

<b>APPLICATION NO</b>	<b>PA/2013/0243</b>
<b>APPLICANT</b>	Simons Developments Ltd, Costa Ltd and Subway Realty Ltd
<b>DEVELOPMENT</b>	Planning permission to erect a drive-through restaurant (class A5) and a restaurant unit (class A3) with associated access roads, car parking, servicing areas and landscaping
<b>LOCATION</b>	Land to the rear of Trent Valley Garden Centre, Doncaster Road, Scunthorpe
<b>PARISH</b>	<b>GUNNESS</b>
<b>WARD</b>	Burringham and Gunness
<b>CASE OFFICER</b>	David Wordsworth
<b>SUMMARY RECOMMENDATION</b>	<b>Grant permission subject to conditions</b>
<b>REASONS FOR REFERENCE TO COMMITTEE</b>	Member 'call in' (Councillor Oldfield – impact upon highways and significant public interest)

## **POLICIES**

**National Planning Policy Framework:** Paragraph 19 states that 'significant weight' should be placed on the need to support economic growth through the planning system. The contribution which the proposals will make to the local and wider economy should therefore be accorded substantial weight in the determination process.

Paragraph 24 – local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date local plan. They should require applications for main town centre uses to be located in town centres, then in edge-of-centre locations and only if suitable sites are not available should out-of-centre sites be considered. When considering edge-of-centre and out-of-centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

Paragraph 26 – when assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date local plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m).

Paragraph 27 – where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.

Paragraph 58 sets out a number of considerations to ensure good design is a key aspect of sustainable development.

Paragraph 196 – the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. This Framework is a material consideration in planning decisions.

Paragraph 197 – in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.

**North Lincolnshire Local Plan:** Policy S1 (Scunthorpe Town Centre - New Retail and Leisure Development) – in respect of North Lincolnshire's retail hierarchy Scunthorpe town centre is identified as the principal retail centre and the primary focus for new retail and leisure development in the local plan. This policy identifies opportunities in Scunthorpe town centre for development.

Policies DS1 (General Requirements), DS3 (Designing Out Crime) and DS16 (Flood Risk) are considered to be relevant to the determination of the application.

**North Lincolnshire Core Strategy:** Relevant policies include CS14 (Retail Development), CS19 (Flood Risk) and CS25 (Promoting Sustainable Transport).

## **CONSULTATIONS**

**Highways:** Requested further details to be submitted, which the applicant did. Highways raise no objections subject to conditions.

**Severn Trent Water Ltd:** Advises a condition.

**Scunthorpe and Gainsborough Water Management Board:** Advises a condition.

**Environment Agency:** No objections.

**Crime Prevention Officer:** Recommends conditions regarding surveillance/maintenance, security of windows, doors and shutters.

## **GUNNESS PARISH COUNCIL**

Object to the proposal in support of Lodge Moors Residents Association on the grounds of increased traffic movements and pollution from vehicles.

## **PUBLICITY**

Neighbouring properties have been notified, and site and press notices posted. Several letters of objection have been received which can be summarised as follows:

- The process of challenging the original decision has not yet been exhausted and the permission may not be upheld. The application for the A3/A5 pod units is therefore premature.
- The town centre of Scunthorpe is to be the main location for new retail, leisure, cultural and other development under policy CS14 of the North Lincolnshire Core Strategy. Development outside the town centre will therefore reduce its vitality and viability.

- The applicants are relying on data from the 2005 retail study and have not sought to undertake a health check of the town centre to provide a robust indication of its vitality and viability.
- The 2005 retail study is now out of date because Scunthorpe town centre has been severely affected since 2008 with many retail units becoming vacant.
- No flagship retailers which serve to drive footfall have opened within any of these vacant units and there is little confidence in the viability of Scunthorpe town centre as a destination.
- The applicants have not considered the cumulative effect of the proposal and existing commitments at the out-of-centre location which would adversely affect Scunthorpe town centre.
- The thrust of Central Government policy through the NPPF and ministerial statements is that town centres should be the focus for all main town centre uses which include shops, restaurants and cafés. This was further emphasised during the economic downturn by the 'Plan for Growth' which includes a town centre first policy (Aim 3).
- Section 2, paragraph 23 of the NPPF promotes competitive town centres to ensure their vitality and viability.
- Government published 'The future of high streets' which sought to ensure that town centres and high streets were at the heart of communities.
- It is considered that in compliance with paragraph 14 of the NPPF planning permission should be refused.
- The list of regulated tenants within the existing Section 106 agreement to the original application for the retail development on Doncaster Road does not include any A3 (Restaurants/Cafés) or A5 (Hot Food Takeaways) operators which make a significant contribution to the vitality and viability of the town centre. The list should include sandwich shops, restaurants and takeaways which are main town centre uses.
- If this proposal is approved, a legal obligation should be enforced to make the existing units within the town centre which are occupied by the applicants (Costa Coffee and Subway) remain in the town centre.
- The NPPF states that proposals for main town centre uses in out-of-centre locations should be subject to a robust sequential test.
- The applicants acknowledge that there would be in-centre alternatives to the proposed location and the drive-through element of Costa is not essential to the operation of an A3 use and therefore the proposal remains fundamentally a town centre use.
- The creation of two fast-food outlets will take further trade away from the town centre as both Costa and Subway are already represented within the town centre.
- The applicants should be required to carry out a full retail impact study.
- North Lincolnshire Council should carry out their own independent survey.

- A sequential search should be carried out as there are sufficient vacant premises within the town centre.
- The PA/2011/1008 planning permission has already had a severe negative impact on the town which will only increase once the retail development park is built, so to add two further fast-food outlets would have catastrophic repercussions.
- The numbers of units which were empty before the application was submitted still remain empty today.
- The traffic report states the creation of these two fast-food outlets would not increase the level of traffic as they will only be used by visitors to the proposed retail development. This is preposterous because the level of traffic will increase significantly. It was agreed on the original application (PA/2011/1008) that the second exit will have a gate which will be closed on match days, yet these plans for the drive-through show entry and exit via this gated entrance, so how can the drive-through be used on match days (the busiest retail day of the week) if the gate is closed? Access to the drive-through and fast-food restaurant will then be using the main entrance to the retail park which will cause congestion, not only to the entrance but within the car park itself, and congestion on the main road in and out of Scunthorpe.
- Increased congestion will lead to increased emission levels.
- It is requested that North Lincolnshire Council instructs an independent party to carry out a traffic survey.
- This proposal will further degenerate Scunthorpe town centre should it be granted.
- Objections were raised when the football ground got permission to relocate on the adjacent site so we hope that people will now listen.
- This permission would take the number of units to seven which is a lot different to what was heard at the planning meetings.
- The drive-through will only add to heavy traffic.
- The proposal will create more rubbish and litter on the estate.
- Shops are closing down. Will Costa and Subway be the next to put the shutters up?
- This proposal would make a total of seven fast-food outlets in a small area where the development is planned.
- On football days the area becomes almost gridlocked, particularly by the amount of traffic between Berkeley roundabout and the access to Tesco. The area will come to a standstill between 4pm and 10pm.

The following objections have been received from the Lodge Moors Residents Association:

- The Association considers the information given at the original open event at the football ground and the Civic Centre to be incorrect.

- In the small area where the site is planned there will now be seven fast-food outlets accessed by one small road.
- On football days the area becomes almost gridlocked so the additional units will only exacerbate the problem, particularly between 4pm and 10pm.
- The amount of litter blowing in the wind becomes large scale.

## **ASSESSMENT**

The application proposes two additional restaurant units which would operate as part of the larger retail development granted planning permission under reference PA/2011/1008 which comprises four retail units with a total of 10,498m<sup>2</sup> of floor space. The two additional units proposed are to be located in the south-eastern corner of the existing garden centre with access shown to be gained from both the approved retail development via Doncaster Road and from Jack Brownsword Way, the access to the Scunthorpe United Football Ground. The two units would be occupied by a Subway restaurant (Use Class A3) and a drive-through Costa Coffee (Use Class A5). The total amount of floor space would be 276.5m<sup>2</sup> which would be set over one floor. Supplementary documents that were submitted by the applicants in support of the application included a planning statement, design and access statement, transport statement, phase 1 environmental assessment, flood risk assessment and the relevant drawings. The applicants have stated that the development would create 10 full-time jobs and 20 part-time jobs.

### **The key issues in determining this application are:**

- **whether the proposal would comply with planning policy given its out-of-town centre location;**
- **whether the proposal would adversely impact upon the vitality and viability of Scunthorpe town centre;**
- **whether the traffic generated by this development would adversely impact upon highway safety or levels of congestion in the vicinity; and**
- **whether the vehicular access to the development is considered to be acceptable.**

### **Planning policy**

The applicants' planning justification by HOW Planning refers to guidance in the National Planning Policy Framework (NPPF) which requires local planning authorities, when assessing applications for retail, leisure and office development outside town centres which are not in accordance with an up-to-date local plan, to require an impact assessment if the development is over a proportionate, locally set floorspace threshold. If there is no locally set threshold, the default threshold is 2,500m<sup>2</sup>. Given that the units in combination equate to less than 276.5m<sup>2</sup> GIA (gross internal area) retail floorspace it is apparent that the impact test is not relevant as there is no local policy threshold.

Paragraph 24 of the NPPF requires local planning authorities to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date local plan. Additionally, when considering edge-of-centre and out-of-centre proposals, preference should be given to accessible sites that are

well connected to the town centre. The applicants and local planning authorities are required to demonstrate flexibility on issues such as format and scale. In the policy justification submitted by the agents no sequential test had been submitted based on several factors that are summarised as:

- The end users of both units operate existing in-centre units within Scunthorpe town centre which they remain committed to. The new units represent satellite restaurants in addition to their Scunthorpe town centre operations.
- The Costa drive-through format is only viable in locations such as the one proposed at the retail park and would not be viable in a town centre location where Costa is already represented.
- The leisure function of the restaurant uses proposed will be ancillary to the committed retail park use which has been established under PA/2011/1008. Accordingly the applicants considered that there was no direct conflict with the sequential test.

Planning officers discussed the proposal with planning consultants England & Lyle who previously advised North Lincolnshire Council on the main retail park planning application. England & Lyle's advice on this occasion was that the applicants and the local authority should sequentially test the proposal and look at potential sites that could accommodate a drive-through element in edge-of-centre locations on the main roads into Scunthorpe town centre. It was felt that the assessment of town centre sites would not be relevant because Costa Coffee and Subway already have existing town centre representation and the proposal represents an addition to supplement the existing units of these two retailers.

The agents then submitted a sequential test that looked at seven potential sites on the edge of Scunthorpe town centre. The parameters of the search by the applicants stated that sites must be between 0.2 to 0.6 hectares in size and must have the ability to accommodate a drive-through sales function in line with Costa Coffee's proposed business model, which involves the provision of an internal vehicular access road that sweeps round the unit to serve an ordering point and a separate dispensing hatch. The site must also be able to provide 10-15 car parking spaces, and it is necessary for them to occupy a prominent position on a well trafficked vehicular highway. The seven sites are as follows:

- a vacant retail unit on Brigg Road
- vacant land on Winterton Road
- the Glebe Pit site on Glebe Road
- West Street car park
- 54-58 Frodingham Road
- the former Majestic cinema site on Oswald Road
- Mary Street (west) car park

The agents considered whether the above sites were suitable, viable and available. Their sequential test concluded that the unit on Brigg Road was unsuitable because of the site's size and the fact that it already contains a large recently-constructed retail unit. Clearing the

site and starting again would be an unviable option given the costs involved in site purchase, demolition and construction.

The land on Winterton Road is considered to be too large to accommodate the proposed units, being more than double the size of the application site and is therefore unsuitable. The agents also claim that the drive-through would not be viable on the site given the extensive size and cost implications.

The Glebe Pit site on Glebe Road is also considered to be unsuitable due to its significant size. The proposed drive-through would not be viable in this location given its extensive size and cost implications. Furthermore there is no evidence that the land is available for retail-led redevelopment at the present time.

With regard to the West Street car park, the agents consider that the proposed development on this site would be resisted by the local authority as it would prevent the site coming forward in the future as part of a higher density town centre expansion scheme in line with its North Lincolnshire Local Plan allocation S1 (Scunthorpe town centre new retail and leisure development). The agents state that this policy constraint renders the site unsuitable and, given the amount of limited pass by vehicular trade, the site would not be viable. Additionally, as the site currently functions as a popular town centre car park, the agents state that there is no evidence that this land is available.

The site on Frodingham Road is not considered to be suitable as it cannot provide the drive-through lane or 15 car parking spaces.

Similarly, the site on Oswald Road is too small to accommodate the proposed retail unit and is therefore unsuitable. Additionally, the last permission secured on the site was for a four-storey office building and therefore no evidence suggests the site is available for retail development.

Finally, Mary Street car park (west) is considered to be too small and therefore is unsuitable. The agents claim that the one-way system that is currently in operation on the road that bounds the site would likely prevent a drive-through lane being incorporated and although this claim is not supported by planning officers, the limitations of the site's size are understood. The agents also claim that there is no evidence that this site is available for retail development as it functions as a popular town centre car park.

The agents' sequential test concludes that there are no more suitable, viable and available sites on the edge of Scunthorpe town centre. This evidence has been considered by consultants England & Lyle who commented that HOW Planning's justification adequately deals with the sequential test issues. It is accepted that the recent legal judgements are relevant and whilst it would not be appropriate for alternative sites for a drive-through to be considered in locations where a drive-through could not be accommodated, the way that alternative, more central locations for the Subway unit were assessed was less convincing. In terms of disaggregation, England & Lyle advised that the agents could have considered if the Subway unit could be located within more central locations in Scunthorpe town centre by disaggregating the proposal. The agents' argument that due to Subway already being represented in the town centre therefore making another unit unrealistic was accepted by England & Lyle to justify why edge-of-centre sites only were considered. England & Lyle agreed that none of the alternative sites appeared to be of a suitable size with adjacent car parking and on that basis they were neither available, suitable or viable for the type of development proposed. Given this careful assessment it is considered that the proposal

complies with national and local retail policies as previously set out and therefore will not adversely affect the vitality and viability of Scunthorpe town centre.

## **Highways**

A transport statement was submitted with the planning application. Further information and clarification was required by the council's Transportation officers. This information was submitted and was considered by the Highways department to be acceptable. Comments were raised regarding access to the two units, particularly considering that access via Jack Brownsword Way is to be restricted at certain times outside the opening hours of the retail park, on match days and in the event of an emergency which is controlled by condition 28 of planning permission PA/2011/1008. It should be noted that this proposal for the two units does not in any way change the access arrangements consented by the previous planning permission for the wider site.

## **Other matters**

Comments received during the publicity of the application refer to the deteriorating health and vitality of Scunthorpe town centre and criticise why the agents have not sought to undertake a health check to provide an indication of its current vitality and viability. A health check for the health and vitality of Scunthorpe town centre would only be required where an impact assessment was required and as the development falls under the threshold required as stated in the National Planning Policy Framework there is no requirement for an assessment of the proposed impact to be undertaken. Furthermore, it is felt unlikely that the creation of two relatively small restaurant uses built as ancillary uses to the larger retail development will not adversely affect the vitality and viability of Scunthorpe town centre. One objection claimed that granting permission for the above proposal would be premature because the decision on the retail park may not be upheld. In April a decision in the appeals court determined that the judicial review could not proceed further and therefore brought the judicial review for planning application PA/2011/1008 to a conclusion. Comments received regarding the cumulative impact of having seven restaurant/fast-food units within a small area has no policy basis to restrict the number in any particular area. None of the issues raised by objectors are sufficient to outweigh the general policy presumption in favour of economic-related development.

## **RECOMMENDATION      Grant permission subject to the following conditions:**

1.

The development must be begun before the expiration of three years from the date of this permission.

Reason

To comply with section 91 of the Town and Country Planning Act 1990.

2.

The development hereby permitted shall be carried out in accordance with the following approved plans: 5295-0-002-1, 5295-107-3, 5295-108-3, 5295-180-6 and 5295-0-208-2.

Reason

For the avoidance of doubt and in the interests of proper planning.



3.

The proposed new unit shall not be brought into use until the vehicle access to it and the vehicle parking, turning and servicing areas serving it have been completed in accordance with the approved details. Once complete the vehicle parking, turning and servicing areas shall be retained.

Reason

In the interests of highway safety and to comply with policies T2 and T19 of the North Lincolnshire Local Plan.

4.

No development shall take place until a construction phase traffic management plan showing details of all associated traffic movements, including delivery vehicles and staff/construction movements, any abnormal load movements, contractor parking and welfare facilities, storage of materials and traffic management requirements on the adjacent highway, has been submitted to and approved in writing by the local planning authority. Once approved the plan shall be implemented, reviewed and updated as necessary throughout the construction period.

Reason

In the interests of highway safety and to comply with policy T19 of the North Lincolnshire Local Plan.

5.

The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

Reason

To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.

6.

Prior to the commencement of development details shall be submitted to and agreed in writing by the local planning authority of measures to ensure that the development meets the requirements of the document 'Designing Out Crime through Environmental Design'. Details shall include the following areas: surveillance/maintenance, security, lighting, windows, doors and roller shutters.

Reason

To ensure that the development complies with policy CS3 of the North Lincolnshire Local Plan.

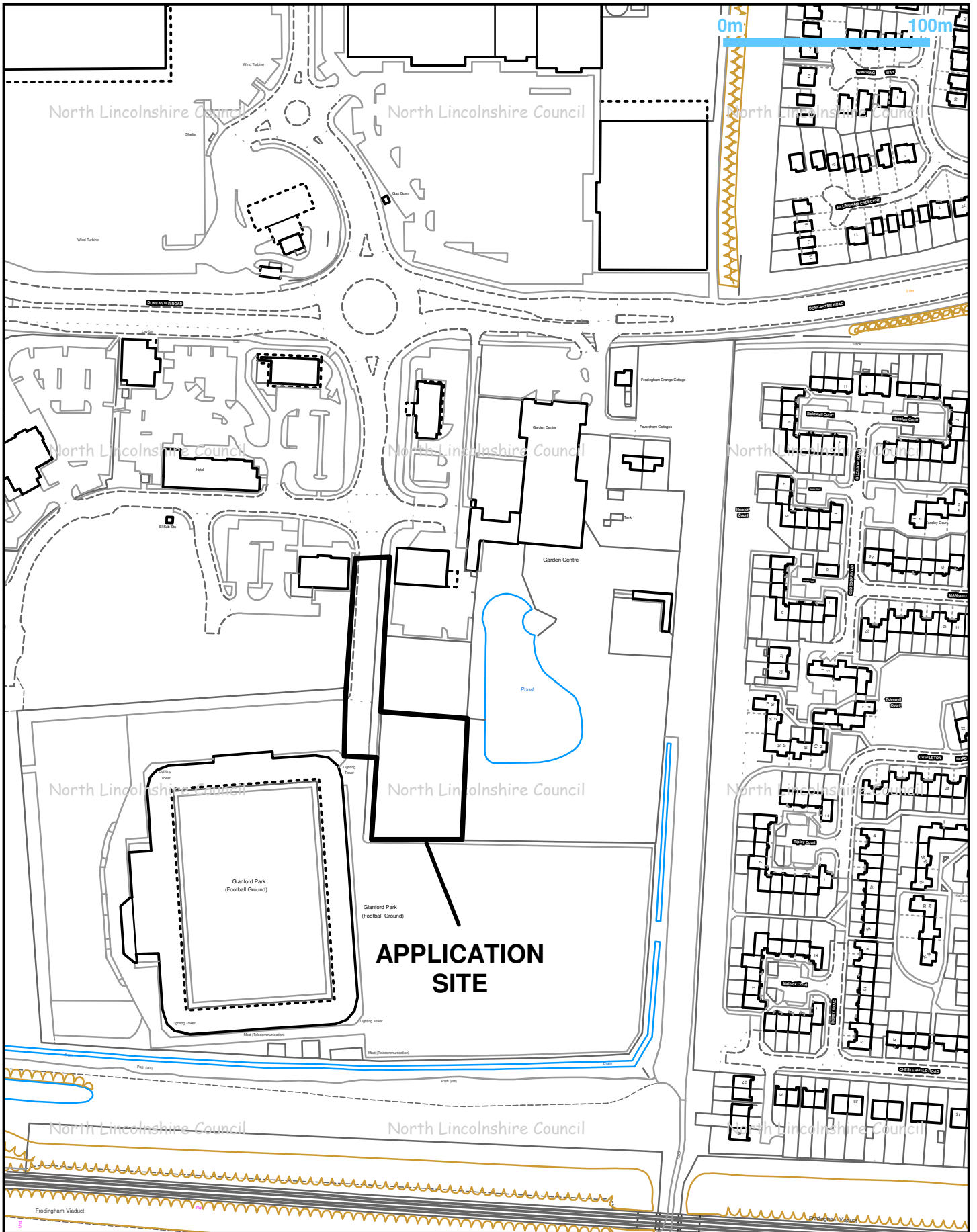
### **Reasons for approval**

The council, as local planning authority, has had regard to the relevant policies of the development plan as set out below and considers that, subject to compliance with the conditions attached to the permission, the proposed development would be in accordance with the development plan, would not materially harm the character of the area nor the living conditions of neighbouring occupiers, and would be acceptable in all other planning

considerations. The council has taken into account all other matters, none of which outweigh the considerations that have led to its decision. The policies taken into consideration in the determination of this application are

**Informative**

In determining this application, the council, as local planning authority, has taken account of the guidance in paragraphs 186 and 187 of the National Planning Policy Framework in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the area.



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