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## Appeal Decision

Inquiry held on 12 - 15 January and 19 January 2016

Site visit made on 19 January 2016

**by J A Murray LLB (Hons), Dip.Plan.Env, DMS, Solicitor**

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

**Decision date: 9 March 2016**

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**Appeal Ref: APP/V0728/W/15/3018546**

**Longbank Farm, Ormesby, Middlesbrough, TS7 9EF**

- 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 Gladedale Estates against the decision of Redcar & Cleveland Borough Council.
- The application Ref R/2014/0304/OOM, dated 15 May 2014, was refused by notice dated 16 October 2014.
- The development proposed is described in the application as "outline planning application for the construction of up to 320 dwellings on land at Longbank Farm, Ormesby."

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

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### Procedural matters

1. Notwithstanding the description in the application, the parties agreed that the proposal can best be described as an outline application for the construction of up to 320 dwellings including vehicular and pedestrian access off Ormesby Bank and associated landscaping. All matters are reserved for subsequent consideration apart from access.
2. On 18 September 2014, the Council issued a screening decision confirming its view that an Environmental Impact Assessment (EIA) is not required. No contrary view has been expressed and I am satisfied that an EIA is unnecessary.
3. The inquiry ran for 5 days in total and whilst the accompanied site visit took place on 19 January 2016, I also made 2 unaccompanied visits to the area on 11 and 13 January. The second of those visits began at 0825, so I observed local peak hour traffic conditions.

### Main Issues

4. The main issues are:
    - Whether the Council can demonstrate that it has a supply of specific deliverable sites sufficient to provide five years worth of housing.
    - Whether, having regard to the above and any other factors, Policy DP1 of the Redcar & Cleveland Local Development Framework Development Plan
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Policies DPD, July 2007 is out of date and if so, how much weight attaches to it, and:

- the impact of the development on the site's countryside/landscape and ecological value;
  - whether the proposal represents sustainable development;
  - whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework (the Framework) taken as a whole;
  - or whether specific policies in the Framework indicate development should be restricted<sup>1</sup>.
- If Policy DP1 is not out of date, whether any material considerations indicate that planning permission should nevertheless be granted.

## **Reasons**

### ***Five year housing land supply***

5. Paragraph 47 of the Framework indicates what local planning authorities should do to boost significantly the supply of housing. This includes ensuring that they have a supply of specific deliverable sites to provide five years worth of housing against their requirements. The Council has not established its housing requirement in an up-to-date development plan and the starting point is therefore to consider what the objectively assessed need for housing is. Indeed, it is worth noting at the outset that, whilst the parties differ over whether some sites are genuinely deliverable, they agree that this difference is not determinative; if the Council's assessment of objectively assessed need is to be preferred, then it can demonstrate a five year supply of housing land but, if the appellant's assessment is to be preferred, it cannot.

### *Objectively Assessed Need (OAN)*

6. The Planning Practice Guidance (PPG)<sup>2</sup> indicates the correct approach to the assessment of OAN. It provides that needs should be assessed in relation to the relevant housing market area (HMA)<sup>3</sup> and I have no reason to take issue with the parties' agreement that the Borough of Redcar and Cleveland is the appropriate HMA. The PPG also says the assessment of development needs "is an objective assessment of need based on facts and unbiased evidence. Plan makers should not apply constraints to the overall assessment of need..."<sup>4</sup> This is customarily described as the 'policy-off' (or 'policy-neutral'<sup>5</sup>), rather than 'policy-on' approach." A policy-on approach is taken when setting policy targets, but it is not appropriate to my assessment of need in this appeal.
7. The appellant and Council dispute each other's methodologies, but in this regard, the PPG says: "There is no one methodological approach or use of a particular dataset(s) that will provide a definitive assessment of development need. But the use of this standard methodology set out in this guidance is

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<sup>1</sup> Having regard to footnote 9 in the Framework.

<sup>2</sup> Core Document (CD) 5.4.

<sup>3</sup> PPG ID 2a-008.

<sup>4</sup> PPG ID 2a-004.

<sup>5</sup> See paragraph 3.5 of the Planning Advisory Service guidance at CD5.8.

- strongly recommended because it will ensure that the assessment findings are transparently prepared. Local planning authorities may consider departing from the methodology, but they should explain why their particular local circumstances have led them to adopt a different approach where this is the case. The assessment should be thorough but proportionate, building where possible on existing information sources outlined within the guidance.” The PPG later reiterates that “establishing future need for housing is not an exact science. No single approach will provide a definitive answer.”<sup>6</sup>
8. The starting point when assessing OAN is the household projections published by the Department of Communities and Local Government (DCLG), which are based on Office for National Statistics (ONS) population projections. The 2012 – 2037 Household Projections were published on 27 February 2015 and these are the most up-to-date estimate of future household growth.<sup>7</sup> The PPG then allows for sensitivity testing, specific to local circumstances and for account to be taken of employment trends and market signals.<sup>8</sup>
  9. For the appellant, Mr Wisher contends that the OAN is 355 dwellings per annum (dpa)<sup>9</sup> over the next 5 years. Ms Howick has been commissioned by the Council to direct its OAN study, which forms part of the Strategic Housing Market Assessment (SHMA). The Council’s OAN calculation is taken from the SHMA, which is currently in final draft form. Ms Howick contends that the OAN is 213 dpa for the next 5 years.
  10. The parties made reference to a number of factors to explain the difference between their OAN calculations, namely: jobs figures; unemployment rates; differing baseline years for the calculation of OAN; the impact of ONS mid-year estimates; the use of different activity rates; and what Ms Howick describes as a “logical inconsistency” in Mr Wisher’s approach.
  11. A significant amount of inquiry time was taken up with a debate over job forecasts. Ms Howick favours the Experian forecast of 30 new jobs p.a., whereas Mr Wisher uses a figure 109 new jobs p.a., calculated by Regeneris on past trends. This is close to the average of the Oxford Economics forecasts produced in 2013 and 2014, namely 106 jobs p.a. However, whether the correct figure is 30 or 109, this represents virtually no change from the existing employment level of 45,870 accepted by both parties.<sup>10</sup> Accordingly, it was agreed that this difference between the parties’ job forecasts has no significant impact on the OAN figure and I will not therefore seek to resolve it. Similarly, whilst there was a difference of around 1% between the parties’ projected unemployment rates, they accepted that that this would have no significant impact on the outcome.
  12. Ms Howick used 2015 as the baseline year for her OAN calculation, whereas Mr Wisher used 2012. Mr Wisher argued that 2012 was appropriate in order to take account of any backlog, but neither the Framework nor the PPG require a particular baseline date. Furthermore, he acknowledged that, whilst he found no need for additional supply in response to market signals<sup>11</sup>, Ms Howick

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<sup>6</sup> PPG 2a-014.

<sup>7</sup> PPG ID 2a-015 - 016.

<sup>8</sup> PPG ID 2a-017 - 020.

<sup>9</sup> Having regard to the November 2015 Office for Budget Responsibility (OBR) Economic Activity Rates (EAR) forecasts – see inquiry document 3. This figure was revised downwards from the 395 dpa stated in Mr Wisher’s initial proof and rebuttal.

<sup>10</sup> Ms Howick’s proof paragraph 3.45 and Mr Wisher’s rebuttal paragraph 3.7.

<sup>11</sup> Mr Wisher’s proof paragraph 10.10.

allowed for a 10% market signals uplift<sup>12</sup> on Sub National Population Projections (SNPP) and this cancels out any backlog effect. The baseline dates do not then have any significant impact on the parties' OAN figures.

13. The PPG advises that, wherever possible, local needs assessments should be "informed by the latest available information."<sup>13</sup> Mr Wisher criticised Ms Howick for not having regard to the latest 2014 ONS mid-year population estimates, which indicate more recent population growth. However, he confirmed during his evidence in chief that, although he assumed population growth would be a bit higher than the 2012 household projections, he had not actually used the 2014 mid-year estimates in arriving at his OAN figure. Furthermore, Ms Howick explained that the divergence in mid-year estimates at national level is due to international migration, which Mr Wisher accepted has been low in Redcar and Cleveland. In all these circumstances, the latest mid-year estimates do not seriously undermine the Council's OAN figure.
14. What emerged from the evidence during the inquiry is that the difference between the Council's and appellant's OAN figures of 213 dpa and 355 dpa respectively is due mainly to the differing economic activity rates used; these have a big impact because, as explained by Ms Howick, they relate to the whole population of the area. The question is whether the expected future demand for jobs, driven by employers, can be met by the labour force available to fill those jobs. Ms Howick's view is that the population of the Borough will be sufficient to meet the demand for jobs in the area, whereas Mr Wisher considers that population will need to be imported to meet that demand and their housing needs will have to be met. Activity rates are therefore crucial.
15. As indicated above, the starting point is the DCLG/ONS population and household projections and these indicate that the core working age population will decline substantially<sup>14</sup>. Taking that as the starting point, Mr Wisher relies on projections produced by the Office for Budget Responsibility (OBR), whereas Ms Howick relies on Experian's forecasts. OBR and Experian predict an increase in activity rates for older people, but Experian predicts a much greater increase. As a result, the Experian forecasts show only very small reductions in the labour force, which are then offset by reductions in unemployment, the scale of which the parties broadly agree. On this basis, Ms Howick says the working aged population is virtually unchanged over the forecast period, which matches the virtually unchanged number of workforce jobs.
16. Both parties accept that increases in the State Pension Age (SPA) and lengthening healthy life expectancy have an impact, but Mr Wisher criticises Experian's assumptions about activity rates for older people and for women, because they result in figures markedly above the OBR rates. He points to the Planning Advisory Service (PAS) guidance<sup>15</sup>, authored by Ms Howick herself, which warns:

"It is important to avoid unrealistic assumptions on the relationship between housing, population and jobs. A number of housing assessments have been criticised by Inspectors for expecting very fast increases in economic activity rates. Such increases reduce the population growth, and hence the number

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<sup>12</sup> Ms Howick's proof paragraph 3.41.

<sup>13</sup> PPG ID 2a-016 – 17.

<sup>14</sup> Mr Wisher's rebuttal proof paragraph 3.13 – 3.14 and Ms Howick's rebuttal proof paragraph 4.16.

<sup>15</sup> CD 5.8 at paragraph 8.15.

of homes, that is required to support a given number of new jobs. But unrealistic figures put the emerging plan at risk.”

17. I must therefore consider whether the Experian figures are unrealistic. The factors taken into account and assumptions made by Experian are outlined in a May 2015 paper by Experian’s Bobby Shojai entitled ‘Employment Activity and the Ageing Population.’<sup>16</sup> These were explained further by Ms Howick in oral evidence and can be broadly summarised as follows. A continued rise in healthy life expectancy will enable people to work for longer, as will the increasing trend for the UK economy to become more service oriented. Social changes mean that younger generations, or cohorts, of women will have a higher propensity to work. Under cross examination, Mr Wisher accepted that it is reasonable to take account of each of these factors. As the Experian forecast is based upon their analysis of up-to-date Labour Force Survey economic activity rates it takes account of changes in participation rates and other factors which have already occurred. It is therefore evidence based.
18. It remains the case that Experian’s activity rates are significantly above the OBR rates and the Council contends that the OBR projections do not take account of the factors identified in Bobby Shojai’s paper and highlighted by Ms Howick. However, graphs of the OBR projections<sup>17</sup> show undulating, rather than smooth lines into the future and this suggests they have been subject to the application of some judgemental assumptions, rather than a straightforward projection. Indeed, my attention has been drawn to the OBR Fiscal Sustainability Report (FSR)<sup>18</sup> and in particular paragraphs A25 – A.30. The following extracts are of interest:

“A.25 The employment decisions of older people will be affected by a range of factors, including healthy life expectancy, the legislative context and financial considerations. In recent years, legislative changes have included announced rises to the SPA and the compulsory retirement age for men and women being phased out...

A.26 ... our projections capture cohort effects and a rising SPA. Modelling these two factors alone would suggest that employment rates for men aged 60 to 64 years will continue rising over time, although slightly more gradually than in the recent past, and ending the period below the level seen in the 1970s.

A.27 Employment rates for women of the same age are projected to pick up more significantly over the next five years, as the SPA is equalised. And SPA changes are also projected to raise the shares of both men and women working into their late sixties. We do not assume that this pace of change continues into later life.

A.28...There are clearly many other factors that determine retirement decisions.

A.29 Some of these will be specific to the individual. Estimates for disability-free life expectancy have increased over time - although by less than overall life expectancy - which will have facilitated longer spells in employment. There is also clear evidence that couples make joint retirement decisions,

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<sup>16</sup> Ms Howick’s rebuttal appendix C.

<sup>17</sup> Inquiry document 4.

<sup>18</sup> Inquiry document 25

choosing to retire at similar points in time. And higher levels of education are also associated with working for longer. A relatively larger service sector, developments in technology and self-employment becoming a more viable alternative may also have opened up options for some people to work longer.”

19. In closing for the Council, Miss Ogley submitted that these paragraphs in the FSR have nothing to do with the OBR’s long term market projections, given that they follow after the sub heading ‘Past trends.’ However, this specific point was not made by Ms Howick in evidence and the significance or otherwise of that sub heading was not put to Mr Wisher in cross examination, when he referred to paragraphs A.25 – A.30. In any event, I do not read this part of the FSR in the way that Miss Ogley suggests I should. I note paragraph A.3 of the introduction, which says:

“We begin this annex by summarising how we produce our long-term labour market projections and map these across to fiscal outcomes. We then turn to past trends in employment, highlighting particular features *that may go on to affect the future outlook...*” (my emphasis).

Paragraph A.6, under the sub heading ‘Central projections’, also says:

“We project that women born in the 1980s will have higher participation rates than women born in the 1970s across all comparable ages.”

I am not sure why those decades are specifically referred to, but it would appear that the OBR projections have taken account of social changes along with all the other factors in Bobby Shojai’s Experian report. The difference then is the degree to which OBR and Experian consider these factors will have an impact. Both parties accept that considerable uncertainty surrounds projections and forecasts and indeed paragraph A.2 of the FSR expressly acknowledges this.

20. I do not doubt that Experian is an authoritative source. Ms Howick points out that Bobby Shojai’s forecasts were clearly based on data from the Labour Force Survey (LFS) for the second quarter of 2014<sup>19</sup>. However, whilst the OBR’s FSR refers in general terms to the LFS on pages 144 and 145, Ms Howick says it is not clear which particular quarter’s LFS data has been relied upon. I note Ms Howick’s evidence that OBR projections do not have the status of “official statistics” confirmed by the UK Statistics Authority. Nevertheless, Mr Wisher explained that the OBR was set up in 2010 to provide independent economic forecasts to central government. It has a duty to report on the sustainability of public finances under the National Audit Act 2011. It updates its economic activity forecasts roughly annually, but nevertheless looks at the longer term. In arriving at his OAN figure of 355 dpa, Mr Wisher has used the latest set of OBR economic activity forecasts issued in November 2015.<sup>20</sup> Those forecasts are very recent and I accept, in the words of Mr Williamson’s closing submissions for the appellant, that the “OBR figures are used by the Government in the most important activities of the State.”<sup>21</sup>

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<sup>19</sup> See page 4 of Appendix C to Ms Howick’s rebuttal proof and also page 1, which explains that the LFS provides official measures of employment and unemployment.

<sup>20</sup> Mr Wisher’s rebuttal proof paragraph 3.21 and inquiry document 3.

<sup>21</sup> Inquiry document 36 paragraph 52.

21. In these circumstances, I attach greater weight to the OBR projections. They give me cause to seriously doubt the markedly higher activity rates assumed by Experian, in the absence of a more cogent and robust explanation for those markedly higher rates. Furthermore, I note Mr Wisher's point that higher activity rates among older people may not provide the same variety of skills, for example to serve the construction or leisure industries. Whilst I acknowledge Ms Howick's evidence that Experian's approach has not been challenged or discredited to date, Bobby Shojai's paper was only published in May 2015 and it could take some time for decisions to emerge which address this point. In terms of the PAS guidance then, I consider on the evidence before me, that the fast increases in economic activity rates assumed by Experian are unrealistic.
22. Ms Howick also contends that there is a "logical inconsistency" in Mr Wisher's approach. The Oxford Economics model, which produced a jobs growth figure of 106 p.a., averaged from 2013 and 2014 forecasts, is an internally consistent model; it includes a jobs led element based on a view of future population. The argument is that "Mr Wisher's translation of forecast jobs into population is logically flawed, because the forecasts already incorporate a view of future population."<sup>22</sup> Ms Howick says Mr Wisher was wrong to take one element out of that model and use it in the POPGROUP demographic model, as the jobs figure is inconsistent with other inputs used in the POPGROUP modelling; the economic assumptions are different. Furthermore, Ms Howick contends that using the 109 jobs p.a. figure projected from past trends over the past 13 years is invalid because key factors implicit within it will change; most notably there will be a reduction in the working age population.
23. However, the PPG advocates an "assessment of the likely change in job numbers based on past trends and/or economic forecasts".<sup>23</sup> Furthermore, the Inspector in another recent appeal (the Saltburn appeal) described Mr Wisher's 109 jobs p.a. figure as "relatively conservative."<sup>24</sup> Mr Wisher commented that the majority of OAN experts use POPGROUP in exactly the same way as him<sup>25</sup>. Furthermore, the Inspector in a recent appeal concerning a site at Marske Road, Saltburn said his approach offered a "realistic and robust indication of the Borough's full OAN"<sup>26</sup>. Mr Wisher nevertheless accepted the principle of the logical inconsistency point and there is support for Ms Howick's argument in the PAS guidance.<sup>27</sup> However, Mr Wisher firmly rejected the contention that it would have a significant bearing on the outcome, especially given that job growth is not solely the function of the level of population in an area.<sup>28</sup> Indeed, under cross examination, Ms Howick said that nearly all of the difference between the parties on OAN is down to the use of different economic activity rates, rather than the logical inconsistency point. I have heard no evidence which causes me to doubt that.
24. In closing for the Council, Ms Ogley said the Council has not agreed that "any difference in jobs numbers would be insignificant. Some changes may well be materially significant." However, there is no evidence before me that the jobs growth figure is likely to be significantly outside the range 30 – 109 jobs p.a.,

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<sup>22</sup> Ms Howick's rebuttal proof paragraph 4.7.

<sup>23</sup> CD 5.4 ID 2a-018.

<sup>24</sup> Paragraph 67 of appeal Ref APP/V0728/W/15/3006780 at Appendix 1 of Mr Wisher's rebuttal proof.

<sup>25</sup> Inquiry document 3 paragraph 1.9.

<sup>26</sup> Appeal Ref APP/V0728/W/15/3006780 at Appendix 1 of Mr Wisher's rebuttal proof.

<sup>27</sup> CD 5.8 paragraphs 8.4 – 8.13.

<sup>28</sup> Inquiry document 3 paragraph 1.11

which represents virtually no change from the existing employment level. I am not therefore persuaded that the logical inconsistency point seriously undermines the appellant's evidence of the OAN.

### *Conclusion on OAN*

25. Ms Howick and Mr Wisher agreed that the difference between them is principally due to differing activity rates. For the reasons given, I consider the appellant's view on activity rates to be more realistic. Accordingly, I am persuaded on the balance of probability that the OAN figure of 355 dpa is the more robust figure.

### *The supply of housing land*

26. I have already noted the parties' agreement that the dispute between them over whether certain sites are deliverable will not determine whether the Council can demonstrate that it has a five year supply, as the crucial difference concerns the OAN. Having regard to my conclusion that the OAN is 355 dwellings per annum, Mr Wyatt's supplemental statement<sup>29</sup> shows that, even if I accept the Council's own supply figure of 1901 units, it could only demonstrate a 4 year supply.<sup>30</sup> I need not therefore examine this aspect in great detail, but I should broadly consider the extent of the shortfall. During the round table session concerning housing supply, it emerged that there remained a dispute over the deliverability of 5 sites, namely:

- Adult Education Centre, Redcar (75 units)
- Former Redcar and Cleveland Town Hall Complex , Eston Grange (45 units)
- Former GEDC (14 units)
- Cleveland View, Skelton Green (8 units)
- Former Petrol Filling Station, Rosebury Road, Redcar (10 units)

27. The last 3 of these, providing a total of 32 units all have planning permission. Nothing I heard during the inquiry provided a clear indication that the schemes would not be implemented within 5 years and, having regard to footnote 11 of the Framework, I am satisfied that they are deliverable.

28. As far as the Adult Education Centre is concerned, I note a recent email from the prospective developer<sup>31</sup> indicating that a planning application is anticipated some time in 2016. However, the Council explained that contracts had not yet been exchanged on the sale of the site because there is a need to lift a restrictive covenant, or to explore the possibility of indemnity insurance. In the light of this, notwithstanding the developer's apparent confidence, there must be some doubt over whether there is a realistic prospect of these 75 units being delivered on site within 5 years and I would exclude this site from the supply. Turning to the Eston Grange site, even though contracts have not yet been exchanged on the purchase, a recent email from the prospective developer<sup>32</sup> anticipated the submission of a planning application by early

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<sup>29</sup> Inquiry document 6, Table 3.

<sup>30</sup> This is based on the 10% uplift adopted by Ms Howick and the Council's acceptance that a 20% buffer is required because of the Council's record of persistent under delivery of housing. (See paragraph 47 of the Framework and the Statement of Common Ground (Inquiry document 18, paragraph 4.15).

<sup>31</sup> Inquiry document 27.

<sup>32</sup> Inquiry document 28.



February 2016. Other than the fact that this is a brownfield site, no specific difficulties were identified with this scheme and I accept that 45 units are probably deliverable within 5 years. On this basis, the supply of housing land amounts to marginally below 4 years.

*Conclusion on five year housing land supply*

29. For all the reasons given, I conclude that the Council cannot demonstrate that it has a supply of specific deliverable sites sufficient to provide five years worth of housing.

***Whether Policy DP1 is out of date and how much weight attaches to it***

30. Policy DP1 seeks to restrict development beyond development limits, unless specified criteria are met. The appeal site lies just outside any defined development limits and none of the criteria is relevant. However, paragraph 49 of the Framework provides that "relevant policies for the supply of housing" should not be considered up-to-date where the local planning authority cannot demonstrate a five year supply of deliverable housing sites". To the extent that it relates to housing, Policy DP1 is a relevant policy for the supply of housing, as it restricts housing development.

31. Given my conclusion on housing land supply. Policy DP1 is out of date by virtue of paragraph 49 of the Framework alone. Furthermore, the appellant advances an additional basis for its contention that Policy DP1 is out of date and that its weight should be further reduced. The development limits upon which the Council relies have been provided to me as CD 5.18 entitled 'Redcar and Cleveland Local Development Framework Proposals Map adopted September 2007.' However, the Statement of Common Ground (SOCG) records the parties' agreement that the 'Proposals Map 2007' contains the same development limits as the adopted 1999 Local Plan<sup>33</sup>. Whilst it was the Council's intention to formally consult on an updated Proposals Map and formally adopt it, the 'Proposals Map 2007' was neither adopted, nor subject to formal consultation.

32. The 2007 Inspector's report of the Examination into the Redcar and Cleveland Development Policies Development Plan Document (DPDPD)<sup>34</sup> said that Policy DP1 was "consistent with national and regional policy" at that time, "in restricting development to development limits unless it is one of a range of categories suitable for a rural location." However, the Inspector also noted that it had "in-built flexibility in that the development limits will be reviewed and defined to take account of new site allocations contained in other Development Plan Documents..." The supporting text of Policy DP1 states at paragraph 2.1 that development limits "*will be identified* (my emphasis) around towns and villages on the Proposals Map."

33. The development limits have not been reviewed since 2007. Whilst the Local Plan policy defining the development limits was saved to 27 September 2007 and then superseded by Policy DP1<sup>35</sup>, the Proposals Map to which the Council is working was adopted in 1999. It was intended to identify land to meet development needs up to 2006. Furthermore, the examination into that

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<sup>33</sup> Inquiry document 18, paragraph 4.4.

<sup>34</sup> CD 5.16, paragraph 5.1.

<sup>35</sup> Inquiry document 15.

- 1999 Local Plan was in 1997 and the identification of the development limits was based on work prior to that.
34. The implications of all this have been considered in the Saltburn appeal<sup>36</sup>. In short the Inspector concluded: "Policy DP1 is clearly old and has outdated value as part of any wider strategy towards current housing development in the Borough, and I have little evidence to suggest the limits are still meeting current or future development needs."<sup>37</sup> He acknowledged that, under paragraph 215 of the Framework, the test as to whether a policy is out of date is not simply one of age, but consistency with the Framework. The Inspector found some consistency only in so far as the stated aim of Policy DP1 is to "contain future development and to make a clear distinction between the urban area and the countryside." In the circumstances he attached only very limited weight to Policy DP1 in so far as it is consistent with the Framework's commitment towards generally recognising the role and character of the countryside."<sup>38</sup>
35. This conclusion in the Saltburn appeal followed that of the Secretary of State in September 2013 on another appeal concerning land at Galley Hill Estate, Stokely Road, Guisborough (the Galley Hill appeal)<sup>39</sup>. Following the recommendation in the Inspector's report, which also noted that all the allocations in the 1999 Local Plan had been built out<sup>40</sup>, the Secretary of State concluded that "Policy DP1, which relates to housing requirements established in the mid 1990s, is out of date" and "that it should not be afforded any significant weight."
36. In closing for the Council, Ms Ogle sought to distinguish the Saltburn and Galley Hill decisions on the basis that, in both cases, the decision maker found that there was no five year supply. However, that is the conclusion I have reached in this appeal. Policy DP1 is out of date by virtue of the fact that the development limits in the 1999 Proposals Map have not been reviewed and because the Council cannot demonstrate a five year housing land supply. Whilst Policy DP1 remains part of the statutory development plan, I have heard nothing to cause me to depart from the conclusion in the Saltburn and Galley Hill appeals that Policy DP1 should not be afforded any significant weight in the context of the Framework.
37. I must have regard to the Framework's presumption in favour of sustainable development. Provided the appeal scheme represents sustainable development, paragraph 14 of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted. I shall therefore turn to consider the extent of any adverse impacts.

### ***The site's countryside/landscape and ecological value***

38. Whilst appearance, landscaping, layout and scale are all reserved matters the appellants placed reliance on revised indicative layout and landscaping master

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<sup>36</sup> Mr Wisher's rebuttal proof, Appendix 1.

<sup>37</sup> Ibid, at paragraph 18.

<sup>38</sup> Ibid, at paragraph 21.

<sup>39</sup> Appeal Ref APP/V0728/A/13/2190009 at CD5.44, paragraph 12.

<sup>40</sup> CD 5.44, at paragraph 140 of the Inspector's Report.

- plans<sup>41</sup> to demonstrate how it considers the development could avoid causing harm and indeed deliver benefits. I acknowledge that changes could be made at the reserved matters stage, but have assessed the proposal in the light of those revised indicative plans and there was no objection to my doing so.
39. Notwithstanding what I have said about the Proposals Map and the very limited weight to be attached to Policy DP1, the site lies outside, but immediately adjacent to the development limits of Ormesby, as identified in 1999. In any event, as a matter of fact, the scheme would extend built development into the countryside on some 21.2 hectares of agricultural land around an existing single farm building.
40. The site is not within a conservation area and the development would not affect the setting of a listed building, but the site lies within the wider 'Tees Forest' designated landscape and is protected by Policy CS22 of the Redcar & Cleveland Local Development Framework Core Strategy DPD (CS), adopted July 2007<sup>42</sup>. That policy says the overall approach will be to protect and enhance the Borough's landscape based on the character areas identified through the Redcar & Cleveland Landscape Character Assessment (LCA) Supplementary Planning Document published in April 2006<sup>43</sup>. This is clearly consistent with the Framework's core planning principles and the environmental role of sustainable development and with paragraph 109 of the Framework.
41. The site is identified in the LCA as being within the Eston Hills Tract. Under the LCA landscape classification, the northern part of the site is within a "Restoration Landscape" zone, whereas the southern part is in a "Sensitive Landscape" zone."<sup>44</sup> Sensitive Landscapes relate to higher land and have "a high strength of character, a product of a dominant land form and a strong woodland pattern". Restoration Landscapes, covering the "lower lying areas, are characterised by a more open landscape structure of isolated woods and hedges set within a farmland context."<sup>45</sup> In short, the LCA says a Sensitive Landscape is one which has a character which should be retained and where change would be damaging and a Restoration Landscape is one where the landscape may be improved.<sup>46</sup>
42. Landscape harm is not specifically referred to in the Council's decision notice<sup>47</sup> and it has not produced expert evidence on the point. This is nevertheless a matter of great concern to local residents and, for the appellant, Ms Simes acknowledged that residential development on a Greenfield site would clearly change its character. In relation to the southern part of the site, which lies within the Sensitive Landscape, the LCA indicates that such change would be damaging. This must inform my conclusion as to whether the requirement in CS Policy CS22 and the Framework to protect and enhance the landscape is satisfied.
43. However, whilst approximately half of the appeal site falls within the Sensitive Landscape zone indicated on the LCA plan<sup>48</sup>, this is a district level, strategic assessment and I accept that it was appropriate for Ms Simes to seek to refine

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<sup>41</sup> Inquiry documents 33 and 34.

<sup>42</sup> Ms Simes' proof paragraph 1.11 and Appendix L2 and CD 5.15.

<sup>43</sup> CD 5.41.

<sup>44</sup> Ms Simes' paragraph 2.32 and Appendix L3

<sup>45</sup> Ibid, at paragraph 1.9.1.

<sup>46</sup> Ibid, at paragraph 1.6.

<sup>47</sup> CD 3.16.

<sup>48</sup> Ms Simes' Appendix L3.

this at site level. She states that the key landscape feature of the appeal site is the steeply sloping topography in the southern section, close to the major ridgeline associated with Eston Hills<sup>49</sup> and she identifies the relevant area on a site level plan.<sup>50</sup> In turn, that area of some 3.06 hectares is now shown on the revised indicative master plan as a non-developable area.<sup>51</sup> I am satisfied from my own inspection that this plan properly interprets the Sensitive Landscape zone at site level. The revised plan relocates 11 units from that sensitive area to other parts of the site and replaces them with green infrastructure, such that built development would not encroach on the dominant land form of the higher slopes and ridgeline. This could be secured by planning condition.

44. Beyond the basic requirement to protect and enhance the Borough's landscape, Policy CS22 states that development will not be allowed if it would lead to the loss of features important to the character of the landscape, unless the need for the development outweighs the landscape considerations. The supporting text also says it is important that the special qualities and character of the wider landscape are protected and enhanced, particularly the historic landscape area of the Eston Hills. Ms Simes contends that the scheme, as illustrated in the revised indicative master plan, would retain the key features of the site important to the designated landscape and would therefore accord with the purposes of CS22.<sup>52</sup> The Sensitive Landscape zone, as broadly defined by the LCA district level plan, is already bordered by housing development on Farmbank Road. The proposal would bring housing closer to the sensitive zone, as defined by Ms Simes, but would not result in the loss of its key features or diminish its strength of character.
45. I accept the point made by Miss Ogley in closing for the Council that the development will affect the character of the whole site, not just the sensitive area. In simple terms, within the Restoration Landscape on the northern half of the site, an agricultural field, which currently forms part of the countryside setting of Ormesby, will become a housing estate and housing will skirt the northern and western sides of the Sensitive Landscape zone. That change will be readily apparent from a number of vantage points. These include: the existing housing development to the west of the site; parts of Ormesby Bank; a short section of the Flatts Lane bridleway; a stretch of the A174 to the north; and longer views from residential areas to the north of that.
46. However, the proposal would provide a number of landscape benefits<sup>53</sup> and the development would be seen within a new landscape framework. I understand residents' objection to the notion that the scheme is "landscape led"; clearly its primary purpose is not improve the landscape. However, just over 50% of the site would be open space, allowing a substantial opportunity for new woodland and tree planting belts. The indicative plans show significant planting along the northern boundary with the A174 but, most notably, a large buffer strip along the eastern site boundary, to supplement the already well-treed setting with native woodland planting. There would be significant areas of both public and communal open space, dedicated play spaces and green infrastructure, linking with the existing Flatts Lane Country Park to the east. These would provide green wedges, or fingers, into the site and opportunities for pedestrian and

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<sup>49</sup> Ms Simes' proof paragraphs 3.06 and 3.07.

<sup>50</sup> Ibid, at paragraph 4.02 and Appendices L5 and L9.

<sup>51</sup> Inquiry document 33.

<sup>52</sup> Inquiry document 36 at paragraph 65.

<sup>53</sup> Ms Simes' proof, section 7.

- cycle linkages and the depths of gardens would allow for additional tree planting.
47. There is no expert evidence to counter Ms Simes' thorough and careful assessment, nor her view that the benefits balance the inevitable impact of Greenfield site development. I note this view was also expressed in the officers' report<sup>54</sup> to the Council Planning (Development Management) Committee in which officers concluded that the proposal complied with Policy CS22. Having regard to the revised indicative master plan, I share that conclusion and also find no conflict with paragraph 109 of the Framework.
48. Turning to ecological impact, again I assess this in the context of the revised illustrative masterplan. The land to the east of the site is designated as a Local Nature Reserve (LNR) and Site of Nature Conservation Interest (SNCI). Furthermore, the southern section of the site itself is part of a wildlife corridor, safeguarded by CS Policy CS24, which extends to the east of the site and also to the south, beyond the Flatts Lane bridleway.<sup>55</sup>
49. However, like landscape harm, ecological impact did not feature in the Council's reasons for refusal and it produced no expert evidence on this subject to counter the evidence of Dr Martin for the appellant set out in his Ecological Position Statement<sup>56</sup>. The officers' report to committee<sup>57</sup> recognised that the development would have an impact on the LNR, SNCI and wildlife corridor, but given the approach to the development of the site, the relationship to the special designations and proposed mitigation measures, it concluded that refusal on this basis would not be warranted. That report also acknowledged that the proposed additional woodland planting and sustainable drainage has the capacity to improve biodiversity throughout the site. The SOCG<sup>58</sup> acknowledged the potential to deliver biodiversity benefits and ecological enhancements, but said the extent of these was not agreed. It also recorded the Council's concern that the wider function of the site, as part of a wider ecological network has not been fully assessed.
50. Although Dr Martin believed the Council could call on advice from a neighbouring authority, he accepted that, at the time of the officers' report to committee, the Council did not have its own ecology expert. Furthermore, whilst Natural England stated that it had no objection to the proposal, Dr Martin also confirmed that they would not normally advise on ecology issues which were concerned with features at the local level, unless they had a particular point to make about protected species. I also note that the ecological impact of the scheme is of great concern to residents who, together with the ward councillors, put some detailed questions to Dr Martin. A letter from the Tees Valley Wildlife Trust (TVWL) expressed concerns about the scale of the development.<sup>59</sup> The TVWT has considered Dr Martin's report, but believes that the impact of the scheme should be re-evaluated in the wider context to ensure the proposals are appropriate to the ecological and heritage interests of the whole area.

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<sup>54</sup> CD 3.15, at page 22.

<sup>55</sup> Figure 4 of Dr Martin's Ecological Position Statement at Appendix L1 of Ms Simes' proof.

<sup>56</sup> Appendix L1 of Ms Simes' proof.

<sup>57</sup> CD 3.15 at page 24.

<sup>58</sup> Inquiry document 18, at paragraphs 2.3, 4.26 and 5.4.

<sup>59</sup> Inquiry document 2.

51. Dr Martin confirmed that his fieldwork surveys had not gone more than 30 – 100 metres beyond the site boundaries, but said that his desk top survey extended 2 km beyond the site. He looked at data at the regional records centre and he expected good data to have been provided by the Country Park wardens as well as nature conservation organisations. The desktop study and fieldwork surveys were part of an iterative process, with the desktop survey flagging up issues for the fieldwork.
52. Dr Martin said he gave great weight to the potential impact of dog walking and cat predation, resulting from development being brought closer to the Country Park. Whilst he acknowledged that the capacity of the Country Park for extra visitors had not been assessed, he explained that this is why a contribution would be made towards footpath provision, as people tend to stay on good footpaths. He said that the desktop studies gave him a good degree of confidence that significant effects would have been identified. Dr Martin also acknowledged the impact of light spillage on wildlife, but a condition is proposed to limit this in areas of green infrastructure of primary importance to wildlife.
53. In terms of the function of the wildlife corridor, Dr Martin explained that the links are to the east, rather than the west, and then south along the Eston Hills to the North York Moors. This is reflected in the proposed landscape buffer along the eastern site boundary and the less intensive development now proposed for the Sensitive Landscape zone in the southern area of the site. Whilst the wildlife corridor would be reduced in that part of the site, it would not be severed. Dr Martin said the scheme had been re-valuated to address the concerns of the TVWT and the measures proposed would do a good job in conserving and enhancing features of value.
54. Dr Martin explained the mitigation measures set out in his Ecological Position Statement<sup>60</sup> and gave comprehensive and straightforward answers under cross examination. Ultimately there was no evidence to contradict the conclusions set out in that statement and I accept them. In short those conclusions are that:
- Only habitats and species of local significance would be adversely affected;
  - Wildlife linkages would be maintained and enhanced, with 50% of the site providing green infrastructure;
  - Whilst some species on open farmland (most particularly ground nesting birds) would be displaced, only very low numbers are present;
  - There would be a significant net gain for urban and woodland edge birds, including tree sparrow and song thrush as well as for bats, great crested newts and in terms of wetland, hedges, lowland broadleaved woodland and grassland species;
  - There would be significant biodiversity gain in the medium term as wetland and new planting matures;
  - Planning conditions can ensure successful mitigation and habitat enhancement works, with a management company ensuring management of the green infrastructure in perpetuity.

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<sup>60</sup> At paragraph 6.1.4.

55. Among other things, CS Policy CS24<sup>61</sup> seeks to protect the Borough's biodiversity and gives priority to: conserving and enhancing protected biodiversity sites; improving the integrity and biodiversity of wildlife corridors; encouraging the management of landscape belts for nature conservation; and increasing public access to wildlife sites. Overall it says that development will be encouraged to include measures to contribute positively to the overall biodiversity in the Borough. The aims of CS24 are also broadly reflected in CS Policy CS3<sup>62</sup> and DPDPD<sup>63</sup> Policies DP2 and DP3. In this regard, these policies are consistent with the Framework, which also provides that if significant harm from a development cannot be avoided, adequately mitigated, or compensated for then planning permission should be refused.<sup>64</sup>
56. That part of the wildlife corridor which lies within the site would be reduced by the development. Nevertheless, I am satisfied that the appeal scheme would enhance and add to existing landscape belts, whilst providing for their effective management and improving access to the LNR and SNCI. In short, it would contribute positively to the overall biodiversity in the Borough, in conformity with Policies CS24, CS3, DP2 and DP3 and I find no conflict with the Framework.

*Conclusion on countryside/landscape and ecological value*

57. For all the reasons given, and notwithstanding the specific concerns of the TVWT, I conclude that the proposal would not harm the countryside/landscape and ecological value of the site.

***Whether the proposal represents sustainable development***

58. The site is adjacent to Ormesby, which forms part of the Borough's Conurbation at the highest tier in the settlement hierarchy defined in the CS<sup>65</sup> and I am satisfied that this is a sustainable location. Having regard to the three dimensions of sustainable development set out in the Framework, the Council acknowledges the economic and social benefits of the scheme<sup>66</sup>. As set out in Mr Wyatt's proof, these include: increased Council Tax receipts, including the uplift from the New Homes Bonus; the benefit to the local economy as a result of additional household expenditure and the creation of construction and supply chain jobs over a likely 8 year build programme; and the provision of a significant number of new homes, to meet an identified need, including affordable housing.
59. The Council considers that the loss of countryside is not consistent with the environmental dimension of sustainable development but, given my conclusions on the main issue relating to countryside/landscape and ecological matters, I do not share that concern.
60. Residents also draw attention to flooding and drainage concerns. Having regard to the Flood Risk and Drainage Strategy<sup>67</sup> submitted with the application, the Flood Risk and Drainage Statement and Addendum<sup>68</sup> submitted

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<sup>61</sup> CD 5.15.

<sup>62</sup> Ibid.

<sup>63</sup> CD 5.17.

<sup>64</sup> Paragraph 117 of the Framework.

<sup>65</sup> Inquiry document 18, at paragraphs 2.3 and 4.21 and CD 5.15, at page 18.

<sup>66</sup> Inquiry document 35 at paragraph 118.

<sup>67</sup> CD 1.11.

<sup>68</sup> Appendices 4 and 5 of Mr Wyatt's proof.

with the appeal and Mr Elliott's oral evidence, I am satisfied that the development itself is not at risk of fluvial flooding. Indeed, the proposed system of interception swales<sup>69</sup> and linking pipes is likely to enhance the current situation; the identified surface water flood risks to the development can be managed whilst reducing the existing risk arising from this type of flooding at the adjacent housing development.

61. Taking the economic, social and environmental dimensions together, I conclude that the proposal does represent sustainable development.

***Whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole***

62. I have found that the proposal would not harm the countryside/landscape and ecological value of the site, but neighbours raise other concerns, for example highway safety and capacity. Neighbours have understandable misgivings about a development of this size in the context of a busy local network. However, the Council accepts that, subject to a number of planning conditions and contributions under a section 106 agreement<sup>70</sup>, there is no reason to withhold planning permission on highway safety or capacity grounds.<sup>71</sup> For the appellant, Mr Rodger submitted a proof of evidence, which built on the Transport Assessment and Travel Plan considered by the Council at the application stage.<sup>72</sup>
63. Clearly, the proposal cannot be expected or required to remedy existing problems, but it should not worsen them and Mr Rodger explained that he had factored in the effect of other committed sites and background traffic growth. He answered residents' questions at the inquiry and explained how the proposal would not cause harm because of: the site access design; improvements to roundabout junctions at the Cargo Fleet Lane/Normanby Road and Ormesby Bank/Middlesbrough Road; and contributions to highway improvements under the section 106 agreement<sup>73</sup>. On this basis, the scheme complies with DPDPD policy DP3 and CS Policies CS26 and 27, which together require suitable and safe access.
64. Residents also express concern over the potential for the development to be affected by historical mining issues and subsidence. A ground investigation report<sup>74</sup> submitted with the application addressed that risk but revealed no significant issues. Nevertheless, the appellant recognises the need for further survey work<sup>75</sup> and this can be secured by condition, such that there is no conflict with DPDPD Policy DP7 in this regard.
65. Neighbouring residents are concerned about the impact of the proposal on their living conditions in terms of overlooking, visual impact/loss of outlook and light pollution. I viewed the appeal site from 2 of the dwellings that could be most affected, namely Nos 28 and 38 Farmbank. These dwellings back onto the

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<sup>69</sup> In his straightforward and comprehensive answers to residents' questions, Mr Elliott described a "swale" as the "re-branding of a ditch."

<sup>70</sup> Inquiry document 38.

<sup>71</sup> Inquiry document 18, at paragraph 4.24.

<sup>72</sup> CD 2.1 and CD 1.10 respectively.

<sup>73</sup> Residents had undertaken their own traffic survey in 2015, but the 2014 survey figures used in the appellants' Transport Assessment actually indicated higher traffic flows.

<sup>74</sup> CD 1.15.

<sup>75</sup> See inquiry document 17.



southern part of the site, where the land rises towards the Sensitive Landscape zone. Clearly, the view of an undeveloped hillside, from which some residents currently benefit, would substantially alter. The details could clearly be subject to change at the reserved matters stage. Nevertheless, the revised indicative masterplan satisfies me that, even with the relocation of 11 plots closer to existing housing, there is scope for appropriate landscaping, separation distances and detailed dwelling design features to achieve satisfactory relationships and avoid unacceptable harm in this regard. This is acknowledged in the SOCG<sup>76</sup>. Together with landscaping, a sensitive lighting scheme could be required by condition to minimise light pollution.

66. A number of residents are concerned about the impact on walkers, horse riders and cyclists who currently use the site. Existing paths across the site to the Flatts Lane Country Park are valued, but they are not formal rights of way. The proposal includes pedestrian and cycle links across the site, improving and formalising accessibility between existing residential development and the Country Park.<sup>77</sup>
67. There is a concern among residents that allowing this proposal would set a precedent for further development outside existing development limits. However, each proposal must be considered on its merits and if any scheme is found to be acceptable overall, it cannot be used to justify schemes which are unacceptable.
68. Objections to the scheme point to pressure on local services. The parties agree that, whilst secondary schools have sufficient capacity, the proposal would necessitate additional primary school places. However, the section 106 agreement makes provision, subject to completion of a feasibility study, for a contribution of up to £1.8 million to address that need. There is no evidence before me to indicate that other services would be unable to cope with the development. Indeed, Mr Wyatt's unchallenged evidence is that the additional population would actually sustain existing services and facilities and possibly attract additional services.<sup>78</sup>
69. Some neighbours believe the development may comprise housing of unsuitable types and designs. However, the SOCG records that the proposal would meet the specific needs identified in the 2012 SHMA, including affordable housing in accordance with CS Policy CS15<sup>79</sup> and saved Policy H9 of the Redcar and Cleveland Local Plan, adopted June 1999<sup>80</sup>. The revised indicative masterplan gives me confidence that there is plenty of scope at the reserved matters stage to secure appropriate dwelling types and designs.
70. On the basis of my consideration of all the main issues, I have not identified any substantial adverse impacts, to weigh against the benefits. Those benefits include: a substantial contribution to the delivery of market and affordable housing; biodiversity gains; the creation of managed green infrastructure; a drainage scheme that will improve the current situation, reducing the risk of localised flooding; improved footpath connectivity to the Country Park; the creation of on-site construction jobs and through the supply chain; increased

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<sup>76</sup> Inquiry document 18, at paragraphs 4.18 – 4.19.

<sup>77</sup> Ms Simes' proof, at paragraph 4.09 and inquiry document 13.

<sup>78</sup> Mr Wyatt's proof, at paragraph 4.74.

<sup>79</sup> CD 5.15.

<sup>80</sup> CD 5.12.

Council Tax receipts and the New Homes Bonus; and increased household expenditure in the Borough.

71. I therefore conclude on this main issue that any adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

***Whether specific policies in the Framework indicate development should be restricted***

72. In closing for the Council, Ms Ogley acknowledged that there are no specific policies in the Framework which indicate development should be restricted. I have heard and read nothing to lead me to a contrary view.

**Section 106 Agreement**

73. A completed section 106 agreement<sup>81</sup> contains a range of obligations, namely: the provision of 15% affordable housing units on the site and measures to ensure the occupation of the units on an affordable basis in perpetuity; a financial contribution for the improvement of educational facilities to be determined through a feasibility study, but subject to a maximum of £1.8 million; a financial contribution of £470,000 to Middlesbrough Borough Council towards anticipated costs of designing and constructing the Stainton Way Western Extension; a contribution of £25,000 to Middlesbrough Borough Council towards the cost of improving the existing traffic signalling equipment at the junction of the A172 Dixons Bank/Stainton Way; and a contribution towards the cost of providing a footpath link to the Flatts Lane Country Park and improving existing footpaths within the park, subject to a maximum of £60,000.
74. The Council has provided evidence<sup>82</sup> that these obligations are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Officers of the Council, and indeed the Head of Planning from Middlesbrough Council, attended the inquiry to expand on the written justification. I am satisfied that all of the obligations set out in the section 106 agreement comply with Regulation 122(2)(a) – (c) of the Community Infrastructure Levy Regulations 2010/948 and with the Framework. I am also satisfied with the form and drafting of the section 106 agreement and I therefore take the obligations into account as material considerations.

**Overall planning balance and conclusion**

75. As the appeal site lies outside any defined settlement limits, the proposal is contrary to Policy DP1. However, that policy is out of date for the purposes of paragraph 49 of the Framework, because the Council cannot demonstrate a five-year supply of housing land. Having regard to previous decisions in the Saltburn and Galley Hill appeals, policy DP1 is also out of date because the development limits have not been reviewed since their adoption in 1999. I have found that the proposal would not harm the site's countryside/landscape and ecological value, such that it would comply with Policies CS3, CS22, CS24, DP2, DP3 and the Framework. I have found that the proposal would represent

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<sup>81</sup> Inquiry document 38.

<sup>82</sup> Inquiry documents 31 and 32.

sustainable development and, subject to conditions and planning obligations, it would cause no unacceptable harm in terms of: highway safety and capacity; land stability; neighbours' living conditions; the interests of walkers etc; setting a precedent; and it would not place undue pressure on services and facilities. It would therefore further comply with Policy DP3 and with Policies CS26, CS27 and DP7.

76. Indeed the proposal would deliver a range of positive benefits, most notably making a significant contribution to meeting house need, including providing affordable housing, in accordance with Policies CS15 and H9 and the Framework.
77. It cannot therefore be said that any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole and as no specific policies in the Framework indicate development should be restricted, I am satisfied that the appeal should be allowed and outline planning permission granted, subject to conditions.

### **Conditions**

78. The SOCG included a list of suggested conditions, but following my preliminary observations, a revised agreed list was submitted.<sup>83</sup> I have made some minor changes to these, to ensure they are precise, enforceable generally meet the tests in the Framework. I have combined some conditions and put them into a logical order.
79. In addition to the usual time limits for submission of reserved matters and commencement of development, for the avoidance of doubt, I shall specifically limit the development to no more than 320 dwellings.
80. To ensure a satisfactory development and to safeguard the character and appearance of the area, I shall impose conditions relating to the phasing of the development and concerning: proposed ground and floor levels; the provision of a play area; landscaping; external materials for buildings and hard surfaces; boundary walls and fences; and the areas where development will not be permitted.
81. To minimise the risk of pollution and to safeguard the environment, I will require a site contamination investigation and that the development be carried out in accordance with any appropriate and approved remediation measures.
82. In the interests of highway safety, it is necessary to impose conditions requiring: parking provision for the proposed dwellings and for contractors' vehicles and the provision for materials storage within the site; the implementation of an approved traffic management plan; the delivery of off-site highway mitigation measures; completion of the proposed site access junction in accordance with approved details and the maintenance of a visibility splay; and the completion of Road Safety Audits.
83. Conditions concerning the disposal of foul and surface water and limiting surface water run-off are needed to prevent an increased risk of flooding.

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<sup>83</sup> Inquiry document 29.

84. To ensure satisfactory living conditions for neighbours and future occupiers of the development and to prevent damage to buildings, I will require: the implementation of a scheme for dust suppression during construction; the submission of a noise and vibration assessment and a scheme to protect the proposed dwellings from road traffic noise, together with the implementation of any necessary works; and a limit on working hours for construction activities.
85. To ensure compliance with Policy DP3, I will require the provision of an approved artwork feature or features and, in the interests of sustainability, I will require a minimum of 10% of the site's energy requirements to be provided by embedded renewable energy.
86. To conserve and protect ecological systems, wildlife species and habitats and to safeguard the LNR, SNCI and wildlife corridor, I will attach conditions requiring: the implementation of an approved ecological mitigation system, including provision for a management company; site vegetation clearance to be avoided at certain times; the implementation of an approved lighting scheme; the provision of bird and bat boxes; and the prevention of development in certain areas.
87. In the interests of public safety, and given the history of mining in the area, I will impose a condition requiring a scheme of intrusive ground investigation and the implementation of any necessary and approved remediation measures.

## **Decision**

### **Appeal Ref: APP/V0728/W/15/3018546**

88. The appeal is allowed and outline planning permission is granted for the construction of up to 320 dwellings including vehicular and pedestrian access off Ormesby Bank and associated landscaping at Longbank Farm, Ormesby, Middlesbrough, TS7 9EF in accordance with the terms of the application, Ref R/2014/0304/OOM, dated 15 May 2014, subject to the following 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 the expiration of three years from the date of this permission.
  - 2) The development hereby permitted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last of the reserved matters to be approved, whichever is later.
  - 3) No part of the development hereby permitted shall be implemented until a Phasing Plan for the timing and delivery of the development, in terms of the relationship between the phases of development and the proposed infrastructure, has been submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the Phasing Plan.
  - 4) The development hereby permitted shall comprise no more than 320 dwellings and the details submitted pursuant to Condition 1 shall include a Plan defining those areas within which development will not be permitted, which areas shall include the area edged blue on drawing number LBF02 A submitted to the local planning authority at the inquiry on 19 January 2016.

- 5) The details submitted pursuant to Condition 1 shall include details of an emergency vehicle access point.
- 6) The details submitted pursuant to Condition 1 shall include existing and proposed ground levels together with finished floor levels for the development hereby approved. The levels shall also be demonstrated by the use of sections through the site.
- 7) The details submitted pursuant to Condition 1 shall include full details of the play area. The play area shall be provided in accordance with the agreed Phasing Plan.
- 8) Unless otherwise agreed by the local planning authority in writing, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts (a) to (c) have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing.

(a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health;
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
  - adjoining land;
  - groundwaters and surface waters;
  - ecological systems;
  - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

(b) Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical

environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

(d) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of part (a) and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of part (b), which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority.

- 9) Prior to commencement of development, a scheme of intrusive ground investigation works shall be submitted to, and approved by, the local planning authority in writing. The works shall be carried out in accordance with the approved scheme, which shall include:
- (i) trial pits/mini rig boreholes to enable the made ground and natural soils to be examined and buried obstructions to be identified; and
  - (ii) rotary boreholes to determine if shallow mining is a risk to the development.

The results of the investigation works, together with any proposed remediation measures shall be submitted to and approved in writing by the local planning authority before commencement of development and the development shall be carried out in accordance with any such approved measures.

- 10) Development shall not commence until a detailed scheme for the disposal of foul and surface water from the development hereby approved has been submitted to and approved in writing by the local planning

authority in consultation with Northumbrian Water. The detailed scheme shall include a phasing plan indicating the extent of the foul and surface water system to be installed to serve each phase and to be completed before any occupation of properties within that phase. The submitted surface water management plan shall include details of SUDs techniques and a detailed watercourse assessment of the Spencer Beck if necessary. The SUDs features shall include elements designed to enhance biodiversity including permanent pools, reedbeds, swales and marshy grassland. The Surface Water system shall be designed to provide protection against surface water flooding within the site on all events up to a 1 in 30 year event including an appropriate climate change allowance. Overland flows from the site shall be contained within the site for all events up to a 1 in 100 year event plus an appropriate climate change allowance. Discharges from the site into Spencer Beck shall not exceed existing discharges into Spencer Beck for all events up to a 1 in 100 year event plus an appropriate climate change allowance. The foul and surface water drainage scheme shall be fully installed, in accordance with the approved details for each phase prior to the occupation of any dwelling within that phase.

- 11) The surface water run-off generated by the impermeable areas of the site to the existing greenfield run-off rate, shall be limited so it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site. The discharge rate for the portion of surface water to be discharged into the Spencer Beck should be restricted to 5.5 l/s as detailed in the Flood Risk Assessment and Surface Water Drainage Strategy received by the local planning authority on 30/5/2014.
- 12) Prior to the commencement of development a scheme for the delivery of the off-site highway mitigation measures, including timing of delivery, shall be submitted to and agreed with the local planning authority incorporating the details shown on plans 1647-SK-001 Rev C and 1647-Sk-02 Rev D both received by the local planning authority on 16 September 2014.
- 13) Prior to the commencement of development, details shall be submitted to and agreed in writing by the local planning authority, of proposals to provide contractors' car parking and material storage within the site. The details approved shall be retained for use until completion of the development.
- 14) Prior to the occupation of any dwelling on the site the parking spaces associated with that dwelling shall be completed and brought into use.
- 15) Prior to the commencement of development a traffic management plan shall be submitted to and agreed in writing with the local planning authority. The scheme hereby approved shall then be implemented in accordance with the agreed traffic management plan unless any change to that plan is first agreed in writing with the local planning authority.
- 16) The development site's junction within the existing highway shall be provided in accordance with the details set out on plan 1647-GA-002 Rev A received by the local planning authority on 30.07.2014 and have a visibility splay of 2.4m X 43m. There should be no obstructions greater than 600mm within this area and any vegetation should be maintained at or below this height. The junction and visibility works shall be fully implemented prior to the first occupation of any dwelling on site.

- 17) The whole development shall be subject to a Stage 2 Road Safety Audit. The Audit shall be carried out in accordance with DMRB HD 19/03 and shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with any recommendations in the approved Audit.
- 18) The proposed junction with Ormesby Bank shall be subject to a Stage 3 Road Safety Audit. The Audit shall be carried out in accordance with DMRB HD 19/03 and shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with any recommendations in the approved Audit.
- 19) No development shall commence until a scheme for protecting the proposed dwellings from road traffic noise has been submitted to and approved in writing by the local planning authority; all works which form part of the Noise Scheme, unless related to an individual property, shall be completed before any of the dwellings identified as being affected by noise are occupied and any works to individual dwellings shall be completed before the dwelling to which it relates is occupied, unless otherwise agreed in writing as part of the phasing arrangements.
- 20) Before any development is commenced a noise and vibration assessment shall be carried out to assess the likelihood of adverse impacts on nearby noise sensitive properties. Where adverse impacts are identified then a scheme of works detailing how the impacts will be reduced to acceptable levels shall be submitted for the prior approval in writing of the local planning authority. The assessment should have due regard to the advice and guidance contained in British Standard BS5228:2009 Code of practice for noise and vibration control on construction and open sites and the development shall be carried out in accordance with any approved scheme of works.
- 21) The working hours for all construction activities on this site are limited to between 08:00 and 18:00 Mondays to Friday and 08:00 to 13:00 Saturdays and not at all on a Sunday or Bank Holidays.
- 22) Prior to the commencement of development a detailed scheme for the suppression of dust at the construction site shall be implemented in accordance with a scheme that has first been submitted to the local planning authority for approval in writing. The approved scheme shall be adhered to for the duration of the construction period.
- 23) Pursuant to the details submitted under Condition 1, a landscaping scheme shall be submitted to, and approved in writing by, the local planning authority prior to the commencement of development. The details shall include size, type and species of plant and indicate the proposed layout and surfacing of all open areas. The submission shall include details of existing vegetation to remain on site and methods of protection during construction phases. The development on site shall take place in accordance with the details agreed in writing.
- 24) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with a phased programme of works, which has first been submitted to and agreed in writing with the local planning authority prior to the commencement of development. Any trees or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or



diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.

- 25) No development shall take place until a scheme of ecological mitigation and enhancement, including a timetable for its implementation, to accord with the details set out in the Phase I Habitat Survey, received by the local planning authority on 30.05.2014, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details and timetable. In addition, prior to the start of construction works on site an ecological construction, implementation and management plan shall be agreed to ensure that biodiversity is enhanced through prompt implementation of new planting and appropriate management to be delivered by a management company or equivalent in perpetuity.
- 26) There shall be no site vegetation clearance between March to the end of August unless the project ecologist has first undertaken a checking survey immediately prior to the clearance and confirms in writing to the local planning authority that no active nests are present.
- 27) Prior to the commencement of development 50 bird boxes, of a variety of types, and 50 bat boxes will be erected in retained trees. Details (including the locations) of the bat and bird boxes shall be submitted to and approved in writing by the local planning authority prior to the installation on site. The boxes shall be installed in accordance with the approved details.
- 28) Prior to the commencement of development a lighting scheme for the site shall be submitted to, and approved by, the local planning authority. The scheme shall be implemented in accordance with the approved scheme.
- 29) Details (including samples) of the external materials to be used in all buildings and hard surfaces in the development shall be submitted to, and approved in writing by the local planning authority, prior to the commencement of each phase of development and the development shall not be carried out except in accordance with the approved details.
- 30) Prior to the first occupation of each individual plot, boundary walls and fences shall have been erected to that plot in accordance with a scheme that has first been agreed in writing with the local planning authority and shall thereafter be retained.
- 31) An artwork feature(s) shall be installed at the site in accordance with details that have first been submitted to the local planning authority for approval in writing and shall thereafter be maintained unless otherwise first agreed in writing. The art feature(s) shall be installed on site prior to the occupation of the final dwelling on the site.
- 32) A minimum of 10% of the site's energy requirements shall be provided by embedded renewable energy.

*J A Murray*  
INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Alison Ogley of counsel (assisted by Stanzie Bell of counsel)	Instructed by Emma Garbutt, Senior legal Officer (Planning and Highways), Redcar and Cleveland Borough Council (RCBC)
She called	
Cristina Howick MA MSc	Peter Brett Associates
Councillor Mary Lanigan	
Alex Conti	Planning Strategy Team Leader, RCBC (participated in housing round table session)
	Principal Planning Officer (Strategic Planning Team), RCBC (participated in housing round table session)
Mark Mein	
	Masterplan Delivery Officer, RCBC (participated in section 106 round table session)
Ian Dunn	

### FOR THE APPELLANT:

Andrew Williamson BA Dip TP MRTPI of counsel, solicitor and town planner	
He called	
Dr Antony Martin BSc	E3 Ecology Limited
PhD CMLI CIEEM	
Matthew Elliott	WYG
BSc(Hons) MSc FICE	
FCIWEM FCI Arb C Eng	
CWEM C Env	
Robert Rodger BEng	WYG
(Hons) CMILT	
Liz Simes BA(Hons) Dip	Fabrik
LA Dip UD CMLI	
Darren Wisner BA MA	Regeneris
Econ	
John Wyatt BA (Hons)	Signet Planning
MTP	

### INTERESTED PERSONS:

Lesley Tart	Local resident
Susan Holmes	Local resident
Councillor Glyn Nightingale	Ward Councillor
Councillor Ann Wilson	Ward Councillor
Councillor Irene Nightingale	Ward Councillor
Martin Tart	Local Resident
Glyn Williams	Local Resident
Christine Lazenby	Local Resident
Paul Clarke	Head of Planning, Middlesbrough Borough Council (participated in section 106 round table session)

**DOCUMENTS SUBMITTED TO THE INQUIRY**

1	Statement of Cllr Glyn Nightingale
2	Tees Valley Wildlife Trust letter dated 5.1.16
3	Additional Sheet 1 of Mr Wisher's proof
4	OBR Nov 2015 Participation Rate Projections graphs
5	Additional Sheet 2 of Mr Wisher's proof
6	Supplemental Statement of Mr Wyatt (11.1.16)
7	Newspaper extracts and notes re highways and flooding matters
8	Appellant's opening submissions
9	Council's opening submissions
10	Edge Analytics Demographic Analysis & Forecasts August 2015
11	Plans missing from Core Document 5.26
12	Tables re OBR, Regeneris and Experian economic activity rates
13	Additional plans: <ul style="list-style-type: none"> <li>• Figure L13.1 Illustrative Landscape Masterplan (Changes from Application Site Landscape Masterplan Highlighted)</li> <li>• Figure 14.1 Alternative scheme (Relocated 11 Plots) Open Space Plan</li> <li>• Figure L15.1 Alternative Scheme (Relocated 11 Plots) Illustrative Landscape Masterplan</li> <li>• Drawing No LBF02 Indicative Masterplan with 11 Units Relocated from Sensitive Area of site</li> <li>• Drawing No LBF02 Indicative Masterplan with 11 Units Relocated from Sensitive Area of site (annotated version)</li> <li>• Drawing No 1092795 showing water mains</li> </ul>
14	Strategic Housing Market Assessment commission notes
15	Development Limits note prepared by officers for Cllr Lanigan
16	Note re abandonment of Local Plan
17	Mr Wyatt's letter to the Council dated 18.12.15 re ground conditions and flood risk (submitted in connection with the second planning application)
18	Signed Statement of Common Ground
19	Appeal decision Ref APP/G2815/A/13/2209113 St Christopher's Drive, Oundle
20	Appeal decision Ref APP/R0660/A/14/2216767 Poole Ln, Winterley
21	Secretary of State's decision and Inspector's report Ref APP/R0660/A/13/2197532 & 2197529 Audlem Rd and Peter Destapeleigh Way, Nantwich
22	Secretary of State's decision and Inspector's report Ref APP/P1615/A/14/2218921
23	State Pension Age changes note
24	Fiscal Sustainability Report supplementary tables
25	OBR Fiscal Sustainability Report July 2014
26	Plan showing suggested walking route for accompanied site visit (agreed by local residents and the principal parties)
27	Email correspondence dated 12.1.16 re possible development of the former Redcar Adult Education Centre, Corporation Rd
28	Email correspondence dated 11.1.16 re possible development of Eston Town Hall site
29	Revised list of suggested conditions as of 14.1.16
30	Agreed draft section 106 Agreement
31	Community Infrastructure Levy Compliance Statement
32	Appendices to Community Infrastructure Levy Compliance Statement

33	Drawing No LBF02A Indicative Masterplan with 11 Units relocated from a more sensitive area of the site
34	Alternative Scheme (Relocated 11 Plots) Illustrative landscape Masterplan – Non-developable area
35	Council’s closing submissions
36	Appellant’s closing submissions
37	<i>Anita Colman v Secretary of State for Communities and Local Government (1), North Devon District Council (2) and RWE NPower Renewables Limited [2013] EWHC 1138 (Admin)</i>
38	Completed section106 Agreement dated 28 January 2016