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## Appeal Decision

Inquiry held on 13 -15 and 19 September 2017

Site visit made on 19 September 2017

**by Helen Hockenhull BA(Hons) B.PI MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 25 October 2017**

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**Appeal Ref: APP/Z2505/W/17/3170198**

**Land at Middlegate Road West, Frampton, Boston PE20 1BX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Larkfleet Ltd t/a Allison Homes against the decision of Boston Borough Council.
  - The application Ref B/16/0380, dated 29 September 2016, was refused by notice dated 12 January 2017.
  - The development proposed is the erection of up to 215 dwellings including access off Middlegate Road West, public open space and drainage infrastructure.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 195 dwellings including access off Middlegate Road West, public open space and drainage infrastructure on land at Middlegate Road West, Frampton, Boston PE20 1BX in accordance with the terms of the application, Ref B/16/0380, dated 29 September 2016, subject to the conditions in the attached Schedule.

### Procedural Matters

2. The original planning application the subject of this appeal proposed the construction of up to 215 dwellings. Following refusal of planning permission, the appellant submitted a revised scheme to the Council in May 2017, planning application Ref B/17/0174, which proposed the construction of up to 195 dwellings on the site. This scheme was also subsequently refused by the Council contrary to an Officer recommendation of approval. Before the start of the Inquiry, the appellant submitted this amended scheme for consideration in this appeal, reducing the maximum number of dwellings to 195. The appellant also undertook a further consultation exercise in respect of the revised submission before the Inquiry and I have had regard to the responses received.
3. The Council and the appellant have agreed in the Statement of Common Ground (SoCG) that having regard to the 'Wheatcroft'<sup>1</sup> principles, no party would be prejudiced if the appeal should proceed on the basis of the revised 195 dwelling scheme. As the scheme is in outline and the plans submitted with it are indicative, the reduction in the number of dwellings could have been

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<sup>1</sup> Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982)

achieved in any event. I therefore consider that there would be no prejudice in considering the appeal against this revised number.

4. The appeal proposal is in outline with all matters reserved for later approval except for the matter of access. The submitted masterplan and parameters plan are for indicative purposes only and I have considered them accordingly.
5. The proposed development was refused for two reasons. The second reason related to flood risk matters in particular the failure to satisfy the sequential test as set out in paragraph 101 of the National Planning Policy Framework (the Framework). The Council and the appellant agreed in the SoCG that in the absence of any deliverable sites at a lower risk of flooding, the sequential test has been passed. Accordingly the Council no longer pursue the second reason for refusal.
6. A draft planning obligation by way of an agreement made under section 106 of the Town and Country Planning Act 1990 (s106) was submitted at the Inquiry. The obligation related to financial contributions towards upgrading facilities at Kirton Medical Centre, further sixth form provision, bus stops, a landscaping scheme, affordable housing and a compensatory winter foraging habitat area. A signed and dated agreement was provided immediately after the event.

### **Main Issues**

7. Mindful of the above, I consider that the main issues in this case are :
  - whether the principle of development outside the settlement boundary would be acceptable with regards to the policies of the development plan;
  - the effect of the development on landscape character and the visual amenity of the area;
  - whether the Council can demonstrate a 5 year supply of housing land sufficient to meet the fully objectively assessed need (FOAN) for housing and the consequences for national and local plan policy.

### **Reasons**

#### *Principle of the development*

8. The appeal site lies outside the settlement boundary of Kirton in open countryside. Saved Policy CO1 of the Boston Borough Local Plan 1999, states that development will not be permitted in the countryside unless it is supported by other local plan policies. The Council and appellant agree that the appeal proposal would not be supported by any other such policies and that the principle of the development therefore conflicts with the development plan.
9. The emerging South East Lincolnshire Local Plan, a joint document covering both Boston and South Holland administrative areas has been submitted for Examination to the Secretary of State and the first hearing sessions are due to be held in mid-October 2017. The Council and the appellant agree that having regard to the stage that the plan has reached and the outstanding objections, that only limited weight, if any, should be attributed to this document.
10. Policies G1 and G2 of the Boston Borough Local Plan form general development policies setting out criteria against which all development proposals should be

assessed. Policy G1 permits development which would not substantially harm the amenities of other nearby land users or residents, or the general character of the area because of its nature, scale, density, layout and appearance or level of traffic generation. Bearing in mind the scheme is in outline, the reserved matters such as layout and appearance cannot be appropriately assessed at this stage.

11. Policy G2 states that planning permission will not be granted for proposals having a significant adverse impact upon existing landscape, wildlife and vegetation sources. It is common ground that the impact on the landscape is a material issue in this appeal. I shall consider this in detail below.

*Landscape character and visual amenity*

12. The appeal site comprises around 10 hectares of agricultural land adjoining the northern boundary of the settlement of Kirton as defined in the Boston Local Plan proposals map. However the site lies in the Parish Boundary of Frampton. The site is generally flat and largely devoid of features though has a number of mature trees on the southern boundary the subject of both a group and individual Tree Preservation Orders. The site is not subject to any national or local designations.
13. The Council and the appellant make reference to the national, regional and district wide landscape character assessments (LCAs) relevant to the appeal site. The site lies in 'The Fens' national character area which characteristically comprises an expansive flat open low lying wetland landscape offering extensive vistas to level horizons and huge skies. Overall woodland cover is sparse though notably there are a few small woodland blocks and large built structures exhibit a strong vertical influence.
14. At the regional level, the East Midlands Landscape Character Assessment describes the appeal site as lying within the Settled Fens and Marshes Character Type which again exhibits a low lying flat open landscape with wide horizons with small plantations of young trees providing shelter belts to farms or along field boundaries in an otherwise open agricultural landscape. In regard to new development the regional assessment encourages limited tree planting around settlement fringes to help integrate new development into the landscape.
15. The district wide Boston Borough Landscape Character Assessment 2009 divides the Settled Fen character type identified in the regional assessment in to three sub areas. The appeal site is at the northern edge of the Frampton to Forsdyke Settled Fen (LCA B2) adjoining the Bicker to Wyberton Settled Fen (LCA B1) to the north. Whilst both of these areas inevitably have common characteristics such as the largely flat open landform, open views, sparse tree cover, there are also differences. LCA B1 exhibits a large scale organic network of winding roads infilled by a geometric field pattern. LCA B2 is characterised by a small scale landscape pattern of winding narrow roads enclosing small irregular shaped fields bounded by dykes and ditches. LCA B2 recognises however that Kirton has a high level of tree cover within and around it. There was some agreement between the Council's and the appellant's landscape witnesses that the site lies in a transitional area between the two character types. I see no reason to disagree with this assessment.

16. The appellant put forward arguments that the Boston LCA, as it was prepared in 2009 and pre dates the National Character Assessment and also the Framework, should be given less than full weight. Neither party were able to refer me to any other appeal cases where this matter had been addressed. In any event it seems to me that the character assessment forms a starting point in the consideration of the landscape impact of a particular development which is then further informed by the context and characteristics of an individual site. I have no evidence before me to suggest that it is not robust or that it is unreliable.
17. In terms of landscape value the appellant argues that having analysed a range of factors<sup>2</sup>, including the sites designation, rarity and representativeness , conservation interest and recreational value, the site is at most of medium value. The Council however suggest the site has a medium to high value. As I have already stated, the site has no formal landscape designation and does not form a 'valued' landscape as referred to in paragraph 109 of the Framework. Additionally the site does not contain any physical features that are considered to be of value, there are no public rights of way crossing it and it is affected by urban influences such as the A16 and the settlement edge of Kirton. Accordingly it appears to me that the site is of medium value and sensitivity. That being said I acknowledge that the site is very much valued in landscape terms by local residents.
18. The Council and the appellant agree that in terms of the wider landscape, the site is relatively visually enclosed. The existing settlement, surrounding woodland and tree belts prevent longer distance views. I observed this to be the case on my site visit.
19. The proposed development would be sited at the northern edge of Kirton and inevitably as with any new development it would have an effect on the open character of the farmland. The Council have argued that the proposal would result in an incursion of built form into the open countryside. This would to an extent be true for any development in such a location. I note that both LCA B1 and B2 suggest that new development should be concentrated around existing settlements or development near to main roads to prevent any further loss of the rural landscape. The development would be located in such a position. Therefore rather than resulting in an incursion into the open countryside, I consider that the development would be viewed as an extension of the existing urban area.
20. In cross examination the Council's landscape witness Mr Maslen suggested that the development could result in a degree of coalescence of the settlements of Kirton and Frampton, though he did recognise that this did not form a reason for refusal. The A16 clearly forms a physical barrier between the two settlements. Together with the proposed planting on the eastern site boundary of the appeal site and the break in development to the eastern side of the A16, I do not consider that the proposal would result in any significant loss of separation or coalescence.
21. In the reason for refusal on landscape grounds, the Council makes reference to the settlement development limits being constrained by Middlegate Road. Whilst I accept that development to the north of this road is limited I do not consider the position to be that clear cut. There are existing houses on the

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<sup>2</sup> Mr Jackson's Proof of Evidence page 12-13 paras 4.31-4.41

- southern boundary of the appeal site north of Middlegate Road West; there is also ribbon development in Frampton to the north of Middlegate Road East including the cul de sac development on Lenten Road and development on London Road. Whilst currently the road may be seen as the northern boundary of Kirton, it has no natural features that would constrain development to the north and therefore does not in itself form a constraint to development.
22. Notwithstanding the above, it is important to consider the character of the northern settlement edge. The appeal proposal would in effect create a new northern edge to Kirton. The proposed development would not follow any existing defined boundary as it would cut across the existing two fields. The Council has expressed concern that this arbitrary boundary would not respect the character of the existing landscape.
23. When viewed from the north, the boundary of the settlement comprises properties on the northern side of Middlegate Road West which can be glimpsed through the existing garden planting and the range of boundary treatments. The mature trees which bound the remainder of the southern boundary of the appeal site are also visible with glimpses of residential development beyond. Whilst the appeal proposal is in outline, the parameters plan indicates informal structural planting on this boundary arranged in clusters to allow views into and out of the site. Further planting is also proposed further up the sides of the main drain on land in the appellant's ownership.
24. I am mindful that there are a number of sites identified for development in the emerging local plan which have no defined boundary<sup>3</sup>. Therefore the introduction of a new landscaped settlement edge would not be unacceptable in principle. The proposed treatment of the northern boundary would create an informal natural looking edge to the settlement which would not be out of keeping with the character of the existing northern boundary to Kirton.
25. The other significant feature of the proposed development in landscape terms is the proposed acoustic bund alongside the A16. Indicative cross sections of this feature have been provided by the appellant. These show two options either a 2.1 metre high planted bund or a 2.1 metre high acoustic fence located in the centre of a planting belt. In both cases the extent of the planting belt would be around 35-40 metres.
26. In cross examination Mr Jackson (the appellant's landscape witness) made reference to the existing bund around the irrigation pond to the south of Millfield Lane to indicate the presence of other bunds in the locality. I viewed this on my site visit and found this particular feature to have the appearance of an artificial man made structure out of character in this flat open landscape. I do not consider this to be comparable to the appeal scheme. The bund proposed would have a significantly wider base and side slopes with a gentler gradient. With an appropriately designed planting scheme, I consider that the bund would not be appreciated as a planted embankment but rather it would have the appearance of a planting belt on the edge of the settlement.
27. I have also assessed the option of an acoustic fence. On my site visit I viewed examples of existing close boarded fencing forming the rear garden boundaries to dwellings further south on the A16. Some but not all had the benefit of screen planting. As this type of fencing already exists at the edge of the

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<sup>3</sup> Mr Jacksons Proof of Evidence Appendix 7

settlement and in light of the proposed planting scheme, I consider that the introduction of an acoustic fence would be acceptable in landscape and visual terms. The details of this could be considered in more depth at reserved matters stage.

28. As I have stated above, either of the above options would require the creation of a significant new block of planting of overall width around 35-40 metres. I recognise that the LCA indicates that any new development should fit the organic pattern and existing components of the landscape and take advantage of existing screening. I also note that in respect to LCA B1, the Boston Character Assessment indicates that developments should be designed to avoid large screening belts.
29. However it is clear from aerial photographs of the area and confirmed on my site visit that in the vicinity of the appeal site, blocks of existing planting are a feature of the landscape. This is recognised in the LCA in particular with respect to Kirton. Bearing in mind that the planted bund would be located next to the A16, a significant urban feature, I consider the proposed bund and treatment to the eastern site boundary would cause limited harm to the landscape.
30. The three levels of LCA all make reference to the importance of landmark features in this flat fenland landscape. In the appeal case the Boston Stump (St. Botolph's Church tower) can be seen framed by existing tree planting to the north of the site and forms an important view which I know is valued by local residents. The landscape witnesses agreed at the Inquiry that the view of the Stump was limited to an area extending approximately from the proposed north westerly access point to the appeal site to just past the junction of Lighton Avenue. On my site visit I paid particular attention to the extent of this view from the appeal site and I agree with this assessment. Local residents advised that in the evenings and in the winter months, glimpses could be obtained from a slightly wider area, as the Church is floodlit at night and when trees have less leaf cover.
31. The appeal scheme would significantly reduce the views of the Stump from Middlegate Road West. Though it was suggested by the appellant's witness Mr Jackson that the appeal scheme could be designed such that a vista through to the Stump could be maintained. In any event I consider that the development of the site would cause harm by restricting views of this important landscape feature. That being said I recognise that the appeal scheme includes a publically accessible footpath along the northern site boundary from where views of the Stump could in the future be achieved, though such views would be foreshortened as the extent of open agricultural land would be reduced.
32. The appellant has advised that the Boston Stump is recognised as an important landscape feature in 9 out of the 7 landscape character types described in the Boston LCA. This is perhaps not surprising given the flat nature of the surrounding landscape. I have had regard to the fact that in carrying out any development in the Boston area, depending on its location, there would be the potential to impact on the view of this feature. In light of the above, I consider that overall, the loss of view of the Stump, would cause moderate harm to the landscape.
33. The Rule 6 Party and other residents have also expressed concern with the loss of views to St Mary's Church in Frampton. On my site visit I was unable to

view this church from the footpath on Middlegate Road West itself though views could be achieved from within the site and from the rear gardens of properties on the northern side of the road. Whilst I accept that it may be different in the winter months, in light of the limited views of this feature from public vantage points, I consider that the loss of view would not result in any material landscape harm.

34. Turning to the visual impacts of the development, it is agreed that views of the site are largely confined to the A16 to the east, Middlegate Road West and East, London Road (B1397), Millfield Lane, Ralphs Lane and Clatterdykes Road.<sup>4</sup> Whilst the LCA suggests that development should avoid the reduction of open views, in this flat open landscape most developments would have some effect in this regard.
35. The main visual receptors affected by the proposal would be existing residents living on or close to the boundaries of the site. On my site visit I entered the gardens of Nos 18 and 28 Middlegate Road West to appreciate the existing open views. Residential occupiers would experience a material change to their outlook with the loss of open countryside views and its replacement with housing. The proposed planting to the southern site boundary would go some way to mitigating these adverse visual effects.
36. With regard to views north from Middlegate Road West, the appellant suggests that the visual effects would be at most moderate adverse<sup>5</sup>. No distinction is made between road users, for example those walking and those using the car or bus, travelling at a greater speed. I agree with the Council that not all road users would have the same degree of sensitivity. Pedestrians enjoying a walk should in my judgment be considered to be of higher sensitivity.
37. I heard at the Inquiry that Middlegate Road West is well used by local residents and dog owners taking a recreational walk enjoying the open views. The proposed development would result in the loss of these views and therefore have a significant adverse effect. I recognise that the proposed public footpath to the northern boundary of the site would provide an alternative segregated route for walkers and still enable open views to be enjoyed. However its provision would not compensate for the loss of views from Middlegate Road West.
38. Users of the A16 currently experience an open view over the appeal site though this is limited in duration due to the presence of existing boundary planting to the sewage works and on the boundary of the highway. Whilst such users would lose this sense of openness, bearing in mind the extent of this view and the speed at which road users would be travelling, together with the proposed setting back of built development and planting proposed on the eastern site boundary, I consider that the impact on these receptors would be limited. Brief views of the site can also be obtained from surrounding roads such as the B1397, Millfield Lane, Ralphs Lane and Clatterdykes Road. However I agree with the appellant that the resultant effects would be minor- moderate adverse at most<sup>6</sup>.

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<sup>4</sup> SoCG paragraph 6.10

<sup>5</sup> Mr Jacksons proof para 6.33 page 23

<sup>6</sup> Mr Jacksons proof paragraph 6.34 page 23

39. In summary, in terms of landscape impact I have found that the treatment of the eastern site boundary would have a limited adverse impact and that the loss of view to the Stump would have a moderate adverse impact. The treatment of the northern boundary, which would create a new settlement edge, would result in no material harm to the landscape. The test of acceptability in Local Plan Policy G1 is that development would not substantially harm the general character of the area and in Policy G2 that development should not have a significant adverse impact upon the existing landscape. Accordingly in light of my findings, whilst there would be some adverse impacts on the landscape and the character of the area, these would not be so significant that the development would breach the respective thresholds of acceptability. The proposal would therefore in regard to landscape impact comply with Policies G1 and G2.
40. Turning to visual impact, I have determined that the proposal would cause significant harm in terms of the loss of open views. Therefore the proposed development would, in terms of visual amenity, conflict with Policy G1 of the Local Plan.

*Objectively assessed need for housing and housing supply*

41. It is accepted that the Council cannot demonstrate a five year supply of housing land, the dispute between the parties relates to the extent of the shortfall. The Council consider that they have a 3.4 years supply whilst the appellant suggests it is in the region of 1.61 years.
42. The Council did not adduce any evidence to support its view that the fully objectively assessed need (FOAN) for housing amounted to 302 dwellings per year and that the shortfall since April 2011 was over 900 dwellings. In contrast the appellant put forward detailed evidence that the Council's FOAN should be 444 dwellings per annum and that there was consequently a shortfall of 1693 dwellings. The appellant argues that the Council's FOAN is based on a flawed methodology as it underestimates average migration and market signals such as affordability.
43. The Council put forward the view that irrespective of the level of supply, it was below 5 years and therefore policies relevant to the supply of housing were out of date. The tilted balance in paragraph 14 of the Framework was engaged and therefore there was a presumption in favour of sustainable development which presumes in favour of the grant of permission unless harm significantly and demonstrably outweighs the benefits of the scheme. The assessment of the FOAN in this appeal was therefore unnecessary, disproportionate and furthermore could prejudice the examination of the emerging local plan.
44. A section 78 appeal is not the appropriate vehicle through which to assess the FOAN. This should take place in more depth through the Examination process for the emerging local plan where the Examiner would have the benefit of detailed evidence and representations from interested parties. That being said any decision that I should make on this matter, based on the evidence before me, would not prejudice or predetermine the findings of the Examination Inspector.
45. I have had regard to the Phides judgment<sup>7</sup> and whilst I acknowledge the

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<sup>7</sup> Phides Estates , Secretary of State for Communities and Local Government [2015] EWHC 827 (Admin)



Council's view, I consider it important to assess the extent of the shortfall, how long the deficit is likely to persist and the steps the authority are taking to reduce it in order to apportion weight to the schemes contribution to increasing the supply of housing. I shall consider the matter of weight in more depth in the planning balance.

46. The appellant has questioned the deliverability of a number of individual larger site and sites proposed under 10 dwellings which are included in the Council's 5 year housing land supply. In light of the lack of contradictory evidence, the past delivery rates, the need for infrastructure and the lack of completions to date, I agree with the appellant that the delivery of dwellings on The Quadrant, Roseberry Meadows extension and Old Station Yard sites, are likely to have been overstated by the Council. This would reduce the supply by 108 homes. In regard to land west of Toot Lane and east of Toot Lane, I consider that the appellant has put forward no substantive evidence that these sites could not deliver and contribute to the 5 year supply.
47. Turning to sites under 10 dwellings, the supply includes 74 homes on sites where development has commenced. The majority are single dwellings where planning permission was granted up to 10 years ago. I agree with the appellant that bearing in mind the length of time some of these sites have been stalled many are unlikely to be completed. However I consider that the appellant's stance that dwellings started more than 2 years ago should be discounted is too harsh a position to take as there is a chance that many sites could still deliver. Whilst I have not been made aware of any trend data in order to make an informed judgment on this matter, I consider it would not be unreasonable to suggest that a third of these sites may not complete, ie. around 25 dwellings. In conclusion overall, I consider that 133 dwellings should be removed from the 5 year housing supply.
48. The appellant has also argued that having regard to the high levels of non-implementation in the borough that a lapse rate of 10% should be applied to the housing supply. I note that the percentage of completions to permissions from 2007/08 to 2013/14 stands at 87% and between 2014/15 and 2016/17 at 47%<sup>8</sup>. Taking account of the large number of small sites which make up the Council's supply, sites at greater risk of non-implementation, I consider a lapse rate of 10% to be appropriate.
49. Taking all the above factors into account, I consider that the 5 year housing land supply would be substantially less than the 3.4 years that the Council suggests and may be closer to that suggested by the appellant.

### **Other matters**

50. A number of other matters were raised by the Rule 6 Party and local residents in representations and at the Inquiry. These include the use of best and most versatile agricultural land, drainage and flooding, local infrastructure and highway issues. There is no dispute in relation to these matters between the Council and the appellant. I shall consider each in turn.

#### *Best and most versatile agricultural land*

51. The appeal site forms Grade 1 agricultural land. It is clear from the East

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<sup>8</sup> Mr Bassett's Proof Table 8 page 35

Midlands Region Agricultural Land Classification Map<sup>9</sup> that the quality of agricultural land across the Boston and Spalding area is predominantly Grade 1 and 2. I further note that in regard to sites allocated for housing development in the emerging local plan that the land classification is mostly Grade 1 and 2. It therefore appears clear to me that in order to meet the housing requirements of the borough it will be necessary for high quality agricultural land such as the appeal site to be brought forward for development.

### *Drainage and flooding*

52. I am aware that there have been flooding events on Middlegate Road West in the recent past and that is why this matter is of particular concern to local residents. As part of the original planning application documents a Flood Risk Assessment was submitted which included a drainage strategy. As I have already mentioned earlier in this decision, the Council's second reason for refusal relating to the Sequential Test has been withdrawn.
53. In terms of foul water I am advised that there is capacity for the treatment of wastewater at the Frampton Waste Recycling Centre but that there is no capacity in the local sewer network to take wastewater from the appeal site. Either the existing sewers would need to be upgraded or a separate direct connection to the Recycling Centre would be required.
54. Turning to surface water, it is proposed that this be dealt with through a system of swales and ponds which would be designed in accordance with sustainable drainage principles. The ponds would accommodate a 1 in 100 year flood with an allowance of 40% for climate change. This would be a sealed system connecting to the nearby watercourse and regulated to flow at the existing green field run off rate. There would be no connection to Middlegate Road West.
55. The Rule 6 Party has brought my attention to an investigation being undertaken by Lincolnshire County Council into the condition of the existing network. At the time of the Inquiry this report was not available. In any event as I am advised that no connection would be made to the existing surface water network, the findings of this study would not be determinative to my consideration of this appeal.
56. On the basis of the evidence before me, I am satisfied that appropriate foul and surface water drainage provision can be made. Should the appeal be allowed, planning conditions would be necessary to require the submission of further details of the drainage scheme before the commencement of the development.

### *Local infrastructure*

57. A number of local residents and the Rule 6 Party have raised concern that local schools and health provision would be unable to cope if the appeal scheme took place. The Education Authority has confirmed that the local primary and secondary schools have sufficient capacity to accommodate additional pupils generated by the development. There is however a need for further sixth form places. A financial contribution towards increasing such provision is included within the section 106 agreement.

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<sup>9</sup> Mr Bassett's Proof of Evidence Appendix 13

58. With regard to health provision I heard evidence that it can take up to three weeks to get a non-urgent appointment to see a local doctor and that this situation can only get worse with additional patients. The additional pressure on existing services that an increase in population would bring has been confirmed by NHS England. A financial contribution has been requested which would be used to upgrade existing rooms at Kirton Medical Centre so that additional treatment space and storage space can be provided. This would also be secured through the section 106 agreement.
59. I therefore consider that the increased demands on local infrastructure should the proposed development proceed would be appropriately mitigated.

#### *Highway matters*

60. I have given careful attention to the local highway network and local traffic conditions as there have been substantial objections from the Rule 6 Party and local residents on these matters. In particular concerns relate to construction traffic, the width and condition of Middlegate Road West, the increased delays for traffic trying to turn onto the A16, and the increased traffic on local roads such as Lighton Avenue and the Hardwick Estate as residents go to the shops in Kirton or use these routes as an alternative to gain access to the A16 at the roundabout junction on Station Road.
61. The appellant submitted a Transport Assessment with the original planning application. This assessment was based on the original scheme of 215 dwellings; as the proposal under consideration has been reduced to 195 dwellings the findings of the document remain robust. The proposed development is forecast to generate 162 new two way traffic movements on the highway network in the morning peak and 165 in the evening peak hour. This equates to around 3 vehicles per minute. The impact of this increased traffic was assessed at a number of junctions including Middlegate Road West/A16 and Middlegate Road West/ B1397. It was concluded that all junctions assessed could accommodate the additional traffic without the need for further mitigation.
62. The Rule 6 Party and residents have expressed the view that the scale and impact of the traffic generated by the proposal has been underestimated by the appellant. However in the absence of any detailed evidence to the contrary I have no reason to conclude that the appellant's assessment is unreliable. I have also had regard to the fact that there is no objection to the scheme from the highway authority.
63. On my site visit I made use of the junctions referred to above in the evening peak hour. I accept that some delay may be experienced at peak times, particularly turning right onto the A16. I also accept that some traffic may use Lighton Avenue and the Hardwick Estate to access the services in Kirton or to reach Station Road and access the A16. I note this route forms a bus route and whilst there may be some increase in traffic, I consider that this would not be to such a level to adversely affect highway safety.
64. It is agreed by the Council and the appellant in the SoCG that the site is in a sustainable location. There are a range of services and shops available in Kirton which are accessible by walking, cycling and public transport. There was some disagreement at the Inquiry with regard to how long it would take to walk to the shops from the appeal site. I undertook this walk on my

unaccompanied site visit and found it to take around 15 minutes. I accept that for some it may take longer particularly for those with less mobility or very young children. However this forms an acceptable distance having regard to the Institute of Highways and Transportation document Guidelines for Providing for Journeys on Foot<sup>10</sup>. I therefore have no reason to consider that the site is not in an accessible location, providing a choice of means of travel.

65. With regard to the width of Middlegate Road West, the road is generally 5.5 metres wide. I observed on my site visit the short narrower section at the eastern end of the road which I am advised by local residents has a width of around 4.6 metres. In my experience a road of this width is adequate for two cars to pass but I accept that construction or larger vehicles may have difficulty passing each other, requiring another vehicle to give way. This however would be mainly during the construction period. Controls on the routing of construction traffic and traffic management measures to address issues relating to construction vehicles could be the subject of appropriate conditions.
66. The submitted Transport Assessment considers the accident data for the main roads and junctions in the vicinity of the appeal site for the three year period up to December 2015. A total of 14 accidents were recorded. A range of factors contributed to each of these such that it is not possible to identify a particular trend or highway safety issue.
67. I also heard evidence from residents regarding the condition and stability of Middlegate Road West and that it has collapsed on a number of occasions leaving sink holes to be repaired. Whilst I can understand resident's concerns, I have been presented with no convincing evidence that this may be exacerbated by the development.
68. The Framework in paragraph 32 advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. In this case I have no substantive evidence before me to conclude that the development would result in such severe impacts. I therefore consider that a safe and suitable access would be provided to serve the proposed development.

*Other concerns*

69. Concerns have been raised with regard to loss of privacy in particular for the occupants of the bungalows north of Middlegate Road West. As the appeal scheme is in outline this matter could be addressed through suitable conditions and further scheme details to be submitted at reserved matters stage.
70. I have been made aware of other brownfield sites in Kirton that local residents consider to be more suitable for residential development. In determining this appeal I must consider whether the appeal site is suitable not whether there are alternative sites. In any event I have no information before me with regard to the availability or deliverability of these other sites. Whilst the development of brownfield land should be encouraged, it seems clear to me that in light of the extent of the shortfall in housing land in the borough, greenfield sites such as the appeal site would also be required.

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<sup>10</sup> Transport Assessment prepared by ADC Infrastructure page 12-13 paras 2.22-2.25

## Planning Balance

71. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that I determine the appeal in accordance with the development plan unless material considerations indicate otherwise. I have found that as the proposal would introduce new built development into the open countryside it would conflict with Policy CO1 of the Local Plan. It is accepted by the Council and the appellant that in light of the lack of a 5 year housing land supply and the need to release sites in the open countryside to meet the housing requirements of the borough, significantly diminished weight should be given to this policy. I concur with this view.
72. I have also found that the proposal would comply with Policy G2, in that whilst it would cause moderate harm to the landscape, this harm would not exceed the threshold of acceptability set down in the policy. However I have also determined that the development would conflict with Policy G1 as it would cause substantial harm to visual amenity. Therefore the appeal proposal would conflict with the development plan when taken as a whole.
73. There is agreement that the Council cannot demonstrate a 5 year supply of housing land and in line with paragraph 49 of the Framework the relevant policies for the supply of housing are out of date. Paragraph 14 of the Framework is engaged. The presumption in favour of sustainable development applies to the proposal and in these circumstances planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
74. In terms of adverse impacts, I have already made reference to the significant harm to visual amenity and the moderate landscape harm in paragraph 69 above. I also accept that there would be harm in terms of the loss of 10 hectares of agricultural land and in building within Flood Zone 3; however this harm is limited by the difficulties in delivering housing in an area of high quality agricultural land and the low lying nature of the area.
75. Turning to the benefits of the scheme, the provision of 195 dwellings would clearly contribute to the shortfall in the supply of housing in the borough. I acknowledge that the Council is taking positive steps to address the matter through the preparation of the emerging local plan. Whilst I note that the Examination is in progress, the Council could not provide a published timeframe for the adoption of the document. I have had regard to the number of objections to be resolved, including those relating to the objectively assessed need for housing and potential housing sites. Accordingly the Council accepted that at the current time, limited, if any, weight should be given to the emerging local plan.
76. Progressing the new local plan and the allocation of further housing sites will address the borough's future need for housing but as explained above, this could take some time when the need is now. I acknowledge that the appellant has suggested a shorter timeframe for the submission of a reserved matters application leading to the implementation of the scheme as quickly as possible should the appeal be allowed. Consequently I consider that the appeal proposal would contribute to meeting housing need in the short term and therefore I attach very significant weight to the benefit of the proposal in providing additional housing.

77. The appeal scheme proposes 20% affordable housing, up to 39 affordable homes, above the 15% starting point in the Council's non statutory interim policy. There is a significant affordable housing need in the borough, confirmed in the consultation response from the Council's Housing Officer. The Council's updated Strategic Housing Market Assessment March 2017 indicates a need for 263 affordable dwellings per year. Whilst I recognise that affordable housing delivery often has difficulty in keeping up with actual need, I am advised that over the 6 year period 2011/12 – 2016/17, 365 affordable dwellings have been completed, around 23% of the total need<sup>11</sup>. Accordingly I attach significant weight to the schemes contribution in this regard.
78. In respect of economic benefits I acknowledge that future residents of the development would make use of local services and spend in the shops in Kirton. I attribute moderate weight to this benefit. The scheme would also result in direct and indirect employment and create a demand for building supplies during the construction phase. However due to the short term nature of these benefits I give them only limited weight.
79. In terms of environmental matters, I acknowledge that around 42% of the appeal site would be put to green infrastructure and that an area of ecological mitigation would be provided on adjoining land. However this provision is designed principally to compensate for the negative ecological effects of the proposal, though I accept that it would be provide some recreational benefit for existing residents. I therefore attribute limited weight to this benefit.
80. In regard to other matters, I have concluded that the proposal would cause no material harm in terms of highway safety and cause no increased risk of flooding.
81. Bringing all the above together in the final balance, I consider that the adverse environmental impacts I have identified would not significantly or demonstrably outweigh the social and economic benefits, in particular the significant contribution to the shortfall of housing in the area. Even if the housing shortfall was at the level the Council suggests, the adverse impacts of the proposal would not, in my judgment, outweigh the benefits. The proposal therefore constitutes sustainable development as defined in the Framework. The factors above provide the material considerations to grant planning permission other than in accordance with the development plan.

### **Section 106 Agreement**

82. The section 106 agreement contains obligations to provide financial contributions towards upgrading facilities at the Kirton Medical Centre, the provision of further sixth form education, bus stops, a landscaping scheme, affordable housing and a compensatory winter foraging habitat area.
83. I consider that the obligation to provide funding to upgrade the Kirton Medical Centre is necessary as the appeal proposal would have a direct impact on this facility. This is confirmed by NHS England.
84. The Education Authority have projected that there would be no spare capacity in sixth form provision serving Frampton by 2018, the time when it would be reasonable to conclude that this development would be complete or well advanced. Following a review of sixth form provision, the need for increased

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<sup>11</sup> Mr Bassett's Proof of Evidence Table 13 page 49.

capacity at Boston Grammar School has been identified. I am satisfied that this contribution is required.

85. The funding of bus stops for the K58 service is necessary to deliver sustainable transport objectives and encourage the use of public transport. The need for additional planting on land in the appellant's ownership outside the planning application boundary is agreed between the parties. Such planting is necessary to ensure an appropriate landscaping scheme to the north of the appeal proposal.
86. A winter foraging habitat area forms part of the obligation. This is necessary in order to mitigate the impact of the development on pink footed geese and is supported by Natural England.
87. The obligation also provides for 20% of the proposed homes to form affordable housing. The need for affordable housing in the borough is identified in the SHMA July 2015, updated in March 2017. This contribution is necessary to meet this need and also to comply with the Council's non statutory interim policy of seeking a minimum 15% affordable housing contribution.
88. In summary, the above obligations are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind to the development. Therefore they meet the tests within Regulation 122 of the CIL Regulations. In respect of the Education, Health and bus stop contributions, I am advised that no more than 5 contributions have been sought with respect to each of these and therefore the pooling restrictions of Regulation 124 of the CIL Regulations are met. I have taken these obligations into account in the decision.

### **Conditions**

89. The conditions in the attached schedule are those agreed by the Council and the appellant and included in the SoCG. Where necessary I have amended the wording of the suggested conditions in the interests of consistency and precision.
90. Conditions 1 to 3 are the standard reserved matters conditions except that in condition 2 the timeframe for the approval of reserved matters has been reduced to one year as agreed by the main parties. Condition 4 defines the approved plans in particular the access proposals. This is necessary to ensure that the access to the site, which does not form a reserved matter, is constructed appropriately.
91. Condition 5 restricts the number of dwellings that can be constructed to no more than 195. I consider that this is appropriate in this case for the avoidance of doubt as the scheme has been amended from 215 dwellings. In order to ensure that the development proceeds in broad accordance with the submitted parameters plan, condition 6 is required.
92. Conditions 7,8 and 9 relate to access and are necessary to ensure that the new estate road is in place before the construction of any dwellings, to prevent access to Middlegate Road West other than from the approved access road and to ensure that roads and footways are in place and surfaced.
93. In order to address flooding issues, condition 10 is required to ensure that the mitigation measures recommended in the Flood Risk Assessment are

implemented including floor levels 1 metre above existing ground levels and the use of flood resistant construction methods. Condition 11 requires a scheme of foul water drainage which may include a new direct sewer to Frampton Waste Recycling Centre. Conditions 12 and 13 are necessary to ensure that a scheme of surface water drainage based on sustainable principles is implemented and that no dwelling is occupied until the approved scheme is completed or provided in accordance with the approved phasing. In order to assess the impact of any ground raising on the character of the area and the amenity of existing residents, condition 14 is necessary.

94. Conditions 15 and 16 relate to the provision of public open space, green infrastructure and the landscaped/ acoustic bund to the eastern site boundary in. These are necessary to ensure that the development accords with the submitted Parameters Plan and in order to ensure such provision is made in line with Policies H4, G1 and G2 of the Local Plan. These policies seek to ensure the provision of open space in new developments and protect the character of the landscape. The second part of Condition 15 as agreed by the parties required the areas of public open space including children's play areas to be provided before the first occupation of any of the dwellings. As the scheme is in outline I do not consider that this part of the condition is necessary. I have therefore omitted it.
95. In the interests of protecting the amenity of existing residents, condition 17 which relates to the submission of a construction management plan is required. Finally condition 18 is necessary to ensure that a survey of archaeology is undertaken, any appropriate mitigation is put in place and any finds are appropriately recorded.
96. The parties suggested a condition to ensure the submission of measures to enhance biodiversity in the implementation of any landscaping. However as landscaping forms a reserved matter this condition is not necessary at outline stage. I therefore do not impose it.

### **Conclusion**

97. For the reasons given above and having had regard to all other matters raised, I conclude that the appeal should be allowed and planning permission granted subject to the conditions in the Schedule attached.

*Helen Hockenhull*

INSPECTOR



## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ian Ponter of Counsel                      Instructed by Michelle Sacks, Corporate Director and Solicitor, Boston Borough Council.

He called

Steve Maslen  
BSc(Hons) MPhil, CMLI

JBA Consulting

Chris Holliday  
BA (Hons) Dip TP, MRTPI

Forward Planning Manager, Boston Borough Council

Mark Simmonds  
BA(Hons) BTP MRTPI

Mark Simmonds Planning Services

### FOR THE APPELLANT:

Peter Goatley of Counsel                      Instructed by Freeths LLP

He called

Roland Bolton  
BSc (Hons) MRTPI

DLP Consultants

Jason McKellar  
AMIHE

Millward Partnership Ltd

Timothy Jackson  
BSc (Hons) Dip LA CMLI

FPCR Environment and Design Ltd

Mark Bassett  
BA (Hons) DipTP, MRTPI

Freeths LLP

### FOR THE RULE 6 PARTY:

Mr Tim Sharpe                                      Representing the residents of Middlegate Road.

### INTERESTED PERSONS:

Cllr I Turner  
Cllr P Burton  
Miss S Bull  
Mr D Hodgson  
Mrs I Ginn  
Mr J Marshall  
Mr J Anderson

Chair Kirton Parish Council  
Chair Frampton Parish Council  
Resident  
Resident  
Resident  
Resident  
Resident

Mr R Green	Resident
Mrs L Skiba	Resident
Mr F Maskell	Resident
Mr T Taylor	Resident
Mr A Holliday	Resident
Ms V Bryson	Resident
Mrs A Baxter	Resident

#### DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening submissions on behalf of the appellant.
2. Opening submissions on behalf of the local planning authority.
3. Statement of behalf of the Rule 6 Party (Evidence in Chief).
4. Statement submitted by Miss S Bull.
5. Statement submitted by Mr J Marshall.
6. Statement submitted by Cllr I Turner, Kirton Parish Council.
7. South East Lincolnshire Strategic Housing Land Availability Assessment- Plan identifying sites in Kirton April 2017.
8. Photographs submitted by the Rule 6 Party of an accident on 12 September 2017 at the junction of Middlegate Road West and Boston Road.
9. Statement submitted by Cllr P Burton, Frampton Parish Council.
10. Statement submitted by Mr R Green.
11. Statement submitted by Mrs L Skiba.
12. Statement submitted by Mr F Maskell.
13. Statement submitted by Mr T Taylor.
14. Revised section 106 agreement, tracked changed version.
15. Revised section 106 agreement, amended version, unsigned and dated
16. CIL Compliance Note including supporting correspondence from NHS England and Lincolnshire County Council (Education Authority).
17. Closing submissions on behalf of the local planning authority.
18. Closing submissions on behalf of the Rule 6 Party.
19. Closing submissions on behalf of the appellant.
20. Plan of suggested viewpoints for unaccompanied site visit.

#### DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. Executed section 106 agreement, dated 19 September 2017.

## SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 1 year from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan-Drawing No 008, Proposed access arrangement- Drawing No. ADC1427/001 Rev B.
- 5) No more than 195 dwellings shall be constructed on the site.
- 6) All and each reserved matters submission shall broadly accord with the Parameters Plan Drawing No. PP-01 received by the local planning authority on 5 July 2017 and which forms part of this permission. Specifically,
  - in the positions shown there shall be one-and-a-half storey dwellings only with minimum rear garden lengths of 13 m;
  - the lower density area of properties on the northern limits of housing development shall have their principal elevations facing north as shown;
  - the minimum separation from the northern application site boundary to the nearest dwelling shall be 16m;
  - the native and semi mature planting to the northern boundary shall follow the indicative layout as shown and in accordance with the Landscape Strategy dated 5 July 2017 which forms part of this permission;
  - the minimum distance between the A16 and the nearest dwelling shall be 46 m.
- 7) No dwellings shall be commenced before the first 60 metres of estate road from a junction with the public highway and including site access, kerb radii and visibility splays as shown on Drawing No. ADC1427/001 Rev B dated 23 May 2016 has been completed.
- 8) Other than the approved main estate road junctions to serve the permitted development, there shall be no direct vehicular access from the site onto Middlegate Road West.
- 9) Before each dwelling is occupied the roads and/or footways providing access to that dwelling, for the whole of its frontage from an existing public highway, with the exception of the carriageway and footway surface courses, shall be constructed to a specification to enable them to be adopted as highway maintainable at the public expense. The carriageway and footway surface courses shall be completed within three

months from the date upon which the penultimate dwelling is commenced.

- 10) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (Millward ref MA 10325-FRA-R04 dated May 2017) and in particular with the following mitigation measures :
  - finished floor levels of all dwellings shall be set no lower than 1m above existing ground levels
  - flood resilient construction shall be incorporated throughout the development to a minimum height of 3000mm above finished floor levels.
  - resistance measures shall include flood resistant doors to be fitted to all external doors of dwellings before each dwelling is first occupied.
- 11) Prior to development commencing a scheme of foul water drainage provision which may include a new direct sewer to Frampton WRC including the timeframe for implementation, shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved scheme.
- 12) No development shall take place until a surface water drainage scheme, 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:
  - i) 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 and to specifically demonstrate how existing properties will be protected from above ground run-off as a result of raised land levels.
  - ii) provide attenuation details and discharge rates which unless otherwise agreed with the surface water receiving body, shall be restricted to 1.4 litres per second per hectare.
  - iii) provide details of the timetable for and phasing of the implementation of the drainage scheme; and
  - iv) provide details of how the scheme shall be maintained and managed over the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 13) The approved Surface Water Drainage Scheme shall be carried out in accordance with the approved drainage scheme and no dwelling hereby permitted shall be occupied until the approved scheme has been completed 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.

- 14) No development shall commence until details of existing and proposed finished floor levels to show ground raising and any level changes, including where levels are graded down to existing boundaries have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 15) The detailed layout/reserved matters submissions shall incorporate an area or areas of public amenity open space/children's play areas and landscape, public open space, green infrastructure and habitat related proposals to a minimum aggregate area of 42% of the total housing site area in accordance with Parameters Plan Drawing No. PP-01.
- 16) The landscaped / acoustic bund to the eastern boundary with the A16, subject to the detailed design being first submitted to and agreed in writing by the local planning authority, shall be constructed prior to the first occupation of any dwelling east of the Internal Drainage Board maintained drain which runs north to south through site. Completion of the planting of the bund, in accordance with any approved reserved matter, shall take place in accordance with the agreed timescale for the implementation of the approved landscaping.
- 17) Prior to the commencement of the development hereby permitted, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. Development shall then be carried out in accordance with the approved CMP. The CMP shall include, though not necessarily be restricted to the following details :
  - a Traffic Management Plan incorporating the routing of construction traffic and details of heavy vehicle movement patterns;
  - measures to minimise and control noise, vibration, dust and fumes, including any piling plan and specifications;
  - details of the on-site parking facilities of all vehicles of site operatives and visitors;
  - the unloading and loading arrangements for heavy plant and machinery;
  - the location, extent and duration of any stockpiling area;
  - hours of construction activity and compound openings;
  - a tree protection plan and measures to protect trees identified for retention during the construction which shall be in accordance with BS5837 Trees in Relation to Construction;
  - measures to prevent mud being deposited on the surrounding highway;
  - a programme of implementation for all items above.
- 18) No development shall take place until a further geophysical survey of those areas of the site not previously surveyed and the resultant programme of archaeological works to include a programme of trial trenching on those areas identified by the geophysical survey has been submitted to and approved in writing by the local planning authority. The programme of works shall include a timescale for the production of any necessary scheme of mitigation arising out of the intrusive survey which

shall have been submitted to and approved in writing by the local planning authority before the commencement of development in those areas identified.