



Ministry of Housing,  
Communities &  
Local Government

Mr Paul Belton  
Carter Jonas  
1 Station Square  
Cambridge  
CB1 2GA

Our ref: APP/V2635/W/19/3237042  
Your ref: 16/02231/OM

14 July 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY WHISTLE WOOD AND REFFLEY WOOD LIMITED AND MR P DE  
GREY OSBORN AT LAND WEST OF KNIGHTS HILL VILLAGE, GRIMSTON ROAD,  
SOUTH WOOTTON, NORFOLK  
APPLICATION REF: 16/02231/OM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC who held a public local inquiry between 14 and 17 January 2020 into your client's appeal against the decision of King's Lynn and West Norfolk Borough Council to refuse your client's application for planning permission for residential development of the land to provide up to 600 dwellings, incorporating affordable housing, together with a local centre for uses A1, A2, A3 and/or A5 (600m<sup>2</sup>) with the total quantum of A1 net sales area not to exceed 279m<sup>2</sup> in the alternative, D2 community floorspace (up to 500m<sup>2</sup>), open space, formal sports pitches, a car park to serve Reffley Wood and associated development to include substations, drainage features, roads, cycle and pedestrian paths and other such works, in accordance with application ref: 16/02231/OM, dated 22 December 2016. The appeal application is made in outline with all matters reserved save for access.
2. On 31 October 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

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

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## **Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR8, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

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

6. Following the close of the Inquiry the results of the Housing Delivery Test: 2019 measurement were published. The comments of the two main parties were invited and have informed the Inspector's report. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

## **Policy and statutory considerations**

7. In reaching his decision, 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.
8. In this case the development plan consists of The King's Lynn and West Norfolk BC Local Development Framework - Core Strategy (2011) (CS); The Site Allocations and Development Management Policies Plan (SADMPP) (2016); The South Wootton Neighbourhood Plan 2015-2026 (2014) (SWNP); The Core Strategy and Minerals and Waste Development Management Policies Development Plan Document 2010-2026 (September 2011); The Minerals Site Specific Allocations Development Plan Document (October 2013, amendments adopted December 2017); and The Waste Site Specific Allocations Development Plan Document (October 2013). The Secretary of State considers that relevant development plan policies include those set out at IR24-29, and agrees with the Inspector at IR223 that the most important policies for the determination of this appeal are CS policies CS12, CS11 and SADMPP policies DM15 and E4.1.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

## *Emerging plan*

11. The emerging plan comprises the draft King's Lynn and West Norfolk Local Plan (eLP). The Secretary of State considers that the emerging policies of most relevance to this

case include those listed at IR30, and he also notes the Council's intention to delete the allocation of the appeal site as set out at IR31.

12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State agrees with the Inspector that the emerging plan is at an early stage (IR226) and at the time of the Inquiry it was anticipated that the eLP pre-submission publication and consultation would take place later in 2020, working towards examination in 2021 and adoption mid-2022. Overall the Secretary of State agrees with the Inspector (IR226) that the emerging policies carry very limited weight.

## **Main issues**

### *Housing*

13. The Secretary of State agrees that the Council has a five-year supply of housing, as required by the Framework (IR187). He agrees with the Inspector's conclusions at IR187 that the delivery of the appeal site would increase flexibility in delivering a five-year housing supply which is a matter of significant importance considering the 2019 housing delivery test results (below 85%) and considering national policy to significantly boost the supply of housing. He has considered further that the proposal would result in the loss of a greenfield site (IR197). However, the appeal site is an allocated site in an adopted Development Plan for at least 600 dwellings, and that it is essential to deliver the adopted CS strategy that focuses on the expansion of King's Lynn and identifies areas of growth to fulfil that aim (IR188). He has considered at IR196 that a proportion of affordable housing, in accordance with the requirements of CS policy C09 is proposed which would meet the requirements of SADMPP policy E4.1. In addition, a range of house sizes, types and tenures would need to be proposed to meet the same policy requirement; the details of which would be considered at a later stage. He further agrees with the Inspector at IR189 that the provision of affordable housing is a significant benefit. While the Secretary of State notes the stated intention to remove the site allocation from the emerging plan, as that plan is yet to be consulted upon or examined, he has found that it carries very limited weight. Overall, the Secretary of State agrees the proposal would accord with policies CS01,02, 03 and 09 and SADMPP policy E4.1 and considers housing provision attracts substantial weight in favour of the scheme.

### *Heritage impacts*

14. The Secretary of State has considered the Inspector's reasoning at IR169-192 concerning the impact of the proposal on the setting and significance of a number of designated heritage assets. For the reasons given at IR170-175 he agrees that there would be harm to the setting of Rising Lodge (Grade II 18<sup>th</sup> century former farmhouse) as the proposal would result in the loss of some agricultural land with which the listed building was formerly associated. He further agrees (IR174) that such harm would be limited by the proposed intervening open space, and that the listed building would retain its isolated, rural and open setting. For the reasons given at IR175 he agrees that the harm would be less than substantial, at the lower end of that spectrum.
15. For the reasons given at IR176-182 the Secretary of State agrees that the contribution the appeal site makes to the setting of Castle Rising Castle (grade I and SAM) is small (IR180). He further agrees (IR181) that as the appeal site forms part of the former Chase,

some harm would result however that such harm would be limited by a number of factors. In particular, he agrees with the Inspector at IR181 that as the northern extent of development along with its height would be controlled, given the separation distance, topography and planting, the appeal scheme would hardly be visible from the Castle, and that, were it visible, it would not appear out of place, given the varied character and other field boundaries and wooded areas within the former Chase. He agrees with the Inspector at IR182, that any harm to the significance of the Castle would be less than substantial, at the lower end of that spectrum.

16. For the reasons given at IR183-184 the Secretary of State agrees that as there is some intervisibility between the appeal site and the ruins of the Grade I listed Norman St James' church at Bawsey, introducing built development where none exists at present would erode its isolated setting and would interrupt views of the Church in its isolated setting from the appeal site and beyond. He agrees (IR183) that the harm would be limited by the separation distance and the existing and proposed planting that would further act to interrupt those views. There is also existing built development in views from St James' towards the appeal site, including Queen Elizabeth Way and the hospital. He agrees with the Inspector at IR184 that when taking all these considerations into account the level of harm that would result to St James' would be less than substantial, midway within that spectrum.

#### *Cumulative impacts*

17. The Secretary of State agrees with the Inspector at IR185 that as some elements of the historic landscape around the appeal site are interrelated, some cumulative harm would arise, in particular with regard to the interrelationship between Castle Rising Castle and Rising Lodge as those assets have a historic functional relationship. This cumulative harm has been taken into account in his assessment above. He further agrees with the Inspector's view that as there are no inter-relationships between St James' at Bawsey and other heritage assets identified, he therefore cannot be assured that there would be any cumulative impacts on that heritage asset.
18. The Secretary of State attaches great weight to the conservation of the heritage assets, in line with paragraph 193 of the Framework. Paragraph 196 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Should that heritage test prove favourable to the proposals, he agrees with the Inspector that the proposed development would meet the requirements of Local Plan policies CS12 and SADMPP policy E4.1 (IR192).

#### *Highways and transport*

19. The Secretary of State notes at IR34 that there are not matters of disagreement between the appellants, Council and the County Council on the subject of highways, transport and access. He has taken into account that the transport assessment has identified mitigation works to deal with the impact of the proposal on the highway network, and these are proposed to be secured by condition (IR159) and agreements., For the reasons given at IR157-168 he agrees with the Inspector at IR159 that the local highway authority is satisfied that the mitigation proposed is appropriate and that the residual cumulative impacts would not be severe on the basis of the findings of the Traffic Impact Assessment (TA). The proposal is therefore not in conflict with paragraph 109 of the Framework. He further agrees with the Inspector at IR168 that the proposals would reduce the need for travel and promote sustainable modes of transport and would therefore accord with policy

CS11 and SADMPP policies DM15 and E4.1 (IR168). For the reasons given at IR190 he considers that the enhancement of public transport, walking and cycling routes would be a benefit to those beyond the appeal site. Furthermore, he agrees with the Inspector at IR190 that it would deliver off-site highway improvements which are unlikely to be delivered in the absence of the appeal development. He considers that both these benefits attract moderate weight.

#### *Other matters*

20. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 and for the reasons set out at IR208-212 he agrees with the Inspector that he is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of any affected European site in view of each site's conservation objectives. Those sites are Roydon Common and Dersingham Bog Special Area of Conservation (SAC) and RAMSAR sites, known together as Roydon Common and Dersingham Bog SAC. The Secretary of State agrees with the assessment and findings in the Inspector's Annex D. He therefore adopts Annex D as the necessary Appropriate Assessment in his role as the Competent Authority on this matter and agrees that there would be no adverse effect on the integrity of the designated sites.
21. For the reasons given in IR193 and 194, the Secretary of State considers that flood risk and foul water / sewerage issues do not weigh against the proposal. Furthermore, he has considered the Inspector's reasons given at IR195 regarding the mitigation of the impact on Reffley Wood, which includes development set back behind wide planted buffer zones, planting and a defined boundary to direct visitors to agreed access locations. He agrees with the Inspector that details of landscaping are reserved for consideration at a later stage, however a large buffer would be included on the northern section of Reffley Wood, this will help to ensure no harm to the former clay pit within the Wood.
22. The Secretary of State notes at IR201 that a pedestrian and cycle link are proposed to link the appeal site to the Knights Hill car park area and agrees with the Inspector that the benefits of a shared link would outweigh the small loss of planting envisaged. For the reasons given at IR203 the Secretary of State also agrees with the Inspector that the appeal development would conserve and enhance the landscape and natural beauty of the AONB.
23. He further agrees with the Inspector at IR198 in respect of local infrastructure to meet further primary health care needs that CIL monies and the reserved site for community use, secured through the section 106 agreement would meet the requirements of SADMPP policy E4.1. He further agrees with the Inspector at IR199 that provisions of the s.106 agreement address primary school requirements.
24. He agrees for the reasons given at IR200 that the environmental statement that accompanies the appeal application has assessed the impacts of additional traffic movements on air quality as negligible and that mitigation is provided to address the impacts of dust during construction. He further agrees for the reasons given at IR204 that open space provision is sufficient to meet the needs of the proposed development and to provide for ecological mitigation, and would accord with the requirements of SADMPP DM16 and E4.1. Further he agrees with the Inspector for the reasons given at IR205 that a layout could be secured that would avoid overlooking into existing properties in Ullswater Avenue. He further agrees at IR206 that requirements to accommodate a

major accident hazard high pressure gas pipeline given the development free areas and planting proposed near to the boundary with the A149 can be met (IR206).

#### *Other benefits*

25. The Secretary of State agrees with the Inspector's conclusions at IR190 that other benefits include CIL receipts and economic benefits in terms of the direct and indirect economic expenditure from jobs and future spending power. He considers that on-site facilities would be open for use by existing residents include sports pitches and a local centre. He considers that the above benefits each attract moderate weight.

#### **Planning conditions**

26. The Secretary of State has given consideration to the Inspector's analysis at IR154-155, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex A should form part of his decision.

#### **Planning obligations**

27. Having had regard to the Inspector's analysis at IR213-221, the planning obligation dated 16<sup>th</sup> January 2020, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR221 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

#### **Planning balance and overall conclusion**

28. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with policies CS12, CS11 and SADMPP policies DM15 and E4.1 of the development plan, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

29. The only material consideration which weighs against the proposal is harm to the setting and significance of the heritage assets, which in line with Framework requirements carries great weight.

30. The Secretary of State considers that the provision of housing carries substantial weight in favour of the scheme, and he further agrees with the Inspector that it is essential this allocated site comes forward to deliver the strategic spatial strategy and objectives of the development plan, particularly in respect of growth [IR197]. He considers that CIL receipts and economic benefits attract moderate weight, as does the provision of on-site facilities and the enhancement of public transport, walking and cycling routes. The off-site highway improvements also attract moderate weight. The Secretary of State considers that the delivery of open space attracts limited weight.

31. Overall the Secretary of State considers that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to heritage assets he has identified at paragraphs 14-18 of this decision letter. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.

32. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a grant of permission. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted, subject to conditions.

### **Formal decision**

33. 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 with all matters reserved save for access subject to the conditions set out in Annex A of this decision letter for residential development of the land to provide up to 600 dwellings, incorporating affordable housing, together with a local centre for uses A1, A2, A3 and/or A5 (600m<sup>2</sup>) with the total quantum of A1 net sales area not to exceed 279m<sup>2</sup> in the alternative, D2 community floorspace (up to 500m<sup>2</sup>), open space, formal sports pitches, a car park to serve Reffley Wood and associated development to include substations, drainage features, roads, cycle and pedestrian paths and other such works.

34. 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**

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

36. 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.

37. A copy of this letter has been sent to King's Lynn and West Norfolk Borough Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch  
Authorised by the Secretary of State to sign in that behalf

## Annex A List of conditions

- 1 Approval of the details of the layout, scale, appearance and landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority before any development is commenced.
- 2 Plans and particulars of the reserved matters referred to in condition 1 above shall be submitted to the Local Planning Authority in writing and shall be carried out as approved.
- 3 Application for the approval of reserved matters shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.
- 4 The development hereby permitted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the latest such matter to be approved.
- 5 The development hereby approved shall be carried out in accordance with the parameter plans land uses (CS053683-PL-001E), access and movement (CS053683-PL-002E) and the location plan (CS053683-PL-02A). The development shall also be carried out in accordance with the landscape Strategy (CS053683-PL-100F) in so far as the details provided relate to the landscape strategy for the site. For the avoidance of doubt the landscape strategy should underpin the integration of green space throughout the development but shall not define the precise extent of built development or layout, save to the extent that development shall not extend north east above the line of the 45m contour and 43m contour for that part of the site lying within 80m of Grimston Road, as shown on the landscape strategy plan and shall retain the overall extent of greenspace.
- 6 Other than highway improvement works to form the new roundabout on Grimston Road, notwithstanding the details submitted the development hereby permitted shall not be commenced until a phasing plan has been submitted to and agreed in writing by the Local Planning Authority. The phasing plan shall identify and describe the phases of construction of development including the following infrastructure elements
  - the local centre;
  - Public open space and play areas;
  - Pedestrian, cycle and emergency vehicle route to Ullswater Avenue;
  - Other pedestrian and cycle connections, including to the remainder of Allocation E4.1 (known as Claylands site);
  - A new car park serving Reffley Wood;
  - Structural planting.The development shall be carried out in accordance with the provisions of the approved phasing plan and/or any subsequent amendment to it that has been agreed in writing by the Local Planning Authority.
7. The maximum height of development shall be restricted to 8 metres (floor to ridge level) and 9.5 metres (floor to ridge level) respectively in the areas indicated on the parameters plan – land uses (CS053683-PL-001E).
8. Notwithstanding the details indicated on the approved drawings no works shall commence on-site until detailed drawings for the off-site highway improvement works as



indicated on drawing No. KHD-CAP-00-00-SK-C-0002 Rev P02 Grimston Road Roundabout Option 2, including the provision of bus stops along the site frontage on Grimston Road, together with a programme for their implementation, have been submitted to and approved in writing by the Local Planning Authority.

9. Prior to the occupation of the 125th dwelling, detailed drawings for the off-site highway improvement works for the Grimston Road - Langley Road proposed traffic signal junction as indicated on drawing No. KHD-CAP-00-00-SK-C-0006 Rev PO3 shall be submitted to and approved in writing by the Local Planning Authority.

10 Prior to the occupation of the 200th dwelling of the development hereby permitted the off-site highway improvement works (including Public Rights of Way works) referred to in condition 9 shall be completed to the written satisfaction of the Local Planning Authority.

11 No more than 30 dwellings shall be occupied until an interim travel plan has been submitted to and approved in writing by the Local Planning Authority.

12 No more than 50 dwellings shall be occupied prior to the implementation of the interim travel plan referred to in condition 11. During the first year of occupation an approved full travel plan based on the interim travel plan referred to in condition 11 shall be submitted to and approved in writing by the Local Planning Authority. The approved full travel plan shall be implemented in accordance with the timetable and targets contained therein and shall continue to be implemented as long as any part of the development is occupied, subject to approved modifications agreed by the Local Planning Authority as part of the annual review.

13 Each reserved matters submission shall be supported by a detailed surface water drainage scheme which shall be based on the submitted drainage strategy (Welland Design and Build Limited, WDB\_SWDS\_07, October 2018) and shall have regard to the detailed comments set out within the consultation response of the Local Lead Flood Authority dated, 27th November 2018.

14 Other than highway improvement works to form the new roundabout on Grimston Road and notwithstanding the details already submitted, prior to the commencement of groundworks on any phase, an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health;
  - property (existing or proposed) including buildings, crops, livestock and pets;
  - woodland, service lines and pipes,
  - adjoining land;
  - groundwaters and surface waters;
  - ecological systems;
  - archaeological sites and ancient monuments.
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

15 Other than highway improvement works to form the new roundabout on Grimston Road, prior to the commencement of groundworks of any phase, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

16 The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of groundworks, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.

17 In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 14, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 15, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 15.

18 The recommendations, mitigation and enhancement measures identified in the following protected species surveys by Torc Ecology Ltd, shall be implemented in accordance with the approved details and in accordance with a programme to be submitted and agreed to the written satisfaction of the Local Planning Authority:

- Mitigation measures for Reptiles within the Environmental Statement Volume 1 Ecology & Nature Conservation Dated December 2016;
- Invertebrate Survey Report, Ref: 30.07.14 Dated 28 July 2014;
- Bat Survey Report, Project Ref: TE/LB/2012\_157 Dated November 2016.

19 Prior to first occupation, details of the future management of the Ecological Management Zones shall be submitted to and agreed in writing by the Local Planning Authority.

20 Welcome packs (to include information relating to the availability of and whereabouts of locations for dog walking routes which are less sensitive than international sites, and the provision of connecting accesses to existing rights of way and open space) shall be provided on first occupation of all houses hereby approved.

21 Other than highway improvement works to form the new roundabout onto Grimston Road, no development shall take place until an archaeological written scheme of

investigation has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and 1) The programme and methodology of site investigation and recording; 2) The programme for post investigation assessment; 3) Provision to be made for analysis of the site investigation and recording; 4) Provision to be made for publication and dissemination of the analysis and records of the site investigation; 5) Provision to be made for archive deposition of the analysis and records of the site investigation; and 6) Nomination of a competent person or persons/organization to undertake the works set out within the written scheme of investigation.

22 Other than highway improvement works to form the new roundabout onto Grimston Road, no development shall take place other than in accordance with the written scheme of investigation approved under condition 21.

23 No more than 50 dwellings shall be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological written scheme of investigation approved under condition 21 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.



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

**by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC**

An Inspector appointed by the Secretary of State

**Date: 14 April 2020**

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**TOWN AND COUNTRY PLANNING ACT 1990**  
**KING'S LYNN AND WEST NORFOLK BOROUGH COUNCIL**  
**APPEAL MADE BY WHISTLE WOOD AND REFFLEY WOOD LIMITED AND MR P**  
**DE GREY OSBORN**

Inquiry held on 14-17 January 2020

Land west of Knights Hill Village, Grimston Road, South Wootton, Norfolk

File Ref(s): APP/V2635/W/19/3237042

## Abbreviations used in this report

AONB	Area of Outstanding Natural Beauty
CIL	Community Infrastructure Levy
CS	King's Lynn & West Norfolk Borough Council Local Development Framework-Core Strategy
Council	King's Lynn & West Norfolk Borough Council
County Council	Norfolk County Council
CWS	Countryside Wildlife Site
DMRB	Design Manual for Roads and Bridges
ES	Environmental Statement
EiP	Examination in public
eLP	emerging draft King's Lynn and West Norfolk Local Plan
NPPF	National Policy Framework
HE	Historic England
NPPG	National Planning Policy Guidance
RTD	round table discussion
SADMPP	Site Allocations and Development Management Policies Plan (2016)
SAM	Scheduled Ancient Monument
SSSI	Site of Special Scientific Interest
SWNP	South Wootton Neighbourhood Plan
SoCG	Statement of common ground

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**File Ref: APP/V2635/W/19/3237042**

**Land west of Knights Hill Village, Grimston Road, South Wootton, Norfolk**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The application is made by Whistle Wood and Reffley Wood Limited and Mr P De Grey Osborn to King's Lynn and West Norfolk Borough Council (the Council).
- The application Ref 16/02231/OM is dated 22 December 2016.
- The development proposed is described as 'residential development of the land to provide up to 600 dwellings, incorporating affordable housing, together with a local centre for uses A1, A2, A3 and/or A5 (600m<sup>2</sup>) with the total quantum of A1 net sales area not to exceed 279m<sup>2</sup> in the alternative, D2 community floorspace (up to 500m<sup>2</sup>), open space, formal sports pitches, a car park to serve Reffley Wood and associated development to include substations, drainage features, roads, cycle and pedestrian paths and other such works'.

**Summary of Recommendation: That the appeal be allowed.**

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**PRELIMINARY MATTERS**

1. The address and description of development reflect those on the Council's decision notice. As those accurately identify the appeal site and describe the development sought, I have used them in the banner heading and my formal decision. I note that they have been agreed with the appellants.
2. The Inquiry sat for three and a half days between 14 and 17 January 2020. There was an accompanied site visit on the afternoon of 16 January. By agreement with the parties, my visits to various off-site locations referred to in the evidence were carried out on an unaccompanied basis, all in the public realm. I carried out unaccompanied visits before and during the course of the Inquiry.
3. The appeal was recovered by the Secretary of State by letter dated 31 October 2019 for the following reason:

*The reason for this direction is that the appeal 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.*

4. The Council refused the appeal application on 19 January 2017 for two reasons, which are summarised below. They are set out in full in the statement of common ground on general matters.<sup>1</sup>
  - 1) The proposed development would adversely affect the setting of Castle Rising Castle, harming the significance of the scheduled ancient monument (SAM) and grade I listed building. It would therefore fail to protect the setting of the Castle as required by policy E4.1 of the Site Allocations and Development Management Policies Plan (2016) (SADMPP), would be contrary to policy CS12 of the Core Strategy (2011) (CS) and policy DM15 of the SADMPP. The benefits are not considered to outweigh this harm and it would not accord with paragraph 193 of the National Planning Policy Framework (NPPF).

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<sup>1</sup> KD1

- 2) The impacts of up to 600 dwellings on the local road network would be unacceptable and severe, contrary to paragraph 109 of the NPPF.
5. In respect of the second reason for refusal, the Council subsequently confirmed that it would not pursue any objection on the basis of the impact of the proposed development on the local road network.
6. The appellants submitted a signed section 106 agreement at the Inquiry<sup>2</sup>, the main provisions of which are summarised below:
  - provision and transfer of open space;
  - provision and transfer of affordable housing;
  - provision of habitats monitoring and mitigation strategy contribution;
  - contribution towards community ranger cost and community engagement delivery payment;
  - provision of community facility land;
  - provision of Council and Norfolk County Council (County Council) monitoring charge;
  - highway contributions;
  - education contributions;
  - library contributions;
  - bus service contributions.
7. The Council submitted a Community Infrastructure Levy (CIL) Regulations compliance statement<sup>3</sup> which set out its view as to whether the obligations would accord with Regulation 122 of the CIL Regulations. The Council and the appellants agreed that all of the obligations would meet the relevant tests. The obligations are discussed further below.
8. The application was accompanied by an Environmental Statement (ES)<sup>4</sup>. I have taken the environmental information into consideration in my assessment and recommendation.
9. The appeal application is made in outline with all matters reserved save for access. A masterplan accompanies it (CS053683-PL-01N), which it was confirmed is for illustrative purposes only. Parameter plans (CS053683-PL-001E and CS053683-PL-002E), set out the extent of proposed developed area and access arrangements, whilst a landscape strategy plan (CS053683-PL-100F) provides further clarification. Together, they form part of the appeal application. Suggested planning condition 5 indicates that development should be carried out in accordance with the parameter plan and, as far as it relates to the landscape

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<sup>2</sup> IQ21 and IQ25

<sup>3</sup> KD5



strategy of the site, the landscape strategy plan. I am determining this appeal accordingly.

10. Castle Rising Parish Council did not have Rule 6 status, but was represented at the Inquiry, submitted evidence and presented witnesses. It sought to defend the Council's second reason for refusal, regarding the impacts of the appeal development on the local road network, along with other concerns.
11. On the second day of the Inquiry a letter from Historic England (HE), dated 14 January 2020, was submitted. It gives HE's current position clarifying its continued opposition to the proposed development. Whilst no reason was given for the very late submission of this evidence, as it was relevant to the appeal, did not raise any matters of substance that differed from HE's previously stated position and the appellants took a similar view, I consider that its acceptance would not materially prejudice the appellants. It has been taken into account in my deliberations.
12. Post Inquiry the results of the Housing Delivery Test:2019 measurement were published. The comments of the two main parties were invited and have informed my report.

## **THE SITE AND SURROUNDINGS**

### ***Location and description***

13. The site and surroundings are described in the evidence and the statement of common ground (General Matters)<sup>5</sup> (SoCG). The appeal site at present is undeveloped, greenfield land, in agricultural use. It extends to approximately 35.3 hectares. Roughly triangular in shape, it is enclosed by Queen Elizabeth Way (the A149) on one side, Grimston Road (A148) on the other and Reffley Wood and housing around Ullswater Avenue on the remaining side. Sandy Lane, a public right of way, passes roughly through the centre of the site. Access is currently provided off Grimston Road and Sandy Lane.
14. The appeal site is mostly open, enclosed mainly by planted boundaries. It is split into two parts by Sandy Lane, an unmetalled public right of way enclosed to some extent by established hedges. There is an area of woodland which sits between the appeal site and much of the housing around Ullswater Avenue. The land rises gently from around Sandy Lane in the south to the highest point around Knights Hill at the junction of Grimston Road and Queen Elizabeth Way.
15. Reffley Wood, a County Wildlife Site (CWS), abuts part of the appeal site beyond Sandy Lane just south of the houses around Ullswater Avenue. Many footpaths and tracks pass through the Wood, extending up to the site boundary.
16. The gardens of the Knight's Hill Hotel complex adjoin the appeal site near to the junction of Grimston Road and Queen Elizabeth Way. That comprises a number of buildings and associated facilities. That complex includes a grade II listed building, a former farmhouse on the site of the original Rising Lodge. The former farmhouse has since been extended and modern buildings have been erected in its immediate surroundings.

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<sup>5</sup> KD1

17. Land immediately beyond Grimston Road forms part of the Norfolk Coast Area of Outstanding Natural Beauty (AONB). For the most part the appeal site is not located within it, though it immediately adjoins its boundary along the Grimston Road. The part of the site, comprising some of the roundabout junction, slip-roads and associated works lie within the AONB.
18. Part of the appeal site lies within the Parish of Castle Rising, part within South Wootton Parish and part within the unparished areas of King's Lynn.

### ***Planning history***

19. The appeal site has not been the subject of any other planning applications or appeals.
20. The appeal site is allocated for housing in policy E4.1 of the SADMPP. A residual area of that allocation, which is a 2.6 hectare site to the west, known as the Claylands, has the benefit of outline planning permission for up to 60 dwellings. It includes an access, which together with the appeal development's proposed access would fulfil the requirement in SADMPP policy E4.1 for two accesses to the site as a whole<sup>6</sup>.

### ***Designated heritage assets***

21. The appeal site does not include any designated heritage assets. However, there are a number of designated heritage assets in the locality, including the following:
  - SAM at Rising Castle and 11th century church, along with the associated grade I listed ruins of the Castle and 11<sup>th</sup> century church;
  - Castle Rising Conservation area;
  - SAM at St James' Church and surrounding Saxon and Medieval settlement and grade I listed ruins of St James';
  - Grade II listed Rising Lodge, Knight's Hill Hotel complex (referred to in paragraph 16);
  - Grade II listed Warren Farmhouse.
22. Castle Rising Castle lies roughly 1.6 kms to the north of the appeal site, beyond Grimston Road, within the Castle Rising Conservation Area. Adjacent to the appeal site lies Rising Lodge, a grade II listed former farmhouse, which may sit in place of a former hunting and warreners' lodge associated with the Castle and surrounding hunting lands. That building is now part of a hotel and leisure complex, separated by the gardens associated with the hotel. The other side of Queen Elizabeth Way lies St James' (approx. 775m away) and the Medieval settlement at Bawsey. Warren Lodge sits roughly 600m away, again on the other side of Queen Elizabeth Way.

## **PLANNING POLICY**

23. The Development Plan for this appeal comprises the following:

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<sup>6</sup> 15/01782/OM

- The King's Lynn and West Norfolk Borough Council Local Development Framework - Core Strategy (2011) (CS)
- The SADMPP (2016)
- The South Wootton Neighbourhood Plan 2015-2026 (2014) (SWNP)
- Core Strategy and Minerals and Waste Development Management Policies Development Plan Document 2010-2026 (September 2011)
- Minerals Site Specific Allocations Development Plan Document (October 2013, amendments adopted December 2017)
- Waste Site Specific Allocations Development Plan Document (October 2013)

### ***Core Strategy***

24. The CS provides for 16,500 new dwellings across the borough over the period 2001-2026. Policy CS01 sets out the spatial strategy for the borough, seeking to strike a balance between protecting and enhancing the built and natural environment, whilst facilitating sustainable growth in the most appropriate locations. That policy identifies King's Lynn as the focus for major planned growth in accordance with a settlement hierarchy, which is set out in policy CS02. Policy C02 identifies King's Lynn as a sub-regional centre at the top of that hierarchy and together with policy C03 confirms the requirement for King's Lynn, to provide at least 7,510 new dwellings, within and around King's Lynn, including at South Wootton. It identifies urban regeneration and urban expansion areas adjacent to the town, which are shown on figure 7 (King's Lynn key diagram 1), together with key infrastructure requirements. The area for urban expansion identified to the north east of the town is located in the same broad location as the appeal site. Figure 8 (King's Lynn diagram 2) identifies the town centre expansion area, and waterfront regeneration.
25. Policy CS09 confirms that provision of the King's Lynn housing requirement will be made through development at strategic locations identified on the proposals map and through smaller sites, both of which would be identified in the SADMPP.
26. Policy CS11 seeks to deliver a sustainable transport network to support the regeneration and development priorities of the CS, whilst policy CS12 recognises the need for development to protect and enhance environmental assets, including the historic environment and landscape character.

### ***Site Allocations and Development Management Policies Plan***

27. Policy E4.1 allocates 36.9 ha of land at Knights Hill for at least 600 dwellings over the period to 2026. It states that proposed development will be subject to detailed assessment and scrutiny of a range of matters likely to affect the extent and design of proposed development, including heritage, flood risk, ecology, landscape, minerals and transport impacts, including the combined impacts with other planned development on Low Road/Grimston Road. It sets out 13 criteria to guide development which include requirements for an overall density of around 16 dwellings per hectare, tree planting and retention, a variety of house sizes, types and tenures and affordable housing amongst other things. Of most significance to this appeal is the requirement as policy E4.1(5) for suitable landscape planting to the east and north of the development or other design

approach to protect the setting of heritage assets, including Knights Hill complex, Castle Rising Castle and the remains of the Church of St James' and surrounding Saxon/Medieval settlement. The appeal site includes most of the land within that allocation.

28. Policy DM15 seeks to protect and enhance the amenity of the wider environment including its heritage and cultural value.

### ***South Wootton Neighbourhood Plan***

29. A part of the appeal site falls within the defined area of the SWNP. Those policies generally relate to detailed matters of design and layout. Policy H1 relating to the growth areas, requires development to be masterplan led, whilst policies H2 and H4, encourage high quality design, including the generous provision of open space, responding to local character and history and residential densities to respond to their context. At para 7.5, it sets out priorities for transport, identifying capacity and safety issues at Castle Rising Road traffic lights and the Langley Road junction for Asda as major issues. It identifies that good walking and cycling facilities already exist. Policy T1 states that new facilities should be incorporated into new development.

### ***Emerging Policy***

30. SADMPP policy DM2A sets out the Council's commitment to an early review of the Local Plan. The emerging draft King's Lynn and West Norfolk Local Plan (eLP) (Regulation 18) was published in March 2019. It will provide for the development needs of the Borough up to 2036, setting a housing requirement of 12,765 over the Plan period with a reduced annual housing requirement of 555 per annum. Housing completions and commitments account for 11,190, which includes the appeal site. As a result the eLP seeks to provide for at least 1,658 dwellings, through allocations. It includes policy E4.1, which identifies a similar allocation at Knights Hill. Emerging policy 17 replaces CS policy CS12, seeking to protect and enhance the environment and heritage, working to the NPPF to ensure that historic sites and buildings are protected and opportunities for enhancement sensitive to the area and feature are grasped.
31. The Council advises that it has taken the decision to delete the allocation of the appeal site in the eLP. At the time of the Inquiry, a further iteration of the eLP had not been published, nor had any further public consultation on this suggested revision been undertaken. At the time of the Inquiry it was anticipated that the eLP pre-submission publication and consultation would take place later in 2020, working towards adoption mid-2022.

## **THE PROPOSAL**

32. The appeal proposal is described in the design and access statement<sup>7</sup>. The application sought outline planning permission for a residential development of up to 600 homes, incorporating affordable homes. It includes parameter plans<sup>8</sup> which set out broad areas for the main land uses. It confirms areas of housing, the location of open space and indicative schedule of uses, broad areas for

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<sup>7</sup> CD2J; CD2 includes all the appeal plans and supporting studies

<sup>8</sup> CD2S; CD2U

existing and proposed structural and other planting and the position of identified ecological mitigation areas. It also identifies the location and broad extent of a local centre (A1, A2, A3 and or A5 uses), within which a reserved site for community floorspace would be sited. An access and movement parameter plan sets out that vehicular access would be taken from Grimston Road (A418), by the creation of a roundabout forming a spine road running roughly centrally through the site, passing over Sandy Lane. A pedestrian, cycle and emergency access would connect to existing development at Ullswater Avenue. Additional pedestrian and cycle networks would connect the appeal site to areas beyond, including Reffley Wood and surrounding areas beyond Grimston Road and Queen Elizabeth Way (A149). The appeal development would include just under 12 hectares of open space or undeveloped land, which would be roughly a third of the site, with the retention of some existing planting and new structural planting which would frame the developed areas. The overall density would be 17 dwellings per hectare. The maximum height and extent of development in the north eastern corner of the appeal site would be restricted in an effort to protect the setting of heritage assets. The appeal development would also include a car park serving Reffley Wood.

## **MATTERS AGREED BETWEEN THE MAIN PARTIES**

### *General Matters*

33. The matters agreed between the Council and the appellants are set out in the SoCG (General Matters)<sup>9</sup>. They include the following:

- the outline submission, description of the appeal site, planning policy and planning history as set out above;
- the appeal site forms the greatest part of land identified in SADMPP policy E4.1;
- in approving the Hall Lane applications<sup>10</sup> the Council and County Council assessed the cumulative traffic impacts of those developments together with SADMPP allocation E4.1. Necessary highway improvements to junction at Wootton Gap were split between those developments in accordance with their traffic impacts;
- the Hall Lane developments would, together, pay for 57% of those works; the remaining 43%, would be delivered through the Knights Hill development (the appeal development);
- full funding for that scheme needs to be secured before works can commence;
- the contributions for the Hall Lane applications, that would provide the remaining funds, would need to be paid back within 5 years of that development being occupied, if not spent;
- HE did not object to the principle of development at the appeal site. It confirmed that less than substantial harm to designated heritage assets, through development within their settings, would be a result of the appeal

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<sup>9</sup> KD1

<sup>10</sup> 17/01151/OM and 17/01106/OM

scheme, in particular Castle Rising Castle and St James' Church and Saxon and Medieval settlement at Bawsey;

- HE confirmed that there may be harm to other designated heritage assets;
- HE assessed that the harm to the heritage assets identified would be moderate and less than substantial;
- HE requested that the Council weigh public benefits against the harms identified in the context of government policy set out in the NPPF;
- a full list of suggested planning conditions and heads of terms of a section 106 legal agreement.

#### *Highways and access*

34. A signed SoCG between appellants, Council and the County Council, the local highway authority is before the Inquiry<sup>11</sup>. That confirms that there are not matters of disagreement between those parties on the subject of highways, transport and access. An addendum to that confirms the following agreements in relation to the bus enhancements, some of which are set out in the section 106 agreement:

- the contribution and its triggers;
- potential enhancements to provide a bus service entering the appeal site linking to the Queen Elizabeth Hospital and local area with bus stops on Grimston Road;
- flexibility to review and agreement that encouraging use of public transport relies more on a quality service on a main route, rather than walk distance.

#### *Heritage*

35. The heritage matters agreed between the Council and the appellant are set out in the Heritage SoCG<sup>12</sup>. They include the following:

- legislation, planning policy and methodology for assessment of significance<sup>13</sup>, along with relevant case law<sup>14</sup>;
- all the designated heritage assets in the vicinity of the appeal proposal, as identified in paragraph 21 of my report, would potentially be affected by the appeal proposal;
- as there is no inter visibility between the appeal site and Warren Farmhouse, the impact of the appeal proposal would have a neutral impact;
- the extent of the Chase in relation to Castle Rising Castle;
- there would be no harm to the heritage significance of any heritage assets other than Castle Rising Castle, the remains of St James' Church and surrounding Saxon and Medieval settlement at Bawsey, and Rising Lodge;

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<sup>11</sup> KD2

<sup>12</sup> KD3

<sup>13</sup> CD19; CD20; CD21; CD22

<sup>14</sup> CD18; CD23; CD24; CD25

- no harm would occur to the fabric of the assets;
- any harm that would occur would be less than substantial;
- the details of HE comments on the appeal application as outlined in the SoCG (General Matters);
- HE produced their advice before the production of the wireframe images of the proposed development, although they were informed by the submitted landscape and visual assessments;
- while HE's advice focused on the two scheduled monuments and grade I listed buildings, it was noted that the development has the potential to impact upon the setting of a number of grade II listed assets;
- the assessment of the development's impact on these grade II assets was undertaken by the Council, as reported within the Council officer's report;
- having considered the Officer's report, the Council's heritage reason for refusal (reason for refusal 1) relates to the harmful impact of the proposed development on the setting of Castle Rising Castle only;
- the impact in relation to each of the heritage assets identified is considered in the evidence of each party.

## **THE CASE FOR THE APPELLANTS – WHISTLE WOOD AND REFFLEY WOOD LIMITED AND MR P DE GREY OSBORN<sup>15</sup>**

### ***Introduction***

36. The planning system is plan led. In this borough a Local Plan is in place. The appeal proposal would advance the interests that the Development Plan seeks to pursue. That Local Plan is not subject to challenge as part of this appeal.

### ***Benefits***

37. The Development Plan includes the CS; the spatial strategy of which was publicly discussed during its preparation. It includes treaty obligations to respond to the climate crisis, protect important landscapes, the need to pursue sustainable development in accordance with national policy and the need to respect the character of small towns and villages and protect them and their landscapes from inappropriate development and its attendant impacts. The identification of King's Lynn as a focus for new development over the time horizon of the Local Plan followed a detailed, extensive and inclusive process involving all relevant considerations. That process needs to be respected in this appeal because the integrity of the Development Plan system depends on it.

38. The CS pursues a policy of urban concentration, which in relation to King's Lynn is reflected in a preferred approach of balancing brownfield redevelopment and urban extension; both recognised as essential to deliver the housing needs of the Development Plan. Taking account of the severe physical and policy constraints at the periphery of King's Lynn, the appeal site was identified as one of three most appropriate locations for urban expansion and identified as a housing site

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<sup>15</sup> IQ3; IQ23; APP1; APP2; APP3; APP4

allocation. This matter should be accorded very considerable weight in this appeal and the fulfilment of that policy allocation through this appeal is a material consideration to which great weight should be attached.

39. Some questioned whether the appeal development was necessary to deliver the Local Plan requirement. However, a section 78 appeal is not the correct forum to challenge the OAN in an adopted Development Plan.
40. However, the appellants submit evidence which identifies 11,880 dwellings as the Plan requirement, translating to 1,270 per annum from 2021/22. It submits that even if all the deliverable sites are built out, including the appeal site, the minimum adopted housing target would only just be met by the end of the Plan period. Therefore, it is important that the appeal site comes forward for housing development as soon as possible to fulfil the strategy and objectives of the Development Plan. In this context, the benefits of the appeal scheme are very significant.
41. The life chances of children who do not have a home are compromised in every direction, suffering from more disease, illness and injury to less educational attainment and a greater likelihood to commit crime. The Council's record of affordable housing delivery 2011 to 2018 indicates 503 affordable housing units against a need of 2,058, which equates to meeting 24% of the need<sup>16</sup>. Whilst the Council suggests that this record is due to 'current market failing', it provides no reliable evidence to substantiate that assertion. The appeal site is capable of delivering 112 affordable homes in the medium term, which set against the Council's record of delivery is a benefit to which substantial weight should apply.
42. Improvements to the Wootton Gap junction are a tangible benefit of the appeal proposals that would not otherwise arise. There would be a range of other benefits of the appeal development, including off-site contributions designed to mitigate the impact of the appeal proposals. Those would include an enhanced bus service and contributions to Roydon Common.

### ***Conformity with the Development Plan<sup>17</sup>***

43. The appeal development would accord with both the generic Development Plan policies (SADMPP policies DM15- environment, design and amenity, DM17- parking, CS policies CS11- transport, CS12- environmental assets) and the specific Development Plan policies (SADMPP policy E4.1- allocates the appeal site), such that it would conform with the Development Plan as a whole. The Development Plan should be read as an internally consistent and coherent whole. CS policy CS12 includes reference to the heritage balance in assessing the impacts of development on heritage assets, thereby anticipating and allowing for necessary development.
44. SADMPP policy E4.1 provides for a development of at least 600 dwellings, supported by a range of technical studies. It lists 13 criteria which an application is required to address; 12 of which it is agreed between the two main parties, the appeal application would comply with. The two main parties agree that the appeal application would therefore be substantially in conformity with the site specific policy.

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<sup>16</sup> APP1 para 6.4

<sup>17</sup> APP1



45. The criterion in dispute, is that relating to impact on heritage assets. That criterion does not require nil detriment as a result of development. Rather any development can result in harm and still be in conformity with the Development Plan, explained at paragraph E.4.22. From the wording of the relevant policies in the Development Plan, it is clear that the examination in public (EiP) Inspector was aware that harm would arise to heritage assets, but considered that the public benefit of housing development on this site as desirable in the context of pursuing the Development Plan's strategy would outweigh any harm to heritage assets that would arise. The same approach was taken by the Council's officer in recommending approval of the appeal scheme. The correct approach therefore is to acknowledge the harm that would arise to heritage assets and seek to mitigate, limit, ameliorate or restrict to the highest degree possible consistent with the development of the appeal site pursuant to the Development Plan allocation. If the appeal application has done this, then the conclusion should be that it has met the requirements of SADMPP, specifically that of policy E4.1.

### ***Highways harms<sup>18</sup>***

46. Upon receipt of expert advice, the Council did not defend its second reason for refusal on highways grounds. However, that is pursued by the CCRPC and therefore is addressed by the appellants.
47. Firstly, the reason for refusal does not address residual cumulative impacts and therefore is in conflict with NPPF paragraph 109. However, the appellants have carried out a detailed traffic assessment in support of the appeal scheme. An iterative process of discussion and engagement with the highway authority followed, which has culminated in a SoCG, which has comprehensively agreed all relevant matters, including highway, traffic and access matters. Trip generation assumptions are agreed as robust, considering future growth, particularly in light of National Planning Practice Guidance (NPPG)<sup>19</sup>, which requires assessment of growth likely to come forward in the next three years only. They take account of holiday traffic fluctuations and are based on assumptions regarding future traffic growth that are higher than contemporary assumptions. As a result of discussion at the Inquiry, it was agreed between CRPC and appellants that the appeal development complies with the transport and highway aspects of SADMPP policy E4.1. That confirms the agreed viewpoint of the appellants and highway authority in the highways SoCG. The CRPC's residual concern regarding street lighting is a disagreement with a judgement that Design Manual for Roads and Bridges (DMRB) reposes in the highway authority. Other concerns raised conflict with the professional consensus referred to earlier and the latter should prevail.

### ***Heritage harms<sup>20</sup>***

48. The sole remaining reason for refusal is the impact of development on the setting of Castle Rising Castle, located a mile to the north. However, the Council also sought to consider the cumulative impact of development on St James' and the deserted Medieval settlement at Bawsey and Rising Lodge. The appellants submit that the level of harm to Castle Rising Castle is at the lowest end of the less than substantial spectrum. The impact on Castle Rising Lodge is very minor,

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<sup>18</sup> APP2; APP2B

<sup>19</sup> Para 414

<sup>20</sup> APP1; APP3

at the low end of less than substantial harm. In addition, the harm to St James' Church would be very minor, at the low end of less than substantial. In coming to these conclusions, the appellant has assessed the significance of the heritage assets concerned, the contribution of the asset's setting to significance, the contribution of the appeal site to significance, the impact of proposed mitigation and then finally the impact of development on the asset. The Secretary of State must do the same. The detailed assessment in relation to each asset impacted is set out below.<sup>21</sup>

#### *Castle Rising Castle*<sup>22</sup>

49. The significance of the asset lies in its designation as a grade I listed building, SAM and lying within the Castle Rising Conservation Area. It is a designated heritage asset of the highest significance as defined by the NPPF. Its significance lies primarily in its historic fabric.
50. The setting makes some contribution to its significance, and includes the following:
  - the earthworks, roughly contemporary with the Castle, but may have been augmented in 1170s;
  - the settlement of Castle Rising, which still has a legible grid plan, is contemporary with the Castle and spatially and historically associated with it;
  - topographic situation and the Babingley Valley. The Castle would have dominated views from the north, with the false ridge making it appear on the horizon with extensive views from the Castle over this area;
  - the historic approach from the north, via the river from the sea, reinforced by the deer park framing the northern approach;
  - the former deer park, which was designed to be seen from the Castle chamber, with a strong boundary defined by earthworks and a fence. It would have been ordered, sylvan, private and seigneurial. It would have been partially wooded with a wooded edge and is still legible in the landscape today;
  - the former Chase, in which the appeal site sits, which comprised an area of legal hunting and forest rights. In contrast to the deer park it would not have been well defined, and would have a mix of uses, such as woodland and wood pasture. Its extent is not legible in the landscape today and for all these reasons it makes a small contribution to the significance of the Castle.
51. The appeal site makes a negligible contribution to the significance of the Castle through setting for the following reasons:
  - it is not visible from the Castle, the deer park, defences, village or the Babingley Valley;
  - it is not part of the areas over which there were designed views from the Castle, part of the deer park, which is still legible today or on the northern historic approach;

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<sup>21</sup> IQ10

<sup>22</sup> APP3

- it forms a very small part of the former Chase (0.7%), which is not legible in the landscape today. It later lay partially within a discrete warren but this is not legible in the landscape today;
- the former Chase has changed in character and that former use has ceased;
- the adjacent lodge is not legible as having earlier origins. In addition, it is not thought to have been sited to be visible from the deer park, having been sited beyond the pale and wooded edge and not thought to be sited to be visible from the park;

52. Proposed mitigation would include the following:

- development pulled back beyond the 45m contour, set back from Grimston Road and the building heights would be restricted for the northernmost dwellings;
- additional planting would be proposed, which would be historically appropriate due to the historic woodland to the south of the Castle;
- visibility from the north would be minimised, demonstrated by the visualisations submitted<sup>23</sup>;
- the masterplan is illustrative, and outline permission is sought.

53. The impact of development would be limited by the following:

- development would not be seen from the Castle;
- there would be no built form in areas designed to be seen from the Castle;
- whilst there would be a change in the character of the appeal site, neither Council nor HE object to the principle of development. The character of the appeal site has already changed to the present agricultural use, which does not reflect its Medieval or post Medieval character and the historic functional relationship between the Castle and the appeal site has been severed.

54. For all these reasons, the level of harm would be negligible at the lowest end of the less than substantial spectrum.

#### *Rising Lodge*

55. Rising Lodge is a former farmhouse; now a hotel complex. The existing building replaced a former hunting lodge evident on the 1588 Map of the Chase and Borough of Castle Rising in about 1800. It is possible that the building that exists today incorporates earlier built fabric, although this is not legible. It has been extended and altered over time and is now part of a hotel complex. It is a designated heritage asset but not of the highest significance as defined by the NPPF. Its significance lies primarily in its built form.

56. The setting makes some contribution to its significance, although less than its built form. It includes the following:

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<sup>23</sup> CD15

- the curtilage of the listed building, which includes the former associated farm buildings now converted to hotel use, as they illustrate its origins. This makes the greatest contribution to significance through setting;
- the wider landscape, including the former Chase, which included the former lodge, the former deer park and warrens. All represent historic functional associations. However, none of the former uses exist today and the Lodge has been rebuilt and repurposed to a hotel since;
- the historic agricultural land of Lodge Farm, which extended to roughly 800 acres. However, they are no longer associated with Rising Lodge as the asset and its curtilage function as a hotel complex.

57. The appeal site makes a very minor contribution to the significance of Rising Lodge through setting for the following reasons:

- there is a shared association of the appeal site, the Chase, the warrens and Lodge Farm, including the part documented as part of Lodge Farm in the mid-19th century. There is also some intervisibility;
- the historic associations have been severed; the lodge rebuilt since its historic connection with the Chase and warrens, and there has been a wholesale change of character in the complex.

58. Proposed mitigation would include setting development back from Rising Lodge within an intervening area of informal open space. As a result the impact of development would be restricted to the change in character of formerly associated land which would be visible from Rising Lodge. Overall, the impact of development would be very minor at the low end of the less than substantial harm spectrum.

#### *Church of St James' and Deserted Medieval settlement at Bawsey*

59. The significance of the heritage assets is derived from the Norman ruins of the church. This is grade I listed. The church ruins, together with the remains of the deserted Medieval settlement at Bawsey are also a SAM. Together they are designated heritage assets of the highest significance as defined by the NPPF. Their significance lies primarily in their physical form, archaeological remains and historic fabric.

60. The setting makes some contribution to its significance, although less than the physical fabric of the church and buried remains associated with the ecclesiastical site and settlement. It includes the following:

- the enclosure in which it lies, from which its architectural and artistic values can be understood;
- the Gaywood Valley to the east over which the Church has planned panoramic views;
- key views from the surrounding footpaths and glimpsed views from Queen Elizabeth Way contribute to a lesser extent.

61. The appeal site makes a very minor contribution to the significance of the heritage asset through setting. The historic parish of Bawsey included the southern part of the appeal site, up to the mid-19<sup>th</sup> century, but it never had any

specific association with the church and now lies outside the parish. Glimpsed views of undeveloped land are appreciable from the Church and non-key views are appreciable from the appeal site to the asset.

62. Most development would be screened from the Church. Where this is not the case, tree planting is proposed to break up the built form of development along the Queen Elizabeth Way boundary. The impact of development would be restricted to one area of built form over 1 km away from the Church and beyond the core setting and Queen Elizabeth Way. That view already includes urban influences such as housing, the hospital and a wind turbine along with agricultural land. Overall, the level of harm would be very minor at the low end of less than substantial harm.

### ***Heritage Summary***

63. The appeal development would impact on the setting of Castle Rising Castle as opposed to the physical fabric. The setting is a secondary concern to the physical remains, which are recognised as the primary significance of the asset. Mrs Stoten considers setting to contribute to a third of the significance of the heritage asset.
64. In relation to this secondary concern, the development would be removed from the areas which are most significant to the Castle's setting. These are agreed to be the approach from the north, which runs through the Babingley Valley and the deer park to the south. They were specifically designed to be seen from the Castle and enjoyed by visitors looking at the Castle and remain clearly legible in the landscape today.
65. The development would lie within 0.7% of the undifferentiated historic Chase. The Chase provided seigneurial hunting rights to the Lord of Castle Rising and is undistinguished from the surrounding landscape. It includes much of south Wootton and the urban form of North East Kings Lynn. Moreover, the appeal site is contained from the rest of the historic hunting ground by the ridge, the A148 and the houses of South Wootton. Together these features give the appeal site an isolated and peri-urban feel.
66. Both main parties agreed in the heritage round table discussion (RTD) position statement<sup>24</sup>, that the appeal site is not visible from even the highest tower of the Castle<sup>25</sup>. The appeal site is also sheltered from the deer park by a high ridge. Similarly, the impact on the adjacent Rising Lodge will be minimal as that building has been completely rebuilt in the 1800s and is now a Best Western Hotel complex. Whilst the Council suggests that the Lodge was once a large structure designed to be visible from the Castle, there is no direct evidence to support this claim. Moreover, a 1588 illustrative map shows the structure to be single storey house with a pitched roof.
67. The appeal application went through repeated iterations in response to comments from HE. Measures such as pulling back development from the ridge and the Lodge, reducing the numbers of homes, and incorporating a planting and bunding scheme were all devised to shield development from views from the Castle and other heritage assets. HE's response reflects the impacts of these changes and it

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<sup>24</sup> IQ16

<sup>25</sup> CD15

confirms no objection to the principle of development in its letter 12 February 2017 and no objection to the appeal proposals in its letter dated 3 December 2018.

68. Despite the Council's attempts to claim that the planting proposed would be unsuitable for screening the appeal development, it was agreed at the Inquiry that the Chase had always been of 'mixed character, comprising both woodland and open country'. The site was named 'Whistle Wood' in the 1588 map. The Chase today is a mixture of urban areas, woodland and farmed land. The use of trees to screen the proposed development from the Chase and St James' Church is therefore entirely appropriate.
69. The impact of development on the setting of the Castle is at the lowest level of harm. Even if considered to be higher, that needs to be weighed against the benefits of the appeal scheme. Those are weighty.

### **Conclusion**

70. In this case, the forward planning process has endorsed the selection of the appeal site against all other strategies and sites as locations for meeting housing requirements in the most sustainable way. In so doing it has not overlooked potential impacts on heritage assets. Heritage impacts were live in the Council's mind when preparing the Local Plan allocations, all those who made representations including HE and WYG, instructed by the Council in this appeal, and the EiP Inspector in examining the Plan and finding it sound. There has been no material change in circumstances since. At the heart of this appeal is the question as to whether we have a planning system that is open, fair and meaningfully engages with all stakeholders to meet essential public policy objectives, or whether it is subject to subtle manipulation to advance narrow sectional interests?
71. In conclusion, the appellants respectfully invite the grant of planning permission qualified by a section 106 agreement and conditions discussed at the Inquiry.

### **THE CASE FOR THE LOCAL PLANNING AUTHORITY– THE COUNCIL**

72. The Council considers that the scheme would cause harm to the significance of heritage assets of the very highest importance. Any harm to heritage assets requires clear and convincing justification<sup>26</sup>.
73. As a preliminary, it is clarified that the Council's reasons for refusal relate only to the impact of the appeal proposals on Castle Rising Castle. However, consistent with his duties as an expert witness, Dr Richard Hoggett identified harm to the significance of St James' and Castle Rising Castle. The Secretary of State is obliged by statute to have special regard to the desirability of preserving the building and its setting, which requires no harm. In so far as those judgements are found to be sound, they must be weighed in the planning balance against the grant of planning permission.
74. The two main parties agree that the appeal site forms part of the setting of three heritage assets, Castle Rising Castle, grade I listed building and SAM; the ruins of

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<sup>26</sup> NPPF para 194

St James' Bawsey, a grade I listed building and SAM and Castle Rising Lodge a grade II listed building.

75. The Council's case is that the appeal development would result in harm to the setting of those assets at the level of moderate harm in the less than substantial harm bracket of the NPPF. HE agrees with that proposition, in relation to the first two; the third not falling within its remit.<sup>27</sup> At the Inquiry, the two main parties agreed that more than negligible harm would result to the significance of the Church and Rising Lodge; in relation to the Castle the appellant holds this to be negligible at the lowermost end of the less than substantial harm spectrum.<sup>28</sup>
76. The Castle and Church are agreed to be heritage assets of the highest significance. Consistent with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and NPPF paragraphs 193 and 194 great weight should be given to any harm that would be caused by the development to their significance. Any harm to their significance, including harm to their settings, should require clear and convincing justification. In this regard Mr Belton agreed that some harm to all three heritage assets would be a consequence of the appeal development, that clear and convincing justification cannot be provided where it could be avoided and that it would be possible to avoid the kind of harm to heritage assets alleged by the Council, by pulling development back from the northern and eastern boundaries of the appeal site. Mr Belton also agreed that it would be possible to build 600 homes on the remaining part of the appeal site, including affordable housing, whilst delivering the public benefits claimed for the scheme which underpin its allocation in the SADMPP. It therefore follows that, on the appellants' own evidence the harm that the appeal scheme would cause is not justified and that it would conflict with para 193-196 of the NPPF.

### *The Castle*

77. Its primary significance is embodied in its historic fabric. A material component of its significance is embodied in its setting; the appellants put that contribution at 25% of the total, the Council at 30%. Either way setting adds significantly to significance.
78. The Castle sat at the centre of a complex, designed landscape; part of a 'Landscape of Lordship', which has been the subject of intense academic study<sup>29</sup>. The chief elements include the Castle, the planned settlement to the north, an extensive deer park and rabbit warren to the south, Rising Lodge, which functioned as a hunting lodge and warrener's house and the wider Chase which surrounded these features. That such observation, interpretation and cutting-edge learning is possible is attributable to the richness of the landscape around the Castle and its continuing legibility<sup>30</sup>, adds to its significance.
79. The appeal site is part of the Chase. That is an area which was subject to the right of 'free warrening'; the grant by the Crown of the right to hunt. In the vicinity of the appeal site the Chase was largely comprised of open land,

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<sup>27</sup> HE consultation responses dated 3 December 2019 and IQ9 dated 14 January 2020

<sup>28</sup> IQ16

<sup>29</sup> LPA1 pg 18

<sup>30</sup> LPA1 pg 30

evidenced by the map of 1588<sup>31</sup>. The Whistle Wood to the south is depicted as free of trees.

80. The Castle was designed to have views over the deer park and towards Rising Lodge and the Chase, which is clear from the orientation of windows in the principal upper rooms. Despite planting of trees in the 18<sup>th</sup> century enclosures, there is intervisibility between the Castle and Rising Lodge and the northern part of the appeal site (as seen on the Inspector's site visit). The wireframes produced by the appellant are wrong and provide an overly static impression<sup>32</sup>. In addition, modern day views do not reflect those which could have been obtained in Medieval times from battlements, which were later enclosed and tower structures. The Castle was designed to facilitate views to the south, and they would have afforded the Castle residents an opportunity to easily identify the hunting lodge and follow those engaged in hunting along the ridgeline of the more open Chase.
81. The appeal would affect an area of open land which retains the character of the former Chase, intervisible from the Castle and seen with Rising Lodge. The land would be planted with a dense tree screen and it would cease to be open and predominantly rural taking on an urban fringe character. The Lodge would be severed from open land. The impact would be to largely destroy an important designated view, of the Castle, the park, the Chase and the Lodge; a view that can be seen and understood as a coherent and complete picture of an historical 'Landscape of Lordship', comprising a range of historical components and imbued with symbolism and meaning (notions of exclusivity, status, power and their interrelationships with the Lodge and warrens).
82. The harm would be less than substantial. HE agrees. Its opinion deserves significant weight. Dr Hoggett says such harm would be moderate. Mrs Stoten says negligible at the lower end of the spectrum, founded on the false assumption that there never was and now is not intervisibility between the northern part of the appeal site and the Castle. That is found to be wrong. The evidence of Dr Hoggett is to be favoured.

### *Rising Lodge*

83. This includes an 18th century farmhouse built in the Regency style. It has now been developed as a hotel but is still easily legible as a former farmstead in a farm complex. The primary significance of the asset it is agreed, is embodied in its physical remains. However, it is sited at the location of the former Rising Lodge. The details of the listing refer to it as incorporating built elements from an earlier period, which may well have been the earlier Rising Lodge.
84. The Lodge's association with an earlier period of occupation, its relationship with the Castle and the Lordly Landscape (the open land of the Chase within the view shed of the Castle) contributes to its significance. Dr Hogget ranks this as moderate; Mrs Stoten as very minor.
85. In relation to the impact of the proposed development, the block landscaping associated with it would sever the Lodge from that historical context and cause a loss of rural aspect and openness. It would absorb into the urban area an

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<sup>31</sup> LPA1 pg 23 fig 3



historic structure which was conceived of and functioned as an isolated rural building; both as a hunting lodge and as an historic farmstead. Those impacts would rob the asset of an important part of its meaning. Dr Hoggett describes this impact as moderate. Mrs Stoten judges the impact to be minor at the low end of the less than substantial spectrum.

86. Since the harm to the setting of Rising Lodge, the mechanism by which it is caused and the consequent impact on its significance is a mirror image of that caused to the Castle with which it is integrated in the historic landscape, it is submitted that the evidence of Dr Hoggett is to be preferred.

#### *The ruins of the Church of Saint James*

87. The parties agreed that the primary significance of the ruins of the Church is embodied in its physical remains. However, both parties consider its setting contributes materially to that significance; Dr Hoggett puts the contribution at a third of the total; Mrs Stoten at a quarter.
88. An important element of the setting of the Church is its striking isolation located on a low hill which would form a green island where the Gaywood River flooded. The siting was also intended to facilitate the ostentatious display of the Church's outstanding Romanesque architecture, notably its central tower. That underlines the important contribution to setting and significance of the intervisibility of the Church in the surrounding countryside.
89. In that context the appellant's heritage statement concedes the development as originally conceived would have noticeably changed the setting of the Church equating to a moderate adverse effect upon the heritage asset. In April 2018 the scheme was amended to try to reduce its visual impact when viewed from Bawsey. In essence the appellants introduced additional landscape planting along the site's eastern boundary. However, whilst that would break up the views of homes that could be obtained from the appeal site, built development would still be clearly visible as a result of the extension of the urban area of Kings Lynn into the countryside.
90. There would have two adverse effects. Firstly, it would erode the special sense of isolation looking northwest from the Church that would compound the harm that already arises looking towards the hospital. The fact that existing views include built development around the setting and significance of the Church does not justify further harm if it can be avoided. Secondly, built development on the site will obscure important views from the West looking East from within a rural setting towards the deliberately isolated site of the Church. It thus erodes an important opportunity to appreciate the asset.
91. For those reasons, Dr Hoggett concludes the development would cause moderate less than substantial harm to the significance of this most important asset. His opinion on this matter should be accorded particular respect and weight as he is an acknowledged expert in historic church architecture and has a particular expertise and knowledge of the churches in East Anglia.

#### **Benefits**

92. The development would deliver public benefits including the following:

- the provision of 600 market houses and an indeterminable number of affordable homes. However, no viability evidence was produced to confirm how many could be delivered;
  - CIL receipts;
  - economic benefits arising from direct and indirect expenditure on development and jobs associated with that process;
  - various facilities that form part of the scheme. However, the weight that can be attributed to this class of benefit is diminished by the appellants' failure to quantify them.
93. In light of Mr Belton's concession that a scheme for 600 homes could be delivered which does not cause any harm to the Castle and other heritage assets, the weight which would normally be attached to public benefits when some harm cannot be avoided falls away. Further, most of the items listed as benefits are mitigation required to overcome harm. These include:
- junction improvements, but there is no evidence that these or any improvements would be necessary if the scheme were not to proceed and they cater for more traffic than would be generated by the schemes that would fund them;
  - open space, but there is no evidence that there is a local shortfall in public open space;
  - dog walking routes;
  - a car park at Reffley Wood;
  - public transport improvements
  - land for a community building but there is no evidence of funding to provide it or even what it would be used for.
94. The appellants measured the contribution of affordable housing in terms of annual average delivery compared with the need that is specified in the draft Strategic Housing Land Availability Assessment. This is incorrect. Mr Belton agreed that the need the Council is required to meet is that expressed by CS policy CS09, which is a portion of the requirement of market housing.
95. The Council is not required by the NPPF, the NPPG or any other guidance issued by the Secretary of State to deliver affordable housing that is tied to the trajectory of all housing. It is required to deliver the required amount of affordable housing over the whole of the plan period. The appellants have not actually produced any statistics on the delivery of affordable housing since the start of the plan. It has cherry picked statistics which best serve its case for a part of the plan period. Those statistics are meaningless.
96. Mr Belton conceded that the Council has a healthy five year housing land supply. The purpose of that supply, which incorporates a 5% buffer, is to ensure enough land is available to deliver the Plan requirement over the next five years. If the requirement is delivered, then a policy compliant quantum of affordable housing will be delivered. The healthy picture in respect of market housing is wholly

inconsistent with the pessimism Mr Belton expresses about affordable housing delivery.

97. The appellants focused on how overcrowding and homelessness can prejudice the life chances of children. The Council is tackling that issue through its housing service. The appellants have no idea of the extent of the problem in the Borough. It has not researched local need at all. It has not told the Inquiry how the delivery of affordable homes on the appeal site would meet the needs of homeless people or those in overcrowded conditions.
98. The appellants also sought to establish that the site would come forward quickly and that its development is essential to ensure the Plan's requirement is met. Mr Belton agreed development will not start before March 2023. He further agreed that even if development starts then it will deliver no more than 240 homes during the Plan period. The Local Plan review will be completed well in advance of that date, so that if further land is needed it can be found through that process. In any event homes could be delivered by a policy compliant scheme to meet any affordable housing need.
99. The Council can demonstrate a five year housing land supply. Whilst that is not a reason for refusal, the appellants' ability to deliver a part of the site would make little difference to the overall delivery of market and affordable housing. Mr Fidget explained that were the appellants to make planning application for an acceptable scheme, it is likely that it could be approved quickly so as to deliver broadly the same number of homes before the end of 2026.

### ***Planning balance***<sup>33</sup>

100. Mr Belton agreed the most important policies for the determination of this appeal are CS policies CS12 and SADMPP policies DM15 and E4.1. He agreed that CS policy CS12 is a strategic policy which accords with paragraphs 193-196 of the NPPF. The effect of applying that policy mirrors the application of those parts of the NPPF that have been set out earlier. SADMPP policy DM15 is a policy which generally aims to preserve and enhance heritage assets whilst advancing a range of other environmental objectives. It adds nothing to the requirements of core strategy policy CS12.
101. SADMPP policy E4.1 is the critical policy. It specifies 13 criteria which are intended to secure the sustainable development of the appeal site. Mr Belton accepted that SADMPP policy E4.1(5) is a critically important criterion; a fact that can easily be appreciated by reference to policy E4.3 and E4.22 of the policy's reasoned justification and Inspector Hogger's report on the examination of the SADMPP. The appellants agree that any scheme should comply with policy E4.1(5) in order to comply with the policy as a whole. Against that background policy E4.1(5) requires suitable landscape planting to the east and north of the development to provide a degree of screening or other design approach for the development. The purpose of that is to protect heritage assets, including the Castle, the Church and Rising Lodge. It has been shown that the planting proposed by the appellants and the general design approach they have adopted will result in harm to those assets.

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<sup>33</sup> LPA2

102. That triggers a presumption under section 38(6) of the Planning and Compulsory Purchase Act 2004, that planning permission should be refused. The refusal of planning permission is indicated by other material considerations, chiefly the potential to easily develop a policy compliant scheme which would protect the very high status of nationally important heritage assets. That draws a lot of force from the appellants' case that focuses on the benefits to be derived from the delivery of market and affordable housing. Such benefits could be delivered by a better scheme. There is no serious risk within the next two years of the eLP achieving such weight as to prejudice the grant of planning permission for a Plan compliance scheme. The existing proposal is not good enough, insensitive and should be rejected. Therefore, I invite you to recommend to the Secretary of State that planning permission be refused.

### **THE CASE FOR CASTLE RISING PARISH COUNCIL<sup>34</sup>**

103. This is an extremely controversial scheme. It has a huge number of objections with no supporters except the appellants. The weight of objection must be considered by the Inspector and Secretary of State as a material consideration.

#### ***Reasons for refusal***

104. There are two reasons for refusal. The first is that the scheme would adversely affect the setting of Castle Rising Castle, a grade I listed building and a SAM. It is extremely difficult to outweigh such harm by benefits. The fact that there is a material effect on the setting of the grade I listed building in itself leads to a policy breach, unless the benefits so clearly outweigh the disbenefits. The bar is extremely high.

105. NPPF paragraphs 184 through 196 set out the Government's policy in this regard. To summarise, heritage must be protected at all costs. In this case, there is in excess of a 5 year housing land supply and many other sites have planning consent and are deliverable. Therefore, there is absolutely no need to put heritage assets in jeopardy and cause dramatic transport and road traffic problems.

#### ***Planning<sup>35</sup>***

106. The site is allocated in the Local Plan. That is only an indication that the site could be suitable for housing. It does not mean that anything goes. SADMPP policy E4.1 expressly recognises the potential for development to impact on a wealth of heritage assets and their settings. It states that, 'it is important to consider these assets in their settings, including the historic landscape associated with them and ensure that these are preserved and enhanced.'

107. The appellants have used unsuitable planting along the northern boundary of the site which will harm the Castle's setting. It is clear that the real harm is caused by being a product of too much development on too large a proportion of the site. The appellants are trying to make the most financial benefit they can to deliver road improvements to this and other large schemes in the locality. However, it is not the task of the Inspector or Secretary of State to deal with

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<sup>34</sup> IQ5; IQ26;

<sup>35</sup> IQ6; CRPC3; CRPC4; CRPC5

those other schemes. The appeal scheme has to be dealt with on its merits. The money offered for junction improvements by the appellants to this and another scheme is seriously outweighed by the harm identified.

108. The Council has confirmed that it has an impressive record of housing delivery. Its housing land supply, in excess of 5 years is not in dispute. No harm therefore is caused by this site not being released, either in national or Development Planning policy terms. The statutory presumption that arises does not apply because there is a five year housing land supply and the other sites are deliverable. The statutory presumption against development in NPPF paragraphs 192 onwards, relating to heritage assets is not rebutted. The appellants have failed regardless of the traffic to create the right balance between their economic desires on the one hand and the environment on the other.
109. No evidence has been put forward to suggest that the other sites do not fall within the definition of deliverable in the glossary to the NPPF. The housing supply position is such that it could cope with some of the sites not coming forward. The fact that the development site has gone through the local authority process does not mean it should automatically be granted planning consent. There are plenty of other sites available and the function of this site is not to support development on the Hall Lane scheme.

### ***Planning benefits<sup>36</sup>***

110. The financial contributions are inadequate for the bus service, the junctions and there is no lighting provision. Bus service contributions have been reduced from £800,000 to £500,000. There is no indication as to when these payments are to be made. They should be increased and paid prior to commencement. Affordable housing provision could have been more generous.

### ***Transport, highways and accessibility<sup>37</sup>***

111. The TA that underpins the appeal application is flawed. In addition, the road safety audit (RSA) was not independent. In respect of the access to the site, the latest RSA stage 1 carried out in December 2019 identifies a number of problems that have not been addressed, including the street lighting. The appellants' own drawings acknowledged the need to consider street lighting. This is necessary for pedestrian safety.
112. Given the distance of the site from key trip destinations and the site's topography, it is unrealistic to assume meaningful take up with active travel, such as walking and cycling. All the housing will be south of the ridge near Grimston Rd. Therefore, future residents will have a longer walk to the main road bus stops, including all those in the affordable housing. Bus provision is inadequate, and will enforce future car dependency, social isolation and massively increased congestion in the area, with a negative impact on the local economy in the town centre. To ensure this does not occur an adequate and fully funded bus service must be in place, serving appropriate destinations such as the town centre, railway station and hospital, running seven days a week for at least 13 hours a day prior to occupation.

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<sup>36</sup> CRPC1; CRPC2

<sup>37</sup> CRPC1; CRPC2; CRPC3; CRPC4; CRPC5; IQ12; IQ17

113. The agreed transport SoCG has no detail on the bus service funding at all and refers to a contribution of £500,000. The bus service will not serve the majority of the development and is completely unsatisfactory from a sustainability point of view. This will result in a massive overuse of the motor car, particularly as they are taking children to primary school, which will make the site unsustainable. The traffic generation numbers therefore are seriously flawed because they are based on false analysis.
114. There will be a pedestrian desire line across Grimston Road to and from the north and east bound bus stop. The exact location for that bus stop is to be determined at a later date. That bus stop will be used by parents, school children and commuters. Its use will require crossing a busy 40 mile an hour road an uncontrolled island on the approach to the roundabout with no street lighting. This will be dangerous.
115. The nearest primary schools are around 30 minute walk away. The existing bus service is inappropriate for school times and is not direct. There is no appropriate transport link to and from nearby secondary schools either. To sum up, public transport improvements are not sufficiently meaningful to encourage any modal shift from the private car.
116. There has been no change in circumstances since the Council's formal decision. It should have defended its second reason for refusal. As it has not, the CRPC has had to scramble at the last minute to support that reason for refusal. That ground of refusal was fully justified and should in all circumstances have been pursued by the Council and the County Council. The application dramatically fails the Local Plan and the NPPF. It fails on heritage, transport and accessibility grounds. Therefore, the planning application should be refused.

## **OTHER PARTIES WHO APPEARED AT THE INQUIRY**

### ***David Goddard (CRPC)<sup>38</sup>***

117. The majority of the town's routes are unable to cope with the traffic pressure. The A149 roundabout at Knights Hill is often gridlocked and the Wootton Gap traffic lights are very busy. This is the only route for HGVs into the town, port, docks and industrial estate. These routes cannot accommodate an additional 600 homes promoted by the appellants, in addition to the 660 already granted planning permission in South Wootton. Adequate questions have not been asked regarding the traffic queues and interruption to traffic flows. This development will result in longer queues on the A148 and A149. Due to the siting of the proposed development on the furthest outreach of the village most journeys will be reliant on the private car, including school traffic. The proposed traffic improvements are insufficient and inappropriate and will result in more delay, queuing and emissions.
118. This is the largest single planning application ever sought in South Wootton. South Wootton is a village of some 1,880 homes, with poor infrastructure. With existing commitments, it represents a 67% increase, which is unsustainable. The Council has not listened to our concerns on housing numbers in South Wootton. It is contrary to the SWNP, which guards against over development.

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<sup>38</sup> CRPC3

119. The findings of the King's Lynn Transport Study (2018) indicate a major air quality problem in Gaywood and the town centre, with nitrogen levels that fail to meet the National Air Quality Strategy. Therefore, we should not be adding more traffic to our overburdened roads.
120. The Council has not pursued its original objection on highway grounds. This was done behind closed doors. Therefore, parish councils and residents are left to challenge this application on highways and air quality grounds.
121. It would be sited on an ancient hunting Chase forming part of the setting of both the historic Castle and Knights Hill hotel. The appeal site is a beautiful greenfield area of open space forming a pleasant entrance and exit to our village. It is adjacent to an AONB and a natural habitat.
122. The urban sprawl onto a greenfield site on the edge of our village should be avoided in light of viable alternatives. There are brownfield sites with potential for some 2,000 homes closer to the town centre. The appeal development will generate a need for medical provision and schools, which is not addressed.
123. The Knights Hill site has been removed from the eLP. The current housing requirement is 555 per annum over the next 20 years. We have sufficient sites from the current approved Local Plan. This site is not needed to meet housing targets.

***John Marrow (North Wootton Parish Council and local resident)<sup>39</sup>***

124. The proposed development will adversely impact local infrastructure, including roads, delivery traffic and essential services. Grimston Road is the only lorry route into town. The additional traffic from this development, plus existing and proposed developments, supermarket, school and lorry traffic along Grimston Road will cause tail backs. The junction at Wootton Gap plus the new roundabout proposed will result in stop/start traffic. Tailbacks already occur through the villages of Castle Rising, North and South Wootton. When traffic reaches King's Lynn there is limited parking causing cars to drive around looking for spaces. All this traffic will adversely impact traffic and air quality. No amount of tinkering with the local system is going to solve the root cause.
125. Air quality will also be adversely impacted by the additional traffic and boilers, which will further contribute to toxic and carcinogenic chemicals release. This will adversely impact Roydon Common, Castle Rising Castle and Reffley Wood along with local wildlife.

***Nick Daubney (local resident)<sup>40</sup>***

126. People need homes to live in, but development needs to take account of infrastructure needs. This development would double the size of South Wootton, without road improvements, without service infrastructure and against the wishes of the community and local professionals. This development will not necessarily meet local target needs. If the community delivers housing, then Government should deliver infrastructure.

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<sup>39</sup> CRPC4

<sup>40</sup> IQ6

127. West Norfolk is up for growth and is meeting its housing requirements. But this development is an unplanned expansion with weak local infrastructure. It includes an access road that cannot safely join the local road network; a road network that should be a dual carriageway. Any development needs to be very carefully planned around an existing overstretched network that is already choked, the local environment in terms of pollution, wildlife sustainability and the tourist economy.
128. Most HGVs going to King's Lynn, its industrial estates and the docks use Grimston Road. That together with Queen Elizabeth Way are under too much pressure already. This development will massively increase that stress. It will adversely affect a pleasant local environment, inadequate overstressed infrastructure, including GP services and air quality.

***Councillor Michael deWhalley (Gayton and Grimston Ward and local resident)<sup>41</sup>***

129. The development site overlooks the remains of Saint James' Church and the deserted settlement of Bawsey. It borders valuable conservation areas, AONB as well as the distinctive Gaywood River, all of which support tourism and recreation.
130. This development will undoubtedly exacerbate Kings Lynn's two Air Quality Management Areas (Gaywood and Railway Rd/London Rd), as a consequence of additional traffic. Air and light pollution would adversely affect Roydon Common with its complex plant communities. Further light pollution would destroy the night sky of the AONB. The environmental statement is insufficient in dealing with these impacts. It has failed to include any assessment of the potential hydrological impacts on Roydon Common. Breckland SPA has a 1.5km buffer zone restricting development to protect breeding bird species such as stone curlew which have also been recorded on Roydon Common. There is little to support wildlife corridors or biodiversity within the site. The development creates a hardening of the barrier between Reffley Wood and the surrounding countryside. There would be additional human and canine pressures.

***David Price (Chair South Wootton Parish Council)<sup>42</sup>***

131. South Wootton is an attractive village, almost entirely surrounded by open spaces and AONB. It currently has 1,880 properties and in the past two years four separate new developments have been approved, with a combined total of 660 properties. All are greenfield sites, as is the appeal site. As well as concerns relating to heritage and historical issues, the Parish Council is also concerned about the impact on the environment including trees, hedges and wildlife. The proposed development would have adverse consequences for traffic congestion. Mitigation proposed is insufficient. CS policy CS12 and the SWNP stress the importance of protecting green belt land. The development of this site would conflict with the aims of the Government's green belt policy.

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<sup>41</sup> IQ6

<sup>42</sup> IQ6



**James Wild (MP North West Norfolk)<sup>43</sup>**

132. There is very strong local opposition to the proposed development. It would be contrary to the NPPF, in terms of sustainable development and the economic, social and environmental impacts. Its scale is wholly inappropriate. With existing planning commitments, it would represent an increase of nearly 70% on the existing 1,800 dwellings, damaging an attractive village and undermining planning policies to protect it.
133. It would result in further traffic congestion, on a key route into King's Lynn which is designated as an HGV route. Due to the appeal site's location and the provision of public transport, it is inevitable that there would be a significant increase in travel levels from residents of the new properties. The proposed mitigation, including additional roundabouts, would exacerbate existing congestion levels and delays on this route. That would result in intolerable pressure on our roads and have a negative impact on air quality.
134. It would place a major burden on local services including access to GPs, dentists and schools, which are already facing challenges to meet local need. It would have a negative impact on heritage including Castle Rising and the area as a whole. It would have adverse impacts on nature conservation, including Roydon Common. Additionally, concerns have been raised regarding surface water drainage as well as the effect on effluent disposal potentially being stored and pumped overnight. Finally, this development is unnecessary to meet local housing targets.

**Councillor Jon Taylor (CRPC and local resident)<sup>44</sup>**

135. The village of Castle Rising is dominated by the remains of the 12th century Castle, the parish Church of St Lawrence and Trinity Hospital Almshouses. It has past and present Royal connections and very considerable heritage. There has been a steady rise in the levels of traffic passing through Castle Rising trying to avoid traffic on the main roads into King's Lynn. With more development in the pipeline this is expected to increase. To date, increased traffic through the village has led to an increase in accidents, noise, air pollution, litter, damage to roads and the historic environment, including the traditional Carstone walls. Those walls are extremely susceptible to erosion from car fumes and salt splash, which can lead to instability. More vehicles will increase travel for school and employment, and as the main roads are gridlocked at rush hour, traffic through our village will increase. Overall, the increased traffic would destroy the villages of South Wootton, North Wootton and Castle Rising. Until plans to increase road capacity are in place along with infrastructure such as education, health, public transport, the appeal should be dismissed.

**Henry Bellingham (ex MP North West Norfolk)<sup>45</sup>**

136. I have never come across an application that has given rise to so much opposition and anger. This huge development would urbanise the rural character of the parishes of South Wootton, North Wootton and Castle Rising. It would put intolerable pressure on key local services such as schools and the NHS. It would

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<sup>43</sup> Submitted prior to Inquiry

<sup>44</sup> IQ6

<sup>45</sup> Third party reps

develop a greenfield site adjacent to an AONB and Site of Special Scientific Interest (SSSI), which would adversely affect the character of the land and habitat around King's Lynn. Castle Rising Castle and Knight's Hill would be significantly impacted by the development, the former being one of the most important heritage sites in East Anglia. The additional traffic would significantly add to congestion on the A149; the only designated HGV route into King's Lynn docks, industrial estate and town centre. It would adversely affect the ability of West Norfolk to attract investment into the area. There is no need for development of this site to meet the Council's five year housing land supply and in any event the benefits of the scheme can be replicated elsewhere.

***John Marshall (on behalf of Greville Howard, Lord Howard of Rising)***<sup>46</sup>

137. There is very strong feeling within the Woottons Parish (the recently renamed South Wootton and Castle Rising Parishes). This peaceful rural area will be adversely affected by the proposed development, in addition to existing planning commitments. Sufficient sites already exist to meet the requirement for a five year housing land supply. Greenfield land should not be built on where there are brownfield sites available for development, as is the case around King's Lynn.
138. The proposed development would have a serious impact on nationally important heritage assets, including Castle Rising Castle and Knights Hill. HE has concerns. Heritage guidelines state, in such cases consent should only be given where there is no other alternative. The landscape and visual impact sites should be strongly considered
139. The lack of infrastructure proposed is concerning. Queen Elizabeth Hospital is already in special measures. There is a shortage of doctors and more development will cause serious health problems. It will put unbearable pressure on traffic. Traffic surveys and documents commissioned by South Wootton Parish Council and CRPC report concerns of increased traffic congestion on the A149, which should be classed as a dual carriageway. The narrow country lanes will be used as a rat run and the outlying villages will be adversely affected by traffic delays from Knights Hill into King's Lynn.
140. No consideration has been given to the problems of schools. The nearest primary school is over 30 minutes walk from the large part of the site. Buses are distant and irregular. Concerns have been raised regarding surface water drainage and effluent disposal. The drainage strategy report assumptions are incorrect and no assessment is made of how development will prevent flooding beyond the appeal site.

***Councillor Terence Parish (Heacham Ward and local resident)***<sup>47</sup>

141. I am a member of the planning committee which refused to grant outline permission for this proposed development. That was correct and unanimous. This is because the impacts of up to 600 dwellings on the local road network would be unacceptable and severe. The Council decided not to defend its highway reason for refusal, due to the financial risk of costs being awarded. That does not change the rationale or the truth behind that reason for refusal. Traffic

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<sup>46</sup> IQ6

<sup>47</sup> IQ6

generated leaving the road network at a single point will have a detrimental impact on the road network. That impact will be compounded by existing planning commitments in the vicinity. The County Council was wrong to link the grant of permission on this site to other highway improvements that facilitate other development. The proposed development is not needed as sufficient houses are being built elsewhere to meet the Plan requirements. The A149 is a very heavily used holiday route. It is very congested and traffic from this development will damage the tourism industry, which is a major industry in this part of West Norfolk.

***Peter Borrmann (local resident)<sup>48</sup>***

142. Surface water drainage here is very poor. The developers are proposing that water courses could be open through Reffley Woods. There is also concern regarding capacity of the river further downstream. Houses in Ullswater Avenue suffer flooding in times of heavy rain. I am concerned that this development will compound those problems.

***Pippa Winson (local resident)<sup>49</sup>***

143. The surface water drainage here is very poor. My garden, in Ullswater Avenue floods for about four months of the year. My neighbours have the same issue. This problem has affected house sales in the locality. There were issues with the percolation tests on the development site to the rear of Ullswater Avenue.

***David Andrews (local resident)***

144. The proposed development, together with existing planning commitments will generate an additional 2,500 cars onto Grimston Road. As that road is congested already, this will have a severe impact.

***Graham Price (local resident)***

145. I am concerned about the effect of traffic on the road network, the impact on air pollution, on Reffley Wood, local school provision and parking at the school. Many of the proposed homes could be used for buy to lets.

***Danny Thorpe (local resident)<sup>50</sup>***

146. The proposed development would impact on local facilities such as hospitals, which are overstretched at present. It would adversely affect the already congested road network, including the A10 and A149 and increase fatalities. New homes and jobs can be accommodated without encroaching on Knights Hill. The proposed development should provide on-site sewage processing to reduce greenhouse gases. A decision on this development should take place once the impacts can really be understood. Any decision needs to address and understand the surroundings and the local infrastructure, roads, hospitals and sewage infrastructure. That cannot be done at the present time, with one Inspector. Any development needs to take account of the impact on wildlife including bats and swallows.

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<sup>48</sup> IQ18

<sup>49</sup> IQ19

<sup>50</sup> IQ14

**Robert Raab (local resident)**

147. The proposed development would not be served by a local bus network and could impact on that which exists.

**Ben Colson (CRPC and local resident)<sup>51</sup>**

148. Developing this site would be unsustainable in terms of public transport provision. Grimston Road is already over capacity at morning and evening rush hours from both work and school traffic. A particular pinch-point is the Wootton Gap junction where traffic often backs up eastwards past Sandy Lane and on occasions back to the appeal site. Seasonally, the roundabout at Knights Hill is completely blocked with tailbacks for some 6 or 7 miles. Traffic flow in the entire area is therefore close and at times in excess of capacity.

149. The proposed traffic generation would be greater than assessed by the County Council due to the distance from King's Lynn. The additional traffic (some 9%+) coupled with the traffic control mitigation measures proposed at Wootton Gap and Langley Road would just add to the existing traffic backlogs, with the potential to block the strategically important A148/A149 junction at the appeal site. The measures are insufficient.

150. National policy, guidance and local policy promote sustainable forms of transport. Walking from the site would be limited by the busy A148 and the incline of the appeal site. The existing buses that pass the appeal site at present are infrequent, with timings unsuited to normal work patterns. The bus stops on the main road are too far from most of the site, involving a walk up a steep incline and positioned on a busy road. It is most unlikely that it would be attractive for existing bus services to divert into the appeal site. Therefore, the existing bus routes do not provide a sustainable travel option. For all these reasons, I believe that appropriate sustainability has not been built into the development insofar as traffic and transport considerations are concerned.

**Elaine Culvert (local resident)**

151. I do the school runs and experience the traffic tailbacks and congestion. Most people use cars. Buses and cycles are not used. Parking at the school is very limited. The traffic from this development and the proposed roundabout will add to the congestion. This will particularly be the case during construction.

**WRITTEN REPRESENTATIONS**

152. The Council officer's report lists the responses from statutory consultees, other relevant bodies and members of the public<sup>52</sup>. In terms of the public responses, the report notes that there were 439 objections from third parties along with a petition with 948 signatures. The objectors were mostly concerned regarding the scale of development, traffic and parking, harm to heritage and natural assets, impact on services and facilities and the living conditions of those living nearby. The material grounds of objection listed in the report are generally related to matters that have been covered above.

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<sup>51</sup> CRPC2; IQ12; IQ17

<sup>52</sup> CD2A(1)

153. Written representations were received in relation to the appeal. These have been summarised by the appellants<sup>53</sup>. They include concerns regarding the following:

- Surface water drainage;
- Sewage disposal;
- Low water pressure in Ullswater Avenue;
- Impact on Reffley Wood;
- Loss of greenfield land;
- Lack of affordable housing;
- Lack of infrastructure;
- Appeal site no longer needed and there are more sustainable locations;
- Impact on character and appearance of the locality, including loss of trees and impact on AONB;
- Impact on natural assets including SSSIs;
- Reffley Barrow;
- Need measures to prevent vehicular use of Ullswater Avenue;
- High pressure gas lines in locality;
- Overlooking to properties in Ullswater Avenue.

### **PLANNING CONDITIONS**

154. A list of suggested planning conditions was agreed between the two main parties at the Inquiry. I have agreed with the imposition of most of these subject to refinement to improve clarity and ensure consistency with national policy and guidance.<sup>54</sup> A list of planning conditions to be imposed is set out in Annex C.

155. Standard time plans and reserved matters conditions are necessary to ensure certainty. A condition ensuring that development is carried out in accordance with the land uses parameter plan is necessary to confirm the limits, location and height of development; the access and movement parameter plan to ensure satisfactory vehicular, cycle and pedestrian access to and within the appeal development; and development to be carried out in accordance with the landscape strategy set out on the landscape parameter plan, to establish the overall amount of greenspace, a development free zone towards the north east corner of the appeal site to minimise any harm to the setting of heritage assets and the environment. A condition to control the height of buildings is required to minimise impact on the setting of heritage assets. Phasing should be controlled, prior to commencement, to ensure the timely delivery of all relevant infrastructure. Conditions to secure the design and timing of the proposed access from Grimston Road, including the provision of bus stops, together with

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<sup>53</sup> CD12

<sup>54</sup> Paragraph 55 of the Framework and PPG including paragraph 21a-003-20190723

all off-site highway improvement works, are necessary to ensure highway safety and that the traffic impacts of the proposed development are mitigated; the access prior to commencement to ensure satisfactory access during construction. Securing the details and timing of the travel plan is necessary to ensure that the development offers a wide range of travel choices and to reduce the impact of travel on the environment. Details of a surface water drainage scheme to accompany each reserved matters submission is necessary to prevent flooding. Conditions to assess contamination and secure its timely remediation if identified, whether prior to or during construction, are necessary to avoid risks to human health and the environment. A condition to secure the recommendations of protected species surveys that accompanied the appeal application, along with the details of the future management of the 'ecological management zones', are necessary to protect the ecology of the locality. Provision of welcome packs to all occupiers of the appeal development, providing details of appropriate dog walking routes outside ecologically sensitive sites, is necessary to protect local international sites. To safeguard archaeology, conditions are necessary to secure a written scheme of investigation and its timely implementation.

## **INSPECTOR'S CONCLUSIONS**

The numbers in square brackets [n] refer to earlier paragraphs in this report.

156. Taking account of the oral and written evidence, the Secretary of State's reasons for recovering the appeal and my observations on-site, the main considerations are the effect of the appeal proposal on:

- the significance of designated heritage assets in the locality, with particular regard to their settings;
- the local road network, with particular regard to highway safety and its residual cumulative impact; [47]
- whether the proposed development would reduce the need to travel and promote sustainable transport modes.

### ***Highways***

#### *Traffic impact and mitigation*

157. A comprehensive strategic traffic study was undertaken to support the allocation of this and the other sites in the locality as part of the SADMPP. In addition, the appeal application is supported by a traffic impact assessment (TA). That is considered comprehensive and fit for purpose by the Council and local highway authority. On the basis of the comprehensive nature of the evidence provided and attaching significant weight to the views of the local highway authority as an expert on these matters, I have no reason to take an alternative view on this matter. [47;111;124;128;131;133;141;145;146;147;150;177]

158. Particular concern was raised regarding the robustness of the TA undertaken, in particular the traffic base modelling flows that underpinned it. The updated surveys taken in August and September 2019 which accompany the appeal address concerns regarding the date of traffic data used and the need to account for summer and school traffic. Further, the TA tests a future year of 2026, which is ten years from date of application, therefore in excess of the requirements set out in national guidance. For all these reasons, I consider the methodology and

approach to the TA supporting the proposed development, with regards to trip generation and traffic modelling to be appropriate and robust. This matter was agreed between the appellants and Mr Evans at the RTD. That is a view shared by the local highway authority. [47;117;147;150;152]

159. The TA identifies that mitigation is required at two junctions along Grimston Road; a signalised crossroads at Wootton Gap, part funded by this scheme and addressed in the section 106, and a traffic signal scheme at the Grimston Road/Langley Road junction, implemented by a section 278 agreement and a planning condition. The local highway authority is satisfied that the mitigation proposed is appropriate and that residual cumulative impacts would not be severe. On the basis of the findings of the TA, I take a similar view. [47;117;124;141;147;150]
160. There is a great deal of concern expressed regarding existing traffic flows, particularly around the Wootton Gap and Langley Road junctions with Grimston Road, along with the impact of the proposed development on them and the wider road network. On my site visits, I observed traffic conditions and noted some delays as evidenced by the concerns expressed. However, I have not read or heard anything to seriously challenge the appellants' evidence and view of the local highway authority. In addition, I have no substantive evidence to demonstrate that any harmful increase in traffic through surrounding local settlements would result or that increased vehicle flows are the cause of damage to the roads or Carstone walls in Castle Rising. [47;117;124;128;135;136;141;145]

#### *Access and safety*

161. A road safety audit (RSA) (September 2018)<sup>55</sup> assessed the proposed access, a designer's response prepared, and the scheme amended. As that study was carried out in accordance with the industry standard and assessed by the local highway authority, I consider it to be independent and robust. [111]
162. The purpose of a stage 1 RSA is to identify fundamental safety issues at the early design stages. No issues fundamental to the design or implementation of the proposed access have been identified by that assessment or by a similar audit carried out by Allen Transport Consultancy (December 2019) on behalf of CRPC. All matters raised, including street lighting, could be incorporated through design progression at the detailed design stage. The process of auditing would continue at the detailed design stage and post construction. This matter was agreed by the appellants and the local highway authority. Ultimately the new access would require a section 278 Highways Act 1980 agreement with the local highway authority prior to construction. As part of that process the local highway authority would need to assess the detailed construction design of all aspects of the works. This gives additional assurance on this point. In addition, for this reason, conditions to address the matters raised by the RSA would not be necessary at this stage and any such conditions would not pass the tests for the imposition of planning conditions.<sup>56</sup> [114]

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<sup>55</sup> CD2H

<sup>56</sup> Paragraph 55 of the Framework and PPG including paragraph 21a-003-20190723

163. Limited substantive evidence is before me to demonstrate a lit roundabout is safer than an unlit one. Relevant guidance in DMRB TA48/07 sets out that, in assessing whether street lighting is required in this case, a balanced judgement needs to be made. Even though other parts of Grimston Road are lit, the proposed roundabout would be located within a stretch that is not. In accordance with that guidance, there is not requirement for lighting to be incorporated at this stage of the design process, even though the proposed bus stops and bus service enhancements are not fixed, and they may require pedestrians to cross Grimston Road. All in all, on this matter I have no reason to take an alternative view to that of the local highway authority who will ultimately take the decision as to whether lighting is required or not. [111;112]

#### *Accessibility*

164. The appeal site has been allocated in an adopted Development Plan (SADMPP E4.1). As part of that process the CS and SADMPP were subject to public examination and the location and distribution of housing development was fully considered at that time. That would have considered the suitability of the appeal site for housing in terms of its wider accessibility to services and facilities. I do not intend to revisit those matters as part of this appeal. King's Lynn has excellent transport links including public transport, bus, foot and cycle links connecting to the adjacent areas and good links to the principal road network and the appeal development would include local facilities and services. [112]

165. However, I will address specific concerns raised. The appeal site is within 5 kms of the services and facilities in King's Lynn and within 2kms of an Asda store. Further, the appeal development would include some facilities and services, including a local centre, community facility if need and user exists, sports pitches and open space. It would include improvements to walking and cycling facilities and upgraded bus stops and enhanced bus services. Considering the walk within the appeal site and its topography, the primary school closest, Reffley Academy, would be within an easy walk. Whilst I appreciate that this is not a locally favoured school, a new catchment population coupled with section 106 contributions to enhance facilities could make a difference in this regard. Taking the same considerations into account, senior schools would be accessible by bus, cycling or foot. Accessibility to school could be further enhanced through improvements to the local bus services. Local employment opportunities would be within easy cycle or bus access from the appeal site. In coming to the above conclusions, I am mindful that some walking distances for some future residents would exceed those set out in Manual for Streets 2. However, that is guidance and I note that most would be within an easy walk. In addition, I agree that the quality of bus service on a main route is more important than walk distance in determining its use. This matter, therefore, does not materially diminish the possibilities for travel by foot or cycle or public transport. [112;115;140;150;152]

166. Concern was expressed that the proposed enhancements to public transport, including the financial contribution sought to enhance bus services would be insufficient to affect a meaningful modal shift. However, in the provisions made flexibility exists to provide a service which could enter the appeal site, a route to the hospital and local area along with improvements to existing services, which would be within acceptable walking distance of future residents. Together, these



would provide a realistic option other than the private car and the financial contribution proposed is justified. [112;140;148;149;151;152]

167. All in all, I consider that the proposed development including public transport enhancements serve to give priority to pedestrians and cycle movements and facilitate access to public transport services. The appeal development, therefore would provide an alternative to the private car and promote alternative sustainable modes of transport. [151]
168. I conclude that the proposed development would not adversely affect highway safety. The residual cumulative impacts on the road network would not be severe. Further, overall, it would reduce the need for travel and promote sustainable modes of transport. It would therefore accord with CS policy CS11 and SADMPP DM15. Those policies, together, require development proposals to demonstrate that they have been designed to reduce the need to travel and promote sustainable forms of transport appropriate to their particular location, related to the uses and users of the development. In addition, it would accord with SADMPP E4.1, which requires a comprehensive transport assessment of the impacts of the proposed development and specific highway requirements delivered as part of the appeal development.

### ***Heritage***

169. There are a number of heritage assets in the vicinity of the appeal site as set out in paragraph 21 and 22 of my report. Both main parties agree that the impact on the significance of Warren Farmhouse would be neutral. On the basis of the separation distance and nature of that asset, I have no reason to take an alternative view.

### ***Rising Lodge***

170. Rising Lodge is a grade II listed eighteenth century former farmhouse built in the Regency style. Today it forms part of a hotel/leisure complex. It includes gardens and lawns which sit adjacent to the appeal site. It also includes a number of buildings, including a large barn building, and for this reason, its former farmstead origins are still recognisable. The former farmhouse building was rebuilt in the 18<sup>th</sup> century. The listing description suggests that it may include built elements from an earlier period, which may be the former Rising Lodge associated with hunting and warrening at Castle Rising Castle. [54-56;83]
171. In this regard, a Rising Lodge is depicted on a Map of the Chase and Borough of Castle Rising dated 1588, as a lodge within the former Chase. Documentary evidence suggests that it was used as a hunting lodge associated with the former deer park and later as a warren lodge serving the rabbit warrens in the vicinity. Its use changed to a farm in the mid-18<sup>th</sup> century. [84]
172. Today, the primary significance of the former farmhouse lies in its built fabric, its illustrative value as a Regency farmhouse and its archaeological interest. However, some lesser significance is derived from its setting, which includes the former farm complex and the wider agricultural landscape that it farmed. That gives the farmhouse an isolated and rural wider setting. As the former farm complex is illustrative of the origin of the building in its current form, I consider it makes the greatest contribution to significance through setting. [56;84]

173. However, as some evidence suggests that the site and possibly the former farmhouse were associated with Castle Rising Castle, a smaller part of its significance is derived from the setting of that asset. That includes the former deer park, Chase, and the warrens. That wider landscape illustrates the former lodge's interrelationship with the Castle and the 'Landscape of Lordship'. It is suggested that the former Rising Lodge and the land nearby, including the appeal site, would have sat on a high ridge within the former Chase, positioned as such to afford views of the 'Lordly' pursuits of hunting from the Castle and deer park. This may be the case, but I do not have sufficient evidence to conclude in those terms. In any event, those historic associations have now been severed, the Lodge has been rebuilt since those historic uses persisted and the character of the former Lodge's complex has changed. For these reasons, that wider 'Lordly Landscape' makes less of a contribution to significance through setting. However, the listed building and its former iterations would have functioned as an isolated rural building and today it still has an isolated, rural and open wider setting. The appeal site sits within Rising Lodge's wider setting and contributes to its isolated, rural and open setting. [56;84]

#### *Impact of development*

174. The proposed development would result in the loss of some agricultural land with which the listed building was formerly associated. In addition, proposed planting would limit views from Rising Lodge to the agricultural land formerly associated with it and thereby weaken the visual link between the two. However, such harm would be limited by the proposed intervening open space. In addition, the detail of the planting is to be defined at a later stage. As it would follow an existing field boundary, dependent on chosen species and form, it could read as a feature of the rural landscape, which is mixed in this locality and therefore would not appear out of place. Whilst there are some visual links between the listed building and the wider agricultural landscape including the appeal site, those are primarily towards Grimston Road, to which the main façade of the listed building faces. Those would remain unchanged. In addition, as the height of the built form near to Rising Lodge would be restricted and development set back from Grimston Road, the listed building would retain its isolated, rural and open setting. [58;85;107;121]

175. The appeal development would, for the same reasons, have some limited impact on an understanding of the former uses and landscape elements of the wider 'Lordly Landscape' associated with Castle Rising Castle. As historic maps indicate some wooded areas in this locality and for the reasons outlined earlier, I am unconvinced that the proposed planting would result in material harm to an understanding of the historic Medieval landscape. Overall, some harm would result. However, taking all factors into consideration, I consider that the harm would be less than substantial, at the lower end of that spectrum. [137]

#### *Castle Rising Castle*

176. Castle Rising Castle is a grade I listed building and SAM, lying within the Castle Rising Conservation Area. It is therefore a designated heritage asset of the highest significance as defined by the NPPF. It is agreed between the two main parties that its primary significance is in its physical remains and those would be

- unaffected<sup>57</sup>. On the basis of the historic fabric of the hall keep Castle and its earthworks and given the distance from the appeal site, I have no reason to take an alternative view on this matter. [49;63;77]
177. However, some lesser significance is derived from its setting, which includes the remains of the surrounding purposely designed Medieval landscape. That would have incorporated a number of landscape elements designed to display power and authority to the north, and private pleasure based on 'Lordly pursuits' such as hunting to the south. Those landscape elements are agreed between the two main parties to be the formal approach from the north through the settlement of Castle Rising, from which the high status of the Castle could be fully appreciated. Further afield it would have included a wooded deer park, situated to the south of the Castle, enclosed by a large bank and ditch with a park pale<sup>58</sup>. That boundary is still appreciable in the curved field boundaries to the south of the Castle. It is quite possible that deer rearing took place in the deer park and the pursuit of hunting took place further afield in the Chase. [50;78]
178. The Chase comprised a large area, some 24km in circumference that surrounded the Castle and deer park, in which Lords of the Castle had hunting and forestry rights, part of which was being used for warrening by the 16<sup>th</sup> century. The map of 1588 indicates that the area was mixed in character, including wooded and open areas and its boundaries would have been less well defined than the deer park<sup>59</sup>. As the former Chase is a very large area beyond the former deer park and it is today undefined in the landscape and varies considerably in character, it contributes less than other landscape elements identified to the significance of the heritage asset. [50]
179. The appeal site sits within the former Chase to the south of the Castle. It is suggested that Rising Lodge, and former associated lands including the appeal site, were so positioned within the Chase to enable views from the Castle and deer park as part of the designed 'Landscape of Lordship'. Whether that is the case or not, on my site visit I observed that today views from the Castle towards the appeal site and Rising Lodge, due to the separation distance, intervening planting and the topography are extremely limited. Due to the separation distance and topography views are also limited from the former deer park. [51;79;80]
180. Taking all these considerations into account, the wider setting of Castle Rising Castle in this locality is rural and mixed in character, including open and wooded areas. The appeal site positively contributes to the setting of the heritage asset, although considerably less than other elements of its setting. I acknowledge that designed views from the Castle and deer park may have been a part of the Lordly Landscape, but even taking into account the possibility of a former higher Castle, they are likely to have been limited by topography, landscape elements such as the deer park pale, planting and distance. Today views are extremely limited. The appeal sites forms a very small part of the Chase (roughly 07%). Any historical functional association with the Castle is not readily understood from the

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<sup>57</sup> IQ16

<sup>58</sup> LPA1

<sup>59</sup> APP3

landscape today. For all these reasons, the contribution of the appeal site to the setting of Castle Rising Castle is small. [79]

### *Impact of development*

181. The character of the appeal site would change from open agricultural land to a developed site. In this regard, as it has been established that the appeal site forms part of the former Chase, some harm would result. However, such harm would be limited by a number of factors. As the northern extent of development along with its height would be controlled, given the separation distance, topography and planting, the appeal scheme would hardly be visible from the Castle. Even if the proposed planting were visible from the Castle, as trees and planting are likely to have been a feature of this part of the Medieval designed landscape and it would follow the line of an existing field boundary, it would not appear out of place, given the varied character and other field boundaries and wooded areas within the former Chase. This would be the case, even though I acknowledge that the appeal site is mostly open today and possibly always has been. As some open space would be retained and the details of planting could be controlled, any inter-relationship between Rising Lodge and Castle Rising Castle would not be materially affected. Therefore, even if there was a designed view of the Castle, the deer park, the Chase and Rising Lodge, that would not be materially changed. As the proposed development would be pulled back from Grimston Road and would include planting and open space, and due to the separation distance from the Castle, it would not materially impact on the Castle's rural setting. Whilst additional traffic and activity would result, for the same reasons material harm would not result. Further, the appeal development would affect a very small part of the former Chase. [52-53;64-69;81;107]
182. For all these reasons, I consider that the harm to the significance of Castle Rising Castle would be less than substantial, at the lower end of that spectrum. I make this judgement mindful of the contribution that this landscape makes to our understanding of such landscapes. Whilst this assessment deviates from one of those made by Historic England<sup>60</sup>, I note that was made prior to the production of wireframe views produced<sup>61</sup>. I have come to my conclusions on the basis of all evidence before me and my own site assessment. [54;82;138]

### *St James at Bawsey*

183. This is a heritage asset of the highest significance. The primary significance of the ruins of St James' are in its high-status historic fabric, including its chancel, nave and central tower along with its archaeological interest, including the deserted settlement. However, its setting contributes to its significance, albeit less than its historic fabric. A striking element of the setting is the asset's isolated location on a low hill, which would form a riverine island when the Gaywood River flooded. That location was also intended to facilitate a display of the Church's Romanesque architecture. For this reason, its setting includes the surrounding landscape from which the Church can be viewed<sup>62</sup>. However, on my site visit I was able to appreciate the best views of the ruins from the land around the Gaywood River, the footpaths around and to the east of Queen

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<sup>60</sup> dated 3 December 2018

<sup>61</sup> CD15

<sup>62</sup> LPA1

Elizabeth Way from which the ruins can most readily be appreciated in their intended isolated setting. The appeal site sits on the other side of Queen Elizabeth Way. Due to the separation distance and intervening planting there is limited intervisibility between the appeal site and the ruins. However glimpsed views are possible. [59-61;87-88;129]

#### *Impact of development*

184. The proposed development would change the character of the appeal site by introducing built development where none exists at present. As there is some intervisibility between the appeal site and St James', that would erode its isolated setting. In addition, it would interrupt views of the Church in its isolated setting from the appeal site and beyond. However, the harm that would result would be limited by the separation distance and the existing and proposed planting that would further act to interrupt those views. In addition, there is existing built development in views from St James' towards the appeal site, including Queen Elizabeth Way and the hospital, and although the proposed development would add to that, the presence of existing urban features diminishes the impact of further development. Taking all these considerations into account I consider the level of harm that would result to be less than substantial, midway within that spectrum. That assessment is similar to that of Historic England and the Council. [62;87;90;129;137]

#### *Cumulative impacts*

185. As some elements of the historic landscape around the appeal site are interrelated, some cumulative harm would arise. This would be the case with regard to the interrelationship between Castle Rising Castle and Rising Lodge as those assets have a historic functional relationship. That has been taken into account in my assessment. As no inter-relationships between St James' at Bawsey and other heritage assets are identified, I cannot be assured that there would be any cumulative impacts on that heritage asset.<sup>63</sup>

#### *Public benefits*

186. In accordance with paragraph 196 of the NPPF, I accord great weight to the conservation of designated heritage assets. I consider that the harm to the significance of the heritage assets identified would, together, be less than substantial. Mindful of my statutory duties<sup>64</sup>, this is a matter to which I attach considerable importance and weight. In this case, however, public benefits, as identified in paragraph 196 of the Framework, are before me.

187. The appeal development would result in additional housing, including affordable housing. The Council confirms that it can demonstrate a five year housing land supply and I acknowledge that the appeal site development is not required to maintain that position. The delivery on the appeal site would increase flexibility should some of those sites fail to come forward; a matter of significant importance in light of the most recent housing delivery test results. In any event, in light of national policy to significantly boost the supply of housing, this is a significant benefit of the appeal proposal. This would be the case, even

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<sup>63</sup> Verbal evidence of Dr Hoggett and Mrs Stoten

<sup>64</sup> sections 16(2), 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

- if development were not to start until 2023, delivering roughly 240 homes within the current Plan period. Given the complexity of the matters at play in relation to this appeal site and the extent of public interest, I cannot be assured that a revised scheme would deliver similar numbers within the same timeframe. [40-42;92-99;108;141]
188. Further, regardless of the five year housing land supply position, the homes, including affordable homes that would be delivered are absolutely essential to deliver the CS strategic spatial strategy, that focuses on the expansion of King's Lynn and identifies areas of growth to fulfil that requirement. The emerging Development Plan is in its early stages of preparation and therefore I attach extremely limited weight to its intentions and in particular, its intention to delete the appeal site allocation. [37-39;108;109;123;126;131;132]
189. In addition, it would result in a policy compliant proportion of that housing coming forward as affordable housing. I have no substantive evidence to suggest that the scheme would be unable to deliver this housing. This again is a significant benefit of the appeal scheme, which will complement measures taken by the Council's housing service to meet identified need. [92;94-97;110]
190. The appeal scheme would deliver CIL receipts and some economic benefits in terms of the direct and indirect economic expenditure from jobs and future spending power. It would also deliver on-site facilities that would be open for use by existing residents including sports pitches, and a local centre. In addition, it would deliver open space, which would be a benefit to those beyond the appeal development, even though a local need has not been demonstrated. Moreover, it has the potential to deliver a community facility, if funding is available and a potential use and user identified. Furthermore, there would be some enhancement to public transport, walking and cycling routes, which again would be a benefit to those beyond the appeal site. Moreover, it would deliver off-site highway improvements which are unlikely to be delivered in the absence of the appeal development. I have limited substantive evidence to conclude that without the appeal development those improvements would not be required. [92;93;147]
191. All in all, I attach great weight to the heritage assets' conservation. However, the benefits identified, when taken together, would outweigh the considerable importance and weight that I attach to the heritage harm. Together, they provide clear and convincing justification for the level of harm identified.
192. Whilst I have found some harm to the setting of the heritage assets identified, I have also found that the public benefits of the appeal proposals would outweigh that harm, when considered together. In these circumstances, I consider that the appeal development would meet the requirements of CS policies CS12 and SADMPP policy E1.4, when read together. Those policies require development proposals to protect and enhance the historic environment, whilst recognising the need to balance any public benefits against the loss of interest or significance of heritage assets and, in relation to the appeal site, provide suitable planting to protect the setting of heritage assets, including those assessed within this section of my report.

## **Other Matters**

193. The appeal site is located within a low flood risk area (Flood zone 1). A surface water drainage strategy<sup>65</sup> has been submitted, which confirms that suitable on-site mitigation can be secured, which will ensure that the risks of off-site flooding will not be increased by development. A suitable planning condition would ensure that each phase of development is supported by a detailed surface water drainage scheme to secure this. In this regard, I note that the County Council as Lead Local Flood Authority, do not raise concern in this regard. For all these reasons, I take a similar view. [142;143]
194. The application includes a utilities report<sup>66</sup>, which confirms that a new foul water connection to serve the development could be made in Sandy Lane. Further, it confirms that the existing public sewer network could be upgraded to serve the development. Anglian Water has confirmed that available wastewater treatment centre capacity exists. If for any reason adequate capacity were not available, effluent could be stored onsite and pumped at night. Any such proposal would need to ensure that any unacceptable odour would be dealt with through appropriate design and location. Those would be matters addressed through further design work at a later stage. [142;143;147]
195. Regarding impact on Reffley Wood, development would be set back behind wide planted buffer zones. Planting could provide a defined boundary and direct visitors to agreed access locations. Details of landscaping are reserved for consideration at a later stage. As a large buffer would be included on the northern section of Reffley Wood, this will help to ensure no harm to the former clay pit within the Wood. The appellants confirm that Reffley Barrow would be retained. [130;146]
196. A proportion of affordable housing, in accordance with the requirements of CS policy C09 is proposed. That would meet the requirements of SADMPP policy E4.1. In addition, a range of house sizes, types and tenures would need to be proposed to meet the same policy requirement; the details of which would be considered at a later stage. [110;130;139]
197. The proposed development would result in the loss of a greenfield site. However, the appeal site is an allocated site in an adopted Development Plan. That Development Plan is based on a strategic spatial strategy that directs a large amount of housing development in and adjacent to its sub-regional centre of King's Lynn (CS policies C01). South Wotton is defined as a larger village that provides significant local facilities. CS policy C03 directs 7,510 homes to King's Lynn including South Wootton as an adjacent settlement, to be delivered through a balance of brownfield redevelopment and urban extension. To deliver the urban expansion, development on green field sites was endorsed by that Plan. The appeal site is one of those sites allocated in the SADMPP to deliver that spatial strategy identifying Knights Hill as a strategic growth area. Therefore, it is clear that both brownfield and greenfield sites are required to deliver that strategy. [37-39;122;131;132;136;137;147]

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<sup>65</sup> CD2V

<sup>66</sup> CD2X

198. In respect of local infrastructure, whilst a primary health care centre is required in South Wootton to meet current and future demand, the NHS has confirmed that a new surgery at or near the appeal site would not be required or desirable. It required CIL monies to be allocated to secure its provision. This would meet the requirements of SADMPP policy E4.1, which requires a new doctor's surgery within or close to the appeal site. If any further primary health care facility were to be required, it could utilise the reserved site for community use, secured through the section 106 agreement. [134;136;139;147]
199. The County Council has confirmed there is capacity in local schools to cater for the appeal development at both early years and senior level. Provisions of the section 106 agreement address primary school requirements. [130;136;139;146;147]
200. The appeal site is not located within an Air Quality Management Area. The environmental statement that accompanies the appeal application assessed the impacts of additional traffic movements on air quality as negligible<sup>67</sup>. In the face of limited substantive evidence to the contrary, I concur with that assessment. Mitigation is provided to address the impacts of dust during construction. [119-125;130;147]
201. A pedestrian and cycle link are proposed to link the appeal site to the Knights Hill car park area. Whilst that would involve the removal of trees and planting in the highway verge, replacement planting could be provided, and the benefits of a shared link would outweigh the small loss of planting envisaged.
202. The adopted Development Plan identified South Wootton as a settlement adjacent to King's Lynn and directs growth to the settlement in accordance with its strategic spatial strategy. The scale of development and associated urbanisation at Knights Hill has already been assessed and considered acceptable therefore, including the provision of at least 600 homes on the appeal site. As policy E4.1, in relation to this allocation, sets a minimum requirement, the provision of more than 600 homes at Knights Hill would not be in conflict with that policy. [118]
203. As development within and nearest to the AONB would be set back from Grimston Road, open space and planting incorporated and the height of development restricted, no adverse impact on the AONB would be likely. This would include harm due to light pollution and the dark skies of the AONB. Whilst access works, including the small shared surface link from Knights Hill hotel would be within the AONB, due to the small scale nature of these works, again no harm would result. In any event, the landscape impact of development and any impact on the AONB would have been considered when the appeal site was allocated for development. Overall, I consider that the appeal development would conserve and enhance the landscape and natural beauty of the AONB. [130]
204. The land use parameter plan sets out areas that would be free of development and areas of structural planting. The open space provision is sufficient to meet the needs of the proposed development and to provide for ecological mitigation. It would accord with the requirements of SADMPP DM16 and E4.1. The exact

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<sup>67</sup> Environmental Statement Chapter 11



layout and use of each area of open space, apart from ecological management zones, would be defined at a later stage. [127]

205. Given the size of the appeal site, the scale of development proposed, and the amount of undeveloped area included, I consider that a layout could be secured that would avoid overlooking into existing properties in Ullswater Avenue. The details of the proposed layout would be considered at a later stage. The links through to Ullswater Avenue and the Claylands site would be for cycle and pedestrian use only. However, emergency access for vehicles would be possible and could be reflected in the detailed design. [154]

206. A major accident hazard high pressure gas pipeline lies within the highway verge to the A149 Queen Elizabeth Way. It requires a 14 metre development free zone around it. Given the development free areas and planting proposed near to the boundary with the A149, it is considered that this requirement could be accommodated. [154]

207. I have a number of previous appeal decisions before me in relation to different schemes in different locations. However, none replicate the circumstances of this appeal. In relation to the Gayton appeal brought to my attention, in addition to the above, I note that Inspector found heritage harm in combination with other harms, which does not reflect the appeal before me<sup>68</sup>.

#### *Ecology and European protected sites*

208. The application was accompanied by an Environmental Statement (ES). The Council is satisfied that the ES meets the requirements of the relevant Regulations and on that point I have no reason to disagree. I have had regard to the environmental information in my assessments and recommendation.

209. The Ecological Impact Assessment and Habitats Regulation Assessment found that harm to Roydon Common and Dersingham Bog SAC/RAMSAR/potential SPA due to additional recreational and visitor pressure could not be discounted, when assessed in combination with other developments in the locality.

210. Mitigation is proposed and effectively secured through the outline proposals, appropriate planning conditions or by legal agreement. Given that mitigation is secured, the harm identified would be discounted. That position is supported by Natural England. On the basis of the detailed evidence regarding visitor numbers and patterns provided, the proposed mitigation and mechanisms to secure it, I have no reason to take an alternative view. Therefore, I conclude that the appeal development would not adversely affect the integrity of Roydon Common and Dersingham Bog SAC/RAMSAR/potential SPA.

211. Those studies also demonstrate that appropriate measures can be put in place to ensure that there would be no significant effect on sites of Special Scientific Interest in the locality and in particular protected species such as breeding skylarks, invertebrates, bats, reptiles and breeding birds. Mitigation is secured, as appropriate, by planning condition 18. The appeal development would meet the requirements of SADMPP policy E4.1 in this regard.

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<sup>68</sup> APP/V2635/W/16/3166074

212. If the Secretary of State is minded to allow the appeal, he will need to carry out an Appropriate Assessment, as the Competent Authority. I have provided my views on any effects on the European protected sites at Annex D to assist him.

### ***Planning obligation***

213. An executed planning obligation is before me. Whilst the Council has confirmed that it is satisfied with its contents, for its provisions to be given weight in the determination of this appeal, I am required to assess whether they are necessary to make the proposed development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind.<sup>69</sup>

214. The provisions for affordable housing are necessary to ensure a high quality development that meets the requirements of CS policy CS09 and policies E4.1 and DM8 of the SADMPP. These provisions meet the above tests and therefore weigh in favour of the appeal. [110;130]

215. Provisions to secure public open space and its future maintenance, play equipment, allotments, landscaping and street furniture are necessary to ensure a high quality development and to minimise impacts on heritage assets. Justification for the financial contribution sought is before me. Together they would meet the policy requirements set out in SADMPP policies E4.1 and DM16, CS policy CS14 and SWNP policies E2, E4, E5, H2, S2 and S3. Together, they meet the above tests. [134;136]

216. Financial contributions are necessary to mitigate the impact of development on protected European sites of nature conservation importance. This includes a contribution towards the Habitats Mitigation and Monitoring Strategy and contributions to fund a community ranger and community engagement in relation to Roydon Common. The amounts specified in each case are justified and would meet the requirements of CS policy CS12 and SADMPP policies E4.1 and DM19. On that basis they would meet the necessary tests. [130; 136]

217. The legal agreement requires an area of land to be reserved for a potential community facility, indicating a timescale within which, if required, it should come forward. This is necessary to meet the requirements of CS policy CS14, SADMPP policy E4.1 and SWNP policy S2. Those policies, together, require suitable infrastructure provision for the development of the appeal site. It would therefore meet the necessary tests. [93;134;136]

218. Junction improvements at Wootton Road/Castle Rising Road/ Grimston Road are necessary to mitigate the traffic impacts of the appeal development. A financial contribution proportionate to the traffic generated by this scheme is sought; the balance contributed by two large developments at Hall Lane. The figure sought has been justified. Overall, these provisions would meet CS policies CS11 and CS14, which together seek necessary infrastructure to accompany development. These provisions therefore meet the relevant tests. [47;117;147;150;152]

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<sup>69</sup> Regulation 122 Community Infrastructure Regulations 2010 (as amended) (CIL Regulations)

219. Parts of the appeal site are unparished and therefore zero rated for CIL. Financial contributions towards education and library provision for those parts of the site are therefore necessary to ensure a quality development. Local needs are identified, along with details of how and where the monies would be spent. Such provisions would meet CS policy CS14 and SWNP policies S1 and S2, which require community infrastructure. They would meet the relevant tests, therefore. [134;136-139;147]
220. Given the location of the appeal site on the edge of King's Lynn and the scale of development sought, the provision of a bus service is necessary to promote sustainable forms of transport and secure a high quality development. The contribution sought is justified and would meet the aims of CS policies CS11 and CS14, which together seek to provide a sustainable transport network. For these reasons, the provisions would meet the above tests. [110;113]
221. Given the scale of development, the complexity of the legal agreement and timescales involved, monitoring charges for the Council and County Council are necessary. The figures sought are justified, based on previous staff time and costs. Overall, the provisions meet the CIL tests.

### ***Planning Balance***

222. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out, that if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the Plan, unless material considerations indicate otherwise. In this case, I have no reason to determine that regard should not be had to the Development Plan.
223. The most important policies for the determination of this appeal are CS policies CS12, CS11 and SADMPP policies DM15 and E4.1. No evidence is before me to indicate that those policies do not accord with the NPPF. In particular, CS policy CS12 is a strategic policy which includes reference to the heritage balance set out in the NPPF. [43-45;100]
224. SADMPP policy E4.1 provides for a development of at least 600 dwellings, supported by a range of technical studies. It lists 13 criteria which an application is required to address. I have found no harm to highway safety or by its residual cumulative impact and have concluded that the appeal development would reduce the need to travel and promote sustainable forms of transport. In this respect, it accords with the requirements of SADMPP policy E4.1 therefore. [43-45;101]
225. Criteria E4.1(5) relates to impact on heritage assets. When read alongside CS policy CS12, it is clear that criterion does not require nil detriment as a result of development. Rather any development can result in harm and still be in conformity. I have identified that less than substantial harm to heritage assets identified would be a consequence of the appeal development. The appeal proposal seeks to mitigate that harm. However, heritage harm would still result. This is a matter to which I attach considerable importance and weight. However, I have found that such harm would be outweighed by the public benefits. Therefore, the appeal scheme meets the requirements of SADMPP policy E4.1(5). As a consequence, it meets the requirements of that policy as a whole. As there are no outstanding conflicts with the Development Plan found, I conclude that the

appeal development accords with the Development Plan when read as a whole. [43-45;100-102]

226. Turning to other material considerations, due to the proximity of heritage assets and site constraints, I am unconvinced that a policy compliant development which would deliver equivalent public benefits, including the same level of market and affordable housing, could be delivered on the appeal site or part of it, whilst avoiding harm to heritage assets or resulting in less harm to heritage assets identified. Further, due to the significant public interest in development at the appeal site, I am unconvinced that a revised scheme would deliver a similar number of homes within a similar time frame. This site is an allocated site in an adopted Development Plan. It is essential that it comes forward to deliver the strategic spatial strategy and objectives of that Development Plan. I acknowledge that the Council can demonstrate a five year housing land supply in the absence of this site. That may reduce the contribution that the appeal site makes to the local housing need in that time period. However, it does not reduce the need for the site to come forward to deliver the overarching aims of the adopted Development Plan. Whilst the Council's emerging CS is likely not to allocate the appeal site, that document is in its early stages of preparation and therefore attracts very limited weight in my decision making. [93-99] It also does not reduce the need for the site to come forward to ensure that the Government's objectives to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities are not prejudiced.

227. Overall, I consider that the other material considerations do not indicate that this appeal should be determined other than in accordance with the Development Plan. I therefore recommend that the appeal succeeds.

### **RECOMMENDATION**

228. I recommend that the appeal be allowed, subject to the conditions set out in annex C to this report.

*R Barrett*

INSPECTOR

**ANNEX A APPEARANCES****FOR THE COUNCIL:**

Timothy Leader of Counsel instructed by Stuart Ashworth Assistant Director of Environment and Planning the Council He Presented:	
Steven Fidgett BSc (Hons) Dip TP MRTPI	Union4 Planning Ltd
Dr Richard Hoggett BA (Hons) MA PhD FSA MCIfA	
In respect of the discussion on planning obligation only:	
Fiona Croxen	East Law
Stephen Faulkener	County Council
Stuart Ashworth	Council

**FOR THE APPELLANTS:**

Anthony Crean QC instructed by Carter Jonas He presented:	
Paul Belton BA (Hons) Dip TP	Carter Jonas
Gail Stoten BA (Hons) MCIfA FSA	Pegasus Planning Group
Simon Tucker BSc (Hons) MCIHT	David Tucker Associates

**FOR CASTLE RISING PARISH COUNCIL:**

David Cooper of David Cooper and Co Instructed by CRPC He presented:	
Stephen Evans BA (Hons) MA CMILT MCIHT MTPS	Technical Director Pell Frischmann

Ben Colson	
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### **OTHER PEOPLE WHO SPOKE OR SUBMITTED WRITTEN STATEMENTS AT THE INQUIRY**

David Goddard	CRPC
John Marrow	North Wootton Parish Council and local resident
Nick Daubney	Local resident
Councillor Michael deWhalley	Gayton and Grimston Ward
David Price	Chair South Wootton Parish Council
James Wild MP	MP North West Norfolk
Councillor Jon Taylor	CRPC
Henry Bellingham	Ex MP North West Norfolk
John Marshall	Speaking on behalf of Greville Howard the Lord Howard of Rising (the Woottons Parish Council)
Councillor Terence Parish	Heacham Ward
Peter Borrmann	Local resident
Pippa Winson	Local resident
David Andrews	Local resident
Graham Price	Local resident
Danny Thorpe	Local resident
Robert Raab	Local resident
Elaine Culvert	Local resident

**ANNEX B DOCUMENTS LISTS*****Documents submitted during the Inquiry***

IQ 1	List of appearances on behalf of the Council
IQ2	Statement of David Cooper, and full statements of Stephen Michael Evans, Greville Howard the Lord Howard of Rising, David Goddard, Ben Colson and John Marrow; all representing CRPC
IQ3	Appellants' opening submission
IQ4	Council's opening submission
IQ5	Statement of David Cooper for CRPC
IQ6	Bundle of third party statements Nick Daubney Councillor Michael deWhalley David Price Chairman SWPC Councillor Jon Taylor Councillor Terence Parish Greville Howard the Lord Howard of Rising (the Woottons Parish Council)
IQ7	Extract from EIA Chapter 11 (11.1.1 to 11.7.9) on air quality
IQ8	Schedule of appeal application plans and A4 coloured set of plans
IQ9	Letter from Historic England dated 14/01/2020 and covering email
IQ10	Gail Stoten's speaking notes (heritage RTD)
IQ11	Missing page of Mr deWhalley's statement
IQ12	Statement of Mr Colson (highways RTD)
IQ13	Chance of a lifetime Shelter (2016)
IQ 14	Statement from Danny Thorpe
IQ15	List of agreed suggested conditions v2
IQ16	Position statement, following the heritage RTD, agreed between the two main parties
IQ17	Position statement, following the highways RTD, agreed between the appellants and CRPC (Stephen Evans and Ben Colson)
IQ18	Statement of Peter Borrmann

IQ19	Statement of Pippa Winson
IQ20	Suggested agenda for site visit
IQ21	Signed section 106 agreement – awaiting additional signed copy from Mr De-Gray Osborne
IQ22	Council’s closing submissions
IQ23	Appellants’ closing submissions
IQ24	List of agreed suggested conditions v3
IQ25	Counterpart to section 106 agreement
IQ26	Closing statement of David Cooper (CRPC)

### ***Other key documents***

KD1	Signed SoCG (general matters) between Council and appellants
KD2	Signed SoCG plus addendum dated 8 January 2020 (highway matters) between Council, appellants and highway authority
KD3	Signed SoCG (heritage matters) between Council and appellants
KD4	Executed section 106 agreement
KD5	CIL compliance statement

### ***Proofs of Evidence***

<b>Appellants</b>	
APP1	Proof of Mr Paul Belton (planning)
APP1A	Summary proof of Mr Paul Belton
APP2	Proof of Mr Simon Tucker (highways and transport)
APP2A	Summary proof of Mr Simon Tucker
APP2B	Rebuttle proof of Mr Simon Tucker
APP3	Proof of Mrs Gail Stoten (heritage)
APP3A	Summary proof of Mrs Gail Stoten



APP4	Appellants' response to third party comments
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<b>Council</b>	
LPA1	Proof of Dr Richard Hoggett (heritage)
LPA1A	Summary proof of Dr Richard Hoggett
LPA1B	Appendices to Dr Richard Hoggett proof
LPA 2	Proof of Mr Steven Fidgett (planning)
LPA2A	Summary proof of Mr Steven Fidgett (planning)
LPA3	Rebuttle proof of Mr Steven Fidgett (planning)

<b>CRPC</b>	
CRPC1	Proof of evidence of Mr Steven Michael Evans (highways and transport)
CRPC2	Statement of Mr Benjamin Colson (highways and transport)
CRPC3	Statement of Mr David Goddard (highways and transport)
CRPC4	Statement of Mr John Marrow (highways and transport)
CRPC5	Statement of Greville Howard the Lord Howard of Rising

***Core Documents (as agreed between the parties)***

CD2	Appeal application
CD3A	CD/3a – Core Strategy Issues and Options Paper 2005
CD3B	Core Strategy Sustainability Appraisal Issues and Options 2005
CD3C	Regulation 25 Core Strategy
CD3D	Core Strategy Inspector's Report 2011
CD3E	Core Strategy Pre Submission Sustainability Appraisal
CD3F	Adopted Core Strategy
CD3G	King's Lynn Area Transport Strategy Stage 1 March 2009

CD3H	King's Lynn Area Transport Strategy Phase 2 August 2010
CD3I	King's Lynn Area Transport Strategy Implementation Plan
CD4A	SADMPP Issues and Options Consultation – extract North East King's Lynn
CD4B	Historic England's consultation response to SADMPP Issues and Options
CD4C	SADMPP Preferred Options 2013 – extract Knights Hill
CD4D	Historic England's consultation response to SADMPP Preferred Options
CD4E	SADMPP Pre submission draft – extract King's Lynn and Surrounding Area Chapter
CD4F	Council's Response to Issue 7 of the SADMPP Examination
CD4G	SADMPP Pre Submission Sustainability Appraisal
CD4H	Inspector's Report to SADMPP 2016
CD4I	SADMPP Main Modification 29 - Knight's Hill Modifications
CD4J	Council's response to SADMPP Examination Issue 4
CD4K	Adopted SADMPP
CD5	South Wootton Neighbourhood Plan
CD6	Draft Local Plan and evidence base
CD7A	CD/7a – Hall Lane Committee reports (applications 17/01151/OM and 17/01106/OM)
CD7B	Hall Lane section 106 application 17/01151/OM
CD7C	Hall Lane section 106 application 17/01106/OM
CD8	Castle Rising Conservation Area Draft Character Statement
CD9A	King's Lynn and West Norfolk Authority Monitoring Report 2017-2018
CD9B	King's Lynn and West Norfolk Housing Trajectory April 2019
CD9C	King's Lynn and West Norfolk Housing Delivery Test Action Plan Update August 2019

CD9D	King's Lynn and West Norfolk Housing and Economic Land Availability Assessment January 2019
CD10A	King's Lynn and West Norfolk Local Plan Task Group Agenda 19 <sup>th</sup> September 2019
CD10B	King's Lynn and West Norfolk Local Plan Task Group Minutes 19 <sup>th</sup> September 2019
CD11	Historic England's consultation response
CD12	Appellants response to third party submissions
CD13	Appeal cases quoted in Simon Tucker Proof of evidence - APPX2410A122177327, APPQ1825A132205688 and APPT2215A132203710
CD14	Verified View Methodology
CD15	Wireframe views from Castle Rising Castle
CD16	East Northamptonshire District Council v SSCLG (2015) EWCA Civ 137
CD17	Jones v Mordue Anor (2015) EWCA Civ 1243
CD18	Catesby Estates Ltd v Steer, EWCA Civ 1697, 2018
CD19	Historic England, 2015, Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning:2
CD20	English Heritage, 2008, Conservation Principles, Policies and Guidance for the Management of the Historic Environment
CD21	Historic England, 2019, Statements of Heritage Significance: Analysing Significance in Heritage Assets Historic England Advice Note 12
CD22	Historic England, 2017, Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets
CD23	EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council
CD24	South Lakeland District Council Appellants v Secretary of State for the Environment and Another Respondents, [1992] 2 A.C. 14
CD25	EWHC 1895, R (Forge Field Society, Barraud and Rees) v. Sevenoaks DC, West Kent Housing Association and Viscount De L'Isle

CD26	Robert Liddiard, 1999, Castle Rising, Norfolk: Landscapes of Lordship
CD27	Robert Liddiard 1999, The Castle Landscapes of Anglo Norman East Anglian: A Regional Perspective
CD28	Robert Liddiard, 2005, Castles in Context
CD29	Brian Cushion and Alan Davison, 2003, Earthworks of Norfolk
CD30	O.Rackham, 1986, 'The Ancient Woods of Norfolk', Transactions of the Norfolk and Norwich Naturalists' Society
CD31	N. Batcock, 1991, The Ruined and Disused Churches of Norfolk
CD32	Robert Liddiard 2000, Landscapes of Lordship Norman Castles and the Countryside in Medieval Norfolk, 1066-1200
CD33	Dallas 2010 – Sustainable environments: common wood pastures in Norfolk
CD34	Langton and Jones 2010, Forests and Chases of Medieval England and Wales
CD35	Gayton appeal decision ref APP/V2635/W/16/3166074

***List of Plans (as agreed between Council and appellant at the Inquiry)***

<b>Plan name</b>	<b>Plan number</b>
Site location plan	CS053683-PL-02A
Land use parameter plan	CS053683-PL-001E
Access and movement parameter	CS053683-PL-002E
Landscape strategy	CS053683-PL-100F
Site access plan	KHD-CAP-00-00-DR-C-0001 P04
Grimston Road roundabout option 2	KHD-CAP-00-00-SK-C-0002 P02
Primary site access plan Grimston Road roundabout swept path analysis	KHD-CAP-00-00-DR-C-0004 P02

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Grimston Rd roundabout, Goosberry Lane, Lodge Lane, Grimston Rd, Langley Rd junction's general arrangement	KHD-CAP-00-00-SK-C-0006 P03
Primary site access plan Grimston Rd roundabout swept path analysis drawing (with further tracking)	KHD-CAP-00-00-DR-C-0009 P01
Illustrative masterplan	CS053683-PL-PL01N

## **ANNEX C CONDITIONS**

- 1 Approval of the details of the layout, scale, appearance and landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority before any development is commenced.
- 2 Plans and particulars of the reserved matters referred to in condition 1 above shall be submitted to the Local Planning Authority in writing and shall be carried out as approved.
- 3 Application for the approval of reserved matters shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.
- 4 The development hereby permitted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the latest such matter to be approved.
- 5 The development hereby approved shall be carried out in accordance with the parameter plans land uses (CS053683-PL-001E), access and movement (CS053683-PL-002E) and the location plan (CS053683-PL-02A). The development shall also be carried out in accordance with the landscape Strategy (CS053683-PL-100F) in so far as the details provided relate to the landscape strategy for the site. For the avoidance of doubt the landscape strategy should underpin the integration of green space throughout the development but shall not define the precise extent of built development or layout, save to the extent that development shall not extend north east above the line of the 45m contour and 43m contour for that part of the site lying within 80m of Grimston Road, as shown on the landscape strategy plan and shall retain the overall extent of greenspace.
- 6 Other than highway improvement works to form the new roundabout on Grimston Road, notwithstanding the details submitted the development hereby permitted shall not be commenced until a phasing plan has been submitted to and agreed in writing by the Local Planning Authority. The phasing plan shall identify and describe the phases of construction of development including the following infrastructure elements
  - the local centre;
  - Public open space and play areas;
  - Pedestrian, cycle and emergency vehicle route to Ullswater Avenue;
  - Other pedestrian and cycle connections, including to the remainder of Allocation E4.1 (known as Claylands site);
  - A new car park serving Reffley Wood;
  - Structural planting.

- The development shall be carried out in accordance with the provisions of the approved phasing plan and/or any subsequent amendment to it that has been agreed in writing by the Local Planning Authority.
7. The maximum height of development shall be restricted to 8 metres (floor to ridge level) and 9.5 metres (floor to ridge level) respectively in the areas indicated on the parameters plan – land uses (CS053683-PL-001E).
  8. Notwithstanding the details indicated on the approved drawings no works shall commence on-site until detailed drawings for the off-site highway improvement works as indicated on drawing No. KHD-CAP-00-00-SK-C-0002 Rev P02 Grimston Road Roundabout Option 2, including the provision of bus stops along the site frontage on Grimston Road, together with a programme for their implementation, have been submitted to and approved in writing by the Local Planning Authority.
  9. Prior to the occupation of the 125<sup>th</sup> dwelling, detailed drawings for the off-site highway improvement works for the Grimston Road - Langley Road proposed traffic signal junction as indicated on drawing No. KHD-CAP-00-00-SK-C-0006 Rev PO3 shall be submitted to and approved in writing by the Local Planning Authority.
  10. Prior to the occupation of the 200<sup>th</sup> dwelling of the development hereby permitted the off-site highway improvement works (including Public Rights of Way works) referred to in condition 9 shall be completed to the written satisfaction of the Local Planning Authority.
  11. No more than 30 dwellings shall be occupied until an interim travel plan has been submitted to and approved in writing by the Local Planning Authority.
  12. No more than 50 dwellings shall be occupied prior to the implementation of the interim travel plan referred to in condition 11. During the first year of occupation an approved full travel plan based on the interim travel plan referred to in condition 11 shall be submitted to and approved in writing by the Local Planning Authority. The approved full travel plan shall be implemented in accordance with the timetable and targets contained therein and shall continue to be implemented as long as any part of the development is occupied, subject to approved modifications agreed by the Local Planning Authority as part of the annual review.
  13. Each reserved matters submission shall be supported by a detailed surface water drainage scheme which shall be based on the submitted drainage strategy (Welland Design and Build Limited, WDB\_SWDS\_07, October 2018) and shall have regard to the detailed comments set out within the consultation response of the Local Lead Flood Authority dated, 27<sup>th</sup> November 2018.
  14. Other than highway improvement works to form the new roundabout on Grimston Road and notwithstanding the details already submitted, prior to the commencement of groundworks on any phase, an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be

undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health;
  - property (existing or proposed) including buildings, crops, livestock and pets;
  - woodland, service lines and pipes,
  - adjoining land;
  - groundwaters and surface waters;
  - ecological systems;
  - archaeological sites and ancient monuments.
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

- 15 Other than highway improvement works to form the new roundabout on Grimston Road, prior to the commencement of groundworks of any phase, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 16 The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of groundworks, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.
- 17 In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of



condition 14, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 15, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 15.

- 18 The recommendations, mitigation and enhancement measures identified in the following protected species surveys by Torc Ecology Ltd, shall be implemented in accordance with the approved details and in accordance with a programme to be submitted and agreed to the written satisfaction of the Local Planning Authority:
- Mitigation measures for Reptiles within the Environmental Statement Volume 1 Ecology & Nature Conservation Dated December 2016;
  - Invertebrate Survey Report, Ref: 30.07.14 Dated 28 July 2014;
  - Bat Survey Report, Project Ref: TE/LB/2012\_157 Dated November 2016.
- 19 Prior to first occupation, details of the future management of the Ecological Management Zones shall be submitted to and agreed in writing by the Local Planning Authority.
- 20 Welcome packs (to include information relating to the availability of and whereabouts of locations for dog walking routes which are less sensitive than international sites, and the provision of connecting accesses to existing rights of way and open space) shall be provided on first occupation of all houses hereby approved.
- 21 Other than highway improvement works to form the new roundabout onto Grimston Road, no development shall take place until an archaeological written scheme of investigation has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and 1) The programme and methodology of site investigation and recording; 2) The programme for post investigation assessment; 3) Provision to be made for analysis of the site investigation and recording; 4) Provision to be made for publication and dissemination of the analysis and records of the site investigation; 5) Provision to be made for archive deposition of the analysis and records of the site investigation; and 6) Nomination of a competent person or persons/organization to undertake the works set out within the written scheme of investigation.
- 22 Other than highway improvement works to form the new roundabout onto Grimston Road, no development shall take place other than in accordance with the written scheme of investigation approved under condition 21.
- 23 No more than 50 dwellings shall be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological written scheme of investigation approved under condition 21 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

## **ANNEX D**

### **INFORMATION TO INFORM THE SECRETARY OF STATE'S HABITATS REGULATIONS ASSESSMENT (HRA)**

#### ***INTRODUCTION***

Article 6 of the Habitats Directive, which has been transposed into UK law through the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (for plans and projects beyond UK territorial waters (12 nautical miles)), requires that where a plan or project is likely to result in a significant effect on a European site either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

#### ***PROJECT LOCATION***

The appeal site and surroundings are set out in paragraphs 13-18 of this report and the proposals are described in paragraph 32. The appeal site is close to some European sites. These are Roydon Common and Dersingham Bog Special Area of Conservation (SAC) and RAMSAR sites, known together as Roydon Common and Dersingham Bog SAC. Roydon Common is approximately 1.4km from the appeal site and Dersingham Bog is 5km away.

Roydon Common and Dersingahm Bog SAC is known to contain significant numbers of breeding nightjar at a level to which it may qualify for designation as a Special Protection Area (SPA). The site, as a whole, is therefore considered as a SPA under the precautionary principle.

#### **HRA IMPLICATIONS OF THE PROJECT**

##### ***PART 1 - ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS***

The appeal development is not directly connected with or necessary to European site management for nature conservation.

The appeal application is accompanied by an ES, an Ecological Impact Assessment and Habitats Regulation Assessment. Dersingham Bog falls outside a 2km zone of influence and due to that separation distance, significant effects are not likely. However, Roydon Common would fall within that zone of influence. Potential significant effects to Roydon Common are considered to arise from the loss of supporting habitats, increased recreational and leisure pressures and the cumulative recreational pressure impacts arising from multiple housing allocations and other developments in the vicinity. By far the greatest concern is the potential impact of additional recreational and leisure use<sup>70</sup>. Any impact would be exacerbated when considered in combination with other development in the locality. On the basis of the studies undertaken to date, including detailed visitor surveys, I have no reason to take an alternative view.

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<sup>70</sup> Environmental Statement chapter 8; HRA Addendum report October 2018; DC2a(1)

Other European sites are located over 5km from the appeal site. However, they fall outside the 2km zone of influence and due to the separation distance and as no specific direct ecological connectivity is identified, significant effects on their integrity are not likely.

### **CONSERVATION OBJECTIVES**

Roydon Common SAC is designated due to the presence of the following habitats:

- Northern Atlantic wet heaths with cross leaved heath *Erica tetralix* for which the site represents the largest and best examples of *Erica tetralix*- *Sphagnum compactum* wet heath in East Anglia;
- Depressions on peat substrates of the *Rhynchosporion* for which this is considered to be one of the best areas in the UK;
- European dry heaths for which the area is considered to support a significant presence.

Roydon Common RAMSAR is designated due to the presence of mixed valley mire heathland.

The conservation objectives for the SAC are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the Favourable Conservation Status on which its qualifying natural habitats rely.

### **PART 2 - FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY**

Roydon Common is over 1.4 km from the appeal site. Further, no specific direct ecological connectivity is identified. Therefore, the appeal development would result in no direct impact on the European site during its construction.

However, due to increased recreational pressure as a result of the appeal development a likely significant effect on the integrity of the European site identified cannot be discounted. Such impacts include increased recreational pressure, including dog walking. Based on a detailed assessment of visitors to European sites in East Anglia<sup>71</sup> impacts identified due to increased recreational pressure are disturbance to breeding birds, trampling/erosion, increased fire risk and contamination. Further, it is reasonable to assume that a proportion of the proposed development's residents would own dogs and are likely to seek local dog walking facilities. There is a risk that dog fouling and roaming would result in disturbance to birds, particularly breeding birds.

Overall such additional pressure could damage heathland and wetland vegetation, result in disturbance to ground nesting birds, most significantly the nightjar, woodlark and the wider raptor roost.

#### *In-combination impacts*

Other developments in the locality (within 8km) include:

- Hall Lane (450 homes);
- Nursery Lane (26 homes);

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<sup>71</sup> Visitor Surveys at European protected Sites across Norfolk during 2015 and 2016

- Lynnsport (136 homes);
- Marsh Lane (130 homes);
- Russett Close 81 homes.

Evidence is before me to confirm that each of those sites, where appropriate, has proposed effective mitigation through a combination of on-site accessible green space, improved access to adjoining green space, payment of the Habitat Mitigation Tariff as well as CIL. However, whilst the impacts of individual developments may have been mitigated, the HRA that underpinned the CS and SADMPP identified 'in combination' effects of new housing developments within the range of the European sites. Therefore, I cannot be assured that harm would be unlikely, in the absence of mitigation at the appeal site.

### *Mitigation*

Specific and generic mitigation is proposed as part of the appeal proposals to minimise the impacts of increased recreational and visitor pressure. These include:

- a 50m buffer around the ancient woodland contained at Reffley Wood;
- a new car park for approximately 10 cars to Reffley Wood;
- pedestrian links into Reffley Wood and a managed boundary;
- overprovision of 6 hectares of open space, which would be roughly 167% of the Council's standards set out in SADMPP policy DM16;
- 4.75 hectares of land for landscape buffers and ecological mitigation areas;
- a network of footpaths and cycle routes;
- provision of an area of approximately 1.5 hectares for off lead dog walking incorporated into the development at the north east corner near to Grimston Road;
- payment of a Habitats Mitigation Tariff for specific projects;
- a contribution towards a community ranger for Roydon Common and community engagement costs for 3 years.

The mitigation proposed is effectively secured through the outline proposals, appropriate planning conditions or by legal agreement. [155;216]

The mitigation measures proposed, together, would ensure that the integrity of Roydon Common is maintained or restored as appropriate, and ensure that it contributes to achieving the Favourable Conservation Status on which its qualifying natural habitats rely. In that case there would be no adverse effects on the integrity of the features of a European site. Natural England did not raise objection to the proposed development, subject to appropriate mitigation being secured<sup>72</sup>. No change in circumstances has been brought to my attention since that response. Overall, I am satisfied that, with the mitigation proposed, no adverse effects on the integrity of the features of the European site would result as a result of development at the appeal site, alone or in combination.

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<sup>72</sup> Natural England letter dated 21 November 2018

## **HRA CONCLUSIONS**

Without mitigation, the proposed development is likely to have an adverse effect on the integrity of Roydon Common and Dersingham Bog SAC/RAMSAR/potential SPA, when taken as a whole.

Therefore, a series of mitigation measures have been identified to address anticipated adverse effects. Measures proposed include on-site provision of open space, a dog walking area, improved accessibility to surrounding open space, financial contributions towards a community ranger and community engagement for Roydon Common and payment of the Habitats Mitigation Tariff. Those measures are effectively secured through embedded design, appropriate planning conditions or legal agreement. I am therefore confident, taking proposed mitigation into account, that the appeal development would not adversely affect the integrity of Roydon Common and Dersingham Bog SAC/RAMSAR/potential SPA, either alone or in combination.

These conclusions represent my assessment of the evidence presented to me but do not represent an Appropriate Assessment as this is a matter for the Secretary of State to undertake as the competent authority.



# Ministry of Housing, Communities & Local Government

[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

#### Challenges under Section 288 of the TCP Act

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

### SECTION 2: ENFORCEMENT APPEALS

#### Challenges under Section 289 of the TCP Act

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

### SECTION 3: AWARDS OF COSTS

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

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.