund to the A16 boundary would appear alien and uncharacteristic such as to further emphasise this impact upon the open countryside, contrary to saved Local Plan Policies G1 and G2.
 2. The application has failed to satisfy the flood risk Sequential Test as set out in para. 101 of the National Planning Policy Framework, its technical guidance and the Planning Practice Guidance. The evidence from the emerging South East Lincolnshire Local Plan and taking account of the unresolved objection from the Environment Agency is that up to date information indicates that there is a sequentially preferable site within the development limits of Kirton which is at a lower risk of flooding. The local planning authority considers that the benefits of the development of this site - which can be in a sustainable location - are outweighed by the higher level of risk that would be encountered on this site compared to the identified sequentially preferable site.

In determining this application the authority has taken account of the guidance in paras 186 – 187 of the NPPF (2012) in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the Borough.

Paul Edwards
Development Control Manager