



Department for
Communities and
Local Government

Mr Colin Griffiths
Satnam Planning Services Ltd
17 Imperial Square
Cheltenham
Gloucestershire
GL50 1QZ

Our Ref: APP/H0738/A/14/2214781

24 May 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY TIVIOT WAY INVESTMENTS LTD
AT LAND AT LITTLE MALTBY FARM, LOW LANE, INGLEBY BARWICK,
TS17 0QR - APPLICATION REFERENCE 13/3107/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI, who held a public local inquiry on 15-17 July 2014 into your client's appeal against the decision of Stockton-on-Tees Borough Council ('the Council') to refuse outline planning permission for residential development (up to 550 homes), local centre (2500m²) with means of access at Land at Little Maltby Farm, Low Lane, Ingleby Barwick, TS17 0QR in accordance with application number 13/3107/OUT, dated 9 December 2013.
2. On 24 March 2014, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal for residential development of over 150 units on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
3. The Secretary of State issued his decision in respect of the above appeal in his letter dated 20 January 2015. That decision letter was the subject of an application to the High Court and was subsequently quashed by order of the Court on Tuesday 21 July 2015. The appeal therefore falls to be redetermined by the Secretary of State.

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Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers are to that report.

Procedural matters

5. The Secretary of State has had regard to the Inspector's remarks at IR2-3. He has taken account of the fact that the appeal scheme is not Environmental Impact Assessment (EIA) development but that your client submitted an Environmental Statement (ES) on 10 June 2014 and an amended ES on 11 July 2014. Like the Inspector (IR3), the Secretary of State has taken the representations into account but does not consider that they affect his conclusions on this appeal.

Matters arising after the close of the inquiry

6. Representations received following the close of the inquiry are listed at Annex A. The Secretary of State has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Copies of the representations received can be made available on written request to the address at the foot of the first page of this letter.
7. Following the quashing of his decision letter, on 28 September 2015 the Secretary of State issued a letter under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 to all interested parties setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeal. These matters were:
 - any changes since the inquiry in respect of the Stockton-on-Tees development plan;
 - the current position regarding the 5 year supply of deliverable housing sites in the Council's area;
 - any other material change in circumstances, fact or policy, that may have arisen since his decision of 20 January 2015 was issued and which the parties consider to be material to the Secretary of State's further consideration of the appeal.

Alternatively, interested parties could ask for the inquiry to be reopened.

8. On 26 October 2015, the Secretary of State circulated the responses he had received to his letter of 28 September 2015 and sought further information on compliance with Regulation 123(3) of the Community Infrastructure Levy Regulations 2010, as amended. Responses are listed at Annex A below. By letter dated 8 October 2015, the Council drew the Secretary of State's attention to the housing supply assessment referred to in paragraph 11 below, and also to the February-March 2015 consultation on the emerging DPD (the Regeneration and Environment Local Plan). The Council also provided information for each obligation submitted in respect of the appeal proposal by letter dated 12 November 2015, and provided a further update on 20 May 2016. By letter dated 16 October 2015, the appellant stated that the emerging DPD had not progressed and that minimal weight should therefore be attributed to it, and

drew the Secretary of State's attention to the 5-year housing land supply position and the agreed and continuing shortfall in the provision of affordable housing in the local area.

9. On 8 December 2015 the Secretary of State wrote to the appellant and the Council, having taken into account their responses to his letter of 26 October, confirming his view that there are no substantive issues that require the inquiry to be reopened.
10. Thereafter, the Secretary of State wrote to interested parties, on 26 April 2016, inviting them to comment on the following matters:
 - the implications for the appeal, if any, of the Court of Appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd & Secretary of State for Communities and Local Government* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168.
11. Responses are listed at Annex A below. By letter dated 10 May 2016, the appellant stated that the Richborough judgment reinforces the view that if, which is not admitted, policy CS(10) applies, it is a relevant policy for the supply of housing which is out of date by virtue of the absence of a 5-year housing land supply and therefore of limited weight in the overall planning balance in this case. By letter dated 11 May 2016, the Council stated that the appeal site cannot currently be considered to be within the green wedge as it lies outside of the green fingers indicated on the Core Strategy diagram. They also stated that they consider the Richborough judgment means a policy can still have full weight in relation to the issues it covers, other than restrictions on housing. In the case of the green wedge policy CS10(3), the Council stated that should the Secretary of State deem it relevant, whilst it may be a relevant policy for the supply of housing, it also aims to enhance the urban environment and protect the coalescence of settlements, and this later aspect is considered to still be capable of having full weight attached. On 16 May 2016 the Secretary of State circulated the responses he had received to his letter of 26 April 2016, and the appellant and Council both confirmed they had no further comments.
12. The Secretary of State has carefully considered and taken into account all the representations he has received since the close of the inquiry, as listed at Annex A below. Copies are not attached to this letter but will be provided on written request to the address shown at the foot of the first page of this letter.

Policy considerations

13. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Stockton-on-Tees Local Plan (1997) (LP), and the Stockton-on-Tees Core Strategy Development Plan Document (2010) (CS). The Secretary of State considers that the main development plan policies of particular relevance to this proposal are those set out by the Inspector at IR16-18, and he has also taken into account policy CS8, which deals with housing mix and affordable housing provision.

14. As part of the Rule 19 exercise, the Secretary of State's attention was drawn to the Council's report entitled 'Five Year Deliverable Housing Supply Final Assessment: 2015 – 2020'. The Report, which uses a base date of 31 March 2015, concludes that the Borough has a supply of deliverable housing land of 4.50 years with a 20% buffer added (with the shortfall being 374 dwellings). The appellant and the Council both additionally referred to this report in their responses to the reference back exercise. Based on this evidence, the Secretary of State concludes that the Council does not have a 5-year housing land supply.
15. In the light of the continuing shortfall in housing land supply, the Secretary of State considers that the Inspector's conclusion at IR134 that LP policy HO3 is out of date is still correct. However, he has taken into account the improvement in the 5-year housing land supply situation since the inquiry and has concluded that it does carry some, albeit little, weight. As part of the reference back exercise, the appellant made representations that CS10 should also be regarded as a policy for the supply of housing, and is also out of date. The Council made representations that whilst CS10 may prevent housing in an area and therefore be a policy relevant to the supply of housing, it also aims to enhance the urban environment and protect the coalescence of settlements, and this later aspect is considered to still be capable of having full weight. Given the Secretary of State's findings in paragraph 19 below that policy CS10 does not apply to the appeal site, he does not consider it necessary to reach a conclusion on this matter.
16. Other material considerations which the Secretary of State has taken into account include National Planning Policy Framework (the Framework), the Planning Practice Guidance (the Guidance) and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

Emerging Plan

17. As part of the Rule 19 exercise, the Secretary of State's attention was also drawn to the emerging DPD Stockton-on-Tees (Regeneration and Environment Local Plan). He notes that there will be further public consultation on the emerging DPD before it is submitted to the Secretary of State in 2017 for Examination. He considers that the relevant policies of the emerging DPD include SP1 (Presumption in favour of sustainable development); SP2 (Housing spatial strategy); SP3 (Locating development); H1 (New housing sites); H39 (Affordable housing provision); ENV1 (Green infrastructure) and ENV2 (Natural environment).
18. Applying paragraph 216 of the Framework, the Secretary of State has considered the weight which should apply to the relevant policies in the emerging DPD. He gives little weight to relevant policies in the emerging DPD with regard to the first and second limbs of paragraph 216 of the Framework given that the emerging DPD is not at a very advanced stage of preparation and has not been subject to an independent examination and also because there are unresolved objections to relevant policies. With regard to the second limb, he has taken into account evidence from the Council's Consultation Statements of unresolved objections relating to limits to development and green wedges in the emerging DPD. With regard to the third element, relating to the degree of consistency of the relevant policies in the emerging DPD to the policies in the Framework, the Secretary of State considers that at this stage the relevant policies in the emerging DPD do not appear to contain obvious inconsistencies with the

Framework, but are still subject to change. Overall, the Secretary of State takes the view that he can give only little weight to relevant policies in the emerging DPD when considered against the three limbs of paragraph 216 of the Framework.

Main issues

19. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR21.

Whether the appeal land is part of a designated green wedge

20. The Secretary of State has given careful consideration to the Inspector's analysis at IR103-112. He agrees with the Inspector that it would be illogical for green wedge areas to exist on a Proposals Map if these areas are no longer the subject of the development plan policy to which they relate and that, when LP policy EN14 disappeared so too, metaphorically, did the green wedge notations on the LP Proposals Map (IR105). Like the Inspector, he is of the opinion that the view of the Council and local residents that the appeal land is within a green wedge is not supported by the CS's Strategic Diagram (IR110). The Secretary of State concludes that, notwithstanding the shared view of the previous Inspector and the Secretary of State in respect of the Low Lane appeal, upon the close scrutiny afforded by the inquiry into this appeal, it is evident that there is no development plan support for a conclusion that the appeal land is within a designated green wedge (IR112). He therefore considers that there is no basis for applying policy CS10 to the appeal site.

The separation of Ingleby Barwick and Thornaby

21. The Secretary of State notes that the distance between the appeal land and the industrial estate is, consistently, about 370 metres and he agrees with the Inspector at IR115 that the gap between the proposed and existing development is about the same as the gap that separates the two settlements and would be sufficient to maintain this separation. Furthermore the Secretary of State agrees with the Inspector at IR116 that the gap that there would be between the proposed development and the Teesside Industrial Estate would not undermine the strategic objective, as shown on the CS Strategic Diagram, of providing and maintaining a green wedge in this location. The Secretary of State agrees with the Inspector's conclusion at IR116 that the proposed development would not undermine the separation of Ingleby Barwick and Thornaby. He has concluded above that policy CS10 does not apply to the appeal site, so there is no question of conflict with it.

The character of the area, biodiversity and the urban environment

22. The Secretary of State has given careful consideration to the Inspector's analysis at IR118-126. Like the Inspector at IR119, he considers that the proposed development would not extend into the green wedge between the settlements and the openness and amenity value of the green wedge would be maintained. For the reasons given at IR120-123, he agrees with the Inspector that there is no justification for the buffer zone to be 20 metres wide (IR121) and that the loss of openness of the appeal land would have a negligible impact on the character of the area (IR123). For the reasons given at IR124-126, he agrees that the proposed development would not cause harm to biodiversity and would not harm the urban environment (IR127). He notes that the appeal land is within the limits of the development of Ingleby Barwick as shown on the

LP Proposals Map, which is saved in so far as it relates to LP policy HO3. Overall he agrees that the proposed development does not conflict with saved LP policy HO3 or with CS policy CS3 (IR127). As above, he has concluded that policy CS10 does not apply to the appeal site, so there is no question of conflict with it.

Other matters

23. The development would supply much needed market and affordable housing over the next five years. The Secretary of State notes that the application is for up to 467 of the dwellings to be market housing (IR13). By implication, a minimum of 83 of the dwellings, or approximately 18%, would be affordable. This is in line with the development plan requirement of 15-20% (CS8). In the light of the lack of a 5-year housing land supply and the Framework policies to increase the supply of housing, the Secretary of State gives the provision of market and affordable housing significant weight.
24. For the reasons given in IR128-132, the Secretary of State agrees with the Inspector's conclusions on matters relating to traffic, public transport, education, and sport and recreation facilities. As to the strength of local opposition/unanimous refusal by the Council's Planning Committee, he agrees with the Inspector's analysis at IR132 that the conclusions in the case must be based on an assessment of the planning merits of the proposed scheme and its compliance or not with the provisions of the development plan.

Conditions and obligations

25. The Secretary of State has given consideration to the Inspector's analysis at IR99, the recommended conditions set out at the end of the IR and the reasons for them and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. For the reasons given at IR99, he agrees with the Inspector's conclusion on condition 9.
26. Having had regard to the Inspector's analysis at IR100-102, and IR128-131, the planning obligation dated 28 July 2014, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR102 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development.
27. On 26 October 2015, the Secretary of State wrote to the Council to clarify the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the appeal. The Council responded on 12 November 2015 providing information for each obligation submitted in respect of the appeal proposal and updated this information on 20 May 2016. The Secretary of State has carefully considered the s106 agreement and the Council's responses dated 12 November 2015 and 20 May 2016. As to the obligation relating to employment and training, he considers this relates to employment and training opportunities on the appeal site alone and notes the Council state there are no other s106 agreements that

relate to employment and training opportunities on the appeal site. As to the affordable housing obligation, he considers this is excluded from Regulation 123. As to the western highway improvements obligation, he notes the Council have confirmed that 5 or more separate obligations have not already been entered into since April 2010 within the relevant area which provide for the funding of that infrastructure project or type. As to the education contribution, he notes the Council have confirmed on 20 May 2016 that the proposed Unilateral Undertaking for the adjacent appeal site (Land at Thornaby Road Appeal Ref APP/H0738/W/3134512) also includes an obligation to make land available (on its own site) for the provision of a primary school (being an alternative to, or extension of, the school referred to in the s106 agreement for Little Maltby Farm dependant on the outcomes of each appeal). He notes that this Unilateral Undertaking has not yet been accepted by the Inspector as part of the appeal, but if it is accepted it will constitute the second obligation for the same infrastructure. As to the highway works obligation and bus contribution obligation, the Council have confirmed that 5 or more separate obligations have not already been entered into since April 2010 within the relevant area which provide for the funding of that infrastructure project or type. As to the residents welcome pack obligation, the Council have confirmed that the obligation relates only to the provision of residents welcome parks for the residents of the proposed development and there are no other obligations for the same project. Overall, and for the reasons above, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

Planning balance and conclusions

28. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons given above he agrees with the Inspector at IR135 that the proposed development accords with the development plan overall, albeit he considers policy HO3 is a policy for the supply of housing which is out of date because of the absence of a 5-year housing land supply, and to which he attaches little weight for the reasons above.
29. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State has gone on to consider whether there are material considerations in this case that indicate the appeal should be determined other than in accordance with the development plan.
30. He considers that due to proposed changes to the limits of development in the emerging DPD, which show the site as being outside the limits of development, along with the proposed more restrictive policies which will apply in those circumstances, the proposal conflicts with the emerging DPD albeit the Secretary of State has concluded, for the reasons above, that the emerging DPD carries little weight.
31. For the reasons given above, the Secretary of State considers that the provision of market and affordable housing carries significant weight in favour of the proposed scheme. For the reasons above, he considers that the scheme would cause only negligible harm to the character of the area.
32. As relevant development plan policies are out-of-date, the 1st indent of the 4th bullet point of paragraph 14 of the Framework applies. For the reasons given above, the Secretary of State considers that the adverse impacts of the appeal proposal would

not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Formal Decision

33. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation (IR136). He hereby allows your client's appeal and grants outline planning permission for residential development (up to 550 homes), local centre (2500m²) with means of access at Land at Little Maltby Farm, Low Lane, Ingleby Barwick, TS17 0QR in accordance with application number 13/3107/OUT, dated 9 December 2013, subject to the conditions listed in Annex B to this letter.

Right to challenge the decision

34. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act.

35. A copy of this letter has been sent to Stockton-on-Tees Borough Council and others who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Maria Stasiak

Authorised by Secretary of State to sign in that behalf

Annex A Schedule of representations

SCHEDULE OF ALL REPRESENTATIONS

Representations received

Party	Date
John W Latimer	22 July 2014
John W Latimer	28 July 2014
John W Latimer	29 July 2014
Emily Williams, Irwin Mitchell	26 February 2016
Emily Williams, Irwin Mitchell	20 April 2016

Representations received in response to the Secretary of State's letter of 28 September 2015

Party	Date
Matthew Clifford, Stockton-on-Tees Borough Council	8 October 2015
Colin Griffiths, Satnam Planning Services	16 October 2015

Representations received in response to the Secretary of State's letter of 26 October 2015

Party	Date
Colin Griffiths, Satnam Planning Services	27 October 2015
Julie Butcher, Stockton-on-Tees Borough Council	12 November 2015

Representations received in response to the Secretary of State's letter of 26 April 2016

Party	Date
Colin Griffiths, Satnam Planning Services	10 May 2016
Simon Grundy, Stockton-on-Tees Borough Council	11 May 2016
Colin Griffiths, Satnam Planning Services	11 May 2016

Representations received in response to the Secretary of State's letter of 16 May 2016

Party	Date
Colin Griffiths, Satnam Planning Services	16 May 2016
Simon Grundy, Stockton-on-Tees Borough Council	16 May 2016

Annex B Conditions

1. The development hereby permitted shall be carried in accordance with the following approved plans: Site Plan Ref. No. 110096-D-010-A, Site Access Plan Ref. No. 1310-91/SCG/04, and Parameters Plan Ref. No. 1835:22.
2. Details of the appearance, landscaping, layout, and scale of each phase of the development (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before development of the phase concerned begins, and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
4. The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
5. No development shall take place until a Phasing Programme for the development hereby permitted has been submitted to and approved in writing by the local planning authority. The programme shall identify the phasing of infrastructure, landscaping, public open space (in accordance with the Open Space Strategy), accesses, associated community facilities and residential areas within the development. Development shall be carried out in accordance with the approved Phasing Programme.
6. No development shall take place until an Open Space Strategy for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The strategy shall identify the extent, location and design of public open space within the development. Development shall be carried out in accordance with the approved Open Space Strategy.
7. The number of dwellings hereby permitted shall not exceed 550 and the local centre hereby permitted shall not exceed a total site area of 2500 square metres. No retail unit within the local centre shall exceed 280 square metres.
8. No development shall take place until details of how the housing in any phase of the development will meet at least 10% of its predicted energy requirements, on site, from renewable energy sources, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
9. The dwellings hereby permitted shall achieve at least Code Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying the Code Level that has been achieved.
10. No construction activity or deliveries shall take place except between the hours of 0800 and 1800 on Monday to Friday and 0900 and 1300 on Saturdays. There shall be no construction activity or deliveries on Sundays or Bank Holidays.
11. No waste products resulting from the construction of the development hereby permitted shall be burned on the site except in an appliance first approved in writing by the local planning authority.
12. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority

relevant to that phase of the development hereby permitted. The CMS shall include details of the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; wheel washing facilities; measures to control and monitor the creation of dust and dirt during construction; a Site Waste Management Plan; details of the routing of heavy goods vehicles; measures to protect existing footpaths and verges; and means of communication with local residents. The approved CMS shall be adhered to throughout the construction period relating to that phase of the development.

13. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Ref: 6804/JMcK/001/03 and the following mitigation measures detailed within the FRA:

1. Limiting the surface water run-off generated up to and including the 100 year (plus climate change) critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
2. The discharge should be restricted to the equivalent greenfield runoff rate for the undeveloped site of 48.3 l/s. Attenuation will need to be provided for rates above this as stated in section 7.8.5 of the FRA.

The mitigation measures shall be implemented prior to occupation of any dwelling and subsequently in accordance with the phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the local planning authority.

14. No development shall take place until a scheme for the provision and management of a 10 metre wide buffer zone (measured from the bank top) to the east of Bassleton Beck has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.

15. No development in any phase shall take place until a timetable for the implementation of the ecological mitigation measures within that phase, as set out within the Extended Phase 1 Habitat Survey (The Appleton Group, June 2013) and the Survey of Trees for Bat Roosting, Foraging Potential (The Appleton Group, July 2013) and Badger Survey (The Appleton Group August 2013), has been submitted to and approved in writing by the local planning authority. The ecological mitigation measures shall be implemented in accordance with the approved timetable.

16. No development in any phase shall take place until a programme of archaeological work for that phase has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

17. No development shall take place on any phase of the development until a scheme for the protection of habitable rooms within the dwellings on that phase from the effects of traffic noise has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.

18. Development shall not commence on any phase until a detailed scheme for the disposal of foul and surface water from that phase has been submitted to and

approved in writing by the Local Planning Authority. Development of that phase shall be carried out in accordance with the approved scheme.

19. No development shall take place until the location of the 1.1 hectare primary school site has been submitted to and approved in writing by the local planning authority.

20. No development shall take place until details of the internal access road layout have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

21. No dwelling shall be occupied until a Residential Travel Plan, including procedures for its implementation, has been submitted and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved Travel Plan.

22. No development shall take place until details of a footway and cycle connection between the site and Wellbrook Close has been submitted to and approved in writing by the local planning authority. The footway and cycle connection shall be completed as approved and brought into use before the 100th dwelling hereby permitted has been occupied.

23. Before the 75th dwelling hereby permitted has been occupied details of a segregated left turn lane at the Thornaby Road Roundabout junction with Ingleby Way and Stockwell Avenue, as shown in indicative form on plan 1310-91/SK01/A, shall be submitted to and approved in writing by the local planning authority. The altered junction shall be completed as approved and brought into use before the 150th dwelling hereby permitted has been occupied.

24. No dwelling hereby permitted shall be occupied until details of the site accesses onto Low Lane, as shown in indicative form on plan 1310-91/SCG/04, have been submitted to and approved in writing by the local planning authority and the site accesses have been completed as approved and brought into use.

25. No development shall take place until details of buffer planting for the eastern boundary have been submitted to and approved in writing by the local planning authority. The details shall include a maintenance plan. The buffer planting shall be planted in the first planting season after the details are approved and shall thereafter be maintained in accordance with the maintenance plan.

Report to the Secretary of State for Communities and Local Government

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Date: 3 September 2014

TOWN AND COUNTRY PLANNING ACT 1990

STOCKTON-ON-TEES BOROUGH COUNCIL

APPEAL

by

TIVIOT WAY INVESTMENTS LTD

Inquiry held on 15-17 July 2014

Land at Little Maltby Farm, Low Lane, Ingleby Barwick TS17 0QR

File Ref: APP/H0738/A/14/2214781

File Ref: APP/H0738/A/14/2214781

Land at Little Maltby Farm, Low Lane, Ingleby Barwick TS17 0QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission and it was recovered for decision by the Secretary of State by a direction, made under section 79 of the Town and Country Planning Act 1990, on 24 March 2014.
- The appeal is made by Tiviot Way Investments Ltd against the decision of Stockton-on-Tees Borough Council.
- The application Ref 13/3107/OUT is dated 9 December 2013.
- The development proposed is residential development (up to 550 homes), local centre (2500 m²) with means of access.
- The reason given for recovering the appeal was that it involves a proposal for residential development of over 150 units on a site of over 5 hectares.

Summary of Recommendation: The appeal be allowed.

Procedural Matters

Application for costs

1. At the Inquiry an application for costs was made by Tiviot Way Investments Ltd against Stockton-on-Tees Borough Council. This application is the subject of a separate Report.

Environmental Statement

2. The proposed housing development is not EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. However, the Appellant voluntarily submitted an Environmental Statement (ES) to The Planning Inspectorate (PINS) on 10 June 2014. The ES was found not to meet the requirements of the EIA Regulations because it failed to provide an adequate assessment of the significant impacts of the scheme on the environment.

3. An amended ES was submitted to PINS on 11 July 2014 and was advertised in a local newspaper on that day. The advertisement stated that representations on the amended ES should be submitted no later than 7 August 2014. A full version of the ES was submitted at the Inquiry and is included as Inquiry Documents (ID26-31). Representations made have been taken into account but do not affect the conclusions reached in this Report.

Site Address

4. The ES and some other documents refer to the site as being Ingleby Manor, High Leven, Ingleby Barwick. This is an alternative name but the site address used in the application, Land at Little Maltby Farm, Low Lane, Ingleby Barwick, has been used throughout this report.

Statements of Common Ground

5. The main parties have agreed a Statement of Common Ground (SoCG) and a Highways and Transport Statement of Common Ground. These documents are included as Inquiry Documents (ID8 and ID24).

Inquiry Documents and Core Documents

6. Documents submitted at the Inquiry (ID) are listed in an appendix to this Report as are Core Documents (CD). Throughout the report I have referred to the numbers of Inquiry and Core Documents in brackets.

The Council's Refusal Notice

7. The Council's Refusal Notice is dated 28 February 2014 and includes three reasons for refusal of the application. The first two reasons for refusal relate to highway safety and archaeology. Paragraph 6.3.1 of the Statement of Common Ground (ID8) states that, following the submission of additional information by the Appellant, these two reasons for refusal "...are withdrawn and no evidence to support these reasons will be presented to the Inquiry by the Council".

8. The third reason for refusal is:

In the opinion of the Local Planning Authority the proposed development would have a negative impact on important environmental assets, biodiversity and the quality of the urban environment and leave insufficient green wedge to adequately maintain the separation between Ingleby Barwick and Thornaby contrary to policies CS3(8) and CS10(3) and (4) of the Adopted Stockton-on-Tees Core Strategy.

The Site and Surroundings

9. The site and its surroundings are best understood by reference to two plans – a 'Parameters Plan Showing Access Arrangements' and an 'Illustrative Masterplan'. These are Figures 2 and 3 on pages 21 and 22 of Volume 1(a) of the ES (ID25).

10. The appeal site is to the north of land for which the Secretary of State granted outline planning permission for a 'free school and residential development (350 units)' at Low Lane, Ingleby Barwick on 26 September 2013 (CD25). The land to which it relates is shown in grey on Figure 3 and is hereafter referred to as the 'Low Lane development'. The land that is the subject of this Report (hereafter referred to as 'the appeal land') is shown mainly in yellow on the same plan. Figure 2 shows the road layout in the permitted scheme and that there would be two points of access into the appeal land. The permitted road layout, and part of Low Lane from which there would be two accesses, is included in the application site area.

11. The appeal land is 22.7 hectares of generally flat Grade 3b former agricultural land, subdivided into irregular fields by hedgerows, that is in use for horse grazing. To the north-west of the appeal land is an irregular strip of woodland on both sides of Bassleton Beck. Beyond the strip of woodland is a residential area of Ingleby Barwick. The north-east boundary of the appeal land is to similar agricultural land, about 350 metres wide, beyond which is Thornaby Road. Beyond this road, part of the A1044, is the Teesside Industrial Estate. A part of the south-east boundary is to a small field at the rear of a cricket ground that has a frontage to Low Lane, also part of the A1044. There are no public footpaths or rights of way over the appeal land.

Relevant Planning History

12. Ingleby Barwick is a modern town of about 20,000 residents that has been established following the adoption of the Ingleby Barwick Master Plan for the town in 1977 (CD20). The Master Plan envisaged seven connected villages. Village 3 would have been on the appeal land and the land to the south, had the Master Plan not been revised in 1991 (CD21). In the Stockton-on-Tees Local Plan, adopted in 1997, the area that would have been village 3 is designated as green wedge.

The Proposed Development

13. The proposed development is for up to 550 dwellings, on 11 parcels of land totalling 14.2 hectares, and a local centre of 2500 m². The application form indicates that up to 467 of the dwellings would be market housing and that, by implication, up to 83 of the dwellings would be affordable housing units. The application form also indicates that the local centre would be wholly Class A1 shops. 1.1 hectares of the land, alongside the east boundary, would be for a single form entry level primary school to meet the educational needs of the development.

14. The application for the proposed development was submitted in outline form with all matters except for access reserved for future consideration. This report will consider the appeal on the same basis.

Planning Policy

Local planning policy

15. The Development Plan for the area, for the purposes of this Report, comprises saved policies of the Stockton-on-Tees Local Plan (LP) and the Stockton Core Strategy (CS), adopted in March 2010. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise

16. Saved LP policy HO3 relates to housing development on unallocated sites and states that within the limits of development residential development may be permitted provided that, amongst other things, the land is not specifically allocated for another use, it does not result in the loss of a site which is used for recreational purposes, and it is sympathetic to the character of the locality and takes account of and accommodates important features within the site. The LP Proposals Map indicates that land to the west of Thornaby Road and to the north of Low Lane, including the appeal land, is within the limits of development.

17. The LP originally included policy EN14, which related to green wedge areas, but this policy was replaced on the adoption of the CS, by CS policies CS1 and CS10 (page 74 of CD2). CS policy CS10(3) refers to green wedges and states that the separation between settlements together with the quality of the urban environment will be maintained through the protection and enhancement of the openness and amenity of, amongst other things, green wedges within the conurbation including the Bassleton Beck Valley between Ingleby Barwick and Thornaby. The CS includes a Strategic Diagram (ID25) which indicates the location of green wedges.

18. CS policy CS3(8) states that, in designing new development, proposals will, amongst other things, make a positive contribution to the local area, by protecting and enhancing important environmental assets and biodiversity, by responding positively to existing features of natural character such as hedges and trees, and by including the provision of high quality public open space. CS policy CS10(4) states that the integrity of designated sites will be protected and enhanced and that the biodiversity and geodiversity of sites of local interest will be improved.

National planning policy

19. Paragraph 215 of the National Planning Policy Framework (NPPF) states that due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years worth of housing against their housing requirements. Paragraph 49 states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

Housing supply in the Borough

20. A document prepared by the Council, 'Housing Supply in the Borough of Stockton-on-Tees: Five Year Deliverable Housing Supply Final Assessment: 1 April 2014 to 31 March 2019' (CD28), concludes that there are, taking previous performance and the requirement for a 20% buffer into account, 4.08 years of housing land supply in the Borough.

Main Issues

21. The main issues were set out at the Inquiry as being:
1. Whether the appeal land is part of a designated green wedge and is therefore subject to planning policy that seeks to protect such areas;
 2. Whether the proposed development would undermine the separation of Ingleby Barwick and Thornaby;
 3. The effect of the proposed development on the character of the area, biodiversity and the quality of the urban environment.

The Case for Tiviot Way Investments Ltd

The material points of the case made by Tiviot Way Investments Ltd are:

22. There is a single ground of refusal. As submitted in opening the LP Proposals Map was not saved and does not survive, and the only relevant plan showing the green wedge is the Strategic or Key Diagram of the CS, which clearly shows the appeal site not to be within delineated green wedge. Therefore the sole ground of refusal has no application. No other objection is raised to the grant of planning permission, which logically should follow.

23. We made extensive submissions to the Inquiry into the Low Lane development on adjoining land in 2013 to the effect that the LP Proposals Map did not constitute an extant delineation of the green wedge. In his conclusion on this matter, the Inspector failed to even note the existence of those submissions let alone give them any consideration, and so the Secretary of State was obviously unable to consider them. The same will not occur in this case.

24. When LP policy EN14 was saved, only the policy was saved, and thus not the proposals map. On the adoption of the CS in 2010, LP policy EN14 was "replaced" by CS policy CS10. It no longer forms any part of the development plan. The only part of the development plan that describes and illustrates the extent of green wedge is CS policy CS10(3) and the Strategic Diagram.

25. There was considerable debate at the Inquiry on the green wedge notation on the CS Strategic Diagram. The important points are as follows. First, the text of

CS10(3) is clear. We are to consider the location of the “Bassleton Beck Valley” maintaining the “separation between settlements”, namely Ingleby Barwick and Thornaby. The location of these “settlements” is clearly seen on the plans and on the ground. The industrial estate is not the “settlement” of Thornaby. One can clearly see, on plan and on site visit, the locations where the Bassleton Beck Valley performs this true function of settlement separation, a considerable way to the north east of the appeal land.

26. The location of the Valleys - and this valley in particular - is also clear from the original Ingleby Barwick Master Plan (CD20). On the Master Plan valleys are marked as open space and the appeal land is shown to be for housing. When the housing was not proceeded with, the appeal land was simply shown as (part of) an open area, not a recreational area. Frantic attempts by the Council to refer to a mild depression in the ground of the appeal site are quite ineffective. This is not remotely the Bassleton Beck Valley for the purposes of the policy. The SoCG (ID8) describes the appeal site as “flat land”, and it obviously is. The proposed development does not remotely encroach onto the area specified in the text.

27. Second, the CS Strategic Diagram (ID25) continues the delineation of the green wedge down Thornaby Road and along Low Lane. This was not justified by the text, but was done - presumably to signal clearly that the continued expansion of Ingleby Barwick in the location of the appeal land (as previously planned in the 1977 Master Plan) was to be kept a defined distance from the industrial estate. As noted by the Inspector, the diagram “consciously did not draw the green to go to the Beck”. In summary, it is clear that the appeal land is not notated as green wedge in the only extant development plan delineation of the green wedge

28. Even if some status is given to green wedge affecting the appeal land by virtue of the CS, policy CS10(3) is a policy for the supply of housing for the purposes of paragraph 49 of the Framework. There is relevant and recent case law on this subject as set out in our Opening Statement to the Inquiry (ID2). The Council, through the evidence of Councillor Rose, applies a series of wrong tests to the topic of green wedge in this case. Reference is constantly made in his Proof of Evidence to matters such as the loss of an open area (paragraph 75), openness (paragraphs 79 and 80), visibility (paragraph 83), and of “countryside” (paragraph 84). This approach would be appropriate if the land were green belt, or designated as countryside and/or for its natural or landscape beauty. None of this, however, arises in this case. Furthermore, the appeal land has no status as “countryside” in any part of the development plan.

29. The primary purpose of green wedge is to maintain the separation between settlements. This has been the approach taken in appeal decisions including the recent Low Lane decision where the test applied was whether “...what would remain of the open land between these settlements would be sufficient for them to remain readily perceptible as separate entities”. The Council’s planning officer applied the appropriate test in the committee report on the appeal application:

“Furthermore, the amount of green wedge which would remain to the east of the site makes it difficult to conclude that there would be a coalescence of the settlements of Thornaby and Ingleby Barwick. In view of these considerations and particularly given the Secretary of State’s conclusions for the already consented development for the 350 houses and the free school, any associated visual harm is considered to be

limited and would be outweighed by the benefits of addressing the current shortfall in the 5 year housing land supply”.

30. CS policy CS10(3) refers, in the context of maintaining “the separation between settlements”, to the protection and enhancement of “amenity value”. In this context, amenity value can only sensibly relate to recreational amenity value. The site has no such value, apart from ad hoc trespass, and therefore has no recreational “amenity value”.

31. Councillor Rose has claimed that the site has “intrinsic character and beauty”. This is simply unrealistic in relation to land previously described as “dull”. This is more realistic. Further, there is no Council policy or study that has ever claimed that this location has any special landscape character or quality. Rightly so. It was unreasonable to make this claim. It is a vague, generalised assertion unsupported by any objective analysis. In addition, the question of views and impact on views was fully examined in the Landscape and Visual Impact Assessment and in Mr Appleton’s evidence, and no challenge has at any stage been raised as to the soundness of this work. The Council has undertaken no alternative assessment.

32. CS policy CS10(4) has no application to the appeal proposals, despite the original claims of the Council to the contrary. The site is not a designated site, nor is it one of local interest, such as a local wildlife site. This is accepted. Reliance on this policy was therefore obviously unreasonable.

33. Turning to site specific matters, the Low Lane site has the same negligible nature conservation interest, explaining why no nature conservation objection was made in relation to those proposals. It is impossible to comprehend why such an objection is raised to the appeal. Further, the following is agreed in the SoCG (ID8):

“There are no trees or hedgerows of note within the Site for removal. The hedgerow to be removed to achieve access to Low Lane has already been agreed as suitable for removal in the context of the Low Lane development approval”.

“There are no site specific natural features contained within the Site that are not able to be satisfactorily resolved at the reserved matters stage. No features or matters of interest on the site from a biodiversity perspective were identified by the statutory consultees as part of the consultation process at the application stage”.

34. What is there left to argue about? A professional Phase 1 ecological survey was undertaken, which no-one has challenged. English Nature does not object.

35. LP policy HO3 has been advanced in evidence, though not in the ground of refusal. The LP is from another age, its housing and other policies are hopelessly out of date and inconsistent with the NPPF. For the purposes of paragraph 49, this policy is undoubtedly a policy for the supply of housing. It is therefore deemed to be out of date for this reason as well. In any event, even if the policy had any weight at all, it is not accepted that this policy, which is permissive in any event, would be breached. The land is not allocated for another use, a green wedge notation (if applicable) not being “another use”. The land has no utility for recreational purposes. The development is sympathetic to the character of the locality and it provides residential estate development adjoining substantial similar areas. There are no “important features within the site”, but such interest as there is, is to be accommodated in the

detailed layout. The development does not result in an unacceptable loss of amenity to adjacent land users. There is no residential amenity objection.

36. CS policy CS3 is without question a design policy. It is about designing new development, not planning where that development should or should not go. Reliance on it shows, again, a misdirected and unreasonable approach. And there can be, and there is, no objection to this outline application on design grounds. It is clear that the 22.7 hectares can accommodate the protection and enhancement of such environmental assets as there are and appropriate public open space. As Mr Appleton stated in evidence, the suggested layout was led by such factors.

37. The development would comply with all other relevant development plan policies, namely CS policy CS1. The scheme would be within the development limits of the conurbation, would be in a sustainable location, would comply with "carbon" policies, would protect environmental assets, would be close to appropriate shopping in Ingleby Barwick, would meet housing need, would include policy compliant affordable housing, and would be supported by appropriate planning obligations. With regard to Section 38(6) of the 2004 Planning and Compensation Act, the scheme complies with the development plan taken as a whole.

38. With regard to paragraph 14 of the NPPF, the primary submission, therefore, is that the proposals accord with the development plan, in which case they should be permitted "without delay". If that is not accepted, it is plain that relevant policies are out of date. These include LP policy HO3 and CS policy CS10(3) by virtue of paragraph 49 of NPPF if for no other reason. The "adverse impacts" test then arises. This goes further than Section 38(6) where a material consideration may simply indicate that the development plan presumption is not to apply, with no indication as to how that balance is to be struck. Under paragraph 14 we have the sustainable development presumption, and the clearest direction as to how the balance is to be exercised; harm must "significantly and demonstrably out-weigh the benefits". If harm is caused by the development – Ingleby Barwick becomes nearer to Teesside Industrial Estate (though not the settlement of Thornaby). We contend that the harm is slight, and that the Council has come nowhere near to discharging the new burden. The committee report consistently ranked any harm as "slight", a measured judgment which we suggest is reliable.

39. The evidence for the Council is wholly unbalanced and unreliable, since it fails to acknowledge that the proposals bring any benefits. Councillor Rose was clear in his proof and answers that the Council ascribe no benefits whatever to the provision of either market or affordable housing, of a substantial amount. This stance is held against the background of a 5 year shortfall and the imperatives of the NPPF, and an acute need for further affordable housing.

40. Consistently with all recent decisions, the Secretary of State will undoubtedly give significant weight to the market housing and affordable housing benefits (in particular) of the proposals. As in the Low Lane case, any "adverse impacts" could not "significantly and demonstrably outweigh the benefits" of the proposals. In these circumstances, if paragraph 14 of the NPPF is engaged, it is submitted that planning permission should be granted.

41. This case is said to be about localism, letting local people have their say and shape their surroundings. The reality is that the appeal proposals are the subject of truly marginal local concern and objection. Ingleby Barwick is a town of more than

20,000 people. There were four written objections to the appeal, and four local residents spoke in objection at the Inquiry.

Conclusion

42. The appeal land is not part of a green wedge and the development of the land would not undermine the separation of Ingleby Barwick from Thornaby. The effect of the development on the character of the area and on the urban environment would be slight. The development would be in keeping with the residential character of existing development to the west/north-west, and with the permitted Low Lane development. Existing views of the site from Low Lane and Barwick Lane are against the backdrop of residential development of the same character. The land has no special landscape character or quality whatsoever, it is fringe land. Such environmental assets as there are - hedges and trees - will be almost wholly preserved, and enhanced. Effect on biodiversity would be negligible.

43. The proposals plainly comply with a number of development plan policies. Making the assumption, for a moment, that it was nonetheless decided that they did not comply with the development plan taken as a whole, since relevant policies are out of date, paragraph 14 of the Framework would require planning permission to 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. The proposals constitute sustainable development. They will provide the significant benefits of the provision of market and affordable housing. The benefits of the proposed scheme demonstrably outweigh any adverse impacts.

The Case for Stockton-on-Tees Borough Council

The material points of the case made by Stockton-on-Tees Borough Council are:

44. Members of the Council are, under the terms of the Town and Country Planning Act 1990, the local planning authority. They were required to exercise their independent judgement and, taking account of local public views, there was and is here unusually unanimous cross-party support for both refusal and dismissal of this appeal. In striking the planning balance, under Section 38(6) of the Planning and Compensation Act 2004, they attributed most weight, as they were entitled, to CS policy CS10(3) of the development plan and to environmental sustainability.

45. The appeal land is part of a designated green wedge, the development would significantly and demonstrably harm the green wedge area of countryside, and would be "a bridge too far" in light of the recently permitted Low Lane development. An area maintained as green wedge since the original Ingleby Barwick Master Plan of 1977 (and as revised in 1991) would be in part gone forever, and important hedgerows and features would be gone forever.

46. The application was accompanied by a design and access statement and certain plans. The plans include an 'existing site plan' and a 'levels plan'. These circumscribe an area of land with a red line and are otherwise devoid of proposed content. The application also included an illustrative Master Plan and is for up to 550 dwellings and 2500 m² of Class A1 shops. The Secretary of State has no jurisdiction to grant a planning permission in terms wider than those which have been applied for and the local centre is inherently restricted to 2,500m² of A1 shops. The Secretary of State, applying the case of *Kent (1976) P&CR 1976*, may grant – "as a matter of common sense" - up to that which has been applied for.

47. Councillor Rose accepted that the application information was “sufficient”. However, the current position is that of two plans proposed to be tied by agreed planning condition 1, one is a classic bare outline plan devoid of any detail at all. Whether this satisfies the judgement in the case of *Tew [2000] Env LR 1* (pages 30-31) is for the Secretary of State. In that case, the illustrative masterplan subject to assessment was not “tied” by condition to that outline planning permission. Whilst Mr Griffiths indicated in cross-examination a reticence to bring his application illustrative Master Plan content into line with the development description, it remains for the Secretary of State to be satisfied as to whether the development proposed is that which has been assessed. The Appellant does not propose to tie its proposal to ES parameters and indicative master plans.

48. Whilst it is accepted that the 2011 Environmental Impact Assessment (EIA) Regulations now provide for a staged consent process and for subsequent EIA at reserved matters stage(s), Regulation 3(4) remains a bar to be crossed by the Secretary of State at this and subsequent stages. Mr Griffiths’s reliance on “parameters” alone truncates the acceptable approach stated in *Milne [2001] Env LR 406* at paragraph 431 for multiple “parameters” including planning conditions to ensure that the proposed project remains the same as that which was subject to assessment. There is no evidence of what likely decisions will be made within any parameters. For example, good design equates to good planning and paragraph 64 of the NPPF maintains that poor design must be rejected.

49. ES Volume 1(a) (CD26) states at paragraph 4.12 that “...an analysis of the existing Bassleton Beck Valley Green Wedge designation shows that the site is not a Valley and thus the inclusion of land located to the *east* of the appeal land does not accord with the description”. It is curious that land east of the appeal land is so mentioned. This approach has resulted in a negligible to minor impact in ES Volume 2 (CD27) where the impact on landscape and visual matters is concluded to be ‘Minor Adverse-Negligible’ and the impact on green wedge to be ‘Negligible’. In addition, in appendix 9 of Volume 3 of the ES, which is dated November 2013, it is concluded that there would be, for both construction and operational phases, no significant adverse impact on landscape and visual amenity. But this conclusion predates the actual submission of the ES in June 2014. The reasonable inference is an assessment fitted to a foregone conclusion or a manifestly illogical approach to assessment of “significance” by conclusion cart before assessment horse. Mr Appleton had no explanation in cross-examination for this. Doubt must be cast on the reliability of this part of the assessment.

50. ES Volume 4 (CD29), at paragraph 1.8, pushes back the “build time” from 6-8 years (at former Volume 1, paragraph 2.8) to be “7-8 years”. This accords with deliverability constraints foreshadowed by Mr Griffiths in his proof of evidence. The current ES remains silent on what actually may occur between years 2 and 5 (save for landscape mounding). This recent change extending the build out period indicates slothful delivery of development. Agreed condition 5 defers consideration of a phasing programme to a subsequent date and decision maker. Mr Griffiths was unable to provide on behalf of the Appellant *any* explanation of what quantum of housing development may or may not be likely to occur between years 2 and 5 or whether or when or how many housing units may be started before year 5 or after year 5. Mr Griffiths accepted in cross-examination that it was inappropriate to second guess the future decisions of the Local Planning Authority. The Appellant’s recent deferment to 7-8 years indicates a supply of actual development being pushed *back* in time and not brought *forwards*. Applying ES Volume 4 (received on 10 July

2014 with Volume 5), paragraph 7.2 indicates that 121 units will be built out on the appeal land from year 8 backwards which engenders a worst case scenario of 363 of 500 dwellings likely to be built out between years 6 and 8 inclusive (i.e. 3 years) leaving 137 (including 15% affordable units) in year 5 and before. There is no evidence of a lesser quantum over a longer period.

51. ES Volume 4, paragraph 5.1, also states that the “proposals” are “for ... a primary school”. In fact, they are not. The bare outline application itself and proposed condition 1 ties the development to a site plan which makes no provision for a primary school. Rather, a currently unexecuted planning obligation provides for *land* for such a school but its erection does not actually form part of the proposals. In law they are not. The development description cannot embrace “primary school” and the Inspector has no power to grant wider than the terms applied for (see above). The assessment proceeds (again) on a misplaced premise.

The Development Management Legal Framework

52. The Secretary of State, as local planning authority and under Section 38(6) of the Planning and Compensation Act 2004, is required to determine the application for outline planning permission in accordance with the terms of the statutory development plan unless material considerations indicate otherwise.

53. Mr Griffiths accepted at the Inquiry that this is the correct test. His acceptance was correct in light of his cross-examination about the operation of NPPF paragraphs 49 and 14. The paragraph 14 presumption in favour of granting permission is not here engaged because (as considered by the Secretary of State in September 2013) the development plan is not here “out of date”.

The first main issue – green wedge

54. The Appellants accept, see ES Volume 2 at paragraph 5.2.3 on page 17, that “the Development Plan for Stockton and this proposal comprises the Core Strategy adopted March 2010 and the saved policies of the Stockton Local Plan (Adopted 1997)”. Paragraph 5.2.4 identifies “policy HO3” as “relevant” to the development proposals and this policy includes the phrase “within the limits of development”. Paragraph 5.2.6 records that LP policy EN14 referred to green wedge areas but that “This policy was deleted on the adoption of the Core Strategy and the operative Green Wedge policy, now policy CS10”.

55. The CS records the “replacement” of certain LP “policies” by CS “policies” including EN14 by CS10. ES Volume 2, at paragraph 5.2.7, states “the Local Plan Proposals map therefore for the Stockton Borough Local Plan should be read without the Green Wedge notation as there is no operative policy within the document currently in force to which the notation is able to relate”. Paragraph 5.2.7 then states “The Local Plan proposals map was not “saved” following the adoption of the Core Strategy”. This is, and was at the Inquiry into the permitted Low Lane development, the Appellant’s position.

56. But this position is not supported by any legal analysis whatsoever. Mr Griffiths was right to accept in cross-examination that the Inspector in September 2013 (and likewise the Secretary of State) was entitled to conclude that the consented scheme lay in “designated green wedge...contrary to the assertion of the Appellant”. It is clear from the way the matter was placed in issue at the previous Inquiry that the preliminary issue, whether the appeal land is part of a green wedge,

was addressed at paragraph 11.8 of the Inspector's Report and that he simply disagreed with the Appellant. There was no mystery in the Inspector's reasoning.

57. Likewise, the Secretary of State was perfectly entitled to rely on that finding and agree the same at paragraph 10 of his Decision Letter. These judgements can only have been made on the basis of the LP Proposals Map then before them. There is not, therefore, "doubt" as to the correct reasoning. The reason is that that Inspector disagreed with Leading Counsel's *assertion*. This Inspector is entitled to himself rely on the said Inspector's judgement and on their approach too in this Appeal. The Appellant's revisiting this issue is straw grasping.

58. The Appellant today seeks a second bite at the "Proposals Map" cherry. This time it relies on subsequent case law. The Appellant contends that "Under the Planning and Compensation Act 2004, the local plan would have expired in 2007". The Secretary of State made a saving direction on 31st August 2007 which saved certain policies of the local plan. He did not, and could not (see below) save the proposals map. Policy EN14 expired on the adoption of the Core Strategy on 24th March 2010, being "replaced by policy CS 10". It is contended that the "Appellant made legal submissions to the effect that the former proposals map had no legal status, so that the land was not designated as green wedge in the development plan". In fact, as is clear, the point was advanced by a lawyer but without any then legal rationale in statute or case law.

59. *R(oao Cherkley Campaign) v Mole Valley DC [2014] EWCA 2014* is very recent and post-dates the Council's refusal of the appeal scheme in February 2014. The first parts of the judgement consider the legal relationship between policies and their supporting text. Paragraph 19 of the judgement is relevant and was not referred to by the Appellant's Counsel in opening. Paragraph 19 states "what was saved pursuant to a direction under the 2004 Act" and held that the scope of "policies" had a narrow meaning, "referring to the wording in the policy box, but on the basis that regard *could* be had to any map or reasoned justification or other descriptive or explanatory matter when interpreting or *implementing* the policy ... I would accept [that] construction [and] agree with the judge". Therefore, such a saving process of LP policy EN14 could not preclude subsequent regard to the Proposals Map.

60. For completeness, paragraph 1(1)(b) of Schedule 8 to the 2004 Act refers to development plan and not to "maps". Paragraph 1(3) empowers the Secretary of State to save "policies" not "maps". Section 54(1)(c) of the 1990 Act defines "development plan" as the provisions of the local plan. Section 36(2) explains "a local plan shall contain a written statement formulating the authority's detailed policies for the development and use of land in their area". Subsection (6) states that a "local plan shall also contain – (a) a map illustrating each of the detailed policies; and (b) such other descriptive or explanatory matter as the (LPA) thinks appropriate". That is, the statute distinguishes between "policy" and "maps". By subsection (7), for section 36 purposes alone, and not for section 54 of Schedule 8 as above, "policies" includes proposals.

61. The LP, in this case, at paragraph 1.21 similarly distinguishes "policies" from "Proposals Map", and at paragraph 1.22 explains that the "map...indicates areas to which particular policies and proposals *apply*". In effect, the map is not itself a policy but shows the locational application of policies. There is no dispute that LP policy HO3 remains both saved and relevant. It refers to "limits of development". That phrase appears on the Proposals Map. Likewise, policy EN14 was saved and was

itself replaced by CS policy CS10. But it is a non-sequitur that the replacement of the LP policy EN14 equates to the exclusion from account of the whole Proposals Map. Rather, the terms of LP policy EN14 and its supporting paragraphs 2.42 and 2.43 have been replaced by the terms of CS policy CS10(3). But, the Proposals Map remains on foot. In legal reality, it will, in due course, be superseded by the adoption of the allocations map for development management purposes.

62. The Court of Appeal's 'no change' approach in *Cherkley* is consistent with the Planning Officer's approach. Having restated the relevant elements of the development plan he states that "The application site is designated as green wedge on the 1997 Local Plan Proposals Map. Green wedge designations have not been altered on the Core Strategy Strategic Diagram". It follows that the Appellant's second bite at the cherry is, properly understood, without teeth. It further follows that the Appellant is in error in its approach to consideration of relevant development plan policy and so the weight to be attributed thereto. Their evidence has given no weight to the green wedge in striking a balance.

63. If, contrary to the above, there is legally no Proposals Map at all and it is so much waste paper, this has, the surprising result implicitly advanced by planning Leading Counsel that either a Proposals Map can be cherry-picked like a jigsaw, LP policy HO3 is rendered meaningless ("limits of development" has no reference point), and numerous Local Planning Authorities nationwide would suddenly find themselves devoid of any (or punctuated) Proposals Map until adoption of the (development management) allocation maps. In reality, such approach defies common sense and so Parliament's intention.

64. The Proposals Map remains a legally current "map" by reason of its *not* having been deleted by operation of law pursuant to the saving direction nor having been subject to a Local Planning Authority resolution to not remain on foot when CS policy CS10 replaced LP policy EN14. LP policy HO3, for example, *has* a coherent meaning and reference point for its application.

65. It further follows that the Appellant's ES assessment has proceeded on a fundamentally misplaced footing in relation to leaving out of account from its assessment the policy designation of the land south east of Ingleby Barwick in which the appeal land sits as green wedge as to the degree of likely significance (and so weight) to be attributed to assessment matters pertaining to green wedge. The Appellant's analysis, therefore, leaves out of account irrevocable harm.

66. If, contrary to the above, which is not accepted, the Secretary of State *does* consider the Proposals Map excluded from account, the Inspector has the agreed approach to application of CS policy CS10(3) terms as a matter of fact and degree to the circumstances of the case here. In short, the CS Diagram (CD25) is agreed by Mr Griffiths to be at too high a level of abstraction to be relevant to development management decision making; there is in fact *some* beck "valley" bounding and traversing the appeal land and, since green wedge is expressed inclusively, the geographical scope of the green wedge - which includes "valley" - can extend more broadly than the actual slopes of "valley".

67. So far as the "policy behind the policy" is here also relevant and to ascertain the scope of the green wedge in this location, the 1991 Revised Master Plan (CD21) explains the "main components" of the revised Master Plan underpinning the developing new town as "*major* Green Wedge separating Ingleby Barwick from the

industrial estate to the east". The geographical scope of "major" is shown on Plan 3. The appeal land plainly falls within that major green wedge.

68. The proposals are contrary to the development plan as they would breach CS policy CS10(3)(ii). It is submitted that the NPPF assumes development plan compliance if development is to qualify as "sustainable" within its own terms. Breach of CS policy CS10(3) here means that the appeal proposals do not meet the requirement to be environmentally sustainable. Councillor Rose also highlighted that the social limb was not met either, due to impact on the quality of residents' lives.

The second main issue - whether the scheme would undermine the green wedge

69. Assuming the presence of the appeal land in the designated green wedge, it is axiomatic that the scheme would undermine the green wedge. The terms of LP policy HO3 and CS policy CS 10(3) are today required to be interpreted on their face (*Tesco v Dundee [2012] 2 P&CR 162* at paragraphs 17 and 18-21). On its face, LP policy HO3(iii) does not include a criterion of "availability" but of "use". Logically, questions of private rights to enter land or not are not relevant to the public law planning sphere. It is accepted that the weight attributable to such "illicit" "use" may be less by reason of its peripatetic and non-formal (public) highway status. But that does not equate to such actual land 'use' being legally irrelevant to planning. LP policy HO3 is not on its face qualified by "privately lawful".

70. The evidence of a number of witnesses to the inquiry is of some historic and ongoing recreational use of the appeal land by dog walkers and adventurous teenagers. The site visit will reveal actual evidence of this of 'desire lines' in the ground, to which the previous Inspector also referred, whilst Mr Griffiths excludes from his account any mention of recreational use. LP policy HO3 terms "provided that ... does not" are not here met. This policy does not permit development.

71. The contention that CS policy CS10(3) yields to NPPF paragraph 49 is misplaced. The cases relied on by the Appellant concern policies entitled "Green Wedge" expressed in particular local terms and which included the term "development". For instance *Jelson [2013] EWHC 3058 (Admin)* mentions "Development will not be permitted...", *Cotswold DC [2013] EWHC 3719 (Admin)* at paragraph 16 mentions "Policy 19 ... restricted development, including housing development, outside existing development boundaries", and *South Northamptonshire [2014] EWHC 573 (Admin)*, at paragraphs 3 and 38, refers to "Planning permission will not be granted for development in the open countryside...".

72. Simply put, CS policy CS10(3) is not a policy relevant to the supply of housing because it does not contain the term "development", it ensures the maintenance of environment, and is relevant to the *location* of, not the *supply* of, "development". CS policy CS10(3)(iii) terms do not on their face include the term "sufficient". The Appellant is driven to imply this 'test'. There is no need to qualify the policy terms. Post-*Tesco*, the correct and straightforward approach is to apply the policy terms to the facts: is "the separation between the settlements ... *maintained* through the *protection* and enhancement of the openness *and* amenity value of (this) green wedge"? As the previous Inspector concluded "Development would harmfully undermine the existing degree of separation between settlements" and thus would be contrary to LP policy HO3 and CS policy CS 10(3). He also concluded that "It is axiomatic that the loss of open agricultural fields to development would harm the character and appearance of the area concerned".

73. Therefore “the proposal is contrary to LP policy HO3 (as identified to be relevant by the Appellant) and CS Policy CS3(8)”. By paragraph 2 of the NPPF, it is a material consideration of “significant weight”. The Inspector explained at his Report paragraph 11.7 that “one of the core principles of the (NPPF) is that the intrinsic character and beauty of the countryside should be recognised”.

74. By contrast, Mr Appleton identifies extrinsic features in his Proof of Evidence at paragraph 4.2.3. A site visit will enable sensation and experience of the intrinsic nature of this countryside. The parties agree as to the previous Inspector’s Report save that the Appellant considers that the consented scheme now informs that experience. The Local Planning Authority submits that the reverse is true: the very presence of the consented scheme reinforces why the maintenance of the appeal land’s intrinsic qualities have *increased* value (and so weight) because of their now contrast with the consented land to the south (including for those new inhabitants looking north and others to the south looking north).

75. An NPPF core principle requires that planning should empower local people and indicates that it should be about scrutiny but a creative exercise in finding ways to enhance and improve places in which people live. In this respect, the neighbourhood plan is not the sole vehicle by which to manifest localism. These core principles also provide for its manifestation in planning. Here, exceptionally, there is actual cross-party Councillor and local MP (not to mention numerous petitioners and also civic and other local attendees at the inquiry) “unanimous” support for maintenance of this particular green wedge by seeking again refusal of this proposal as Councillor Rose lucidly expressed: the proposals are “a bridge too far”. In particular, Members refused the application in their role as democratically elected local representatives as (“arguably”) “expert tribunals within their area of special competence” who are required to exercise their independent judgement about the maintenance of separation through the protection and enhancement of the openness and amenity value of the Green Wedge.

76. In *Morge (CA) [2011] 1 P&CR 282* the Court of Appeal reminds us that Parliament vests the Section 70(2) discretion not in certain expert professionals but expects a wider discretion to be exercised by Members here. Expert views must not be accepted “willy nilly” by Members since that would emasculate their duty to themselves to decide the application. Here, Members appreciated, were properly able to, and did take account of local interest (unlike professional experts) to add weight by reason of local concerns (as they were so entitled) to their consideration of the application. This adds to the considerable weight in favour of the *maintenance* of the green wedge. By contrast, the Appellant’s experts exclude – if they have any regard at all – the *weight* of local public concern at the axiomatic loss of open land.

77. Once it is accepted that the very presence of the application development in the green wedge in this particular location would by definition empirically reduce its openness, there is a subsequent question of planning judgement for the very reason that this is *not* Green Belt: does the presence of the development “maintain” the green wedge. The scope of maintenance admits of a spectrum. On behalf of the Local Planning Authority, Councillor Rose explained in his Proof of Evidence at paragraph 63 that Members had in mind that the potential resulting Green Wedge was “insufficient” to, inter alia, maintain the green wedge. They disagreed with their Officers who considered “limited harm” would accrue here. The reporting officer, though, also summarised overall at page 1 that “the harm associated with this development is not so significant”. The Appellant seeks to delete the term “so”.

78. The Appellant disagrees. Mr Appleton considers the eastern edge of the appeal land results in a sufficient gap between it and the industrial estate that, inter alia, the green wedge is 'maintained'.

The third main issue – the effect of the proposal on the area

79. Councillor Rose gives evidence in his proof of evidence on amenity matters. The landscape plans are currently not tied to the proposal and landscape is a reserved matter. Natural England identified in its consultation response that Members must consider biodiversity, including “types of habitat”. The Appellant’s ES Volume 2 at paragraph 2.5.3 states that “*The field patterns and existing landscape features have provided a strong driver to the layout of the outline scheme*” and at paragraph 2.5.7 that states “*The proposed landscape scheme for the site includes the retention of existing features of amenity, ecological and character importance...*”.

80. Section 14 at Tab 2 of that document shows a table which assumes residual impacts in consequence of mitigation measures in relation to landscape and the impact on the green wedge. Since paragraph 5.4.1 acknowledges a dispute about whether the wedge applies, and 5.2.7 states that it does not, the residual impact on the wedge to “negligible” is depressed in error. The provision of landscaping assumes a plan at ES Volume 3, Tag 5, which includes in a Key “existing hedgerow planting to form habitat linkages (and also) outside of the site boundary”. Habitat buffers are also proposed and potential bat roosts also appear.

81. But, as Councillor Rose explained in cross-examination such corridors for wildlife require continuity and this would necessarily be bisected by an internal road layout of unknown routes. Furthermore, the Green Infrastructure Strategy (CD13 page 46 and Map 10) identifies the Beck as a secondary corridor “I”. Paragraph 4.3 requires existing green infrastructure to be “safeguarded” and on page 53 it is stated that the green corridor incorporates Thornaby Woods “and an extensive network of rights of way *and other paths*”. The quality of the urban environment would be diminished, and harmed. One of 6 “main” elements of the 1991 Revision to the “imaginative” 1997 urban Master Plan would not be maintained.

82. As to amenity, Mr Appleton properly accepted that amenity may include the protection of a view, in the public interest. Here, there is a local public interest in protection of that amenity by maintenance of the views enjoyed by those experiencing the appeal land from different locations about it (including from the industrial estate) and new residents of the permitted scheme looking north across the appeal land, and, illicitly, within it.

Other material considerations

83. Whilst there is a need, the affordable housing requirement in the Borough is not “acute”. This was emphasised by Councillor Rose in cross-examination. It results from an absence of provision for social housing in the 1978 outline planning permission for Ingleby Barwick (CD24). Further, the settlement is full.

84. Whilst the Local Planning Authority accepts there to be a housing shortfall, caution is to be exercised in relation to the actual likely contribution thereto of the proposal, particularly where there is no tied phasing plan currently and the ES actually anticipates delivery of housing after the 5 year period. The practical reality appears to be a supply of some 130 houses within 5 years. Further, absent is a phasing plan or a minimum guarantee of what and when units may be delivered, it is difficult to see how the inspector may rationally attribute the *same* weight to *any* particular number of units or know what weight (as opposed to benefit) may be given to 1 unit as opposed to 500 units or anywhere between. A defined phasing plan at

this stage may resolve this - but it is not tied presently. Instead “up to” remains scalable in the weight equation.

85. Additionally, the weight attributable to the housing element is diminished by reason of its delivery being contingent on erection and use of schools (but which are full), and likewise the Free School. There is no certainty on how many homes would be built in any given year after a grant of planning permission.

86. The provision of land for a primary school is not the provision of a school. Further, the requirement for a school is here *mitigation* of the impact of the proposals (where all schools are full) and cannot be relied upon as a planning *benefit*. Consequently, the purported benefit is narrower than suggested with a commensurate reduction in weight.

87. The scope of “local centre” is curtailed by the above description of development. Therefore, its scope as a benefit is also curtailed. It can only offer a shop. It is difficult to see how this is a planning benefit otherwise than to residents of the appeal land.

Conclusion

88. There would be significant and demonstrable harm resulting from a proposal that is in breach of development plan policy, is environmentally and socially unsustainable, and in relation to which no other material considerations indicate otherwise. The appeal should be dismissed.

Representations made by interested parties at the Inquiry

The material points of the cases made by those who appeared at the Inquiry are, in summary:

Ms L Baldock

89. Ingleby Barwick has proved popular since its inception following the adoption of the 1977 Master Plan but this plan was amended by the 1991 Master Plan to be a settlement of six connected villages. The last of these villages, The Rings, has been under construction since 2012 and some of its dwellings have already been occupied. A map of the town now shows that the original concept of six villages has been lost and, apart from a few leafy footpaths that divide the six areas, the town is now one housing estate of about 8000 homes. The features that define the extent of the town are three waterways; the River Tees to the north, the River Leven to the west, and Bassleton Beck to the north and east. These form natural boundaries and the Borough Council and the Town Council have spent money to develop a footpath network following these waterways.

90. Main parties have debated the extent of green wedge around the town but local residents are adamant that all white space on the CS Strategic Diagram around the built up area of the town is green wedge. These areas define the town and separate it from nearby built up areas. The appeal land was originally intended to be part of one of the original planned villages but after this was deleted in the Master Plan of 1991 the land, which falls on the wrong side of Bassleton Beck, became known to be part of the green wedge around the town. The appeal land was never meant to be developed and the previous Inspector and the Secretary of State understood that the appeal land is part of the green wedge that separates Ingleby

Barwick from Thornaby. It is also part of green wedge that separates Ingleby Barwick from the villages of High Leven and, further afield, Maltby.

91. CS policy CS3(8) requires the preservation of hedges, biodiversity, archaeology and heritage assets and the development of the appeal land would threaten all of these. Preservation could not be achieved by simply providing a buffer zone of 10 metres to Bassleton Beck, and consideration should be given to widening such a buffer strip to 20 metres if planning permission is to be granted, because it needs to be set in an appropriate landscape. This valuable landscape corridor and its biodiversity would be enclosed which is neither sustainable nor environmentally acceptable.

92. Ingleby Barwick is, de facto, a new town and CS policy CS2 places importance on development being well served by public transport. Non car owners are reliant on buses, as there are no rail services, but there are no bus subsidies on Teesside so bus services are only provided by bus companies if they are profitable. Previous bus services linking the town to nearby facilities in larger towns have been withdrawn once subsidies were no longer available and the intended bus service, which has been offered by the developer for a three year period, would probably be similarly withdrawn once the subsidy is no longer available. This runs contrary to policy CS2.

93. The town has six primary schools and one secondary school and a further secondary school is planned for land adjacent to the appeal land. A new primary school may be provided on the appeal land, if the proposed development goes ahead, but, with all existing schools full, there is no guarantee that intended residents of the development would be able to have their children educated. Local residents routinely have to wait for three weeks for appointments at two local doctors surgeries and with a further 900 dwellings planned this problem would be exacerbated further. Sports and other recreation facilities, particularly for young people, are lacking in the town and the proposed development would not include any new community facilities and is unclear on what facilities it would provide; probably only a few shops and therefore a new location for young people to hang around at.

94. The proposed development is not sustainable. It would damage the urban environment of the town, would encroach into the green wedge, and would not provide the facilities necessary for residents to have fulfilling lives in their homes.

Mr G Walker

95. Ingleby Barwick is one of the most densely populated housing estates in Europe and already has inadequate recreational facilities. Every small piece of green space is being built upon in the pursuit of more unwanted and unnecessary housing. Traffic at peak times is reminiscent of the bad old days and sometimes it takes an hour to get off the estate. More houses would simply exacerbate this situation. Health infrastructure is already stretched to breaking point. Primary and secondary schools in the town are full and children are bussed out of the town, contributing to congestion. The appeal land is a recreation area that is valued by existing residents.

Mr P Hadfield

96. The Government is committed to the principle of localism and it is worth recording that the proposed development is opposed by the local MP and by all political parties, and was unanimously rejected by the Planning Committee. The proposed development would be on green wedge land that is valued by many local

residents and is there for a purpose. The Appellant unlocked development on the green wedge by offering land for a much needed secondary school, alongside 350 new houses, and has continued their commercial interests by submitting the appeal application for a further 550 houses. The consequent increase in traffic resulting from the two developments would bring the local roads to gridlock. The proposed development is clearly unsustainable.

Mr N McCabe

97. Low Road and other roads in the area are already at over capacity and traffic congestion is very bad. Further development would only serve to exacerbate this unsustainable situation.

Written Representations

The material points of the cases made by those who submitted written representations are, in summary:

98. The proposed development would exacerbate traffic congestion in the area, would bring further pressure on health and education infrastructure, would harm the urban environment, and would result in the loss of valuable green wedge.

Conditions and Obligation

99. Recommended conditions are included in a Schedule attached to this report. The reason for each condition appears after the condition. They are in line with conditions agreed by the Council and the Appellant (ID15) though they have been amended, where necessary, to meet the tests set out in the Planning Practice Guidance (PPG) and in the interests of clarity and precision. The only point of dispute is with regard to condition 9. The Council maintains that the dwellings should be constructed to Code Level 4 of the Code for Sustainable Homes but has provided no justification for such a stance. The minimum requirement is that new dwellings should be constructed to Code Level 3 of the Code for Sustainable Homes and recommended condition 9 reflects this minimum standard.

100. The Appellant has entered into an Agreement with the Council, made under Section 106 of the Town and Country Planning Act. The first version of the Agreement included the payment of a commuted sum as an education contribution. The executed version of the Agreement includes the transfer of land to the Education Authority for the construction of a primary school instead of the payment of a commuted sum.

101. Other provisions of the executed agreement include reasonable endeavours to ensure that not less than 10% of construction jobs are made available to residents in Target Areas, the provision of 15% affordable housing, the payment of a commuted sum of £770,000 as a Western Highway Improvement Works Contribution, the payment of a commuted sum of £100,000 towards highway improvements at the Low Lane/Thornaby Road junction, and the payment of a total of £300,000 towards providing a bus service to link the development to services and amenities in the first three years after the occupation of the first 50 dwellings.

102. The obligations of the Agreement are all necessary to make the development acceptable in planning terms. They are all, furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development,

and are in place to mitigate the effects of the development. The Legal Agreement therefore complies with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and, with regard to section 4 of the Agreement, is required if planning permission is granted for the development.

Conclusions

Numbers in square brackets at the end of each paragraph refer to earlier paragraphs in this Report.

The first issue - whether the appeal land is part of a designated green wedge

103. The main parties take up diametrically opposed positions on the status of the LP Proposals Map and to green wedge notations shown on it. The Council has argued that the LP Proposals Map remains in place as part of the development plan and that the green wedge notations on it can therefore be taken to indicate the location and extent of such areas. The Appellant maintains that the LP Proposals Map was not saved at the time LP policies were saved and is therefore no more than waste paper.

104. There would be no point in saving a policy, such as LP policy EN14, if the Proposals Map could no longer be relied upon to show where the green wedge areas are to which the policy relates. When LP policies were saved the Proposals Map, though it was not also expressly saved, may also have been regarded to have been saved, but only in so far as it related to the saved policies. The information on it relating to unsaved policies became no longer relevant. [24, 54-55]

105. Applying this principle to LP policy EN14, when this policy was replaced by CS policies CS1 and CS10, the Proposals Map became no longer relevant for indicating the extent and location of green wedge areas. It would be illogical for green wedge areas to exist on a Proposals Map if these areas are no longer the subject of the development plan policy to which they relate. When LP policy EN14 disappeared so too, metaphorically, did the green wedge notations on the LP Proposals Map.

106. The CS has its own Strategic Diagram so there is no reason to regard the LP Proposals Map as indicating the location and extent of green wedge areas to which CS policy CS10 relates. The Strategic Diagram is just that, a diagram. Whilst it was "...reproduced from Ordnance Survey material..." it cannot be relied upon to precisely identify the location and extent of green wedges or any other designations of land. The Strategic Diagram indicates, roughly, a green wedge around Ingleby Barwick. [27-28, 61]

107. The Inspector for the Low Lane development regarded that development to be in the green wedge; the reasons for doing so were not explicit in the Inspector's report or in the Secretary of State's decision letter. It is possible the Inspector had regard to green wedge being shown on the CS Strategic Diagram to extend, from where it separates Ingleby Barwick from Thornaby, alongside Thornaby Road and then Low Lane. [23, 56]

108. It is possible, in fact, that if the CS Strategic Diagram was overlaid on Figure 3 of Volume 1(a) of the ES (ID25), which shows the site areas of the Low Lane and appeal developments, that the green wedge notation on the Strategic Diagram does extend, to more than just a small extent, into the Low Lane development area. This factor may have been the reason for the Low Lane Inspector's presumption. But the CS green wedge notation does not extend into the appeal land.

109. The appeal land, on the Strategic Diagram, is wholly within a white area between the green wedge notation and the 'conurbation' of Ingleby Barwick. White areas on the diagram are not shown, by reference to the key, to have any designation. It is worth noting, however, that one white area on the diagram is

currently being developed for housing; The Rings development that is one of the villages of the original and amended Master Plan for Ingleby Barwick. [90]

110. Therefore, in short, the previous Inspector and the Secretary of State considered the Low Lane development to be in the green wedge but this can be explained by the notation on the CS Strategic Diagram. The Council and local residents who support their Council's refusal of the appeal application clearly regard the appeal land to be within a green wedge. But this is not supported by the Strategic Diagram nor, given that LP policy EN14 has been replaced, by the green wedge notation on the LP Proposals Map. [91, 61]

111. The Council has sought to suggest that the green wedge notation on the CS Strategic Diagram somehow implies that the whole of the land between Bassleton Beck and Low Lane/Thornaby Road is green wedge. They have sought, in this regard, to use the diagram as a development control tool but it cannot be used for this purpose. It is what it is titled; a Strategic Diagram. The location of development will be controlled, in time, through the adoption of a Regeneration and Environment Development Plan Document. They have, also, sought to suggest that the appeal land is part of the "major green wedge" mentioned on the 1991 Revised Master Plan (CD21). But this is a historical document and is not part of the development plan, unlike the CS and its Strategic Diagram. [25, 67]

112. Notwithstanding the shared view of the previous Inspector and the Secretary of State, upon the close scrutiny afforded by the Inquiry into this appeal it has become evident that there is no development plan support for a conclusion that the appeal land is within a designated green wedge.

The second issue – the separation of Ingleby Barwick and Thornaby

113. Teesside Industrial Estate, whilst separated from it by a road, is directly to the south of the built up area of Thornaby. It is, furthermore, shown on the CS Strategic Diagram to be part of the Thornaby conurbation. The CS seeks, through CS policy CS10, to maintain the separation between settlements and, in particular for this case, the separation of Ingleby Barwick and Thornaby. [29]

114. The Bassleton Beck Valley green wedge already serves this purpose to the west of the industrial estate and to the south of Thornaby. Between the industrial estate and Ingleby Barwick the green wedge is a consistent width of about 300 metres, including the width of Thornaby Road. Between Ingleby Barwick and Thornaby the green wedge varies in width between about 225 and 400 metres.

115. It is clear, on the ground, that the Bassleton Beck Valley green wedge serves its primary purpose; the separation of two settlements. The distance between the appeal land and the industrial estate is, consistently, about 370 metres. The gap between proposed and existing development is about the same as the gap that separates the two settlements and would be sufficient to maintain this separation.

116. The gap that there would be between the proposed development and Teesside Industrial Estate would not undermine the strategic objective, as shown on the CS Strategic Diagram, of providing and maintaining a green wedge in this location. The proposed development would not undermine the separation of Ingleby Barwick and Thornaby and accords with the principal objective of CS policy CS10. [42, 72]

117. The strategic objective of CS policy CS10 would not have been compromised if the conclusion had been that the appeal land is in a designated green wedge. If that

had been the conclusion and with regard to the wording of the reason for refusal, the development would leave sufficient green wedge to adequately maintain the separation between Ingleby Barwick and Thornaby.

The third issue – the character of the area, biodiversity and the urban environment

118. CS policy CS10(3) states that “The separation between settlements...will be maintained through the protection and enhancement of the openness and amenity value of...Green wedges...including...Bassleton Beck Valley between Ingleby Barwick and Thornaby”. The green wedge between the two settlements is identified as being the Bassleton Beck Valley because the beck flows through it. [30]

119. But this does not mean that the whole green wedge is the valley of the beck. The valley, in fact, is shallow and only a few metres wide. The green wedge between the settlements includes other mainly flat areas that are part wooded and part open; including flat playing fields to the west of the industrial estate. The proposed development would not extend into the green wedge between the settlements and the openness and amenity value of the green wedge would be maintained. [31]

120. The beck continues to the south-west, from within the green wedge identified in the CS, through a narrow amenity area alongside the built up area of Ingleby Barwick. This amenity area, together with the green wedge, is ‘secondary corridor I’ – Bassleton Beck’ and is part of a strategic green infrastructure network as shown on Map 10 in the Council’s Green Infrastructure Strategy. Map 10 is a diagram and in no way identifies the width or precise location of any corridors. [82]

121. The Council has sought to suggest that ‘secondary corridor I’ extends into the appeal land. A stream, virtually dry at the time of the Inquiry, meanders through the appeal land but this in no way suggests that the secondary corridor extends into the appeal land. The appeal land extends up to a fence that meanders close to the beck but the proposed development includes the provision of a 10 metre wide buffer zone along this boundary. The buffer zone would provide opportunities for the enhancement of the amenity value of the secondary corridor and would assist the Council in meeting the strategic objectives of their Green Infrastructure Strategy. There is no justification for the buffer zone to be 20 metres wide. [82, 92]

122. The appeal land is of little intrinsic landscape value and is lacking in nature conservation and ecological interest. Its only attractive natural features are hedgerows and a small wood at its north corner alongside the beck. The wood would be retained, the hedgerows would be enhanced to become 8 metre wide habitat buffer zones between development areas, and the stream, which could be adapted to be part of a sustainable drainage scheme for the development, would be the main feature of another 8 metre wide habitat buffer zone. [80]

123. There is no doubt, however, that the openness of the appeal land would be lost. But, though it extends further to the north-east, the proposed development would largely fill the gap between existing development and the proposed Low Lane development. There is no reason to doubt that this development will come forward so the loss of openness of the appeal land would have a negligible impact on the character of the area.

124. Councillor Rose maintains that the biodiversity of the appeal land would be harmed. The only features of the land that he is concerned about are the hedgerows, but he has not provided any evidence on the biodiversity value of the

hedgerows and the Council has not carried out any objective biodiversity assessment. Hedgerows would be retained and enhanced to become habitat corridors and even at this outline stage it is possible to conclude that the biodiversity value of the proposed development would be, at least, no less than the biodiversity value of the appeal land as it is at present. The appeal land is not designated for its biodiversity and geodiversity value nor is it identified as a site of local interest. The development does not thus conflict with CS policy CS10(4). [32, 82]

125. Though there are no public rights of way over the appeal land it is used (there is a pedestrian bridge across the beck) for dog walking and other activities. It is therefore of some recreational value. Though the proposed development, if allowed, would result in the construction of up to 550 houses and other development, there would be greater access to the land, at four points over the beck, and there is no reason to suppose that the development would not include high quality open space. Recreational opportunities would change but the recreational value of the land would not be unduly diminished. Though it is, essentially, a policy that relates to design of new development rather than to the planning of new development, the proposed development does not conflict with CS policy CS3(8). [33, 70]

126. The appeal land is, as is the Low Lane development site, within the limits of development of Ingleby Barwick as shown on the LP Proposals Map, which is saved in so far as it relates to LP policy HO3. With regard to this policy, the proposed development would be on an unallocated site and the land would remain available for recreational use, albeit restricted, by those who currently reside nearby. Furthermore, the development would be, given that it would occupy a site bounded on two of three main sides by existing and proposed development, not unduly unsympathetic to the character of the area, and the development would accommodate important features within the site. The proposed development of the appeal land does not conflict with saved LP policy HO3. [35, 82]

127. The proposed development of the appeal land would have a negligible harmful effect on the character of the area, would not cause harm to biodiversity, and would not harm the urban environment. The proposed development does not thus conflict with saved LP policy HO3 or with CS policies CS3 and CS10.

Other matters

128. The proposed development has been scrutinised by the Highway Authority for its potential impact on traffic congestion and highway safety. The development is accompanied by a Section 106 Agreement that makes provision for significant contributions to highway infrastructure works and other highway improvements will flow from the Section 106 Undertaking that is tied to the outline planning permission for the Low Lane development. The Highway Authority has not raised any concerns and there is no evidence to indicate that the proposed development would, itself, result in any significant increase in traffic congestion. [96-99]

129. The Section 106 Agreement would ensure that residents of the proposed development would have public transport access to amenities and services for three years after the development is commenced. Thereafter the provision of a bus service would depend on demand and thus the viability of the service. Furthermore, it is just as reasonable to predict that the addition of many houses to the south of Ingleby Barwick would render a service viable, as it is to predict that a service would be withdrawn once the three year subsidy is over. This is not a matter that counts against the proposal. [93]

130. The Education Authority is charged with ensuring that all school age children have the opportunity to attend school. A new secondary school is planned in the Low Lane development and space for a new primary school is included in the appeal development. There is no reason to suppose that school age children resident on the appeal land would not have a school to go to. Pressure would increase on health infrastructure but there is no professional evidence to support the contention that existing and intended residents of the town would have inadequate health care. [94, 96]

131. The provision of adequate and appropriate sport and recreation facilities for residents of the town, both young and old, is the responsibility of the Council. Nothing indicates that they would be unable to fulfil that responsibility. [94]

132. Mention has been made of the strength of local opposition to the proposed development and of the unanimous refusal of the scheme by the Council's Planning Committee. Paragraph 005 of the PPG states that "The views of local communities likely to be affected should be listened to". The Public Inquiry was held so that the views of the local community in this case could be heard; only four local residents spoke at the Inquiry. However, and in any event, conclusions reached in this Report are based, as they must be, on an assessment of the planning merits of the proposed scheme and its compliance or not with the provisions of the development plan. [44, 97]

Overall conclusion

133. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years worth of housing against their housing requirements. The Council has a supply of only 4.08 years of housing land in the Borough. Paragraph 49 states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

134. LP policy HO3 is a policy for the supply of housing and must be regarded to be out of date. However, the proposed development has been assessed against this policy and has been found to accord with it. The development would supply much needed housing and affordable housing over the next five years and beyond. The proposed development would cause only negligible harm, to the character of the area, and has also been assessed against relevant elements of CS policy CS3 and CS10, and has been found to accord with these policies also.

135. The proposed development accords with the development plan. Paragraph 14 of the NPPF states that "...there is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision-taking...For decision-taking this means approving development proposals that accord with the development plan without delay". Planning permission for the proposed development should be granted without delay.

Recommendation

136. I recommend that the appeal be allowed subject to the conditions set out below.

John Braithwaite

Inspector

INQUIRY DOCUMENTS

- 1 Appearances for the Appellants.
- 2 Outline Opening Submissions on behalf of the Appellants.
- 3 Letter of notification of the Inquiry and list of those notified.
- 4 Appellants' Outline Opening Submissions for APP/H0738/A/13/2192538.
- 5 Council's Opening Note.
- 6 Bundle of Case Law submitted by the Council.
- 7 Bundle of Case Law submitted by the Appellants.
- 8 Statement of Common Ground (final version dated 28 May 2014).
- 9 Appellants' Closing Submissions for APP/H0738/A/13/2192538.
- 10 Proposed Bus Route – Drwg. No. SK09.
- 11 Green Infrastructure Delivery Plan for Ingleby Barwick/Thornaby.
- 12 Proposals Map for Stockton-on-Tees Local Plan dated 23 June 1997.
- 13 Ingleby Barwick Trail – Existing Options dated February 2014.
- 14 Ingleby Barwick Parish Boundary in 2003/4.
- 15 Draft Agreed Conditions Version 3.
- 16 Unexecuted version of Section 106 Agreement.
- 17 Statement of Ms L Baldock.
- 18 Statement of Mr G Walker.
- 19 Statement of Mr P Hadfield.
- 20 Stockton-on-Tees Borough Council Closing Submissions.
- 21 Maureen Smith v SoS for the Environment, Transport and the Regions.
- 22 Appellants' Closing Submissions.
- 23 Appellant's Application for Costs.
- 24 Highways and Transport Statement of Common Ground.
- 25 Core Strategy Strategic Diagram.
- 26 ES Volume 1(a) – Revised Non-Technical Summary.
- 27 ES Volume 2 – Environmental Statement.
- 28 ES Volume 3 – Appendices, Figures and Drawings.
- 29 ES Volume 4 – Addendum to Environmental Statement.
- 30 ES Volume 5 – Appendices to the Addendum (File 1 of 2).
- 31 ES Volume 5 – Appendices to the Addendum (File 2 of 2).

CORE DOCUMENTS

- 1 Stockton-on-Tees Adopted Local Plan 1997 showing saved and deleted policies.
- 2 Stockton-on-Tees Adopted Core Strategy (March 2010).
- 3 Stockton-on-Tees Regeneration DPD Issues and Options (2007).
- 4 Stockton-on-Tees Core Strategy Review – Planning for Housing: Issues and Options (July 2011).
- 5 Stockton-on-Tees Regeneration and Environment Local Development Document – Preferred Options (July 2012).
- 6 Stockton-on-Tees Regeneration and Environment Local Development Document – Preferred Options Consultation Statement (July 2012).
- 7 Stockton-on-Tees Regeneration and Environment Local Development Document: North of the Borough Map (July 2012).
- 8 Stockton-on-Tees Regeneration and Environment Local Development Document: South of the Borough Map (July 2012).
- 10 Extract from Appendix B – Landscape Sensitivity / Capacity Survey Sheets – Capacity Survey Sheet: A19 Fringe and Ingleby Barwick Fringe from the Stockton-on-Tees Borough Council Landscape Capacity Study (July 2011).
- 11 Extract ‘Yarm Rural Fringe’ from Stockton-on-Tees Borough Council Landscape Character Assessment (White Young Green) (July 2011).
- 12 Tees Valley Structure Plan 2004.
- 13 Stockton-on-Tees Green Infrastructure Strategy (November 2011).
- 14 Policy EN13 Bassleton Beck Green Wedge – Little Maltby Farm – extract from the Stockton-on-Tees Local Plan Inspector’s Report 1996.
- 15 Green Wedges – extract from the Proof of Evidence submitted to the Stockton-on-Tees Local Plan Inquiry by Stockton-on-Tees Borough Council in respect of Policies EN1 to EN18 of the Environment Chapter: January 1995.
- 16 Review of the Limits to Development and Green Wedges: Stockton-on-Tees Borough Council (May 2010).
- 17 Extract from Planning Policy Statement 12: Local Spatial Planning (2008).
- 18 Representation from Satnam Planning on behalf of Tiviot Way Investments in response to the Regeneration and Environment LDD: Preferred Options.
- 19 Plan submitted by Satnam Planning on behalf of Tiviot Way Investments in response to the Regeneration and Environment LDD: Preferred Options showing extent of area referred to in the representation.
- 20 Ingleby Barwick 1977 Masterplan.
- 21 Ingleby Barwick 1991 Masterplan.
- 22 Ingleby Barwick 2002 Masterplan.
- 23 Resolution of the May 2002 Special Planning Committee.
- 24 Decision Notice from the Secretary of State granting planning permission for 7,920 dwellings at Ingleby Barwick.

- 25 Appeal decision for the Low Lane development.
- 26 Planning application committee report and consultation response from Technical Services regarding 14/0208/OUT plus Decision Notice dated 17/04/14.
- 27 Committee Report for Mount Leven Farm (Retirement Village) 13/0776/EIS plus Decision Notice dated 20/09/14.
- 28 April 2014 Housing Land Supply Monitor.
- 30 Environmental Scoping Report and LPA response.

RECOMMENDED CONDITIONS

1. The development hereby permitted shall be carried in accordance with the following approved plans: Site Plan Ref. No. 110096-D-010-A, Site Access Plan Ref. No. 1310-91/SCG/04, and Parameters Plan Ref. No. 1835:22.

Reason: To ensure that the development is implemented as approved.

2. Details of the appearance, landscaping, layout, and scale of each phase of the development (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before development of the phase concerned begins, and the development shall be carried out as approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990 and Article 3(1) of the Town and Country Planning (General Development Procedure) Order 1995.

3. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990 and Article 3(1) of the Town and Country Planning (General Development Procedure) Order 1995.

4. The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990 and Article 3(1) of the Town and Country Planning (General Development Procedure) Order 1995.

5. No development shall take place until a Phasing Programme for the development hereby permitted has been submitted to and approved in writing by the local planning authority. The programme shall identify the phasing of infrastructure, landscaping, public open space (in accordance with the Open Space Strategy), accesses, associated community facilities and residential areas within the development. Development shall be carried out in accordance with the approved Phasing Programme.

Reason: To ensure that the development is properly phased.

6. No development shall take place until an Open Space Strategy for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The strategy shall identify the extent, location and design of public open space within the development. Development shall be carried out in accordance with the approved Open Space Strategy.

Reason: To ensure that the development has appropriate and adequate open space.

7. The number of dwellings hereby permitted shall not exceed 550 and the local centre hereby permitted shall not exceed a total site area of 2500 square metres. No retail unit within the local centre shall exceed 280 square metres.

Reason: To limit the development to the number of dwellings applied for.

8. No development shall take place until details of how the housing in any phase of the development will meet at least 10% of its predicted energy requirements, on site, from renewable energy sources, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: In the interests of the environment and sustainability.

9. The dwellings hereby permitted shall achieve at least Code Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying the Code Level that has been achieved.

Reason: In the interests of sustainability.

10. No construction activity or deliveries shall take place except between the hours of 0800 and 1800 on Monday to Friday and 0900 and 1300 on Saturdays. There shall be no construction activity or deliveries on Sundays or Bank Holidays.

Reason: To protect the amenities of nearby residents.

11. No waste products resulting from the construction of the development hereby permitted shall be burned on the site except in an appliance first approved in writing by the local planning authority.

Reason: To protect the amenities of nearby residents.

12. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority relevant to that phase of the development hereby permitted. The CMS shall include details of the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; wheel washing facilities; measures to control and monitor the creation of dust and dirt during construction; a Site Waste Management Plan; details of the routing of heavy goods vehicles; measures to protect existing footpaths and verges; and means of communication with local residents. The approved CMS shall be adhered to throughout the construction period relating to that phase of the development.

Reason: To protect the amenities of nearby residents and in the interests of highway safety.

13. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Ref: 6804/JMcK/001/03 and the following mitigation measures detailed within the FRA:

1. Limiting the surface water run-off generated up to and including the 100 year (plus climate change) critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
2. The discharge should be restricted to the equivalent greenfield runoff rate for the undeveloped site of 48.3 l/s. Attenuation will need to be provided for rates above this as stated in section 7.8.5 of the FRA.

The mitigation measures shall be implemented prior to occupation of any dwelling and subsequently in accordance with the phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the local planning authority.

Reason: To ensure that the development is not subject to, and does exacerbate, flooding.

14. No development shall take place until a scheme for the provision and management of a 10 metre wide buffer zone (measured from the bank top) to the east of Bassleton Beck has been submitted to and approved in writing by the local

planning authority. Development shall be carried out in accordance with the approved scheme.

Reason: In the interests of landscape character and biodiversity.

15. No development in any phase shall take place until a timetable for the implementation of the ecological mitigation measures within that phase, as set out within the Extended Phase 1 Habitat Survey (The Appleton Group, June 2013) and the Survey of Trees for Bat Roosting, Foraging Potential (The Appleton Group, July 2013) and Badger Survey (The Appleton Group August 2013), has been submitted to and approved in writing by the local planning authority. The ecological mitigation measures shall be implemented in accordance with the approved timetable.

Reason: To protect the ecology of the area.

16. No development in any phase shall take place until a programme of archaeological work for that phase has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

Reason: To protect archaeological interests.

17. No development shall take place on any phase of the development until a scheme for the protection of habitable rooms within the dwellings on that phase from the effects of traffic noise has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.

Reason: In the interests of residential amenity.

18. Development shall not commence on any phase until a detailed scheme for the disposal of foul and surface water from that phase has been submitted to and approved in writing by the Local Planning Authority. Development of that phase shall be carried out in accordance with the approved scheme.

Reason: To protect the water environment.

19. No development shall take place until the location of the 1.1 hectare primary school site has been submitted to and approved in writing by the local planning authority.

Reason: In the interests of the education requirements of primary school age residents.

20. No development shall take place until details of the internal access road layout have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure that the development has an acceptable layout.

21. No dwelling shall be occupied until a Residential Travel Plan, including procedures for its implementation, has been submitted and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved Travel Plan.

Reason: To ensure that residents have sustainable transport opportunities.

22. No development shall take place until details of a footway and cycle connection between the site and Wellbrook Close has been submitted to and approved in writing

by the local planning authority. The footway and cycle connection shall be completed as approved and brought into use before the 100th dwelling hereby permitted has been occupied.

Reason: To ensure that residents have foot and cycle access to the existing development.

23. Before the 75th dwelling hereby permitted has been occupied details of a segregated left turn lane at the Thornaby Road Roundabout junction with Ingleby Way and Stockwell Avenue, as shown in indicative form on plan 1310-91/SK01/A, shall be submitted to and approved in writing by the local planning authority. The altered junction shall be completed as approved and brought into use before the 150th dwelling hereby permitted has been occupied.

Reason: In the interests of highway safety.

24. No dwelling hereby permitted shall be occupied until details of the site accesses onto Low Lane, as shown in indicative form on plan 1310-91/SCG/04, have been submitted to and approved in writing by the local planning authority and the site accesses have been completed as approved and brought into use.

Reason: In the interests of highway safety.

25. No development shall take place until details of buffer planting for the eastern boundary have been submitted to and approved in writing by the local planning authority. The details shall include a maintenance plan. The buffer planting shall be planted in the first planting season after the details are approved and shall thereafter be maintained in accordance with the maintenance plan.

Reason: To ensure that suitable boundary planting is provided and maintained.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.