



Department for  
Communities and  
Local Government

Colin Griffiths Esq.  
Satnam Planning Services  
17 Imperial Square  
CHELTENHAM  
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GL50 1QZ

Our Ref: APP/H0738/A/13/219538  
Your ref:

26 September 2013

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY TIVIOT WAY INVESTMENTS LTD  
LAND NORTH OF LOW LANE, HIGH LEVEN, INGLEBY BARWICK, TS17 0LW  
APPLICATION REF: 12/2517/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul Griffiths BSc(Hons) BArch IHBC, who held an inquiry between 14 and 17 May and on 28 June 2013 into your appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Stockton-on-Tees Borough Council ('the Council') to refuse outline planning permission for the erection of Ingleby Manor Free School and Sixth Form and residential development (350 houses) including means of access, dated 19 October 2011.

2. The appeal was recovered for the Secretary of State's determination on 18 February 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for residential development of over 150 units or on sites 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.

**Inspector's recommendation**

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and planning permission granted. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation. A copy of the Inspector's report (IR) is enclosed. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

### **Matters arising after the close of the inquiry**

4. Four letters were received after the inquiry had closed. The Secretary of State has carefully considered these representations, but as they do not raise matters that would affect his decision, he has not considered it necessary to circulate them to all parties. The correspondence is listed at Annex A to this letter and copies will be provided on application to the address at the bottom of the first page to this letter or to PCC@communities.gsi.gov.uk.

5. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance is currently in test mode and for public comment, he has attributed it limited weight.

### **Policy Considerations**

6. 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), and the Stockton Core Strategy Development Plan Document (2010). The Secretary of State agrees with the Inspector that the development plan policies relevant to the appeal are those set out at IR5.2 – 5.8.

7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework – March 2012); the Ministerial Policy Statement - planning for schools development (August 2011); and Circular 11/1995: *Use of Conditions in Planning Permission*.

### **Main issues**

8. The Secretary of State agrees with the Inspector that the main issue to be considered is whether any harmful impacts that would be caused by the proposals, in terms of the green wedge, the character and appearance of the area, and recreational opportunities, in particular, are outweighed by any benefits (IR11.1).

9. The Secretary of State notes that the Council cannot demonstrate a five year supply of deliverable housing sites (IR11.2), the supply of deliverable housing sites is far short of the five year supply required in the Framework (IR11.3), and that no specific development plan policy was brought to the attention of the Inspector which deals with the provision of the Free School and Sixth Form (IR11.4). He has had regard to paragraph 72 of the Framework which sets out that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities and agrees with the Inspector that great weight should be given to the need to create schools. The Secretary of State has also had regard to paragraph 14 of the Framework which makes it clear that where the development plan is absent, silent, or out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole (IR11.5).

10. The Secretary of State notes that the site lies within the designated green wedge, and that while it has little to offer in terms of landscape quality, being flat and largely featureless, it is open in character, undeveloped, and in agricultural use. He is mindful that one of the core principles of the Framework is that the intrinsic character and beauty of the countryside should be recognised and he accepts the Inspector's conclusions that the proposal falls contrary to the development plan policies stated in IR11.6 & 11.7. He agrees with the Inspector that the site's utility, in recreational terms, is limited to the footpath that crosses it (IR11.8) and, because the footpath would be a less attractive recreational experience for most, as a result of the development, the proposal would be harmful and is contrary to the development plan (IR11.9).

11. For the reasons outlined by the Inspector at IR11.10 to 11.12, the Secretary of State agrees with the Inspector's conclusion that, taken together, the degree of harm that the proposal would cause in relation to the green wedge designation, the character and appearance of the area, and the utility of the footpath in recreational terms would be limited (IR11.13). In so doing, he notes the Inspector's cognisance of the manner in which the Council has sought to address their housing supply shortfall.

12. The Secretary of State agrees with the Inspector that, in terms of the open market housing proposed, while the Council is taking steps to address the existing shortfall, the provision of around 300 units represents a significant benefit (IR11.14). For the reasons outlined at IR11.15, the Secretary considers that the provision of 53 units of affordable housing that the scheme would bring forward also represents a significant benefit. For the reasons given by the Inspector, the Secretary of State considers that the doubts about delivery raised by the Council bear little on the weight to be attached to the benefits inherent in the provision of open-market and affordable housing (IR11.16).

13. In terms of the Free School and Sixth Form, for the reasons outlined in IR11.17 to 11.19, the Secretary of State accepts the Inspector's conclusion that there is no cogent reason why anything other than great weight, as outlined in paragraph 72 of the Framework, should be attached to the benefits of providing a new Free School and Sixth Form (IR11.20). He also agrees with the Inspector's conclusions about other benefits outlined in IR11.21 & 11.22 in respect of community use, employment and economic activity.

14. The Secretary of State accepts the Inspector's conclusions on a number of other issues: the Grade II listed Little Maltby Farm (IR11.23), the concerns raised by the Council and others about the appellant's future intentions for the green wedge (IR11.24), the Council's concern about the lack of a master-plan (IR11.25), and the argument that permitting housing on the appeal site would undermine the Council's attempts to deal with their housing supply shortfall (IR11.26).

### **Balancing Harm against Benefits**

15. The Secretary of State agrees with the Inspector's conclusions, at paragraph 11.27 of the report, that the sum total of the harm caused would be limited.

16. For the reasons outlined at IR11.28, the Secretary of State agrees with the Inspector that the different elements of the proposals would bring forward benefits of a different nature. In terms of the housing element, given the prevailing situation in terms of housing supply in the Borough, the Secretary of State is satisfied that these

benefits are sufficient to justify the housing element of the proposals, whether or not the Free School and Sixth Form ever materialises. He agrees with the Inspector that, for this reason, there is no need for a Grampian condition linking the two elements together. The Secretary of State considers that the Free School and Sixth Form would widen choice in education, provide community facilities, and generate employment and economic activity. He agrees with the Inspector that these factors add significantly to the benefits the housing element of the proposals would bring forward.

### **Conditions and Obligations**

17. The Secretary of State has had regard to the proposed conditions set out at Annex D of the Inspector's Report and to the planning obligations contained in the Unilateral Undertaking referred to in 10.1-10.17 of the IR. He has taken account of the Inspector's comments at IR9.1-9.16 and 10.1-10.17 on conditions and on the obligations, and to Circular 11/95 and the CIL Regulations 2010 as amended. He is satisfied that the conditions are reasonable and necessary, and meet the tests of Circular 11/95. He is also satisfied that the planning obligations are directly related to the development and are fairly and reasonably related to it in scale and kind, and is CIL-compliant. He therefore agrees with the Inspector's reasoning and conclusions on these matters.

### **Overall Conclusion**

18. The Secretary of State acknowledges that the proposals fail to accord with the development plan in terms of its impact on the green wedge, the character and appearance of the area, and recreational opportunities. He agrees with the Inspector that, given the provisions of paragraph 215 of the Framework, and the findings in the IR, the Framework is a material consideration that carries weight such as to justify a decision other than in accordance with the development plan.

### **Formal Decision**

19. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission for the erection of Ingleby Manor Free School and Sixth Form and residential development (350 houses) including means of access, in accordance with planning application ref: 12/2517/OUT, dated 19 October 2011, subject to the conditions listed at Annex B of this letter.

20. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

21. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

22. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

23. A copy of this letter has been sent to the Council. A notification letter or e-mail has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Lindsay Speed**

Authorised by the Secretary of State to sign in that behalf

**POST INQUIRY CORRESPONDENCE****ANNEX A**

<b>Name / Organisation</b>	<b>Date</b>
<b>R Patterson, Group Leader Ingleby Barwick Independent Society</b>	<b>15 July 2013</b>
<b>Miss Vianne Amini</b>	<b>17 July 2013</b>
<b>Rt Hon Michael Gove MP, Secretary of State for Education</b>	<b>23 July 2013</b>
<b>J D Pemberton</b>	<b>27 July 2013</b>
<b>James Wharton MP</b>	<b>11 September 2013</b>

## CONDITIONS

## Annex B

1. 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.
2. 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.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: 110096-D-001: Existing Site Plan and Existing Levels; and 8067 SCG/7: Vehicular Access to the Appeal Site.
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. This shall identify the phasing of infrastructure, landscaping, public open space (in accordance with the Open Space Strategy), accesses, the Free School and Sixth Form and associated facilities, and residential areas within the development permitted herein. Development shall be carried out in accordance with the approved Phasing Programme.
6. No development shall take place until an Open Space Strategy has been submitted to and approved in writing by the local planning authority. This shall identify the extent, location and design of public open space within the development permitted herein. Development shall be carried out in accordance with the approved Open Space Strategy.
7. The total number of dwellings authorised by this permission shall not exceed 350.
8. No development shall take place until details of how the Free School and Sixth Form 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. No development shall take place on any phase of housing until details of how the housing in that phase 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.
10. The dwellings approved herein shall achieve Code Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 4 has been achieved.

11. The Free School and Sixth Form shall achieve a BREEAM 'excellent' rating and shall not be brought into use until achievement of that rating has been certified.
12. No construction activity 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 on Sundays or Bank Holidays.
13. No waste products derived as a result of the development approved herein shall be burned on the site except in an appliance first approved in writing by the local planning authority.
14. No development shall take place, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved CMS shall be adhered to throughout the construction period and shall provide 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 emission of dust and dirt during construction; a Site Waste Management Plan; details of the routing of associated HGVs; measures to protect existing footpaths and verges; and a means of communication with local residents.
15. No development shall take place until a scheme for the management of surface water during the construction phase and thereafter, including sustainable drainage measures, has been submitted to and approved in writing by the local planning authority. Surface water run-off from the site shall be limited to 42 l/s. Development shall be carried out in accordance with the approved details.
16. No development shall take place until a scheme for the provision and management of a 5 metre buffer zone around the watercourse has been submitted to and approved in writing by the local planning authority. The buffer zone shall be implemented in accordance with the approved details and retained as such thereafter.
17. No development shall take place until a timetable for the implementation of the ecological mitigation measures within the Extended Phase 1 Habitat Survey (The Appleton Group, October 2012) and the Survey of Trees for Bat Roosting and Foraging Potential (Martin Prescott Environmental Services, January 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.
18. No development shall take place in any particular phase of the development until a programme of archaeological work for the phase concerned, including a written scheme of investigation, and a timetable, has been submitted to and approved in writing by the local planning authority. The archaeological work shall be carried out in accordance with the approved details.
19. If during the course of development of any particular phase of the development, contamination not previously identified is found to be present, then no further development on that phase shall be carried out until the developer has submitted to, and obtained written approval from the local planning authority



for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be carried out as approved.

20. No development shall take place until a scheme for the protection of habitable rooms within the dwellings 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 details and retained as such thereafter.
21. The Free School and Sixth Form shall not be brought into use until a scheme for the wider use of the facility by the community has been submitted to and approved in writing by the local planning authority. The Free School and Sixth Form shall be operated in accordance with the approved scheme.
22. The Free School and Sixth Form shall be used for those purposes and for no other primary purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

End



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# **Report to the Secretary of State for Communities and Local Government**

**by Paul Griffiths BSc(Hons) BArch IHBC**

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

**Date: 16 August 2013**

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**Town and Country Planning Act 1990**

**Appeal by**

**Tiviot Way Investments Ltd**

**Against the decision of**

**Stockton-on-Tees Borough Council**

Inquiry held between 14 and 17 May and on 28 June 2013

Land at Low Lane, Ingleby Barwick TS17 0LW

File Refs: APP/H0738/A/13/2192538

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**Appeal Ref: APP/H0738/A/13/2192538**

**Land at Low Lane, Ingleby Barwick TS17 0LW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Tiviot Way Investments Ltd against the decision of Stockton-on-Tees Borough Council.
- The application Ref.12/2517/OUT, dated 19 October 2011, was refused by notice dated 5 February 2013.
- The development proposed is Ingleby Manor Free School and Sixth Form and residential development (350 houses) including means of access.

**Summary of Recommendation: The appeal be allowed and planning permission granted, subject to conditions.**

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**1. Procedural Matters**

- 1.1 The Inquiry opened on 14 May 2013 and sat on the following three days before being adjourned. I carried out a series of unaccompanied site visits in accordance with schedules prepared by the Council<sup>1</sup> and agreed by the main parties on 27 June 2013. The Inquiry closed on the following day.
- 1.2 Throughout the report, I have referred to the submitted documents through the use of footnotes. References thus [--] cross-refer to previous or succeeding paragraphs in the report.

**2. The Site and its Surroundings**

- 2.1 As set out in the Statement of Common Ground on Planning Issues<sup>2</sup>, the appeal site is 18.2 hectares in extent, comprising a number of fields. It is flat, broadly rectangular in shape, with an easterly projection, and bounded by open land to the north and east, Low Lane to the south, and the settlement of Ingleby Barwick to the west. It is most easily described as urban fringe<sup>3</sup>.

**3. Planning and Associated History**

- 3.1 The planning and associated history of the site is fully set out in the Statement of Common Ground on Planning Issues<sup>4</sup>.

**4. The Proposal**

- 4.1 The proposal is made up of two elements: a Free School and Sixth Form and a residential development of up to 350 houses.
- 4.2 The vehicular access to the site would be from Low Lane with pedestrian access from footpath links to the north and west into Ingleby Barwick, as well as from Low Lane.
- 4.3 The originating application was made in outline with all matters, save for means of access, reserved for future determination. I have considered the appeal on the same basis.

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<sup>1</sup> ID34 and ID50

<sup>2</sup> ID1

<sup>3</sup> ID1 paragraph 1.6

<sup>4</sup> ID1 paragraphs 3.1 to 3.4

## 5. Planning Policy

- 5.1 The statutory development plan for the area includes the saved policies of the Stockton-on-Tees Local Plan<sup>5</sup> that was originally adopted in 1997, and the Stockton Core Strategy Development Plan Document, adopted in March 2010<sup>6</sup>.
- 5.2 In their reason for refusal the Council referred to LP Policy HO3. This deals with development on unallocated sites within the limits to development and is permissive provided that the land is not specifically allocated for another use or underneath electricity lines; development does not result in the loss of a site which is used for recreational purposes, or unacceptable loss of amenity for adjacent land users, is sympathetic to the character of the site and the locality, and satisfactory arrangements can be made for access and parking.
- 5.3 CS Policy 1 (CS1) sets out the spatial strategy for the Borough and in terms of the provision of housing, seeks to prioritise previously developed land in the Core Area with particular emphasis on projects that help to deliver the Stockton Middlesbrough Initiative and support Stockton Town Centre. Elsewhere, housing development is meant to support the regeneration of Stockton, Billingham and Thornaby.
- 5.4 CS Policy 2 (CS2) covers sustainable transport and travel while CS Policy 3 (CS3) refers to sustainable living and climate change. Criterion 1 requires all new residential development to achieve a minimum of Code Level 3 of the Code for Sustainable Homes up to 2013, and, thereafter, Code Level 4. Criterion 2 requires all new non-residential development to be completed to a BREEAM rating of 'very good' up to 2013 and 'excellent' thereafter. Criterion 5 requires, for all major developments, including residential developments of 10 or more units and non-residential developments exceeding 1,000 square metres gross floor space, at least 10% of total predicted energy requirements to be provided, on site, from renewable sources.
- 5.5 CS Policy 3 (CS3) criterion 8 requires development proposals to make a positive contribution to the local area, including existing features of natural, historic, archaeological or local character, including the provision of high-quality public open space.
- 5.6 CS Policy 8 (CS8) deals with housing mix and affordable housing. Criterion 5 sets out that affordable housing within a target range of 15-20% will be required on schemes of 15 dwellings or more and on development sites of 0.5 hectares and more. Affordable housing at a lower rate will only be accepted where robust justification is provided to show that provision at the standard rate would make the development economically unviable.
- 5.7 CS Policy 10 (CS10) is directed towards environmental protection and enhancement. Criterion 3 sets out that the separation between settlements will be maintained through the protection and enhancement of the openness and amenity value of strategic gaps between the conurbation and the surrounding towns and villages and, of direct relevance here, green wedges, including the Bassleton Beck Valley between Ingleby Barwick and Thornaby.

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<sup>5</sup> C5: referred to hereafter as the LP

<sup>6</sup> C6: referred to hereafter as the CS

- 5.8 The Council has produced a series of documents that relate to emerging policy<sup>7</sup>. Strategic Policy SP4<sup>8</sup> continues the approach to green wedges found in CS Policy 10. However, this, and the other emerging policy documents referred to, are at a very early stage of the process towards adoption, and have yet even to be examined. As such, they can attract little weight. In contrast, the Framework<sup>9</sup> is a material consideration that carries significant weight.

## 6. The Case for the Council

- 6.1 The case for the Council is fully set out in their Closing Statement to the Inquiry<sup>10</sup>. It can be summarised under a series of headings:

### *The Proposals*

- 6.2 There are two elements to the proposals: the erection of a Free School and Sixth Form and a residential development of 350 houses. However, it is important to note that in terms of the school, the intention of the appellant is limited to the provision of serviced land for it, on a leased basis. It will be the responsibility of the Ingleby Manor Foundation Trust<sup>11</sup> to build the school once the necessary funding from the Department for Education<sup>12</sup> has been secured through the vehicle of the Education Funding Authority<sup>13</sup>. This, coupled with the fact that the housing element is the commercial driver of the scheme, raises uncertainty about whether the Free School will ever come forward.
- 6.3 Despite the relationship between the school and the housing elements, it is surprising that the appellant has not sought to justify the number of houses proposed on a viability or landscape basis. Equally inconsistent is the continued challenge to the financial contribution sought by the Council for primary school provision to mitigate the impact of the housing proposed, despite provision for it being made in the completed Unilateral Undertaking<sup>14</sup>.
- 6.4 Notwithstanding the claimed urgency of providing new housing, and affordable housing, the appellant has offered only 53 units of the latter (15%) despite the scheme being able to bear, in economic terms, 70 units (20%)<sup>15</sup>. Moreover, the appellant refuses to accept the inclusion of a link between the provision of the school and construction of the houses in the UU. All that has been agreed is a Grampian style condition restricting occupation of the houses until a long term lease has been entered into with the providers of the school.
- 6.5 While the appellants have stressed the need to alleviate the current housing supply shortfall and provide secondary school places, no direct evidence has been provided to show that there is a realistic prospect of the Free School opening in September 2015, or that a meaningful amount of new housing will be provided in the next five years. Upon closer analysis, it is eminently possible that only the housing element of the proposals will come forward.

<sup>7</sup> For example C8 – C15, ID40 and ID49

<sup>8</sup> C9: Regeneration and Environment Local Development Document

<sup>9</sup> The National Planning Policy Framework

<sup>10</sup> ID52

<sup>11</sup> Referred to hereafter as IMFT

<sup>12</sup> Referred to hereafter as DfE

<sup>13</sup> Referred to hereafter as EFA

<sup>14</sup> Referred to hereafter as UU: ID51

<sup>15</sup> Accepted by Colin Griffiths in x-e

### *Housing Provision*

- 6.6 The Council accepts that it cannot demonstrate a five year supply of housing land<sup>16</sup>. There is 4.08 years supply assuming a 5% buffer and 3.6 years supply assuming a 20% buffer<sup>17</sup>. However, the Council is taking steps to address the current shortfall<sup>18</sup>.
- 6.7 In that context, the housing element of the proposals might be desirable, but they are not essential. The Council has embarked on a targeted review of its CS in order to identify suitable sites that will meet the requirement to demonstrate a five year supply of housing land<sup>19</sup>. Some of those identified sites are already coming forward<sup>20</sup>. Allowing housing to come forward outside that process poses the risk that sustainability considerations will not be addressed properly.
- 6.8 Obviously, the current lack of a five year supply of housing land is a material consideration that carries significant weight. However, it is not the only material consideration. Paragraph 14 of the Framework advises that even where relevant policies are out of date, planning permission should not be granted if the adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. The Council believes that to be the case here.
- 6.9 The Council is also concerned that the proposal would prejudice the proper strategic planning of the area. The response of the appellant to the draft Regeneration and Environment LDD Preferred Options<sup>21</sup> clearly set out their intention to bring forward a much larger scheme.
- 6.10 Indeed, the likelihood that HM Treasury will seek to recover some of the capital grant for the Free School from funds generated by the release of land for a further 1,000 houses<sup>22</sup> adds further pressure on the Council to accept the loss of the green wedge in its entirety, despite there being alternative, sustainable locations for new housing elsewhere in the Borough.
- 6.11 Consideration of the limited proposal promulgated at this stage will prevent a properly masterplan-led approach to the whole site, as required by paragraph 17 of the Framework.
- 6.12 More significantly, there are issues around the sustainability credentials of the appeal site both in terms of the school and the housing. While there would be good access to sport and recreation facilities, and a nearby primary school, the appeal site is not on a Core Bus Route and the nearest retail centres are over a kilometre away. Indeed, it is likely that the bus service will deteriorate because of the removal of Council subsidies<sup>23</sup>.

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<sup>16</sup> Para 6.4.1 of the Planning SoCG: ID1

<sup>17</sup> Using March 2012 as a base date in each case

<sup>18</sup> Through the evidence of Mrs Young in particular: C1 and C2

<sup>19</sup> Set out in particular in C8 – C15, ID40 and ID49

<sup>20</sup> A2: Appendices 10 and 19 and A3: Appendix D, for example C26 and C27

<sup>22</sup> Accepted by Colin Griffiths in x-e

<sup>23</sup> ID37 refers

### *The Green Wedge*

- 6.13 The appeal site is, contrary to the assertion of the appellant<sup>24</sup>, located wholly within a green wedge, designed to maintain the separation between the settlements of Ingleby Barwick and Thornaby, designated in the CS, and protected by CS Policy CS10.
- 6.14 Objective 8 of the CS is that 'strategic gaps and green wedges that prevent the coalescence of built-up areas will be retained as important components'. The intention of the Council, expressed in the draft Regeneration and Environment LDD Preferred Options<sup>25</sup> is to retain the existing designation.
- 6.15 Unsurprisingly, the Council accepts that a green wedge is not a green belt. However, because of the density of the settlements in the Borough, and their proximity, the Council contends that green wedges play a critical role in preventing settlements from merging as well as protecting green spaces and recreational opportunities. It is acknowledged that the green wedge at issue is relatively wide and that the proposal as it stands will not lead to the merger of Ingleby Barwick and Thornaby. However, there can be no question that the proposal will erode from the green wedge and result in an irretrievable change of character from open agricultural land to a built-up area.
- 6.16 The appellant contends that the impact of the proposed development can be mitigated through buffer planting but this may take 15 years to reach maturity<sup>26</sup>. The development of the appeal site would be clearly visible during this time and in particular, from Thornaby Road. That the gap between Ingleby Barwick and Thornaby had reduced would be obvious and even when buffer planting reached maturity, it would draw attention to the presence of development.
- 6.17 The amenity value of the appeal site must be considered too. Paragraphs 109 and 123 of the Framework recognise the importance of the natural environment and tranquil areas. Ingleby Barwick is not blessed with much open space and those areas of green wedge on the periphery of the settlement are therefore important, also, for informal recreation. Indeed when the Secretary of State permitted the development of Ingleby Barwick in 1990<sup>27</sup>, the intention was for the appeal site to be left undeveloped in order to ensure a balanced development of the New Town.
- 6.18 In its current state, the appeal site maintains an element of peace and quiet. It is evident that as well as the footpath crossing it, there are 'desire lines' actively used by local residents for recreation. The description of the site as rural fringe<sup>28</sup> remains justified.
- 6.19 Given the value of the appeal site as part of a green wedge, in visual, and recreational terms, the social benefits of protecting the site in its current form outweigh the benefits of developing the site in the manner proposed.

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<sup>24</sup> A1: Paragraph 5.4.18 refers also A2: Appendix 15

<sup>25</sup> C9: Draft Strategic Policy SP4

<sup>26</sup> ID17

<sup>27</sup> ID16

<sup>28</sup> ID36 refers

### *Affordable Housing*

- 6.20 The appellant contends that while 20% could be provided, the provision of 15% affordable housing accords with CS Policy CS8<sup>29</sup>. While 15% would meet the lower end of the range set out in CS Policy CS8, the appellant has not provided anything to explain why the Council's consistent and pragmatic practice of seeking 20%, at the higher end of the policy range<sup>30</sup>, should not be applied in this case. For example, there is nothing to suggest that the housing development proposed is not viable, or the Free School would not come forward, if affordable housing is provided at a rate of 20%<sup>31</sup>.
- 6.21 The 2012 Strategic Housing Market Assessment<sup>32</sup> identifies an annual deficit in the provision of affordable housing of 560 homes. The annual target for Ingleby Barwick is 81. The provision of 53 affordable housing units (at a rate of 15%) would go some way towards that, but 70 (at a rate of 20%) would go much further.

### *The Free School*

- 6.22 The Free School is promoted as a key benefit of the proposal overall but it is clear that the degree of local support for the Free School is questionable, especially when the housing element of the overall proposals is taken into account. Moreover, little evidence has been provided by the appellant or IMFT to show that there is a realistic prospect of it opening by September 2015. Indeed, it was not until just before the Inquiry opened that some evidence was provided<sup>33</sup>. However, EFA have provided no witness to the Inquiry, and as the continuing exchanges with the Council bear out<sup>34</sup>, have failed to give any proper reassurance.
- 6.23 Equally IMFT have provided no surety of delivery. Despite having a Project Manager, and despite being promised full support from the DfE<sup>35</sup>, IMFT claimed to be unaware of Inquiry procedures and ill-prepared to answer important questions. The Council is left with significant doubts about whether the Free School will ever come forward, even in temporary accommodation. That must limit the weight that can be attached to this element of the proposals.
- 6.24 There is no clarity around the leasing and funding processes from the appellant, IMFT or EFA. Accordingly the Council is concerned that the housing might come forward without the Free School. As to funding, there are two possible conclusions. Either the Free School element of the proposals is based on an ambitious, fiscally irresponsible decision to build the school in the hope that students will come, or it is based on the need to show demand through student recruitment which must first be assessed, through a temporary facility, to demonstrate viability.

<sup>29</sup> A1: Paragraph 5.4.15 and elsewhere

<sup>30</sup> ID12

<sup>31</sup> Accepted by Colin Griffiths in x-e

<sup>32</sup> C1: Table 4 and paragraph 6.3 refer

<sup>33</sup> A3: Appendices A and B – Statements from EFA and IMFT

<sup>34</sup> C4: Appendices 10 and 11 in particular

<sup>35</sup> ID32 and the attached letter from the Secretary of State for Education in particular



- 6.25 The Council's view is that the latter must be assumed. In that context, there remains a likelihood that the Free School will fail to recruit a sufficient number of pupils to open temporarily in September 2014, thereby casting doubt over whether construction of the permanent facility can commence in August 2014, in order to be ready to accept pupils in September 2015.
- 6.26 Given that recruitment is the key, it would be abnormal if the DfE departed from the long-established practice of testing whether there is demand for places, before releasing the capital funding to construct the Free School. It must also be borne in mind that until the Free School secures funding, places cannot be allocated as part of the Council's co-ordinated admissions round.
- 6.27 Even then, only conditional places can be offered until there is a clear timetable as to when the Free School will be fully functioning. Given the importance parents naturally attach to secondary school choices, any uncertainty is bound to have a detrimental impact on recruitment. If sufficient recruitment fails to materialise, there will be an issue about funding and the Free School might not, therefore, materialise. That must limit the weight that can be attached to the claimed benefits.
- 6.28 As to the wider public interest of secondary education provision, this is not a situation where there are too few places at present. The Free School will be competing with three highly successful and popular secondary schools that are excellent in terms of their academic standards and extra-curricular offers. If the Free School failed to gain a grant of planning permission, other than a reduction in choice, no real harm would result.

#### *The Education Contribution*

- 6.29 The Council maintains that the requested contribution of £728,000 for primary school provision is reasonable, and justified, in the light of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the Framework. The Council has already invested to increase places in primary schools in Ingleby Barwick. If an additional 350 houses come forward, as proposed, this would increase demand and create a situation where primary schools are over-subscribed. That harmful impact of the proposal would require mitigation.

#### *Other Issues*

- 6.30 A financial contribution aimed towards mitigating the highway impacts of the proposals has been agreed<sup>36</sup> and is included in the completed UU<sup>37</sup>.

#### *Conclusion*

- 6.31 To summarise, there are sound and clear-cut reasons why the appeal should be dismissed.

### **7. The Case for the Appellant**

- 7.1 The case for the appellant is fully set out in their Closing Statement to the Inquiry<sup>38</sup>. It can be summarised under a series of headings:

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<sup>36</sup> ID2: Highways and Transport - Statement of Common Ground

<sup>37</sup> ID51

### *The Nature of the Originating Application*

- 7.2 The originating application was made up of two main elements: a Free School and Sixth Form; and a residential development. The two elements are not severable in that the Free School and Sixth Form will not come forward without the housing.
- 7.3 The housing element may be described as a facilitator for the school since it is the means by which serviced land will be provided for it. However, the proposal is not an enabling development and there is no mathematical link between the number of dwellings proposed, or the consequent land-take, and the nature of the Free School and Sixth Form.

### *Benefits*

- 7.4 The proposal will bring forward around 300 units of market housing in an area the Council agrees<sup>39</sup> is attractive to the market and a situation where the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. The proposal will also bring forward affordable housing to where there is a severe shortage. The proposal will, therefore, assist in meeting the Framework objective, set out in paragraph 47, of seeking to meet the full needs for housing. The Council agrees that this would represent a benefit<sup>40</sup>.
- 7.5 The proposal will allow the provision of a Free School and Sixth Form, declared by local residents, the IMFT, and Ingleby Barwick Town Council, to be desperately needed, at no cost to the Council, or local residents. Depending on the eventual management structure, the school facilities will be likely to be made available for community use. These are matters not in dispute.
- 7.6 These benefits can be brought forward on land that is not designated or protected, or indeed, valued, for its landscape qualities. Moreover, the proposals will provide employment, in construction and in the school, and attendant economic activity. These matters are not disputed by the Council<sup>41</sup>.

### *Housing Supply*

- 7.7 It is agreed that there is no more than a supply of 4.08 years. It is accepted that the policy implications of that, as set out in paragraph 49 of the Framework, and, as a result, paragraph 14, apply. If it is accepted that there has been persistent under-delivery, then the supply figure falls to 3.6 years, based on the need for a 20% buffer as set out in paragraph 47 of the Framework. Over the last four years, supply has averaged 492 units a year against an annual requirement of 600 units. Even including the massive spike in supply in 2007/08<sup>42</sup>, there has been an average under-delivery of 10%. Most tellingly, the Council accepted<sup>43</sup> that there has been persistent under-delivery since the beginning of the CS plan period in 2004/05.

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<sup>38</sup> ID53

<sup>39</sup> Accepted by Rosemary Young in response to a question from the Inspector

<sup>40</sup> Accepted by Rosemary Young in x-e

<sup>41</sup> Accepted by Rosemary Young in x-e

<sup>42</sup> C1: Table following paragraph 4.1

<sup>43</sup> Accepted by Rosemary Young in x-e

### *Affordable Housing*

- 7.8 The up-to-date evidence base for the delivery of affordable housing shows an annual requirement for 560 units, including 81 for Ingleby Barwick. The rate of delivery<sup>44</sup> shows an annual rate of 26% of the requirement, overall, and just 10% for Ingleby Barwick. The need for delivery is, as accepted by the Council, acute. The proposal will provide 53 units with the required tenure split. In terms of the development plan, the provision of affordable housing at a rate of 15% plainly accords with CS Policy CS8 criterion 5. The policy does not require any assessment of viability where provision is in the range of 15-20% and the Council accepted that<sup>45</sup>.
- 7.9 The Council appears to apply Policy CS8 in a rather different way requiring housing schemes on greenfield sites that are attractive to the market, to provide affordable housing at a rate of 20%<sup>46</sup>. There is no development plan policy, or Supplementary Planning Document, to that effect. The approach the Council adopts should not be afforded any weight.
- 7.10 This is reinforced by the latest position – the proposed consultation on a new draft SPD<sup>47</sup>. First, by seeking to make new policy requiring a standard target for affordable housing at 20% serves to demonstrate that this is not current policy. In seeking to amend adopted policy, the draft SPD is clearly unlawful and in any event, consultation on it has yet to commence. Clearly, it can attract no weight.

### *The Free School and Sixth Form*

- 7.11 As paragraph 72 of the Framework makes clear, national policy is extremely positive towards the provision of Free Schools. This is underlined by the Ministerial Statement of August 2011<sup>48</sup> which sets out that the creation of Free Schools remains 'one of the Government's flagship policies'. Moreover, it outlines that there is a presumption in favour of such proposals. The statement confirms that the Secretary of State 'will attach significant weight to the need to establish and develop state-funded schools when determining appeals that come before him for decision'. The commitment was strengthened further in the recent Spending Review<sup>49</sup>.
- 7.12 It is Government policy that the Free School and Sixth Form at issue should proceed and correspondence from the EFA makes this abundantly clear<sup>50</sup>. The Government's commitment to the proposal has been made on the basis that it has decided that secondary education provision in the area is to be developed in this manner. This was fully grasped in the Council's Report to Committee<sup>51</sup>. It was in that context that one of the Council's witnesses agreed that it was not the purpose of the Council to challenge the need for the school<sup>52</sup>.

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<sup>44</sup> C1: Table 3 following paragraph 6.1

<sup>45</sup> Accepted by Rosemary Young in x-e

<sup>46</sup> As confirmed by RY in x-e

<sup>47</sup> ID49

<sup>48</sup> ID9

<sup>49</sup> ID47

<sup>50</sup> A3: Appendix A in particular

<sup>51</sup> A2: Appendix 2 Paragraph 42

<sup>52</sup> Accepted by Rosemary Young in x-e

- 7.13 Despite that, the Council has, by calling an additional witness to give evidence<sup>53</sup>, sought to cast that position aside and re-run the Council's implacable political objection to a Free School in the area in favour of their own, locally controlled, provision. The Council recognised though that this aspect of their case was futile<sup>54</sup>. All the points raised were taken into account by the Secretary of State for Education in discharging his duties under the Academies Act 2010.
- 7.14 The purpose of the Inquiry is not to examine whether the Free School and Sixth Form is a good thing in terms of education policy, but whether it is acceptable in planning terms. There is plainly a need for the school and it would bring significant benefits.
- 7.15 There have been issues raised about delivery. However, a Grampian condition is proposed to link the delivery of the housing to the provision of land and access for the school. Following a grant of planning permission, the school will be delivered with an opening date of September 2015. The delivery of the school on the appeal site is not affected in any way by the timing, or indeed the existence, of the operation in temporary accommodation.

### *The Development Plan*

- 7.16 In terms of the saved policies of the Local Plan, Policy H03 was referred to and conflict was alleged with criteria 1, 3 and 5. This is plainly misplaced and in any event, the LP is to be considered out of date given the lack of a 5 year supply of deliverable housing sites.
- 7.17 Preparation of the Core Strategy began in 2006 and it was adopted in 2010. The central theme was to focus development on a defined area in need of regeneration. That failed and CS Policies CS1 and CS7 are recognised by the Council as being out of date<sup>55</sup>. Moreover, the Council has accepted that because it cannot demonstrate a five year supply of housing, the overall approach of the CS to the provision of housing is out of date<sup>56</sup>.
- 7.18 In terms of CS Policies CS3 criterion 8 and CS10 criterion 3, these seek to restrain housing and are, therefore, having regard to paragraph 49 of the Framework, out of date. Full weight cannot be given to these policies as the Council initially suggested<sup>57</sup> but subsequently distanced itself from<sup>58</sup>.
- 7.19 The Council has referred to emerging policy<sup>59</sup> but these were not relied in the Council's reason for refusal. The Council asserts that significant weight should be attached to these emerging policies<sup>60</sup> but that is untenable. There are outstanding objections and the emerging policies have yet to be examined. The SoS has consistently found that in such circumstances, very little or little weight can be placed on such emerging policy<sup>61</sup>.

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<sup>53</sup> Lynda Brown

<sup>54</sup> Accepted by Lynda Brown in x-e

<sup>55</sup> C1: paragraph 3.11

<sup>56</sup> A2: Appendix 10 for example

<sup>57</sup> C1: Paragraph 2.7 and repeated in C2

<sup>58</sup> Accepted by Rosemary Young in x-e

<sup>59</sup> C1: Paragraph 3.12 - 3.21

<sup>60</sup> C2: Paragraph 2.2

<sup>61</sup> A3: Appendices G & H for example

- 7.20 In terms of whether the proposal represents a sustainable form of development, it is agreed to be so in transport terms<sup>62</sup>. It is difficult to understand the occasional suggestions made by the Council about a lack of sustainability when one considers the recent grants of planning permission for housing elsewhere, the somewhat remote sites in Wynyard especially<sup>63</sup>.
- 7.21 On top of that, the provision of a Free School and Sixth Form on the site, a measure consistent with the original masterplan for Ingleby Barwick<sup>64</sup>, will limit the substantial amount of travel that currently takes place out of Ingleby Barwick for education purposes.

### *The Green Wedge*

- 7.22 The starting point of the analysis on this issue must be that the development plan policy that supports the Council's reason for refusal is not up to date. It is plainly not a 'specific policy' in the terms of paragraph 14 of the Framework.
- 7.23 The parties agree that the site is best described as urban fringe<sup>65</sup>. It has no designation for landscape character or quality. It is affected by traffic noise from the nearby A19 and the presence of surrounding development is clearly apparent from it. The only formal recreational resource it offers is the footpath that crosses it.
- 7.24 The objective of the Council's green wedge policy is to prevent the coalescence of settlements. In this case, according to the policy, it is intended to keep separate Ingleby Barwick and Thornaby, not Ingleby Barwick and the Teeside Industrial Estate. The proposals will not affect the gap between Ingleby Barwick and Thornaby. The separation between Ingleby Barwick and the Teeside Industrial Estate will be reduced but a gap of nearly half a kilometre will remain. The test is whether sufficient of a gap will remain to retain the sense of separation<sup>66</sup>. Clearly, it will.
- 7.25 It is relevant to note that the Council has taken a quite different approach in relation to other, recent, comparable cases. At Sandhill, Barwick Farm<sup>67</sup>, the Council approved housing in a green wedge on the basis of a housing supply shortfall taking account of the fact that sufficient of the green wedge would remain to retain the necessary sense of separation between settlements.
- 7.26 At Morley Carr<sup>68</sup>, a site outside development limits, and in a strategic gap, said to be broadly equivalent to a Green Belt, and of great importance<sup>69</sup>, planning permission was granted for housing on the basis of a housing supply shortfall. The way the Council has dealt with the site at Green Lane, Yarm<sup>70</sup>, and other sites in Wynyard, follows a similar path.

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<sup>62</sup> ID2

<sup>63</sup> C8-C10

<sup>64</sup> A2: Appendix 4

<sup>65</sup> ID1

<sup>66</sup> A2: Appendices 13 and 14 for example

<sup>67</sup> A2: Appendix 18

<sup>68</sup> A2: Appendix 10

<sup>69</sup> C2: Paragraphs 5.1 – 5.3

<sup>70</sup> A3: Appendix 10

### *Primary School Contribution*

- 7.27 No evidence was advanced to justify the required contribution for primary school provision. The evidence shows an existing deficiency in the area and that the Council intends to review school provision. There are no proposals planned to take place in a defined time frame. Inspectors and the Secretary of State are consistent in how this matter must be dealt with<sup>71</sup>. The tests of Regulation 122 of the CIL Regulations cannot be met. In particular, there is no scheme on which the contribution claimed could be spent, so it cannot be shown that the contribution sought is reasonably related in scale and kind to the development.

### *Other Issues*

- 7.28 The Council has raised doubts about whether the housing will be delivered within five years<sup>72</sup>. Deliverability is clearly relevant to assessing the supply situation but it has no place in development control decisions. Nevertheless, the strong likelihood is that spurred on by infrastructure spending in relation to the provision of the school, the housing will follow quickly thereafter.
- 7.29 The Council's view about whether the proposal is the first stage of a wider development is clearly confused. This is clearly a matter for future consideration and does not bear on any reasonable consideration of the proposals at issue. The same goes for the risible suggestion that the prospect of clawback from the Treasury would exert pressure on the Council to approve a wider scheme. The Council has also raised the lack of a masterplan but, subject to the approval of reserved matters, there is no good reason why the development proposed would prejudice development of the wider site.

### *Conclusion*

- 7.30 On that overall basis, the benefits of the proposal significantly outweigh the harm it would cause. The appeal should therefore be allowed.

## **8. Interested Persons**

- 8.1 **Peter Jordan MRTPI** of Persimmon Homes Teeside Ltd spoke against the proposal<sup>73</sup> on the basis that the scheme is an enabling development. There has been no financial appraisal to show that the land take for housing is the minimum necessary to secure the Free School and Sixth Form. Like all enabling developments, there needs to be a tie between the two elements to ensure delivery. What is proposed is not sufficient, and without a proper commitment, or guarantee, there is a good chance that the housing will come forward without the school.
- 8.2 **Ted Strike**, a local resident, expressed support for the proposal<sup>74</sup> criticising the Council for the failure to provide secondary school places for children on Ingleby Barwick, outlining further that traffic congestion will be reduced by the new secondary school because children will not have to be driven, or bussed, elsewhere, and the impact on the landscape has been overstated.

<sup>71</sup> A2: Appendix 14 paragraph 42 for example

<sup>72</sup> C1: Paragraph 4.4 for example

<sup>73</sup> ID19

<sup>74</sup> ID20

- 8.3 **William Feldon**, former Mayor of Ingleby Barwick, spoke strongly in favour of the proposals on the basis of the urgent need for a secondary school on Ingleby Barwick to serve resident children<sup>75</sup>.
- 8.4 **Roland Firby**, a resident of the Borough, expressed strong reservations about the scheme arguing that new housing should be focussed in a manner that supports Stockton town centre<sup>76</sup>.
- 8.5 **Katia Lightfoot**, a local resident, objected to the proposal on the basis that existing school provision is acceptable and there is nothing unusual about children going to school by bus. The new housing will place undue pressure on existing facilities and overall, the loss of the green wedge that would result is unacceptable, especially taking into account the appellant's wider ambitions<sup>77</sup>.
- 8.6 **Stephen Hadfield**, a resident of Ingleby Barwick, objects to the proposal on the basis that it does not represent a sustainable form of development. The Free School and Sixth Form is a fig leaf for grander plans to build housing on what is an important green wedge<sup>78</sup>.
- 8.7 **Stephen Fryer**, Chair of the IMFT and resident of Ingleby Barwick stressed the importance of education, welfare and safety of children as compelling reasons to allow the appeal<sup>79</sup>.
- 8.8 **Frances Lynch**, Director of the IMFT, and resident of Ingleby Barwick, set out the background to, and make up of, the IMFT. There is a clear need for additional secondary school places on the estate and children should be able to have the option to walk or cycle to school and have a sense of belonging and community. Travelling to school by bus, as many children currently do, is not acceptable. The new school will provide access for children to enrichment through extracurricular activities; remove the need to travel to and from school by bus; develop a sense of community in Ingleby Barwick; provide community facilities to benefit all the residents of Ingleby Barwick; and provide a more sustainable option with less environmentally costly travel patterns. There is strong support for the provision of the school from local residents and parents and from the Secretary of State for Education<sup>80</sup>.
- 8.9 **Councillor Kevin Faulks**, one of the ward members for Ingleby Barwick, spoke in an independent capacity expressing support for the Free School and Sixth Form, but not for the housing element of the proposals.

## 9. Conditions

- 9.1 A list of suggested conditions was submitted by the Council<sup>81</sup>. The suggested conditions were discussed in some detail at the Inquiry, in the light of the comments of the appellant upon them<sup>82</sup>, advice in Circular 11/95<sup>83</sup>, and paragraph 206 of the Framework.

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<sup>75</sup> ID21

<sup>76</sup> ID22 and ID44

<sup>77</sup> ID23 and ID43

<sup>78</sup> ID24

<sup>79</sup> ID25

<sup>80</sup> ID32

<sup>81</sup> ID35

<sup>82</sup> ID38

- 9.2 It is correct to highlight that conditions must be necessary; relevant to planning; relevant to the development to be permitted; enforceable; and reasonable in all other respects. I have made a series of minor alterations to the conditions as presented in the interests of precision and, in some cases, to deal with implementation.
- 9.3 In relation to the submission of reserved matters, and commencement, the Council has suggested shortening the times allowed for implementation bearing in mind the claimed urgency of the proposals. I do not regard that as reasonable, given that implementation is a matter for the appellant and the market. I see no need to depart from the standard timescales.
- 9.4 A condition is required to set out the approved plans in order that any subsequent application for a minor material amendment can be facilitated. Given the outline nature of the originating application, these consist of the plan identifying the site, and that giving details of the proposed site access.
- 9.5 Given the way in which the appellant intends to implement the proposal, a condition is necessary to deal with phasing. This can cover the separate elements of the proposal but also Public Open Space. There is no need to deal with the phasing of this element separately. However, given that the appellant requires some flexibility in how Public Open Space is provided within the development, a condition requiring the submission of a Public Open Space Strategy for the approval of the local planning authority is required.
- 9.6 A condition is required to limit the number of dwellings to 350.
- 9.7 A range of conditions have been suggested to address external materials, ancillary structures, and street lighting. None of these are necessary as they are matters best dealt with at reserved matters stage. The condition suggested to deal with site levels is similarly otiose.
- 9.8 A condition has been suggested to require details of how at least 10% of predicted energy requirements will be met through the use of on-site renewable energy sources. This is necessary in order for the proposal to comply with criterion 5 of CS Policy 3. **[5.4]**
- 9.9 Similarly, a separate condition has been suggested to require the dwellings to meet Code Level 4 of the Code for Sustainable Homes and the Free School and Sixth Form to achieve a BREEAM rating of 'excellent'. I note the reluctance of the appellant to accept this condition, and, specific to the Free School and Sixth Form, the resistance of the EFA. However, without such a condition, and bearing in mind when the Free School and Sixth Form, and the housing, are likely to come forward, the proposal would fail to accord with criteria 1 and 2 of CS Policy 3. **[5.4]**
- 9.10 It is also relevant to considering the necessity for these suggested conditions that two of the core principles of the Framework are to secure high-quality design and to support the transition to a low carbon future in a changing climate and encouraging the use of renewable energy.

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<sup>83</sup> Circular 11/95: *The Use of Conditions in Planning Permissions*



- 9.11 A condition has been suggested to deal with the times when construction activities and deliveries linked to that process can take place. Given the proximity of the site to existing housing, such a condition is necessary, along with another to secure a Construction Management Plan, which can include a Site Waste Management Plan, all in order to protect living conditions. A condition is also required to allow the method by which any open fires, that might be required as part of the construction process, can take place.
- 9.12 Conditions are required to deal with surface water disposal, which can also secure the mitigation works required by the flood risk assessment, address the need for a watercourse buffer zone, and the required ecological mitigation. There is no evidence of Giant Hogweed on the site so a condition to address removal and long-term management, as suggested, is unnecessary.
- 9.13 A condition is also required to deal with archaeology. This can reasonably be linked to phases of work. The condition suggested to deal with unexpected contamination can work in a similar way. Given the proximity of parts of the proposal to roads, it is reasonable to apply a condition to protect the dwellings from traffic noise. Conditions dealing with buffer planting, and the retention of existing trees, shrubs, and hedges, are unnecessary as these can properly be dealt with at reserved matters stage. The same is true of parking provision and highway design, within the site.
- 9.14 A series of conditions have been suggested that deal with the use of the school. First of all, IMFT and the appellant have rightly pointed to the benefits community use of the Free School might bring to Ingleby Barwick generally. I recognise the concerns expressed by IMFT and EFA, but for those benefits to be considered material, there needs to be some mechanism to secure them. In that context, a condition requiring details of community use to be submitted for the approval of the Council, and for the school to be operated in accordance with those details, is both reasonable and necessary. It is also necessary for a condition to be applied to ensure the Free School and Sixth Form to be used as a school and for no other primary (bearing in mind the intention to allow community use) purpose in Use Class D1. **[7.5, 8.8]**
- 9.15 The Council has also suggested, and the appellant is prepared to accept, a Grampian condition to tie commencement of construction or occupation of the dwellings to a long term lease between the landowner and IMFT for the land on which the school is proposed to be built being entered into, and acknowledged or approved by the Council. There are difficulties with that not least that the suggested condition is imprecise. Leases can take all sorts of forms and can include break clauses. It can hardly be reasonable to allow the Council control of the terms of the lease to be agreed between IMFT and the landowner. In that context the condition proposed is not acceptable.
- 9.16 Moreover, such a condition could only be necessary if the delivery of the Free School and Sixth Form was a decisive factor. In other words, a Grampian condition could only be justified if the housing was only acceptable if it brought forward the Free School and Sixth Form. As I have set out below, given the lack of a five year supply of deliverable housing sites, the housing is acceptable, with or without the provision of a Free School and Sixth Form. As a consequence, the condition suggested, or any alternative designed to fulfil a similar function, is not only unreasonable, but also unnecessary. **[6.2, 7.15, 10.16, 11.29]**

## 10. Obligations under Section 106

- 10.1 After a number of iterations and various discussions between the Council and the appellant<sup>84</sup>, a completed Planning Obligation by UU was submitted to the Inquiry<sup>85</sup>. Consideration of the UU must take place in the light of paragraph 204 of the Framework and the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 10.2 These require planning obligations to be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The UU is conditional upon the Secretary of State allowing the appeal and being satisfied, in relation to each obligation, that these tests are met.
- 10.3 Schedule 1 of the UU deals with employment and training and covenants to use reasonable endeavours to ensure that 10% of construction jobs are made available to residents of Target Areas and that 10% of the total net value of services and materials used in the development are made available to be provided by businesses in the Target Areas.
- 10.4 One of the benefits claimed for the proposal is the economic activity it will generate locally. If these benefits are to be taken into account, there needs to be a means of securing them. On that basis, the provisions of Schedule 1 meet the tests of the Framework and Regulation 122. **[7.6]**
- 10.5 Schedule 2 of the UU deals with the provision of affordable housing as part of the housing element of the proposals. There is a dispute about the level of affordable housing included, linked to CS Policy CS8, that I deal with separately but no dispute about the way that provision is dealt with in the UU. Affordable housing is a clear benefit of the scheme and it needs to be secured to enable it to be considered as such in reaching a decision. On the basis of my conclusions about the level to be provided, the provision of affordable housing, as set out in the UU, is necessary to make the development acceptable in planning terms, directly related, and fairly and reasonably related in scale and kind, to the development. As such, the provisions of Schedule 2 meet the tests of the Framework and Regulation 122. **[11.15]**
- 10.6 Schedule 3 of the UU deals with the need for a financial contribution towards highway improvements accepted as necessary to make the proposal acceptable in these terms and referred to in the Highways & Transport - Statement of Common Ground<sup>86</sup>. The only issue raised by the Council relates to the provision for the sums involved to be reduced in the event that alternative funding for the works necessary is secured from elsewhere, before the trigger points in the UU arrive. **[6.30]**
- 10.7 However, it cannot be reasonable for the Council to require payment for the same highway works twice. This is a matter that the Council will have to address in dealing with other developers who may become involved, in the light of their development timetables. On that overall basis, the provisions of Schedule 3 meet the tests of the Framework and Regulation 122.

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<sup>84</sup> ID8 and ID39 for example-

<sup>85</sup> ID51

<sup>86</sup> ID2

- 10.8 Schedule 4 of the UU is aimed at securing a financial contribution towards the provision of additional primary school places in the Borough. The appellant does not accept the need for such a contribution but the Council takes a contrary view. The level of contribution been calculated on the basis of a commonly used DfE multiplier of £8,000 per pupil<sup>87</sup>.
- 10.9 According to the Council, notwithstanding investment that has already taken place, there will be little in the way of surplus places in Ingleby Barwick primary schools over the next five years. It is inescapable that the provision of 350 new houses will lead to additional demand for primary school places that will need to be mitigated.
- 10.10 Clearly the Council does not have any specific scheme in mind for how the contribution would be spent but the UU is very clear that it can only be spent on providing additional primary school places in the Borough, rendered necessary by the impact of the development.
- 10.11 Whatever form the eventual scheme might take, it will need to be aimed at mitigating a potentially harmful impact of the proposed housing. Other Inspectors may have dealt with the matter differently but I am not party to all the evidence before those Inspectors. In this case, Schedule 4 is necessary to make the development proposed acceptable in planning terms, directly related to the development, and, through the use of an approved multiplier, fairly and reasonably related in scale and kind to the development. It therefore meets the tests of the Framework and Regulation 122. **[6.29, 7.27]**
- 10.12 Schedule 5 deals with financial contributions towards footpaths and cycleways. Contribution 1 would go towards the proposed connection to, and the provision of a toucan crossing of Barwick Way and improvement to the path along Windmill Way with payment tied to occupation of the Free School and Sixth Form. Contribution 2 would go towards the proposed connection into Priorwood Gardens via Acorn Bank. These works are clearly necessary to achieve the required level of connectivity and, as such, Schedule 5 meets the tests of the Framework and Regulation 122.
- 10.13 Schedule 6 covers a financial contribution to the restriction of parking on Regency Park with payment tied to occupation of the Free School and Sixth Form. These works are necessary to mitigate impacts of the school and, as such, Schedule 6 meets the tests of the Framework and Regulation 122.
- 10.14 Schedule 7 sets out financial contributions designed to encourage residents of the new housing to plan and use public transport. Clearly, the housing proposed will lead to additional use of the private car and this encouragement will serve to mitigate some of the impacts of that. Schedule 7 meets the tests of the Framework and Regulation 122, therefore.
- 10.15 Schedule 8 ties the construction of the Free School and Sixth Form to the Council's approval of an Access Works Plan, with completion required before practical completion of the school and occupation of the houses. In general terms, a matter of this kind could be dealt with by condition but clearly the provisions of Schedule 8 meet the tests of the Framework and Regulation 122.

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<sup>87</sup> C4: Paragraph 7.7 refers

- 10.16 The Council has raised concerns about the lack of any tie in the UU between the provision of the Free School and Sixth Form and the construction and/or occupation of the housing. I have addressed this matter in dealing with the suggested condition. On the basis of those conclusions, the lack of any similar provision in the UU is not a matter that weighs against the proposal. **[6.2, 7.15, 9.15-9.16, 11.29]**
- 10.17 In relation to all these matters, and Schedule 4 in particular, it is open to the Secretary of State to disagree with the analysis put forward. If so, the UU makes provision in Clause 4 for any obligation not to be binding on the appellant if the Secretary of State judges that the obligation concerned fails to accord with the tests of the Framework and Regulation 122.

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## 11. Inspector's Conclusions

- 11.1 Put simply, the main issue to be considered in this case is whether any harmful impacts that would be caused by the proposals, in terms of the green wedge, the character and appearance of the area, and recreational opportunities, in particular, are outweighed by any benefits.
- 11.2 While the overall proposal is made up of two elements, the starting point for consideration of the housing element is the fact that, as the Council accepts, it cannot demonstrate a five year supply of deliverable housing sites. Paragraph 47 of the Framework stresses the importance the Government attaches to boosting significantly the supply of housing and paragraph 49 of the Framework sets out that when such a five year supply cannot be demonstrated, relevant policies for the supply of housing should not be considered up-to-date. **[6.2, 7.2-7.3]**
- 11.3 There was some debate at the Inquiry about the extent of the shortfall. On the basis of a 5% buffer referred to in paragraph 47 of the Framework, the Council can demonstrate 4.08 years supply, but if a 20% buffer is applied, only 3.6 years. Over the CS plan period, the Council agreed that there has been persistent under-delivery. On that basis, while the Council is clearly taking steps to address the shortfall, as things stand, the supply of deliverable housing sites, whether at 3.6 years or 4.08 years, is far short of the 5 year supply required in the Framework. **[6.6, 7.7]**
- 11.4 In terms of the Free School and Sixth Form, no specific development plan policy was brought to my attention that deals with the provision of such facilities. Paragraph 72 of the Framework sets out that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities and great weight should be given to the need to create schools. This approach has been confirmed in other Government pronouncements too. **[7.11-7.12]**
- 11.5 Drawing these points together, paragraph 14 of the Framework makes clear that where the development plan is absent, silent, or out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. **[6.8, 7.7]**
- 11.6 Notwithstanding points made in evidence about the nature of the Proposals Map, the land that would be taken up by the Free School and Sixth Form, the housing, and the attendant infrastructure, lies within the designated green wedge. Development of the site would harmfully undermine the existing degree of separation between settlements. As a consequence, the proposal falls contrary to LP Policy HO3 and CS Policies 1 and 10 criterion 3. **[5.2-5.3, 5.7, 6.13. 7.22]**
- 11.7 Moreover, while the appeal site has little to offer in terms of landscape quality, being flat and largely featureless, it is open in character, undeveloped, and in agricultural use. One of the core principles of the Framework is that the intrinsic character and beauty of the countryside should be recognised. It is axiomatic that the loss of open agricultural fields to development would harm the character and appearance of the area concerned. In this regard, the proposal falls contrary to LP Policy HO3 and CS Policy CS3 criterion 8.

- 11.8 Furthermore, the appeal site has a sense of being part of the countryside, despite traffic noise and the inescapable presence of existing built-up areas around it. While there may be other 'desire lines' crossing it, these are informal and could be closed off so the utility of the appeal site, in recreational terms, is limited to the footpath that crosses it. **[2.1, 5.2, 5.5, 6.15, 7.23]**
- 11.9 Nevertheless, paragraph 73 of the Framework makes clear that opportunities for recreation can make an important contribution to the health and well-being of communities. While the footpath would be maintained as part of the development proposed, it would be a less attractive recreational experience for most, as a result of the development. This would be harmful and contrary to CS Policy CS3 criterion 8. **[5.5, 6.17-6.18, 7.23]**
- 11.10 Bearing in mind the approach of paragraph 14 of the Framework, it is necessary to assess the degree of harm that would be caused. In terms of the green wedge, the purpose of CS Policy 10 criterion 3 is to maintain separation between settlements. As a consequence of the proposal, the degree of separation between Ingleby Barwick and the Teeside Industrial Estate that I consider to be part of Thornaby, would reduce but what would remain of the open land between these settlements would be sufficient for them to remain readily perceptible as separate entities. The proposal would be identified as part of Ingleby Barwick and there would be no sense of coalescence with Thornaby or, for that matter, the Teeside Industrial Estate. **[5.7, 6.15, 7.2]**
- 11.11 If buffer planting is properly designed, implemented, and managed, matters that can be dealt with through the reserved matters, then while it would take time to establish, it could provide an edge and a screen to the extension of Ingleby Barwick which the proposals entail, that would be an improvement over the rather ineffective treatment of the eastern boundary of Ingleby Barwick that currently exists. **[6.19]**
- 11.12 In recreation terms, as set out, the experience of using the footpath as it stands, to cross an area of open countryside, would be, for most, a more pleasurable experience than using the same footpath to cross the built-up area that would result from the proposals. However, if carefully designed, the existing route of the footpath could give a lead for the design and layout of the public open space that would form part of the scheme. This is a matter that can be addressed through reserved matters and conditions and could offset the harm that the scheme would cause in these terms to a significant degree.
- 11.13 Taking all these points together, the degree of harm that the proposal would cause in relation to the green wedge designation, the character and appearance of the area, and the utility of the footpath in recreational terms would be limited. In reaching that conclusion, I am cognisant of the manner in which the Council has sought to address their housing supply shortfall by granting or expressing a willingness to grant planning permission for housing on other similar sites on the edge of settlements, often within strategic gaps or green wedges. Having visited those sites, it is apparent that the harm would be caused in these terms by the development at issue in this case, would be no greater than the degree of harm the Council has been, and is, prepared to accept in those other cases in order to maintain a five year supply of deliverable housing sites. The same is true of criticisms made of the sustainability credentials of the proposal. **[6.6, 6.12, 7.25-7.26]**

- 11.14 Having assessed harm, bearing in mind the approach of paragraph 14 of the Framework, it is necessary to assess benefits. In terms of the open-market housing proposed, while the Council is taking steps to address the existing shortfall, in the context of the current degree of under-supply, the provision of around 300 units represents a significant benefit. **[6.6, 7.4]**
- 11.15 The Council has criticised the level of affordable housing proffered by the appellant as part of the proposal. However the Council chooses to interpret and operate its policy, and while the appellant accepts that the scheme could bear the burden of more, it is inescapable that the provision of affordable housing at a rate of 15% clearly falls within the range of 15-20% set out in CS Policy 8 criterion 5. Bearing in mind the acute shortfall of affordable housing in the Borough, and in Ingleby Barwick in particular, the 53 units of affordable housing that the scheme would bring forward represent a significant benefit. **[5.6, 6.20-6.21, 7.8-7.10]**
- 11.16 The Council raised questions about whether the open-market and affordable housing would come forward quickly enough to alleviate current difficulties with housing supply. Delivery is largely a matter for the market rather than the planning system but nevertheless, the evidence is that Ingleby Barwick is attractive to house-builders and prospective occupiers of new housing. In that context, the doubts about delivery raised by the Council bear little on the weight to be attached to the benefits inherent in the provision of open-market and affordable housing. **[6.5, 7.28]**
- 11.17 In terms of the Free School and Sixth Form, the Council raises issues about whether it would be a benefit, but bearing in mind paragraph 72 of the Framework, and other Government pronouncements, the creation of a new school is clearly a matter that should attract great weight in favour of the proposals. Nevertheless, the Council raised questions about delivery and whether that might serve to reduce the degree of weight that can be attached to the benefits of the Free School and Sixth Form. **[6.2, 6.22-6.24, 7.11-7.15]**
- 11.18 It is plain that not all residents of Ingleby Barwick support the proposal, especially when the housing associated with it is taken into account. It is also correct to highlight that pupil recruitment, and as a consequence funding, might be issues given that parents of children about to move to secondary school will have to make a choice between existing schools with excellent academic records that are a bus ride away, and a new school, that is more easily accessible but lacking such an academic record. There may also be issues around whether the facility can, or needs to, operate in temporary accommodation first. **[6.22-6.28, 8.5-8.6]**
- 11.19 However, these matters have been considered by the Secretary of State for Education and the decision has been taken to strongly support IMFT and bring the proposed Free School and Sixth Form to fruition through the EFA. It is not for me, or the Secretary of State making the planning decision on the case, to go behind that support. The Council also suggests that the only consequence of a failure of the Free School and Sixth Form to gain a grant of planning permission would be a reduction in choice and so, no real harm would result. There is no shortage of secondary school places locally but paragraph 72 of the Framework makes it obvious that widening choice in education is the critical consideration. As a consequence, the loss of the opportunity to widen choice would be regrettable and harmful. **[6.28, 7.11-7.15]**

- 11.20 In that overall context, I see no cogent reason why anything other than great weight, as outlined in paragraph 72 of the Framework, should be attached to the benefits of providing a new Free School and Sixth Form.
- 11.21 The appellant and IMFT have pointed to the potential for the Free School and Sixth Form to offer facilities for community use. Provided this arrangement is secured by condition, it would be an attendant benefit of the proposals. **[9.14]**
- 11.22 Paragraph 18 of the Framework is clear that the Government is committed to securing economic growth in order to create jobs and prosperity. In that light, it is correct to note that the Free School and Sixth Form will provide a relatively significant amount of employment. Moreover, construction of the Free School and Sixth Form, and the housing, will do likewise, and generate economic activity. **[7.6]**
- 11.23 There are a number of other issues that command attention. Little Maltby Farm that lies to the immediate east of the appeal site is a Grade II listed building. Having regard to the requirements of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the approach of the development plan, and advice in the Framework, the parties are content that the proposal would have no harmful impact on the setting of the listed building. Subject to careful design of the closest extremities of the development proposed, and the buffer planting in particular, matters that can be dealt with through the reserved matters, I see no good reason to disagree.
- 11.24 The Council and others have also raised concerns about the appellant's future intentions for the green wedge between Ingleby Barwick and Thornaby and the Teeside Industrial Estate suggesting that it might be lost completely. The appellant may well harbour wider ambitions but there is no specific proposal at present. If an application for further expansion is made then the Council will have to consider it, on its merits, at the appropriate time. It has no significant bearing on the proposal at issue in this appeal. **[6.9-6.10, 7.29, 8.5-8.6]**
- 11.25 Similarly, the Council has voiced concern about the lack of a master-plan to show how the proposal at issue would marry with the appellant's wider ambitions. However, there are no specific proposals at present and should any come forward, and be considered acceptable, then I see no good reason why they could not be successfully integrated with the proposals at issue here, especially when detailed design of the layout will be addressed through the reserved matters. **[6.11, 7.29]**
- 11.26 The Council advanced an argument that permitting housing on the appeal site would undermine their attempts to deal with their housing supply shortfall through emerging policy that directs new housing to strategic gaps rather than green wedges. However, these emerging policies are at far too early a point in the path towards adoption to be thrown off course by a grant of permission in the specific circumstances that pertain in this case. It is also fair to note that similar considerations have not prevented the Council from permitting housing on other green wedge sites in recent times. **[5.8, 6.7, 6.9, 7.19, 7.25]**
- 11.27 Drawing all these matters together, and with paragraph 14 of the Framework in mind, there is then a need to balance harm against benefits. The proposal would involve building on a green wedge and would reduce the sense of separation between settlements. It would have a deleterious impact on the



character and appearance of the area and reduce the recreational value of the footpath crossing the site. While this renders the proposal contrary to the provisions of the development plan, for the various reasons set out, the sum total of the harm caused would be limited.

- 11.28 In terms of the benefits, the appellant has made it clear that the two elements of the proposals are not severable and that, while the housing is not an enabling development, the Free School and Sixth Form will not come forward without it. However, there is no counter suggestion that the housing would not come forward without the Free School and Sixth Form. In that context, it is correct to note that the different elements of the proposals would bring forward benefits of a different nature. **[6.2-6.3, 7.2-7.3, 8.1]**
- 11.29 In terms of the housing element, the proposal would deliver open-market and affordable housing, where there is an acknowledged shortfall, and generate employment and economic activity. Given the prevailing situation in terms of housing supply in the Borough, these benefits are sufficient to justify the housing element of the proposals, whether or not the Free School and Sixth Form ever materialises. For this reason, there is no need for a Grampian condition linking the two separate elements together. For its part, the Free School and Sixth Form would widen choice in education, and provide community facilities. It would also generate employment and economic activity. These add significantly to the benefits the housing element of the proposals would bring forward. **[7.3, 9.15-9.16, 10.16]**
- 11.30 To summarise, having regard to the duty under Section 38(6), the failure of the proposals to accord with the development plan in terms of its impact on the green wedge, the character and appearance of the area, and recreational opportunities, must be acknowledged. However, given the provisions of paragraph 215 of the Framework, and my findings above, the Framework is a material consideration that carries weight such as to justify a decision other than in accordance with the development plan.

## **12. Recommendation**

- 12.1 I recommend that the appeal be allowed, and planning permission granted subject to the conditions as set out in Annex D.

*Paul Griffiths*

**INSPECTOR**

## **Annex A: APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

John Pugh-Smith of Counsel	Instructed by Stockton-on-Tees Borough Council
He called	
Rosemary Young	Spatial Planning Manager, Stockton-on-Tees
BA(Hons) MRTPI	Borough Council
Simon Grundy	Area Team Leader, Planning Services, Stockton-
BSc(Hons) MTP(UC)	on-Tees Borough Council
MRTPI	
Lynda Brown	Head of Education, Early Years and Complex
BA(Hons) CertEd	Needs, Stockton-on-Tees Borough Council

### **FOR THE APPELLANT:**

Christopher Lockhart-Mummery	Instructed by Satnam Planning Services
QC	
He called	
Colin Griffiths	Satnam Planning Services
BA(Hons) MRTPI	
David Appleton	The Appleton Group
NDH MA CMLI	

### **INTERESTED PERSONS:**

Peter Jordan MRTPI	Persimmon Homes Teesside Ltd
Ted Strike	Local Resident
William Feldon	Local Resident
Roland Firby	Local Resident
Katia Lightfoot	Local Resident
Peter Hadfield	Local Resident
Stephen Fryer	Chair of Ingleby Manor Foundation Trust
Frances Lynch	Director of Ingleby Manor Foundation Trust
Councillor Kevin Faulks	Ward Member for Ingleby Barwick

## Annex B: DOCUMENTS

### Stockton-on-Tees Borough Council

C1	Proof of Evidence of Rosemary Young
C2	Rebuttal Proof of Evidence of Rosemary Young with Attachments
C3	Proof of Evidence of Simon Grundy
C4	Proof of Evidence of Lynda Brown with Appendices
C5	CD1: Stockton-on-Tees Adopted Local Plan (1997)
C6	CD2: Stockton-on-Tees Adopted Core Strategy (March 2010)
C7	CD3: Stockton-on-Tees Regeneration DPD Issues and Options (2007)
C8	CD4: Stockton-on-Tees Core Strategy Review – Planning for Housing: Issues and Options (July 2012)
C9	CD5: Stockton-on-Tees Regeneration and Environment Local Development Document – Preferred Options (July 2012)
C10	CD6: Stockton-on-Tees Regeneration and Environment Local Development Document – Preferred Options Consultation Statement (July 2012)
C11	CD7: Stockton-on-Tees Regeneration and Environment Local Development Document: North of the Borough Map (July 2012)
C12	CD8: Stockton-on-Tees Regeneration and Environment Local Development Document: South of the Borough Map (July 2012)
C13	CD9: Stockton-on-Tees Five Year Deliverable Housing Supply 2012-2017: Final Assessment
C14	CD10: Extract from Appendix B – Landscape Sensitivity/Capacity Survey Sheets – Capacity Survey Sheet: A19 Fringe and Ingleby Barwick Fringe from the Stockton-on-Tees BC Landscape Capacity Assessment (White Young Green July 2011)
C15	CD11: Extract 'Yarm Rural Fringe from Stockton-on-Tees BC Landscape Capacity Assessment (White Young Green July 2011)
C16	CD12: Tees Valley Structure Plan 2004
C17	CD13: Stockton-on-Tees Green Infrastructure Strategy (November 2011)
C18	CD14: EN13 Bassleton Beck Green Wedge – Little Maltby Farm – extract from the Stockton-on-Tees Local Plan Inspector's Report 1996
C19	CD15: Green Wedges – extract from the Proof of Evidence submitted to the Stockton-on-Tees Local Plan Inquiry by Stockton-on-Tees BC in respect of Policies EN1 to EN18 of the Environment Chapter (Jan. 1995)
C20	CD16: Review of the Limits to Development and Green Wedges: Stockton-on-Tees BC (May 2010)
C21	CD17: Extract from PPS12: Local Spatial Planning (2008)
C22	CD18: Tees Valley SHMA 2009 (arc4)
C23	CD19: Tees Valley SHMA 2012 (arc4)
C24	CD20: Economic Viability of Affordable Housing Requirements: Report for Stockton-on-Tees BC (arc4) (Feb. 2009)
C25	CD21: Extract from PPS3: Housing (2006)
C26	CD22: Representation from Satnam Planning on behalf of Tiviot Way Investments in response to the Regeneration and Environment LDD: Preferred Options
C27	CD23: Plan submitted by Satnam Planning on behalf of Tiviot Way Investments in response to the Regeneration and Environment LDD: Preferred Options showing area referred to in the representation

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C28	CD24: 1977 Masterplan
C29	CD25: 1991 Masterplan
C30	CD26: 2002 Masterplan
C31	CD27: Resolution of the May 2002 Special Planning Committee
C32	CD28: Decision notice of the Secretary of State granting planning permission for 7,920 dwellings at Ingleby Barwick
C33	Bundle of material including questionnaire and attachments, application documents, appeal documents, and Design & Access Statement

### **Tiviot Way Investments Ltd**

A1	Proof of Evidence of Colin Griffiths
A2	Appendices to the Proof of Evidence of Colin Griffiths
A3	Supplementary Proof of Evidence of Colin Griffiths with Appendices
A4	Proof of Evidence of David Appleton
A5	Appendices to the Proof of Evidence of David Appleton
A6	Figures to the Proof of Evidence of David Appleton

### **Inquiry Documents**

ID1	Statement of Common Ground: Planning
ID2	Statement of Common Ground: Highways
ID3	Opening Statement: Appellant
ID4	Opening Statement: Council
ID5	Location Plan of Comparison Sites
ID6	Letter of 19 12 12 from EFA to Council
ID7	Letter of 09 05 13 from Knight Frank to Prism
ID8	Draft Agreement under s.106 (1)
ID9	Policy Statement: Planning for Schools Development
ID10	Table showing Housing Delivery
ID11	Section 106 Affordable Housing Requirements: Review and Appeal
ID12	Extract from Inspector's Report on Core Strategy
ID13	Letter of 04 02 13 from Satnam to Councillors
ID14	E-Mail of 21 01 13 from Matthew Clifford to Colin Griffiths
ID15	2011 SHLAA Final Site Assessments – Overview Report
ID16	Copy of SoS Decision and Inspector's Report on APP/W0720/A/88/104971
ID17	Council Memo dated 15 05 13 concerning tree growth rates
ID18	Corrected Update Committee Report
ID19	Statement of Peter Jordan MRTPI
ID20	Statement of Ted Strike
ID21	Statement of William Feldon
ID22	Statement of Roland Firby
ID23	Statement of Katia Lightfoot
ID24	Statement of Peter Hadfield
ID25	Statement of Stephen Fryer
ID26	Minutes of Meeting 07 06 12
ID27	Extracts from 2011 SHLAA
ID28	Note regarding political make-up of the Council's Planning Committee
ID29	Note regarding planning application Ref.13/0809/FUL
ID30	List of Estate Agents on Ingleby Barwick
ID31	Copy of Recovery Letter of 18 02 13

ID32	Statement of Frances Lynch and attachments
ID33	E-Mail of 23 01 13 EFA to Council
ID34	Map of viewpoints for Inspector's site visits
ID35	Council's suggested conditions
ID36	Note from WYG regarding the term 'rural fringe'
ID37	Council Committee Report about Bus Services
ID38	Appellant comments on Council's suggested conditions
ID39	Further Iterations of Draft Agreement under s.106 with Council comments
ID40	Copy of Regeneration and Environment Local Development Document: Preferred Options approved by the Council in May/June 2013
ID41	Copy of Council's Open Space, Recreation and Landscaping Supplementary Planning Document, of December 2009, with attachments
ID42	Details of Council's Notification Procedure for Resumption
ID43	Further Representation from Katia Lightfoot
ID44	Further Representation from Roland Firby
ID45	Council documents dealing with School Admissions and Projections
ID46	Response from IMFT to the PoE of Lynda Brown
ID47	Extract from Hansard of a House of Commons debate of 26 06 13
ID48	Response of Lynda Brown to IMFT Statement (ID46)
ID49	Copy of Council's Supplementary Planning Document 8: Provision of Affordable Housing and the Need for Viability Evidence Consultation Draft July 2013
ID50	Agreed Itinerary for Inspector's Site Visits
ID51	Completed Unilateral Undertaking dated 21 June 2013
ID52	Closing Statement on behalf of the Council
ID53	Closing Statement on behalf of the Appellant

## **Annex C: PLANS**

- A 110096-D-001: Existing Site Plan and Existing Levels
- B 8067 SCG/7: Vehicular Access to the Appeal Site

## **Annex D: SUGGESTED CONDITIONS**

- 1) 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.
- 2) 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.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 110096-D-001: Existing Site Plan and Existing Levels; and 8067 SCG/7: Vehicular Access to the Appeal Site.
- 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. This shall identify the phasing of infrastructure, landscaping, public open space (in accordance with the Open Space Strategy), accesses, the Free School and Sixth Form and associated facilities, and residential areas within the development permitted herein. Development shall be carried out in accordance with the approved Phasing Programme.
- 6) No development shall take place until an Open Space Strategy has been submitted to and approved in writing by the local planning authority. This shall identify the extent, location and design of public open space within the development permitted herein. Development shall be carried out in accordance with the approved Open Space Strategy.
- 7) The total number of dwellings authorised by this permission shall not exceed 350.
- 8) No development shall take place until details of how the Free School and Sixth Form 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) No development shall take place on any phase of housing until details of how the housing in that phase 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.
- 10) The dwellings approved herein shall achieve Code Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 4 has been achieved.
- 11) The Free School and Sixth Form shall achieve a BREEAM 'excellent' rating and shall not be brought into use until achievement of that rating has been certified.

- 12) No construction activity 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 on Sundays or Bank Holidays.
- 13) No waste products derived as a result of the development approved herein shall be burned on the site except in an appliance first approved in writing by the local planning authority.
- 14) No development shall take place, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved CMS shall be adhered to throughout the construction period and shall provide 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 emission of dust and dirt during construction; a Site Waste Management Plan; details of the routing of associated HGVs; measures to protect existing footpaths and verges; and a means of communication with local residents.
- 15) No development shall take place until a scheme for the management of surface water during the construction phase and thereafter, including sustainable drainage measures, has been submitted to and approved in writing by the local planning authority. Surface water run-off from the site shall be limited to 42 l/s. Development shall be carried out in accordance with the approved details.
- 16) No development shall take place until a scheme for the provision and management of a 5 metre buffer zone around the watercourse has been submitted to and approved in writing by the local planning authority. The buffer zone shall be implemented in accordance with the approved details and retained as such thereafter.
- 17) No development shall take place until a timetable for the implementation of the ecological mitigation measures within the Extended Phase 1 Habitat Survey (The Appleton Group, October 2012) and the Survey of Trees for Bat Roosting and Foraging Potential (Martin Prescott Environmental Services, January 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.
- 18) No development shall take place in any particular phase of the development until a programme of archaeological work for the phase concerned, including a written scheme of investigation, and a timetable, has been submitted to and approved in writing by the local planning authority. The archaeological work shall be carried out in accordance with the approved details.
- 19) If during the course of development of any particular phase of the development, contamination not previously identified is found to be present, then no further development on that phase shall be carried out until the developer has submitted to, and obtained written approval from the local planning authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be carried out as approved.

- 20) No development shall take place until a scheme for the protection of habitable rooms within the dwellings 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 details and retained as such thereafter.
- 21) The Free School and Sixth Form shall not be brought into use until a scheme for the wider use of the facility by the community has been submitted to and approved in writing by the local planning authority. The Free School and Sixth Form shall be operated in accordance with the approved scheme.
- 22) The Free School and Sixth Form shall be used for those purposes and for no other primary purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).





## Department for Communities and Local Government

### **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 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**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: 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 report of 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.