
Appeal Decision

Inquiry opened 25 April 2017

Site visit made on 5 May 2017

by Philip Lewis BA (Hons) MA MRTPI

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

Decision date: 13 June 2017

Appeal Ref: APP/V0728/W/16/3158336

Land west of Flatts Lane, Normanby, Middlesbrough TS6 0SR.

- 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 Mr Harrison, Theakston Estates (Investments) Limited against the decision of Redcar & Cleveland Borough Council.
 - The application Ref R/2016/0326/OOM, dated 16 May 2016, was refused by notice dated 1 September 2016.
 - The development proposed is residential development (Use Class C3) together with access, infrastructure, open space and landscaping with all matters reserved except for access.
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Decision

1. The appeal is allowed and planning permission is granted for residential development (Use Class C3) together with access, infrastructure, open space and landscaping with all matters reserved except for access at land west of Flatts Lane, Normanby, Middlesbrough TS6 0SR in accordance with the terms of the application, Ref R/2016/0326/OOM, dated 16 May 2016, subject to the attached schedule of conditions.

Procedural matters

2. The inquiry sat for 5 days from 25 to 28 April and on 5 May 2017. The application is in outline, with all matters reserved for future consideration except for access. The submitted plans are as set out in the agreed Planning Statement of Common Ground (PSCG) and I have had regard to these in determining the appeal.
3. During the appeal, the appellant submitted revised plans to exclude a Council owned footpath which had previously been shown to be in their ownership. I am satisfied that no interests would be prejudiced by this minor amendment and I have taken the revised plans into account in making my decision.
4. A completed Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (S106) was submitted at the Inquiry¹. The S106 includes obligations relating to affordable housing, education contributions, pedestrian and cycleway improvement works, bus services and towards management and maintenance at the Flatts Lane Woodland Country Park. At my request, the

¹ Document 11

Council provided a Community Infrastructure Levy Regulations 2010 Compliance Statement².

5. The Council and appellant provided proofs of evidence for ecology witnesses³ prior to the Inquiry, but subsequently agreed not to call these witnesses. I have dealt with this evidence therefore as written submissions.
6. Prior to closing the Inquiry, it was agreed that the appellant and Council would, if they considered it necessary, make submissions regarding the anticipated Supreme Court judgement concerning the Suffolk Coastal DC v Hopkins Homes and Richborough Estates v Cheshire East BC cases⁴. The judgement was issued on 10 May 2017 and I have had regard to submissions received from the appellant and the Council in determining the appeal.
7. Before the Inquiry opened, the Council wrote to request that the Inquiry should be postponed or kept open to await the decision of the Secretary of State in respect of an appeal relating to land south of Marske⁵. The decision of this appeal should not however wait for the outcome of the Marske appeal and in any event, I have made my decision on the evidence before me.

Main Issues

8. Having had regard to the above procedural matters and in light of all that I have read, heard and seen, I consider the main issues in the appeal are:
 - Whether the Council is able to demonstrate a five year supply of deliverable housing sites sufficient to meet the full objectively assessed need for housing;
 - Whether the appeal site is an appropriate location for housing development having regard to whether the future occupants of the proposed development would have acceptable access to shops, community facilities and services; and
 - Whether the material considerations identified are sufficient to outweigh any conflict with the Development Plan.

Reasons

Five year supply of deliverable housing sites

9. The Framework, in paragraph 47 sets out what local planning authorities should do to significantly boost the supply of housing. This includes that they identify a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. The Council and appellant have agreed as set out in the Housing Statement of Common Ground (HSCG) that there is not an up to date housing requirement for the area set out in the development plan and it is necessary to therefore consider the objectively assessed need for housing.

² Document 18

³ Mr Kevin Honour for the Council and Dr Antony Martin for the appellant

⁴ [2017] UKSC 37

⁵ APP/V0728/W/15/3134502

Objectively Assessed Need (OAN)

10. The Planning Practice Guidance (PPG) states that needs should be assessed in relation to the relevant functional area. For the purposes of this appeal, the parties consider this to be the Redcar and Cleveland administrative boundary. No reason is before me to dispute this.
11. The PPG sets out that establishing the future needs for housing is not an exact science and that no single approach will provide a definitive answer⁶. It also states that there is no one methodological approach or use of a particular dataset(s) that will provide a definitive assessment of development but strongly recommends the standard methodology set out in the PPG.
12. Whilst I have had regard to the appeal decisions relating to land south of Marske Road, Saltburn⁷ and Longbank Farm, Ormesby⁸, I have formed my own view regarding the availability of a five year supply of housing on the basis of the evidence before me.
13. The Council has calculated the OAN at 206 dpa for the 5 year period starting on 1 April 2016. The appellant has calculated the OAN to be at least 358 dpa. The parties agree that the OAN is the key factor in determining whether the Council can demonstrate a 5 year supply of deliverable housing sites and that the key issue in determining the OAN concerns any adjustment to be made regarding the likely change in job numbers and economic activity rates (EARs). I agree.
14. The position of the Council in regards to OAN is similar to that it expressed in the Longbank Farm appeal, based upon the Strategic Housing Market Assessment (SHMA) February 2016 and the SHMA update dated September 2016⁹. The Inspector in the Longbank Farm appeal found the appellant's figure of 355 dwellings per annum (dpa) to be more robust. The Council use forecasts by Experian and Oxford Economics to test whether a future jobs uplift is required. The appellant has put forward a case which includes both a forecast and trends based approach.
15. The Council submit that the number of workplace jobs in Redcar and Cleveland and population will remain virtually unchanged between 2015 and 2032 and that economic activity rates will increase with no constraint being caused by a lack of labour. The SHMA update includes forecasts which predict falls in the age 16-64 labour force and increases in the 65+ age group labour force, with Experian predicting an increase in jobs per annum (jpa) of 30, whilst Oxford Economics predict minus 62 jpa. Consequently, the Council makes no uplift in the OAN for any employment led needs.
16. The appellant on the other hand puts forward a number of job led scenarios ranging from 89 to 210 additional jpa, resulting in an OAN in the range 335-462 dpa. The 89 jpa is based upon past job trends between 2000 and 2015, whilst 109 jpa reflects the past trends argued at the Longbank Farm appeal. Alternative scenarios are provided based upon Cambridge Econometrics (CE) forecasts, of 152 jpa and 210 jpa. The appellant contends that the future

⁶ 014 Reference ID: 2a-014-20140306

⁷ APP/V0728/W/15/3006780 dated 16 December 2015

⁸ APP/V0728/W/15/3018546 dated 9 March 2016

⁹ CD 5.12 and CD 5.13

Economic Activity Rates (EARs) used by Experian are unrealistically high and instead adopts those of the Office for Budgetary Responsibility (OBR).

17. I have before me therefore two contrasting views of the future to inform my judgement regarding the OAN. One, where the balance between jobs and labour supply will be met and the other, requiring further housing if in-commuting into Redcar and Cleveland were not to increase.

Economic Activity Rates and jobs

18. The appellant contends that the OBR national EAR rates are more realistic since Redcar and Cleveland has lower economic activity rates than the national average and argues that the 2017 OBR rates provide more optimistic forecasts of older age economic activity, closer to those of Experian than the OBR 2015 rates.
19. I take the point that there is an inconsistency in the appellant's assumptions in terms of jobs growth forecasts and local labour force supply. The Council's alternative scenario using the OBR data results in a smaller resident workforce and fewer jobs, with the workplace jobs equal to job demand, as per the Experian baseline scenario. This demonstrates the logical inconsistency point through the Experian model, evidence which I understand was not before the Longbank Farm Inspector. I note however that the logical consistency exercise has not been repeated with the OBR 2017 data and that the OBR 2017 data has not been critiqued by Experian.
20. In terms of historic jobs growth data for 2000 to 2015, the ONS data indicates an equivalent of 86 jpa, Oxford Economics 94 jpa and CE, 240. For this period Experian indicate a reduction of minus 40 jpa. For the more recent 2011 to 2015 period, I note that Experian indicates an appreciably lower rate of job growth than the other forecasters cited. In this context, the Experian forecast of jobs growth appears appreciably lower than the longer term trend and significantly lower than the more recent shorter term performance in Redcar and Cleveland.
21. Bearing in mind that establishing the future need for housing is not an exact science, I have not been persuaded that the logical inconsistency argument should hold sway given the particular circumstances in Redcar and Cleveland. In my view, EARs are unlikely to increase at a sufficiently rapid rate so as to meet future jobs growth. Consequently, it is reasonable to establish the OAN through a combination of trend based job growth and the EARs from the OBR 2017.
22. Although I note that there are examples¹⁰ where Inspectors have accepted the logical inconsistency point, each appeal must be determined on its own merits. On the evidence before me, I consider that, despite the inconsistency in the appellants approach, I consider that it provides a more realistic assessment than the Experian forecasts, given the relatively low starting point in Redcar and Cleveland in terms of EARs and the degree of rapid increase suggested for them.
23. It may well be that Redcar and Cleveland's problem is with creating jobs but the appellants minimum OAN is based upon past trends and produces a higher

¹⁰ APP/W1525/W/15/3129306 and APP/W1525/W/15/3121603

annual jobs growth figure. Applying the logical inconsistency argument, this would not necessarily result in an increase in jobs, but I am not convinced that the rapid increase in EARs forecast by Experian would be achieved.

24. Mr Spry explained in re-examination that if the logical inconsistency point was considered correct then he would rely upon the CE forecast, which is not based upon any assumption regarding EARs, as confirmed in the Cambridge Econometrics Employment Projections note submitted to the inquiry¹¹. Whilst it is contended by the Council that these forecasts must assume some national assumptions in terms of activity, this has not been demonstrated. The CE projections are for 152 jpa and give rise to a higher OAN than the minimum stated by Mr Spry and lend some support to the contention for a higher OAN than that of the Council.
25. As for the scenario regarding York Potash, I am not convinced that it is realistic since some account will already be taken of it in the baseline. Nor is there any technical evidence to demonstrate whether the SSI closure has had a specific effect on OAN.
26. Whilst the logical inconsistency argument casts some doubt over the appellant's methodology, the Council's assumed rapid increases in EARs lack sufficient justification due to the absence of a critique of the 2017 OBR data. In any event, the CE forecast is not so affected given that it is concerned with past trends in various industrial sectors, and adds some weight to the OAN arguments of the appellant.

Population projections and uplifts

27. I note that the difference between the 2012 and 2014 population projections as used by the parties is minor, and in the context of the PPG does not represent a meaningful change in the projections. In respect of the headship rate uplift put forward by the appellant, I remain unconvinced that this is necessary and in any event, does not lead to a figure, significantly out of step with the demographic starting point of the Council.
28. The PPG¹² sets out guidance regarding how market signals should be taken into account in assessing housing need. It has not been demonstrated that Redcar and Cleveland is experiencing adverse issues in respect of land or house prices, rents, overcrowding or affordability.
29. The PPG also includes that if the historic rate of development shows that actual supply falls below planned supply, future supply should be increased to reflect the likelihood of under-delivery of a plan. I have had regard to the submissions from the Council that this guidance, taken with that set out in paragraph 47 of the Framework regarding the 20% buffer, could give rise to double counting of any under supply in assessing the 5 year supply of deliverable housing sites. I have some sympathy with this view and am not convinced of the necessity to apply such an uplift in calculating the OAN, if the 20% buffer were also to be applied. In any event however, in this case I have no reason to disagree with the parties that this point is somewhat peripheral overall, though the factors above would overall have a small downwards effect if applied to appellant's OAN calculation.

¹¹ Document 14

¹² Reference ID: 2a-019-20140306

OAN conclusion

30. I consider therefore that the appellant's case in the round is preferable to that of the Council. Having had regard to adjustments and uplifts, an OAN at the lower end of the appellants range at 335 dpa is the more robust figure. This would be broadly in line with the conclusions in respect of Longbank Farm.

The supply of deliverable housing sites

31. The Council contend that there is a supply of 1839 dwellings that are deliverable over the five year period. The appellant disputes the deliverability of two of the sites (Spencerbeck Farm and The Dunes) and the assumptions made regarding the trend based allowance for small sites.
32. Firstly, with regards to Spencerbeck Farm, I note the scheme has outline planning permission. There is no clear evidence before me that the scheme will not be implemented within 5 years and having had regard to evidence of Mr Cansfield obtained from the agent for the site regarding its likely implementation and to footnote 11 to the Framework, I consider the site as being deliverable.
33. The Dunes, is for accommodation falling within Use Class C2 Residential Institutions. The PPG¹³ advises such accommodation should count against the housing requirement. It seems that the Dunes would provide self-contained living units for future occupiers capable of being occupied independently. Whilst this type of accommodation is excluded from the Government's household projections, I nevertheless find that given the particular characteristics of the Dunes scheme and the guidance in the PPG, the scheme should count against the housing requirement.
34. The appellant contends that the allowance for small sites should be 148 dwellings rather than that the 235 set out by the Council. Given however that the base date for the 5 year period is 1 April 2016 and that there are already 164 such units with planning permission, I do consider that the Council's assumed figure is reasonable for the 5 year period as a whole and that its approach is realistic in the context of paragraph 48 of the Framework.
35. On the basis of the evidence before me, I concur with the Council that there is a supply of 1839 dwellings that are deliverable over the five year period.

5% or 20% buffer

36. The Council has previously accepted that a 20% buffer should be applied but considers that the 2016-2017 housing completions data means that the 20% buffer should no longer be applied.
37. The Framework in paragraph 47 is clear that the five year supply should be measured against the housing requirement. This was agreed by Ms Howick in oral evidence. In this case, the relevant requirement is set out by Policy CS13 of the Redcar and Cleveland Local Development Framework Core Strategy (Core Strategy) even though the Core Strategy housing requirement is not up to date, it would not be appropriate to use instead the emerging Local Plan target for this assessment, given the early stage in its examination and that it is liable to change. Furthermore, I am unconvinced as to the logic of applying

¹³ Reference ID: 3-037-20150320

the OAN of either party to this purpose, given that they have been assessed for a period starting on 1 April 2016.

38. When measured against the Core Strategy requirement there has been undersupply in the provision of housing in 3 out of the past 5 years and marginally overall in numeric terms over 5 years. Having regard to the Cotswold judgement¹⁴, I have also considered the delivery of housing over a range of time periods. In the longer term, there has been under supply in 3 out of 10 years and 4 out of 14, with a significant undersupply as a whole since 2004/5. On this basis, I do not consider that the addition of the 2016/17 figures has significantly changed the position as to the persistent under delivery of housing. A 20% buffer should be applied.
39. Whilst residents have drawn my attention to factors such as the need for housing and affordability, the level of housing for sale in the area and the availability of brownfield land, these factors do not alter my conclusion regarding housing supply.
40. The Council cannot demonstrate a 5 year supply of deliverable housing sites. Based upon an OAN of 335, taking into account the shortfall in supply from 2015, the application of a 20% buffer and a supply of 1839 dwellings, the supply is about 4.27 years¹⁵.

Accessibility to shops and community facilities and services

41. The appeal site is situated to the south of Normanby, separated from the existing built up area by the A174 dual carriageway. A bridleway passes through the site from Flatts Lane to the Woodland Country Park and there are informal paths to the west of the site leading to a pedestrian underpass beneath the A174, which connects with informal paths to the north.

Walking

42. The appeal site has limited pedestrian and cycle connectivity to the urban area via Flatts Lane and there is no disagreement that the underpass beneath the A174 is unattractive. The proposal makes provision for various improvements to the west side of Flatts Lane, the bridleway and the underpass to provide pedestrian links from the appeal site to Ormesby. A footway/cycleway would be provided from the underpass along the western edge of the appeal site to the country park. A footpath link is also proposed to the Longbank Farm development to the west.
43. The parties agree that with the implementation of the proposed transport and travel planning measures, the target mode share as set out in the TA¹⁶ would be met. However, the Council contend that the appeal site would not have reasonable, acceptable or easy pedestrian access to shops, services and jobs, with its concerns relating to the walking distances required and the effect of gradients and topography.
44. The IHT Guidelines provide desirable, acceptable and preferred maximum distances. For town centres these range between 200 to 800 metres, for commuting/school 500 to 2000 metres and elsewhere 400 to 1200 metres.

¹⁴ [2013] EWHC 3719 (Admin)

¹⁵ As set out in Inquiry document 22

¹⁶ CD 1.37 Table 7 page 34

Although of some vintage, they were prepared by the relevant professional body and are used widely, I nevertheless consider them relevant and afford them some weight.

45. Whilst no primary school is situated within 1000 metres, the appeal site falls within the preferred maximum figure of 2000 metres as set out in the IHT guidelines for all identified primary schools and within the statutory walking distances. With regard to retail facilities, the identified shops are situated between about 1200 and 1700 metres from the appeal site, with health facilities in Normanby between 1900 and 2000 metres away. In terms of recreational facilities, the Woodland Country Park is situated about 800 metres from the site, with the other facilities identified between 800 and 2100 metres. The urban centres at Normanby, Ormesby and Eston Square are 1900, 2200 and 2400 metres away respectively.
46. I observed during my site visit that the proposed walking routes would not be affected by significant gradients. With the proposed improvements to surfacing and lighting and connectivity with the existing network, they would not present any significant deterrent to walking. Due to some of the journey distances involved however and given the location of the site at the edge of the urban area, the resulting target mode share for walking is not high, but I understand the target figure would nevertheless reflect that of the existing urban area to the north.
47. The appellant also proposes a link to the west towards Ormesby via the Longbank Farm development site. I have had regard to the correspondence between the appellant and the developer at Longbank Farm and whilst there is clearly a prospect of the route coming forward, there is nevertheless uncertainty, particularly regarding the details, timing and delivery of such a route. Consequently, I afford it less weight than the proposed routes via Flatts Lane and the underpass.
48. To conclude, whilst the appeal site cannot be said to be close to services, shops and facilities for journeys on foot, many services and facilities and employment locations are within the suggested maximum acceptable walking distances. The proposed routes would provide opportunities for walking and cycling and would be reasonable and acceptable for such use. Although the target mode share for walking at 8.1% is relatively modest, it is reflective of the existing urban area to the north. In that context, I do not find the proposal to be unacceptable in this regard.

Bus services

49. The appeal site is not presently served by direct public transport and the appellant is proposing via a S106 agreement, a new bus service between the appeal site and Middlesbrough via Normanby. The proposed bus service would operate on an hourly frequency Mondays to Saturdays and would be guaranteed for a period from the occupation of the first dwelling until 2 years after the completion of the development. Without the proposed bus service, the proposed development would not otherwise be served by public transport. The existing bus services are not conveniently related to the appeal site in terms of distance, with the nearest service, offering a very limited service. The parties agree that the distance to the nearest railway station is such that rail travel would not be a significant mode of public transport, as reflected in the target mode share.

50. I note that the bus services previously operated by Leven Valley Coaches were withdrawn due to the company ceasing to trade, rather than a lack of viability on any particular route. I also note that the former 271 and X71 services, which took a similar route in part to that proposed by the appellant, became uneconomic once concessionary fares were withdrawn. Consequently, the Council's concern regarding the certainties of the viability of the proposed service and that once the proposed bus service is no longer supported, it could be unviable and be withdrawn, potentially leaving the proposed development with no direct public transport service, have some validity.
51. Whilst the proposed bus service might not be of a 'high frequency', the public reaction to the withdrawal of the hourly No 492 service indicates that the proposed bus service is likely to be attractive to new and existing residents. Given the proposed route and destination of Middlesbrough, the service would provide access to a range of employment locations.
52. In respect of long term viability, the support for the proposed bus service would continue for a number of years, with the capital cost of providing a new bus being met up front. I am given to understand that the service would require a daily revenue of £320 to be viable. Given the population within a five minute walk of a bus stop being about 18,000 and the target mode share for bus being 7.8%, there appears to be a realistic prospect that the required income would be met from a share of the existing bus demand on the route. On the balance of evidence before me therefore, I consider that there is a reasonable prospect that the proposed bus service would be viable in the long term.

Accessibility conclusions

53. The proposed bus service would provide a realistic public transport choice for residents wishing to travel to Normanby and Middlesbrough and would be viable in the longer term. The appeal scheme would also provide connections for walking and cycling networks in the wider area. Whilst the distances involved are generally at the upper end or beyond the maximum acceptable walking distances set out in the IHT guidelines, I am satisfied that the proposed development should achieve the target mode share. Consequently, I find that access to shops and community facilities and services by means other than the private car to be acceptable in this case.
54. The proposal does not conflict with Core Strategy Policy CS1 which is concerned with the principle of sustainable development and sets criteria against which the contribution of development proposals will be assessed. These include easy access to jobs, shops and transport services by all sections of the community. It also accords with Core Strategy Policy CS19 which is concerned with delivering inclusive communities and includes amongst other things that all proposal will be assessed in terms of their contribution to providing access to core facilities which are listed as local shops for day to day needs, education, basic health and care facilities, sport facilities, children's play areas and safe open space.
55. Whilst not included within the reason for refusal, Core Strategy Policy CS26 was considered in evidence and discussed at the Inquiry. I find that the appeal scheme does not conflict with Policy CS26 which is concerned with managing travel demand and includes amongst other things, that proposals will be supported that improve transport choice and encourage travel to work and

school by public transport, cycling and walking and minimise the distance people need to travel.

56. I also find that the appeal proposal does not conflict with the Redcar and Cleveland Local Development Framework Development Policies DPD July 2007 (DPD) Policies DP2 and DP3, which are concerned with the location of development and sustainable design respectively.

Whether the material considerations identified are sufficient to outweigh any conflict with the Development Plan

57. DPD Policy DP1 is concerned with development limits and sets out that development beyond development limits will be restricted to specified circumstances. The purpose of the development limits is to contain future development and to make a clear distinction between the urban area and the countryside. The appeal proposal conflicts with DPD Policy DP1 through the extension of the urban area beyond the defined limits, with the appeal scheme not meeting one of the exceptions as set out in the policy. Given that DPD Policy DP1 is a key policy in the plan concerning the location of development, I consider that the appeal proposal does not accord with the development plan as a whole.
58. A number of comments have been made that the proposed development would breach a 'barrier' set by the A174 road. During my site visit I observed that the road provides a clear separation between the urban area of Normanby and the appeal site and country park beyond. If I were to allow the appeal the character of the appeal site would change, and bring housing development closer to the Eston Hills. However, I have had regard to the development either side of the A174 to the west, which would be further extended by the Longbank Farm development. The appeal scheme would nevertheless give rise to some harm through development encroaching into agricultural land.
59. The appeal site falls within the Eston Hills Landscape Tract as identified in the Redcar and Cleveland Landscape Character Assessment (CD 5.24), falling within the defined 'Escarpment' landscape unit. I consider that given the identified character of the area, its elevation and its contrast to the adjacent 'Upland' landscape unit, in terms of character, the appeal scheme would not give rise to unacceptable effects upon the Eston Hills. In regards to outlook from the Eston Hills, the appeal scheme would bring the urban area closer, but I do not consider that such change would be unacceptable. It has not been demonstrated that the appeal scheme would give rise to additional unacceptable pressure upon the Eston Hills, nor have any adverse effect on the setting of the North York Moors National Park. It has been stated by some interested persons that the appeal site is within a Green Belt, however, whilst it is outside of the development limits for Normanby, this is not the case.
60. The appeal scheme would affect the bridleway which passes through the site with the illustrative layout indicating a road crossing it. Whilst the setting of the bridleway and experience of users would change, it would be retained in the site layout, with improvements being made in respect of pedestrian and cycling accessibility. I do not find the proposed changes unacceptable, but the change in character of the bridleway does weigh against the scheme.

Other matters

61. I have considered carefully all other matters raised, both in written evidence and at the inquiry and have had regard to the high level of local interest in the proposal, as expressed in the written comments and petitions. I consider these matters below.

Precedent

62. Concern has been expressed by residents concerning the appeal scheme setting a precedent for further development south of the A174. However, any such proposals would have to be considered within the constraints posed by topography, the infrastructure including the Ethelyne pipeline and power lines and access. In any event, any such scheme would be the subject of a planning application to be considered on its merits.

Flatts Lane Woodland Country Park

63. The proposed development is sited to the north of the Country Park, which is clearly a well-used and valued community resource, as was seen during the site visit. Whilst there may be some additional recreational pressures arising from the proposed housing, I am satisfied that the associated improvements to walking/cycling routes and management and maintenance measures would be sufficient to mitigate against any such effects and so I do not consider that the appeal scheme would be unacceptable in this regard.

Ecology

64. I have had regard to the concerns of interested persons about the effects of the proposal on ecology. Firstly I have noted the evidence regarding the works which were undertaken to the appeal site to bring it into agricultural use, including statements that a pond was filled. However, those works have already taken place and nor is that scheme before me.

65. In view of the specialist evidence of the appellant and the Council, I am satisfied that the surveys undertaken for protected species are up to date and adequate. The surveys undertaken of the ponds within 500 metres of the appeal site recorded a single great crested newt, which it is stated reflects the low scattered population within the area. I consider that likely effects of the proposed development on great crested newts would not be harmful if the proposed mitigation is undertaken. Such mitigation could be secured by way of planning conditions were I minded to allow the appeal. The proposed development has the potential to harm to a European Protected Species, the great crested newt, and I have had regard to the Habitats Directive in reaching my decision. In respect of other species, I am satisfied that the appeal scheme would not give rise to unacceptable adverse effects.

Capacity of local services

66. Concern has been expressed that the additional 400 dwellings would place unacceptable burdens on local services, such as school places, doctors and dentists. I am satisfied from the evidence before me that doctors and dentist practices are taking on new patients in the area. In regards to education, the proposed development via a S106 Planning Agreement, would provide for education contributions which would meet any requirement for school places arising from the development.

Highway safety

67. I have had regard to the concerns expressed by many interested persons concerning the potential effects of the appeal scheme in terms of traffic congestion and highway safety. After having regard to the appellant's transport assessment (TA) including the proposed full junction refurbishment at the B1380/Normanby Road / Cleveland Street junction to be implemented under section 278 of the Highways Act and the comments of the Highway Authority, I do not however find the proposal unacceptable in this regard.

Infrastructure

68. I have considered the comments in respect of electricity transmission lines and Ethelyne pipeline and historic mine workings. Having had regard to the consultation responses from the responsible bodies, I do not consider that these matters weigh against the appeal scheme.

Landscaping

69. I have had regard to the concerns of interested persons regarding trees and landscaping and note that the appeal site was the subject of a temporary Tree Preservation Order. However, landscaping would be a reserved matter should I be minded to allow the appeal.

Drainage

70. I heard at the Inquiry from a number of interested persons regarding recent flooding events in the area. I have had regard to the concerns expressed that the appeal scheme would give rise to an increased risk of flooding due to an increase in the run off of surface water, though there is no technical evidence before me in support of this proposition. I note that the Lead Local Flood Authority has no objection to the appeal scheme subject to certain planning conditions regarding surface water. The appellant has through the Flood Risk Assessment and Drainage Strategy, set out measures to control surface water run off including sustainable urban drainage measures which would restrict flows during storm events. Subject to appropriate planning conditions, consider the appeal scheme acceptable in this regard.

Planning balance

71. The proposal would be contrary to DPD Policy DP1 and the development plan as a whole. Nevertheless, because of the housing land supply position, paragraph 14 of the Framework is invoked. I find that the development limits relating to DPD Policy DP1 were not reviewed for the DPD and are not serving to provide a 5 year supply of deliverable housing sites. The strict application of this policy would prevent improvements to the shortfall in the supply of housing. The development limits do however continue to mark the edge of the urban area and the countryside and accordingly I afford them limited weight.

72. Paragraph 14 of the Framework indicates that where relevant policies are out of date 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.

73. The appeal scheme would give rise to some limited harm through development encroaching into agricultural land and I also give some limited weight to the

harm which would arise to the change in character of the bridleway. In respect of accessibility of the appeal site to shops, services and facilities, although the proposed walking distances are towards or beyond the upper limits of the IHT guidelines, given the target mode share which is based on that in the area and the improved opportunities proposed for walking and bus travel, I do not find the scheme to be harmful in this regard.

74. Set against this harm are the social and economic benefits of addressing the undersupply of housing in the area. In the context of the shortfall in the supply of housing land, I attach significant weight to the provision of up to 400 units, 15% of which would be affordable. In accordance with Section 70(2)(b) of the Town and Country Planning Act 1990, I take into account the local finance considerations in respect of the New Homes Bonus and Council Tax payments, which although would arise from any housing development, are nevertheless benefits to the scheme.
75. The proposed education contribution would provide for a half form entry at a school, providing additional places over that resulting from the development. This is a benefit to the wider community. The proposed bus service and upgraded walking and cycle routes, off-site highways improvements and works to the Woodland Country Park and contributions towards ongoing management and maintenance and ecological mitigation, whilst being intended to serve the development would also have wider benefits to the community to which I attach modest weight.
76. Overall the adverse impacts identified above do not significantly and demonstrably outweigh the social, economic and environmental benefits of the appeal scheme. Consequently the proposal would represent sustainable development as defined in the Framework, and, material considerations indicate that planning permission should be granted for development that is not in accordance with the development plan.

Planning obligations

77. The S106 agreement contains obligations in respect of the provision of 15% affordable housing; a financial contribution to expand the capacity of primary schools within the catchment of the appeal site to be determined through a feasibility study; financial contributions towards pedestrian and cycleway improvement works; provision of a bus service between the site and Middlesbrough Bus Station from the occupation of the first dwelling until at least two years after the completion of the 400th dwelling and annual contributions towards the management and maintenance of Flatts Lane Woodland Country Park.
78. Having had regard to the evidence before me including the Council's Community Infrastructure Levy Regulations 2010 (CIL Regulations) Compliance Statement¹⁷ I am satisfied that the tests set out in paragraph 204 of the Framework and Regulation 122 of the CIL Regulations are met in that the 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. The Council confirmed during the discussion regarding planning obligations that there was no reason under Regulation 123 regarding the pooling of contributions, why I could not take the

¹⁷ Inquiry document 18

obligations into account, and having had regard to the provisions of the S106 agreement in terms of projects and the evidence before me, I do not disagree.

79. I am satisfied with the form and drafting of the Section 106 agreement and I therefore take the obligations into account as material planning considerations.

Planning conditions

80. A draft list of agreed conditions was provided before the Inquiry and was revised following discussion at the Inquiry. I have made some minor changes to these having regard to the tests set out in the Framework and the guidance contained in the PPG, reordered to group some related conditions together and omitted conditions proposed regarding landscaping, external building materials and refuse storage as these would be covered by reserved matters.
81. I have imposed conditions in respect of timescale and specifying the approved plans, to specify that the development shall consist of no more than 400 dwellings, regarding finished floor levels and in respect of phasing of development, as this provides certainty. In the interests of highway safety, I have attached conditions regarding the design and implementation of the vehicular access to the site, to secure a Travel Plan and regarding improvements to the B1380 / Normanby Road / Cleveland Street junction. A condition is also attached to secure the implementation of the new or improved paths and the future maintenance of the A174 underpass in the interests of accessibility and safeguarding the environment.
82. Conditions are attached concerning a Construction Environmental Management Plan to ensure that development is undertaken in a satisfactory way and construction hours are restricted to safeguard the living conditions of residents. Conditions are also attached concerning contamination in the interests of preventing pollution. In addition, conditions are attached regarding the maintenance and management of green infrastructure, including measures to conserve great crested newts, in respect of trees and hedgerows and regarding vegetation clearance in order to protect the environment and breeding birds and in the interests of the character and appearance of the area. A lighting scheme, provision of bird nesting boxes, method statements in respect of minimising harm to protected species and landscape enhancements are specified in the interests of wildlife.
83. I have specified a condition requiring a written scheme of investigation in the interests of the archaeology of the area. Conditions are specified regarding foul and surface water drainage in the interest of flood prevention and preventing pollution. A condition is attached requiring a noise mitigation strategy in respect of the A174 road in order to provide acceptable living conditions for future residents. Having had regard to DPD Policy DP5, a condition is also applied regarding the provision of an art feature in the interests of the character and appearance of the area.

Conclusion

84. For the above reasons, the appeal is allowed.

Philip Lewis

INSPECTOR

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 3 years 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: Red Line Boundary Plan N81-2451 dated 24 March 2017; Land Use Parameter Plan N81-2451 PL02 Rev C dated 28 March 2017; Character Area Parameter Plan N81-2451 PL05 Rev C dated 28 March 2017; Site Access Arrangements Plan 2057/SK001/006 and Proposed Landscape Enhancements NT13039/100 March 2017.
- 5) No more than 400 dwellings (Use Class C3) are hereby permitted within the application site.
- 6) No development (except for site preparation works and the formation of a site compound) shall take place until a scheme of phasing for the dwellings, highways, and drainage infrastructure and associated open space/green infrastructure has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development (except for site preparation works and the formation of a site compound) shall take place until full engineering details for site access as shown on plan reference 2057/SK001/006 have been submitted to and approved in writing by the local planning authority. The approved access must be completed prior to the first occupation of any dwelling on site.
- 8) Prior to the occupation of the 100th dwelling, details in general accordance with the improvement works to the junction of B1380 / Normanby Road / Cleveland Street, proposed within section 8.4.3 of the Transport Assessment (Fore Consulting, July 2016), shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully operational before the occupation of the 200th unit and be maintained thereafter.
- 9) No development (except for site preparation works and the formation of a site compound) shall take place before a Travel Plan has been submitted to and approved by the local planning authority. The approved Travel Plan shall be implemented upon commencement of the development and thereafter maintained
- 10) No development, shall take place until a Construction Environmental Management Plan (CEMP) for the phase(s) has been submitted to and approved in writing by the local planning authority. The approved CEMP

shall be adhered to throughout the construction period and shall include details of:

- i. the methods to be used to control the emission of dust, noise and vibration from construction works, including details of any mitigation measures required;
 - ii. measures to control the deposit of mud and similar debris on adjoining public highways;
 - iii. site fencing and security;
 - iv. temporary contractor's buildings, plant, storage of materials, lighting and parking for site operatives;
 - v. the use of generators;
 - vi. the routing of all HGV movements associated with the construction phases;
 - vii. arrangements for the turning of vehicles within the site so that they may enter and leave the site in a forward gear;
 - viii. restrictions on burning;
 - ix. pedestrian and cyclist protection throughout construction including the use of the Flatts Lane Bridleway (no. 102/14/1);
 - x. a risk assessment of construction activities with a potentially damaging effect on ecological receptors, existing trees and hedges including measures to identify and protect any such receptors during construction;
 - xi. the location and timing of sensitive work to avoid harm to biodiversity features;
 - xii. roles and responsibilities for the implementation of CEMP requirements and measures.
- 11) Construction work shall only take place between the hours of 08:00 and 18:00 Monday to Friday and 08:00 to 13:00 Saturday and not at all on Sundays or Bank Holiday.
- 12) Development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved in writing by the local planning authority. The approved scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the public when the site is developed. Development shall not commence until the measures approved in the scheme have been implemented.
- 13) If during the course of development any contamination not previously considered is identified, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 14) Prior to the commencement of the first dwelling within each phase, a scheme for the provision, maintenance and management of areas of green infrastructure/open space and play space (excluding private gardens) for each phase shall be submitted to and approved in writing by the local planning authority. Details to be submitted shall include:

- i. Measures to conserve great crested newts including any trapping out under licence;
- ii. Details of planting, grass cutting, weeding and pruning;
- iii. Inspection, repair and maintenance of all hard landscaping and structures;
- iv. Management, monitoring and operational restrictions;
- v. Maintenance and planting replacement programme for the establishment period of landscaping together with future management and maintenance; and
- vi. Trees, hedges and shrubs planted in accordance with the scheme shall not be removed within five years. Any planting which dies, fails to flourish or is removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species.

The development of each phase shall thereafter be carried out, maintained and managed in accordance with the approved details.

- 15) No trees or hedgerows shall be removed from that phase of the site until the reserved matters for landscaping, has been approved in writing by the local planning authority. For the avoidance of doubt, the trees and hedgerows on the southern and western perimeter boundary of the application site, and the hedgerows along the Flatts Lane Bridleway (no102/14/1) within the application site, shall be retained, except for where the internal road network crosses the Flatts Lane Bridleway in accordance with the reserved matters approval.
- 16) All hedgerows and trees that are to be retained shall be protected from root compaction during the course of the development works in accordance with the guidance set out in BS5837:2012 Trees in Relation to Design, Demolition and Construction: Recommendations' British Standards Institution, 2012.
- 17) There shall be no site vegetation clearance between 1 March to the 31 August unless an ecologist, whose professional details and qualifications have first been submitted to and approved by the local planning authority, 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. The development shall be implemented in accordance with the Method Statements for the protection of wildlife during construction works at Flatts Lane, by E3 Ecology Ltd dated March 2017.
- 18) Prior to the occupation of the first dwelling in any phase, a lighting scheme for that phase, shall be submitted to and be approved in writing by the local planning authority. The scheme shall specify the lighting to external public areas, including means to minimise light spill and to ensure the illumination within areas of green infrastructure of importance for wildlife does not exceed 2 lux and shall include a timetable for its implementation together with the management regime. The development shall thereafter be undertaken in accordance with the approved details.
- 19) No development (except for site preparation works and the formation of a site compound) shall take place until a scheme for the incorporation of 35

(open fronted and hole) nesting boxes within areas of retained woodland, 40 nesting boxes suitable to house sparrow and starling incorporated into garages and two owl boxes to be installed on retained trees is submitted to and approved in writing by the local planning authority. The development shall thereafter be undertaken in accordance with the approved details.

- 20) No development (except for site preparation works and the formation of a site compound) shall take place until details of the proposed works for the protection and enhancement of the woodland as identified by point 6 (woodland management) as shown on the Proposed Landscape Enhancement Plan NT13039/100 (March 2017), including a timetable for implementation have been submitted to and approved in writing by the local planning authority. The development or phase thereof shall be carried out in accordance with the approved details.
- 21) No development shall take place until a programme of archaeological work including a Written Scheme of Investigation (WSI) has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions, and:
- i. The programme and methodology of site investigation and recording
 - ii. The programme for post investigation assessment
 - iii. Details of the provision to be made for analysis of the site investigation and recording
 - iv. Details of the provision to be made for publication and dissemination of the analysis and records of the site investigation
 - v. Details of provision to be made for archive deposition of the analysis and records of site investigation
 - vi. The name and qualifications of the personnel proposed to undertake the archaeological work.

The development shall be implemented in accordance with the approved details.

- 22) The development shall be implemented in line with the drainage scheme contained within the submitted document entitled "Drainage Statement" (prepared by Queensberry Design Limited, February 2017). The drainage scheme shall ensure that foul flows discharge to manhole 4105.
- 23) No development (except for site preparation works and the formation of a site compound) within any phase of the development shall take place until a scheme to dispose of, maintain and manage surface water from each phase has been submitted to, and approved in writing by the local planning authority. The development of each phase shall be implemented and thereafter managed and maintained in accordance with the approved details. The scheme shall include but not be restricted to providing the following details;
- i. Detailed design of the surface water management system

- a) Restriction of surface water greenfield run-off rates (QBAR value) with sufficient storage within the system to accommodate a 1 in 30 year storm
 - b) The method used for calculation of the existing greenfield run-off rate shall be the ICP SUDS method. The design shall also ensure that storm water resulting from a 1 in 100 year event, plus climate change surcharging the system, can be stored on site with minimal risk to persons or property without overflowing into drains, local highways or watercourses
 - c) Full Micro Drainage design files (mdx files) including a catchment plan
 - d) The flow path of flood waters for the site as a result of a 1 in 100 year event plus climate change.
- ii. A build program and timetable for the provision of the critical surface water drainage infrastructure
 - iii. A management plan detailing how surface water runoff from the site will be managed during construction phase
 - iv. Details of adoption responsibilities and management plan for the surface water drainage scheme and any maintenance and funding arrangement.
- 24) Prior to the commencement of the construction of the first dwelling, a detailed noise mitigation strategy in relation to residential amenity from the A174 shall be submitted to and approved in writing by the local planning authority for the development. The development shall be implemented in accordance with the approved mitigation strategy and the mitigation measures shall be retained throughout the lifetime of the development.
- 25) Prior to the commencement of the first dwelling within each phase, details of the finished floor levels shall be submitted to and approved in writing by the local planning authority for each phase. The development shall be carried out in accordance with the approved details.
- 26) Prior to the occupation of the 200th unit, a scheme for an artwork feature(s) shall submitted to and approved in writing by the local planning authority. The art feature(s) shall be installed on site in accordance with the approved scheme prior to the occupation of the 350th unit and be maintained throughout the lifetime of the development.
- 27) No development shall take place until a scheme for the management and maintenance of the underpass, as shown on the Proposed Landscape Enhancement Plan NT13039/100 (March 2017) has been submitted to and approved by the local planning authority. Thereafter the scheme shall be implemented in accordance with the approved details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

John Hunter	Of Counsel instructed by the Assistant Head of Governance of Redcar and Cleveland Borough
He called	
Neil McAlpine BA (Hons), MSc, MCIHT	Director of Transportation, Cundall Johnston and Partners LLP
Ian Cansfield BA (Hons) MA MRTPI	Cundall Johnston and Partners LLP
Cristina Howick	Partner of Peter Brett Associates LLP

FOR THE APPELLANT:

Mr Christopher Katkowski	of Queen's Counsel, instructed by Lichfields
He called	
Paul Irwin BSc (Hons), MSc, MCIHT	Director, Fore Consulting Ltd
Matthew Spry BSc (Hons), Dip TP (Dist) MRTPI MIED FRSA	Senior Director, Lichfields
Christopher Harrison BA (Hons), DIPTP, MRTPI	Managing Director, Theakston Land

INTERESTED PERSONS:

Mr Andrew Fenwick	Local resident
Mr Brian Dennis	Local resident
Linda McGloin	Read statement on behalf of Mrs Coulson
Mr Craig Hornby	Conservationist/historian
Jayne Moffat	Local resident
Mr Ian Tyzack	Speaking on behalf of Liz Bone
Katie Atkinson	KVA Planning Consultancy on behalf of CRPE North Yorkshire
Mr Marek Olszowski	Local resident
Mr David Cammish	Local resident
Mr Kester Marsh	Local resident
Anna Turley MP	Member of Parliament for Redcar
Janet Coulson	Local resident

DOCUMENTS (Received during the Inquiry)

- 1 Opening Statement for the Appellant
- 2 Opening Statement for the Council
- 3 Mr Brian Dennis statement
- 4 Linda McGloin statement
- 5 Mrs Janet Coulson statement
- 6 Jayne Moffat statement
- 7 Tyzack/Bone statement regarding flooding at Cricket Lane/Ormesby Road, Normanby
- 8 KVA Planning Consultancy statement for CPRE North Yorkshire
- 9 Lichfields plan of withdrawn and proposed bus routes GIS/NE/22607/012-31
- 10 Redcar and Cleveland Borough Council housing completions data 01/04/2016 to 31/03/2017
- 11 Copy of completed Section 106 agreement
- 12 Mr Marek Olszowski statement
- 13 Mr Kester Marsh statement
- 14 Cambridge Econometric Employment Projections methodology
- 15 Suggested planning condition by Appellant regarding underpass maintenance and management
- 16 Anna Turley MP statement
- 17 Cuttings Teeside Gazette regarding flooding
- 18 Redcar and Cleveland Council Community Infrastructure Regulations 2010 Compliance Statement
- 19 Planning decision notice R/2014/0304/OOM Longbank Farm, Longbank, Ormesby
- 20 Redcar and Cleveland Council Planning Officers report regarding R/2014/0304/OOM Longbank Farm, Longbank, Ormesby
- 21 Plan showing super output area boundary Redcar and Cleveland 015D submitted by appellant
- 22 Appellants tables - OAN implications with 5% and 20% buffers
- 23 Second floor floorplan Wheatacres Extracare 14.013/112D submitted by the Council
- 24 Housing commitments by parish data submitted by the Council
- 25 Mr Craig Hornby statement and DVD 'A Century in Stone - The Eston and California Story'
- 26 Further statement by Jayne Moffat
- 27 Aerial photograph submitted by Mr Marsh
- 28 Closing statement for the Council; appeal decision APP/B3410/W/16/3142808 and East Staffordshire BC v SSCLG and Barwood Strategic Land [2016] EWHC 2973 (Admin)
- 29 Appellants closing submissions and transcript of evidence in chief of Mr Spry.

Documents received after the Inquiry closed

- A Appellants Supplementary Submissions regarding the Supreme Court Judgement Suffolk Coastal DC v Hopkins Homes / Richborough Estates v Cheshire East BC cases [2017] UKSC 37
- B Councils Submissions on Supreme Court Judgement Suffolk Coastal DC v Hopkins Homes / Richborough Estates v Cheshire East BC cases [2017] UKSC 37