

BOSTON BOROUGH COUNCIL

Planning Committee – 20 June 2017

Reference No: B/16/0141

Expiry Date: 08-Jul-2016 (extension of time agreed until 23 June 2017)

Application Type: Full Planning Permission
Proposal: Construction of 66 dwellings including 11 affordable dwellings, new vehicular access and estate road plus associated garages and infrastructure

Site: Land off Sibsey Road/Wainfleet Road, Boston, Lincolnshire

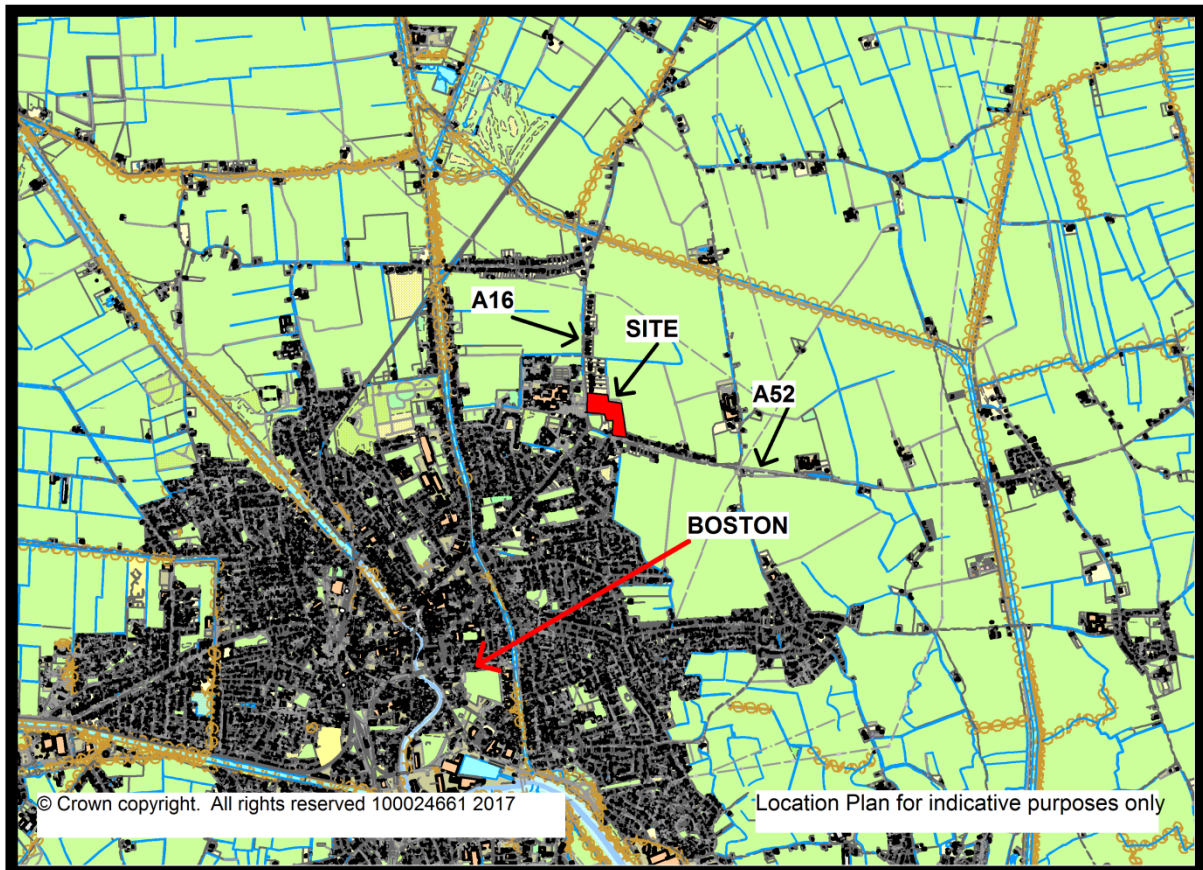
Applicant: Mrs Alison Lea, Larkfleet Homes

Ward: Fishtoft
Parish: Fishtoft Parish Council

Case Officer: Trevor Thompson

Third Party Reps: 25 (17 +8)

Recommendation: GRANT



1.0 Reason for Report

- 1.1 This application is essentially a re-submission of a similar scheme from 2014 and has been presented to the Planning Committee since that 2014 application was the subject of refusal and appeal. In addition objections have been raised by local residents and the Parish Council. The application was originally submitted in April last year and had been held in abeyance at the applicants' request to enable further discussions to take place.

2.0 Application Site and Proposal

- 2.1 The site is of irregular shape, covers approximately 3.75 hectares and fronts onto both Sibsey Road and Wainfleet Road, close to the A52/A16 roundabout. The site is divided into 2 pieces of land by an existing hedge that runs partly along the northern boundary and through the central part of the site. The Pilgrim Hospital on Sibsey Road lies opposite the site to the west and the Burton Inn Public House and Premier Inn on Wainfleet Road lie opposite to the south.
- 2.2 The main part of the site is within the open countryside for Plan purposes, outside of settlement development limits and approximately 140m from the Boston (Spilsby Road) Conservation Area. The site does however include part of Sibsey Road which lies within the development limits of Boston. There are residential properties fronting both Sibsey Road and Wainfleet Road located within close proximity to the site; Burton Hall adjacent to the south and its outbuildings are listed buildings. A number of trees within the site fronting Wainfleet Road are protected by a Tree Preservation Order.
- 2.3 The application site is located within Flood Zone 3 (High Probability) on the Environment Agency's Flood Maps and also within a 'danger for some/danger for most' flood hazard category with the majority of the site within low probability of tidal or fluvial flooding as identified on this Council's Strategic Flood Risk Assessment. A small part of the south east corner of the site lies within a medium risk of tidal flooding.
- 2.4 This application is for full planning permission for the erection of 66 dwellings including 11 affordable homes plus associated infrastructure including estate roads, sustainable drainage systems (SuDS) and an enlarged area of public open space.
- 2.5 At the time this application was originally submitted last year, it was intended to construct a new vehicular access onto Sibsey Road to restrict a right turn (north) manoeuvre from the site. The design of the proposed access was however later amended back to the same design as the previous application given the views expressed by the Inspector relating to the previous appeal decision. This matter is discussed in detail below.
- 2.6 The proposed residential development will thus be accessed via a new priority controlled T junction onto the A16 Sibsey Road. As with the previous scheme, the new site access will include a protected right turn lane and central refuges on the A16, to allow pedestrian flows.

- 2.7 The site frontage onto Wainfleet Road is marked by a wall approximately 1.5m high with a gated access which serves the field to the rear. It is not proposed to construct a new vehicular access onto Wainfleet Road, only a pedestrian and cycle access at the existing field gate. The existing brick wall and trees are to remain.
- 2.8 This application, as previously, does not include any offers of off-site contributions since no such request has been made by either NHS Lincolnshire or the LCC Strategic Development Officer (Education).
- 2.9 The major differences between the previous scheme that was refused and the current application are:
- The layout has been changed and the number of dwellings has been reduced from 76 dwellings to 66 dwellings in order to minimise the impact on the heritage assets and the number of affordable houses has now been reduced proportionally to 11 units
 - The main difference is that it is now intended to retain much of the field to the east of the site and to reduce the number of units to be built in the north east corner in order to reduce the impact on the setting of the nearby listed buildings and to retain the open views from Wainfleet Road
 - The density of the previous application was 20.2 dwellings per hectare (dph) and that of this new scheme is 17.6 dph
 - The site now includes a larger area of public open space. Previously the area of open space was 25% (including dry ponds and buffer zones). This has increased to 37.7% of the gross site area
 - It is intended to construct 2 dwellings to the rear of Burton Hall – previously it was intended to construct attenuation ponds in this area.

3.0 Relevant Site History

- 3.1 Application B/14/0329 was refused by Committee in 2015 following a Committee site visit.
- 3.2 That application was for the erection of 76 dwellings and was refused on highway related grounds. All other matters such as design, impact on heritage assets, flood risk, loss of agricultural land, internal layout, residential amenity and the level of affordable housing, for example, were all considered, by implication, to be acceptable to Committee.
- 3.3 The appeal against the Council's refusal was dismissed (permission was not granted). A copy of the Inspector's decision notice is attached to this agenda.
- 3.4 When this appeal decision was reported to the Committee in October 2016 the Development Control Manager advised Members that the main implications of this decision were:
- Although the appeal was dismissed, the Inspector refused the proposal principally on one of his own identified 'main issues' on the grounds that it would significantly encroach upon the setting of the nearby listed buildings which he considered as a main issue. He considered that the proposal would result in harm to the heritage assets but this harm would be 'less than substantial'. He concluded that the harm would not be outweighed by the public benefits of the proposal

- The appeal was not dismissed on the grounds of highway safety which was this Council's sole reason for refusal
- The Inspector concluded that *Manual for Streets* was the correct guidance to employ rather than *The Design Manual for Roads and Bridges* (DMRB) since the character of Sibsey Road is more urban than rural (para 11). Consequently *Manual for Streets* can be used for ghost island right turn junctions (para 12)
- The Inspector found that adequate visibility to the south (the centreline) could be achieved (paras 14, 15 & 16), and there is a good level of forward visibility and reduced traffic speed when approaching from the south (para 18)
- The Inspector also pointed out that no sequential test had been undertaken in accordance with section 10 of the NPPF, neither did he have any evidence to demonstrate that the level of development could not be accommodated without involving the loss of 3.75ha of grade 1 agricultural land. These were not considered by your officers to be a barrier to development.
- The amenities of the neighbour to the north would only be at minimal risk of loss of privacy and that the development would not cause any detriment to the protected trees within the site.

3.5 At his paragraph 34 the Inspector stated that 'for viability reasons, the proposal would not provide any of the other developer contributions which the Council would normally seek from a development of this type and scale' This is not strictly accurate since neither the NHS, the LCC Education Services, nor the Council had made requests for financial contributions.

3.6 In addition, the Inspector noted that 'a lower level of (affordable housing) provision than that normally sought under the Council's development plan policies has been agreed...' and appeared to place weight on the fact that the development consisted of 20% affordable housing as opposed to 30%. This is again an example of where the Inspector may have erred since the level of affordable housing at 30% was included within this Council's 2006 old Interim Affordable Housing Policy and not within the development plan. The current level of affordable housing is now a minimum of 15% which was agreed by Committee in April of last year.

3.7 In conclusion, the Inspector considered that the harm to the designated heritage assets and the loss of grade 1 agricultural land are adverse impacts which would significantly and demonstrably outweigh the benefits of the proposal (para 36).

4.0 Relevant Policy

Boston Borough 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 majority of the site lies within countryside, in an area where new development is controlled by Policy CO1. The access to the site includes part of Sibsey Road which lies within the settlement limits where Policy H2 could apply.
- 4.3 There are no current saved policies to guide housing development and the lack of a five year supply of housing land means that any policies that are to do with housing supply are 'out of date'. The May 2017 decision of the Supreme Court in the Cheshire East/Suffolk Coast cases appears to confirm that policies like CO1 are not policies for the 'supply of housing', contrary to what the Court of Appeal had determined earlier. Thus we seem to have returned to a point where full weight could be given to Policy CO1. But for Policy CO1, the development plan is either silent or out of date on the question of the in-principle development of this site. There are no saved conservation or listed building policies.
- 4.4 The relevant general development control policies are as follows:
- Policy G1 – Amenity
 - Policy G2 – Wildlife and landscape resources
 - Policy G3 – Surface and foul water disposal
 - Policy G4 – Safeguarding the water environment
 - Policy G6 – Vehicular and pedestrian access
 - Policy CO1 – Development in the Countryside
 - Policy T1 – New accesses onto major roads
 - Policy T2 – Roads and footpaths in new developments
 - Policy H3 – Quality of housing developments
 - Policy H4 – Open space on housing estates

National Planning Policy Framework (2012)

- 4.5 Paragraph 14 repeats the presumption in favour of sustainable development from elsewhere in the Framework and seeks the speedy approval of proposals that accord with the development plan and, where the plan is "absent, silent or relevant policies are out of date", to grant permission unless the adverse impacts would significantly and demonstrably outweigh the benefits; or that policies in the NPPF indicate development should be restricted. The general effect of para 14 is now clearer following the Supreme Court judgment - in the absence of relevant or up to date policies - the balance is tilted in favour of permission – 'the tilted balance'.
- 4.6 However, and almost irrespective of paragraph 14, since it is inevitable in the light of a lack of a five year supply that sustainable greenfield sites will be candidates for new housing supply, the weight given to the restrictive policy CO1 needs to be judged against the need for development. The Framework does not replace the primacy given to the statutory development plan.
- 4.7 The core planning principles in the Framework include to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

- 4.8 Paragraph 34 of the NPPF requires developments which generate significant movements to be located where the need to travel will be minimised and the use of sustainable transport modes are maximised. Paragraph 56 of the NPPF indicates that the Government attaches great importance to the design of the built environment and adds that good design is a key aspect of sustainable development. Paragraph 60 indicates that decisions should not attempt to impose architectural styles or particular tastes and should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It also says that 'it is however, proper to seek to promote or reinforce local distinctiveness'
- 4.9 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'.
- 4.10 With regard to the setting of nearby listed buildings, paras 126-135 of the NPPF are relevant. It indicates that a proposal which fails to adhere to the historic environment policies contained within this document cannot be viewed as being sustainable and therefore contrary to the 'presumption in favour of sustainable development' which lies at the heart of this document. All harm to the setting of a designated asset, it says, requires clear and convincing justification. Paragraph 134 says that 'where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use'.

Departure from the Development Plan

- 4.11 The application has been publicised as a departure from the development plan in accordance with regulations since it does not have any allocation or policies in the Local Plan which would appear to support it. A Ministerial Direction requires a planning authority to consult the Secretary of State before granting planning permission for certain categories of development (whilst Circular 02/2009 has been cancelled under the National Planning Policy Guidance, the Direction remains in force). This gives the Minister the opportunity to 'call-it-in' for his own determination.
- 4.12 Although this application is for 'development outside of town centres' and is not in accordance with the prevailing development plan, the size of the development is not large enough to require referral to the Secretary of State. It is concluded therefore that provided the application has been publicised correctly (as a departure) there is no further requirement to refer it to the Minister if you are proposing to approve this application. The requirement for referral does not apply in any event if you wish to refuse it.

Planning Legislation

- 4.13 Section 66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 places a general duty on Local Planning Authorities when considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
- 4.14 In addition, section 72 of the Act places a duty on a Local Planning Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
- 4.15 As indicated above, there are listed buildings within close proximity to the site and the site is approximately 140m from the Boston (Spilsby Road) Conservation Area.

5.0 Representations

- 5.1 As a result of publicity 25 letters of representation have been received from neighbouring residents relating both to the scheme as originally submitted i.e. (for 76 homes) and relating to the amended details (i.e. for 66 dwellings with amendments to the access). In total 17 letters were received relating to the original scheme and 8 letters were received relating to the amended scheme.
- 5.2 The 17 letters of representation relating to the original scheme were from the occupiers of the following properties:

Petersfield Lodge, Wainfleet Road

Burton Hall, Wainfleet Road

Orlando, Wainfleet Road

17, 21, 23, 27, 29, 31, 33, 39, 41, 43a and 55 Sibsey Road

20 Somersby Green

7 Burton Close

160 Burton Corner/ Sibsey Road.

- 5.3 The objections and comments relating to the concerns expressed are summarised as follows:

Impact on highway safety

Development will add to congestion and impact on local highway network, restricting access to hospital and effect access for emergency vehicles, Sibsey Road is very busy and carries significant traffic through town, development will lead to queues along highway, limited access visibility, inadequate road width, concerns over right hand turns into site, concerns that estate road will be used for parking by visitors and staff to the hospital, traffic assessment flawed, unsustainable opportunities for pedestrians and cyclists, concerns about motorists making a U Turn at Sibsey Road/Wainfleet Road roundabout and insufficient parking within site.

Flood risk issues

Development does not accord with the NPPF, concerns over third party flooding, raised slab and land levels, development within a flood risk area, concerns over surface water disposal. Attenuation ponds will be hazardous to children

Local Plan policies

- Development is contrary to Local Plan policies G1, G2, G5, G6, G10, H1, H2, H3, H9, C6, C01 and C02.
- Loss of prime (Grade 1) agricultural land
- Density is contrary to Local Plan policies G1 and H2
- Development does not constitute good design and is not in accordance with the NPPF or Local Plan policies relating to quality of housing developments.

Other matters

- Development will harm the character of the area and the countryside
- Approval of this application will set a precedent
- Development is not sustainable and does not accord with the three threads of sustainability and core principles of the NPPF
- Adverse impacts are not outweighed by the benefits
- Development will have an adverse impact on local infrastructure, e.g. doctors surgeries, schools etc
- Impact on the amenity of neighbours in terms of loss of privacy, overlooking, noise disturbance and air pollution

- Development does not reflect building line
- Development will affect setting of the listed buildings and context of listed hall within landscape
- Ecological report does not address ecological impact- impact on trees and wildlife habitat
- Development will not be energy efficient and not in accordance with the NPPF
- Development does not afford with the Council's affordable housing policy- insufficient low cost housing
- Impact on Human Rights Act- Articles 1 and 8.

5.4 The 8 letters of representation relating to the amended scheme have been received from the occupiers of the following properties:

23, 25 (x2), 33, 39, 41 and 55 Sibsey Road
Burton Hall, Wainfleet Road

5.5 The objections and comments are similar to the concerns expressed originally and issues not previously raised may be summarised as follows:

- capacity of the existing road network to accommodate proposed development, concerns about how children from the proposed development will cross the roads to access local schools having regard to road volumes and speeds, pavement widths and lack of road crossing facilities
- Density of development is still out of character with the area
- development is out of scale in relation to listed buildings, third party flooding may affect or damage listed asset, significance of Burton Hall outweighs need for development, concerns over the boundary treatment between site and Burton Hall, Burton Hall would be lost in a 'sea of new roofs'
- Impact of BREXIT- Potential reduction in local population or if unemployment rises may create a 'ghetto' around one of Boston's premier heritage assets
- Development is still too large for the site and does not provide sufficient levels of affordable houses. A smaller development would have less impact
- Development will cause light, noise and air pollution

6.0 Consultations

6.1 Fishtoft Parish Council has reiterated its previous concerns regarding impact on highway and pedestrian safety including amongst other issues, the design of the new junction onto Sibsey Road, proximity to the access to the Pilgrim Hospital, increased traffic generation adding to congestion, access for emergency vehicles and it also questions the findings of the submitted transport assessment. The Council also has concerns that this development is 'intense', that the site would be used as a 'hospital car park', cause third party flooding and will have an impact on the protected trees.

6.2 The County Highway Authority has no objections subject to 5 conditions. The views expressed by the County Highway Authority are further discussed in detail below.

6.3 Boston Borough Council – Consultant Architect has no objections but has made the following comments:

'I refer to drawing PL-01 Rev G showing the revised layout of the new housing on the site layout plan. This has green space alongside the boundaries with the listed manor house apart from a pair of semidetached houses on plots 56 and 57 which sit adjacent to the boundary on the northern side.

These are some distance from the house, but it would, in my view, have been preferable to have no houses abutting the site. If it is decided to allow these, they should be restricted to two storeys in height and have natural roofing materials used - either clay pantile or slate.'

6.4 Historic England has concerns regarding the application on heritage grounds and has made the following comments:

'.....We consider that drawing back the development further from Wainfleet Road has reduced the impact on the contribution that the setting of Burton Hall and its stables makes to their significance. However we remain of the view that development in the field immediately adjacent to Sibsey Road opposite the entrance to the hospital alone would be appreciably less harmful than the proposed development in the field to the east and north east of Burton Hall. Historic England has concerns regarding the application on heritage grounds. We recommend that that the scheme is reconsidered in the light of this advice'

6.5 Boston Borough Council – Environmental Protection has no objections

6.6 Local Housing Authority. Although the Housing Authority acknowledges the 16.6% affordable housing contribution offered it is not happy to support this application unless tenure can be agreed and set out within the condition. A preference is expressed for eight affordable rented and three shared ownership to help meet the identified need.

6.7 The Witham Fourth District Internal Drainage Board has no objections.

6.8 The Environment Agency has no objections subject to one condition.

7.0 Planning Issues and Discussions

7.1 The main considerations in the determination of this application include:

- Principle of development and the 5 year land supply
- Impact on the setting of listed buildings and the 'harm v public benefit' balance
- Impact on highway safety and consistency of decision making given the appeal decision as a material consideration
- Flood risk and drainage
- Loss of agricultural land

- Sustainability
- Impact on character of countryside
- Impact on residential amenity
- Impact on wildlife and loss of wildlife habitat.
- Affordable housing
- Developers' contributions

Principle of development and the 5 year land supply

- 7.2 The Inspector at appeal did not appear to dismiss the previous application on grounds of the principle of development in this edge of settlement location although he did raise specific concerns at a more strategic level with regard to the sequential test (flood risk) and loss of high grade agricultural land. He regarded the latter as a significant adverse effect on the proposal (paras 30-32), as well as the impact on the setting of the listed buildings. The site is on the urban fringe and it is considered by your officers that the site would provide for a sustainable pattern of development due to its access to various amenities and facilities within the town.
- 7.3 The main part of the site is within the open countryside in an area where Local Plan Policy C01 would resist new residential development unless the development is supported by other Local Plan policies. As indicated above, the plan is incomplete in guiding this development and the fact that the proposed development would be within the countryside does not by itself make it unacceptable in principle. This is since a great majority of housing approvals over the past years have been on greenfield land.
- 7.4 On this point, the Committee has not resisted the development of this site in principle and it is considered that subject to site specifics, housing here can be supported.

Impact on the setting of Burton Hall and the 'harm v public benefit' balance

- 7.5 The Inspector at appeal considered that the effect of the proposal on the setting and significance of the listed heritage assets comprised in Burton Hall and its former stables should be treated as a main issue in the determination of that appeal. This view also applies to this current application and Appendix 1 at the end of this Report reproduces some definitions from the NPPF in order to assist Committee.
- 7.6 Burton Hall is a Grade II* listed building and its former stables are separately listed as Grade II. The Hall's historic role was that of a substantial house standing set in rural surroundings including the fields to the north, west and east. The Inspector considered that the '...visual connection with these adjacent fields has survived and the importance of this setting to the hall and the stables can be appreciated in the available views from Wainfleet Road' adding that '...this retained setting is of considerable importance to the significance of both the Hall and its former stables'.

7.8 Upon assessment of the appeal application, the Inspector considered that:

‘.....the houses proposed at the southern end of the site estate road would still represent a significant encroachment of new built development into the currently open field to the east of the Hall. This element of the proposal would, in my judgement, cause material harm to that important setting of the Hall and the former stables and, hence, to their significance as designated heritage assets. I agree that the harm would be less than substantial but it must be properly weighed in the determination of the appeal.’ (para 25)

7.9 The Inspector then points to the balancing exercise with regard to advice contained within the NPPF and the 1990 Act, set out at para 4.10 above.

7.10 Recent cases in the Court of Appeal have ruled on the effect of these statutory presumptions and the guidance in the Framework (para 132) indicates that the balancing exercise in the Framework alone is not sufficient and there is ‘a strong statutory presumption against granting planning permission for development which would cause harm to the setting of listed buildings’. In *Barnwell Manor Wind Energy Ltd 2014* it was held that “considerable importance and weight” should be given to the desirability of preserving the settings of listed buildings.

7.11 In carrying out the balancing exercise the Inspector made reference to the benefits of the scheme including the provision of affordable homes and the economic benefits, including construction employment and expenditure and expenditure by the future occupiers of the proposed dwellings in local shops and services. The Inspector did however assume, incorrectly, that for viability reasons the proposal would not provide any of the other development contributions when neither the NHS nor LCC Education had specifically requested any contributions.

7.12 Overall the Inspector concluded:

‘When taken together these public benefits of the proposal are of significant weight. However, regard must be had to the Grade II* listed status of Burton Hall and to the paragraph 132 requirement that the more important the asset the greater the weight to be given to its conservation. In that context, and in circumstances where the setting of two listed buildings would be harmed, the application of the statutory duty leads me to conclude that these benefits would not be sufficient to outweigh the harm that would be caused to the significance of those designated assets. I therefore conclude that the proposal would conflict with the policies in section 12 of the Framework’ (para 28).

7.13 In this instance the applicant has suggested that the provision of 66 dwellings including 11 affordable houses will provide a valuable contribution towards housing supply. The applicant has also submitted a Socio-Economic Impact Assessment Report which indicates that this development will not only provide 66 new homes, but:

- Generate £4.64 million of total Gross Value Added to the construction, supply chain and service sectors and 100 man year jobs.
- The new residents will spend an additional £0.68 million per year within the Borough which will create 6.1 new jobs per year.
- Generate £0.614 million in New Homes Bonus

- 7.14 The Inspector on the Monarchs Road appeal accepted (para 43) the generation of economic benefits through construction and that new residents would contribute to the economy, but gave little weight to Council Tax or NHB receipts in the absence of evidence as to how receipts would be connected to that appeal scheme.
- 7.15 The proposal to include 11 affordable homes equates to 16.6% and this is above this Council's minimum level of 15% affordable homes. The provision of affordable housing coupled with the provision of a large public open space which equates to around 38% of the site which is well above policy requirements may also be considered as 'public benefit' as part of the 'balancing exercise'.
- 7.16 The previous application on this site was refused on the grounds of highway safety and at that time the Planning Committee did not consider that the scheme would have a significant harmful effect on the setting of the listed buildings. Both the Inspector and Historic England considered otherwise. Clearly as indicated above the previous appeal decision is a material consideration as are the views expressed by Historic England and other parties about the impact this revised scheme may have on the setting of the listed buildings.
- 7.17 The revised scheme shows the proposed built development set much further back from the listed buildings than the previous scheme and it is intended to provide a large landscaped buffer between the proposed buildings and the heritage assets, although a pair of houses is now proposed to the north of Burton Hall, some 80m away from this building. It does however remove the houses from the southern end of the estate road (para 7.8 above) and addresses the Inspector's 'significant encroachment'.
- 7.18 It is considered that this scheme will result in harm to the designated historic assets at a less than substantial level and that within this range such impact would be 'moderate'. In terms of the effect on the setting of the listed buildings, this is a far better scheme than previously submitted.
- 7.19 In conclusion the benefits of the scheme identified above are sufficient to outweigh any harm to the significance of these assets. There are no specific Local Plan policies or the NPPF which specifically indicate that this development should be restricted. The revised scheme retains the open characteristics of the area and visual connection with the adjacent open fields which is a key element to the setting of these listed buildings although this view is not shared by Historic England.

Impact on highway safety and the appeal decision as a material consideration

- 7.20 Paragraph 32 of the NPPF indicates that 'development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe'. In addition Local Plan Policy G6 seeks to resist development that would harm highway safety and Policy T1 indicates that on all class A roads in the built up area of Boston, a new access or junction will not be permitted unless, inter alia, it can be demonstrated that there will be no adverse effects on the safety and the capacity of the road.

- 7.23 The Inspector concluded that these policies were satisfied with this access design.
- 7.24 The internal estate roads will be privately maintained by a management company and will not be adopted by the County Council. Therefore the potential highway problems that may result by staff and visitors of the Pilgrim Hospital parking on these estate roads will be managed by the management company.
- 7.25 The County Highway Authority raised objections to the previous application but have raised no objections to this application, subject to conditions. The Authority has made the following concluding comments:
- On that particular point [of the highway authority's belief that the scheme failed to comply with DMRB], the Inspector determined that the Appeal should not be dismissed. The Highway Authority respects the Inspector's opinion and accordingly does not request that this Application be refused by reason of the residual cumulative impacts of the proposed development upon transportation being expected to be severe.'*
- 7.26 The Highway Authority's satisfaction with this proposed residential development is conditional upon the roads and footways remaining private so that the Authority would not then become responsible for instigating measures to prohibit the parking of hospital staff and visitors' vehicles on the roads within the development. Recommended Condition 25 below requires the submission of details relating to the management company who will be responsible for the future maintenance and monitoring of the private roads which form part of this development.
- 7.27 The appeal decision letter is a material consideration which has substantial weight since the access proposals are indistinguishable from the previous decision. The reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency. Although there is no rule that like cases must be decided alike, before disagreeing with another, the decision maker ought to have regard to the importance of consistency and give reasons for departing from the previous decision (*Encyclopaedia of Planning Law & Practice p 2-3290/24*).
- 7.28 The appeal Inspector considered that Policies T1, H3 and G6 are all satisfied (para 23).
- 7.29 On this basis, and given there have been no changes in circumstances from a highway perspective since the appeal decision (apart from the fact that 66 dwellings will now be served by the new access instead of 76 as previously proposed), it is not possible to refuse this application on highway grounds given the conclusions reached by the Inspector. Indeed, persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable is a particular example of behaviour that may give rise to a substantive award of costs. Effectively the decision made by the Inspector 'approves' the detail of the new access in this location and your officer's advice is that this must be accepted.

Flood Risk and drainage

- 7.30 The application is accompanied by a Flood Risk Assessment which indicates that finished floor levels of the proposed houses will be raised 1m above existing ground levels with flood resilient measures employed to a height 300mm above finished floor level. The Environment Agency has no objections subject to one condition which relates to slab levels and the Local Lead Flood Authority recommends that a condition is imposed which requires the submission of a surface water disposal scheme.
- 7.31 The NPPF indicates that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
- 7.32 At that time your officers considered that this Council did not need to provide information to demonstrate how the sequential test had been considered and passed since there are no other sites of this size at a lesser risk of flooding allocated in the Local Plan given all allocated sites have already been developed and this the Test has been implicitly passed.
- 7.33 It is your officers' view that this development meets the sequential and exceptions tests as contained within the NPPF given the proposed mitigation measures.

Loss of agricultural land

- 7.34 The site has been reported as grade 1 agricultural land.
- 7.35 The DEFRA database that the Council has access to indicates that agricultural land to the north, south and east of Boston is grade 1 agricultural land whilst land to the west is grade 2. However this database is a particularly coarse assessment and does not take account of local variations. Committee may also recall in its debate on the appeal decision that it believed the site was unlikely to be Grade 1 land.
- 7.36 It is inevitable that high quality agricultural land (both grades 1 and 2) will always be under pressure for development when much of the land surrounding Boston is high quality agricultural land, there are no remaining housing allocations in the Local Plan and there is not a five year land supply.
- 7.37 Committee may recall that it did not specifically include the loss of (generally) grade 1 agricultural land at Middlegate Road, Frampton as part of the reasons to refuse the outline application for up to 215 houses on this site (application B/16/0380 refers).
- 7.38 Thus, it is not considered that the loss of around 3.75ha hectares of agricultural land will pose as a major constraint to this development although as indicated above the Inspector's decision letter and his views on the loss of agricultural land is a material consideration. Any harm is outweighed by the proposed scale of housing development.

Sustainability

- 7.39 The Framework sets out three dimensions and roles of sustainable development i.e. social, economic and environmental. In addition, one of the core elements of the NPPF is that patterns of growth should be properly managed and to make the most effective use of public transport, cycling and walking. Paragraphs 7 and 8 of the Framework explain that these three roles should not be undertaken in isolation because they are mutually dependent.
- 7.40 With regard to the economic role, it is agreed that the construction of new housing will create jobs and as indicated in the applicant's Socio-Economic Impact Assessment Report the development will support growth in the local economy. A social role includes supporting strong, vibrant and healthy communities by providing housing to the needs of present and future generations. The proposed housing development consisting of 66 dwellings including an element of affordable housing will also makes a significant contribution toward the supply of housing in the area which will meet the social dimension of sustainable development.
- 7.41 The development will have an impact on the local environment and Committee might share some of the concerns expressed by neighbouring residents and Historic England that this development will harm residential amenity and in particular, the setting of the listed Burton Hall. It is considered that whilst this application will have an effect on the setting of the listed buildings; as with the previous application, this harm will be less than substantial and would not be contrary to the environmental dimension of the NPPF having regard to the public benefits identified above.
- 7.42 The site is within easy walking and cycling distance from the town centre and the nearest bus stops are within 400m walking distance from the proposed site with a frequent bus service. It is unlikely that future occupiers of the proposed houses will be totally dependent on the use of the motor vehicle to gain access to nearby shops and other facilities. It is thus considered that the application site will contribute to sustainable patterns of development.

Impact on character of countryside

- 7.43 The site is located in a semi –rural /edge of settlement location and is agricultural. Local Plan Policy C01 seeks to resist development in the countryside. The site clearly is not previously developed land but neither is it of high environmental value given it is not specifically nationally or locally designated as a protected site or having any landscape value. However the open characteristics of the site provide value to the visual amenities of residents and may be considered to provide an effective buffer between town and country.
- 7.44 The previous application on this site was not refused on the grounds that the development would adversely impact upon the character of the countryside and the Inspector at appeal did not highlight this as a major issue. This current application is for 66 dwellings as opposed to 76 dwelling as previously proposed and now includes a greater area of open space than the previous scheme to the east of the site when viewed from Wainfleet Road. Consequently it is not considered that this development would substantially harm the character of the countryside sufficient to warrant a refusal of this application.

Impact on residential amenity

- 7.45 Policy H3 of the Local Plan would resist new windfall housing which does not provide pleasant, secure environments for residents; are incompatible with the existing character of the area; are close to an existing use which is likely to cause environmental problems to future residents; or will cause or significantly aggravate adverse traffic conditions on the public highway. Policy G1 is the general development control policy which has some overlap with Policy H3. The test in the policy is that permission would only be granted if a proposal will not 'substantially harm' amenities of neighbours or the general character of the area.
- 7.46 This revised application makes no changes with regard to the proposed development along the site's northern boundary shared with 17 Sibsey Road. The Inspector considered that 'the amenities of the neighbour to the north would only be at minimal risk of loss of privacy'.
- 7.47 The proposed layout shows a large public open space along part of the southern and eastern boundaries between Burton Hall and 'Orlando' fronting Wainfleet Road. It is not intended to erect any houses close to these neighbouring properties but the occupiers of these may experience some noise disturbance when the play areas are being used.
- 7.48 Given the size, separation distances, existing boundary treatment and orientation of the new houses, it is not considered that the amenity of the occupiers of Burton Hall will be substantially affected by this development.

Impact on wildlife and loss of wildlife habitat

- 7.49 An ecological survey has been submitted with this application. It concludes that overall the site is of low ecological value with low probability of bat interest and whilst no species of bird were recorded on the date of the survey, there is suitable nesting habitat in the hedgerows and trees on the site. The survey makes recommendations to include the provision of nest boxes to help compensate for the loss of habitat and that trees and hedgerows should only be removed outside of the bird breeding season.

Affordable housing

- 7.50 This application includes 11 affordable houses which equates to 17% (16.6%) which is above this Council's minimum requirement of 15%. The application was originally for 76 dwellings which included 15 affordable units but was reduced to seek to address the impact on the listed buildings.
- 7.51 Matters relating to tenure and the delivery of affordable housing can be resolved by a suitably worded condition. Condition 3 below is similar to one recently imposed by an Inspector at appeal relating to a housing scheme in Spalding which requires the submission of details relating to numbers, type, tenure and location of the affordable housing units. This would indicate that this form of condition is NPPF compliant. It is considered that a similarly worded condition should be imposed should permission be granted for this scheme.

Developer contributions

- 7.52 There have been no requests from NHS England or Lincolnshire County Council Strategic Planning and Major Developments Manager for developers' contributions and there are no Local Plan policies which would otherwise enable this authority to request them.

8.0 Summary and Conclusions

- 8.1 There are a number of planning issues in the determination of this application as indicated above. The key considerations as highlighted by the Inspector are i) the affect this development may have on highway and pedestrian safety and ii) the effect of the proposal on the setting and significance of the heritage assets, especially Burton Hall which is a Grade II* listed building. The other matters referred to are material considerations which also have weight.
- 8.2 The Framework indicates that housing applications should be considered in the context of the presumption in favour of sustainable development.
- 8.3 The above report sets out the 'balancing exercise' between harm to the setting of the listed buildings against public benefit.
- 8.4 Although this Committee did not refuse the previous application on the grounds that the development would have a major adverse impact on the setting of the historic assets, this Committee is advised that this application is for a different proposal and that the views of Historic England and the appeal decision are also material considerations which need to be taken into account.
- 8.5 It is considered that this revised scheme, as with the previous scheme will result in 'less than substantial' harm to the setting of the listed assets and that within this range, such impact may be classed as 'moderate'. This is having regard to the significant distance between the built part of the proposed development and the wider public open space that will form part of the scheme. A parkland setting will be provided to the listed buildings and it will help to retain views of the open fields to the east, which is an essential component of the setting of these listed buildings. In carrying out the balancing exercise as detailed above, it is considered that the harm to the setting of the listed buildings would be 'significantly and demonstrably' outweighed by the public benefits detailed above, including having regard to the lack of the 5 year supply of housing.
- 8.6 With regards to vehicular and pedestrian access to the site, having regard to the Inspector's decision notice, it is clear that this vehicular access to the site would comply with the saved Local Plan Policies H3 and G6 (para 23 of the appeal decision). The proposed access to the site is now the same design which was refused by this Committee in 2015 and although similar concerns have been expressed again by neighbours and the Fishtoft Parish Council about highway and pedestrian safety, the conclusions reached by the Inspector are material considerations which have considerable weight. Unlike the previous application, the County Highway Authority has no objections to this application subject to conditions.

8.7 It is not possible to reasonably refuse this application on the same grounds as before and any refusal on highway grounds could result in an appeal and costs being awarded against this Council.

8.8 It is therefore recommended that planning permission be granted subject to the following conditions:

9.0 Recommendation:

9.1 It is recommended that Committee grants planning permission subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

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

- Location Plan scale 1:2500 (1/30)
- Coach house design sheet Plot 13 ref L00/2225/DS/P13 (2/30)
- 2225 Coach house design sheet ref L00/2225/DS rev A (3/30)
- 2306 Design sheet ref L00/2306/DS Rev A (6/30)
- 2308 House type design sheet – ref L00/2308/DS (7/30)
- 2323 House type – ascot design sheet ref L00/2323/DS (8/30)
- 2324 House type design sheet ref L00/2324/DS (9/30)
- 2326 House type design sheet ref 2326/L00/DS/01 (10/30)
- 2326 House type design sheet ref 2326/L00/DS/02 (11/30)
- 2404 Design sheet ref 2404/L00/DS (12/30)
- House type 2407 –internal layout ref 01A (13/30)
- House type 2407 – elevations- ref 02A) (14/30)
- 2410 House type design sheet ref 2410/L00/DS(15/30)
- 2427 Design sheet ref 2427/L00/DS (16/30)
- 2428- Design sheet ref 2428/L00/DS (17/30)
- 2502-Layout plans design sheet ref 2502/L00/DS3 (18/30)
- 2502 Elevation design sheet ref 2502/L00/DS4 (19/30)
- House type 2507-layout -01 (20/30)
- House type 2507 02 (21/30)
- 2508- House type design sheet ref 2508/L00/DS/AS Rev A (22/30)
- 2509- House type design sheet ref 2509/L00/DS (23/30)
- Garages double ref L00/GAR/02 (24/30)
- Garages pair ref L00/GAR/03 (25/30)
- Garages single ref L00/GAR/01 (26/30)
- Garages triple ref L00/GAR/04 (27/30)
- Proposed layout ref PL-01 Rev G (28a/30)
- Proposed Ghost Island access ref NTW/2223/100-01 REV P7

Reason: To ensure the development is undertaken in accordance with the approved details and to accord with saved Local Plan Policy G1.

3. No dwelling shall commence above slab level until a scheme for the provision of 11 affordable housing units as part of the development shall have been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
- i) the type, tenure and location on the site of the affordable housing provision
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be retained in accordance with the approved scheme.

Reason: To provide affordable housing to accord with the objectives of the National Planning Policy Framework.

4. Operations that involve the destruction and removal of vegetation or buildings (or part of a building) shall not be undertaken during the month of March to August inclusive, except when approved in writing by the local planning authority, once they are satisfied that breeding birds will not be adversely affected.

Reason: In the interests of nesting and breeding birds and to accord with the Wildlife and Countryside Act and to accord with the objectives of the NPPF (2012).

5. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall:

- a) Provide details of how run-off will be safely conveyed and attenuated during storms up to and including the 1 in 100 year critical storm event, with an allowance for climate change, from all hard surfaced areas within the development into the existing local drainage infrastructure and watercourse system without exceeding the run-off rate for the undeveloped site;
- b) Provide attenuation details and discharge rates which, unless agreed otherwise with the surface water receiving body, shall be restricted to 1.4 litres per second per hectare;
- c) Provide details of the timetable for and any phasing of implementation for the drainage scheme; and

- d) Provide details of how the scheme shall be maintained and managed over the lifetime of the development, including any arrangements for adoption by any public body or Statutory Undertaker and any other arrangements required to secure the operation of the drainage system throughout its lifetime.

The development shall be carried out in accordance with the approved drainage scheme and no dwelling shall be occupied until the approved scheme has been completed or provided on the site in accordance with the approved phasing. The approved scheme shall be retained and maintained in full in accordance with the approved details.

Reason: This is a pre-start condition to ensure residents of the permitted development, neighbouring residents and neighbouring land are not adversely affected, by reason of flooding by the construction of the permitted development and to accord with the objectives of Local Plan policy G3.

6. No dwelling shall commence above slab level until full details of all landscaping and planting works have been submitted to and approved in writing by the local planning authority. The scheme shall include details of all boundary treatments, hard surface materials, planting schedules (tree and shrub species, size on planting and planting densities) including any existing trees to be retained and removed.

Reason: In the interests of visual amenity and in accordance with Section 197 of the 1990 Act which requires local planning authorities to ensure, where appropriate, adequate provision is made for the preservation or planting of trees, and to ensure that the approved scheme is implemented satisfactorily in accordance with saved Local Plan Policies G1, H3 and H4.

7. All landscape works shall be carried out in accordance with the approved details during the first available planting season following substantial completion of the development. Any trees, plants, grassed areas which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the first available planting season with others of similar size species or quality.

Reason: In the interests of visual amenity and in accordance with Section 197 of the 1990 Act which requires local planning authorities to ensure, where appropriate, adequate provision is made for the preservation or planting of trees, and to ensure that the approved scheme is implemented satisfactorily in accordance with saved Local Plan Policies G1, H3 and H4.

8. A landscape management plan including management responsibilities and maintenance schedules of all areas of public open space shall be submitted to the local planning authority for approval before the 10th dwelling constructed on the application site is first occupied. The landscape maintenance plan shall be carried out as approved thereafter.

Reason: To ensure the long term maintenance of the public open space and play equipment, in the interests of the amenity of residents and to accord with the objectives of Local Plan Policy H4.

9. Prior to the commencement of the development hereby permitted, a Construction Management Plan shall be submitted to and approved by the local planning authority. The Construction Management Plan will prescribe how the construction of the site will be phased, where site accommodation and welfare facilities will be placed, where site vehicles and the vehicles of site personnel will be parked and where materials will be delivered and stored within the site. Construction of the permitted development shall be undertaken in accordance with the approved Construction Management Plan.

Reason: In the interests of the safety and free passage of the public and to accord with the objectives of Local Plan policies G1 and G6. This is a pre-commencement condition due to the fact that the management of plant, site equipment etc needs to be agreed prior to the commencement of any development to ensure that neighbour's amenity and safety are respected.

10. The trees protected by Boston Tree Preservation Order No. 37 (2012) shall be protected during construction work by chestnut pale fencing or similar fencing 1.5 metres in height erected around the tree(s) at a distance from the trunk(s) equal to the spread of the crown(s) of the tree(s). The fence shall be retained until all construction works have been completed. Within the protected area no alteration to the ground level shall take place, no additional water shall be allowed to flow in, no vehicles shall be allowed to pass, no materials shall be stored, no waste tipped, no fires lit, no pruning of branches shall take place, no services shall be routed without the written permission of the Local Planning Authority.

Reason: To protect the trees during construction work and to accord with Adopted Local Plan Policy G2.

11. The development hereby approved shall be carried out in accordance with the approved Flood Risk Assessment (NTW/2223/FRA REV A dated August 2014) and in particular the following mitigation measures:

- The finished floor levels of all dwellings shall be set a minimum of 1m above existing ground level
- Flood resilient and resistant construction techniques shall be incorporated throughout the development

The mitigation measures shall be fully implemented prior to occupation or subsequently in accordance with the timing/phasing arrangements embodied within the scheme.

Reason: To reduce the risk of flooding to the proposed development and future occupants and to accord with the objectives of the NPPF (2012).

12. No development shall commence above slab level on the dwellings hereby approved until details of all external facing materials proposed to be used have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that the new buildings are in keeping with the character of the area and to accord with saved Local Plan Policies G1 and H3.

13. The first floor rear windows of the flat unit above garages on plot 13 (ref plan L00/2225/DS/P13) shall be fitted with obscured glazing before occupation of this residential unit and shall be retained in this form thereafter.

Reason: In the interests of residential amenity of the neighbour to the north and to accord with the objectives of Local Plan policy G1.
14. The areas of public amenity open space shown on the submitted layout plan ref PL-01 Rev G shall be laid out in a manner to be agreed in writing by the local planning authority and made available for use before the 33rd dwelling constructed on the application site is first occupied.

Reason: To provide a satisfactory level of publicly available amenity open space within the development and to accord with Adopted Local Plan Policy H4.
15. Before the occupation of any dwelling, a scheme to provide play equipment shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented before the 33rd dwelling is occupied.

Reason: To enable the delivery of play equipment for the future residents and to accord with the objectives of Local Plan policy H4.
16. Before occupation of any of the dwellings along the private drive, the drives and parking areas shall be provided with lighting in accordance with details, including the maintenance of the lighting, that have been submitted to and agreed in writing by the Local Planning Authority.

Reason: To provide adequate lighting of the private driveway in the interest of crime prevention and community safety and in accordance with Adopted Local Plan Policy H3.
17. No part of the development hereby permitted shall be commenced until such time as the Ghost Island Right-turn Lane junction, shown indicatively on drawing numbered NTW/2223/100-01 P7, dated 12 Jan 2017 has been constructed in accordance with details which shall first be submitted to approved by the Local Planning Authority.

Reason: In the interests of providing safe and suitable access to the permitted development and to accord with the objectives of Local Plan policies G1 and G6.
18. No dwellings shall be commenced before the first 50 metres of estate road from its junction with the public highway, including visibility splays, as shown on drawing number PL-01 Rev G dated 09/01/2017 has been completed.

Reason: In the interests of safety of the users of the public highway and the safety of the users of the site and to enable calling vehicles to wait clear of the carriageway of Sibsey Road and to accord with the objectives of Local Plan policies G1 and G6.

19. Before any dwelling is commenced, all of that part of the estate road and associated footways that forms the junction with the main road and which will be constructed within the limits of the existing highway, shall be laid out and constructed to finished surface levels in accordance with details to be submitted to and approved by the local planning authority.

Reason: In the interests of safety of the users of the public highway and the safety of the users of the site and to accord with the objectives of Local Plan policies G1 and G6.

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

Appendix 1

Definitions from the NPPF

Setting of a listed building

'...The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral'

Substantial harm

'What matters in assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset. As the National Planning Policy Framework makes clear, significance derives not only from a heritage asset's physical presence, but also from its setting.

Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.

While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm'

Public benefit

Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework (paragraph 7). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits.

Public benefits may include heritage benefits, such as:

- *sustaining or enhancing the significance of a heritage asset and the contribution of its setting*
- *reducing or removing risks to a heritage asset securing the optimum viable use of a heritage asset in support of its long term conservation.*