



T O M P K I N S T H O M A S

Planning, Design and Access Statement



Land adjacent Garbrook, Tarrington

S.73 applications re: 171777/F and 184506/O

June 2020

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Executive Summary

- I. Tompkins Thomas Planning Ltd is instructed by Bell Homes Ltd. (the applicants) to prepare a Planning, Design and Access Statement to accompany two separate, but mutually dependent applications made in accordance with s.73 of the Town and Country Planning Act 1990.
- II. 'S.73' applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly.
- III. The planning applications to which this Statement relates are: -
 - Phase 1 - 171777/F "Proposed mixed use development comprising 15 dwellings including 5 affordable, 2 live work units and associated roads and footpaths, junction improvements, sustainable drainage, informal public open space, hedgerow and tree planting" – Approved 3rd July 2018; &
 - Phase 2 - 184506/O "Proposed development of ten dwellings including 2 affordable homes and 2 self-build plots and associated access road, footpath link, sustainable drainage, hedgerow, tree and orchard planting" – Approved 11th April 2019
- IV. The approved applications involve two adjoining sites, within one field parcel, adjacent to Garbrook, Tarrington. The sites were acquired by Bell Homes, a local house-builder with a significant track record of housing delivery in Herefordshire, after the grant of planning permission and comprise the erection of 27 dwellings, with a total of 7 low-cost market dwellings (5 no. on Phase 1 and 2 no. on Phase 2).
- IV. It is the intention that the applications vary the requisite conditions attached to each planning permission to secure a development whereby the 2no. affordable dwellings on Phase 2 184506/O are relocated to Phase 1, in substitution for the 2no. live-work units on that Phase. The units on phase 2 which were originally identified as affordable units will revert to an open

market product; their appearance and design to be defined in a later reserved matters application. Thus the overall number of affordable dwellings will be maintained at seven.

- V. A Deed of Variation will simultaneously be sought. This will ensure the delivery of the 7 units of affordable housing on Phase 1, requiring they are ready for occupation prior to any of the units on Phase 2 being made available for occupation.
- VI. The outcome of the applications will therefore ensure the timely delivery of the 7no. affordable units in the completion of Phase 1, in the context of a persistent under-supply of housing in Herefordshire, including the provision of affordable housing.
- VII. Further, the substitution of the live-work units on Phase 1 with low-cost market 3-bed bungalows as proposed will result in the provision of accommodation for which there is an evident unmet need, in a manner that will benefit the character and appearance of the area and ensure nutrient neutrality.
- VIII. The applications are demonstrably in accordance with the Development Plan, particularly when regard is had to the fall-back position established by the extant planning permissions. In accordance with Core Strategy Policy SS1 and 11 c) of the Framework, planning permission should therefore be granted without delay.**

1 Introduction

1.1 Statement brief and structure

- 1.1.1 Tompkins Thomas Planning Ltd is instructed by Bell Homes Ltd (the applicants) to prepare a Planning, Design and Access Statement to accompany two separate but mutually dependent applications made under s.73 of the Town and Country Planning Act 1990. The applications seek, in essence, to vary the terms of the existing full and outline permissions 171777/F and 184506/O to permit the relocation of the 2 no. affordable units from 184506/F (Phase 2) onto 171777/F (Phase 1).
- 1.1.2 The relocated affordable units will occupy the plots intended for the live-work units on Phase 1 – plots 16 and 17; replacing them with two, three-bed, low-cost market bungalows.
- 1.1.3 Procedurally, this requires the variation of conditions 2, 6 and 16 of 171777/F and conditions 5, 6 and 10 of 184506/O.
- 1.1.4 The applications comprise the duly completed application forms, requisite fee, this Statement and drawings.
- 1.1.5 The remainder of Chapter 1 describes the sites and relevant planning history, including the subsequent discharge of condition applications and then outlines the proposals for which planning permission is sought.
- 1.1.6 Chapter 2 will introduce the relevant provisions of the Development Plan, which in this case consists only of the Herefordshire Local Plan – Core Strategy 2011-2031; the Tarrington NDP not having advanced beyond Regulation 14.
- 1.1.7 Chapter 3 will introduce and discuss the main issues arising from the application before Chapter 4 concludes in respect of whether planning permission should be granted.

1.2 Site description

- 1.2.1 The field parcel within which both sites lie is found immediately to the north of the A438 and east of Little Tarrington Common Road. The roadside boundaries to the A438 and Little Tarrington Common Road are defined by low hedgerows, whereas mature woodland and tree cover along the Gar Brook course is a strong visual feature of the northern and eastern

boundaries.

- 1.2.2 The residential Garbrook Estate consists of terraced and semi-detached properties. The mainline railway between Ledbury and Hereford passes within 200m of the site's northern boundary. Little Tarrington is essentially linear in form and made up of a series of mostly detached dwellings beyond the railway line. The Millpond Caravan Park, with its caravan and camping pitches and associated fishing facilities, lies immediately north and north-east of the site on the other side of the brook.
- 1.2.3 The village of Tarrington lies approximately 300 metres to the west of the site. There is a footway running immediately adjacent the northern edge of the A438 carriageway between the application site and Tarrington.

1.3 Planning history

- 1.3.1 As originally submitted 171777/F was for 21 dwellings and 4 live-work units across the whole field parcel. During consideration of the application the scheme was substantially amended to 15 units (5 affordable) and 2 live-work units; removing dwellings from the eastern portion of the field parcel. Planning permission was granted subject to conditions and a s.106 agreement on 3rd July 2018 – this is referred to as Phase 1.
- 1.3.2 Subsequently the then applicants applied for outline planning permission with all matters bar access reserved, for the erection of 10 dwellings, including 2 no. affordable and 2no. self-build units, on the eastern part of the site i.e. that nearest Garbrook Estate. Planning permission was granted, subject to conditions, including the requirement to enter into a s.106 agreement pursuant to the provision of the affordable units, on 11th April 2019 – this is referred to as Phase 2. In combination these planning permissions represent the 'fall-back' position.
- 1.3.3 The entire parcel (both sites) was marketed and subsequently acquired by Bell Homes Ltd. Discussion then ensued between the applicants and Council in respect of changes that the applicants wished to secure to then enable commencement on site and prompt delivery of the 27 units.
- 1.3.4 In order to secure the ability to implement the existing planning permissions within the requisite timeframe the applicants submitted the relevant discharge of condition applications to the Council as follows in Tables 1 & 2: -

Table 1: Discharge of condition applications pursuant to 171777/F

Phase 1 – 171777/F	Conditions	Decision
194362/XA2	12 (flood alleviation channel), 18 (drainage design) and 19 (slab levels)	Details approved 21 st April 2020
201332/XA2	3, 5, 6, 7, 8, 9, 10, 14 & 17	Decision pending
201472/XA2	13 (Materials)	Decision pending

Table 2: Discharge of condition application pursuant to 184506/O

Phase 2 – 184506/O	Conditions	Decision
194364/XA2	16, 20 & 27 (responsibility for and maintenance of surface water scheme, flood alleviation channel and slab levels)	Details Approved 1 st June 2020

- 1.3.5 The proposed submission of s.73 applications to achieve the plot substitution discussed above was discussed with the Council, who raised no objection from a procedural perspective or indeed to the principle of the changes sought.

1.4 The proposals

- 1.4.1 Upon acquisition of the site the applicants concluded that in their experience there was likely to be an absence of a market for Plots 16 and 17; the two live-work units. The units as approved are located in a prominent location at the south-western corner of Phase 1. They measure 8.4m to the ridge with timber and standing seam walls under a standing seam pitched roof.

- 1.4.2 The living accommodation is at first floor and comprises, in effect, a single-bed apartment. The

workspace is at ground floor with up-and-over roller-shutter doors in the west elevation with shared parking and turning for commercial vehicles. The approved layout and elevations are shown below in Figures 1 and 2: -

Figure 1: Approved layout Phase 1 – Live-work in south-west corner

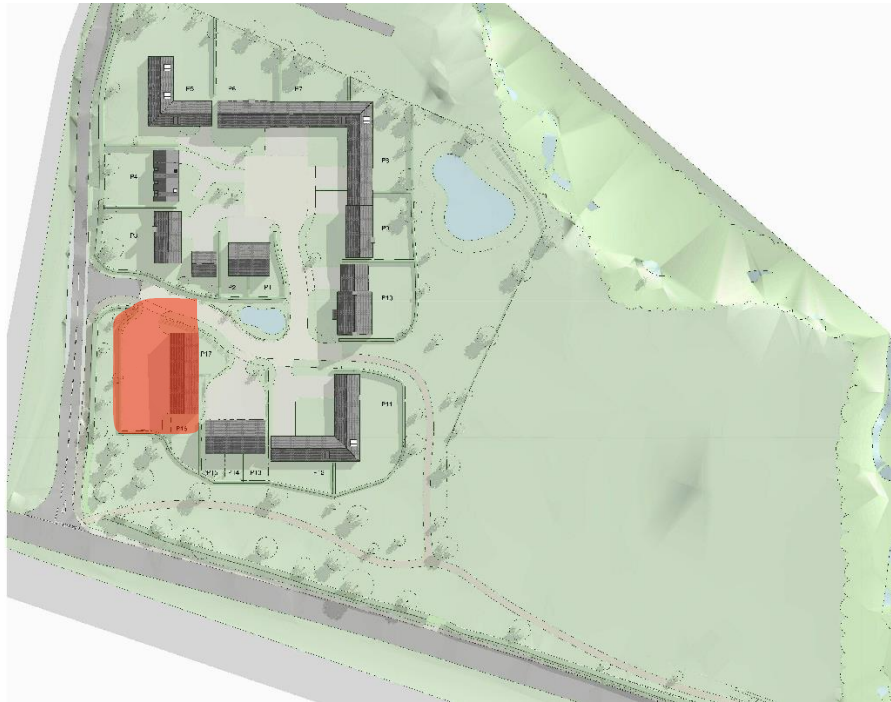


Figure 2: West elevation of live-work units – towards Little Tarrington Road

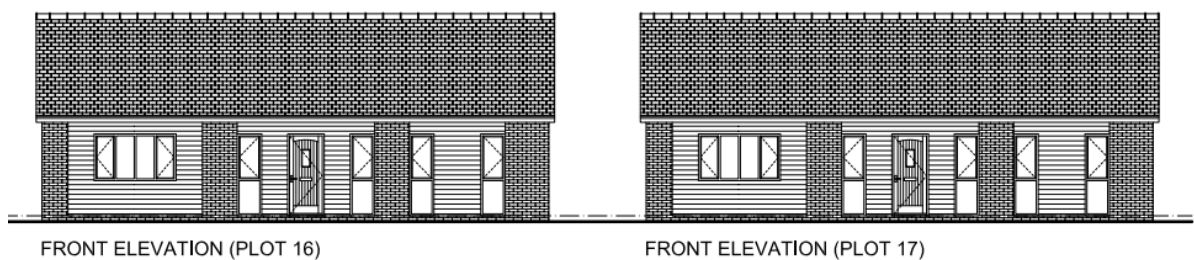


West elevation

- 1.4.3 Having purchased both phases the applicants determined that they would, subject to the requisite planning permission being achieved, substitute these live-work plots for a pair of low-cost market bungalows; these representing the two affordable units on Phase 2 and thus

ensuring no net loss of affordable dwellings against the fall-back position.

- 1.4.4 The plot substitution would enable the provision of rear gardens orientated towards Little Tarrington Road and shared parking and access with plots 13-15; the parking and manoeuvring associated with the live-work units no longer being required.
- 1.4.5 The appearance of the bungalows is consistent with the other approved bungalows on site, constituting brick and timber boarding under a natural slate roof. The ridge height is reduced relative to the live-work units by nearly 3m to 5.5m.



- 1.4.6 Procedurally, it is therefore necessary to submit two s.73 applications to permit the development of Phases 1 and 2 to proceed without complying with conditions 2, 6 and 16 of 171777/F and conditions 5, 6 and 10 of 184506/O.
- 1.4.7 Condition 2 of 171777/F lists the approved drawings, including reference to the live-work units. Condition 6 references the formation of the parking associated with the live-work units and condition 16 ensures the workspace in units 16 and 17 is utilised for B1 uses only. Condition 2 will be amended to include the substituted drawings, condition 16 varied to remove reference to the live-work units and condition 17 deleted.
- 1.4.8 Condition 5 of 184506/O lists the approved drawings, condition 6 a phasing plan and condition 10 the requirement to complete a legal agreement relating to the 2 no. affordable units on Phase 2.

2 The Legislative Context and Planning Policy

- 2.1.1 Section 38 of the Planning and Compulsory Purchase Order 2004 ('the Act' from hereon) explains that the planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise (S38(6)).
- 2.1.2 In this case, the statutory Development Plan for the area comprises the Herefordshire Local Plan – Core Strategy ('Core Strategy') only. The Core Strategy sets out a vision for the County of Herefordshire for the period 2011 to 2031. The principal role of the Core Strategy is to deliver the spatial planning strategy for Herefordshire based on the needs of the area and its local characteristics. It confirms at Policy SS1 that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the Framework.
- 2.1.3 The National Planning Policy Framework ('NPPF' or 'Framework') declares itself an important material consideration for all planning applications in England. The NPPF (2019) was published in February 2019. It is the second revision of the National Planning Policy Framework and replaces the original NPPF (2012). It sets out the Government's planning policies for England and how these should be applied. It confirms that it does not supplant the statutory Development Plan, but it and its policies are a significant material consideration when determining planning applications (paragraphs 2 & 212). The Framework has implications for Development Plan policies and decision taking in Herefordshire, particularly in the context of the Housing Land Supply deficit.
- 2.1.4 The Tarrington NDP has not progressed beyond Regulation 14 and does not warrant further consideration for the purpose of determining the s.73 applications to which this Statement refers. This approach is consistent with the Council's assessment in determination of 184506/O when the NDP was at the same stage of preparation as it is now.
- 2.1.5 The proposals are explained in the context of pertinent policies of each policy document in the following chapters of this statement.

2.2 Herefordshire Local Plan – Core Strategy 2011-2031

- 2.2.1 The Development Plan consists of the Herefordshire Local Plan – Core Strategy 2011-2031. Policies most relevant to the determination of this application are: -

SS1 – Presumption in favour of sustainable development

SS2 – Delivery new homes

SS3 – Ensuring sufficient housing land delivery

RA2 – Housing in settlements outside Hereford and the market towns

RA3 – Herefordshire’s countryside

H1 – Affordable housing – thresholds and targets

H3 – Ensuring an appropriate range and mix of housing

SD1 – Sustainable design and energy efficiency

SD3 – Sustainable water management and water resources

SD4 – Wastewater treatment and river water quality

LD1 – Landscape and townscape

- 2.2.2 The s.73 applications do not seek to amend the approved point of vehicular access or off-site highway improvements. It is our view that the amended development would continue to exhibit compliance with policies SS4, MT1 and we do not discuss the requirements of these policies further.

2.3 The National Planning Policy Framework 2019

- 2.3.1 The continued absence of housing land is, however, material to undertaking the planning balance in the context of NPPF paragraph 11 d) ii) which instructs as follows: -

“Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

- 2.3.2 It follows that planning permission must be granted unless the adverse impacts of so doing significantly and demonstrably outweigh the benefits.

- 2.3.3 **Chapter 5 – Delivering a sufficient supply of homes**, reaffirms the Government’s objective of

significantly boosting the supply of homes. Paragraph 61 confirms that within this context the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies.

- 2.3.4 Chapter 15 – Conserving and enhancing the natural environment, sets out that planning decisions should contribute to and enhance the natural and local environment through several measures, which are encapsulated by paragraph 170. The site is not designated for its landscape quality or scenic beauty and is not of any ecological value.

3 The main issues

3.1 The principle of development

- 3.1.1 S.73 confirms that the determining authority shall *“consider only the question of the conditions subject to which planning permission should be granted and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly.”*
- 3.1.2 In this case the principle of residential development is secured by the granting of the two planning permissions for Phase 1 and Phase 2 – a ‘fall-back’ position. Thus, irrespective of whether or not the putative NDP defines a settlement boundary that excludes the application site(s), the principle of development is unquestionable.

3.2 Character and appearance

- 3.2.1 As per 3.1.1, it is only necessary to assess the impact of the s.73 applications in the context of the plot-substitution and not revisit the overall effect of the development upon the character and appearance of the landscape. It should also be remembered that Phase 2 is recipient of outline planning permission only with all matters bar access reserved. Hence, in the context of the ‘fall-back’, it is only the effect on the character and appearance of the area arising from the deletion of the live-work units and replacement with the 2no. live-work bungalows that requires assessment.
- 3.2.2 CS Policy LD1 requires that development proposals should demonstrate that character of the landscape and townscape has positively influenced the design, scale nature and site selection,

protection and enhancement of the setting of settlements and designated areas. Policy RA2 requires that development should be high-quality and appropriate to the context.

- 3.2.3 The Framework confirms that local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (para. 130).
- 3.2.4 As described above, the proposed revised plots 16 & 17 are two 3-bedroom low-cost market bungalows. They are significantly smaller than the approved live-work units and in our view they sit more comfortably alongside the adjoining units and as a component part of the scheme overall, than the units they replace.
- 3.2.5 The opportunity is also present for a reduction in the vehicular access, turning and parking area associated with the live-work units; this land being converted to garden space for the two plots, overlooking Little Tarrington Road. In this way, the revised scheme has greater regard to the site context than the approved scheme. A potential 'detractor' in views from the highway network i.e. the parking and manoeuvring space for the live work units, is substituted for garden, maintaining greater unity in terms of the character and appearance of the development along Little Tarrington Common Road.
- 3.2.6 It follows that in terms of the impact of the development upon the character and appearance of the area, the s.73 application would lead to modest enhancement relative to the extant permission. This by virtue of the replacement units fitting in seamlessly with the surrounding built form and the omission of the parking and turning area against the western elevation.
- 3.2.7 The s.73 application continues to demonstrate compliance with CS Policies LD1, RA2 and SD1 and the Framework at Chapter 12.

3.3 The omission of live-work units on Phase 1

- 3.3.1 The substitution of the 2 no. affordable dwellings from Phase 2 for the live-work units approved on Phase 1 will mean the development as a whole (Phase 1 and Phase 2) comprises 27 dwellings, of which none will be expressly for the purposes of live-work. This does not mean that the dwellings will not be suitable for office-based home-working, merely that none of the units will have workspace that is greater in extent than the living space.

- 3.3.2 The Development Plan does not have a policy that sets a specific requirement for the provision of live-work accommodation. Encouragement for live-work as part of mixed-use development and where appropriate is set out at Policy E1 – Employment provision, but this is from the perspective of employment creation and not where residential development is the principal concern; as is the case here.
- 3.3.3 Policy H3 - Ensuring an appropriate range and mix of housing, makes no mention of live-work on residential sites, but does encourage non-specialist new housing is built to take account of the changing needs of an ageing population; - ensuring that developments contain a range of house types, including where appropriate, bungalow accommodation.
- 3.3.4 The Case Officer's report to Committee for 171777/F was clear in attributing significant weight to the provision of market, affordable *and* live-work housing. Paragraph 7.8, which summarised the benefits arising from the scheme, referred to the *"provision of market, affordable and live-work accommodation in the context of a pronounced and not obviously reconcilable under-supply of housing land in the parish."* The live-work units were thus described in the context of the provision of market and affordable housing 'in the round' and not in isolation or in meeting any specific policy requirement for live-work units.
- 3.3.5 It follows from the above that the omission from the scheme of 2 no. live-work units does not result in any breach of the Development Plan.

3.4 HRA – Nutrient Neutrality

- 3.4.1 The River Wye SAC and expressly the River Lugg catchment, is failing to demonstrate a favourable conservation status as per the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012).
- 3.4.2 The fall-back established by 171777/F and 184506/O is material to HRA requirements associated with the s.73 applications; especially in the context that the pertinent drainage conditions for 171777/F have been discharged (194364/XA2 refers).
- 3.4.3 In our view, the sole requirement arising in consideration of the s.73 applications is the demonstration of nutrient neutrality as per the Council's Position Statement. In practical terms this amounts to demonstration that the two low-cost market bungalows would generate the same or less phosphate output than the live-work units they replace.

- 3.4.4 In this respect the applications are accompanied by a Technical Note from PFA Consulting Ltd. explaining the predicted phosphate generation arising from both schemes and providing a tabulated comparison of flows arising. This confirms that the substitution of the live-work units for the proposed low-cost market bungalows should result in a net reduction in phosphate production overall and compliance with the Council's Position Statement and CS Policy SD4.

3.5 Affordable housing

- 3.5.1 CS Policy H1 Affordable housing – thresholds and targets sets out the percentage targets for affordable housing on sites of more than 10 dwellings which have a maximum combined floor space of more than 1000sq.m.
- 3.5.2 Phase 1 (171777/F) was approved with a requirement for 5 affordable units. Phase 2 (184506/O) was for 10 dwellings, which is beneath the Council's requirement for the provision of affordable housing.
- 3.5.3 The Case Officer's report to Committee for Phase 2 was explicit in confirming that affordable housing (and financial contributions) were not required for the proposal, paragraph 6.47 stating: -

"Affordable housing and financial contributions are not required for the proposal as it falls below the threshold for such (11 dwellings or more). Nevertheless, the submission proposes two affordable, low cost market tenure dwellings, both two bedroomed and as per the illustrative layout and these would comprise a pair of semi-detached units towards the south-eastern corner of the site. Although not a planning policy requirement the provision of these affordable units weighs in favour of the scheme."

- 3.5.4 In terms of strict policy compliance, Phase 2 over-provided affordable housing by including 2 affordable dwellings. Relocating these units to Phase 1 results in no net loss across the two phases; maintaining the overall provision at 7 units in total.
- 3.5.5 The proposal would thus result in the delivery of 7/17 units on Phase 1 being affordable, or 41% in total on this phase.
- 3.5.6 Overall, having regard to the fall-back position, the s.73 applications result in no net loss of affordable units across the development as a whole and are liable to result in delivery of the

units being undertaken more promptly; the Deed of Variation likely to prescribe that the 7 affordable units on Phase 1 are delivered prior to occupation of any of the 10 units on Phase 2.

3.6 Other matters

- 3.6.1 The application has no impact on the approved schemes in respect of traffic and transport, ecology and drainage.

4 Should planning permission be granted?

- 4.1.1 Now that the salient planning matters have been examined, it is necessary to consider whether planning permission should be granted. The starting point in making that determination is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that such a determination is made in accordance with the Development Plan unless material considerations indicate otherwise.

- 4.1.2 The Development Plan for the area is the Core Strategy. The fall-back position is a highly significant material consideration; the two extant permissions having established the principle of development of the field parcel in two phases.

- 4.1.3 Moreover, this Statement has established: -

- The overall provision of affordable dwellings will remain constant at 7 dwellings;
- The affordable dwellings will be available for occupation prior to the first occupation of any of the market units on Phase 2;
- The substitution of the live-work units for 2 no. 3-bed low-cost market bungalows would fulfil a need for bungalow accommodation described by CS Policy H3 in a manner that would lead to modest enhancement of the landscape relative to the fall-back position; the bungalows assimilating more appropriately with the remainder of the development than the live-work units and with the omission of the vehicular parking and turning area against Little Tarrington Common Road.

- 4.1.4 This Statement has also explained that there is no conflict with any other policies of the Core Strategy having particular regard for those relating to landscape, highway safety, biodiversity, residential amenity, design and drainage. Accordingly, the application proposal complies with

the Development Plan in the round.

- 4.1.5 Section 38(6) of the Act also requires consideration of other material planning factors. The Framework is one such consideration. Paragraph 11 explains that there is a presumption in favour of sustainable development which is a golden thread running through both plan-making and decision-taking. For decision taking this means, in the first instance, proposals that accord with the development plan should be approved without delay. As it has already been established that the scheme accords with the Development Plan (Core Strategy), the Framework supports the Development Plan's direction that planning permission should be granted.
- 4.1.6 Whilst Neighbourhood Development Plans are capable of being material considerations, in this case, given the infancy of the Tarrington NDP, it can presently have no weight.
- 4.1.7 **Accordingly, as the application proposal complies with the Development Plan and without material considerations indicating to the contrary, S38(6) of the Act, supported by paragraph 11. c) of Framework, requires that planning permission is granted without delay.**

