



Ministry of Housing,  
Communities &  
Local Government

Lizzie Marjoram  
Bird Wilford & Sale

[ehm@BWSLaw.co.uk](mailto:ehm@BWSLaw.co.uk)

Our ref: APP/C2741/W/19/3233973  
Your ref: 18/02687/OUTM

13 May 2020

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY BARWOOD STRATEGIC LAND II LLP  
LAND AT MOOR LANE, WOODTHORPE, YORK, YO24 2QR  
APPLICATION REF: 18/02687/OUTM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of P W Clark MA(Oxon) MA(TRP) MRTPI MCMI, who held a public local inquiry on 12 – 28 November 2019 into your clients appeal against the decision of City of York Council to refuse their application for planning permission for 516 residential units, a Local Centre, a Sports Pavilion and associated infrastructure, the demolition of existing buildings and structures and creation of an Ecological Protection and Enhancement Zone EPEZ) and vehicular access arrangements, in accordance with application ref: 18/02687/OUTM, dated 12 November 2018.
2. On 18 September 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 dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to dismiss the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Environmental Statement**

4. In reaching this position, the Secretary of State has taken account of the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, as well as the Inspector's comments at IR10, 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.

Ministry of Housing, Communities & Local Government  
Jean Nowak, Decision Officer  
Planning Casework Unit  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

Tel: 0303 444 1626  
Email: [PCC@communities.gov.uk](mailto:PCC@communities.gov.uk)

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

5. The Secretary of State has received post inquiry correspondence from the local MP Julian Sturdy on behalf of a cross party group of Yorkshire MPs, Philip Davies, Cat Smith, Julian Smith, Alec Shelbrooke, Stephen Flynn and Rachael Maskel.
6. All the correspondence received raises concerns about the potential harm to Askham Bog. 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. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

## **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 City of York has not had an adopted statutory Development Plan since 1956. The Council have approved for development control purposes the City of York Fourth Set of Changes (Development Management) Local Plan, but this has no statutory status.
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'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

## *Emerging plan*

10. The emerging plan comprises the City of York Local Plan, which was submitted for examination in May 2018 and the examination continues. The policies which parties consider to be relevant are set out at IR21.
11. 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 considers that, due to its stage in the examination process, little weight can be attributed to the emerging local plan. The Inspector noted that in practice, no party placed much reliance on any of the emerging plan policies as such; rather, considerable reliance has been placed on the Framework and the evidence underlying the policies in the emerging plan (IR21).

## **Main issues**

### *Green Belt*

12. Although it is established development plan policy that York should have a Green Belt, its boundaries have never been defined. The Secretary of State agrees with the

Inspector and the parties that, for the purposes of this appeal, the site should be taken as forming part of the York Green Belt and that the proposal should be regarded as inappropriate development within the Green Belt (IR278-282).

13. For the reasons given at IR283-285, the Secretary of State agrees with the Inspector's consideration of the potential impact on the openness of the Green Belt at and agrees that the proposed development would compromise the visual openness of the Green Belt. He also agrees that the degree of harm caused to the openness of the Green Belt would be substantial rather than overwhelming; and he considers that substantial weight should be given to this harm.

#### *Landscape*

14. The Secretary of State agrees with the Inspector at IR286-296 that the main issues are the impact on views of Askham Bog from the north and the effects of the proposed EPEZ. He agrees with the Inspector that the proposal would bring built form closer to the Bog but also agrees that isolation is not one of the Bog's interest features. He notes that the development would be screened by planting and by the EPEZ (IR287) and agrees with the Inspector that the proposal would cause little harm to the landscape as the site is a relatively self-contained element in the landscape while open countryside would continue to surround York (IR289).
15. However, the Secretary of State agrees with the Inspector at IR292-294 that while the loss of the site to built development would cause little harm to the landscape, in contrast the EPEZ would cut across existing hedgerows, drains and landscape features and would present an abrupt slope to the new bund. He therefore agrees that the EPEZ would be an alien feature at odds with the existing character of the countryside; and that it would fail to respect the intrinsic character and beauty of the landscape. He therefore also agrees with the Inspector's conclusion that the EPEZ would be inconsistent with national policy expressed by Framework policy 170(b).

#### *Askham Bog*

16. The Secretary of State agrees (IR297) that Askham Bog comprises a precious and delicate range of habitats that requires continued human intervention to maintain it in a stable condition, or to restore it to a previous condition.

#### Water

17. The Secretary of State notes that there is universal agreement that the Bog depends on water to survive, but disagreement about what effects, if any, the development would have on the Bog's water supply (IR298). He agrees with the Inspector at IR299 that, while urban pollution would be harmful to the Bog, natural filtration prevents pollution in surface water run-off from reaching the Bog, and there is no reason to disbelieve the appellant's assertion that a SUDS scheme could be designed to filter out the pollutants.
18. Having carefully considered the Inspector's points on groundwater (IR300-308), permeability (IR309-313), attenuation ponds (IR314-317) and flooding (IR318-319), the Secretary of State agrees with his reasoning and agrees with his conclusions at IR320-321, including that the hydrology of the bog is complex and nobody can have absolute certainty about the source of the Bog's water supply and the route by which it reaches the Bog; therefore conclusions can only be presented in terms of likelihood and probability. He further agrees that the built development itself is likely to have very little

adverse effect but that much more noticeable effects would result from the attenuation ponds. He particularly agrees with the Inspector's conclusion that the attenuation ponds would greatly reduce the contribution that the site as a whole makes to the supply of base-rich nutrients to the area in the vicinity of Askham Bog Drain and that these effects would probably cause harm to the interests for which the Bog is cited as an SSSI and to the deterioration of irreplaceable fenland habitat.

#### Ecological isolation

19. Having carefully considered the inspector's discussion at IR322-329, the Secretary of State agrees that there would be a biodiversity net gain resulting from the development proposal, and that the EPEZ and the rest of the green infrastructure would be consistent with the aim of achieving a Green Infrastructure Corridor through the city (IR324). He further agrees at IR327 that the benefits of the increase in habitat benefiting the greater number of species relevant to the Bog outweighs the effects of hindering deer movements, and at IR330 that it would be wrong to think of the built development of this proposal as presenting an environment that would be sterile to wildlife.

#### Urban fringe effects

20. For the reasons given at IR331-335, the Secretary of State agrees with the Inspector's conclusion at IR334 that unless there are control measures in place, there is a degree of substance in the fears of damage to the Bog through unauthorised access.

#### *Education, highway safety and other matters*

21. For the reasons given at IR336-339, the Secretary of State agrees with the inspector's conclusions on these matters.

#### *Very special circumstances*

22. The Secretary of State has carefully considered the Inspector's conclusions on housing, including affordable housing, at IR340-345 and notes that all parties are agreed that there is a housing crisis in York and that a five-year supply of housing land cannot be demonstrated. The Secretary of State agrees with the Inspector at IR342 that the provision of housing would be a considerable benefit of the proposal. He has also taken into account that the proposal would provide 35% of the dwellings as affordable units, above a policy requirement of 30%, and agrees that this has value in terms of national policy, particularly in the light of the overall deficiency of supply.
23. The Secretary of State agrees with the Inspector's conclusion at IR346 that the net biological diversity gain of 80% would be a significant excess over what may become the policy requirement, and his conclusion at IR347 and IR356 that the open space provision would be well in excess of the policy requirement and would make a substantial contribution to the remediation of open space deficiencies in the local area. He has further taken into account the Inspector's conclusions on the provision of a local centre and community facilities (IR348), the clear urban edge (IR349) and the economic benefits of the scheme (IR350). The Secretary of State's conclusion on the Green Belt balance is set out in paragraph 31 below. He agrees with the Inspector that all benefits should be taken into account in the overall planning balance (IR350), and for the avoidance of doubt, his conclusion on the Green Belt balance would not be different if,

unlike the Inspector, he had treated all benefits as potentially counting towards very special circumstances.

### **Planning conditions**

24. The Secretary of State has given consideration to the Inspector's analysis at IR255-276, 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. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

### **Planning obligations**

25. The Secretary of State has had regard to the Unilateral Undertaking dated 8 November 2019, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, as well as the Inspector's comments at IR238-254 and conclusions at IR321, IR325, IR335, IR336, IR337, IR345, IR347 and IR348. He agrees with the Inspector's conclusions about which elements of the planning obligation are and are not in accordance with the CIL regulations. Overall the Secretary of State does not consider that the Unilateral Undertaking overcomes his reasons for dismissing this appeal and refusing planning permission.

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

26. Planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this instance there is no development plan.

27. As there is no development plan and a five-year housing land supply cannot be demonstrated, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole.

28. The Secretary of State has taken into account the benefits of the scheme as set out in paragraphs 22-23 above in reaching his conclusions. He has also taken into account the harm to the Green Belt, which carries substantial weight against the proposal and also the effect of the EPEZ on the landscape, which would be inconsistent with national policy.

29. Paragraph 175(b) of the Framework states that development on land within or outside an SSSI and which is likely to have an adverse effect on it should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSIs. Paragraph 175(c) states that development resulting in the loss or deterioration of irreplaceable habitats should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists.

30. The Secretary of State has concluded that the proposal would probably cause harm to the interests for which Askham Bog is cited as an SSSI and to the deterioration of irreplaceable fenland habitat. He considers that the benefits of the development do not clearly outweigh its likely impact, and that there are no wholly exceptional circumstances which would justify the deterioration of the habitat. The proposal should therefore be refused.
31. The Secretary of State has gone on to consider the Green Belt balance. He concludes that the very special circumstances required to justify the development cannot be said to exist, as the harm to the Green Belt and the landscape, and the probable harm to the interests for which Askham Bog is cited as an SSSI and the irreplaceable fenland habitat are not clearly outweighed by other considerations.
32. In the light of his conclusions on the SSSI and the irreplaceable habitat, along with the Green Belt balance, the Secretary of State considers that there are protective policies within the Framework which provide a clear reason for refusal. The presumption in favour of sustainable development therefore does not apply.
33. Overall, the Secretary of State concludes that the appeal should be dismissed and planning permission refused.

#### **Formal decision**

34. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for 516 residential units, a Local Centre a Sports Pavilion and associated infrastructure, the demolition of existing buildings and structures and creation of an EPEZ and vehicular access arrangements, in accordance with application ref: 18/02687/OUTM, dated 12 November 2018.

#### **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. A copy of this letter has been sent to City of York Council and the Yorkshire Wildlife Trust, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by the Secretary of State to sign in that behalf

## ANNEX A: SCHEDULE OF REPRESENTATIONS

### General representations

<b>Party</b>	<b>Date</b>
Philip Davies MP	17/02/2020
Cat Smith MP	21/02/2020
Alec Shelbrooke MP	4/03/2020
Rachael Maskell MP	6/03/2020
Rt Hon Julian Smith CBE MP	9/03/2020
Stephen Flynn MP	11/03/2020
Julian Sturdy MP	18/03/2020



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

**by P W Clark MA(Oxon) MA(TRP) MRTPI MCI**  
an Inspector appointed by the Secretary of State

**Date: 10 February 2020**

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**TOWN AND COUNTRY PLANNING ACT 1990**  
**APPEAL BY BARWOOD STRATEGIC LAND II LLP**  
**CITY OF YORK COUNCIL**

Inquiry Held on 12-28 November 2019

Land at Moor Lane, Woodthorpe, York YO24 2QR

File Ref: APP/C2741/W/19/3233973

**File Ref: APP/C2741/W/19/3233973**  
**Land at Moor Lane, Woodthorpe, York YO24 2QR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Barwood Strategic Land II LLP against the decision of City of York Council.
- The application Ref 18/02687/OUTM, dated 12 November 2018, was refused by notice dated 12 July 2019.
- The development proposed is up to 516 residential units (Use Class C3); a Local Centre (Use Classes A1-A4, AA, B1a, C3, D1 and Sui Generis Live Work Units); a Sports Pavilion and associated infrastructure; the demolition of existing buildings and structures and creation of an ecological protection and enhancement zone, and 4 new principal vehicular access arrangements.

**Summary of Recommendation: The appeal be dismissed.**

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**Costs**

1. By letter dated 24 September 2019, the appellant gave notice of a claim for costs against the City of York Council (CYC) and the Yorkshire Wildlife Trust (YWT). During the Inquiry and confirmed by e-mail dated 21 November 2019<sup>1</sup>, the appellant clarified that the letter of 24 September 2019 was only a notice of an application for costs and not a formal application for costs and that such an application is not being pursued by the appellant.

**Procedural Matters**

2. The appeal was recovered for the Secretary of State's own determination by direction dated 18 September 2019. The reason for this direction was 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 and proposals for significant development in the green belt.
3. The Council's decision lists six reasons for refusal.<sup>2</sup> These concern harm to the Green Belt through inappropriateness and harm to openness, harm to the Askham Bog SSSI, impacts on education provision, potential for significant impacts on the highway system and highway safety and harm to landscape character.
4. A Case Management Conference, as recommended in the Rosewell Report, was held on Tuesday 1 October 2019.<sup>3</sup> During that case conference, the parties accepted that the main issues in dispute were those suggested by the inspector as follows;
  - i. Whether the proposal would be inappropriate development in the Green Belt having regard to the current National Planning Policy Framework and, if so, whether any harm by reason of inappropriateness, and any other harm, would be

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<sup>1</sup> Both letter and e-mail are filed in the yellow folder on the purple case file

<sup>2</sup> The decision letter is filed in the buff folder on the purple case file

<sup>3</sup> A note of the conference is filed in the blue folder on the purple case file

clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

- ii. The effect on the openness of the Green Belt.
- iii. The effect on the landscape character of the area.
- iv. The effect on the Askham Bog SSSI.
- v. The effect on the demand for and provision of schools.
- vi. The effect on highway safety and the operation of the road network.
- vii. The effect on the supply of market and affordable housing.

In the event, the two main parties reached agreement on issues (v), (vi) and (vii) before the close of the Inquiry.

5. The Inquiry sat on 12, 13, 14, 19, 20, 21, 26, 27 and 28 November 2019 but was then held open until 13 December 2019 for closing submissions to be made in writing and for a signed planning obligation to be submitted. An accompanied site visit took place on 15 November 2019. Unaccompanied site visits were made on 11 and 29 November 2019.
6. The application is made partly as a full application for the demolition of existing buildings and structures and creation of an ecological protection and enhancement zone and partly in outline for up to 516 residential units, a Local Centre, a Sports Pavilion and associated infrastructure with all matters reserved except for four vehicular means of access to the site. Details of access within the site, appearance, landscaping, layout and scale are reserved for subsequent consideration and so do not fall to be considered within this appeal except in so far as they are specified within parameters plans, for reasons explained further below. Drawing RG-M-67 revision A shows the areas of the site for which detailed approval is sought, although this drawing is listed as illustrative in the Schedule of Submission Documents.
7. The application was accompanied by an Environmental Statement under The Town and Country Planning (Environmental Impact Assessment) Regulations 2017. This includes three parameters plans, drawings numbered RG-M-47 revision J, RG-M-49 revision J and RG-M-52, revision C, respectively entitled Land Use, Building Heights and Demolition Plan. In accordance with decisions of the courts<sup>4</sup>, any parameter plan submitted with an Environmental Statement must be applied by condition, if permission is granted, so as to establish an envelope within which the detailed design and discharge of reserved matters can proceed, irrespective of whether or not they would otherwise be required to make the development acceptable. These matters are therefore included for consideration within this appeal.
8. Consultee responses to the Scoping Report are included at Appendix 2.2 of the Environmental Statement.<sup>5</sup> Consultee responses to the Environmental Statement

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<sup>4</sup> R v Rochdale MBC ex parte Tew and Others [1999] 3 PLR 74 and R v Rochdale MBC ex parte Milne [2000] EHCW 650 (Admin)

<sup>5</sup> Document ESD013

- itself are not distinguished from comments made on the application as a whole. Copies are included with the Council's Questionnaire response.<sup>6</sup>
9. An Environmental Statement Addendum was submitted on 1 August 2019. It was consulted upon as widely as the original Environmental Statement but this produced only one response, from the Yorkshire Wildlife Trust.<sup>7</sup>
  10. The Environmental Statement, comments made upon it, the Environmental Statement Addendum and comments made upon it, form the environmental information which is required to be taken into account in determining this appeal. This has been done in writing this report. I am satisfied that the legal requirements for Environmental Impact Assessment have been met.
  11. Although an Environmental Impact Assessment has been required, no potential adverse effect on a European Site has been identified and so no Habitats Regulations Assessment is required.
  12. Various Statements of Common Ground (SOCG) were agreed before the Inquiry. They include agreements between the appellant and Highways England on highway matters, between the appellant and YWT on hydrogeology, between appellant, CYC and YWT on Ecology, between appellant and CYC on landscape, on planning in general and on education matters.<sup>8</sup> Two further SsOCG were agreed between the appellant and CYC during the Inquiry, on Housing and on Transportation and Highways.<sup>9</sup> Only those on highways, education and housing avoided or reduced the necessity of giving evidence during the Inquiry. Matters of hydrogeology, ecology, landscape and planning in general remained contentious.

### **The Site and Surroundings**

13. The site and its surroundings are described in numerous places in the evidence.<sup>10</sup> It lies adjacent to and south of the suburb of Woodthorpe on the southwestern extremity of the currently developed area of York, approximately 3.5km from the centre of the city. It is accessed from Moor Lane which is best described as a residential distributor road carrying bus routes.
14. The site is approximately 40.05 ha in extent. It is irregular in shape. Its northern boundary largely follows Moor Lane itself or the rear boundaries of properties fronting onto the southern side of Moor Lane. It extends along Moor Lane from its bridge over the East Coast Main Line (ECML) railway at its eastern end almost as far as existing development on its north side extends at its western end. Its eastern boundary is the ECML railway from Moor Lane southwards as far as the Askham Bog SSSI. Its southern boundary is the

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<sup>6</sup> On electronic file. Paper copies not provided.

<sup>7</sup> Filed in the blue folder on the purple case file

<sup>8</sup> All the above are filed in a green folder on the purple case file

<sup>9</sup> Inquiry documents INQ5 and INQ6

<sup>10</sup> Environmental Statement (Document ESD 013), paragraph 1.5, chapter 3, paragraphs 8.60-8.68 and 8.76- 8.78, Technical Appendix 8.1, paragraphs 3.24-3.49, Technical appendix 10.1, section 2; Technical Appendix 14.1 (Transport Assessment), section 2; Design and Access Statement pages 6 and 7; Supporting Planning Statement (Document ESD05a(ii)), section 2, pages 5ff; Highways Statement of Common Ground with the Council (Document INQ6), section 2.2

- boundary of the SSSI itself, following the line of the watercourse known variously as Holgate Beck or Askham Bog Drain south-westwards until reaching, at its western end, the eastern boundary of the Pike Hills Golf Course.
15. The western boundary of the site follows a convoluted course around and excluding other land in the control of the applicant. Initially it abuts the golf course for a distance of about 125m north-westwards perpendicular to the Askham Bog Drain, then turning at a right angle passing across open fields in a north-easterly direction following an arbitrary line parallel to, and at a distance of about 125m from, the course of the Askham Bog Drain until a point about 15m to the west of the Marsh Farm Drain. The boundary then turns at a right angle to travel northwards a short distance until meeting a field boundary. It then turns westwards and follows field boundaries through Marsh Farm until meeting a track known as Bog Lane. The boundary then turns northwards and runs along Bog Lane and the former route of Moor Lane until it meets with the present route of Moor Lane, enclosing a relatively narrow sliver of land contained between the old and new alignments of Moor Lane.
  16. The major part of the site is generally flat with a gentle slope down to the Askham Bog Drain from a highest point of about 14mAOD to about 11.5mAOD. About halfway along the southwestern arm of the site a slight mounding of the land can be noticed, reflecting an underlying geological feature, resulting in a slightly more pronounced slope close to the Drain in this location.<sup>11</sup> The eastern end of the site lies beyond the Holgate Beck, is raised, was formerly a landfill site and is now pastoral. The rest of the site is generally used for arable farming with farm buildings at its centre and is of limited ecological interest. It is divided into fields by ditches and hedgerows. Most of the latter are species-rich and so are classed as important. There is not an abundance of trees and none are the subject of a Tree Preservation Order.
  17. Land to the west of the site is also agricultural, which can be seen to continue across the A1237 York ring road in the distance. To the north, it is residential, dating variously from the 1960s, 1970s and 1980s to the present day.<sup>12</sup> A 2km pedestrian catchment from the site includes the following shops, services and schools: Tesco, Coop Food, several doctors' surgeries and pharmacies, the Askham Bar Park and Ride Facility, a Post Office, play facilities, York College, Copmanthorpe Primary, Woodthorpe County Primary and Dringhouses Primary schools.<sup>13</sup> To the east, beyond the ECML is a Park and Ride bus station and car park. North of that and abutting Moor Lane is a large superstore, which proclaims that it was established in 1990. It has its own extensive car park. Further to the east is modern residential property, both houses and flats, and the campus of York College.

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<sup>11</sup> A topographical site survey (drawing 20058 OGL revision 1) can be found at Appendix EDP1 (not to be confused with Plan EDP1) to Technical Appendix 8.5 of the Environmental Statement and at Appendix B to Environmental Statement Appendix 13.1 (Flood Risk Assessment)

<sup>12</sup> Environmental Statement paragraph 3.14 and Appendix 8.1 paragraph 2.22

<sup>13</sup> Supporting Planning Statement (Document ESD05a(ii), page 6, not disputed

18. South of the site is the Askham Bog SSSI.<sup>14</sup> This has the visual appearance of woodland and is designated as Ancient Woodland. Beyond it and wrapping around its western end is the Pike Hills Golf Course. Further south still is the Tadcaster Road and the A64 trunk road beyond which is the residential settlement of Copmanthorpe.
19. Some of the site comprises Best and Most Versatile agricultural land. The majority of the site lies within Environment Agency Flood Zone 1 (less than 1 in 1,000 annual probability of river flooding) but there are areas associated with drainage ditches on the site which are classified as Flood Zones 2 and 3. Other than Askham Bog SSSI and Ancient Woodland, other statutory or non-statutory ecological, environmental or heritage designations within the hinterland of the site are not significant to the outcome of this appeal.<sup>15</sup>

### **Planning Policy**

20. The City of York has not had a complete adopted Local Plan since 1956.<sup>16</sup> In April 2005, the Council approved for development control purposes what is known as the City of York Fourth Set of Changes (Development Management) Local Plan.<sup>17</sup> It was never subject to Examination and so could not be formally adopted as part of the statutory Development Plan, though the Council still uses it for development control purposes.<sup>18</sup> The emerging City of York Local Plan was submitted to the Secretary of State for examination on 25 May 2018.<sup>19</sup> The examination continues at the time of writing this report.
21. Paragraph 2.9 of the Council's report on this case<sup>20</sup> lists the policies within the emerging plan which it considers are directly and most relevant to the consideration of this proposal. Appendix IV of the appellant's Supporting Planning Statement<sup>21</sup> appraises the proposal against draft policies of the emerging local plan. Lists of relevant policies are also given in the appellant's

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<sup>14</sup> The citation for Askham Bog SSSI can be found at Appendix 4 of Tom Wigglesworth's Proof of Evidence, at Annex EDP1 of Appendix 9.1 (the Baseline Ecology Report) of the Environmental Statement and as Core Document CD082

<sup>15</sup> Environmental Statement, Technical Appendix 8.1, paragraph 2.3, Technical Appendix 9.1, paragraphs 9.56, 9.65 and 9.66-9.68 and Technical Appendix 10.1, paragraphs 5.26, 5.37-5.55, 5.56-5.136 and 6.12

<sup>16</sup> Appellant's Statement of Case (Core document CD088) paragraph 4.1 and Supporting Planning Statement paragraph 5.3

<sup>17</sup> Core Document CD004

<sup>18</sup> The Council's report on this application (Core Document CD001) states that "Its policies are however considered to be capable of being material considerations in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF, although the weight that can be attached to them is very limited." Technical Appendix 10.1 of the Appellant's Environmental Statement lists and summarises the following relevant policies at paragraphs 3.28-3.33; SP3, HE2, HE4, HE9 and HE10. Technical Appendix 14.1 (Transport Assessment lists and summarises the following relevant policies at paragraph 4.3.1; T2b, T7c and T13a.

<sup>19</sup> Core Documents CD006 and 007

<sup>20</sup> Core Document CD001

<sup>21</sup> Document ESD05a(ii)

Environmental Statement<sup>22</sup> and in the Council's Statement of Case.<sup>23</sup> There is a large degree of agreement;

- Draft Policy DP2: Sustainable Development;
- Draft Policy DP3: Sustainable Communities;
- Draft Policy SS1: Delivering Sustainable Growth for York;
- (Council only) Draft Policy SS2: The Role of York's Green Belt;
- (Council only) Draft Policy R1: Retail hierarchy and sequential approach;
- (Appellant only) Draft Policy R2: District and Local Centres and Neighbourhood Parades;
- (Appellant only): Draft Policy H1: Housing Allocations;
- Draft Policy H2: Density of Residential Development;
- Draft Policy H3: Balancing the Housing Market;
- (Council only) Draft Policy H4: Promoting self and custom house building;
- (Council only) Draft Policy H9: Older Persons Specialist Housing;
- Draft Policy H10: Affordable Housing;
- Draft Policy HW2: New Community Facilities;
- Draft Policy HW3: Built Sport Facilities;
- (Council only) Draft Policy HW4: Childcare provision;
- (Appellant only) Draft Policy HW5: Healthcare Services;
- (Council only) Draft Policy HW7: Healthy Places;
- Draft Policy ED6: Preschool, Primary and Secondary Education;
- Draft Policy D1: Placemaking;
- Draft Policy D2: Landscaping and Setting;
- (Council only) Draft Policy D3: Cultural Provision;
- (Appellant only): Draft Policy D4: Conservation Areas;
- (Appellant only): Draft Policy D5: Listed Buildings;
- Draft Policy D6: Archaeology;
- (Appellant only) Draft Policy D7: The Significance of Non-Designated Heritage Assets;

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<sup>22</sup> Document ESD013, paragraphs 7.8, 11.18, 16.21 and 16.22; Technical Appendix 8.1, paragraph 2.21; Technical appendix 10.1, paragraphs 3.23-3.26; Technical Appendix 14.1 (Transport Assessment), paragraph 4.3.3.

<sup>23</sup> Paragraph 3.14

- (Appellant only) Draft Policy D9: City of York Historic Environment Record;
- Draft Policy GI1: Green Infrastructure;
- Draft Policy GI2: Biodiversity and Access to Nature;
- Draft Policy GI3: Green Infrastructure Network;
- (Appellant only) Draft Policy GI4: Trees and The Hedgerows;
- Draft Policy GI6: New Open Space Provision;
- Draft Policy GB1: Development in the Green Belt;
- Draft Policy CC1: Renewable and Low Carbon Energy Generation and Storage;
- Draft Policy CC2: Sustainable Design and Construction of New Development;
- Draft Policy ENV1: Air Quality;
- (Appellant only) Draft Policy ENV2: Managing Environmental Quality;
- (Appellant only) Draft Policy ENV3: Land Contamination;
- Draft Policy ENV4: Flood Risk;
- Draft Policy ENV5: Sustainable Drainage;
- Draft Policy T1: Sustainable Access;
- (Appellant only) Draft Policy T2: Strategic Public Transport Improvements;
- Draft Policy T7: Minimising and Accommodating Generated Trips; and
- (Council only) Draft Policy DM1: Infrastructure and Developer Contributions.

But, as the examination has not yet concluded, it cannot be presumed that all or any of these policies will be found sound. Paragraph 48 of the NPPF sets out the three criteria by which emerging Local Plan policies can be afforded weight;

The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);

The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);

The degree of consistency of the relevant policies in the emerging plan to the policies in the relevant NPPF (in this case, that published in March 2012).

In practice, no party has placed much reliance on any of the emerging plan policies as such. Rather, considerable reliance has been placed on the NPPF and the evidence underlying the policies in the emerging plan.

22. The Regional Spatial Strategy for Yorkshire and the Humber (the Yorkshire and Humber Plan, May 2008)<sup>24</sup> was revoked in 2013 except for policies YH9 and Y1

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<sup>24</sup> Core Document CD011

and the Key Diagram of the RSS insofar as it illustrates the RSS York Green Belt policies and the general extent of the Green Belt around the City of York. For convenience, the relevant parts are quoted as follows;

YH9 entitled "Green Belts" reads: "*The detailed inner boundaries of the Green Belt around York should be defined in order to establish long term development limits that safeguard the special character and setting of the historic city. The boundaries must take account of the levels of growth set out in this RSS and must also endure beyond the Plan period*".

Y1 entitled "York sub area policy" reads: "*Plans, strategies, investment decisions and programmes for the York sub area should:*

*C Environment*

- 1. *In the City of York LDF, define the detailed boundaries of the outstanding sections of the outer boundary of the York Green Belt about 6 miles from York city centre and the inner boundary in line with policy YH9C.*
- 2. *Protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas*".

23. These two policies are therefore the only formal development plan policies applicable to the site.

### **Planning History<sup>25</sup>**

24. The Council promoted a Green Belt Local Plan in 1994. Although never adopted, it was the subject of an Inquiry and an inspector's report which advised that "Moor Lane provides a clear and satisfactory edge to the developed area of York" and that "it helps to separate York and Copmanthorpe and to prevent further sprawl of the built-up area."<sup>26</sup>
25. The Council's Preferred Options Local Plan (June 2013) identified approximately 17 ha of Land at Moor Lane, Woodthorpe as development allocation Site ST10 for 511 dwellings. In terms of the appeal proposals, this allocation broadly accords with the area of the site indicated for residential and local centre on the land use parameter plan accompanying the current application. The same area was also included in the City of York Local Plan Further Sites consultation in June 2014 where it was deemed capable of delivering approximately 511 dwellings over the lifetime of the plan period. Following this it was then proposed as safeguarded land site SF12 in the draft Publication Local Plan in September 2014. Progress on this plan was subsequently halted by a Council resolution of October 2014 to review the overall housing requirements included in the plan.
26. No part of the site was included as a proposed allocation in the City of York Local Plan Preferred Sites consultation in July 2016, nor in the pre-publication (regulation 18) and publication (regulation 19) versions of the City of York Local

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<sup>25</sup> This is discussed at length in the appellant's Supporting Planning Statement (Document ESD05a(ii), section 3, pages 8-16 and is also summarised in paragraphs 1.7-1.12 of the Council's committee report (Core Document CD001)

<sup>26</sup> Quoted in Historic England's letter dated 7 February 2019 objecting to the planning application

Plan submitted for examination in May 2018. Instead the entire site is proposed for inclusion within the Green Belt.

## The Proposals

27. A description of the development proposed in this appeal is set out in full in chapter 5 of the Environmental Statement<sup>27</sup> and in section 4 of the Supporting Planning Statement.<sup>28</sup> In several places the proposals are described as the first phase of a larger development.<sup>29</sup> The site forms part of a 97ha site being promoted through the local plan process.<sup>30</sup>
28. In summary, the planning application covers about 40.05 ha. It is a hybrid proposal (part outline, part detailed) for a residential-led mixed-use development. Outline planning permission is being sought for up to 516 residential dwellings and a local centre (14.78 ha of built development)<sup>31</sup> on about 17 ha of the site with public open space, allotments, formal and informal recreational facilities on about 13.75 ha<sup>32</sup> (34% of the site<sup>33</sup>) and an ecological protection and enhancement zone (EPEZ) 125m wide from the Askham Bog SSSI on the remainder. Full planning permission is being sought for the creation of the EPEZ, four principal means of access, and demolition of a select number of existing buildings and structures on site. The appellant invites appropriate conditions which would control the maximum number of dwellings to be built on the site together with applying the parameter plans which control the disposition of land uses and limit the height of buildings to 2 and 2½ storeys.
29. A number of details are indicated in the supporting material. These would have to be secured by condition or planning obligation if thought to be necessary for the development to be acceptable. They include illustrative highway improvements to Bog Lane (the former alignment of Moor Lane) to widen it to 5.5m, provide a footpath, street lighting and a speed limit,<sup>34</sup> off-site improvements to Moor Lane (to provide a footpath/cycleway for 1.4km, reconfigure the western arm of the Moor Lane/Chaloner's Road roundabout, provide two toucan crossings and two bus shelters),<sup>35</sup> an intent to provide 35% of the dwellings proposed as affordable housing,<sup>36</sup> elevated ground floor levels to

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<sup>27</sup> Document ESD013

<sup>28</sup> Document ESD05a(ii)

<sup>29</sup> Environmental Statement paragraphs 1.7 and 4.37 and Technical Appendix 14.1 (Transport Assessment) paragraphs 8.2.2 and 8.4.1-8.4.8; Supporting Planning Statement (November 2018) paragraph 3.24

<sup>30</sup> Design and Access Statement, page 30

<sup>31</sup> Supporting Planning Statement (November 2018) paragraph 6.1

<sup>32</sup> Environmental Statement paragraph 5.21 and Supporting Planning Statement paragraph 4.23

<sup>33</sup> Environmental Statement paragraph 5.22. The Supporting Planning Statement paragraph 4.24 gives the figure as approximately 29% of the site

<sup>34</sup> Environmental Statement paragraph 5.39 and Supporting Planning Statement paragraph 4.28

<sup>35</sup> Environmental Statement paragraphs 5.41-5.45 and Appendix 14.1 section 3.5 and Supporting Planning Statement paragraphs 4.30-4.34

<sup>36</sup> Environmental Statement paragraph 5.15 and Supporting Planning Statement paragraph 4.8

avoid excess surface water run-off,<sup>37</sup> a restriction of A1, A2, A3 and A4 uses within the local centre to a cumulative maximum of 200 sq m,<sup>38</sup> the provision of a sports pavilion of up to 150 sq m floorspace,<sup>39</sup> a full-sized football pitch, a 5-a-side football pitch, 4 tennis courts, allotments, a multi-use games area (MUGA),<sup>40</sup> landscape buffers on the southern boundary of the built development the northern side of the EPEZ,<sup>41</sup> access routes to drains for the benefit of the Ainsty Internal Drainage Board (IDB)<sup>42</sup> and a surface water drainage strategy.<sup>43</sup>

30. The EPEZ is proposed in detail.<sup>44</sup> These details include

- A 1.8m deer fence on the EPEZ's northern boundary;
- A zone of permanent open water (minimum depth 0.3m) and marsh within proposed surface water attenuation basins along the majority of the EPEZ (western section). The attenuation basin has been designed with 1 in 4 side slopes, a nominal retained water level of 300mm, with deeper pools of 500mm provided in some areas;
- A bund up to 3m high to the south of the attenuation basins (and created using cut from their excavation) along the majority of the EPEZ (western section). The crest of the bund would vary between 2.1 metres and 6.1 metres in width. The bund would be constructed with a 1 in 5 slope with a maximum height of 3.5m above existing AOD. This would provide a steep landform and a visual/perceptual buffer between the development to the north and SSSI to the south;
- Dense thorny scrub/woodland planting on the proposed bund in the western section and within the eastern section of the EPEZ where no bund is proposed; and
- A 3m tall security fence to the south of the planting running the entire length of the site's southern boundary.

31. The supporting material also gives consideration to measures which may need to be taken during construction. These would have to be secured by condition or obligation if thought necessary to make the development acceptable. They

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<sup>37</sup> Environmental Statement paragraph 5.49 and Supporting Planning Statement paragraph 4.38

<sup>38</sup> Environmental Statement paragraph 5.18 and Supporting Planning Statement paragraph 4.20

<sup>39</sup> Environmental Statement paragraph 5.19 and Supporting Planning Statement paragraph 4.21

<sup>40</sup> Environmental Statement paragraph 5.20 and Supporting Planning Statement paragraph 4.22

<sup>41</sup> Environmental Statement paragraphs 5.23 and 5.25 and Supporting Planning Statement paragraph 4.24

<sup>42</sup> Environmental Statement paragraphs 5.52, 5.53 and 5.58-5.60 and Supporting Planning Statement paragraphs 4.44-4.48

<sup>43</sup> Environmental Statement paragraphs 5.62-5.66 and 5.70-5.71 and Supporting Planning Statement paragraphs 4.51-4.60

<sup>44</sup> Environmental Statement paragraphs 5.27, 5.28 and 5.30 and Technical Appendix 13.1 (Flood Risk Assessment), paragraphs 7.5.15-7.5.18 and Supporting Planning Statement paragraphs 4.12, 4.13 and 4.15

include a Waste Management Strategy,<sup>45</sup> a Construction Environmental Management Plan (CEMP),<sup>46</sup> the location of site compounds<sup>47</sup> and hours of work.<sup>48</sup>

## **The Case for the appellant**

### *Green Belt*

32. Although the boundary of the Green Belt has never been defined in an adopted Local Plan, it is accepted for the purposes of this appeal that the site should be deemed to be within the Green Belt.<sup>49</sup> Nevertheless, there are doubts about whether the emerging local plan yet to be adopted will or should define the site, or all of the site, as lying within the Green Belt. The evidence base for the Local Plan includes documents which indicate that the parts of the current appeal proposal which are proposed for built development are not necessary to fulfil the purposes of the Green Belt. Although the submitted plan defines all of the site as Green Belt, earlier iterations of the emerging Local Plan preceding its submission for examination excluded that part of the site from the Green Belt which is now proposed for built development.<sup>50</sup>
33. As is clear from Core Document CD05, those iterations of the Local Plan had been through both a site selection process and a Sustainability Appraisal that tested proposals against a range of objective criteria and reasonable alternatives. National advice then, as now, was that land should not be included in the Green Belt which it is not necessary to keep permanently open. It can only be inferred, therefore, that while the area of the site proposed for built development was recognised as serving some Green Belt purpose, that was not of such onclusionindimcportance as to merit keeping the site permanently open.<sup>51</sup> The only reason the site is not now proposed for exclusion from the Green Belt in the submitted plan is because of doubts over its effect on Askham Bog.<sup>52</sup>
34. Although elements of the scheme would not be inappropriate within the Green Belt,<sup>53</sup> they are not separable from elements which are inappropriate within the Green Belt and so, the scheme as a whole must be deemed to be inappropriate development within the Green Belt.<sup>54</sup>

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<sup>45</sup> Environmental Statement paragraph 5.73 A Waste Management Strategy is submitted with the application as a supporting document (ESD05a(vi))

<sup>46</sup> Environmental Statement paragraphs 5.76 and 5.90-5.91 and Table 3. A Framework CEMP is submitted with the application (Document ESD05a(vii))

<sup>47</sup> Environmental statement paragraphs 5.84-5.86

<sup>48</sup> Environmental statement paragraphs 5.87-5.89

<sup>49</sup> Appellant's statement of case (Core Document CD088), paragraph 6.1. General Statement of Common Ground paragraph 3.1

<sup>50</sup> Supporting Planning Statement paragraph 6.13ff; Proof of evidence of Gary Halman on behalf of the appellant paragraph 8.10-8.12 (Mr Halman also prays in aid at paragraphs 8.5-8.7 of his proof, the views of an Inspector in a report to the Secretary of State but the Secretary of State did not accept those views in his decision)

<sup>51</sup> Appellant's closing submissions paragraph 7; Duncan McInerney's Proof of Evidence footnote 19

<sup>52</sup> Confirmed by Frances Harrison in cross-examination

<sup>53</sup> Duncan McInerney's Proof of Evidence paragraphs 6.11, 2<sup>nd</sup> bullet and 6.13

<sup>54</sup> Appellant's closing submissions, paragraphs 13 and 14.

### *Harm to Green Belt*

35. Although, by definition, inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances, in this case, harm would be limited and there are very special circumstances which apply. In national policy, Green Belt serves five purposes:

- a) To check the unrestricted sprawl of large built-up areas;
- b) To prevent neighbouring towns merging into one another;
- c) To assist in safeguarding the countryside from encroachment;
- d) To preserve the setting and special character of historic towns; and
- e) To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

But only one of these ((c), encroachment into the countryside) would be compromised by this proposal<sup>55</sup> and so, harm would be limited.

36. Moor Lane is put forward by the Council as the logical boundary of the Green Belt but housing development already extends, unchecked, on its south side. The proposal would provide a better designed urban edge, as the Council's own evidence confirms.<sup>56</sup> The part of the site proposed for built development is in a sustainable location, well served by local facilities,<sup>57</sup> is not identified in the Council's Local Plan evidence base as an area essential for preventing coalescence,<sup>58</sup> would be contained within an area of open space and landscaping and so the proposal does not represent unchecked urban sprawl.<sup>59</sup>

37. As with the Council's own proposal for development of 158 houses on the northern edge of Copmanthorpe, no merging of neighbouring towns would result. A large visual gap between the York conurbation and Copmanthorpe would remain, in the form of the open space proposals of the site itself, the Askham Bog SSSI, the surrounding Pike Hill golf course and the A64 corridor.<sup>60</sup>

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<sup>55</sup> Appellant's closing submissions, paragraph 15

<sup>56</sup> Ibid, referencing Mrs Priestley's evidence for the Council; Esther Priestley's Proof of evidence for the Council paragraph 3.3.4

<sup>57</sup> Environmental Statement paragraphs 7.29 to 7.40; Highways Statement of Common Ground with the Council (Inquiry Document INQ6) section 3

<sup>58</sup> Appellant's Statement of Case (Core Document CD088) paragraphs 2.6, 7.10 and 7.12; Design and Access Statement (Document ESD07) pages 22-25; Supporting Planning Statement (Document ESD05a(ii)) paragraphs 2.10 and 2.11; Sustainability Statement (Document ESD05a(v)) paragraphs 4.2.3; Environmental Statement paragraphs 3.22, 7.29-7.40 and 14.70-74 and succeeding paragraphs (wrongly numbered 14.2 and 14.4-12) and Appendix 14.1 (Transport Assessment) section 5: Gary Halman's Proof of evidence paragraph 8.10

<sup>59</sup> Supporting Planning Statement (Document ESD05a(ii)) paragraph 6.20; Appellant's closing submissions, paragraph 15

<sup>60</sup> Supporting Planning Statement (Document ESD05a(ii)) paragraph 6.20; Appellant's closing submissions, paragraph 15

38. The primary purpose of the York Green Belt is said to be the protection of the historic setting of York<sup>61</sup>. Yet it is clear from a series of Historic Character and Setting documents prepared as part of the evidence base for the emerging Local Plan that the part of the site proposed for built development has no positive role in that purpose.<sup>62</sup>
39. There is no evidence at all that allowing the appeal would cause the redevelopment of previously developed land in York itself to be held back. On the contrary, the lack of sufficient appropriate and available sites for redevelopment within York itself causes the Council to promote strategic housing sites for development within the Green Belt in its emerging local plan.<sup>63</sup>

#### *Openness and landscape*

40. The proposals would result in an increase in tree cover and an increase in a variety of landscape features but a loss of openness.<sup>64</sup> It is accepted that the openness of the Green Belt would be reduced both by the transformative effects of built development proposed on part of the site and by the construction of a 1.8m deer fence and a 3m security fence in the EPEZ. But it is contested that the bund and attenuation ponds to be constructed in the EPEZ would compromise Green Belt openness because the bund will be landscaped and is intended to be read as consistent with open countryside character. Trees are not inconsistent with openness as NPPF paragraph 142 confirms.<sup>65</sup> The attenuation ponds will not intrude into openness in any three-dimensional sense and will read, in visual terms, as being part and parcel of the surrounding open countryside.<sup>66</sup> Following recent judgements, Green Belt openness now includes a landscape dimension.<sup>67</sup>

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<sup>61</sup> Andrew Crutchley's proof of evidence on behalf of the appellant paragraph 4.53. Confirmed by Frances Harrison in cross-examination

<sup>62</sup> Appellant's closing submissions paragraphs 8-10,12 and 15, referencing Core Documents CD09, 029-031 and 035 and paragraph 9 of the Landscape Statement of Common Ground; Appellant's Statement of Case (Core Document CD088) paragraphs 7.10, 8.5-6; Design and Access Statement page 16; Supporting Planning Statement (Document ESD05a(ii)) paragraph 6.15; Alison Stockdale's proof of evidence on behalf of the Council paragraph 3.38 and 3.39; Duncan McInerney's proof on behalf of the appellant paragraph 2.3; Andrew Crutchley's proof on behalf of the appellant paragraphs 4.53 and 4.61; Environmental Statement paragraphs 8.73 and 10.42 and Technical Appendix 10.1 paragraph 5.20. Confirmed in cross examination by Frances Harrison and Esther Priestley

<sup>63</sup> Appellant's closing submissions paragraph 15; Appellant's Statement of Case (document CD088) paragraph 7.3; Supporting Planning Statement (Document ESD05a(ii)) paragraph 2.16; Council officers' report (CD001) paragraphs 3.4 and 4.88; Council's Statement of Case paragraphs 4.6 and 4.7, Frances Harrison Proof of Evidence paragraph 5.2; Environmental Statement paragraphs 4.39-4.49; Gary Halman's proof on behalf of the appellant paragraph 9.22; General SOCG paragraph 3.4

<sup>64</sup> Landscape Statement of Common Ground

<sup>65</sup> Duncan McInerney, oral evidence in chief

<sup>66</sup> Appellant's closing submissions, paragraph 14; Duncan McInerney's Proof, paragraph 5.20;

<sup>67</sup> Duncan McInerney's Proof of Evidence paragraphs 6.3 – 6.8, referencing [2016] EWCA Civ 466; John Turner v Secretary of State for Communities and Local Government, East Dorset Council (2016) and [2018] EWCA Civ 489: Samuel Smith Old Brewery v North Yorkshire County Council

41. Two part-time farming businesses would be affected by the loss of 23 hectares of "best and most versatile" agricultural land (57% of the site). But any greenfield development anywhere around York is likely to have a similar effect.<sup>68</sup>
42. The land is not designated for its landscape qualities.<sup>69</sup> It has a medium overall value and is not a valued landscape in the terms of the NPPF.<sup>70</sup> The presence of urban features is keenly felt in the forms of the A1237, the A64, the ECML, the large Tesco store, the Park and Ride facility<sup>71</sup> and the existing built development at Woodthorpe, characterised as having an anonymous suburban feel.<sup>72</sup> The site forms a small part of the Landscape Character Area in which it sits and contains no rare or especially distinctive features and so its development will have no significant effect on that Landscape Character Area.<sup>73</sup> It has little ecological interest other than hedges and ditches.<sup>74</sup> Landscape considerations were never a reason for excluding the site as a development proposal from the Local Plan.<sup>75</sup> It is land that has no greater intrinsic value in the planning balance than any other undesignated farmland surrounding the city of York.<sup>76</sup>
43. In visual terms the site is unusually contained.<sup>77</sup> There is a greater sense of exposure and intervisibility with the surrounding landscape in the western site sections in contrast to the impression of enclosure adjacent to the low lying Askham Bog SSSI.<sup>78</sup> Even so, the development would not be located or be so

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<sup>68</sup> Supporting Planning Statement paragraphs 8.148-8.150; Environmental Statement paragraphs 4.24 and 17.6

<sup>69</sup> Appellant's Statement of Case, paragraph 8.2; Design and Access Statement page 16; Landscape Statement of Common Ground

<sup>70</sup> Landscape Statement of Common Ground; Duncan McInerney's Proof of evidence paragraph 7.3

<sup>71</sup> Appellant's closing submissions paragraph 17; Duncan McInerney's Proof of Evidence paragraph 2.3; Environmental Statement Appendix 8.1 paragraph 2.30

<sup>72</sup> Appellant's closing submissions paragraph 16 referencing the City of York Characterisation Project 2013 (Appendix 6 of Mr McInerney's Proof of evidence on behalf of the appellant); Duncan McInerney's proof paragraphs 2.8 and 2.9; Environmental Statement Appendix 8.1 paragraph 2.23

<sup>73</sup> Appellant's Statement of Case, paragraph 8.3; Design and Access Statement page 16; Appellant's closing submissions paragraph 17, quoting Mrs Priestley's cross-examination; Environmental Statement paragraphs 8.77, 8.145 and 8.153; Landscape statement of Common Ground

<sup>74</sup> In oral evidence in chief, Tom Wigglesworth confirmed that a further 8 out of 52 hedgerow sections (H2, H9, H12, H17, H22, H26, H39 and H42) would qualify as important in the terms of the Hedgerow Regulations 1997 over and above those listed in table EDP A5.1 and Plan EDP2 even though paragraph A5.6 of Annex EDP5 of Appendix 9.1 of the Environmental Statement correctly records the criteria applicable to northern counties for a classification as important. This correction did not change the conclusions of the Environmental Statement because the hedgerows in question had anyway been classed as species-rich.

<sup>75</sup> Confirmed by Frances Harrison and Esther Priestley in cross-examination, with reference to core documents CD113 (Site Selection Paper 2013 Main Report), Annex 18 and CD9 City of York (September 2014) Local Plan Site Selection Addendum Paper page 191.

<sup>76</sup> Duncan McInerney's proof of evidence paragraph 3.12

<sup>77</sup> Appellant's closing submissions paragraph 18; Mr McInerney's Proof of Evidence paragraphs 2.5 and 2.6; Environmental Statement paragraphs 8.80 and 8.134

<sup>78</sup> Environmental Statement Appendix 8.1, paragraph 3.31

- extensive as to cause visual harm to the setting of the City as seen from a recognised viewpoint on the outer ring road.<sup>79</sup>
44. There is no landscape watershed on or close to the site in terms of any physical barrier or topographic feature that the scheme would breach.<sup>80</sup> It would merely extend the existing suburb of Woodthorpe south onto land of equivalent character and quality to that which existed prior to the most recent stage of Woodthorpe's evolution.<sup>81</sup>
45. Views south from Moor Lane towards the woods of Askham Bog are of local value, at the bottom end of the hierarchy. They only exist because field hedges are low, contrary to the recommendations of the Council's own character area assessment. Askham Bog itself is indistinguishable from other woodland features on the horizon.<sup>82</sup> Views would not be extinguished<sup>83</sup> but relocated. The appeal proposal would, in effect, change and move southwards the built interface with the adjacent open farmland. It would not remove the opportunity to experience the setting of what would become the new edge of Woodthorpe. As Mrs Priestley agreed in cross-examination, the allocation which the Council once proposed would have had substantially the same impact as the appeal proposal.<sup>84</sup>
46. It is generally accepted that the introduction of new built form anywhere into the open countryside will cause some degree of harm to landscape character and visual amenity.<sup>85</sup> The issue is whether the harm is so significant that it merits dismissal of the appeal.<sup>86</sup>
47. The sensitivity of Askham Bog is primarily ecological. The view north from Askham Bog is a view that almost nobody sees.<sup>87</sup> YWT has no formal intention to create a boardwalk in the northern part of the Bog.<sup>88</sup> Whilst it is legitimate to note that the fences and mound of the EPEZ, if taken in isolation, are not in themselves characteristic of the host landscape, it is not fair to ignore the role of planting which in time will give the mound the appearance of a stand of trees which are in any event characteristic of the immediate area.<sup>89</sup> The planting of thousands of trees would be a positive long-term benefit.<sup>90</sup>

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<sup>79</sup> Appellant's Statement of Case, paragraph 8.6, quoting opinion of the Council's design officer recorded at paragraph 3.11 of Council's committee report; Supporting Planning Statement paragraph 8.77; Duncan McInerney's Proof of evidence paragraph 4.6: Environmental Statement paragraph 8.73

<sup>80</sup> Environmental Statement paragraph 8.171; Duncan McInerney's proof, paragraph 2.10

<sup>81</sup> Environmental Statement paragraph 8.171

<sup>82</sup> Duncan McInerney, oral evidence in chief

<sup>83</sup> Duncan McInerney's Proof, paragraphs 3.15 and 4.15

<sup>84</sup> Appellant's closing submissions paragraph 21

<sup>85</sup> Environmental Statement paragraph 8.50

<sup>86</sup> Appellant's closing submissions paragraph 19

<sup>87</sup> Duncan McInerney's proof, paragraph 5.12; about four people per day according to oral evidence in chief; Appellant's closing submissions paragraph 22

<sup>88</sup> Appellant's Addendum to closing submissions, responding to Council's closing submissions paragraph 41(1)

<sup>89</sup> Appellant's closing submissions paragraph 23

<sup>90</sup> Environmental Statement paragraph 8.146

## *Askham Bog*

### *(i) Hydrology, Hydrogeology and Surface water drainage*

48. Studies previous to the Environmental Statement conclude that Askham Bog is critically dependent on precipitation for water supply rather than surface water runoff or groundwater inputs.<sup>91</sup> Those who oppose the development appear to have three concerns;<sup>92</sup>

- That the development will result in a lowering of groundwater levels which will lead to the Bog drying out
- That the proposed surface water drainage strategy will cause reduced flow rates in the Askham Bog Drain/Holgate Beck, a lowering of water levels in the Bog and hence its drying out
- That the development will generate contaminants which will be fed into the Bog

A conceptual hydrogeological model has been prepared, on the basis of which it is concluded that the proposed built development will not give rise to any significant adverse effect on the groundwater anywhere on the site, in the general vicinity or near the SSSI in respect of groundwater levels, flows or chemistry.<sup>93</sup>

### *a) Contamination*

49. The Ainsty IDB catchment for the area is shown in Mr Parkinson's Rebuttal Proof dealing with Surface Water Drainage at page 12. The appeal site as a whole represents about 10% of the catchment.<sup>94</sup> The area proposed for housing represents only about 2.6% of the catchment. In context, some 19% of the catchment is already developed.<sup>95</sup> Holgate Beck and its contributors, the Askham Bog Drain and Pike Hill Drain, receive water from multiple sources subject to urban influence (e.g. the A1237, the A64, Pike Hills Golf Club, Copmanthorpe village, the ECML, the existing developed parts of Woodthorpe and the waste water treatment works which until 2004 discharged treated sewage into Askham Bog Drain and in storm conditions still discharges raw sewage) as well as run-off from fertilised arable land.<sup>96</sup>

50. Yet, according to Professor Fitter's evidence, the condition of the Bog has improved over time.<sup>97</sup> The assertion by Yorkshire Wildlife Trust (YWT) that even

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<sup>91</sup> Environmental Statement paragraph 12.30

<sup>92</sup> Appellant's closing submissions paragraph 25

<sup>93</sup> Richard Thomas Proof of Evidence paragraph 9.1.2

<sup>94</sup> Paragraph 5.1.13 of PBA Technical Note attached as Appendix 1 to Avison Young letter dated 12 April 2019 responding to representations made during the statutory consultation on the application (Document ESD06a)

<sup>95</sup> Michael Parkinson's Surface Water Drainage Proof, paragraph 4.1.6

<sup>96</sup> R H Thomas's Hydrology Proof of Evidence paragraph 4.3.3; Michael Parkinson's Surface Water Drainage Proof paragraphs 4.1.7 to 4.1.13; Appellant's closing submissions, paragraph 25

<sup>97</sup> Also noted by Tom Wigglesworth in his Ecology Proof, paragraph 2.17

small changes to the water chemistry or levels in the Beck and/or the Bog could have a damaging effect is therefore surprising.<sup>98</sup>

51. Worst-case scenario testing has shown that the effects of migration of contaminants from urban surface water run-off presents no significant risk to the Holgate Beck.<sup>99</sup> In practice, the surface water run-off from the site will have been treated by way of a SUDS scheme<sup>100</sup> and will have to achieve compliance with the SUDS Mitigation Index. Maintenance and management of the SUDS would be through adoption by Yorkshire Water or by the Management Company prescribed by the planning obligation.<sup>101</sup> Mr Parkinson's drainage evidence<sup>102</sup> demonstrates that the development would present no hazard at all to the chemistry of the Bog. Mr Parkinson was not challenged on this issue in cross-examination.<sup>103</sup>

*b) Groundwater*

52. The British Geological Survey (BGS) map shows that two superficial deposits underly the site. The west of the site is underlain at outcrop by the Vale of York Formation. The majority of the eastern part of the site is underlain at outcrop by the Alne Glaciolustrine<sup>104</sup> Formation, itself underlain by the Vale of York Formation.<sup>105</sup>

53. The Alne Formation in this location is described by the BGS as laminated silt and clay with occasional sand beds.<sup>106</sup> The York Formation comprises predominantly glacial till<sup>107</sup> with interbedded sand, gravel and laminated clay,<sup>108</sup> sometimes called boulder clay.<sup>109</sup> Both are defined as unproductive strata<sup>110</sup> or aquitards,<sup>111</sup>

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<sup>98</sup> Appellant's closing submissions, paragraph 25

<sup>99</sup> Richard Thomas's Hydrology Proof paragraph 9.1.10; Appellant's closing submissions paragraph 32

<sup>100</sup> Richard Thomas's Hydrology Proof paragraphs 5.1.3 and 5.1.7; Environmental Statement paragraphs 9.145 and 12.60 to 12.65

<sup>101</sup> Paragraph 4.1.11 of PBA Technical Note dated 29.3.2019 attached as Appendix 1 to Avison Young's letter dated 12 April 2019 to York City Council, commenting on responses made to the consultation on the planning application (Document ESD06a); Environmental Statement Appendix 13.1 (Flood Risk Assessment) "It is also anticipated that the maintenance of the swales and basins will be via a private management company. This will be agreed with CYC at the detailed design stage and the mechanism to secure this will be via the s106"

<sup>102</sup> Michael Parkinson's Surface Water Drainage Proof, paragraphs 6.1.12 to 6.1.23 and 7.1.4 and 7.1.6

<sup>103</sup> Appellant's closing submissions, paragraph 25

<sup>104</sup> Sediments deposited into lakes that have come from glaciers

<sup>105</sup> Richard Thomas's Proof of evidence paragraph 4.5.1; appellant's closing submissions paragraph 26

<sup>106</sup> Richard Thomas's Hydrology Proof of evidence paragraph 7.2.3; Appellant's closing submissions, paragraph 27; Core Document CD038, Vale of York 3-D Borehole Interpretation and Cross-sections Study paragraph 6.2.7

<sup>107</sup> Unsorted glacial sediment

<sup>108</sup> R H Thomas's Hydrology Proof of Evidence paragraph 4.5.1; Core Document CD038, Vale of York 3-D Borehole Interpretation and Cross-sections Study paragraph 6.2.4

<sup>109</sup> Richard Thomas's Rebuttal Proof paragraph 2.2.16

<sup>110</sup> Environmental Statement paragraph 13.56

<sup>111</sup> R H Thomas's Hydrology Proof of Evidence paragraph 7.2.6 and 8.2.2

namely, a rock with limited permeability that allows some water to pass through it but at a very reduced rate.<sup>112</sup>

54. All geoscience is based on sampling and interpolation.<sup>113</sup> Site investigation work has been comprehensive.<sup>114</sup> Suggestions that the collection or analysis of data were flawed are regrettable and are disproven.<sup>115</sup> There were 10 soil cores,<sup>116</sup> 15 boreholes,<sup>117</sup> the majority of which were instrumented with groundwater monitoring standpipes,<sup>118</sup> recorded at monthly intervals over a fifteen-month period,<sup>119</sup> 15 gauge boards in watercourses,<sup>120</sup> 14 trial pits,<sup>121</sup> 40 archaeological trenches,<sup>122</sup> the BGS borehole data<sup>123</sup> and data from 31 dipwells collected by Arup for the YWT in 2003.<sup>124</sup> Both permeability<sup>125</sup> and infiltration<sup>126</sup> tests were carried out. The infiltration tests' non-compliance with BRE365 is irrelevant because that is intended to test suitability for soakaways. 136 water samples were each tested for 40-50 determinants.<sup>127</sup> Laboratory tests are subject to quality controls, audited annually.<sup>128</sup> The collected information shows glacial till to be a little more extensive than in BGS.<sup>129</sup> It confirms the published BGS material.<sup>130</sup>
55. Although there are some areas of the site that will experience drainage into the subsurface, overall, clay soils predominate and the volume of the groundwater recharge is low.<sup>131</sup> The evidence confirms that the land where the built

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<sup>112</sup> R H Thomas's Hydrology Proof of Evidence paragraph 7.2.5

<sup>113</sup> Richard Thomas, in cross-examination

<sup>114</sup> Appellant's closing submissions paragraph 28

<sup>115</sup> Appellant's closing submissions paragraphs 35 and 36; Addendum to Appellant's closing submissions, responding to paragraphs 51(13(i)), 51(13(ii)), 51(13(iii)) and 51(16) of Council's closing submissions

<sup>116</sup> Core Document CD039 paragraph 2.4

<sup>117</sup> Core Document CD040, paragraph 3.2; Environmental Statement appendix 12.1 paragraph 2.2

<sup>118</sup> Core Document CD040, paragraph 3.6

<sup>119</sup> R H Thomas's Hydrology Proof of Evidence paragraph 8.2.1; oral evidence in chief referred to six monitoring rounds at quarterly periods.

<sup>120</sup> R H Thomas's Hydrology Proof of Evidence paragraph 8.2.21

<sup>121</sup> Core Document CD040, paragraph 3.3

<sup>122</sup> Document ESD013; Environmental Statement Appendix 10.1 (Historical Baseline), Appendix EDP4, section 4

<sup>123</sup> Environmental Statement Appendix 11.1 Combined Phase 1 and Phase 2 Ground Condition Assessment paragraph 3.1 and Appendix 4

<sup>124</sup> In the Arup study carried out for the YWT (Core Document CD037)

<sup>125</sup> Core Document CD040, paragraph 4.3

<sup>126</sup> Core Document CD040, paragraph 4.4

<sup>127</sup> Richard Thomas, orally in chief

<sup>128</sup> Richard Thomas's oral evidence in chief

<sup>129</sup> Richard Thomas's oral evidence in chief, comparing his figures 3, 4 and 5

<sup>130</sup> R H Thomas's Hydrology Proof of Evidence sections 7.3 and 7.5; Environmental Statement appendix 12.1, paragraph 2.3

<sup>131</sup> Richard Thomas's Proof of Evidence paragraph 8.2.10, referencing Environmental statement Addendum Appendix 4; Richard Thomas's Rebuttal Proof paragraphs 3.2.12-3.2.16 and 3.2.27; Environmental Statement Appendix 12.1 paragraphs 3.1 and 3.3

development would be located is characterised by low permeability<sup>132</sup> and low infiltration<sup>133</sup> inhibiting rainwater recharge into groundwater. The variation across a level site in seasonal changes in groundwater indicates discontinuous hydrogeology resulting from low permeability.<sup>134</sup> Permeability tests are not applicable to vertical rainwater infiltration. There is a layer of clay before water-bearing sands are reached. One isolated incident of a water strike in clay is explained by a rupture of the base of the clay as the borehole approached a layer of water bearing ground under pressure.<sup>135</sup> Land drainage will carry away any infiltration as run-off to farm ditches but standing water in the fields shows that there is little or no infiltration.<sup>136</sup> Seasonal variations in groundwater levels are explained by the phenomenon of water loading,<sup>137</sup> not rainfall recharge.<sup>138</sup>

56. Of the borehole material, 83.5% was classed as clay, only 11.5% as sand in pockets and lenses,<sup>139</sup> in two different geological strata. No borehole encountered multiple layers or pockets of sand and so there is no evidence to support Dr Foley's theory advanced on behalf of the Council that there are continuous connected layers or pockets of sand providing permeable hydraulic connectivity.<sup>140</sup> Broadly speaking, his proposition is that rain falling on the part of the site proposed for development would find its way through 2-3m of clay to reach silty sand, then through linked pockets of that material to reach the bog.<sup>141</sup> His theory is not supported by the results of the infiltration tests, the gauge board data or the chemistry.<sup>142</sup> Dr Foley never explains how rainwater would penetrate the thick layer of clay overlaying any sand layer.<sup>143</sup>
57. The quantity of rainwater recharge that reaches the groundwater bearing strata is insignificantly small in comparison with surface water run-off. Groundwater

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<sup>132</sup> (Between  $1 \times 10^{-6}$  and  $5 \times 10^{-6}$  m/sec) Appellant's closing submissions paragraph 30; R H Thomas's Hydrology Proof of Evidence paragraph 8.2.7; Environmental Statement Appendix 12.1 paragraph 3.3

<sup>133</sup> R H Thomas's Hydrology Proof of Evidence paragraph 8.2.8

<sup>134</sup> Richard Thomas's Rebuttal Proof paragraph 3.2.2; Environmental Statement Appendix 12.1 paragraph 2.4 and Appendix 12.2

<sup>135</sup> Addendum to Appellant's closing submissions, responding to Council's closing submissions paragraph 51(12(ii))

<sup>136</sup> Richard Thomas's Rebuttal Proof paragraphs 3.2.11 and 3.2.13 referencing observations made in representations consequent on the appeal from third party Mr J L Turner CEng MICE (held on electronic file only)

<sup>137</sup> the quantitative increase or decrease in confined aquifer water pressures created by the loading effect of changes in near-surface water mass. In cross-examination, Mr Thomas asserted that 1m depth of water was not required to result in an increase of pressure of 1m.

<sup>138</sup> Appellant's closing submissions paragraph 34; addendum to appellant's closing submissions, responding to paragraphs 53 and 56-57 of the Council's closing submissions

<sup>139</sup> Richard Thomas's Rebuttal Proof paragraph 2.2.5

<sup>140</sup> Appellant's closing submissions paragraphs 28 and 34; Environmental Statement paragraph 12.31 "The differences in major ion chemistry indicate that the groundwater[s] in the area of the site are different and are not in hydraulic continuity"; Environmental Statement Appendix 12.1 paragraph 3.4

<sup>141</sup> Dr Foley, in cross-examination

<sup>142</sup> Appellant's closing submissions paragraph 34; Richard Thomas's Rebuttal Proof paragraph 2.2.1 notes that Dr Foley analyses grouped boreholes as though they were separate locations, which skews his results.

<sup>143</sup> Appellant's closing submissions paragraph 29; Richard Thomas's Rebuttal Proof paragraphs 2.2.10-12 and 3.3.6

quality is protected by the overlying beds of low permeability clay.<sup>144</sup> The groundwater under the part of the site proposed for built development does not appear to have been contaminated by urbanisation.<sup>145</sup>

58. About halfway along the southwestern arm of the site a ridge of Vale of York Formation Glacial Till extends south-eastwards almost to the Askham Bog Drain/Holgate Beck. This lies directly south of the area where built development is proposed to be located and prevents any groundwater flow in a southerly direction towards Far Wood, Middle Wood and the south-western two thirds of New Wood.<sup>146</sup> Consequently, the hydraulic gradient in groundwater is towards the south east, reflecting topographical contours.<sup>147</sup> Only the north-eastern third of the Near Wood portion of the SSI lies directly down gradient of the part of the site where built development is proposed.<sup>148</sup> The gradient does not necessarily mean flow or connectivity.<sup>149</sup>
59. The combination of low permeability and shallow gradient along this flowpath would result in a groundwater flow velocity of 4.6mm per day.<sup>150</sup> Worst case scenario testing of much higher permeability and flow rates shows that groundwater would represent just 2% of the estimated average flow in the Beck.<sup>151</sup> This demonstrates that even in the very unlikely scenario that there is hydraulic interconnectivity, the throughflow would be very low indeed.<sup>152</sup> Dr Foley's calculation on behalf of the Council is based on a complete drain down of groundwater rather than just a release of pressure and so is flawed.<sup>153</sup> Comparisons of groundwater data with data from gauge boards in the drains demonstrate limited hydraulic connectivity between groundwater on site and water in the Askham Bog Drain/Holgate Beck,<sup>154</sup> a finding which is confirmed by chemical analysis.<sup>155</sup>

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<sup>144</sup> Richard Thomas's Proof of Evidence paragraph 9.1.3

<sup>145</sup> R H Thomas's Hydrology Proof of Evidence paragraph 8.3.24-8.3.27; R H Thomas's rebuttal Proof of Evidence Appendix 2

<sup>146</sup> R H Thomas's Hydrology Proof of Evidence paragraphs 8.2.17 and 8.2.19

<sup>147</sup> R H Thomas's Hydrology Proof of Evidence paragraph 8.2.16

<sup>148</sup> R H Thomas's Hydrology Proof of Evidence paragraph 8.2.19; Appellant's closing submissions paragraph 31

<sup>149</sup> Richard Thomas, orally in cross-examination

<sup>150</sup> This equates to 1.68 m per year which is comparable to Dr Foley's estimate (given in cross-examination) of 50-60 years for chloride shown in groundwater samples near Moor Lane to reach the Beck. Alex Jones's oral evidence in chief confirms that water would take decades to move through areas of low permeability

<sup>151</sup> R H Thomas's Hydrology Proof of Evidence paragraphs 8.2.13 and 9.1.5-9.1.7; Appellant's closing submissions paragraph 32; Mr Thomas's Rebuttal Proof paragraph 1.4.7 referencing sections 9.1.5 and 9.1.6 and appendix 6 of his Proof of Evidence and appendix 2 of his Rebuttal Proof. Paragraphs 3.2.23-3.2.24 of his Rebuttal Proof examine an over-estimate of groundwater flux which leads to a figure of 5% of the lowest (rather than average) flow rate of the Beck

<sup>152</sup> R H Thomas's Hydrology Proof of Evidence paragraph 8.2.20; Mr Thomas's Rebuttal Proof paragraph 3.4.15 and 3.4.19

<sup>153</sup> Appellant's closing submissions paragraph 35; R H Thomas's Rebuttal Proof paragraphs 3.2.6-3.2.8 and 3.2.17 to 3.2.21

<sup>154</sup> R H Thomas's Hydrology Proof of Evidence paragraphs 8.2.21-8.2.27

<sup>155</sup> R H Thomas's Hydrology Proof of Evidence paragraph 8.3.5-8.3.28; R H Thomas's rebuttal Proof of Evidence section 3.3 and Appendix 2; Appellant's closing submissions paragraph 33

60. The west end of the attenuation ponds will intercept the groundwater table but any groundwater flow intercepted by the attenuation pond in this location will be very limited in volume and any zone of dewatering would be limited radially. In any event, the eastern three-quarters of the attenuation pond system will be above the groundwater table, so any groundwater entering the pond system at its western end will infiltrate back into the ground at its eastern end.<sup>156</sup>
61. Mr Jones's evidence on behalf of the YWT depends on Dr Foley's theory of great permeability.<sup>157</sup> The data for only two out of 31 dipwells and one borehole out of fifteen support the proposition that a south-eastern part of the site lies on water-bearing sand<sup>158</sup> and that does not demonstrate continuity with the part of the site proposed for built development.<sup>159</sup> The eastern end of the site sits on the Alne Formation but groundwater flow would still be low because of the flat hydraulic gradient and the low permeability of the ground.<sup>160</sup> The proposition that there is a strong correlation between groundwater levels in the Alne Formation and the Beck depends on a comparison between water levels in Borehole BH14/07 and Gauge Board 14/09 but the two are 430m apart along the length of the Beck. The borehole is only 20m away from the Beck yet shows levels sometimes higher than the Beck and sometimes lower which disproves the suggested correlation.<sup>161</sup>
62. The suggestion<sup>162</sup> that groundwater pressure from the higher land of the site would exert upward pressure on the Bog from below is not consistent with the Arup Report<sup>163</sup> commissioned by the YWT in 2003 to advise them upon a future management and recovery strategy for the Bog,<sup>164</sup> nor with the evidence from the appellant's borehole BH14/07 and from Arup's dipwells that summer groundwater levels are below those of the Askham Bog Drain/Holgate Beck. If the hypothesis were true, then upward pressure would maintain groundwater levels at the level of the Beck.<sup>165</sup>
63. There is a raised dome of groundwater in the Bog all year round, maintained by precipitation and the relatively low permeability of the ground below and to the side of the Bog. With occasional exceptions, the shallow groundwater table slopes outwards from the Bog. It steepens as it gets closer to the Drain/Beck, which indicates low hydraulic connectivity. Water does not flow upwards so, other than from groundwater seepage along the southern boundary of the SSSI,

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<sup>156</sup> Addendum to appellant's closing submissions, responding to paragraph 51(8(iii)) of Council's closing submission. In answer to my question concerning paragraph 8.2.11 of his proof, Mr Thomas corrected the reference in Appendix 4 to the Environmental Statement Addendum to the effect that the attenuation ponds would be hydraulically disconnected from the underlying groundwater and SSSI by stating that the attenuation ponds would not be lined. Mr Parkinson subsequently confirmed that it was the intention that the attenuation ponds would be unlined and so not hydraulically disconnected from groundwater.

<sup>157</sup> Appellant's closing submissions paragraph 47

<sup>158</sup> Appellant's closing submissions paragraphs 39 and 40; Mr Thomas's Rebuttal Proof paragraphs 2.5.4, 2.5.6, 3.2.14-16 and 4.1.2

<sup>159</sup> Appellant's closing submissions paragraphs 46 and 47

<sup>160</sup> Richard Thomas's Proof of Evidence paragraphs 8.4.4 and 8.4.7

<sup>161</sup> Appellant's closing submissions paragraph 38

<sup>162</sup> By Dr Foley on behalf of the Council

<sup>163</sup> Core Document CD037

<sup>164</sup> Richard Thomas's Rebuttal Proof paragraph 3.4.17

<sup>165</sup> Appellant's closing submissions, paragraph 44

there is no discernible lateral or upward flow of groundwater into the Bog. On rare occasions, evapotranspiration lowers the groundwater table in the Bog below the level of the water in the Beck, thus reversing the hydraulic gradient but even so, the lack of hydraulic conductivity means that the higher water level in the Beck is unable to top up the level in the Bog. Recovery does not take place until rainfall replaces the water lost.<sup>166</sup>

64. In summary;

- Groundwater levels across the appeal site vary widely, with no sensible pattern.
- Groundwater chemistry demonstrates long residence times.
- There is little or no flow of groundwater but there are seasonal pressure changes.
- Baseflow of groundwater into the Beck is negligible.<sup>167</sup>

65. Neither the Council nor the YWT advance any plausible case to demonstrate how their claimed effects would materially alter the status quo in the catchment. Neither sought to demonstrate likely harm to the Bog but rather created a series of hypothetical scenarios designed to force the decision-maker to follow the precautionary principle.<sup>168</sup> What is very clear is that there is no hydrological connectivity between the northern part of the appeal site and the Beck and that hydrological connectivity between the Beck and the Bog is very low with water tending to flow from the Bog to the Beck rather than vice-versa.<sup>169</sup> In any event, the level of water in the Beck is controlled by pumps, irrespective of any groundwater flow from the site.<sup>170</sup>

*c) The hydrology and hydrogeology of Askham Bog*

66. The best evidence there is concerning the hydrology/hydrogeology of the Bog is the Arup Report of 2003.<sup>171</sup> It was commissioned by the YWT to advise them upon a future management and recovery strategy for the Bog, uninfluenced by the need to make a case at a planning appeal. There were 31 dipwells created and monitored over an extended period. The Beck level was monitored and the depth of peat within the Bog mapped.<sup>172</sup>

67. Until the present public inquiry, the findings of the Arup report have never been questioned. All of the appellant's recent investigations are consistent with the findings of the Arup report. The findings of the Arup report are quite clear;

- There is not a major upwelling of groundwater into the Bog.

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<sup>166</sup> Richard Thomas's Proof of Evidence, paragraph 10.6.1. Mr Thomas's Rebuttal Proof paragraphs 3.4.21 and 3.4.22

<sup>167</sup> Appellant's closing submissions paragraph 46; Richard Thomas's Rebuttal Proof, paragraph 3.3.11 also provides a good summary of his position on groundwater

<sup>168</sup> Appellant's closing submissions paragraph 47

<sup>169</sup> Appellant's closing submissions paragraph 45

<sup>170</sup> Appellant's closing submissions paragraphs 46 and 47; Richard Thomas's Proof of Evidence paragraph 9.1.7 and Rebuttal Proof paragraph 3.4.3

<sup>171</sup> Core Document CD037

<sup>172</sup> Appellant's closing submissions paragraph 41

- Water flows mainly from the Bog into the Beck.
- There is little exchange of water between the Beck and the Bog. The Beck has little effect on water levels in the Bog.
- The most dramatic event affecting the Bog is overtopping of the Beck but its contribution to the annual water balance is minimal because it usually occurs in winter when the water table is close to the surface in any event so that most of the water flows back into the Beck within days.
- The Beck is a relatively unimportant source of water to the Bog as it generally functions as a drain. The Bog is critically dependent upon precipitation for its water supply.<sup>173</sup>

The last point is consistent with Core Document CD044,<sup>174</sup> which is quite clear that the water table rises and falls in response to rainfall. There is no suggestion of water moving from the Beck although the role of overtopping is specifically highlighted.<sup>175</sup>

68. Mr Jones, for the YWT, identified four ecohydrological conditions that occur on the Askham Bog;

- Areas of higher ground above flood levels with acidic habitats fed by rainfall with lower nutrient levels
- Habitat affected by flooding where the nutrient quality of flood water affects the habitat
- Habitat where water quality is influenced by groundwater from the Alne Formation
- Groundwater seepage along the southern boundary of the SSSI.<sup>176</sup>

69. Of these, the first and last would not be affected by the development. The appellant's response to the third is reported earlier. The second proposition was not quantified but is not credible. Under post-development conditions, there would be a net gain in the quantity of water from the development site due to reduced net transpiration rates.<sup>177</sup> Run-off from the part of the site proposed to be developed (2.6% of the catchment) will be maintained at a greenfield rate of

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<sup>173</sup> Appellant's closing submissions, paragraph 42, referencing paragraphs 10.3, 11.1.3, 11.2.2, 11.2.3, 13 and 15.2 of CD037 (the Arup Report)

<sup>174</sup> Core Document CD044 "A Wood in Ascam – A Study in Wetland Conservation" edited by Alastair Fitter and Clifford Smith November 1979

<sup>175</sup> Appellant's closing submissions paragraph 43. This is somewhat contradicted by Mr Thomas's assertion in paragraph 3.4.25 of his Rebuttal Proof that "the lowest elevation to which the groundwater level can fall is the lowest level of the surface water in Holgate Beck/Askham Bog Drain" but he himself disproves this assertion in 10.6.1 of his Proof of Evidence and in paragraph 3.4.21 of his Rebuttal Proof of Evidence

<sup>176</sup> Appellant's closing submissions paragraph 37

<sup>177</sup> Appellant's closing submissions paragraph 37; Environmental Statement Addendum paragraph 4.6; PBA Technical Note 002 dated 19.6.2019 attached as Appendix 4 to the Environmental Statement Addendum; Mr Parkinson's oral evidence in chief

- 1.4 l/s/ha<sup>178</sup>. This would be a reduction in the rate of flow from 3.1 l/s/ha but not a reduction in the volume of flow.<sup>179</sup> The greenfield run off from the rest of the appeal site (and from the rest of the catchment of Holgate Beck) will remain unchanged.<sup>180</sup>
70. Only the north-eastern third of Near Wood in the SSSI lies directly down-gradient from the surface water discharge from the part of the site that would be developed.<sup>181</sup> The discharge of water from the proposal's attenuation basins would maintain height levels in the receiving ditch for longer periods of time.<sup>182</sup> In any event, the water level in Askham Bog Drain/Holgate Beck is controlled by the IDB's pumping station.<sup>183</sup> The range of fluctuation is between 11.05 and 11.35 AOD adjacent to Near Wood but the effects extend all round the Bog.<sup>184</sup> There is no requirement to provide any flow from the development site to the Bog to maintain the current regime.<sup>185</sup> If the attenuation ponds were to dry out, this would be as a result of weather conditions (drought), not the development. This would not affect what goes on in the Bog as there would be no run-off from anywhere in such conditions.<sup>186</sup>
71. It is incorrect to state that water levels in Askham Bog Drain prevent drainage of the Bog itself. There is an outward hydraulic gradient from the Bog to the Drain and therefore always an element of drainage. A more appropriate statement would be that the low permeability of the ground below and around the Bog restricts the drainage outflow to the Beck to a negligible proportion of the rainwater replenishing the Bog. Nevertheless, it is important to maintain water levels in the Beck to minimise the drainage effect.<sup>187</sup> The Flood Risk Assessment describes the management actions which have been taken in recent years in the Pike Hill Drain and its connecting channels with the Askham Bog Drain to secure this.<sup>188</sup>
72. Under normal flow conditions, there is no continuity between surface water from the appeal site, Askham Bog Drain and the Askham Bogs.<sup>189</sup> Nevertheless, the Beck can supply base-rich nutrients against a hydraulic gradient by the process of diffusion.<sup>190</sup> The supply of base-rich nutrient water to the Bog occurs as a

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<sup>178</sup> Compared to a Qbar greenfield run-off rate of 3.1 l/s/ha (paragraph 4.55 of Appellant's Supporting Planning Statement) (Qbar is the peak rate of flow for the mean annual flood) and a Q100 of 11.1 l/s/ha (the peak flow for the 1 in 100 year event)(paragraph 7.3.1 of Environmental Statement Appendix 13.1 (Flood Risk Assessment)

<sup>179</sup> Michael Parkinson, orally, in cross-examination

<sup>180</sup> Appellant's closing submissions paragraph 37

<sup>181</sup> Richard Thomas's Proof of Evidence paragraph 8.2.19

<sup>182</sup> Richard Thomas's Proof of Evidence paragraph 8.2.11

<sup>183</sup> Environmental Statement paragraphs 13.47-13.48; Environmental Statement Appendix 13.1 paragraphs 2.3.9-2.3.12

<sup>184</sup> Richard Thomas's Proof of Evidence paragraph 4.3.5 and Rebuttal Proof paragraphs 1.4.2 and 3.4.3 (omitting the report of the contribution of the outfall from the Askham Bryan Waste Water Treatment Works which Inquiry Document INQ1 shows to have ceased since 2003).

<sup>185</sup> Environmental Statement paragraphs 12.40 and 13.49

<sup>186</sup> Addendum to appellant's closing submissions, responding to Council's closing submissions paragraph 51(8(iii)) and to YWT's closing submissions paragraph 29

<sup>187</sup> Richard Thomas's Rebuttal Proof of Evidence paragraphs 3.4.22 and 3.4.23

<sup>188</sup> Environmental Statement appendix 13.1 paragraphs 2.3.13 and 2.3.14

<sup>189</sup> Environmental Statement paragraphs 12.36 and 12.38

<sup>190</sup> Richard Thomas's rebuttal Proof paragraph 3.2.24

result of the overtopping of the Beck.<sup>191</sup> The flooding occurs when the IDB's pumps cannot cope with the volume of water received. Those events will still occur.<sup>192</sup>

*(ii) Ecology*

73. Although the sensitivity of the Bog is assessed as medium in the Environmental Statement, the scope of work undertaken in data collection prior to making the application reflects the sensitivity and importance of the Bog.<sup>193</sup> The Ecological Impact Assessment within the Environmental Statement surveyed hedgerows, breeding birds, bats, badgers, water vole, otters, great crested newts, reptiles and invertebrates on the appeal site.<sup>194</sup> The Supporting Planning Statement<sup>195</sup> notes the presence of three species of aquatic invertebrates of scarce status associated with the acidic conditions which occur in the SSSI.<sup>196</sup>
74. The Bog is also an ancient semi-natural woodland but that contributes to the "unfavourable" condition classification of four out of six units of the SSSI because the extent of woodland has reduced the extent of open wet and marshy habitats and prevented some areas from being managed through grazing.<sup>197</sup> Natural England's standing advice requires a standoff or buffer between development and an Ancient Woodland.<sup>198</sup> The majority of construction would be at least 175m from the SSSI.<sup>199</sup>
75. The Case advanced by the Council and the YWT has three strands of alleged harm to the Bog;
- through reductions in the base-rich nutrient water level of the Askham Bog Drain
  - by way of isolation and the loss of metapopulation effects
  - through increased activity by humans and their pets<sup>200</sup>

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<sup>191</sup> Appellant's closing submissions paragraph 45; Richard Thomas's Rebuttal Proof paragraph 3.2.24

<sup>192</sup> Appellant's closing submissions paragraph 37; Environmental Statement Appendix 13.1 (Flood Risk Assessment), Appendix E, paragraph 4.1.10 "The dimensions of the culvert inlet have been used in an Orifice unit at the downstream end of the model. It is considered that this will represent the potential restriction of the culvert on flows entering the pumping station. In addition, the capacity of the pumping station is far exceeded by the peak inflows to the model. Therefore it is considered that the limiting factor and largest influence on peak water levels within the watercourses and bog at the downstream end of the model will be the pump capacity, not the culvert capacity."

<sup>193</sup> Addendum to appellant's closing submissions, responding to paragraph 13 of YWT's closing submissions

<sup>194</sup> Supporting Planning Statement paragraph 8.17; Tom Wigglesworth's Proof of Evidence paragraphs 2.6-2.11

<sup>195</sup> Paragraph 8.27

<sup>196</sup> Tom Wigglesworth's Proof of Evidence paragraph 2.23; Environmental Statement paragraph 9.63

<sup>197</sup> Tom Wigglesworth's Proof of Evidence paragraph 2.18; Environmental Statement paragraph 9.59

<sup>198</sup> Environmental Statement Appendix 8.1, paragraph 4.26

<sup>199</sup> Environmental Statement paragraphs 9.101 and 9.106

<sup>200</sup> Appellant's closing submissions paragraph 48

*a) Harm to flora*

76. The disposition of species specifically dependent on base-rich nutrient conditions lies in the centre or southern edge of the bog rather than on its northern edge (next to the Drain), where none of the predominant habitats are specifically dependent on base-rich conditions.<sup>201</sup> Nevertheless, in general terms, the proposition is correct that even a small change in the hydrology of the site could have a significant adverse impact on the flora of the Bog. However, the hydrological and hydrogeological evidence (reported above) provides a compelling case that the development will not affect the hydrological/hydrogeological regime of the Bog.<sup>202</sup> It will not result in loss or deterioration of irreplaceable habitats.<sup>203</sup>

*b) Isolation*

77. In general terms it is probably true that whatever is put on agricultural land by way of development would be less penetrable to various species than is open agricultural land. But the significant tree planting associated with the proposal and the biodiversity net gain the development would produce should not be ignored.<sup>204</sup>
78. Bats presently traverse Woodthorpe and, no doubt, Copmanthorpe. There is no evidence that the appeal site itself is an important feeding resource for bats. They would be able to move in a north south direction through the open land to the west of the site.<sup>205</sup> The provision of bat boxes and roosting features and the design of bat-sensitive lighting installations is proposed within the housing development.<sup>206</sup>
79. Deer are noted to have a role in browsing within the Bog. The fences in the EPEZ would prevent this species moving north onto the site but there is no evidence at all that they currently use the appeal site to feed. They would still be able to access the open land to the west. There is no evidence at all to show how any impacts on deer might result in any harm at all to the SSSI.<sup>207</sup>
80. Similarly, there is no evidence that the appeal site has any particular value for hedgehogs and badgers.<sup>208</sup> They would still be able to access land to the west of the site.<sup>209</sup>
81. Sir John Lawton (for the YWT) agreed that there was no evidence that great crested newts would be unable to forage adequately or to access their breeding ponds as a result of the development.<sup>210</sup>

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<sup>201</sup> Richard Thomas's Rebuttal Proof paragraph 3.4.13 and Appendix 3

<sup>202</sup> Appellant's closing submissions paragraph 50

<sup>203</sup> Addendum to Appellant's closing submissions, responding to paragraph 7 of YEWT's closing submissions

<sup>204</sup> Appellant's closing submissions paragraph 51

<sup>205</sup> Appellant's closing submissions paragraph 52

<sup>206</sup> Environmental Statement paragraph 9.184

<sup>207</sup> Ibid

<sup>208</sup> Tom Wigglesworth's Proof of Evidence paragraph 5.32

<sup>209</sup> Ibid

<sup>210</sup> Ibid

82. Bats, birds and flying invertebrates would not be restricted by the fencing of the EPEZ.<sup>211</sup> Sir John Lawton accepted that aquatic species including otter, water vole, amphibians and invertebrates would be able to access the wider landscape by means of the drains and ditches which would pass under the fences in the EPEZ.<sup>212</sup>
83. None of the above demonstrate any likelihood of harm to the integrity of the SSSI which would bring NPPF paragraph 175 into play. The Environmental Statement recognises that development in proximity to Askham Bog SSSI could potentially result in its isolation and/or fragmentation from the surrounding ecological network. But the EPEZ is proposed as part of the Council's Green Infrastructure corridor.<sup>213</sup> The EPEZ would deliver clear net gain for biodiversity through increased available habitat. Sir John Lawton accepts that the concept of "bigger, better, joined" did not require the EPEZ itself to be a nature reserve. Other than species restricted by the fencing, the EPEZ would benefit metapopulations and contribute to the Council's green infrastructure objectives.<sup>214</sup>
- c) Public pressure*
84. There is existing a significant urban area within 400m walking distance of the northern boundary of the SSSI.<sup>215</sup> Access is easy to achieve. Some unauthorised access occurs but the amount is modest. Simply walking through the SSSI does not cause harm.<sup>216</sup> Although there is evidence of dens, campfires and littering which poses a serious long-term threat to the habitats and species present<sup>217</sup> and is part of the reason for classifying some units of the SSSI as in unfavourable condition<sup>218</sup> there is no evidence of material harm to the special interest of the Bog.<sup>219</sup>
85. Access to the SSSI from Copmanthorpe to the south via the Tadcaster Road is a similar distance to that of the proposed housing to the north of the SSSI boundary. Yet the reserve is open and visitors are encouraged with free entry. The large number of visitors does not cause unacceptable problems. Increased recreational visits to the Bog as a result of the proposed housing would be minimal compared with the numbers currently received (and encouraged).<sup>220</sup> There is no reason to suppose that the inhabitants of the appeal proposal would behave differently from existing residents of the locality.<sup>221</sup>

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<sup>211</sup> Tom Wigglesworth's Proof paragraph 5.30

<sup>212</sup> Tom Wigglesworth's Proof of Evidence paragraph 5.31

<sup>213</sup> Environmental Statement paragraph 9.149; Council's committee report paragraph 4.11

<sup>214</sup> Appellant's closing submissions paragraphs 49 and 52

<sup>215</sup> Environmental Statement paragraph 9.134

<sup>216</sup> Tom Wigglesworth in cross-examination

<sup>217</sup> Design and Access Statement page 48; Tom Wigglesworth's Proof of Evidence paragraph 2.19; Environmental statement paragraphs 3.28 and 3.29

<sup>218</sup> Supporting Planning Statement paragraph 8.23; Environmental Statement paragraph 9.59

<sup>219</sup> Appellant's closing submissions paragraph 53

<sup>220</sup> Supporting Planning Statement paragraph 8.55

<sup>221</sup> Appellant's closing submissions paragraph 53 and Addendum to Appellant's closing submissions responding to paragraph 35 of YWT's closing submissions.

86. Although YWT's own study of damage and disturbance due to the proximity of housing<sup>222</sup> advises that the ideal separation should be more than 500m, it records a noticeable reduction in negative effects to nature reserves that are more than 100m from housing.<sup>223</sup> The EPEZ and the landscape buffer around the housing would combine to a depth of 175m. Nevertheless, in response to early pre-application concerns expressed by Natural England and YWT,<sup>224</sup> the EPEZ has been designed to deter any access from the north. It would reduce the potential for littering and fly tipping and so would be a planning benefit.<sup>225</sup> It would have two fences (the extent of which could be required to be increased through a suggested condition), permanent water features and thorny hedges.
87. The SSSI is not attractive to dog walkers. Only 13% of visitors to the bog are dog walkers. The provision of alternative open space within the appeal proposals will provide a diversionary attraction.<sup>226</sup>
88. The harm of cat predation can be overstated.<sup>227</sup> The designated interest features of Askham Bog SSSI are open fen and fen woodland, not vulnerable to cats.<sup>228</sup> The citation lists mainly flora but notes that the site is renowned for its insect fauna. Habitat creation in the public open space would provide an alternative opportunity for an increase in prey attractive to cats. Many cat species are averse to water, prevalent in the bog, and which would form part of the EPEZ.<sup>229</sup> The fences of the EPEZ could be designed to deter entry by cats.<sup>230</sup>
89. Critical to the achievement of the ecological strategy is the long-term management and maintenance of the EPEZ. A Landscape Management Plan for the EPEZ and a Landscape and Ecology Management Plan for land outside the EPEZ is proposed.<sup>231</sup> A maintenance regime would counter damage to the fences. It would remain an obligation for future occupants of the development, as required by the submitted planning obligation and supplemented by a suggested condition.<sup>232</sup>

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<sup>222</sup> Core Document CD025, referenced in Environmental Statement paragraph 9.139

<sup>223</sup> Tom Wigglesworth's Proof of Evidence table EDP6.1, third row

<sup>224</sup> Appellant's Statement of Case paragraph 3.7

<sup>225</sup> Appellant's Statement of Case paragraph 7.33; Tom Wigglesworth's oral evidence in chief

<sup>226</sup> Tom Wigglesworth's Proof of Evidence paragraph 5.20; Duncan McInerney's Proof paragraph 5.19

<sup>227</sup> Tom Wigglesworth's Proof of evidence paragraph 5.22, referencing the RSPB website <https://www.rspb.org.uk/birds-and-wildlife/advice/gardening-for-wildlife/animal-deterrents/cats-and-garden-birds/are-cats-causing-bird-declines/>

<sup>228</sup> Supporting Planning Statement paragraph 8.53; Tom Wigglesworth's Proof of Evidence paragraph 5.21 and the Environmental Statement paragraph 9.141 both point out that Natural England, in its response to the York Local Plan further Sites Consultation (July 2014), advised that recreational disturbance and domestic cat predation are not a significant concern for Askham Bog SSSI as birds are not an interest feature.

<sup>229</sup> Tom Wigglesworth's Proof of Evidence paragraph 5.22

<sup>230</sup> Appellant's closing submissions paragraph 54

<sup>231</sup> Tom Wigglesworth's Proof of Evidence paragraphs 3.13 and 3.14

<sup>232</sup> Appellant's closing submissions, paragraph 55

### *Schools*

90. Notwithstanding existing capacity in local schools,<sup>233</sup> it is accepted that the development will give rise to a need for additional Primary, Secondary and early years/pre-school places to be provided, together with land for the pre-school facility.<sup>234</sup> A parcel of 662 sq m of land will be provided, together with a financial payment at a rate of £3,816,027 index linked per 516 houses paid in phases but to be adjusted in line with approved reserved matters before the final phase payment according to agreed formulae for calculating pupil yield and costs per place.<sup>235</sup>

### *Highway safety*

91. The proposal includes off-site improvements; road improvements to Bog Lane; a 3m wide, 1.4km long combined footway and cycleway along Moor Lane and a Toucan crossing to link the cycleway to on-road cycle lanes; the reconfiguration of the Moor Lane/ Chaloner's Road mini roundabout and a second Toucan crossing to help pedestrians reach eastbound bus stops on Moor Lane.<sup>236</sup>

92. The Initial Transport Assessment examined local junctions on the highway network for 2020 and 2023 together with other cumulative development. They were found to operate within capacity.<sup>237</sup> Following criticism by the Council and by Highways England of the trip generation rates used in the initial Transport Assessment these estimates were revisited.<sup>238</sup> The revised trip generation agreed with the Council is predicated on the achievement of a 10% reduction in vehicular trips through the implementation of a Travel Plan, improvements to bus services and off-site cycle route improvements.<sup>239</sup> These are secured through the planning obligation. This work identified six junctions on the national strategic road network which would experience increases of over 30 trips during a peak hour as a result of the development but none would cause a severe impact other than that on the junction of the A64 and A1237. A mitigation scheme has been designed<sup>240</sup> in agreement with Highways England<sup>241</sup> and would be funded through the planning obligation. Adjustments would also be needed to the junction of Moor Lane with the Tadcaster Road and Tesco access and to the junction of the A1036 Tadcaster Road with Sim Balk Lane. These would be secured through the planning obligation.<sup>242</sup>

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<sup>233</sup> Supporting Planning Statement paragraph 7.94; Environmental Statement paragraphs 7.32, 7.35 and 7.60

<sup>234</sup> Education SOCG, paragraph 4.3.2

<sup>235</sup> Education SOCG paragraphs 4.4.4-4.4.9

<sup>236</sup> Supporting Planning Statement paragraphs 4.30 and 4.31; Environmental Statement paragraph 18.116

<sup>237</sup> Supporting Planning Statement paragraphs 8.124ff

<sup>238</sup> PBA Technical Notes TN05 March 2019, TN06 April 2019, TN07 May 2019, TN08 June 2019 and TN09 July 2019(documents ESD06a)

<sup>239</sup> Highways statement of Common Ground agreed with the Council (Inquiry document INQ6) sections

<sup>240</sup> Drawing number 29426/5506/021 revision B

<sup>241</sup> Statement of Common Ground with Highways England

<sup>242</sup> Highways Statement of Common Ground with the Council (Inquiry Document INQ6), sections 4.17 and 4.18

93. Although excessive speeds on Moor Lane are identified as an existing condition,<sup>243</sup> the appellant and Council are agreed that, should they persist, traffic calming would be necessary to make highway conditions acceptable for the development to proceed. Consequently, the planning agreement makes provision for speed monitoring and for payment of a contribution towards traffic calming measures if required.

*Other matters*

94. The application is accompanied by an Outline Energy Statement.<sup>244</sup> Table 5.1 indicates the potential of photovoltaic panels, solar water heating and heat pumps to comply with policies CC1, CC2 and CC3 of the emerging local plan.

95. There are two Air Quality Management Areas in York. Exceedances of air quality thresholds are expected with or without the development. The effects of the development are not expected to be significant but it is recommended that electric vehicle charging infrastructure is included in the detailed design of the development.<sup>245</sup> The effects during construction are recommended to be mitigated by the imposition of Institute of Air Quality Management 2014 guidelines through a Construction Environmental Management Plan to be secured by condition.<sup>246</sup>

96. With mitigation (such as double glazing with trickle vents and protection of external amenity areas alongside Moor Lane), the effects on the development of noise and vibration (through generated traffic and from plant in the commercial and sports buildings) are expected to be negligible.<sup>247</sup> Construction noise should be controlled through the Construction Environmental Management Plan to be secured through condition.<sup>248</sup>

97. The proposed development would be so distant from the Askham Bryan Conservation Area that it would have no effects on its significance or setting.<sup>249</sup> The farm buildings to be demolished are of negligible heritage value but their loss should be mitigated by a limited programme of building recording.<sup>250</sup> There are records of ridge and furrow cultivation but imperceptible on site. Archaeological investigation found only ditches of low value. Palaeoenvironmental remains may be of medium significance. Their loss should be mitigated by sampling and recording in the footprint of the proposed attenuation pond.<sup>251</sup>

98. The appellant's preliminary ground conditions assessment recommends that further ground investigation and assessment be undertaken, notably in the area

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<sup>243</sup> Highways Statement of Common Ground with the Council (Inquiry document INQ6), paragraph 2.3.2

<sup>244</sup> Document ESD05a

<sup>245</sup> Supporting Planning Statement paragraphs 8.134ff; Environmental Statement paragraph 15.106

<sup>246</sup> Environmental Statement paragraph 15.103

<sup>247</sup> Supporting Planning Statement paragraphs 8.136-8.146; Environmental statement paragraphs 16.156, 16.159 and 16.169

<sup>248</sup> Environmental Statement paragraph 16.151

<sup>249</sup> Environmental Statement paragraphs 10.53 and 10.120

<sup>250</sup> Environmental Statement paragraphs 10.72 and 10.125

<sup>251</sup> Environmental Statement paragraphs 10.60, 10.66-70 and 10.128 and Appendix 10.1 (Historical Baseline) Appendix EDP5 paragraph 4.2

of and around the former Chaloner's Whin landfill and in and around Marsh Farm.<sup>252</sup>

*Very Special Circumstances*

99. Examination of the Local Plan is currently in progress and has called into question the basis on which the Green Belt boundary has been chosen.<sup>253</sup> Notwithstanding such arguments, the appellant's case adopts a pragmatic approach to pursuit of this appeal on the basis that the site should be deemed to be within the Green Belt but that there exist compelling very special circumstances which support the appeal proposals.<sup>254</sup> These are listed in the appellant's opening and closing statements<sup>255</sup> and can be summarised as;

- Housing supply in a situation of shortage
- Affordable housing supply in a situation of shortage
- Net biological diversity gains on site
- Provision of open space well in excess of requirements, in a situation of deficiency
- Delivery of a local centre and community facilities
- Design to provide a clear urban edge
- Economic benefits

*(i) Housing*

100. The Housing Land Supply has an agreed range of 2.19-2.77 years.<sup>256</sup> It is representative of a situation that both the Council and the local MP describe as a crisis.<sup>257</sup>

101. At the time of preparing the Environmental Statement the latest York Annual Monitoring Report showed the completion of new dwellings (net) had averaged

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<sup>252</sup> Environmental Statement Appendix 11.1 paragraph 7.2

<sup>253</sup> Appellant's Statement of Case (Document CD088) paragraph 4.2; Supporting Planning Statement Appendix V

<sup>254</sup> Gary Halman proof paragraph 8.12.

<sup>255</sup> And in Statement of Case section 7 and Supporting Planning Statement section 7

<sup>256</sup> Inquiry Document INQ5. The appellant and the Council are content that the appeal decision is based on a range rather than a specific figure. The difference between them lies in a dispute over the deliverability of eight sites. Both parties adduce a number of appeal decisions in support of their respective interpretations of deliverability. There is little point in trying to home in on a more precise figure for two reasons; (i) whichever figure is chosen, the Housing Land Supply is clearly inadequate, and (ii) because in terms of precise detail the situation is volatile, changing on a daily basis as homes fall into or out of the pipeline as the example given in paragraph 3.3 of the SOCG demonstrates but such volatility does not affect the scale of the deficiency so is not likely to lead to a different overall conclusion, namely that the Housing Land Supply is clearly inadequate. However, should the Secretary of State wish to alight upon a precise figure, the information necessary to make that choice is contained within paragraph 2.13 of the SOCG.

<sup>257</sup> Appellant's closing submissions paragraph 57

- around 652 since 2008. With the exception of 2016, the Council has failed to meet its target requirements in each year since 2007.<sup>258</sup>
102. Representations were prepared by GVA HOW Planning on behalf of the Applicant in response to the City of York Publication Local Plan Regulation 19 Consultation (February 2018). The Representations identified that the Council's approach to identifying its Objectively Assessed Need (OAN) is unsound. The Council rejected the advice of GL Hearn, their professional advisors, that 867 dwellings per annum (dpa) should be regarded as the demographic 'starting point' for establishing the OAN, with percentage uplifts to account for market signals across York. To respond to both market signals and affordable housing need, GL Hearn recommended a 10% uplift resulting in an OAN of 953 dpa.
103. Notwithstanding the evidence base presented to CYC regarding their OAN and housing trajectory and delivery, the Council have progressed with a draft local plan which sets out an OAN of 867 dpa. In light of this, the Planning Inspectors reviewing the draft Local Plan have identified particular concerns regarding the OAN figure and the Green Belt Review.<sup>259</sup> The Council is currently promoting an OAN through the Local Plan process of 790 dwellings pa.<sup>260</sup>
104. Within the administrative boundary of York, there are a number of local, regional and nationally designated ecological sites, including an internationally designated ecological site. Several of the key local plan allocations are constrained by these ecological sites and the potential effects of development upon these have yet to be fully demonstrated to the satisfaction of statutory consultee Natural England.
105. Furthermore, given the City of York's heritage status there are also heritage constraints associated with some of the development sites identified in the Local Plan, which affects the potential development capacities. Other recurring constraints for draft allocated sites include air quality, with a significant area of the strategic highways network designated an Air Quality Management Area (AQMA) due to exceedances of pollution criteria; extensive flooding associated with the Rivers Ouse and Foss; and highways impacts coupled with a need for infrastructure improvements to accommodate the growing population and number of vehicle users on the highways network.
106. Most of the strategic allocations in the emerging local plan are the subject of significant opposition from both the public and statutory consultees.<sup>261</sup> For the purposes of this appeal it is not permissible to presume that York's housing crisis will be resolved by the emerging local plan.<sup>262</sup>
107. In the absence of the proposed development, it is not considered the Local Plan can deliver the housing to achieve a realistic OAN<sup>263</sup> and additional sites will be required to deliver the authority's OAN. The Application site is extremely well

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<sup>258</sup> Appellant's closing submissions paragraph 57, referencing the SHMAA Addendum 2017, paragraph 3.13, copy not provided.

<sup>259</sup> Appellant's Statement of Case, paragraph 4.2; Supporting Planning Statement paragraphs 5.14, 7.11 and Appendix 5

<sup>260</sup> Gary Halman proof paragraph 6.20

<sup>261</sup> Gary Halman's Proof of Evidence on behalf of the appellant, appendix 5

<sup>262</sup> Appellant's closing submissions, paragraph 6

<sup>263</sup> Environmental Statement, paragraphs 4.8-4.11 and 4.46-4.47

placed in a sustainable location to help deliver this additional need, being suitable, available and deliverable.

108. Housing affordability is also a challenge for York. In 2017, the ratio of lower quartile house prices to earnings (a measure of housing affordability) stood at 9.1 in York, compared to 5.7 regionally and 7.3 nationally. Further, the ratio between York and England has widened over the past 10 years, indicating that affordability has worsened in York relative to nationally.<sup>264</sup> By September 2018, lower quartile affordability ratios at 9.41 are significantly higher than both national and regional ratios.<sup>265</sup>
109. Private rental costs have also risen so that York's rental costs significantly exceed those for the region and England as a whole.<sup>266</sup> G L Hearn in the 2019 Housing update directly relate this to a lack of affordability in the purchase market.<sup>267</sup>
110. Affordable housing supply is very low. The 2016 SHMA noted a need for 2,865 affordable units 2014-2019. Actual delivery was 462. However, right to buy sales of the Council's housing stock were 324 over the same period. Thus, the net addition to the affordable stock over the period was only 138 homes.<sup>268</sup>
111. The proposal will deliver 35% affordable housing, in excess of the emerging local plan requirement of 30% and well in excess of the Council's recent average achievement of 13.31%.<sup>269</sup> This represents a very special circumstance necessary to make the proposal acceptable in planning terms.<sup>270</sup>
112. The Council disparages the value of this provision in excess of requirements by insisting on a particular fixed price for the discounted sale housing which would be less than 30% of open market value, a discount of over 70%. In contrast, nothing in the definition of affordable housing in Annex 2 of the NPPF requires a discount of more than 20%. Nor does it require discounted market sales housing or other affordable routes to home ownership to be routed through a Registered Provider as middle man offering no added value. The administrative provision to ensure continued occupancy by eligible persons is achieved with a Land Registry restriction on the title of a discounted sale dwelling.<sup>271</sup>

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<sup>264</sup> Environmental Statement, paragraphs 3.21 and 7.27. The appellant's closing submissions, paragraph 57, referencing Gary Halman's proof paragraph 6.4 has different figures, based on average house prices rather than lower quartile figures (9.9 for York, and 7.3 for the region). The document at Appendix 3 of Gary Halman's proof to which he refers has average figures different again for 2016/2017; 9.6 for York, 7.2 for the region and 10.2 for England but the point remains the same.

<sup>265</sup> Gary Halman's proof paragraph 6.6

<sup>266</sup> Gary Halman's proof paragraph 6.8

<sup>267</sup> Gary Halman's proof paragraph 6.9

<sup>268</sup> Gary Halman's proof paragraph 6.10

<sup>269</sup> Gary Halman's proof paragraph 6.22

<sup>270</sup> Gary Halman's proof paragraph 6.23

<sup>271</sup> Appellant's closing submissions, paragraph 57; Addendum to appellant's closing submissions, commenting on paragraph 77 of Council's closing submissions

*(ii) Biodiversity gains*

113. The site has been the subject of several decades of intensive arable farming. Consequently, both its landscape fabric and its ecology have become relatively impoverished.<sup>272</sup> The development layout will enable the majority of the important habitats present on site to be retained, protected and enhanced,<sup>273</sup> whilst also enabling the creation of new habitats of ecological value. Notwithstanding the barrier which security fencing will provide to larger mammals,<sup>274</sup> the EPEZ and other new habitats and green infrastructure will reverse the recent trend of increasing habitat fragmentation in areas surrounding Askham Bog SSSI by providing native wetland, grassland, scrub and woodland habitats.<sup>275</sup> This will in turn maintain and enhance opportunities for the existing protected species populations and provide an overall significant net gain in biodiversity.<sup>276</sup>
114. A Biodiversity Impact Assessment has been undertaken using the DEFRA Biodiversity Metric 2.0. This demonstrates that an area-based biodiversity unit net gain of 117.54% would be achieved. By way of context, DEFRA has consulted on a proposed 10% mandatory gain. Notwithstanding the proposed removal of 32% of existing hedgerows on site (of which 81% would be classed as "important",<sup>277</sup> a 5.32% increase in linear habitat biodiversity unit would be achieved but this does not take into account the bund and ponds, even though they would be linear features.<sup>278</sup> The Council contests the appellant's use of the DEFRA matrix for calculating benefits but accepts that a net gain can be demonstrated.<sup>279</sup> Even correcting for the Council's points produces a biodiversity unit net gain of 80%, well above the government target.<sup>280</sup>

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<sup>272</sup> Design and Access Statement pages 14 and 16; Supporting Planning Statement paragraph 7.105; Tom Wigglesworth's Proof of Evidence paragraph 2.31; Environmental Statement paragraphs 9.73 to 9.92 records the presence on site of 15 bird species of conservation concern but none in numbers, commuting bats on the southern boundary, typical for urban edge farmland, no evidence of roosting bats (Marsh farm buildings unsuitable), no badgers found, though site suitable, no signs of water vole or otter but known to occur, no Great Crested Newts on site, no reptiles on site and no indication that any of the notable aquatic invertebrates recorded within the SSSI have significant populations which extend beyond the habitats of the SSSI into and across the aquatic habitats within the site.

<sup>273</sup> Recommendations for tree protection are made in the Environmental Statement Appendix 8.1, section 5

<sup>274</sup> Tom Wigglesworth's Proof of Evidence on behalf of the appellant paragraphs 5.30-5.32

<sup>275</sup> Supporting planning statement paragraph 8.59; Environmental Statement paragraph 9.179 records the proposed creation of approximately 5.2ha of new native woodland, hedgerow and scrub planting. Table 9.10 summarises proposed habitat losses and gains

<sup>276</sup> Design and Access Statement page 14; Supporting Planning Statement paragraphs 8.66 and 8.67

<sup>277</sup> Environmental Statement paragraph 9.111. Subsequently corrected during cross-examination

<sup>278</sup> Tom Wigglesworth's Proof of Evidence on behalf of the appellant paragraphs 3.16-3.22

<sup>279</sup> Appellant's closing submissions, paragraph 58; Nadine Rolls's oral evidence in chief and Rebuttal proof on behalf of the Council, paragraph 4.18. The Council's committee report, paragraph 4.11, confirms that, in part, the proposals comply with the Council's Green Corridors Technical Paper (Core Document CD072a)

<sup>280</sup> Tom Wigglesworth, oral evidence in chief.

*(iii) Open space*

115. Woodthorpe, Bishopthorpe and Copmanthorpe are the three suburbs of York which are closest to the site. All three are deficient in outdoor sport and amenity greenspace.<sup>281</sup> Woodthorpe and Dringhouses Ward has recognised issues in respect of both physical and mental health and isolation.<sup>282</sup> The site would provide a total of 13.75ha of such space, well in excess of the policy requirement of 7.74ha.<sup>283</sup> That level of provision would be a significant community benefit.<sup>284</sup>

116. The Illustrative Masterplan demonstrates that this area of the site could accommodate the following uses:

- A full-size football pitch;
- A 5-a-side football pitch;
- 4 tennis courts;
- Allotments;
- Multi-use Games Area;
- Skate Park; and
- Extensive POS and Green Infrastructure.<sup>285</sup>

Its precise nature is not specified because the Council has yet to complete its audit of recreational provision. The Unilateral Undertaking allows for its precise nature to be designed so as to provide maximum benefit and alignment with local needs and the Council's Playing Pitch Strategy when published. A high-quality scheme is capable of being developed in conjunction with Sport England.<sup>286</sup>

*(iv) Local Centre and community benefits*

117. Although there is a good range of facilities within walking distance, the local centre at Woodthorpe does not offer space for community use or for opportunities such as a nursery facility which could be provided at the local

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<sup>281</sup> Design and Access Statement page 64; Environmental Statement Appendix 8.1, paragraph 2.28

<sup>282</sup> Appellant's closing submissions, paragraph 58; Supporting Planning Statement paragraph 7.88

<sup>283</sup> Supporting Planning Statement paragraph 4.23 (paragraph 7.84 and appellant's closing submissions paragraph 58 refer to 13.57ha, understood to be an error because Land Use Schedule shown on page 40 of the Design and Access Statement and figures for "Open space" and "Sports Pitches" on pages 49 and 50 of the Planning Obligation sum to 13.75ha which is also the figure given in paragraph 5.21 of the Environmental Statement). This does not include the external tennis courts which may be included with the Pavilion as defined on page 50 of the planning obligation

<sup>284</sup> Appellant's closing submissions, paragraph 58; Appellant's Statement of Case, paragraphs 7.24-7.26; Supporting Planning Statement paragraph 7.88; The Council's committee report paragraph 3.27 confirms that it would reduce the shortfall in outdoor sports provision in the area.

<sup>285</sup> Supporting Planning Statement paragraph 4.22; Environmental Statement paragraph 5.20

<sup>286</sup> Appellant's Statement of Case, paragraph 7.25

centre proposed on site.<sup>287</sup> While giving it little weight, the Council's committee report accepts the local centre as a benefit of the proposal.<sup>288</sup>

*(v) Design to provide a clear urban edge*

118. Detailed design would be a reserved matter but the land-use parameter plan specifies the location of a landscape buffer. The new settlement edge is to be softened through the use of locally represented, and therefore visually appropriate, new tree planting to ensure that the edge of the proposed development is not considered to be abrupt.<sup>289</sup> Mrs Priestley's evidence on behalf of the Council notes that the proposal could provide a better urban edge to Woodthorpe.<sup>290</sup>

*(vi) Economic benefits*

119. Mr Halman on behalf of the appellant estimates that about 300 construction jobs would be directly provided for about five years, increasing construction employment in York by 6%.<sup>291</sup> The additional household expenditure resulting from the additional population would amount to around £5million, supporting 50 full time equivalent (fte) jobs. There would be fiscal benefits to the Council of about £3.7million in New Homes Bonus and approximately £900,000 annually in Council tax revenue.<sup>292</sup>

### **The Case for the Council**

120. Development of the housing element of the site was once included as a proposal in early stages of the emerging local plan. But the site is subject to such severe constraints that no part of the site is now proposed or safeguarded for development in any version of the emerging local plan since 2014. These constraints outweigh any benefits of the proposal.<sup>293</sup> The constraints relate to

- Green Belt
- The impact on the Askham Bog; and
- Impact on landscape character

Impacts on transportation<sup>294</sup> and on education provision<sup>295</sup> have been resolved by agreement with the appellant.

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<sup>287</sup> Appellant's Statement of Case, paragraph 7.33: Design and Access Statement, page 64

<sup>288</sup> Council committee report, paragraph 4.89

<sup>289</sup> Appellant's Statement of Case paragraph 8.4

<sup>290</sup> Esther Priestley's Proof of Evidence on behalf of the Council, paragraphs 3.1.1 "within itself, the proposed development and open spaces have design merit" and paragraph 3.2

<sup>291</sup> Design and Access Statement, page 64; Environmental Statement paragraphs 7.45 and 7.47

<sup>292</sup> Supporting Planning Statement, paragraphs 7.95-7.99; Environmental Statement paragraph 7.67

<sup>293</sup> Council's opening statement paragraphs 1, 2 and 3; Frances Harrison's Proof of Evidence section 4

<sup>294</sup> Council's closing submissions paragraph 9 referencing Inquiry Document 6 (Highways Statement of Common Ground)

<sup>295</sup> Council's opening statement paragraph 3

## *Green Belt*

121. The current Green Belt status of the site is beyond doubt, as the appellant accepts.<sup>296</sup> The assessment of the Green Belt credentials for the site was carried out as part of the emerging local plan and previously endorsed by the York Local Plan Green Belt Inspector's Report in 1994.<sup>297</sup> The whole site lies within the general extent of the Green Belt in accordance with the saved policies of the Yorkshire and Humber Regional Spatial Strategy 2008. The full force of green belt policies applies to the whole site.<sup>298</sup> The proposed Green Belt boundary in the appeal location provides the most consistent and easily recognisable boundary in the area and has associations with historical features established for a significant period of time.<sup>299</sup> There is no basis for any watered-down approach to the application of the NPPF's strict approach to Green Belt.<sup>300</sup>
122. It is correct to recognise that the housing element of the appeal site was not identified as performing a strategic role in terms of the green belt or rural setting and that the only stated reason for its omission as a proposed allocation subsequent to the 2014 Publication Draft Local Plan was because of doubt over the impact on Askham Bog and that there were sufficient alternative sites which better met the site selection criteria.<sup>301</sup> But it is a mistake to conclude from that that this element of the site offers little or nothing material in Green Belt terms.<sup>302</sup> The remainder of the site is identified as performing a strategic role.<sup>303</sup>

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<sup>296</sup> Council's closing submissions paragraph 12, referencing the appellant's Statement of Case paragraph 7.8 and the general Statement of Common Ground paragraphs 2.1-2.3 and 3.1; Council's Statement of Case paragraph 2.6 referencing appeal decisions including APP/C2741N/O5/1189897 and APP/C2741N/O5/1189885; Frances Harrison's Proof of Evidence paragraph 2.8 referencing additional appeal decisions APP/C2741/W/16/3149489, APP/R0660/A/13/2210660; Frances Harrison's Rebuttal Proof paragraphs 2.2, 2.4, 2.5, 2.7, 2.8 and 2.9 referencing additional appeal decisions APP/C2741/V/05/1189972, APP/C2741/A/08/2069665, APP/C2741/W/16/3149489, APP/C2741/W/19/3227359 and contrary decision APP/C7241/A/13/2191767

<sup>297</sup> Council's closing submissions paragraph 3 and 19, referencing Core Document CD035 (topic Paper TP1 Addendum), Annex 3, paragraph A3:9, Historic England's consultation response letter dated 7 February 2019; Mrs Harrison's Proof of Evidence paragraph 2.4

<sup>298</sup> Council's opening statement paragraph 4; Council's closing submissions paragraph 13; Mrs Harrison's Proof of Evidence paragraph 2.6 and her Rebuttal Proof paragraph 2.3

<sup>299</sup> Council's Statement of Case paragraph 3.13

<sup>300</sup> Council's closing submissions paragraph 16(1)

<sup>301</sup> Council's closing submissions paragraph 15; Council's committee report (Core Document CD001) paragraph 3.2; Council's Statement of Case paragraph 4.7; Frances Harrison's Proof of Evidence paragraphs 3.14-3.15; Alison Stockdale's Proof of Evidence paragraphs 3.38 and 3.39

<sup>302</sup> Council's opening statement paragraph 5, referencing Mrs Harrison's Proof of evidence section 4 including figures 1 and 2; Council's closing submissions referencing Mrs Harrison's proof paragraphs 3.6-3.9; Council's closing submissions paragraph 15 which point out that the Preferred Options Plan 2013 did not conclude that no weight be given to the other purposes of the Green Belt which land around York might serve; Core Document CD035 pages 11 &12, paragraphs 4.6 and 4.7

<sup>303</sup> Council's closing submissions paragraph 14; Mrs Harrison's Proof of Evidence paragraphs 3.7-3.12 and figures 1 and 2 (copied from Core Document CD003) show that the part of the site not proposed for built development is identified as an area retaining the rural setting of the city and as a Strategic Area to keep permanently open

The site includes in part land that is important to the character and setting of historic York.<sup>304</sup>

123. The detailed assessment of the site in Local Plan Topic Paper TP1 Annex 3 addendum<sup>305</sup> makes it clear that the land is within an area which serves the first four Green Belt purposes in that

- The adjacent land is important to the historic character and setting of York
- The land functions in maintaining separation between York, the outer ring road (A1247/A64) and Copmanthorpe
- The area between Moor Lane and the A64 also contains other land uses which illustrate elements of the countryside and which enhance the Green Belt. The openness of the area has created valuable resources for the population of York as emphasised by the designation of District Green Corridor 14
- There is no difference between the housing element and the remainder of the site in terms of landscape or openness. All the land south of Moor Lane is rolling diverse arable farmland
- Askham Bog provides historical evidence of the geological and climatic evolution of the area as well as the influence of human processes
- While much of the urban area of Woodthorpe to the north is modern development with only tenuous links to the city centre, the close proximity of development has not blighted the adjacent farmland
- There are good views from Moor Lane and properties in Woodthorpe into Askham Bog and the surrounding countryside which increases the sense of the city within and close to its rural context
- The proposed Green Belt boundary supports York as a compact City within a contained and concentric form of development which maintains views across the flat terrain and limits development within the identifiable compact district of Woodthorpe
- Moor Lane provides the logical boundary between the existing urbanised areas and the countryside. It serves to protect areas of historic character and setting while preventing coalescence of settlements and encroachment into the countryside.<sup>306</sup>

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<sup>304</sup> Council's opening statement paragraph 7, referencing Core Document CD035 (Local Plan Topic Paper TP1 Addendum) – Annex 3 at page A3:9

<sup>305</sup> Core Document CD035 – App3 at page A3.9

<sup>306</sup> Council's opening statement paragraph 7, referencing Core Document CD035 (Local Plan Topic Paper TP1 Addendum) – Annex 3 at A3:10; Council's closing submissions paragraphs 17 and 18 referencing Mrs Stockdale's Proof of Evidence paragraphs 2.3, 3.21-3.26 and section 4 (At paragraphs 3.23 and 3.26 Mrs Stockdale actually claims that all five purposes of the Green Belt are served).

124. There is no parallel with the Boroughbridge Road appeal decision<sup>307</sup> relating to proposed site allocation ST2 in the emerging local plan.<sup>308</sup> That site is not now serving any Green Belt purpose and is surrounded by development. It has no particular resonance with the current appeal. Indeed, its credentials serve to re-enforce the significant problems with the appeal site.<sup>309</sup>
125. The appellant confuses openness and landscape.<sup>310</sup> The landscape considerations imported by Mr McInerney, supported by legal authorities, are misconceived.<sup>311</sup> The development would offer no benefit such as increased openness.<sup>312</sup> A lack of special landscape qualities cannot undermine the fundamental aim of Green Belt policy of keeping the land permanently open, free from any building.<sup>313</sup> There would be a very significant and visual loss of openness arising from the housing element of the proposal<sup>314</sup> and from the sports pavilion.<sup>315</sup>
126. Engineering operations are also inappropriate development if they conflict with the purposes of the Green Belt or do not preserve its openness.<sup>316</sup> Notwithstanding the lack of any buildings on the EPEZ, its height, length and depth and its 3m high security fence would have a significant effect on openness. Planting on it cannot take away from the loss of openness arising from the engineering operation of its construction. Planting cannot make it appropriate development.<sup>317</sup> It is both an integral element of the appeal proposals and of itself also offends green belt principles. Even though some elements of the proposal may themselves not constitute inappropriate development, they are not severable from the application as a whole.<sup>318</sup>
127. The concept of compensatory improvement to the Green Belt in relation to paragraph 138 of the NPPF applies concerning the removal of land from the Green Belt through the Local Plan process and not, as here, in relation to the

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<sup>307</sup> Appendix 1 of Mrs Harrison's Rebuttal Proof and Core Document CD035A

<sup>308</sup> Core Document CD007 Appendix 1 at page 44

<sup>309</sup> Council's closing submissions paragraph 16(2)

<sup>310</sup> Council's closing submissions paragraph 20 referencing Mr McInerney's Proof paragraph 1.10 and Mr Halman's comment (c)  
On page 31 of his main proof

<sup>311</sup> Council's closing submissions paragraph 22 (2), supported by an Annex quoting legal authorities Lindblom LJ in R (oao Lee Valley Regional Park Authority) v Epping Forest DC [2016]EWCA Civ 404 and in Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC [2018] EWCA Civ 489; Turner v Secretary of State for Communities and Local Government [2016] EWCA Civ 466

<sup>312</sup> Council's closing submissions paragraph 22(1)

<sup>313</sup> Council's closing submissions paragraph 27

<sup>314</sup> Council's closing submissions paragraph 26; Council's committee report paragraph 4.8

<sup>315</sup> Council's Committee report paragraph 4.7

<sup>316</sup> Council's closing submissions paragraph 22(2)

<sup>317</sup> Council's closing submissions paragraph 22(3); Council's committee report paragraphs 4.9 and 4.14; Council's Statement of Case paragraph 4.15

<sup>318</sup> Council's opening statement paragraph 6, referencing Ms Priestley's Proof of Evidence paragraph 3.1.1 on page 13; Council's closing submissions paragraph 23; council's committee report paragraph 4.10; Esther Priestley's Proof of Evidence paragraph 3.3.2; Alison Stockdale's Proof of Evidence paragraph 3.11, 3.12 and 3.13

determination of an appeal.<sup>319</sup> Government policy<sup>320</sup> is that substantial weight is given to any harm to the Green Belt. The Council emphasises the essential characteristics of openness and permanence of Green Belts and the fundamental aim of Green Belt policy to keep land permanently open.<sup>321</sup>

### *Landscape character*

128. The appeal site, adjacent fields and the Bog are rural in character and independent in nature from the adjacent built edge of the City. The site is a component of the open countryside that surrounds York and contributes to the setting of the historic City.<sup>322</sup>
129. Within itself, the proposed development and open space have design merit.<sup>323</sup> Housing, infrastructure and a local centre would replace the essentially open, rural landscape on about 14ha of the site. Views across open countryside from Moor Lane would be lost. Moor Lane would become closed in by built development for the majority of its length. The existing development on the south side of the road is not a precedent because it comprises a variety of ages and styles, only one unit deep with views of the countryside in between the houses.<sup>324</sup> An alien, 3m high, earth bund and fencing would be introduced.<sup>325</sup> The current clear urban edge would be moved closer to the Bog, a landscape of high sensitivity. A sequence of built development, agricultural field, ancient woodland and Bog would be replaced by a sequence of built development, trees and wetland buffer, ancient woodland and Bog.<sup>326</sup> Views north from the Bog would also be significantly and detrimentally changed.<sup>327</sup> Although the site has no special landscape quality designation, it is clearly of local value in providing a sense of place, a rural setting and a direct association with the countryside.<sup>328</sup> The term landscape does not mean just special or designated landscapes.<sup>329</sup>
130. Mr McInerney, for the appellant, accepted the following points;<sup>330</sup>
- Green Belt remains a significant policy constraint

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<sup>319</sup> Council's closing submissions paragraph 24

<sup>320</sup> NPPF paragraph 144

<sup>321</sup> Council's closing submissions paragraph 11

<sup>322</sup> Council's opening Statement paragraph 14; Council's closing submissions, paragraph 28. But see Council's Committee Report (Core Document CD001) paragraph 3.11 for a more qualified comment "The development is not so extensive that its visual impact would cause significant harm to the setting of the city from the outer ring road." And Esther Priestley's Proof of Evidence paragraph 3.4.22.

<sup>323</sup> Esther Priestley's Proof of evidence for the Council, paragraphs 3.1.1, 3.2.2, 3.2.4 and 3.2.6

<sup>324</sup> Esther Priestly, oral evidence in chief

<sup>325</sup> Esther Priestley's Proof of Evidence paragraphs 3.1.1 and 3.1.14

<sup>326</sup> Council's Committee report (Core Document CD001) paragraphs 4.12 and 3.10; "The result is that the overall land mass becomes part of a shared, more complex but not unattractive environment"; Esther Priestley's Proof of Evidence paragraph 3.3.9

<sup>327</sup> Council's Committee Report (Core Document CD001) paragraph 3.10

<sup>328</sup> Council's opening statement paragraphs 14 15 and 16; Ms Priestley's Proof of Evidence paragraph 2.3.2

<sup>329</sup> Council's closing submissions paragraph 29

<sup>330</sup> Council's closing submissions paragraph 31, referencing Mr McInerney's Proof of Evidence paragraphs 1.10, 1.13, 1.18(ii), 3.15, 5.16 and 5.20

- The site is largely free of urban fringe effects
- The countryside south of Moor Lane forms part of the setting of the city
- Within that setting is the Bog which is accepted to be a landscape feature of high sensitivity
- The setting of the historic city of York is an important matter, including in landscape terms, and one which the Council has repeatedly raised in objection to the site
- The development would have a significant impact on views enjoyed by users of Moor Lane
- The EPEZ is not a feature characteristic of the site's Landscape Character Type.

131. The containment of the site is overstated. The site is not separated from the open agricultural setting of the city by the northern bypass. Rather, the northern ring road passes through a contiguous agricultural landscape which can be appreciated on both sides of the road. The road causes severance but the landscape pattern continues from one side to the other.<sup>331</sup> Both sides are within the same Landscape Character Type. There is intervisibility between both sides. There is a view from footpath 2/5/20 on the west of the bypass to the proposed housing on the east. Except at junctions, the road is not picked out by lamp posts. Mr McInerney for the appellant agreed all these points.<sup>332</sup>

132. Perception of a city often comprises a collection of limited views. The number of vehicles using Moor Lane gives significance to views therefrom.<sup>333</sup> Mr McInerney has underestimated the number of people using Moor Lane.<sup>334</sup> These views are recognised as good in the City of York Characterisation Project.<sup>335</sup> Their substitution by foreshortened views from the development proposed would be incomparable to the existing situation.<sup>336</sup> A profound and permanent change will be clearly suffered, in particular by those moving and residing along Moor Lane.<sup>337</sup>

133. In addition, views north from the Bog will be completely blocked by the proposed bund within the EPEZ. Such artificial enclosure, removing the opportunity to enjoy the Bog's rural setting is too heavy a price to pay. To say that it is a view that would be enjoyed by very few fails to take into account;

- The aim of the YWT to extend public access to a path along the north of the reserve, from which a northern outlook over open countryside would be blocked

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<sup>331</sup> Council's closing submissions paragraph 32

<sup>332</sup> Council's closing submissions paragraph 33

<sup>333</sup> Council's closing submissions paragraph 34

<sup>334</sup> Council's closing submissions paragraph 36

<sup>335</sup> Council's closing submissions paragraph 35 referencing appendix DM6 of Mr McInerney's evidence for the appellant,

<sup>336</sup> Council's closing submissions paragraph 37

<sup>337</sup> Council's closing submissions paragraph 40

- The inconsistency of a bund and security fence with the perception of the Bog in the countryside

The impact of the EPEZ in terms of views to and from the Bog has therefore been significantly underestimated.<sup>338</sup> It would be a significant and unnatural intervention in the landscape.<sup>339</sup> It would be about ten times the height of any elevational differences in the Bog. It looks very much like placing to the north of the Bog a smaller version of the York Moraine (which lies to its south). It would appear to represent a significant change in topographic setting for the Bog, not recognised by Mr Thomas or Mr Parkinson for the appellant.<sup>340</sup> Its planting would not be typical of the local landscape.<sup>341</sup>

134. Mr McInerney sought to devalue the character and intrinsic value of the site but;<sup>342</sup>

- The urban fringe of Woodthorpe has not blighted the adjacent farmland
- The York Landscape Appraisal is recognised as a useful reference, identifying key features and best practice design principles
- The appeal site is broadly representative of the overall character and qualities of the rolling diverse arable farmlands Landscape type
- There is nothing which differentiates the landscape within the red line boundary of the site and the rural landscape to its west
- The site is part of a rural, working agricultural landscape
- The enclosure of Moor Lane would remove the sense of place and relief from extensive suburban areas in a way not comparable with enclosure from the growth of hedgerows or the existing development on the south side of Moor Lane
- Whilst audible, traffic on the A64 and northern ring road does not weigh heavily on the tranquillity of the site.

135. Woodthorpe provides a clear and satisfactory urban edge with trees and hedges. It provides a sense of place which development would erode. Therefore, its presence does not justify development but heightens the

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<sup>338</sup> Council's closing submissions paragraph 41, referencing the YWT's response to the Environmental Statement Addendum (at Appendix 2 of Ms Priestley's Proof of Evidence); Council's committee report paragraph 4.15; Esther Priestley's Proof of Evidence paragraphs 1.2.3, 2.4.7, 3.3.3, 3.3.12 and 3.4.9 "I think, despite the current informal nature of the access to the northern boundary of the Bog, the significance of the views and the setting/context of the Bog should be given more weight due to the nature and national status of the SSSI and its significance as a natural heritage asset." And "Existing views across open fields, including hedgerows and Marsh Farm buildings, with the urban edge in the distant background, dotted with trees, gives the SSSI a sense of its rural context and separation from the growth of the city."

<sup>339</sup> Council's Committee Report paragraph 4.13

<sup>340</sup> Council's closing submissions paragraph 51(8(iii))

<sup>341</sup> Esther Priestley's Proof of Evidence, paragraph 3.3.14

<sup>342</sup> Council's closing submissions paragraph 35 referencing paragraph 3.7 and appendix DM3 of Mr McInerney's evidence for the appellant and paragraph 8.75 of the Environmental Statement

importance of keeping the site undeveloped. The impact of the loss of the site has been underestimated.<sup>343</sup> The sense of place is heightened by the presence of Askham Bog, a key feature of the open countryside contributing to the landscape setting of the historic City.<sup>344</sup>

136. The landscape serves a substantial population, providing the city and its outlying villages with a rural setting and direct access to the countryside. It thus has a value and status which reaches beyond the relative quality of its aesthetic appeal.<sup>345</sup>

#### *Askham Bog*

137. This issue has two separate elements;

- Hydrogeological considerations
- Urban edge impacts

##### *(i) Hydrogeological considerations*

138. Development on land outside an SSSI which is likely to have an adverse effect on it should not be permitted. Exceptional circumstances are required for that to happen. The Bog is an asset sensitive to changes in groundwater. It is to be cherished and protected. Its lowland fen element represents irreplaceable habitat at risk from the development and so the development should be refused unless there are wholly exceptional reasons where the public benefit would clearly outweigh the loss or deterioration of habitat.<sup>346</sup>

139. The context for consideration of this issue is;<sup>347</sup>

- The sensitivity and importance of the water table to the irreplaceable habitat of lowland fens, threatened through changes in land drainage.<sup>348</sup>
- The need for a strict and precautionary approach, matching the effort of assessment to the level of risk of environmental damage and based on a robust conceptual model of the site.<sup>349</sup>
- The sensitivity of the plant communities of the Bog to changes in water levels measured in a few centimetres.<sup>350</sup> The species *Carex Elongata*

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<sup>343</sup> Council's closing submissions paragraph 38

<sup>344</sup> Council's closing submissions paragraph 39(1), referencing the Heritage Topic Paper Update for the Local Plan 2014 (Core Document CD033 – App3)

<sup>345</sup> Council's closing submissions paragraph 39(2)

<sup>346</sup> Council's opening statement paragraph 10; Council's closing submissions paragraph 7, 46, 47 and 83

<sup>347</sup> Council's closing submissions paragraph 50

<sup>348</sup> Council's Updated Biodiversity Action Plan pp39-42 (Core Document CD075), especially section 5 on page 41; Nadine Rolls's Proof of Evidence paragraph 6.7

<sup>349</sup> CIEEM guidelines detailed in Ms Rolls's Proof of Evidence section 5 and paragraphs 6.1-6.6; ODPM Circular 06/2005 (Core Document CD073) referenced in Ms Rolls's Proof at paragraph 5.4; Paragraph 3.1 of Environment Agency's Hydrogeological Impact Appraisal Advice (Paragraph Appendix B of Proof of Evidence of Mr Jones for the YWT)

<sup>350</sup> Table on page 40, figure 3.6 on page 42 and table on page 45 of the study of Askham Bog by Professor Fitter and Clifford Smith (Core Document CD044); paragraph 3.3 of Arup Report 2003 (Core Document CD037)

(gingerbread sedge) is part of the designated features of the SSSI and is dependent on winter flooding of the wet woodland at the west of the reserve.<sup>351</sup>

- The Bog's system has evolved over 10,000 or so years. Effects may take place over long periods.<sup>352</sup>
- The marginality of the Bog; "Askham is located in a climatic region where rainfall and evapotranspiration are finely balanced, and the site lies on the edge of the range where oligotrophic<sup>353</sup> mires, especially raised bogs, can exist."<sup>354</sup>
- The "limited connectivity" insisted upon by Mr Thomas on behalf of the appellant<sup>355</sup> may therefore be highly significant. The need for caution is reflected in the extensive measures relied upon by the appellant to justify a conclusion that there will be no harm to the Bog.

#### *The hydrogeological model*

140. The simplest hydrogeological model of a continuous groundwater body flowing down to the immediately down-gradient Askham Bog is discounted by the appellant despite it being the most likely option from considerations of topography, geology and basic hydrogeological principles.<sup>356</sup>
141. The centre of the Bog is rainwater fed. It is a different habitat from that at the edge of the Bog fed by groundwater.<sup>357</sup> The distribution of base-rich<sup>358</sup> dependent species sensitive to acidity thus acts as an effective long-term monitor of bog hydrology. It presents a further line of evidence. There is a hydraulic gradient which drives groundwater flow towards Askham Bog. It imparts groundwater pressure in the Bog itself, and discharges into Askham Bog Drain, supporting the water level in the Drain which in turn inhibits drainage from the Bog and contributes base-rich water to the Bog at times of surface water flooding.<sup>359</sup>
142. The appellant's assessment misrepresents the overarching hydrological system, especially in terms of the importance of groundwater. Their conclusions regarding lack of significant impacts are not well founded.<sup>360</sup> YWT has provided detailed evidence from four years of records which show that hydrological continuity occurs between the site and the Bog.<sup>361</sup> Dr Foley on behalf of the

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<sup>351</sup> Council's committee report paragraph 4.26; Nadine Rolls's Proof of Evidence paragraph 6.14

<sup>352</sup> Dr Foley, in evidence in chief

<sup>353</sup> relatively poor in plant nutrients and containing abundant oxygen in the deeper parts.

<sup>354</sup> Paragraph 9.2 of Arup Report (Core Document CD037)

<sup>355</sup> Council's closing submissions paragraph 48

<sup>356</sup> Council's Committee Report paragraph 4.23

<sup>357</sup> Council's Committee report paragraph 4.18; Dr Foley's Proof of Evidence paragraph 7.7

<sup>358</sup> Dominated by calcium and magnesium cat-ions and bicarbonate an-ions; alkaline

<sup>359</sup> Dr Foley's Proof of Evidence paragraph 7.9.5

<sup>360</sup> Council's opening statement paragraph 12

<sup>361</sup> Council's committee report paragraph 4.25

Council does not suggest that rainwater is not the main source of supply to the Bog but he highlights its critical reliance on groundwater as well.<sup>362</sup>

143. Mr Thomas (on behalf of the appellant) considered groundwater to be confined by clay.<sup>363</sup> He accepted that if his conceptualisation of the hydrogeology is in some way mistaken or in error, this would make a material difference to his assessment of the development's impact on the Bog.<sup>364</sup> He confirmed that his model relies upon a correct interpretation of observed geology.<sup>365</sup> That theory can be tested by examining seasonal groundwater levels, groundwater drainage and groundwater chemistry.<sup>366</sup>

#### *Groundwater levels*

144. With the exception of one borehole (BH14/02), seasonal fluctuations in groundwater levels are consistent with rainfall recharge to unconfined groundwater.<sup>367</sup> Delays between rainfall recharge and groundwater level response is indicative of time taken for permeation and is not evidence of hydraulic discontinuity.<sup>368</sup> Mr Thomas's explanation for seasonal fluctuations in groundwater levels is water loading. His explanation was not justified. It is not plausible because a 1m rise in pressure would require the equivalent of 1m weight of water to be imposed. This would require 4m depth of ground to achieve the level changes recorded. Yet the water-bearing sands are all within 4m of the surface.<sup>369</sup>
145. Borehole BH14/02 exhibits the least synchronous annual water fluctuations and the most significant thickness of clay above any of the sand units monitored. The sand strata in boreholes BH14/01, 14/05, 14/06, 14/07 and 14/10 are in relatively shallow strata.<sup>370</sup>

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<sup>362</sup> Council's closing submissions; Dr Foley's Proof of Evidence paragraph 7.13 and Dr Foley's Rebuttal Proof paragraph 2.1(1)

<sup>363</sup> Council's closing submissions paragraph 51(10) referencing Mr Thomas's Rebuttal Proof paragraph 3.2.18 in relation to Boreholes BH14/01, 14/02, 14/06 and 14/10. Mr Thomas gives figures in m/sec for characteristic ground permeability at the site in paragraph 8.2.7 of his Proof of Evidence; Vale of York Formation (Till) Clay  $3 \times 10^{-8}$  to  $3 \times 10^{-7}$ ; Vale of York Formation Clayey or silty sand layers within Till Clay  $1 \times 10^{-6}$  to  $6 \times 10^{-6}$ ; Alne formation silt  $1 \times 10^{-8}$ ; Alne Formation Clayey or silty sand  $5 \times 10^{-7}$  to  $5 \times 10^{-6}$  Dr Foley tabulates the results of permeability tests on the boreholes at table 1 of his Proof in paragraph 6.3.5. He described these results as moderate permeability in response to my question, characterising  $1 \times 10^{-3}$  to  $1 \times 10^{-5}$  as moderate;  $1 \times 10^{-5}$  to  $1 \times 10^{-6}$  as low-moderate and  $1 \times 10^{-4}$  to  $1 \times 10^{-7}$  as low. These categorisations overlap. Figure 19 of Alex Jones's proof of evidence quotes table 5.4 from R Brassington's 1988 textbook defining ranges of permeability but using a different unit of measurement (m/day)

<sup>364</sup> Council's closing submissions paragraph 51(1)

<sup>365</sup> Council's closing submissions paragraph 51(2), referencing Mr Thomas's Proof of evidence paragraphs 8.4.1-8.4.5, 8.4.7 and 8.4.9

<sup>366</sup> Dr Foley's Proof of Evidence paragraph 6.2

<sup>367</sup> Dr Foley's Proof of Evidence section 6.3

<sup>368</sup> Dr Foley's Proof of Evidence paragraphs 6.3.13 and 6.3.14. In cross-examination, Dr Foley estimated 50-60 years to be the rate of movement between the part of the site proposed for development and the Beck

<sup>369</sup> Council's closing submissions paragraphs 52 to 58

<sup>370</sup> Council's closing submissions paragraph 51(11)

146. Mr Thomas argued that water strikes in boreholes are proof that clay inhibits rainwater recharge into lower sandy layers.<sup>371</sup> Yet borehole BH14/07 has sand with no clay at a depth of between 1.2 and 4.5m, likely to be unconfined, but records a water strike at 3.5m, rising to 0.9m after 20minutes. Borehole BH14/06, gravelly clay, struck water at 1.9m rising to 1.6m after 20minutes. So, there is a very variable response of the ground with regard to recorded geology and water strikes. Both clays and unconfined sands exhibit water level rises after water strikes and therefore not necessarily being indicative of clay soils inhibiting rainwater recharge into lower sand layers as Mr Thomas contended.<sup>372</sup>
147. The appellant's infiltration tests did not comply with the methodology of BRE digest 365.<sup>373</sup> Only two were excavated to the required depth, one to only 0.7m. Infiltration rates may therefore have been underestimated. Given the concerns about the limited scope of the boreholes, the particular importance and sensitivity of the Bog, it was essential that as many and as thorough infiltration tests as possible were undertaken, over an appropriate timescale, to an appropriate depth and in triplicate.
148. The original results of the permeability tests<sup>374</sup> do not sit comfortably with the appellant's conceptual model. They were reinterpreted by Mr Thomas. He gives reasons<sup>375</sup> but, given the need for a precautionary approach, the Council contends that further tests should have been carried out. The variability in the outcomes spans a fairly large permeability range such that the use of a geometric mean rather than an arithmetic mean or median makes no meaningful difference. Consequently, neither the infiltration nor the permeability tests undermine Dr Foley's concerns on behalf of the Council over the reliability of Mr Thomas's conceptual model on behalf of the appellant.<sup>376</sup>

#### *Groundwater flows*

149. Groundwater contour plots indicate the direction that groundwater might be expected to flow. If ground has some widely distributed degree of permeability, one would expect to see groundwater contours indicating a slope in the hydraulic gradient from areas of higher ground to lower, indicating a water flow. From the appellant's data, groundwater contours can be drawn.<sup>377</sup> The water slope mimics the topography. It's what would be expected in a normal situation.<sup>378</sup> Mr Thomas acknowledged a hydraulic and topographic gradient from the appeal site

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<sup>371</sup> Council's closing submissions paragraph 51(12) referencing Mr Thomas's Proof of Evidence paragraphs 8.4.1 and 8.4.7

<sup>372</sup> Council's closing submissions paragraph 51(12)

<sup>373</sup> Council's closing submissions Paragraph 51(13(i)), referencing Dr Foley's Rebuttal Proof paragraphs 2.6 and 2.7 and Inquiry document INQ2

<sup>374</sup> Core Document CD040

<sup>375</sup> Mr Thomas's rebuttal proof paragraph 3.2.10

<sup>376</sup> Council's closing submissions paragraph 51(13). Dr Foley's Proof of Evidence paragraphs 6.3.5- 6.3.11 calculate the mean permeability of the appellant's boreholes and from that go on to calculate a crude estimate of the quantity of groundwater drained on a seasonal basis but this argument is not used in the Council's final comments. In cross-examination Dr Foley accepted that the appellant had targeted high permeability boreholes and had not targeted low permeability boreholes for the collection of data and that the analysis was best done using random data rather than that for targeted boreholes.

<sup>377</sup> Dr Foley's Proof of Evidence section 6.4, referencing Core Document CD042

<sup>378</sup> Dr Foley, in evidence in chief

south-eastward towards Holgate Beck and the Bog and also a gradient south-westward from the site towards the Bog on the west side of a low ridge of glacial till.<sup>379</sup>

150. Boreholes and trial pits BH14/01 (north), BH14/10 (north), BH14/06 (central), TP14/05 (central), TP14/06A and B (central), BH14/08 (on boundary of Bog) and BH14/07 (on boundary of Bog) all contain layers of sand between 0.5 and 4.2m thick, starting no deeper than 3.5m below the surface.<sup>380</sup> The minimum distance between boreholes is 250m.<sup>381</sup> There are no other intervening boreholes, the archaeological trenches are not deep enough to provide meaningful information and other information referred to by Mr Thomas in cross-examination and re-examination is inconclusive.<sup>382</sup> This is not enough information to conclude that the sand layers are not contiguous. The uncertainty is demonstrated by the question marks littering Mr Thomas's figure 5 in his Rebuttal Proof.<sup>383</sup> Therefore, Mr Thomas's interpretation goes beyond the available data on the geology. The gap in the evidence cannot be made good by his reliance on other matters.<sup>384</sup>
151. In the 1:50,000 geological map of the area showing superficial deposits, two obvious lobes of sand of the Vale of York Formation can be clearly seen either encroaching onto or overlain by the glaciolacustrine Alne Formation.<sup>385</sup> Additional evidence of ground permeability is provided by the Centre for Ecology and Hydrology's *Hydrology of Soil Types Baseflow Index (BFI HOST)* soil class for the catchment, which is listed as 0.6. This represents a semi-permeable catchment.<sup>386</sup> The appellant's own report *Investigating the hydrological relationship between the Moor Lane site and Askham Bog SSSI*<sup>387</sup> evidences sand in its various forms in many of the soil cores taken on and close to the appeal site.<sup>388</sup>

#### *Groundwater drainage*

152. Mr Thomas's concept, on behalf of the appellant, of clay-dominated impermeable ground is contradicted by the appellant's own WWT consulting report of conversations with the farmer and findings of mottling in clay evidencing good drainage due to the largely porous nature of the soils. It

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<sup>379</sup> Council's closing submissions paragraph 51(3)

<sup>380</sup> Council's closing submissions paragraph 51(4), Dr Foley's Proof of Evidence paragraph 4.1

<sup>381</sup> Dr Foley in evidence in chief

<sup>382</sup> Council's closing submissions paragraph 51(4)

<sup>383</sup> Council's closing submissions paragraph 51(5)

<sup>384</sup> Council's closing submissions, paragraph 51(6)

<sup>385</sup> Dr Foley's Proof of Evidence paragraphs 5.1 and 5.2, referencing Core Document CD089 (sic - CD090 is meant) British Geological Survey. 1:50,000 Series, England and Wales Sheet 71, Selby. Bedrock and Superficial Deposits. NERC 2008. In cross examination, Dr Foley agreed with paragraph 2.2.17 of Mr Thomas's rebuttal proof which pointed out that the geological map (CD090) identified only the peat of Askham Bog itself, the Alne Glaciolustrine Formation described as laminated silt and clay and the York Moraine member located to the south of the Bog and described as including gravelly sandy clay, clayey sand and a little sand and gravel.

<sup>386</sup> Dr Foley's Proof of Evidence paragraph 6.3.12 referencing Core Document CD077, paragraph 4.4.16

<sup>387</sup> WWT Consulting report 2013 (Core Document CD039)

<sup>388</sup> Council's closing submissions paragraph 51(7), referencing soil cores BAR1, 2, 3, 5, 7, 13 and 14 and figures 3, 4, 5, 8, 10, 17 and 17 of Appendix II of the report

- advises that shallow subsurface flows from these fields would be intercepted by the ditch network and by Holgate Beck.<sup>389</sup>
153. The shallow nature of the groundwater being monitored should be emphasised. It is entirely within the range of near-surface weathering processes experienced by the development site for several thousand years since formed by the drainage of the glacial lake. Mottling at least 1.7m deep within the soils implies that some parts are aerobic and some anaerobic. To be aerobic requires oxygen penetration. That requires open and interconnected pore spaces. They would permit infiltration of rainfall from the surface.<sup>390</sup>
154. On the information of the WWT consulting report, the soils on site appear to be relatively permeable and capable of transmitting water either to the drainage network or to groundwater.<sup>391</sup> A proportion of rainfall is likely to bypass the field drains and ditches and enter groundwater.<sup>392</sup> The majority of rainfall events in the UK are less than 4mm in total. Intensity varies but would not necessarily generate run-off even if infiltration is low because duration is short. Thus, the majority of rainfall events do not generate run-off but allow a significant portion of the rainfall to be infiltrated.<sup>393</sup>
155. The WWT Consulting report concludes that although surface and sub-surface hydrogeological inputs from the land to the north of Askham Bog are not the primary hydrological input to the Bog, they do play a role in maintaining water levels within the Beck. It advises that water levels in the Holgate Beck and surrounding ditches should be maintained at their current levels by designing sustainable drainage features that mimic the current drainage network and current infiltration processes occurring across the site.<sup>394</sup>
156. The SUDS scheme proposed would not mimic the current regime. The attenuation ponds represent an elongated trench cutting across the drainage slopes. Their depth would be at least 0.5m below the recorded winter water table along the entire northern margin of the Bog east of the golf course. Thus, the winter water table would be intercepted and drained. Dr Foley's evidence is that this would lead to export of water from the catchment during the winter that would otherwise have flowed more slowly through the ground to discharge in the base of the valley over the subsequent summer. This would result in a year-on-year net loss of groundwater storage within the catchment and so a loss of hydraulic head in the land surrounding the bog. It would alter the current seasonal patterns and the ponds would be at risk of drying out at times.<sup>395</sup>

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<sup>389</sup> Council's closing submissions paragraph 51(8(ii)) referencing WWT Consulting report paragraph 4.2

<sup>390</sup> Council's closing submissions paragraphs 51(14) and (15)

<sup>391</sup> Dr Foley, in evidence in chief, referencing Core Document CD039, figure 3 on page 10 and paragraphs 3.20-3.27 and 4.2

<sup>392</sup> Council's closing submissions paragraph 51(9) referencing Mr Thomas's Rebuttal Proof

<sup>393</sup> Dr Foley's Proof of Evidence paragraph 7.3.2

<sup>394</sup> Council's closing submissions paragraph 51(8(iii)) referencing WWT Consulting report paragraph 4.5

<sup>395</sup> Council's closing submissions paragraph 51(8(iii)); Dr Foley's Proof of evidence paragraph 8.14, elaborated in response to my question

157. The level of outlet from the attenuation ponds would be 11.2m aod. When water level in the attenuation ponds falls below that level, it will not discharge. It is hard to see how that mimics the existing situation.<sup>396</sup>
158. Natural England has advised that there are likely to be technical or engineering solutions available to mitigate against hydrogeological impacts resulting from the development. Yet the appellant has not been able to satisfy Natural England by supplying them.<sup>397</sup> The attenuation ponds would clearly impact on the quantum and quality of groundwater reaching the Bog.<sup>398</sup>

*Groundwater chemistry*

159. Groundwater which does not flow or flows slowly absorbs minerals to form a sulphate-chloride type of composition. Groundwater flowing quickly would tend towards a bicarbonate composition. Groundwater at the end of a flowpath will have greater concentrations of total dissolved solids. Spatial plots of groundwater chemistry based on the appellant's data indicate a high variability but an alternative to groundwater discontinuity or lack of connectivity as an explanation is the strong correlation of higher concentrations of dissolved solids associated with the urban fringe at Moor Lane and with historical waste tipping at Chaloner's Whin.<sup>399</sup>
160. Hydrochemical analysis arguing for differences in groundwater chemistry should not be relied upon<sup>400</sup> because
- No error bars are presented in any of the appellant's groundwater chemistry plots
  - Laboratory techniques for estimating error are not a substitute for duplicate samples taken in the field
  - Duplicate samples are not presented

*Summary*

161. In summary;<sup>401</sup>
- Groundwater contours are what would be expected from a simple model of unconfined slope drainage
  - Confined pockets of groundwater would not show the spatial correlation or temporal synchronicity evidenced
  - Slope drainage in variably permeable sediments at Moor Lane does exactly what it does everywhere else as shown in the diagram of the hydrologic cycle presented in paragraph 3.1.3 of Mr Parkinson's rebuttal Proof

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<sup>396</sup> Mr Morgan's cross examination of Mr Parkinson

<sup>397</sup> Council's closing submissions paragraph 62 referencing paragraph 2.5 of Core Document CD078

<sup>398</sup> Council's committee report paragraph 4.25

<sup>399</sup> Dr Foley's Proof of Evidence section 6.5

<sup>400</sup> Council's closing submissions paragraph 51(16) referencing Dr Foley's rebuttal proof paragraphs 2.17-2.22

<sup>401</sup> Council's closing submissions paragraph 60

(substituting bog for river and low-medium permeable aquatic deposits for bedrock aquifer<sup>402</sup>)

- Lack of hydraulic connectivity would be uncharacteristic
- It would require a much more elaborate explanation than that provided and which is refuted by Dr Foley
- Unconfined slope drainage represents a significant flow<sup>403</sup>
- This is not described as an “aquifer” as alleged by Mr Thomas<sup>404</sup>
- The flow does not need to be of aquifer proportions to be significant in the context of the ecohydrology of Askham Bog
- The control of the water level by pumps and the site’s small contribution to the catchment are not answers to the uncertainties and the potential harm to the Bog

162. As a result, the Council does not consider that Mr Thomas’s explanation provides any answer to the clear indication from the borehole information, supported by other information, as to the likelihood of hydraulic connectivity between the appeal site and the Beck and the Bog.<sup>405</sup> Broad trends in groundwater levels, drainage, hydraulic gradients, flow direction and hydrochemistry, all point to a situation that conforms to what would be expected from a consideration of topography, superficial geography and basic hydrogeological principles, namely that groundwater flows in the direction of the slope beneath which it is situated. This is a textbook situation and accordingly one would expect groundwater to discharge in the base of the valley occupied by Askham Bog.<sup>406</sup>

#### *Consequences*

163. The assessment undertaken by the appellant has failed to identify negative changes that have a high probability of occurring to Askham Bog as a result of the proposed development and its surface water management, namely; generally lowering ground water levels, lowering water levels in Askham Bog Drain and other boundary drains resulting in water being drawn from the SSSI and reducing the frequency and magnitude of flood events through the controlled attenuation of surface water.<sup>407</sup>

164. A combination of guidance on the identification and risk assessment of groundwater dependent terrestrial ecosystems<sup>408</sup> with the 2011 National Vegetation Classification Survey of the SSSI<sup>409</sup> shows that the majority (98%) of habitats present in Askham Bog are classified as having high to medium ground

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<sup>402</sup> Dr Foley in evidence in chief

<sup>403</sup> Dr Foley’s Proof of Evidence paragraph 6.3.7 to 6.3.9

<sup>404</sup> In paragraphs 3.2.17 and 3.2.18 of his Rebuttal Proof

<sup>405</sup> Council’s closing submissions paragraph 59

<sup>406</sup> Dr Foley’s Proof of Evidence, paragraphs 7.4 and 7.5

<sup>407</sup> Nadine Rolls’s Proof of Evidence paragraph 6.10

<sup>408</sup> Core document CD083

<sup>409</sup> Core Document CD069

- water dependency.<sup>410</sup> The distribution of habitat types found in Askham Bog shows the presence of Birch woodland associated with moderately acid peats in the centre of Near Wood and two types of fen meadow associated with higher alkalinity and nutrient rich situations found towards the northern boundary.<sup>411</sup>
165. Surface water flooding from Askham Bog Drain along the northern boundary also appears to be important to habitats within the SSSI. Elongated Sedge (*Carex elongata*) is found in Far Wood and the western Side of Middle Wood. It is flood-dependent.<sup>412</sup>
166. Many of the habitats at Askham Bog are generally associated with variable water levels and so specific tolerances to the lowering of levels are difficult to define, however it is likely to lead to a loss of wetland interest and increased representation by 'dryland' species. Drier conditions and lower soil water levels can result in the release of the nutrients which have accumulated within the soil also leading to changes in species composition. This change would represent a deterioration of the habitat, and therefore the qualifying features of the SSSI. The change is unlikely to be apparent within one growing season, but will become visible over several years, and might happen very slowly.<sup>413</sup>
167. Many of the habitats at Askham Bog, particularly the fen-meadow, are transitional habitats. This is a stage in the natural process of ecological succession. Maintaining the nature conservation interest of the site requires management to interrupt this process. Drying of the site will only act to accelerate it, favouring tree growth. Periodic inundation through flooding combined with higher groundwater levels is likely to help hinder scrub growth. Scrub encroachment in the SSSI is one of the main factors identified by Natural England leading to an unfavourable condition classification.<sup>414</sup>
168. Although a complex and potentially slow process, it is possible to restore water levels supporting lowland fens but this is largely dependent on being able to make changes to both the wider hydrological catchment and restoring more marginal habitats. The proposed development would represent an irreversible change to the catchment.<sup>415</sup>
169. The appellant claims a betterment through reduced agricultural run-off. Agriculture is recognised as a key source of diffuse pollution but the government is taking steps to address this. The appeal site is located within a Nitrate Vulnerable Zone which requires land managers to limit the average amounts of fertiliser and to create buffers to watercourses, enforced by the Environment Agency. Urban diffuse pollution is typically more complex. The appellant's groundwater data shows heightened chloride and Total Dissolved Solids near Moor Lane, likely to reflect urbanisation impacts. Some evidence in the Aquatic

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<sup>410</sup> Nadine Rolls's Proof of Evidence paragraph 6.12 and Appendix 1. Elaborated orally in evidence in chief

<sup>411</sup> Nadine Rolls's Proof of Evidence paragraph 6.13 referencing Core documents CD044, CD069 and Appendix IV of CD085

<sup>412</sup> Nadine Rolls's Proof of Evidence paragraph 6.14

<sup>413</sup> Nadine Rolls's Proof of Evidence paragraph 6.15 referencing Core Document CD085 paragraph 4.24

<sup>414</sup> Nadine Rolls's Proof of Evidence paragraph 6.16

<sup>415</sup> Nadine Rolls's Proof of Evidence paragraph 6.17 and 6.47

Invertebrate Survey indicates likely urban pollution within Marsh Farm Drain close to Moor Lane, clearing by the time it passes Marsh Farm.<sup>416</sup>

170. It is reasonable to predict that an extension of the urban area south from Moor Lane will result in bringing the source of any urban run-off pollution closer to the SSSI and result in the loss of dilution of this through infiltration, replaced by surface water capture.<sup>417</sup> A standard SUDS treatment maybe insufficient to address pollutants such as chloride resulting from winter road gritting which are not removed by filtration.<sup>418</sup>
171. The Fen Management Handbook 2011 describes water as the main carrier of dissolved chemicals to lowland fen habitats. Consequently, it strongly influences the acidity and fertility of the site, which in turn affects the type and growth of vegetation and fauna which it supports. The critical loads for different chemicals would vary for different plant species but overall changes in water chemistry would be expected to cause an increased growth of some plants and the loss of others less able to respond, changing the species composition leading to the deterioration of the habitat.<sup>419</sup>
172. There is clearly a real risk of deterioration to the irreplaceable element of the Bog. Therefore wholly exceptional circumstances must be demonstrated for the development to be allowed to proceed.<sup>420</sup>

*(ii) Urban edge impacts*

173. Much of the Bog is currently openly accessible with little substantial restriction on movement in and out of the SSSI and the fields to the north of it.<sup>421</sup> The EPEZ would complete the ecological isolation of the Bog.<sup>422</sup>
174. The introduction of significant numbers (1,135) of new residents in closer proximity to the SSSI would cause harm through the exacerbation of urban edge effects.<sup>423</sup> The extensive measures that the appellant is putting forward are testimony to the potential problems.<sup>424</sup> They are not likely to be overcome by the EPEZ because;<sup>425</sup>

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<sup>416</sup> Nadine Rolls's Proof of Evidence paragraph 6.20, referencing Core Document CD079 (Environmental Statement Appendix 9.1 Annex EDP10)

<sup>417</sup> Dr Foley's Proof of evidence paragraph 8.14, elaborated in response to my question

<sup>418</sup> Nadine Rolls's Proof of Evidence paragraph 6.21

<sup>419</sup> Nadine Rolls's Proof of Evidence paragraph 6.22, referencing Core Document CD085

<sup>420</sup> Council's closing submissions paragraph 62 referencing paragraph 2.5 of Core Document CD078

<sup>421</sup> Council's Committee report paragraph 4.13

<sup>422</sup> Council's Committee report paragraph 4.31

<sup>423</sup> Unauthorised access and damage on the northern edge of the SSSI is acknowledged by Mr Wigglesworth in paragraph 2.19 of his Proof of Evidence and at paragraph 2.1 of his Appendix TW10; Nadine Rolls itemises trampling and dogs' discouragement of stock grazing as urban edge effects in paragraphs 6.28 and 6.29 of her Proof of Evidence

<sup>424</sup> Council's closing submissions paragraph 65(2)

<sup>425</sup> Council's opening statement paragraph 13; council's closing submissions paragraphs 63, 64 and 65, referencing Natural England's consultation response (Core Document CD078) at paragraph 3.1 and section 1 of Annex A; Council's Committee report (Core Document CD001) paragraph 3.13

- The open space proposed will fail to divert people's interest because it would not be at least as attractive as the wooded Bog itself. If that were not true, the EPEZ would not be necessary
- As a barrier, the EPEZ represents a challenge which people will overcome by destructive techniques such as cutting and burning
- As a barrier, the EPEZ would be ineffective because the thorny scrub would be discontinuous in order to allow access for IDB maintenance<sup>426</sup>
- The attenuation ponds would be too shallow, require regular dredging and can dry out<sup>427</sup>
- Its effectiveness depends on a rigorous maintenance regime
- There are current desire lines and access can be obtained at the eastern end of the golf course<sup>428</sup>

For these reasons, additional measures set out in Schedule 9 of the appellant's Unilateral Undertaking would be necessary for the YWT to deal with increased visitor numbers<sup>429</sup>.

175. Complementary fauna and flora have to be considered in addition to those included in the SSSI citation. Consequently, there are real concerns regarding cats.<sup>430</sup> Between the ponds are water-free areas which will allow them to pass. Burrowing animals will offer cats a way to pass under the security fences.

176. Copmanthorpe, south of the SSSI, does not present equivalent urban edge impacts because;<sup>431</sup>

- The A64 presents a barrier. It is a four-lane road carrying a heavy volume of 43,561 vehicles per day with a central reservation safety barrier and severed from Copmanthorpe by close-boarded fencing.
- Entry to the Bog is by its main entrance with signage, and controlled by boardwalks

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<sup>426</sup> Council Committee Report paragraph 4.28; Nadine Rolls oral evidence in chief

<sup>427</sup> Reference is made to paragraph 1.3 of Natural England's consultation response (Core Document CD078) and to Ms Rolls's Proof of Evidence paragraph 6.35; See also Council's committee report paragraphs 4.28 and 4.33

<sup>428</sup> The Council's closing submissions actually state the western end of the golf course but this must be an error as the western end of the golf course abuts the A1237 northern ring road. The passage is obscure but oral evidence given during the Inquiry makes it clear that what is meant is the western end of the site which is the eastern end of the golf course. See also Council's committee report paragraph 4.30 and Nadine Rolls's Proof of Evidence paragraph 6.39 and 6.40. In oral evidence in chief, Tom Wigglesworth reported that one can walk down the track (Bog Lane) to the west of the site, trespass through existing farmland and gaps in hedges to reach the golf course from which there is a stile entrance into the SSSI. This route was followed (with consents) on my site visit.

<sup>429</sup> Council's CIL Compliance Statement, section 12

<sup>430</sup> Council's closing submissions paragraph 66(5), referencing Core document CD084; Nadine Rolls's Proof of evidence paragraph 6.32

<sup>431</sup> Council's closing submissions paragraph 66, referencing Ms Rolls's Proof of Evidence paragraphs 4.3 and 6.26

177. No degree of biodiversity gain, nor any of the other benefits relied upon, can override the real risk of a material increase in adverse urban edge effects on the Bog.<sup>432</sup> Nevertheless, the EPEZ is a necessary and integral part of the appeal scheme and so its management and maintenance in accordance with a suitably robust scheme operated by an organisation that has a permanent and sustainable income stream would be necessary if the development were to proceed. The appellant's Unilateral Undertaking is deficient in this respect and so a condition to require a properly funded management scheme and organisation would be necessary if the appeal is allowed <sup>433</sup>.

*Other matters*

178. The appellant's original calculation of trips generated was too low. Accurate assessment would reveal significant impacts on the A1237, the A1036 and the A64 junctions.<sup>434</sup> The Highways Statements of Common Ground agree the measures necessary to make the development acceptable, including measures to improve public transport and cycling facilities.<sup>435</sup> The Council's CIL Compliance Statement<sup>436</sup> demonstrates that these provisions would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind. It describes the nature of the projects on which the money would be spent so as to mitigate the effects of the development.

179. A provision of land and financial contributions to the provision of education facilities are needed.<sup>437</sup> The Education Statement of Common Ground agrees on their provision.<sup>438</sup> The Council's CIL Compliance Statement<sup>439</sup> demonstrates that these provisions would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind. It describes the nature of the projects on which the money would be spent so as to meet the demand arising from the development.

180. Conditions could require adequate mitigation for archaeological harm, for the recording of undesignated heritage assets (parts of Marsh Farm) to be demolished and for the provision of low energy features to comply with policy.<sup>440</sup>

*No exceptional circumstances*

181. There is no dispute that the Council cannot demonstrate a 5-year Housing Land Supply.<sup>441</sup> But that is being addressed through the emerging local plan and

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<sup>432</sup> Council's closing submissions paragraph 67

<sup>433</sup> Council's CIL Compliance Statement (Inquiry Document INQ3), paragraphs 11.5 and 11.7

<sup>434</sup> Council's Committee Report paragraph 4.41

<sup>435</sup> Statement of Common Ground with Highways England; Highways Statement of Common Ground with the Council

<sup>436</sup> Inquiry Document INQ 3, section 8

<sup>437</sup> Council's Committee report paragraph 4.50

<sup>438</sup> Council's Statement of Case paragraphs 4.19-4.22

<sup>439</sup> Inquiry Document INQ3, section 7

<sup>440</sup> Council's Committee report paragraphs 4.56, 4.57 and 4.60; Frances Harrison's Proof of Evidence section 5

<sup>441</sup> Council's Committee report paragraph 4.88; Council's Statement of Case paragraph 4.6

the current supply being achieved.<sup>442</sup> The appellant relies upon there being objections to other strategic sites to disparage the likelihood of York's housing crisis being resolved by the emerging local plan. But those objections are overstated and there were a greater number of objections to the inclusion of the appeal site at earlier iterations of the emerging local plan, including those from Natural England and Historic England.<sup>443</sup>

182. Even a Housing Land Supply of 2.2 years as the bottom of the agreed range simply cannot justify the extensive loss of openness and infringement of Green Belt purposes that would arise in this case.<sup>444</sup> The tilted balance of paragraph 11 of the NPPF does not apply for that reason and also if it is concluded that harm would arise to the SSSI.<sup>445</sup> Footnote 58 to the NPPF paragraph 175(c) gives an indication of what might constitute the wholly exceptional circumstances needed to disregard the policy of refusing planning permission for development resulting in the loss or deterioration of irreplaceable habitats. Housing supply does not compare to an infrastructure project where the public benefit would clearly outweigh loss or deterioration of habitat.<sup>446</sup>
183. The proposal would provide 5% more affordable housing than the emerging local plan policy would require but the extra is not being provided in accordance with the evidence-based tenure split of housing need<sup>447</sup>. There are doubts that it would be affordable by reference to local conditions. Discounted sales will not be meaningfully affordable to local residents<sup>448</sup>. The exclusion of Registered Providers from the transfer of discounted sale dwellings would place an administrative burden on the Council<sup>449</sup> and would not ensure permanent occupation by those eligible. So, caution should be applied to the weight given to this benefit.<sup>450</sup> The provision of dwelling plots for sale to self-builders would comply with emerging plan policy H4, would be necessary to make the development acceptable in planning terms, would be directly related to the development and fairly and reasonably related in scale and kind<sup>451</sup>.
184. The proposal would meet the emerging local plan policy G16 requirements for open space.<sup>452</sup> It would be necessary to make the development acceptable in planning terms, proportionate and directly related to the development<sup>453</sup>. The benefits of the open space provision should not be exaggerated. There is no

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<sup>442</sup> Council's closing submissions paragraphs 5 and 71, referencing Mrs Harrison's Proof of Evidence paragraph 5.4 and her Rebuttal Proof section 4 on pages 8-11 and section 6 at paragraphs 6.2-6.6 and 6.10.

<sup>443</sup> Council's closing submissions paragraph 73, referencing Mrs Harrison's Rebuttal Proof sections 4 and 5 and Appendix 4

<sup>444</sup> Council's closing submissions paragraph 5, referencing the table in section 3 of the Housing Statement of Common Ground; Council's closing submissions paragraph 75 and 76

<sup>445</sup> Council's closing submissions paragraph 69 and 83; Council's committee report paragraph 2.12 (Core Document CD001); Alison Stockdale's Proof of Evidence paragraph 3.9

<sup>446</sup> Council's closing submissions paragraph 83

<sup>447</sup> Council's CIL Compliance Statement (Inquiry Document INQ3), paragraphs 6.4 and 6.5

<sup>448</sup><sup>448</sup> Council's CIL Compliance Statement, paragraphs 6.7 and 6.8

<sup>449</sup> Council's CIL Compliance Statement, paragraph 6.6

<sup>450</sup> Council's closing submissions paragraph 77

<sup>451</sup> Council's CIL Compliance Statement, section 15

<sup>452</sup> Council's committee report paragraph 4.53

<sup>453</sup> Council's CIL Compliance Statement (Inquiry Document INQ3), section 14

deficiency of natural or semi-natural open space in the ward concerned. Distances to play areas diminish their value. Over-provision of amenity green space only benefits the development itself, not existing residents in Woodthorpe. The extent of over-provision of sports pitches remains unclear. Though welcome, directly related to the development, proportionate and necessary to make the development acceptable in planning terms in the event that the appeal is allowed<sup>454</sup>, it adds little in relative terms to counter the substantial harm that would result from this proposal.<sup>455</sup>

185. Given existing facilities, the proposed local centre, although acceptable,<sup>456</sup> does not materially assist a case for there being very special circumstances.<sup>457</sup> Reliance on high quality design cannot count as a contributor to very special circumstances because good design is expected of any development.<sup>458</sup> Harmful effects would not be overridden by good design, layout or landscaping of the housing scheme.<sup>459</sup> The creation of new jobs and economic investment is welcome but that has to arise from otherwise acceptable development.
186. In part, the proposal complies with the Council's Green Corridors Technical Paper (January 2011).<sup>460</sup> There would be a net increase in biodiversity but this has been exaggerated by Mr Wigglesworth's assessment which conflicts with the Biodiversity Metric.<sup>461</sup> In any event, biodiversity gains cannot override protection of the SSSI.<sup>462</sup>

### **The Case for the Yorkshire Wildlife Trust**

187. YWT is the second oldest of the 47 wildlife trusts in the UK. It manages more than 100 natural reserves. It has a membership of over 44,000 people.<sup>463</sup>
188. Askham Bog has evolved over 15,000 years. It is an ancient place which, in the words of Sir David Attenborough, must be protected.<sup>464</sup>

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<sup>454</sup> Council's CIL Compliance Statement (Inquiry Document INQ3), section 13

<sup>455</sup> Council's closing submissions paragraph 78; Council's Committee Report (Core Document CD001) paragraph 3.27

<sup>456</sup> Council's committee report paragraph 4.37

<sup>457</sup> Council's closing submissions paragraph 79, referencing Mrs Stockdale's Proof of Evidence paragraph 3.56

<sup>458</sup> Council's closing submissions paragraph 79

<sup>459</sup> Council's closing submissions paragraph 30

<sup>460</sup> Council's committee report paragraph 4.11

<sup>461</sup> Council's closing submissions paragraph 84, referencing Ms Rolls's Rebuttal Proof paragraphs 4.13-4.19, elaborated in oral evidence in chief. The metric relies on applying numerical values to four components, a difficult concept to apply reliably. Attenuation ponds have been wrongly scored. Loss of trees and hedgerows not fully accounted. Connectivity values appear to be wrongly applied.

<sup>462</sup> Council's closing submissions paragraph 85, referencing paragraph 4.18 of Ms Rolls's Rebuttal Proof

<sup>463</sup> YWT's opening submissions paragraphs 11, 12 and 13; YWT's letter dated 4 February 2019 objecting to the planning application (included with Council's response to appeal questionnaire, supplied in electronic form only)

<sup>464</sup> YWT's opening submissions paragraphs 1, 3 and 4

189. The Bog has attracted naturalists from all over the UK for nearly 200 years.<sup>465</sup> Its significance as one of the premier natural history locations in the country has been recognised for over 150 years; by the Society for the Promotion of Nature Reserves (the precursor to the Royal Society of Wildlife Trusts) set up by Charles Rothschild in 1912 and by Francis Terry and Arnold Rowntree who bought the site for what became the Yorkshire Wildlife Trust. It was first notified as a SSSI nearly 60 years ago in 1961.<sup>466</sup>
190. Recent records show that there are at least 2925 non-microbial species recorded from Askham Bog, a figure that represents over 5% of the total UK species list. In the nineteenth century the site contained samples of 25% of all plant species in the UK. Extensive lists of animal and plant species recorded on the site are unique in Yorkshire as well as nationally and internationally.<sup>467</sup> The SSSI designation is for Askham Bog's insect fauna in toto, not just for three species.<sup>468</sup>
191. As an SSSI it is of national significance. It contains lowland fen and ancient woodland which are irreplaceable habitats. Some of the irreplaceable fen habitats are threatened European-wide.<sup>469</sup> Therefore, they are also internationally important. Its interest derives from its transitional condition.<sup>470</sup> Its significance is not recognised in the appellant's Environmental Statement, which assesses the sensitivity of the Bog only as medium.<sup>471</sup>
192. It is popularly valued. It is enjoyed by over 20,000 visitors per year.<sup>472</sup> YWT has aspirations to extend its boardwalk towards the north of the SSSI within Middle Wood. The development would compromise visitors' views of the countryside from that edge.<sup>473</sup> YWT's petition against development attracted over 7,000 signatures<sup>474</sup> and 400 letters. In less than a month, their campaign raised over £28,500 from 332 people.<sup>475</sup>

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<sup>465</sup> YWT's opening submissions paragraph 15; Professor Fitter's oral evidence in chief is that earliest records are eighteenth century

<sup>466</sup> YWT's opening submissions paragraphs 5, 6 and 7; appendix 1 of YWT's letter dated 4 February 2019 objecting to the planning application (included with Council's response to appeal questionnaire, supplied in electronic form only); Professor Fitter's Proof of Evidence paragraph 2.2

<sup>467</sup> YWT's opening submissions paragraph 15; YWT's letter dated 4 February 2019 objecting to the planning application (included with Council's response to appeal questionnaire, supplied in electronic form only): Professor Fitter's evidence paragraph 2.6. Professor Fitter's oral evidence suggested that 5% is an underestimate; he would expect 10%.

<sup>468</sup> YWT's closing submissions paragraph 18, referencing Mr Wigglesworth's cross-examination; Sir John Lawton, oral evidence in chief

<sup>469</sup> Professor Fitter's Proof of Evidence paragraph 5.3 commentating that chalk-rich fen dominated by saw sedge is a European priority habitat.

<sup>470</sup> Alex Jones's Proof of Evidence section 4

<sup>471</sup> YWT's closing submissions paragraphs 11, 12 and 13; Alex Jones's Proof of Evidence paragraph 6.15

<sup>472</sup> YWT's comments of 2 October 2019 on the Environmental Statement Addendum (included within blue folder on purple case file; also attached as appendix 2 to Esther Priestley's Proof of Evidence)

<sup>473</sup> Ibid

<sup>474</sup> This petition was not presented to the Inquiry

<sup>475</sup> YWT's opening submissions paragraphs 8, 9 and 10

193. YWT emphasises the three parts of NPPF paragraph 175;<sup>476</sup>

- If significant harm to biodiversity cannot be avoided, adequately mitigated or, as a last resort, compensated for, then permission should be refused
- Development likely to have an adverse effect on an SSSI should not normally be permitted, with one specified exception
- Development resulting in the loss or deterioration of irreplaceable habitat such as ancient woodland should be refused (exception again specified)

194. YWT's primary concerns are threefold;<sup>477</sup>

- Increased isolation affecting biodiversity
- Risks from proximity to housing
- Impact on hydrology

### *Isolation*

195. Ecologists have known since 1967 that isolated sites have an impoverished flora and fauna.<sup>478</sup> Making Space for Nature (the Lawton Report 2010) argued for large-scale habitat restoration and re-creation in order to safeguard wildlife. The Lawton Principles of bigger, better managed, joined up sites have become the guiding principle underpinning wildlife conservation in both the voluntary and statutory sectors across the UK. Through government publications<sup>479</sup> they are a part of government policy. NPPF paragraph 170 requires net gains to biodiversity.<sup>480</sup>

196. The element most relevant to Askham of the "bigger, better, joined" approach of the Lawton Principles is joined.<sup>481</sup> To a degree, the Bog is already isolated, surrounded as it is by the A64 road to the south, the ECML to the east and Pike Hills golf course, which wraps around the Bog to the south, west and north.<sup>482</sup> The golf course is relatively less permeable than farmland<sup>483</sup> which currently joins the Bog to the wider countryside through its northern boundary. This is important because of the effects of metapopulation dynamics, evidenced by the 58% overlap in species of invertebrates found in both the Bog and the appeal site. The development would further sever the already much diminished

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<sup>476</sup> YWT's closing submissions paragraph 4

<sup>477</sup> YWT's opening submissions paragraph 14

<sup>478</sup> Sir John Lawton's Proof of Evidence paragraph 3.1 referencing The Theory of Island Biogeography by Robert H. MacArthur and Edward O. Wilson 1967

<sup>479</sup> *Biodiversity 2020* published in 2011 and *A Green Future, our 25-year Plan to improve the Environment* (2018)

<sup>480</sup> YWT's closing submissions paragraph 9; Sir John Lawton's Proof of Evidence paragraphs 2.3 to 2.5 and 2.7

<sup>481</sup> YWT's closing submissions paragraph 10

<sup>482</sup> YWT's opening submissions paragraph 16; Sir John Lawton's Proof of Evidence paragraph 4.1

<sup>483</sup> YWT's closing submissions paragraph 17, referencing Sir John Lawton's evidence paragraph 4.2

connections between Askham Bog SSSI and the surrounding countryside, increasing its isolation and causing further loss of species.<sup>484</sup>

197. Isolation, not absolute or binary but relative, will have an impact on the biodiversity of the Bog. The EPEZ is described by the appellant as an impenetrable barrier. Its placement across approximately 50% of the northern boundary of the Bog represents, at the very least, a relative increase in the isolation of the Bog.<sup>485</sup> It is a textbook definition of increased isolation.<sup>486</sup> For the appellant, Mr Wigglesworth denied that the EPEZ will be a major barrier to larger non-flying animals because they would bypass it or were unimportant. The appellant cannot have it both ways.<sup>487</sup> At all points along a scale from very well connected to completely isolated, increasing isolation leads to loss of some species and reductions in the abundance of others.<sup>488</sup>

#### *Proximity to housing*

198. YWT is concerned about the extent to which populations of some insects would be damaged by artificial domestic and street lighting less than 200m from the Bog. The appellant had no answer other than vague references to a lighting strategy to minimise the effects.<sup>489</sup>

199. For the appellant, Mr Wigglesworth maintained that the existing cat population from surrounding local areas was not known to be causing an issue in the Bog. His refusal to accept that the development of 516 houses would cause a greater threat to wildlife from cat predation is unpersuasive. Under cross-examination he agreed that domestic cats kill birds, that small mammals comprise a bigger proportion of domestic cats' prey than do birds and that some species of bird may abandon or not take up territories frequented by cats.<sup>490</sup>

200. The large village of Copmanthorpe, to the south of the Bog, is separated by a bund, fence and an exceptionally busy dual carriageway A64 with a central reservation. The road carried an average daily vehicle flow of 58,682 in 2018, an average of approximately 4,000 per hour, or 1 per second. It forms a barrier to the movement of people, cats and other wildlife<sup>491</sup> but is one of the main contributors to the existing partial isolation of the Bog. Because the housing and associated lighting lie beyond and below the moraine that carries the A64, the lights from Copmanthorpe are barely visible (if at all) from the Bog.<sup>492</sup>

201. Askham Bog receives a large number of regular visitors from Copmanthorpe via the quieter Tadcaster Road which has an underpass beneath the A64 immediately opposite the entrance to the Askham Bog nature reserve. Welcome signs and nature reserve interpretation boards are provided. Visitors are directed onto the boardwalk to enjoy the wildlife of Askham Bog.<sup>493</sup> To cope with

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<sup>484</sup> YWT's closing submissions paragraph 10

<sup>485</sup> YWT's closing submissions paragraphs 17 and 23 referencing Sir John Lawton's evidence

<sup>486</sup> YWT's closing submissions paragraph 23

<sup>487</sup> YWT's closing submissions paragraph 20

<sup>488</sup> YWT's closing submissions paragraph 21

<sup>489</sup> YWT's closing submissions paragraph 19, referencing Mr Wigglesworth's cross-examination

<sup>490</sup> YWT's closing submissions paragraph 22

<sup>491</sup> YWT's closing submissions paragraphs 34 to 36

<sup>492</sup> YWT's closing submissions paragraph 41

<sup>493</sup> YWT's closing submissions, paragraphs 37 to 40

increased visitor numbers resulting from the development would impose additional site management costs and a need to engage with the new community to foster respectful use of Askham Bog. These costs would amount to an additional staff resource of two days per week, or £16,400pa, maintenance costs of £3,000pa and materials costs of £2,750pa. The appellant's offer to fund a liaison officer for seven hours per month for five years would be insufficient to deliver what is required<sup>494</sup>.

### *Hydrology*

202. Past changes in the catchment area of the Bog have included the loss of semi-natural/natural habitat to intensive agriculture and recreational land use (golf course), associated intensive drainage, diversion of outfall from the Yorkshire Water Waste Water Treatment Works<sup>495</sup> and changes to water quality and chemistry.<sup>496</sup> Natural England considers that past modifications to the SSSI catchment are reversible and therefore that the SSSI could achieve a favourable condition classification but that as the proposal lies across a significant proportion of the SSSI's catchment, it may have significant and irreversible effects which would compromise the potential to achieve favourable condition status.<sup>497</sup>
203. Habitats in Askham include both fen and bog. Bog normally develops above the groundwater level. It depends on rainfall and is therefore acidic. Many of the peats in Askham Bog are not acidic, so must have developed in groundwater. Fen is base-rich (a pH level greater than about 5.5) and so must exhibit groundwater or surface water.<sup>498</sup>
204. Historical reductions in the level of the water table at Askham Bog have coincided with species loss.<sup>499</sup> The Bog has experienced a steady loss of species over the past 100 years. Many mineral-rich-dependent species were lost between 1879 and 1940, few since. The extent of those habitats has decreased over the same period. Most of the wetland species that have been lost are particularly associated with plant communities wholly or partially dependent on groundwater. Drying is associated with evapotranspiration from tree cover but land drainage has played a major role.<sup>500</sup> At the western end of the SSSI the Askham Bog Drain has been moved northwards because its original route failed to drain the land.<sup>501</sup>
205. Askham Bog depends for its long-term survival on the maintenance of a high water table, especially in spring and early summer. To restore peatland, the

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<sup>494</sup> Inquiry Document INQ9

<sup>495</sup> A flow estimated at not less than 2 litres/second or 173 cubic metres per day in Richard Thomas's rebuttal proof paragraphs 3.4.4-3.4.5

<sup>496</sup> YWT's closing submissions paragraphs 31 and 32, referencing Core Document CD078, objection letter from Natural England to CYC dated 20 February 2019

<sup>497</sup> YWT's closing submissions paragraph 32; YWT's aspirations for the renaturalisation of land surrounding the SSSI are described in its original objection to the planning application (included with CYC's response to appeal questionnaire, provided in electronic form only), at paragraph 4.11 of Sir John Lawton's Proof of Evidence and in section 6 of Professor Fitter's Proof of Evidence.

<sup>498</sup> Professor Fitter's oral evidence in chief.

<sup>499</sup> YWT's closing submissions paragraph 14, referencing Professor Fitter's evidence

<sup>500</sup> Professor Fitter's Proof of Evidence paragraphs 3.1-3.7; Alex Jones oral evidence in chief

<sup>501</sup> Oral evidence in chief of Alex Jones.

water table needs to be within 10cm of the surface.<sup>502</sup> Water level monitoring suggests that much of the Bog is fully saturated in winter but water levels drop by 0.5-0.75m over the summer.<sup>503</sup> Management by YWT involving damming of cross-ditches within the Bog, clearing tree cover in New Wood and mowing or grazing fen has resulted in a recovery of some of the more threatened habitat types.<sup>504</sup> Distinct plant communities on Askham Bog are defined by a very few centimetres change in the height of the peat surface. Minor changes in water table levels would cause significant species loss.<sup>505</sup> Activity resulting in a reduction in the water table would lead to severe damage to the site and to further losses of species.<sup>506</sup>

206. Lower lying parts of the bog flood about 2-3 times per year, higher parts every twenty years. Although flooding was regarded as a nuisance in the Arup report of 2003, damaging nutrients no longer come in following the diversion of the sewage works outflow to a different catchment. Some species, such as *Carex elongate*, would not survive without regular flooding.<sup>507</sup>
207. Despite recovery, large parts of Askham Bog are still in “unfavourable” condition, especially the fen communities in New Wood close to the northern boundary ditch. Government policy is to restore SSSIs to “favourable” condition. This requires restoration of the hydrological regime to that which allowed the Bog to form. If bog restoration is to be successful, water must be returned to the edge of the bog. An effective recovery programme would involve restoring the lagg<sup>508</sup> whose original dimensions are suggested clearly by the 12.25m contour.<sup>509</sup> The development would make restoration impossible, partly by development on the water catchment, partly by the construction of the bund in the buffer zone on the original lag fen.<sup>510</sup>
208. The appellant’s hydrogeological argument has three strands;<sup>511</sup>
- The bog is critically dependent on rain and groundwater is unimportant
  - There is very limited connectivity between the Bog and external drains

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<sup>502</sup> Alex Jones’s Proof of Evidence paragraph 5.4

<sup>503</sup> Alex Jones’s Proof of Evidence paragraph 4.14

<sup>504</sup> YWT’s opening submissions paragraph 18; Professor Fitter’s Proof of Evidence paragraphs 4.1 to 4.6 and oral evidence in chief

<sup>505</sup> YWT’s closing submissions paragraphs 14 and 15, referencing Professor Fitter’s evidence (for YWT), the Environment Agency’s report *A wetland framework for impact assessment at statutory sites in England and Wales* (Appendix 15 to Professor Fitter’s evidence) particularly figures 3.3 and 3.4 on page 48; Dr Foley’s evidence (for CYC) and Alex Jones’s evidence paragraph 5.5

<sup>506</sup> YWT’s opening submissions paragraph 18; the mechanism of peat drying out and collapsing is described in paragraph 5.6 of Alex Jones’s Proof of evidence

<sup>507</sup> Professor Fitter’s oral evidence in chief.

<sup>508</sup> A lagg, also called a moat, is the very wet zone on the perimeter of peatland or a bog where water from the adjacent upland collects and flows slowly around the main peat mass

<sup>509</sup> Clearly visible on Map 1 of Alex Jones’s evidence

<sup>510</sup> Professor Fitter’s Proof of Evidence, section 6; oral evidence in chief referencing his Appendix 22 (Joint Nature Conservation committee (JNCC) report No 365 *Characterisation of Hydrological Protection Zones at the Margins of Designated Lowland Raised Peat Bog sites*, fourth paragraph on page 1 of foreword

<sup>511</sup> YWT’s closing submissions paragraph 30

- There will be no changes to the water level in the Beck because the attenuation basins will mimic the current hydrology

(i) *Rainwater and groundwater*

209. YWT's evidence<sup>512</sup> shows that groundwater both supplied mineral rich water and supported the position of the water table. This is typical of a bog system in which the supply of water is predominantly from rainfall (and is therefore base-poor) but the level of the water table in the system depends on groundwater (which is base-rich). The glacial moraine to the south, approximately where the A64 is situated, has a calcareous character. Water draining from the moraine is alkaline, leading to the development of base-rich fen communities at the margins of the SSSI. By contrast, the peat in the centre of the reserve is acidic and mainly fed by rainwater. The site receives extensive ground and surface water input from the south whereas the central part is predominantly rain-fed. Peat alkalinity and the greater abundance of nitrophilous species on the north side point to a major influence of the eutrophic<sup>513</sup> Holgate Beck water.<sup>514</sup>
210. The variation in water supply influences controls the distribution of habitats. It is likely that rainfall is the main input of water to the Bog but what determines the plant communities on the site is the level of the water table at different times of year.<sup>515</sup> The appellant's model offers no explanation for their distribution.<sup>516</sup>
211. In line with Environment Agency guidance, Mr Jones for YWT presented a conceptual model of the hydrogeology of the site and the Bog.<sup>517</sup> This contrasts with the evolution of the appellant's case during the Inquiry,<sup>518</sup> so Mr Jones's evidence should be preferred.<sup>519</sup> Mr Thomas's explanation (on behalf of the appellant) for variations in seasonal groundwater levels is not evidenced with a source of sufficient pressure change to cause the variations shown and cannot apply to the thicker sand deposits of the EPEZ area which his own figure 5 shows are not overlain by clay.<sup>520</sup>

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<sup>512</sup> YWT's original objection to the planning application, especially Appendices 2 and 3; Core Document 099c

<sup>513</sup> when a body of water becomes overly enriched with minerals and nutrients

<sup>514</sup> YWT's objection to the planning application, dated 4 February 2019, particularly Appendix 2 (included with CYC's response to appeal questionnaire, provided in electronic form only) referencing Core Document CD044 A *Wood in Ascam*; Professor Fitter's Proof of Evidence paragraphs 2.1 and 5.8 and orally in cross-examination

<sup>515</sup> Professor Fitter's Proof of Evidence, paragraph 5.8; The distribution of habitats is shown in Core Documents CD044 A *Wood in Ascam* and figure 4.1 of CD99c *JBA Consulting Report (2nd February 2019). Askham Bog review*, document reference 2019s0135

<sup>516</sup> YWT's closing submissions paragraph 30a

<sup>517</sup> Alex Jones's Proof of Evidence Figure 14

<sup>518</sup> YWT's closing submissions paragraph 24 to 26, referencing Alex Jones's Proof of Evidence appendix B *Hydrogeological impact appraisal for dewatering abstractions*, Environment Agency 2007; section 3 and appendices B and C of Alex Jones's evidence explains what a conceptual model is and why it is needed

<sup>519</sup> YWT's closing submissions paragraph 28

<sup>520</sup> Footnote 4 of YWT's closing submissions paragraph 25

(ii) *Hydrological connectivity*

212. The suggestion that there is very limited hydrological connectivity between the Bog and the Askham Bog Drain (Holgate Beck) and between the development site and the Drain is based on inadequate data<sup>521</sup> from the appellant's surveys and a selective interpretation of the Arup Report of 2003. Although the Arup report is a helpful document, it should be read in the context of the information and improved understanding that has become available since its publication over 16 years ago.
213. Mr Jones's evidence<sup>522</sup> indicates that the Beck and the boreholes on the development site track each other closely. Numerous references in Arup as well as data in Appendix 3 of the original YWT submission to CYC dated 4 February 2019<sup>523</sup> display connectivity between the Beck and the Bog over a distance of at least 20m wide.<sup>524</sup> For the appellant, Mr Thomas's conclusion to the contrary is based on a comparison of groundwater level records from borehole BH14/07 in 2014-2015 with Askham Bog Drain level records for 2000-2002. These do not relate to the same hydrological event.<sup>525</sup>
214. It would be expected that at least 10% of the groundwater inputs which sustain rivers during drier periods would come from the site. Mr Thomas's figure of 2% as the contribution of the site's groundwater flow to the flow in the Askham Bog Drain is based on a low permeability rate and a high existing flow in the drain. The permeability of the silty sand in the location for which his calculation is made is between 7.5 and 38 times higher than the figure of  $1 \times 10^{-6}$ m/s for the permeability of the part of the site to be built on which he uses and would increase the proportion of the flow calculated to originate from groundwater. The Qmean figure of 20.8 l/s which Mr Thomas uses in his calculations is relatively high. The bog will be most sensitive to a lowering of the water table during dry conditions, so it would have been more appropriate to have used the Q95<sup>526</sup> flow rate of 4.7 l/s in the calculation. This would have led to a calculation of a significantly higher proportion of flow resulting from groundwater.<sup>527</sup>
215. Michael Parkinson's Rebuttal Proof on behalf of the appellant relies on the 2003 Arup report to challenge the view that periodic overbank flooding from the Beck is critical to the Bog. Yet both chemical evidence (the distribution of influence of base-rich alkaline water) and botanical evidence (the spread of the rare sedge *Carex elongata*) shows that flooding is both regular and important.<sup>528</sup>

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<sup>521</sup> Appendix 2 of YWT's original objection to the application (included with CYC's response to the appeal questionnaire, in electronic form only)

<sup>522</sup> Alex Jones's Proof of Evidence, paragraph 4.18 and figure 9

<sup>523</sup> Included with Council's response to appeal questionnaire, provided in electronic form only

<sup>524</sup> YWT's closing submissions paragraph 30b; Alex Jones's Proof of Evidence paragraphs 4.18-4.22 and figure 9

<sup>525</sup> Alex Jones's rebuttal proof paragraph 2.4

<sup>526</sup> The figure exceeded for 95% of the time

<sup>527</sup> Alex Jones's rebuttal proof paragraphs 2.7-2.10

<sup>528</sup> YWT's closing submissions paragraph 27

*(iii) Attenuation basins*

216. Although the appellant's understanding of the ecohydrological controls of the Bog has evolved, the scheme has not evolved to match. The attenuation basin is to measure over 800m long, approximately 45m wide and will vary from 1.3-2m deep. It will need to be kept relatively empty so that it can contain run-off flows from the 10% of the SSSI's catchment which it drains. If not lined, it would be linked to groundwater levels but would lower them through evaporation. If lined, it would not feed into groundwater.<sup>529</sup> Michael Parkinson, for the appellant accepted during cross-examination that if the attenuation basin dried out, its water level would have to rise to a certain point before it discharged water into Askham Bog Drain. Appendix 3 of the Environmental Statement Addendum notes that attenuation basins will dry out less often than once in every five years but that is quite frequent.<sup>530</sup> This structure cannot therefore mimic as claimed the current water supply mechanism to the Bog.<sup>531</sup>
217. The peak run-off rate from the attenuation basins is to be limited to 1.4 l/s/ha instead of the current 3.1. This halving of the discharge rate could have a significant impact on how Askham Bog floods and affect the habitats which are dependent on that type of periodic flooding.<sup>532</sup> If the SUDS function was excluded, the design could focus on replicating or improving the water supply to the Bog and potentially recreate some of the functions of the lag area highlighted by Professor Fitter.<sup>533</sup>
218. The appellant has misunderstood and/or ignored the fundamental ecological and hydrological controls of the irreplaceable habitats of Askham Bog in the design of the scheme. The appellant has failed to demonstrate the benefits or wholly exceptional circumstances necessary to comply with NPPF paragraph 175. It follows that there is a real possibility of harm. In order to protect irreplaceable habitat, the precautionary principle must apply and the appeal should be dismissed.<sup>534</sup> If allowed, strategies for monitoring the hydrology and botany of the Bog should be imposed by condition<sup>535</sup>.

**The case for others who appeared at the Inquiry**

*Janis Grant*

219. Janis Grant lives on Moor Lane, advises that she has interviewed everyone on Moor Lane and spoken to other local people and so presents what she believes to be the views of her local community. There is support for the site remaining Green Belt because of the openness of aspect that it gives to Moor Lane and the protection it gives to Askham Bog. There is local support, interest and pride in Askham Bog as a special area of national importance which forms a visual backstop to the view from windows or gardens or from walking or driving along

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<sup>529</sup> Alex Jones's evidence paragraphs 5.14 and 5.15

<sup>530</sup> Alex Jones's Proof of Evidence paragraph 6.11

<sup>531</sup> YWT's closing submissions paragraphs 29 and 30c

<sup>532</sup> JBA Consulting report, commissioned by YWT, table 6.1; Alex Jones's Proof of Evidence paragraphs 5.9 and 5.10 and oral evidence in chief

<sup>533</sup> Alex Jones's Proof of Evidence paragraph 5.16

<sup>534</sup> YWT's closing submissions paragraphs 7 and 44.

<sup>535</sup> Inquiry Document 9, section 4, paragraphs 12 and 13

Moor Lane. There is incomprehension that the development could, would or should be permitted on the basis of there being no adopted local plan.

220. Rainfall creates marshes and lakes of local gardens. Surface flooding has increased in recent years. From October to March gardens remain wet. The Marsh Farm site shows identical characteristics. The suggestion that there is no interconnectedness with Askham Bog stretches credulity. Information that the IDB's Moor Lane pumping station is close to capacity is not reassuring.
221. Traffic is a growing issue of major local concern. Narrative examples of local congestion are given. Public transport to the site is poor. Additional patronage from the proposed development would not be sufficient to support an increased bus service but it will generate increased car usage.
222. There is a history in York of developers reducing affordable housing commitments because of viability issues. Although greenfield sites are less costly to develop, this one would carry a heavy burden of EPEZ, sports provision and other structures and costs so one wonders what effect viability considerations would have on the provision of affordable housing.

*Ann Reid*

223. Ann Reid has resided in Woodthorpe since 1985, was a local councillor for 32 years until May 2019 and was chairman of the planning committee for the last four of those years.
224. The engineering operations necessary to deliver the development would be inappropriate in the Green Belt. The EPEZ, with a bund of the size proposed, and its fencing designed to exclude people and animals, would affect openness and is itself inappropriate in the Green Belt.
225. Moor Lane creates a definite edge to the urban area. Extension south would be seen as urban sprawl.
226. Very special circumstances need to be site-specific. Those advanced by the appellant are generic.
227. The measures proposed to protect the Bog cannot be known to work until after the event. But adverse effects would then be irreversible.
228. Experience of other housing adjacent to open space shows impact from human activity – rubbish, domestic pets and demands to trim trees. Wildlife needs to move freely. If the buffer zone and Bog are made impregnable, that would not be possible. If wildlife can move freely then so can people. The solution to the conundrum is not to develop the land.
229. Protective conditions would need to be maintained in perpetuity. But circumstances change and that may not be possible.
230. The most recent ONS figures indicate a need for 790 dwellings per annum. The emerging local plan would allocate sufficient land to meet that need. A decision on this appeal should be deferred until the outcome of the local plan examination is known.

*Cllr Stephen Fenton*

231. Cllr Fenton is one of three councillors for the Dringhouses and Woodthorpe ward. There was unanimity at the planning committee.
232. Significant local opposition is not motivated by nimbyism but by concern for the setting of the city and the effects on local infrastructure and the Bog.
233. York is in dire need of housing and affordable housing. The Council has the most ambitious housing construction programme since the 1960s. Sites causing the least harm to the Green Belt have been identified for development. Moor Lane is not one of them.
234. Moor Lane is used as a cut-through. The report to committee noted that the appellant's estimated trip generation was based on averages for the whole city. But trip rates are higher in Moor Lane. The use of more relevant data shows the likely true impact of traffic. A bad situation would be made worse. Bus services would be adversely affected. Air pollution would be caused. The agreements reached on mitigation measures is welcome.
235. He acknowledges the greater expertise of the YWT in relation to ecology.

**Written Representations**

236. Thirty-seven written representations were sent to the Inspectorate in response to notification of the appeal including one from Natural England commenting on the proposal's expected hydrological effects on Askham Bog. Others commented on the loss of Green Belt, the irreplaceable nature of Askham Bog, its habitat, hydrology and hydrogeology, its fauna, its benefits to people with mental health issues, its role as a tourist attraction, the enclosure of wildlife, the need to manage land surrounding a conservation area, cat predation, inaccuracies in the submitted Drainage Strategy Plan, existing poor site drainage, the need to give precedence to open land in preference to development, the effects of the proposed development on tranquillity, air quality, traffic, infrastructure and schools and an alleged lack of need for housing.
237. In addition, representations made to the Council at application stage need to be taken into account. The Council's committee report records 401 of these. After discounting duplicates, there are 390 included with the Council's response to the appeal questionnaire form.<sup>536</sup> They include three which support the development proposal on grounds of the need for more housing. The remainder oppose the development on grounds which are adequately summarised within the Council's committee report;<sup>537</sup>
- Effects on wildlife
  - Effects on Askham Bog
  - Isolation of nature reserve leading to loss of species
  - Infrastructure and highways issues

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<sup>536</sup> Only supplied in electronic format.

<sup>537</sup> Core document CD001 paragraphs 3.30 to 3.82

- Demand for schools
- Effect on local amenities
- The need for sports centre facilities
- The needs of older people
- Insufficient parking
- Electricity demands leading to outages
- Flooding on site
- Sewerage capacity
- Loss of agricultural land
- Green Belt; sprawl, coalescence etc;
- Height of houses proposed

### **Obligations**

238. The Unilateral Planning Obligation submitted before the close of the Inquiry consists of a set of recitals, followed by ten sections making provisions as to definitions and interpretation, legal effect, conditions precedent, indexation, legal costs, interests, land charge, expert determination, notifications and charges. Paragraph 3.2 refers to the planning obligations contained in Schedules 1 to 8 inclusive. In fact, there are nine schedules but Schedule 1 is a list of the land parcels in each ownership and Schedule 2 describes the development. Recital H requests the Secretary of State to confirm that the obligations of Schedule 8<sup>538</sup> do not comply with the tests of regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and shall not apply in the event that planning permission is granted.

239. Schedule 3 requires 11% of all the dwellings in each phase and in the scheme overall to be provided as discounted sale dwellings at 80% of market value. It requires 24% of the dwellings in each phase and in the scheme overall to be provided as social rent housing at 60% of market rent for a one-bedroom flat, 55% of market rent otherwise. It requires a scheme of affordable housing and an affordable housing car parking plan to be submitted as part of the reserved matters applications for each phase of the development. Thus 35% of all dwellings would be provided as affordable housing in each phase and in the scheme overall.

240. Schedule 3 requires the mix and type of affordable housing to be proportionate to the mix and type of housing in the scheme as a whole, to be pepper-potted in its distribution and to be physically indistinguishable. It has provisions requiring the delivery of the affordable housing to relate to the delivery of full-price market housing, for the affordable housing to be offered to Registered Social Providers, for it to remain affordable in perpetuity and for its release to the full price housing market, subject to a commuted payment to the Council, in the event that the provisions for affordability fail to deliver.

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<sup>538</sup> The context makes it clear that it is in fact Schedule 9 which is meant

241. Schedule 4 has provisions concerning the EPEZ, open space, and the sports pitches and pavilion. It also makes provision for a YWT liaison officer. For the EPEZ, it requires the 3m security fence element to be constructed before any dwelling is occupied. All elements of the EPEZ must be completed before more than 100 dwellings are occupied, at which point the EPEZ maintenance plan (which is attached to the planning obligation as an Appendix) must be in operation. However, neither the planning obligation, nor the EPEZ maintenance plan itself make any arrangements for any organisation or funding to carry on the subsequent operation of the maintenance plan. Clause 6.3 of the obligation specifically provides that individual owners and Registered Providers are not bound by the planning obligations other than in relation to occupancy and affordable housing.
242. In contrast, the provisions for the Open Space (the definition of which excludes the EPEZ and the Sports Facilities) require a management company to be set up, with funding and the means to employ appropriate numbers of qualified personnel. This would be responsible for managing and maintaining the open space. Provision is also made for their transfer to the Council.
243. The quantity and nature of the open space is defined. An open space management plan is to be submitted to the Council for approval with the reserved matters application for each phase of development. But there is no requirement to make a reserved matters application for the layout of the open space in the first place, or that it be provided and laid out. There is an explicit expectation that this be required by condition of any permission for the development.
244. Likewise, although the Planning Obligation requires a Sports Facilities Maintenance and Management Plan to be submitted to the Council for approval, and that no more than 75% of dwellings be occupied until it is approved, there is no requirement to make a reserved matters application for the sports facilities in the first place, nor any requirement that they be provided, even if a reserved matters application is approved. Instead there is a specific expectation that these matters would be required by condition.
245. Although the provisions relating to the Sports Facilities Maintenance and Management Plan specify that it must detail how the Sports pitches and pavilion will be made available for public use free of charge, there is no explicit provision to set up any organisation to operate the Sports Facilities Maintenance and Management Plan. There is provision to offer the sports facilities and pavilion to a sports club at a peppercorn rent.
246. The provisions for a YWT liaison officer would require the owners of the development to employ a person for seven hours per month for five years from the first occupation of the development, in order to advise new residents about the Bog and provide them with guidelines for responsible visits, to provide a point of contact for the YWT to raise concerns for immediate redress and to broker volunteering and membership opportunities between residents and the YWT.
247. Schedule 5 requires no more than 50% of dwellings to be occupied before the reserved matters application for the local centre is made and for no more than 80% of dwellings to be occupied before it is completed.

248. Schedule 6 details the highways and public transport provisions. A public transport contribution of £100,000 is to be paid in five equal annual instalments for improved public transport. A one-off payment of £20,000 is to be paid for off-site footway and cycle improvements. £90,000 is to be paid for upgrading shelters at three in-bound bus stops. A speed survey on Moor Lane is to be conducted annually after 50% occupancy until one year after full occupation of the completed development. If that survey demonstrates that speeding occurs<sup>539</sup>, then a sum of £60,000 is to be paid towards traffic calming measures.
249. A travel plan contribution of £100,000 is to be paid in five equal annual instalments. The travel plan itself is to be required by condition. A total of £206,400 is to be paid towards a sustainable travel pack contribution of £400 per dwelling, comprising £300 per house for either a bus pass or for cycling equipment and £100 for car club membership. Occupancy thresholds are linked to the payment of the public transport and travel plan contributions.
250. A payment of £250,000 is to be made towards the A1237 Moor Lane roundabout improvements. A payment of £100,000 is to be made towards the A1036 corridor and Sim Balk Lane improvements.
251. Schedule 7 details the education contributions. Payment of £759,165 as a contribution to an early years and childcare facility is to be paid before any dwelling is occupied. Land for an early years facility is to be identified and approved before 50% of dwellings are occupied. It is to be reserved for 10 years or until 75% of the development is occupied, whichever is the sooner and transferred to the Council before 75% occupancy. A primary education contribution of up to £1,780,329 and a secondary education contribution of up to £1,276,574 are to be paid in three instalments related to the occupation of dwellings. The figures will be formalised in accordance with a formula applied to the numbers and mix of dwellings approved at reserved matters stage.
252. Schedule 8 requires land for up to 5% of the market housing in each phase to be reserved for up to 12 months for self-build housing. It details requirements for advertising the facility.
253. Schedule 9 makes provision for payments to the YWT; £90,000 over 30 years for maintenance of the boardwalk and for community engagement activities; £300,000 over 30 years to monitor and manage the hydrology of the Bog; and £460,000 over 30 years to employ a warden for three days a week. The contributions are linked to the occupancy of dwellings.
254. I report on the compliance of the provisions of the planning obligation with the CIL regulations in my conclusions below.

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<sup>539</sup> The trigger for payment is ambiguous. The definition of "traffic calming contribution" says it will be paid if the speed survey results show that more than 5% of all recorded speeds are in excess of the speed limit. Clause 12 of the Schedule states that it would be payable if the survey results in an 85<sup>th</sup> percentile of recorded speeds equalling or exceeding 35mph

## Conditions

255. The Council prepared a list of suggested conditions in the event of the appeal being allowed<sup>540</sup>. The appellant provided a commentary on these<sup>541</sup>. My recommendation is that the appeal should be dismissed but, in the event that the Secretary of State were to take a different view, my observations on the need for conditions are set out below and a schedule of nineteen recommended conditions is attached. The Council prepared its list of suggested conditions in two parts, one relating to the parts of the proposal which are submitted in detail, the other to the parts of the proposal which are submitted in outline. On the basis that the Secretary of State is to make a single determination of the appeal, and to eliminate duplication, my schedule of recommended conditions is resolved into a single list.
256. The Council's suggested conditions full 1 and outline 1 and 2 would impose time limits for commencement as required by statute. My schedule of conditions 2, 3 and 4 apply these. The Council's suggested conditions full 2 and outline 3 and 4 would apply the parameter plans and specify the other plans approved so that the provisions of the Act for allowing minor material amendments can apply. These become conditions 9, 10, 11 and 12 of my schedule of conditions.
257. The Council's suggested condition full 3 seeks to redress perceived deficiencies in the EPEZ Maintenance Plan appended to Schedule 4 of the Unilateral Undertaking. I have already noted in paragraph 241 above that details of neither the planning obligation, nor the EPEZ maintenance plan itself make any arrangements for any organisation or funding to carry on the subsequent operation of the maintenance plan and that this deficiency needs to be remedied. Condition 13 is therefore recommended. Condition 14 is likewise recommended (in pursuit of the Council's suggested condition full 4) to remedy an incomplete boundary fencing of the EPEZ.
258. The Council's suggested conditions full 5, outline 16 and full 6 and outline 18 pick up recommendations of the appellant's Environmental Statement.<sup>542</sup> I have translated them as recommended conditions 6d, omitting excessive and unnecessary detail, and 5. The Council's suggested conditions full 7 and outline 17 setting a time limit by which a further ecological survey is required are unnecessary because the Wildlife and Countryside Act applies in any event and any developer will need to protect themselves from prosecution by ensuring that their knowledge of the potential for the existence on site of protected species is up to date before commencing construction.
259. A development of the size proposed is likely to be constructed in phases. The consequent need for a phasing plan was recognised by all parties during the Inquiry. I have therefore included recommended condition 1 in the Schedule of conditions, reflecting the Council's suggested condition outline 5 but omitting the detail of the content of the phasing strategy which would be premature and not necessary to specify in advance. However, submission of details in phases will not reveal the extent of compliance with emerging local plan policy H9 on housing mix until all phases have been submitted. There is therefore a need to

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<sup>540</sup> Inquiry document INQ10

<sup>541</sup> Inquiry Document INQ11

<sup>542</sup> Environmental Statement paragraph 9.171, pages 9-44 and 9-45

- include a dwelling mix strategy within the phasing plan, reflecting the objectives of the Council's suggested conditions outline 35 and 36.
260. Schedule condition 15, reflecting Council's suggested condition outline 6, limiting the number of dwellings to 516 is necessary because the transport effects and mitigations are calculated on the basis of 516 dwellings. A greater number of dwellings would invalidate the calculations and thus throw doubt on the acceptability of the proposal. Likewise, recommended condition 16, limiting the quantity of non-residential floorspace to be provided, reflects the Councils' suggested condition outline 7. It is necessary to comply with emerging local plan policies R1 and R2 and because greater quantities of floorspace would need to be assessed for their impacts on other local centres.
261. The Council's suggested condition 8, limiting the heights of buildings to be constructed, would duplicate the provisions of recommended condition 10, applying the parameters plans which include controls on the height of development and so, would be unnecessary.
262. As noted in paragraphs 243 and 244 above, although the Unilateral Undertaking makes provision for a maintenance plan for the open space and sports facilities to be approved, it includes no requirement for these facilities to be provided in the first place. There is an explicit expectation that the provision of these facilities will be required by condition. This is reflected in the Council's suggested conditions outline 9 and 10, translated into recommended condition 13.
263. By contrast, the planning obligation includes provisions limiting the occupation of dwellings until the EPEZ is complete and so there is no need for the Council's suggested condition outline 11.
264. The Council's suggested conditions outline 12 and 13 would duplicate some of the provisions of Schedule 9 of the planning obligation. I discuss these in paragraph 321 of my conclusions below. For the reasons set out there, I consider that these provisions would fail to meet the CIL tests and so, insofar as those tests duplicate the "six tests" for the reasonableness of conditions, I conclude that these provisions should not be required as conditions.
265. The Council's suggested condition outline 14, for the provision of a landscape and ecological management plan, would duplicate provisions in Schedule 4 of the Unilateral Undertaking and so would be unnecessary.
266. Landscaping is a reserved matter and so it is unnecessary to require by condition the submission of landscaping details. It is also premature and unnecessary to specify by condition at this stage what the content of a reserved matters application should be. I therefore do not include the Council's suggested conditions 15 and 22 within my list of recommended conditions.
267. On the other hand, although paragraph 9.184 of the Environmental Statement recommends that durable bird boxes and bat boxes, including a range of designs to suit different species, be erected on retained mature trees and that bird nesting features (e.g. swift boxes and sparrow terraces) and bat roosting features (e.g. bricks and access tiles) be incorporated into selected new buildings, such details would not necessarily form part of routine reserved

- matters submissions and so recommended condition 6b is necessary, reflecting the Council's suggested condition outline 19.
268. Similarly, many of the mitigation measures proposed in the Environmental Statement can only be secured through one or several method statements. These would not normally feature as reserved matters applications and so their submission must be secured by condition 6e, reflecting the Council's suggested conditions 20 and 37 but omitting the premature and unnecessary specification of the content of the method statements.
269. Although landscaping is a reserved matter and proposals for new landscaping can be expected to be forthcoming in response to the condition requiring the submission of reserved matters, tree preservation is not inherently a feature of landscaping proposals and so there is a necessity for recommended condition 6c, reflecting parts of the Council's suggested condition 21 but omitting parts which are premature and unnecessary prior to the consideration of reserved matters applications.
270. Appearance is a reserved matter and so it is not necessary to require by condition the submission of details of external materials. For that reason, I do not include the Council's suggested condition 23. But reserved matters would not necessarily include the submission of details of foul and surface water drainage, boundary fencing or of street and external lighting, so the Council's suggested conditions 24 and 26 are necessary (recommended condition 6h) to require the submission of those details. Suggested condition 27, specifying an aspect of surface water drainage design, would be premature and unnecessary until those details are submitted for consideration
271. The appellant's submitted Outline Energy Statement records the requirements of emerging local plan policies CC1, CC2 and CC3 for reductions in carbon emissions and for performance in excess of the Building Regulation requirements and so the Council's suggested condition 25 is necessary and justified, becoming recommended condition 8.
272. Paragraph 6.2.3 of the appellant's submitted Flood Risk Assessment<sup>543</sup> recommends that ground floor levels are set 150mm above surrounding ground to mitigate the residual flood risk associated with excess surface water runoff in an extreme rainfall event. A condition (17) to require this provision would be necessary and would put into effect part of the Council's suggested condition 28. Examination of applications for reserved matters and other details to be submitted in accordance with other conditions will establish whether the development would meet the aims of the remainder of the Council's suggested condition 28.
273. Paragraph 15.106 of the appellant's Environmental Statement recommends that as mitigation for the effects of the development on air quality, electric vehicle charging points be provided at all off-street parking places. This would need to be required by recommended condition 18, in pursuit of the Council's suggested condition 29.

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<sup>543</sup> Appendix 13.1 to the Environmental Statement

274. Paragraph 11.42 of the appellant's Environmental Statement recognises that further ground investigation and assessment will need to be undertaken and will be secured through a planning condition. Section 7.2 of Appendix 11.1 to the Environmental Statement recommends that intrusive ground investigations are carried out in the area of and around the Chaloner's Whin landfill and in and around Marsh Farm. Recommended condition 6i is necessary to give effect to these recommendations, similar to the Council's suggested conditions 30, 31 and 32.
275. Chapter ten of the appellant's Environmental Statement recognises that impacts would occur to undated archaeological ditches recorded in evaluation trenches at three locations within the site, to known paleoenvironmental remains located in the south-east part of the site and to the nineteenth century outbuildings at Marsh Farm. The first of these are considered of insufficient heritage value to warrant specific mitigation but for the second, paleoenvironmental sampling, analysis and publication is recommended and for the last, a programme of building recording. These would need to be secured by recommended conditions 9 and 7 based on the Council's conditions 33 and 34.
276. The Unilateral Undertaking makes provision for funding, in accordance with a timetable, the off-site highways works necessary to make the development acceptable. The developer is not responsible for carrying out the off-site highways works and so the Council's suggested condition 38 seeking to make the developer responsible for the delivery of these matters would not be a reasonable condition to impose. However, Schedule 6 of the Unilateral Obligation makes it explicit that a condition (19) is necessary to require the submission of a travel plan, which the obligation will then underwrite. Paragraph 1.2.2 of the submitted Travel Plan<sup>544</sup> makes it clear that it is not intended as the final Travel Plan for the development.

## Conclusions

277. References in this section in square brackets [thus] are to previous paragraphs of this report.

### *Green Belt*

278. Although it is established development plan policy that York should have a Green Belt [22], its boundaries have never been defined. They are a matter of current controversy in the examination of the submitted City of York Local Plan [25, 26].
279. It is not for me to say where the boundaries of the York Green Belt should be drawn. That is a matter for the Local Plan examination. But I do observe that the Green Belt boundary proposed by the Council is already overtaken by development sprawl on about one-third of the southern side of Moor Lane [36], that although Moor Lane is a convenient boundary to draw on a map, there are others equally conveniently drawn in the recent past [32], that there is no obvious landscape threshold which signifies where the boundary should be drawn [44], that these are some of the arguments being made for a different boundary

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<sup>544</sup> Appendix 14.2 of the Environmental Statement

[35-39] and so it should not be presumed that the Green Belt boundary as submitted is fixed.

280. For the purposes of this appeal, all parties are agreed, and I concur, that the site should be taken as forming part of the York Green Belt [32, 121]. But, before making a decision, the Secretary of State will wish to confirm the current position in relation to the Local Plan examination because the outcome of that process may invalidate some of the following conclusions relating to Green Belt.
281. The description of development encompasses several elements, not all of which fall squarely within the definition of inappropriate development contained within paragraph 145 of the NPPF [34]. Not specified in the description of development, the proposal includes about 17ha of public open space which would fall within the scope of NPPF paragraph 146(e) [28]. There would also be a sports pavilion which might also fall within the scope of paragraph 145(b), except that the Council considers (and the appellant accepts) that it would not preserve the openness of the Green Belt [125]. The Council considers (but the appellant denies [40]) that the proposed Ecological Protection and Enhancement Zone would lie outside the scope of NPPF paragraph 146(b) because its height, extent and the inclusion of 3m high fencing would not preserve Green Belt openness [126].
282. Resolution of these issues is unnecessary because both main parties agree (and I concur) that the above elements are not separable from the residential dwellings and local centre proposed [34, 126]. The latter are most definitely inappropriate development within the Green Belt [125] and therefore the whole proposal must be regarded as inappropriate development within the Green Belt.

#### *Green Belt openness*

283. It has to be said that if the Council's proposed Green Belt boundaries are adopted then the openness of the Green Belt in this vicinity is already compromised by the row of housing development which extends for about one-third of the south side of Moor Lane abutting the site [36]. It is also fair to say that the sense of openness in this part of the Green Belt is compromised by its juxtaposition with the built-up area of York but that is true of any boundary situation. Other than that and the nearby buildings of the former Eastfields Farm, the relative flatness of the locality, the size of the fields, the intermittent nature of some of the field boundaries and the relative lack of trees mean that this part of the Green Belt has a very open feel [16].
284. The site is presently undeveloped except for the buildings at Marsh Farm. Most of these (other than the farmhouse itself) would be demolished as part of the proposal [28]. To that extent the proposal would add to the openness of the Green Belt. That would be more than outweighed by the 14.78ha of built development proposed on about 17ha of the 40 ha site [28] which represents a loss of openness of about 37% of the site. To a degree, I concur with the view of the Council that the height, extent, artificial form and fences associated with the EPEZ would compromise the visual openness of the Green Belt (even though it would not conflict with any of the purposes of Green Belt) and so that represents an additional loss of openness.
285. In assessing the degree of harm to the openness of the Green Belt which this development would cause, account must also be taken of the fact that, in the

recent past, assessments have been made that it is not essential to keep this area of Green Belt open [32, 33, 122]. I therefore conclude that the degree of harm caused by the effect of the development on Green Belt openness would be substantial rather than overwhelming.

### *Landscape*

286. There is little that separates the parties on this topic except the importance which the Council places on views from the north of Askham Bog and the effects of the proposed EPEZ.
287. It is factually correct that the development would bring built form closer to the Bog. Insofar as the development would be visible, that would reduce the Bog's sense of isolation in the countryside [129, 133, 135]. But; very few people currently experience the view north from Askham Bog and the YWT's aspirations to make that part of the Bog more accessible would not be for the purposes of enjoying a view of the surrounding countryside but to make the interest features of the Bog more available [47]; a sense of isolation in the countryside is not one of the Bog's interest features; the development could and would be screened by planting and by the EPEZ [40]. Consequently, I do not share the Council's concern with the view from the Bog.
288. The site is best and most versatile agricultural land [41]. It is unspoilt by its proximity to the urban area but is relatively unremarkable in terms of its landscape [42, 44, 129, 134, 136]. Notwithstanding the Council's repeated references to Woodthorpe and Askham Bog giving the locality a sense of place [129, 134, 135], in truth, the former has nothing to signify a sense of arrival or departure; it is simply competent suburban architecture of its time which ceases to extend further without ceremony [42, 44]. The latter, notwithstanding its ecological significance, appears in the landscape as no more than another belt of trees in the distance [45].
289. The site is a component of the open countryside that surrounds York and contributes to the setting of the historic city [128] but it is not an essential component for that purpose [38, 43]. It is a relatively self-contained element in the landscape [43, 131]. Open countryside would continue to surround York and provide a setting for the historic city if this site were developed [45]. In general terms therefore, the loss of this site to built development would cause little harm to the landscape.
290. No party has suggested that the site is a valued landscape in the terms of NPPF paragraph 170(a) but all agreed that the intrinsic character and beauty of the countryside should be recognised. Such character as this site has comprises ditches and hedgerows, a gentle slope down to the Askham Bog Drain and a low ridge of glacial till about halfway along the south-western arm of the site [16, 149].
291. Landscaping to screen the development would add to tree cover [40]. The built development elements of the proposal could be detailed to respect the hedges and ditches as the appellant's illustrative material demonstrates.
292. In contrast, the EPEZ would cut across existing hedgerows and drains. It would present an abrupt slope to a bund with a steep landform of a height as

- great or greater than the total height differential across the whole site [30, 133, 224].
293. Rather than the bund being constructed as a continuation eastwards of the existing low ridge of glacial till which is a feature of the landscape [16, 58, 149], the attenuation ponds which would form part of the EPEZ would cut through that feature and separate it from the new bund to be constructed. The extent of the attenuation ponds is greater than is necessary to serve the development; they are designed to serve a much more extensive proposal [27]. The positioning of the attenuation ponds in relation to the topography can be seen most clearly in map 1 attached to Alex Jones's Proof of Evidence for the YWT. The bund, not shown on that map, would lie between the attenuation ponds and the Bog to the south.
294. I therefore conclude that the EPEZ would be an alien feature. In that it would cut across and be at odds with the existing character of the countryside it would fail to respect its intrinsic character and beauty. Consequently, it would be inconsistent with national policy expressed by NPPF paragraph 170(b).
295. Paragraphs 4.12 of the Supporting Planning Statement and 5.27 of the Environmental Statement promise a zone of permanent open water (minimum depth 0.3m) and marsh within the proposed surface water attenuation basins. In the section of the appellant's Design and Access Statement dealing with Green Infrastructure, the permanent attenuation lakes of the EPEZ are described as intended to have a shallow profile along the edges in order to develop a gradual transition to allow for establishment of wetland meadow, species rich grassland and aquatic and marginal edge species. Those descriptions might almost be understood as intending to recreate features of the Bog itself or of the lagg described in YWT's evidence [207, 217]. Closer inspection of the detailed drawings of the attenuation ponds shows this to be a misconception. The profile at the edges would be 1:4, hardly shallow, and the marginal planting would be infrequent. I cannot identify any marsh in the drawings.
296. This missed opportunity is not a ground for refusal, nor a reason to dismiss the appeal, but it does confirm the point made by the YWT that the construction of the EPEZ would preclude this particular element of aspirations for the restoration of the Bog. It also demonstrates that the net gain in biodiversity, claimed by the appellant as a benefit of the scheme in line with NPPF paragraph 170(d), is not as great as perhaps it could have been.

#### *Askham Bog*

297. There is universal agreement that Askham Bog is precious [73, 74, 138, 189, 190, 191]. There is also agreement that it is delicate [76, 139, 205]. It should not be thought of as homogenous; it encompasses a wide variety of habitats, from wet to less wet, from acid to alkaline [76, 141, 164, 203]. Nor should it be thought of as constant, unchanging; if left to its own devices, it would eventually evolve from fen into woodland and lose much of its interest. It is precisely its intermediate state which makes it of such interest [167, 191]. It is the product of evolution over centuries [139, 188]. It requires continued human intervention to maintain it in a stable condition, or to restore it to a previous condition [168, 207].

*(i) Water*

*a) Pollution*

298. There is universal agreement that the Bog depends on water to survive and thrive. Drier conditions and lower soil water levels can lead to a collapse in the peat, the release of nutrients, changes in species composition and a deterioration of the habitat [48, 156, 166, 167, 204, 205] but there is complete disagreement on the routes by which, and in what proportions and qualities, the water arrives at the bog [140, 142, 143]. Consequently, there is complete disagreement about what effects, if any, the development would have on the Bog's water supply.
299. Although the part of the site proposed for built development represents only about 2.6% of the catchment, of which 19% is already developed, [49] all parties are agreed that urban pollution in the water reaching the Bog would be harmful. The evidence suggests that currently, the natural filtration provided by the existing ditches on site prevents pollution in surface water run-off from reaching the Bog [169]. There is no reason to disbelieve the appellant's assertion that a SUDS scheme can be designed to filter out pollutants [51, 170].

*b) Groundwater*

300. The majority of habitats present in Askham Bog are classified as having high to medium ground water dependency [164] but that fact tells nothing about the source of the groundwater or its qualities. The parties argue about whether it derives from percolation from the drains surrounding the site collecting run-off, from percolation through the underlying geology or simply from prevention of rainfall drainage into the drains [141, 142, 143, 211, 212].
301. The level of groundwater within the Bog fluctuates with the seasons but at all times it has a domed profile, with levels reducing towards the drains on either side, more pronounced towards the Askham Bog drain to the north, less so towards the drain to the south [63]. So, it is clear that the drains do what their names imply; they drain. There is a consensus that the level of water in the drains should be kept high so as to prevent them draining too effectively [71, 205]. This is done partly by damming the drains leading into the Askham Bog Drain and partly by the IDB controlling its pumps so that they do not pump water out of the drain when its level falls [70, 71, 205]. Neither of these management actions would be affected by the development proposed.
302. A major constituent of the supply of water to the Bog is rainfall by direct precipitation. This would not be affected by the development. But it is acidic and therefore only supports those elements of the interest features of the Bog which like acidity [68, 141].
303. Groundwater contains nutrients [159]. Nutrient-rich or base-rich water seems to be both a problem and a necessity. In the Arup report of 2003, it is frequently referred to as a nuisance but, it is no longer regarded as such, following the diversion of the sewage works outflow to a different catchment [207]. Agricultural run-off is recognised as a nuisance, high in nitrates. The appellant claims, and the Council accepts, that reduced agricultural run-off would be a benefit of the development [169]. But some habitats within the Bog are recognised by the YWT as benefitting from proximity to the nitrogen-rich Askham Bog Drain [141, 209].

304. The observation that the critical loads for different chemicals would vary for different plant species but overall changes in water chemistry would be expected to cause an increased growth of some plants and the loss of others less able to respond, changing the species composition, has the ring of truth [171]. It does not necessarily follow that changing the species composition would lead to the deterioration of the habitat because it is the YWT's aspiration to restore the Bog to favourable condition which may well involve the reintroduction of species not currently present.
305. Resulting from Arup's work commissioned by the YWT, action has been taken in the recent past to remove the outflow from the Askham Bryan Waste Water Treatment Works as a source of supply feeding the Askham Bog Drain. Although proof of cause and effect is not supplied, subsequently *Carex elongata* has flourished [206]. That is reckoned to have been beneficial but there is an implicit consensus that anything which would further change the chemical composition of water reaching the bog would introduce a degree of risk to its interest features.
306. There is argument about the degree to which the water table in the Bog is supported from below by hydraulic pressure from higher ground nearby as opposed to rainfall from above [62, 63, 141, 209]. All parties seem to accept that the higher ground to the south of the site (the York Moraine) exerts such pressure and that it produces seepage of mineral-rich groundwater into the drain on the south side of the Bog. The appellant denies that its contribution goes beyond that drain so as to support groundwater levels in the Bog itself.
307. The development proposed would not affect any contribution to the water supply in the Bog emanating from the York Moraine so, to that extent, it is not necessary to resolve the dispute between the parties but it is worth noting that there is evidence that the drains, although effective as drains, are only effective for a limited distance, 20m or so, on either side of the drain [213]. So, although I understand that peat can exert a capillary action and I understand the appellant's point that the drains relieve hydraulic pressure from higher ground on either side of the Bog [63], I am not convinced that they would eliminate it entirely. My view therefore is that although there may be no major upwelling [67], hydraulic pressure from higher ground does, to some extent, support the water table in the Bog.
308. The York Moraine to the south of the bog generally rises higher than the land in the appeal site to the north of the Bog and so hydraulic pressure from the appeal site would be less. All parties accept the York Moraine as relatively porous whereas they dispute the porosity of the ground to the north of Askham Bog and its ability to exert similar pressure or to produce similar seepage [141-143 and 144-148]. Attention thus turns to the extent that the site seeps nutrient-rich groundwater into the Askham Bog Drain and thence into the Bog itself.

*c) Permeability*

309. The rainwater which falls onto the site must either evaporate (or transpire through whatever is grown on the site), infiltrate, or run-off. The appellant's view is that the proposal would reduce quantities lost to evaporation or transpiration and increase the quantity of run-off (although the rate of run-off would be reduced, controlled by the attenuation ponds in the SUDS system) and that there is no, or very limited, infiltration and hence no, or very limited,

- seepage of nutrient-rich groundwater from the site into the Askham Bog Drain [69].
310. There is conflicting evidence about the efficacy of surface water drainage. For the three weeks that the Inquiry sat, there remained standing water on parts of the site. Local residents confirm that this is normal [55, footnote 136, 220, 236]. All but one trial pit failed the soakaway test. Yet the site has land drains, is served by ditches and the tenant farmer affirms that there are no problems with drainage [152-155].
311. Based upon the evidence submitted, there can be no certain way of knowing the truth. All parties rely on sample boreholes, trial pits or trenches from which they interpolate (guess) what lies between [54]. From the evidence and interpretations presented it appears to me most likely that the majority of the area where built development is proposed is relatively impermeable to infiltration and that the part of the site nearer to Holgate Beck to the east is more permeable [53, 61, 144-154].
312. Nevertheless, there is probably some infiltration into groundwater even from the least permeable parts of the site [55]. Because the ground is relatively flat and rather impermeable, the rate of flow of groundwater towards the Bog will be very slow [59, 61, 144, 214]. Any change in the quantity of groundwater flow resulting from the built development may take as much as sixty years to be manifest [Footnote 150].
313. Even in the part of the site to be built upon, hard surfacing will not cover 100% of the site. There will still be a percentage of the built area which will not be hard surfaced, where rainwater can still infiltrate into the ground. Taking that into account, together with the figure for the area of built development as a percentage of the site [49] and the parties' estimates for the contribution of groundwater flow to the flow in the Askham Bog Drain [59], I conclude that the effects of the built development on the contribution which groundwater flow makes to the water levels in the Drain would be very small [155].

*d) Attenuation ponds*

314. Of more significance would be the effect of the attenuation ponds to be constructed as part of the EPEZ. These are designed to serve a larger site and so would be more extensive than is necessary to serve the development proposed. Consequently, they would cut through the low ridge which provides a minor watershed between land which drains into Askham Bog Drain adjacent to Near Wood and that which drains into the Drain adjacent to Middle Wood [58, 156]. They would intercept whatever ground water is seeping into the Askham Bog Drain, not just from the area of the site where built development is proposed but from a wider catchment and divert it eastwards as surface water towards the outfall into Marsh Farm Drain [60]. This would have a much more significant effect on groundwater flow than the increased area of hard surfacing within the catchment resulting from the built development itself.
315. The SUDS system and its attenuation ponds would be intended to mimic the current water supply mechanism to the Bog. Yet the outfall would be positioned at a level which would prevent the lowest 300mm of the attenuation pond from draining. At least once in every five years, in periods of dry weather, evaporation would lower the water below that level, causing a delay in the flow

into the Drain until the attenuation basins recovered [157, 216], so not mimicking the current water supply mechanism.

316. Even so, the majority of water falling as rain on the built development will find its way into Askham Bog Drain as surface water via the SUDs system discharging into the surface water drain known as Marsh Farm Drain and thence into Askham Bog Drain rather than as groundwater [57].

317. The Drain is a drain. It is not an irrigation canal. It is intended to take water away from the Bog rather than feed it, even though it is managed in such a way as to drain the Bog as little as possible [65, 67, 71]. Consequently, I am not convinced that it somehow feeds nutrient-rich water into the Bog, although the appellant did offer a scientific explanation for how nutrients could be transferred whilst still operating as a drain [72]. My conclusion therefore draws attention to the role played by flooding.

*e) Flooding*

318. Surface water flooding appears to be important to habitats within the SSSI [165, 206, 215]. It is one of the ways in which base-rich nutrients are delivered to the Bog. It is also helpful in hindering scrub growth deleterious to the condition of the SSSI [167]. It occurs when the IDB pumps draining the catchment are overloaded [72]. The IDB has required, and the appellant has agreed to design the attenuation ponds associated with the SUDS so that the run-off rate is reduced to a level which will not overload the IDB pumps.

319. Although, as the appellant points out, this will not have any effect on the total quantity of water in the system [69, 70], if it works as intended, it will have the effect of the water from the site, which represents 10% of the catchment of the Askham Bog Drain, overloading the IDB pumps less frequently. Consequently, even though 90% of the catchment would be unaffected, flooding would be likely to be less frequent, to the detriment of the Bog [163].

*f) Conclusion on water*

320. In conclusion, my advice on the controversies surrounding the hydrology of the Bog is to conclude that the built development itself is likely to have very little adverse effect but that much more noticeable adverse effects would result from the attenuation ponds, both in the way they would intercept groundwater flows from an area far wider than that proposed for built development in this appeal and also in the way the IDB has required the appellant to limit their outflows. Both of these effects would greatly reduce the contribution which the site as a whole makes to the supply of base-rich nutrients to the area in the vicinity of the Askham Bog Drain. The site as a whole represents about 10% of the IDB catchment area [49] and so these effects would probably cause harm to the interests for which the Bog is cited as an SSSI and to the deterioration of irreplaceable fenland habitat.

321. My conclusion is presented in terms of likelihood and probability because it is quite clear from the evidence presented to this Inquiry that nobody can have absolute certainty about the source of the Bog's water supply and the route by which it reaches the Bog. For that reason, if the appeal were to be allowed contrary to my recommendation, it would be tempting to endorse the proposals for a programme of hydrological monitoring enshrined in Schedule 9 of the

Unilateral Undertaking. But I do not do so and, indeed, advise that the provisions of Schedule 9 relating to hydrology monitoring would not comply with the CIL regulations for the following reasons:

- A programme of hydrological monitoring does not modify or mitigate any of the characteristics of the development proposed; if the development proposed is not acceptable, hydrological monitoring would not make it so. If the development proposed is acceptable and is permitted, hydrological monitoring could either confirm or disprove the correctness of that decision but, if it were to disprove the correctness of the decision, it would be too late to remedy the matter. It would not make the development acceptable in planning terms and is therefore not necessary in order to do so.
- It is not directly related to the development but is more in the nature of an academic research project of general value and applicability.
- There might be an implication that if hydrological monitoring found that the development had caused harm to the Bog, then remedial action would ensue. But, as the scope of any remedial action cannot be prescribed in advance, it cannot be said to be fairly and reasonably related in scale and kind to the development.

*(ii) Ecological isolation*

322. Askham Bog is both an SSSI and Ancient Woodland [18]. That introduces some tensions because woodland is (through transpiration) one of the agents which tends to induce a drying-out of the Bog. In seeking to restore the Bog, the YWT has already carried out some clearance, mows fen, introduces grazing ponies and encourages deer browsing to control tree growth [74].

323. Natural England's standing advice in relation to Ancient Woodland requires a standoff or buffer between development and Ancient Woodland [74]. That requirement coincides with pre-application advice which led to the EPEZ component of the appeal proposal, designed to preclude human activity reaching the SSSI from the appeal site [86].

324. Although disparaging the choice of species to be planted in the EPEZ [133], and challenging the precise scoring of the evaluation matrix, the Council accepts, and I concur with, the appellant's basic premise of a biodiversity net gain resulting from the development proposal [77, 113, 114, 186]. The Council also accepts, and I agree, that the EPEZ and the rest of the green infrastructure (to be the subject of detailed proposals) would be consistent with its aim of achieving a Green Infrastructure Corridor through the city [83].

325. In the event that the Secretary of State disagrees with my recommendation, I confirm that the EPEZ is an intrinsic part of the development proposed which would need to be secured in the way proposed in the planning obligation [241], which in that respect would comply with the CIL regulations. The deficiencies of the planning obligation in providing an organisation to realise the ongoing management plan should be noted and remedied by condition.

326. The EPEZ would be permeable to the majority of species which comprise the ecology of the Bog [81,82]. They would benefit from the greater metapopulations which the net gain in biodiversity would provide [83, 113]. But the movements of some larger ground-based species, not specifically defined as

part of the special interest of the SSSI but nevertheless contributing to its ecology, would be hindered or prevented by the EPEZ. Consequently, the EPEZ represents a relative increase in the isolation of the Bog [197]. It would still be possible for the YWT to bring grazing ponies onto the SSSI, through gates, as is done now, but deer would find their movements onto Near and Middle Woods more circumscribed [79, 80].

327. This effect is not quantified but the Secretary of State may wish to consider that the benefits of the increase in habitat benefitting the greater number of species relevant to the Bog outweighs the effects of hindering deer movements, whose loss of contribution to the Bog's ecology can be balanced by increased use of other management methods for controlling tree growth and spread.
328. There is concern that the built development components of the site would also be a direct barrier to species movement. Detailed design of the housing layout is a reserved matter. But the Lawton Principles of bigger, better, joined up would apply through NPPF paragraph 170(d) requiring the provision of net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures [195].
329. There are recommendations within the Environmental Statement, which can be required through conditions, suggesting measures which could make even the built development more permeable and welcoming to wildlife. In addition to the SUDS measures, these would include the retention and new planting of hedgerows, bird boxes, bat boxes, hedgehog holes in fences and street lighting designed to minimise interference with bats [78].
330. It would be wrong to think of the built development of this proposal presenting an environment that would be sterile to wildlife. Populations of some insects would be damaged by artificial lighting within the built development but that would be some 200m away from the Bog and insect populations nearer to the Bog would benefit from the general effect of biodiversity net gain. It is reported that bats currently commute between the Bog and built development at Woodthorpe. Although reactions will vary between species, there is no reason to suppose that they, and other wildlife, could not continue to do so.

*(iii) Urban Fringe effects*

331. At present, housing in Woodthorpe is about 400m to the north of Askham Bog [84]. Housing in Copmanthorpe is much closer but there is an effective barrier, in the form of the A64 dual carriageway, across the shortest distance to the Bog [176, 200]. A longer route, 800-900m to the Bog, is available to the Bog's public car park [201]. The built part of the proposal would approach to within 200m or so of the Bog. Although less than the YWT's ideal separation distance of 500m, it would be about double the distance which the YWT recognises as a threshold for the effects of adverse human behaviour [86].
332. In contrast to the approach from the public car park which welcomes visitors with signage, information and a boardwalk [85, 201], the approach from the proposed housing development would be blocked by the EPEZ, intended to be an impenetrable barrier [86, 197]. The fencing proposed in the EPEZ could be as effective a barrier to human movement as is the fencing which seeks to prevent the residents of Copmanthorpe from trying to cross the A64 dual carriageway. But, it could be easily circumvented.

333. There would be, as was demonstrated on my site visit, an easy route from the western end of the proposed development, following field boundaries and trespassing across the golf course, to reach the SSSI, a distance of about 350m or so [174]. It is a route which appears currently to have a degree of regular use. It would be likely to have more such in the future. It would thus be apparent to residents of the development that, as a barrier to movement, the EPEZ serves little or no purpose and so might be treated with a degree of irritation and disrespect. In light of the provision of additional hunting territory for cats within the open space, I am less convinced by the idea that the Bog would be attractive to, or vulnerable from, the increased number of cats [88] resulting from the development.
334. Some diversionary attraction would be exercised by the effects of the provision of open space within the development attractive to dog walkers [87]. I do not go so far as endorsing the likelihood of some of the more extreme examples of criminal damage instanced by the Council and the YWT occurring to any frequent degree [174]. But I do conclude that, unless there are control measures in place, similar to those which greet visitors from the south, there is a degree of substance in the fears of damage to the Bog through unauthorised access expressed by the Council and the YWT [footnote 422].
335. The measures for dealing with increased visitors, proposed by the YWT [201], funding for which is sought through Schedule 9 of the Unilateral Undertaking [253], might be appropriate and necessary if access to the Bog from the appeal site was opened and welcomed. But, that is not what is proposed; on the contrary, access to the Bog from the appeal site is to be closed and made unwelcome. For that reason, I advise that the provisions of schedule 9 of the Unilateral Undertaking would not comply with the CIL regulations in that they are not necessary to make the development acceptable, do not relate to the development as proposed and so would not be reasonably related in scale or kind to the proposal as made. In contrast the provisions for a YWT liaison officer set out in Schedule 4 of the planning obligation would seem to be proportionate and related to the residual risk which would remain after the implementation of the EPEZ.

#### *Education*

336. The parties are agreed that the proposal would have the effect of needing additional provision of pre-school, primary and secondary education. Provision for the necessary additional accommodation is made in Schedule 7 of the planning obligation [90, 179, 251] which appears to comply with the CIL regulations. No contrary evidence is submitted. Therefore, this issue does not provide a reason to dismiss the appeal.

#### *Highway safety*

337. The appellant and the two highway authorities are agreed that the proposal would cause adverse effects on the operation of both the strategic and local highway networks. Actions necessary to deal with these effects are included in Schedule 6 of the planning obligation [91, 92, 93, 178, 248-250] which appears to comply with the CIL regulations. Evidence presented by third parties does not refute this conclusion [221, 234].

### *Other matters*

338. There is no evidence submitted to indicate that the appellant's proposals for dealing with the effects of the proposal on energy demand, air quality, noise and vibration, ground conditions and heritage assets would be anything other than acceptable [94-98].
339. There are some other matters raised in writing by third parties' representations to the Council on the original planning application. These were not taken forward by parties appearing at the Inquiry and do not appear to be substantiated with evidence. My advice is that their consideration should not alter the overall balance of considerations in this appeal.

### *Very Special Circumstances*

#### *(i) Housing supply*

340. All parties are agreed that there is a housing crisis in York, with a wholly inadequate identified Housing Land Supply [100, 181, 233]. The Council and some third parties expect that the emerging Local Plan will resolve the issue and identify an adequate five-year housing land supply [230]. Because of constraints and the level of objections to sites included within the allocations of the emerging local plan, the appellant's belief is that the emerging Local Plan will not identify an adequate five-year housing land supply without the inclusion of the site the subject of the current appeal [104, 105, 106].
341. It is not for me to pre-judge the outcome of the current examination of the emerging local plan. This report must be based on the current situation as set out in the Housing Statement of Common Ground (Inquiry Document INQ5). But, before making a final decision in this case, the Secretary of State will wish to check on the outcome of the examination of the emerging Local Plan, since that may supersede the conclusions of this section of my report.
342. Housing supply, of itself, does not represent very special circumstances for permitting development harmful to the Green Belt. But, housing supply in the face of a marked and intractable shortage of housing land supply, may do so. The five-year housing land requirement is for 5,345 dwellings. The anticipated undersupply (shortage) for the next five years is 2,500 dwellings. This proposal therefore represents just under 10% of the total five-year requirement, or about 20% of the currently identified shortage. That is a considerable benefit which could contribute towards a finding of very special circumstances.

#### *(ii) Affordable housing supply*

343. York has an affordability problem in both home ownership and rental which is more acute than the national average [108, 109, 233]. Affordable housing supply is well below need [110].
344. The proposal, in this appeal, to provide 35% of the dwellings as affordable units is therefore of benefit. Although a very commendable benefit, the excess over the record of the Council's recent achievements (13.31%) [111] should not amount to an argument in favour of a declaration of very special circumstances because policy requires a benefit of 30% in any event.

345. What can be considered towards a declaration of very special circumstances is the 5% excess over policy. The Council's disparagement of this excess should not detract from its value in terms of national policy [112, 183], even though there is a history in York of delivery falling short of promises [222]. It would need to be secured by a planning obligation. Notwithstanding the Council's criticisms, Schedule 3 of the submitted obligation would meet the CIL regulations and would fit the purpose, as would Schedule 8 for the provision of land for self-build housing.

*(iii) Net biological diversity gains*

346. Government has consulted on a proposed mandatory 10% gain in biodiversity [114]. Even after correcting for the Council's criticisms of the appellant's calculations of the gain [186], this development would result in an 80% gain. That would be a significant excess over what may become the policy requirement and so may be accounted a contributory factor in any considerations of whether very special circumstances apply, even though not as much as some parties might wish [207].

*(iv) Open space provision*

347. Open space provided by the development would be well in excess of policy requirement [116]. It would contribute towards the remedying of existing deficiencies in the area, although care should be taken not to exaggerate that effect [184]. As such, the excess may be accounted as a contributory factor in any calculations of whether very special circumstances apply. Its provision would need to be secured by condition or obligation. Schedule 4 of the Unilateral Obligation would serve the purpose, subject to supplementary conditions to secure an executive and funding organisation, and would comply with the CIL regulations.

*(v) Local centre and community facilities*

348. Although a benefit, this element of the proposal does not meet a recognised need, shortfall or policy requirement [117, 185], so I would advise against considering this as an element contributing to a finding of very special circumstances. For that reason, I consider that Schedule 5 of the Unilateral Undertaking would not comply with the CIL regulations and should not be taken into account as it is not necessary to make the development acceptable in planning terms.

*(vi) Clear urban edge*

349. Although a benefit, good design appropriate to context is no more than is required by policy and so ought not to be regarded as a factor contributing to a finding of very special circumstances [118, 185].

*(vii) Economic benefits*

350. The economic benefits are proportionate to the development [119]. Whilst all benefits should be taken into account in the overall planning balance, benefits which are not disproportionate would be unlikely to contribute to a finding of very special circumstances.

### *The planning balance*

351. For reasons previously explained, this report does not prejudge the outcome of the examination into the City of York Local Plan. I write in terms of the current situation. Before making a final decision, the Secretary of State will wish to confirm the contemporary status of the emerging local plan as events may invalidate the following paragraphs of my conclusions.
352. Planning Law requires that applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise. But, in this case, there is no development plan.
353. I fall back on the advice of NPPF paragraph 11(d), which is a presumption in favour of development. But clause (i) of that paragraph advises that it should not apply where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Policies that may fit that description include those in the NPPF relating to sites designated as SSSIs and land designated as Green Belt, namely NPPF paragraphs 143 and 144 for Green Belt and paragraph 175, clauses (b) and (c) for the SSSI.
354. For Green Belt, inappropriate development is, by definition, harmful and should not be approved except in very special circumstances. Those very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal is clearly outweighed by other considerations. In paragraph 285 above, I have already concluded that the degree of harm caused by the effect of the development on Green Belt openness would be substantial rather than overwhelming and so is open to being clearly outweighed by other considerations.
355. To this must be added other harm. In paragraph 294, I conclude that the effect of the EPEZ on landscaping considerations would be inconsistent with national policy expressed by NPPF paragraph 170(b) and in paragraph 320 I find that two separate effects of the attenuation ponds proposed within the EPEZ would greatly reduce the contribution which the site as a whole makes to the supply of base-rich nutrients to the area in the vicinity of the Askham Bog Drain and so these effects would probably cause harm to the interests for which the Bog is cited as an SSSI and to the deterioration of irreplaceable fenland habitat.
356. In paragraphs 340-350 above I have considered potential considerations which might lead to a finding of very special circumstances. There would be a considerable benefit from the supply of housing in a situation of crisis, a modest excess contribution to the supply of affordable housing which may be given disproportionate value because of the overall deficiency of supply, a significant excess of net biological diversity gains and a substantial contribution to the remediation of open space deficiencies in the local area. It might be thought that these cumulative disproportionate benefits would clearly outweigh the combined effect of the harm to the Green Belt and to the landscape of the site caused by this proposal, if those were the only two adverse considerations. But they are not.

357. For the SSSI, development which is likely to have an adverse effect should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest. Moreover, development resulting in the loss or deterioration of irreplaceable habitats (in this case, the fen component of the SSSI) should be refused unless there are wholly exceptional reasons, for example, infrastructure projects where the public benefit would clearly outweigh the loss or deterioration of habitat. The development proposal would not fall within this exception.
358. Although I conclude in paragraphs 324-330 and 334 that the greater ecological isolation and urban fringe effects would be minimal, in paragraph 320 I find that two separate effects of the attenuation ponds proposed within the EPEZ would greatly reduce the contribution which the site as a whole makes to the supply of base-rich nutrients to the area in the vicinity of the Askham Bog Drain and so these effects would probably cause harm to the interests for which the Bog is cited as an SSSI and to the deterioration of irreplaceable fenland habitat.
359. This reason alone would be sufficient to dismiss the appeal but, when it is added to the Green Belt balancing exercise carried out in paragraph 356 above, it is clear that the cumulative disproportionate benefits of the proposal would not clearly outweigh the combined effect of the harm to the Green Belt, the harm to the landscape and the harm to the SSSI and so I recommend dismissal of the appeal on Green Belt grounds as well as the ground of harm to the SSSI.

### **Recommendation**

**File Ref: APP/C2741/W/19/3233973**

360. I recommend that the appeal be dismissed.

*P. W. Clark*

Inspector

## Schedule of conditions

- 1) No development shall commence until a phasing and dwelling mix strategy has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved phasing strategy.
- 2) Details for each phase (or, in the absence of an approved phasing strategy, for the site as a whole) of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") other than those specified in conditions 8, 9, 10 and 11 below, shall be submitted to and approved in writing by the local planning authority before any development of a phase (or in the absence of an approved phasing strategy, the site as a whole) takes place and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 4) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 5) No removal of hedgerows, trees or shrubs or works to or demolition of buildings or structures that may be used by breeding birds shall take place between 1 March and 31 August inclusive in any year unless a competent ecologist has undertaken a detailed check for active birds' nests immediately prior to the clearance of the vegetation or structure and has provided written confirmation, copied to the local planning authority, that no birds will be harmed and/or that there are appropriate measures in place to protect nesting birds on site.
- 6) No development shall commence on a phase (or, in the absence of an approved phasing strategy, the site as a whole) until:
  - a. details of a scheme or schemes for the provision on the site as a whole of not less than 0.57ha children's play space, 0.25ha teenagers' play space, 0.22ha of parks and gardens, 0.34ha of allotments, 2.61ha of amenity green space, 2.53ha of natural/semi natural open space, 4.54ha of natural/semi natural open space, 2.69ha of sports pitches and an associated combined sports pavilion and changing facility have been submitted to, and approved in writing by, the local planning authority.
  - b. a scheme or schemes for the provision of durable bird boxes and bat boxes, on retained mature trees and for bird nesting features (e.g. swift boxes and sparrow terraces) and bat roosting features (e.g. bricks and access tiles) on selected buildings has been submitted to and approved by the local planning authority.
  - c. a plan has been submitted to and approved in writing by the local planning authority showing the location of existing trees and hedges to be retained and protection measures for their retention. The protection measures approved shall be retained for the duration of the construction period

- d. details of Great Crested Newt Reasonable Avoidance Measures have been submitted to and approved in writing by the local planning authority.
- e. a Construction Method Statement and Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority.
- f. details of boundary fences have been submitted to and approved in writing by the local planning authority.
- g. details of external and street lighting have been submitted to and approved in writing by the local planning authority.
- h. details of foul and surface water drainage have been submitted to and approved in writing by the local planning authority.
- i. an assessment of the risks posed by any contamination, carried out in accordance with the recommendations of paragraph 7.2 of the appellant's submitted Combined Phase 1 and Phase 2 Ground Condition Assessment by Peter Brett Associates dated October 2018 and of British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority before the occupation of any dwelling on the remediated land. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the local planning authority before the occupation of any dwelling on the remediated land.

The development shall be carried on in accordance with the approved details. The natural/semi natural open space shall be completed in accordance with the approved details before any of the dwellings to be constructed on site are occupied. The sports pitches and associated pavilion and changing facility shall be completed in accordance with the approved details and made available for use before 50% of the dwellings to be constructed on site are occupied. No dwelling shall be occupied until its fencing and its drainage has been completed. The other matters listed in this condition shall be completed in accordance with the approved details and made available for before any of the dwellings to be constructed on the relevant phase (or, in the absence of an approved phasing strategy, the whole site) are occupied.

- 7) No development in areas of archaeological interest within the EPEZ and fields 22-24 shall take place until a written scheme of archaeological investigation, Optically Stimulated Luminescence and Accelerator Mass Spectrometry dating of sands and peats, public engagement, publication and dissemination of results, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 8) No dwelling may be constructed on site until details of the measures to be taken to achieve at least a 19% reduction in Dwelling Emission Rate compared to the target fabric energy efficiency rates required under Part L1A of the Building Regulations 2013, a water consumption rate of no more than 110 litres per person per day (calculated in accordance with Part G of the Building Regulations) and a reduction in carbon emissions of at least 28% compared to the target rate required under Part L of the Building Regulations have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) No demolition shall take place until a written scheme of archaeological building recording, analysis, publication, dissemination of results and digital archive deposition with the Archaeology Data Service and City of York Historic Environment Record of the original farm outbuildings surrounding Marsh Farm has been submitted to and approved in writing by the local planning authority. The demolition hereby permitted shall be carried out in accordance with the approved scheme and with approved plan RG-M-52, revision C.
- 10) The development hereby permitted shall be carried out in accordance with the following approved plans: RG-M-47, revision J and RG-M-49 revision J
- 11) The principal accesses to the development hereby permitted shall be constructed in accordance with the following approved plans: 29426/5501/003 revision F, 29426/5501/004 revision G, 29426/5501/005 revision D, 29426/5501/006 revision D
- 12) The ecological protection and enhancement zone (EPEZ) hereby permitted shall be constructed in accordance with the following approved plans: 29426/2001/101 revision B, 29426/2001/102, 29426/2001/103, 29426/2001/104, 29426/2001/105, EDP2165\_d090d
- 13) Notwithstanding the EPEZ Maintenance Plan appended to the Unilateral Undertaking associated with the development, the construction of the EPEZ shall not commence until a scheme for the funding and execution of the Maintenance Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried on in accordance with the scheme as approved.
- 14) The construction of the EPEZ shall not commence until details of additional boundary fencing on its western boundary have been submitted to, and approved in writing by, the Local Planning Authority. No dwelling on the development hereby permitted shall be occupied until the approved additional boundary fencing has been constructed.
- 15) The total number of residential units shall not exceed 516

- 16) The total floorspace (including mezzanines) of the development hereby permitted falling within classes A1, A2, A3 and A4 of the Use Classes Order 1987 as amended shall not exceed 200 square metres gross internal area.
- 17) The ground floor level of any building hereby permitted shall be constructed at least 150mm above surrounding site ground levels.
- 18) No dwelling with off-street parking shall be occupied until it has been provided with an electric vehicle recharge point (minimum 32A) within the garage/parking area of each dwelling. The electric vehicle charging point shall thereafter be retained in an operational condition.
- 19) Notwithstanding the Travel Plan submitted with the application, no dwelling shall be occupied until a final Travel Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Travel Plan.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Stephen Morgan	Of Counsel, instructed by Sandra Branigan, Senior Solicitor, City of York Council
He called	
Mrs Frances Harrison BA(Hons) MA MRTPI	Development Officer, City of York Council
Ms Esther Priestley BA(Hons) LA CMLI	Landscape Architect, City of York Council
Dr Aidan Foley PhD MSc BA(Hons)	Principal Hydrogeologist, Mott MacDonald Limited
Miss Nadine Rolls BSc MALGE	Countryside and Ecology Officer, City of York Council
Mrs Alison Stockdale BA(Hons) MA	Development Management Officer, City of York Council

Andrew Beddington, Housing Policy Officer, City of York Council; Helen Vergereau, Principal Development Control Officer, City of York Council and Sandra Branigan, Senior Solicitor, City of York Council spoke during the discussion on conditions and the planning obligation.

### FOR THE APPELLANT:

David Manley QC	Instructed by Mrs Lizzie Marjoram of Bird Wilford and Sale, Solicitors
He called	
Richard Thomas BSc MSc ARSM CGeol FGS	Senior Consultant, Peter Brett Associates
Michael Parkinson BSc(Hons) MICE MIHT MTRSO	Director, Peter Brett Associates
Tom Wigglesworth BSc(Hons) MSc MCIEEM	Director, Environmental Dimension Partnership Ltd
Duncan McInerney BSc(Hons) MLD CMLI	Director, Environmental Dimension Partnership Ltd
Andrew Crutchley BA(Hons) PGDip(Oxon) MCIfa	Director, Environmental Dimension Partnership Ltd

Gary Halman BSc FRICS Principal and Senior Director, Avison Young  
FRTPI

Lizzie Marjoram of Bird Wilford and Sale solicitors spoke during the discussion on conditions and the planning obligation

FOR THE YORKSHIRE WILDLIFE TRUST:

Emma-Louise Fenelon and Daragh Coffey Both of Counsel

They called

Professor Sir John Lawton CBE FRS President of the Yorkshire Wildlife Trust

Professor Alastair Fitter CBE FRS Trustee of the Yorkshire Wildlife Trust

Alex Jones BSc MSc CGeol FGS Senior Hydrogeologist, JBA Consulting

Louise Wilkinson, Conservation Policy and Campaigns Manager for the Yorkshire Wildlife Trust spoke during the discussion on conditions and the planning obligation.

INTERESTED PERSONS:

Janis Grant Local Resident  
Stephen Fenton Ward Councillor  
Ann Reid Local Resident and former City of York Councillor

## DOCUMENTS

### **Essential Supporting Documents**

- ESD 01 – Planning Application Form
- ESD 02 – Schedule of Landowner and Tenant Notice
- ESD 03 – Decision Notice
- ESD 04 – Site Plan
- ESD 05a(i) – Planning Application Covering Letter
- ESD 05a(ii) – Supporting Planning Statement, including Appendices
  - Appendix I Schedule of Submission Documents
  - Appendix II Site Location Plan
  - Appendix III Barwood Publication Local Plan Representations
  - Appendix IV Consideration of the Proposals Against the Emerging Local Plan Policies
  - Appendix V York Local Plan Inspectors’ Letter 24th July 2018
  - Appendix VI Secretary of State Decision APP/C2741/V/05/1189897 and APP/C2741/V/05/1189885
  - Appendix VII Hatch Regeneris Report Review of City of York Proposed Local Plan Housing Targets
  - Appendix VIII SHLAA 2018 Housing Trajectory
  - Appendix IX Ruddington Appeal Decision APP/P3040/W/17/3185493
  - Appendix X WWT Consulting Application Review of ecological and hydrological strategies,
- ESD 05a(iii) – Statement of Community Involvement
- ESD 05a(iv) – Outline Energy Statement
- ESD 05a(v) – Sustainability Statement
- ESD 05a(vi) – Waste Management Strategy
- ESD 05a(vii) – Framework Demolition and Construction Environmental Management Plan
- ESD 05a – Drawings;
  - Site Boundary Plan (dwg ref. 23258 – RG – M – 44 Rev. G)
  - Outline and Full Application Boundaries (dwg ref. 23258 – RG – M – 67 Rev. A)
  - Illustrative Masterplan (dwg ref. 23258 – RG – M – 54 Rev. H)
  - Proposed Site Access: Access 1 Western Access (dwg ref. 29426/5505/003 Rev. D)
  - Proposed Site Access: Access 2: Central Access
  - Proposed Site Access: Access 3 Eastern Access (dwg ref. 29426/5505/005 Rev. C)
  - Proposed Highway Works Moor Lane (1 of 3) (dwg ref. 29426/5501/008 Rev. B)
  - Proposed Highway Works Moor Lane (2 of 3) (dwg ref. 29426/5501/009 Rev. B)
  - Proposed Highway Works Moor Lane (3 of 3) (29426/5501/010 Rev. B)
  - Proposed Site Access: Access 4 (dwg ref. 29426/5505/006 Rev. C)
  - Proposed Site Access – Improvements to Adopted Track (dwg ref. 29426/5505/007 Rev. C)
  - Illustrative Landscape Strategy Plan (dwg ref. EDP2165\_d089c)

Landscape Design of Ecological Buffer (dwg ref. EDP2165\_d090d)  
Landscape Design of Ecological Buffer – Sheet 1 of 7 (dwg ref. EDP2165\_d090d)  
Landscape Design of Ecological Buffer – Sheet 2 of 7 (dwg ref. EDP2165\_d090d)  
Landscape Design of Ecological Buffer – Sheet 3 of 7 (dwg ref. EDP2165\_d090d)  
Landscape Design of Ecological Buffer – Sheet 4 of 7 (dwg ref. EDP2165\_d090d)  
Landscape Design of Ecological Buffer – Sheet 5 of 7 (dwg ref. EDP2165\_d090d)  
Landscape Design of Ecological Buffer – Sheet 6 of 7 (dwg ref. EDP2165\_d090d)  
Landscape Design of Ecological Buffer – Sheet 7 of 7 (dwg ref. EDP2165\_d090d)  
Surface Water Strategy Plan (dwg ref. 29426/2001/100 Rev. D)  
Proposed Buffer Zone: Attenuation Plan and Longsection (dwg ref. 29426/2001/101 Rev. B)  
Proposed Buffer Zone Bund Longsection (dwg ref. 29426/2001/102)  
Proposed Attenuation and Bund Cross Sections (dwg ref. 29426/2001/103)  
Proposed Buffer Zone Attenuation Details Sheet 1 of 2 (dwg ref. 29426/2001/104)  
Proposed Buffer Zone: Attenuation Details Sheet 2 of 2 (dwg ref. 29426/2001/105)  
Water Course Proposals Plan (dwg ref. 29426/2001/106)  
Site Access Management and Maintenance Plan (dwg ref. edp2165\_d106c)  
Parameter Plan - Building Heights (dwg ref. 23258 – RG – M – 40 Rev. J)  
Parameter Plan – Demolition Plan (dwg ref. 23258 – RG – M – 52 Rev. C)  
Parameter Plan Land Use (dwg ref. 23258 – RG – M – 47 Rev. J)

ESD 05b – Schedule of Plans, Drawings and Documents submitted to the Local Planning Authority at Submission

ESD 05c – Schedule of Plans, Drawings and Documents in which the Local Planning Authority based their decision

ESD 06a – Avison Young response to City of York Council (dated 12<sup>th</sup> April 2019). Includes (Appendix 1) PBA Technical Note dated 29 March 2019 Combined response to CYC Drainage comments and consultation responses from Natural England and Yorkshire Wildlife Trust (YWT)<sup>545</sup> and the YWT-commissioned report by JBA Consulting, (Appendix 2) Ecology Technical Note edp2165\_r032b – Response to NE Consultation Comments, (Appendix 3) Heritage Technical Note edp2165\_r033a - Response to HE Consultation Comments.

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<sup>545</sup> Duplicated at CD087

ESD 06a – Peter Brett Associates Technical Note 5 (Ref. 29426 – 5506 – TN05)<sup>546</sup>  
ESD 06a – Peter Brett Associates Technical Note 6 (Ref. 29426/5506/TN06)<sup>547</sup>  
ESD 06a – Peter Brett Associates Technical Note 7 (Ref. 29426/5506/TN07)<sup>548</sup>  
ESD 06a – Peter Brett Associates Technical Note 8 (Ref. 29426/5506/TN08)<sup>549</sup>  
ESD 06a – Peter Brett Associates Technical Note 9 (Ref. 29426/5506/TN09)<sup>550</sup>  
ESD 06b - Schedule of Plans, Drawings and Documents which did not form part of the original application  
ESD 07 – Design and Access Statement  
ESD 013 – Schedule of ES Documents  
ESD 013 – Environmental Statement; Non-Technical Summary  
Chapter 1: Introduction  
Chapter 2: Approach  
Chapter 3: Site Description  
Chapter 4: Alternatives  
Chapter 5: The Proposed Development  
Chapter 6: Planning Policy Context  
Chapter 7: Socioeconomics  
Chapter 8: Landscape and Visual  
Chapter 9: Ecology and Nature Conservation  
Chapter 10: Archaeology and Heritage  
Chapter 11: Land Contamination and Stability  
Chapter 12: Hydrology, Groundwater and Surface Water Quality  
Chapter 13: Drainage and Flood Risk  
Chapter 14: Transport and Access  
Chapter 15: Air Quality, Dust and Odour  
Chapter 16: Noise and Vibration  
Chapter 17: Agricultural Land  
Chapter 18: Cumulative Effects  
Chapter 19: Summary of Mitigation and Residual Effects  
Appendix 1.1: EIA Team Competencies  
Appendix 1.2: Inspector Examination of the City of York Local Plan  
Appendix 2.1: EIA Scoping Report (June 2018)  
Appendix 2.2: Consultee Responses to Scoping Report  
Appendix 8.1: Landscape and Visual Baseline (and associated annex)  
Appendix 8.2: Landscape and Visual Supporting Figures  
Appendix 8.3: Landscape and Visual Effects During Construction  
Appendix 8.4: Landscape and Visual Effects During Operation

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<sup>546</sup> )

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<sup>548</sup> ) Duplicated as Appendices to ES Addendum

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<sup>550</sup> )

Appendix 8.5: Arboricultural Impact Assessment  
Appendix 9.1: Baseline Ecology Report (See CD079)  
Appendix 9.2: EPEZ Landscape Management Plan (See CD080)  
Appendix 10.1: Historic Environment Baseline  
Appendix 11.1: Phase I and II Ground Conditions Assessment  
Appendix 12.1: Hydrological Baseline Summary Report  
Appendix 13.1: Flood Risk Assessment (See CD081)  
Appendix 14.1: Transport Assessment  
Appendix 14.2: Travel Plan  
Appendix 14.3: Traffic Flows – Technical Note  
Appendix 15.1: Details of Existing Proposed Receptors  
Appendix 15.2: Verification  
Appendix 15.3: Model Inputs and Results Processing  
Appendix 15.4: Traffic Data  
Appendix 15.5: Road Transport Emissions Factors – Future Years Modelling  
Appendix 15.6: Background Concentrations and Adjustment  
Appendix 15.7: Road Traffic Predicted Results  
Appendix 16.1: Traffic Flow Data  
Appendix 16.2: Railway Movement Data  
Appendix 16.3: Sound Time History Graphs  
Appendix 17.1: Natural England 1999 Agricultural Land Classification Survey  
Appendix 18.1: Landscape and Visual Cumulative Effects during Construction and Operation

### **Environmental Statement Addendum: Submitted August 2019**

#### ES Addendum

Appendix 1: Site Boundary Plan (Dwg No. 23258 – RG – M – 44 Rev. G)  
Appendix 2a: LVIA Addendum – Photo Viewpoints (dwg no. edp2165\_ed109c)  
Appendix 2b: LVIA Addendum – Visual Receptors (dwg no. edp2165\_d108a)  
Appendix 3: WWT Consulting - Review of Consultation Responses (June 2019)  
Appendix 4: Peter Brett Associates Note TN002 Water Balance Calculations (19<sup>th</sup> June 2019)  
Appendix 5: Peter Brett Associates Technical Note 5 (Ref. 29426 – 5506 – TN05)<sup>551</sup>  
Appendix 6: Peter Brett Associates Technical Note 6 (Ref. 29426/5506/TN06)<sup>552</sup>

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<sup>551</sup>)

<sup>552</sup>) Duplicated at ESD 06a

Appendix 7: Peter Brett Associates Technical Note 7 (Ref. 29426/5506/TN07)<sup>553</sup>

Appendix 8: Peter Brett Associates Technical Note 8 (Ref. 29426/5506/TN08)<sup>554</sup>

Appendix 9: Peter Brett Associates Technical Note 9 (Ref. 29426/5506/TN09)<sup>555</sup>

Appendix 10: Capacity Improvement Chaloners Road / Moor Lane Mini Roundabout Highway Works (dwg no. 29426/5501/020)

## **Core Documents**

### ***Appellant's core documents***

#### ***Planning***

- CD001: City of York (2019) Planning Committee Report for 18/02687/OUTM at OS Fields 5475 7267 and 8384, Moor Lane, Acomb, York
- CD002: Barwood (February 2014) Land at Moor Lane Delivery Statement
- CD003: City of York (2003) The Approach to the Green Belt
- CD004: City of York (April 2005) Draft Local Plan Incorporating the Fourth Set of Changes of Development Control Local Plan and proposals maps
- CD005: City of York (June 2013) Local Plan Preferred Options (relevant extracts only)
- CD006: City of York (September 2014) Local Plan Publication Draft (relevant extracts only)
- CD007: City of York (February 2018) Local Plan Publication Draft and Policies Map (south)
- CD008: City of York Council (June 2019) Proposed Modifications
- CD009: City of York (September 2014) Local Plan Site Selection Addendum Paper
- CD010: City of York (June 2013) Local Plan Preferred Options Sustainability Appraisal and associated appendices (relevant extracts only)
- CD011: Communities and Local Government (May 2008) The Yorkshire and Humber Plan – Regional Spatial Strategy to 2026
- CD012: Department for Communities and Local Government (2019), Planning Practice Guidance: Healthy and Safe Communities
- CD013: Department for Communities and Local Government (2019), Planning Practice Guidance: Housing and Economic Land Availability Assessment
- CD014: Department for Communities and Local Government (2016), Planning Practice Guidance: Natural Environment
- CD015: Department of Housing, Communities and Local Government (February 2019) National Planning Policy Framework
- CD016: John Hobson QC (January 2015) Advice in the matter of the preparation of the York Local Plan
- CD017: Inspector Simon Berkeley and Inspector Andrew McCormack (July 2018) Letter in relation to the Examination into the Soundness of the City of York Local Plan
- CD018: Inspector Simon Berkeley and Inspector Andrew McCormack (December 2018) Letter in relation to the Examination into the Soundness of the City of York Local Plan

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<sup>553</sup>) Duplicated at ESD 06a

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- CD019: Inspector Simon Berkeley and Inspector Andrew McCormack (February 2019) Letter in relation to the Examination into the Soundness of the City of York Local Plan
- CD020: Inspector Simon Berkeley and Inspector Andrew McCormack (May 2019) Letter in relation to the Examination into the Soundness of the City of York Local Plan

### Landscape

- CD021: Landscape Institute and Institute of Environmental Management and Assessment (2013) Guidelines for Landscape and Visual Impact Assessment, Third Edition
- CD022: Natural England (2012) National Character Area Profile: 28 Vale of York (NE367)

### Ecology

- CD023: (See CD074) Chartered Institute for Ecology and Environmental Management (2016) Guidelines for Ecological Impact Assessment in the United Kingdom and Ireland 2nd Edition
- CD024: Collins, J (ed) (2016) Bat Surveys for professional ecologists: Good Practice Guidelines. (Third Edition) Bat Conservation Trust, London
- CD025: Rylatt, F., Garside, L. and Robin, S. Yorkshire Wildlife Trust (2017). Human Impacts on Nature Reserves – The Influence of Nearby Settlements. CIEEM In Practice. September 2017
- CD026: (See CD075) City of York Biodiversity Action Plan (May 2013)
- CD027: (See CD076) City of York Council. Local Plan Evidence Base: Open Space and Green Infrastructure Final Report (September 2013)
- CD028: Consultation response of City of York Ecology and Countryside Officer, Nadine Rolls (07 May 2019)

### Heritage

- CD029: City of York Council (January 2011) City of York LDF: Historic Character and Setting Technical Paper
- CD030: City of York Council (November 2011) York Central Historic Core Conservation Area Appraisal
- CD031: City of York Council (June 2013) City of York Historic Character and Setting Technical Paper Update
- CD032: City of York Council (May 2014) City of York Historic Environment Characterisation Project
- CD033: City of York Council (September 2014) City of York Heritage Topic Paper Update
- CD034: City of York Council (May 2018) City of York Local Plan Topic Paper TP1: Approach to defining York's Green Belt
- CD035: City of York Council (March 2019) City of York Local Plan Topic Paper TP1: Approach to defining York's Green Belt Addendum and Annexes (with additional pages submitted during the Inquiry)
- CD036: Historic England (December 2017) Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets

### Hydrogeology

- CD037: Ove Arup & Partners Ltd. Askham Bog Restoration Project, Technical Report. Job Number 58326, March 2003. For Yorkshire Wildlife Trust.
- CD038: British Geological Survey. Vale of York 3-D Borehole Interpretation and Cross-Sections Study. Commercial Report CR/03/251 N. 2003.
- CD039: Wildfowl & Wetlands Trust (Consulting) Limited (WWT Consulting). Investigating the hydrological relationship between the Moor Lane site and the Askham Bog SSSI. October 2013. (For Barwood)
- CD040: Allied Exploration and Geotechnics Ltd. Preliminary Ground Investigation, Moor Lane, York. Final Factual Report. Contract No. 3967, August 2014. (For Barwood).
- CD041: PBA, Land at Moor Lane, Woodthorpe, York. Hydrogeological Review. August 2014. (For Barwood).
- CD042: PBA, Moor Lane, York. Technical Note TN013 – Baseline Summary (on Groundwater and Surface Water Monitoring). October 2015. (For Barwood). Includes all Piper Plots.
- CD043: Alcontrol Laboratories, Moor Lane York, Field Monitoring Reports, July 2014 – September 2015.
- CD044: Alastair Fitter and Clifford Smith (edited by). A Wood in Ascam – A Study in Wetland Conservation. November 1979.

### Hydrology

- CD045: Environment Agency (2016) National Planning Policy Framework Flood Risk Assessments: Climate Change Allowances
- CD046: Department for Communities and Local Government (2016), Planning Practice Guidance – Flood Risk and Climate Change
- CD047: Commission of the European Communities (1998) Groundwater Directive and Groundwater Regulations
- CD048: Commission of the European Communities (2000) Water Framework Directive
- CD049: HSMO (1991a) The Water Resources Act
- CD050: HSMO (2003) The Water Act
- CD051: HSMO (2010) The Flood and Water Management Act
- CD052: City of York Council (undated), Local Flood Risk Management Strategy
- CD053: City of York Council (2013), Strategic Flood Risk Assessment
- CD054: City of York Council (2011), Preliminary Flood Risk Assessment
- CD055: EA (2009) River Ouse Catchment Flood Management Plan
- CD056: EA (2015) Proposed Update to Humber River Basin Management Plan (RBMP)
- CD057: Department for Environment, Food and Rural Affairs (2015) Non statutory technical standards for sustainable drainage systems
- CD058: CIRIA (ref C735) (2015), The SuDS Manual
- CD059: WRc (2012) Sewers for Adoption (7th Edition)
- CD060: British Standards (2008) BS EN 752:2008 Drain and Sewer Systems Outside Buildings
- CD061: Building Regulations (2006), Approved Document Part H
- CD062: West Yorkshire Combined Authority (undated), SuDS Guidance to Developers

Transport

- CD063: Department for Communities and Local Government (2016), Planning Practice Guidance – “Travel Plans, Transport Assessments ND Statements in decision-taking”
- CD064: City of York Council Local Transport Plan (LTP3) (2011)
- CD065: York Central Transport Assessment, produced by Arup for planning application ref: 18/01884/OUTM

**Yorkshire Wildlife Trust Core documents**

- CD066: Proof of Evidence by Mr A. Jones 2019
- CD067: Wheeler, B.D., Shaw, S., & Tanner, K. 2009 A wetland framework for impact assessment at statutory sites in England and Wales Integrated Catchment Science Programme Science Report.
- CD068: Morgan-Jones, W. Poole, J.S, Goodall, R, (2005), Characterisation of Hydrological Protection Zones at the Margins of Designated Lowland Raised Peat Bog Sites, JNCC Report 365, ISSN 0963-8091. Foreword.
- CD069: Prosser M and Wallace H (2011). National Vegetation Classification Survey. Askham Bog 2011. Ecological Surveys, Bangor
- CD070: Hogg P, Squires P, Fitter AH (1995). Acidification, nitrogen deposition and rapid vegetational change in a small valley mire. Biological Conservation 71: 143-153

**CYC Core documents**

*Landscape*

- CD071: York Landscape Character Appraisal (1996) by Environmental Consultancy University of Sheffield (ECUS) for CYC.
- CD072: PPG Guidance on the Green Belt 22 July 2019
- CD072a: CYC Green Corridors Technical paper (January 2011)

*Ecology*

- CD073: Government Circular: Biodiversity and geological conservation – Statutory obligations and their impact within the planning system: ODPM circular 06/2005
- CD074: Updated CD023: Chartered Institute for Ecology and Environmental Management CIEEM (2018) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine version 1.1.
- CD075: Updated CD026 - City of York Biodiversity Action Plan (May 2017)
- CD076: Updated CD027 AMEC Environment & Infrastructure UK Limited. City of York Council Local Plan Evidence Base: Open Space and Green Infrastructure Final Report. September 2014
- CD077: Mott MacDonald Ltd. Moor Lane, Woodthorpe Planning Application Technical Review. April 2019 (for City of York Council).
- CD078: Consultation response of Natural England (20<sup>th</sup> February 2019).
- CD079: ESD 013 Environmental Statement Appendix 9.1: Baseline Ecology Report

- CD080: ESD 013 – Appendix 9.2: EPEZ Landscape Management Plan
- CD081: ESD 013 – Environmental Statement Appendix 13.1: Flood Risk Assessment, Appendix F Surface Water Drainage Strategy
- CD082: Askham Bog Site of Special Scientific Interest citation (Natural England)
- CD083: Guidance on the identification and risk assessment of groundwater dependent terrestrial ecosystems (2004, updated 2009) UK Technical Advisory Group on the Water Framework Directive
- CD084: Floyd, L., Underhill-Day, J. C. (2013). Literature Review on the effects of cats on nearby protected wildlife sites. Unpublished report by Footprint Ecology for Breckland Council.
- CD085: The Fen Management Handbook, (2011), Editors A. McBride, I. Diack, N Droy, B. Hamill, P.Jones, J. Schutten, A. Skinner, and M. Street. Scottish Natural Heritage, Perth (Relevant Extracts Only)
- CD085a: The SuDS Manual (Defra) s26.7, pp565-576
- CD086: Natural England Commissioned Report NECR012 Scientific research into the effects of access on nature conservation: Part 1: access on foot, 2009 (Relevant Extracts Only)

### *Hydrogeology*

- CD087: PBA Technical Note of 29<sup>th</sup> March 2019 entitled "Combined response to CYC drainage comments and consultation responses from natural England and Yorkshire Wildlife Trust (YWT) and the YWT-commissioned report by JBA consulting
- CD088: Avison Young (25th July 2019). Land at Moor Lane, Woodthorpe, York, Application ref. 18/02687/OUTM. Planning Appeal by Barwood Strategic Land II LLP Statement of Case on behalf of the Appellant
- CD089: Yorkshire Wildlife Trust (4th February 2019). Letter to Alison Stockdale from Sara Robin
- CD090: British Geological Survey. 1:50,000 Series, England and Wales Sheet 71, Selby. Bedrock and Superficial Deposits. NERC 2008
- CD091: British Geological Survey. Geology of the Selby district, a brief explanation of the geological map Sheet 71 Selby. NERC 2008
- CD092: British Geological Survey. Field Guide to the Glacial Evolution of the Vale of York. Internal Report IR/04/106. 2004
- CD093: Peter Brett Associates Technical Note TN001 (Ref. 29426/5506/TN001)
- CD094: Peter Brett Associates Technical Note TN002 (Ref. 29426/5506/TN002)
- CD095: Peter Brett Associates Technical Note TN003 (Ref. 29426/5506/TN003)
- CD096: Peter Brett Associates Technical Note TN004 (Ref. 29426/5506/TN004)
- CD097: Peter Brett Associates Technical Note TN010 (Ref. 29426/5506/TN010)
- CD098: Peter Brett Associates Technical Note TN011 (Ref. 29426/5506/TN011)
- CD099: Peter Brett Associates Technical Note TN012 (Ref. 29426/5506/TN012)
- CD099a: Environmental Statement Addendum Appendix 3: WWT Consulting( June 2019) - Review of Consultee Responses
- CD099b: Environmental Statement Addendum Appendix 4: Peter Brett Associates (19th June 2019) Water Balance Calculations.
- CD099c: JBA Consulting Report (2nd February 2019). Askham Bog review. Document reference 2019s0135.

### *Transport*

- CD100: CIHT, Buses in Urban Development, Jan 2018

- CD101: City of York Council's "Checklist for Strategic Transport Assessments"
- CD102: VOL.1 – 2019-08-30 TA Addendum Moor Lane York (EIA)
- CD103: VOL.2- 2019-08-30 TA Addendum Moor Lane York (EIA)

*Education*

- CD104: Education Supplementary Planning Guidance 2015 v4 June 16

*Planning*

- CD105: Ministerial Statement by Brandon Lewis 01/07/13
- CD106: Ministerial Statement by Rt. Hon Eric Pickles MP 2013 -01-29
- CD107: Letter from Housing Minister to Broxtowe 2 October 2019
- CD108: Yorkshire and Humber SI 2013 No. 117
- CD109: APP/C2741/W/16/3149489 land off Avon Drive, Huntington, York YO32 9YA Decision 21 April 2017

*Policy*

- CD110: City of York Local Plan Publication Draft Schedule of Minor Modifications to 25th May 2018 (LP Examination Submission CD003)
- CD111: Strategic Housing Land Availability Assessment (2018) - (LP Examination Submission SD049A)
- CD111a: Strategic Housing Land Availability Assessment Appendices (2018) - (LP Examination Submission SD049B)
- CD111b: Strategic Housing Land Availability Assessment Appendix 8 – Site 1:500 (2018) - (LP Examination Submission SD049C)
- CD111c: Strategic Housing Land Availability Assessment Appendix 8 – Map Site 501 989 (2018) - (LP Examination Submission SD049D)
- CD112: Strategic Housing Land Availability Assessment (2017) - (LP Examination Submission SD053)
- CD112a: Strategic Housing Land Availability Assessment Annexes(2017) - (LP Examination Submission SD054)
- CD113: Site Selection Paper 2013 Main Report (LP Examination Submission SD072A)
- CD114: Site Selection Paper 2013 Annexes (LP Examination Submission SD072B)
- CD115: Further Sites Consultation Report (June 2014) - (LP Examination Submission SD015A)
- CD116: Further Sites Consultation Appendices (June 2014) - (LP Examination Submission SD015B)
- CD117: Further Sites Consultation Proposal Maps (June 2014) - (LP Examination Submission SD016)
- CD118: Preferred Sites Consultation document (2016)- (LP Examination Submission SD018)

***Appellant's additional core documents***

- CD119: Groundwater control: design and practice, second edition. CIRIA 750. CIRIA 2016
- CD120 Remedial Targets Methodology. Hydrogeological Risk Assessment for Land Contamination. Environment Agency 2006.

CD121      Assessing the Scale and Impact of Urban Run-Off on Water Quality.  
WCA Environment Ltd 2013.

***Inquiry documents***

INQ1:      Yorkshire Water – Second Stage investigation of the I5 Driver in the  
AMP Final Determination  
INQ2:      BRE – Soakaway Digest 65  
INQ3:      CIL Compliance Note (CYC) with nine annexes  
INQ4:      CIL Compliance Statement (Appellant’s comments)  
INQ5:      Housing Statement of Common Ground (with twelve annexes)  
INQ6:      Transportation and Highways SOCG with CYC  
INQ7:      BWS s106 Obligation draft version 9  
INQ8:      Council’s comments on INQ 7  
INQ9:      YWT comments on planning conditions and s106 obligation  
INQ10:     CYC suggested planning conditions  
INQ11:     Appellant’s comments on suggested conditions





# 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.