



Ministry of Housing,  
Communities &  
Local Government

Our ref: APP/E2734/W/17/3181320

Whitcliffe Grange Farm Partnership &  
Gladman Developments Limited  
Gladman House  
Alexandria Way  
Congleton  
CW12 1LB

25 June 2018

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY WHITCLIFFE GRANGE FARM PARTNERSHIP & GLADMAN  
DEVELOPMENTS LTD  
LAND SOUTH WEST OF WEST LANE, RIPON  
APPLICATION REF: 16/05621/EIAMAJ**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Nicholson RIBA IHBC who held a public local inquiry between 24 October and 3 November 2017 into your appeal against the decision of Harrogate Borough Council (“the Council”) to refuse your application for outline planning permission for the erection of up to 390 residential dwellings (including up to 40% affordable housing), structural planting and landscaping, informal public open space, children’s play areas, surface water attenuation, 2 vehicular access points from West Lane and associated ancillary works, with all matters reserved with the exception of site access, in accordance with application ref: 16/05621/EIAMAJ, dated 23 December 2016.
2. On 9 August 2017 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 because of its potential impact on the Outstanding Universal Value (OUV), integrity, authenticity and significance of a World Heritage Site (WHS)

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

3. The Inspector recommended that planning permission be granted, subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector’s conclusions, and agrees with his recommendation. He has decided to grant planning permission. 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 into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, the Addendum ES and the additional further work as referred to at IR1.4. Having taken account of the Inspector’s comments at IR1.4, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

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

5. The Secretary of State has received post inquiry correspondence from Gladman Developments Ltd, dated 22 February 2018. This correspondence informed the Secretary of State that the Council published the latest version of the emerging Local Plan in January 2018 for consultation, and that the draft Local Plan allocates the appeal site for up to 390 dwellings.
6. The Secretary of State is satisfied that, as this Plan is still at an early stage in its preparation, the issues raised do not affect his decision; and that no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

## **Policy and statutory considerations**

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the saved policies of the Harrogate District Local Plan (2001), the Selective Alteration Document (2004) and the Harrogate District Core Strategy Development Plan Document (2009) (CS). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR3.1-3.2.
9. Other material considerations which the Secretary of State has taken into account include:
  - the four supplementary planning documents referred to at IR3;
  - the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), particularly (i) paragraph 14 of the Framework with regard to housing land supply and (ii) the definition of "heritage asset" in the glossary to the Framework (IR3.9);
  - the statutory position with regard to heritage assets, including section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), which requires him to pay special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess;
  - the inscription of Studley Royal Park, including the ruins of Fountains Abbey, by UNESCO as a World Heritage Site ("the WHS") and the associated management plan (IR2.8-2.21 and IR3.7-3.14);
  - The Nidderdale AONB Management Plan 2014-2019 (IR 3.16).

## *Emerging plan*

10. The emerging plan comprises the Harrogate District Local Plan, which has not yet been submitted for examination (IR3.3). Paragraph 216 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. As the Harrogate District Local Plan is at an early stage, any objections are not fully resolved, and its policies are still subject to change the Secretary of State considers it carries limited weight.

11. The Ripon City Plan (RCP) is intended to become a neighbourhood plan for the Parish (IR3.6) but, as it is also still at early stage, the Secretary of State gives it limited weight.

## **Main issues**

### *Housing land supply*

12. Having regard to the fact (IR3.5) that it is common ground between the appellant and the Council that the development plan does not contain a Framework-compliant figure for objectively assessed housing needs and the fact that he agrees with the Inspector and the parties that there is a 4.2 years housing land supply, the Secretary of State concludes that the delivery of both market and affordable housing carries significant weight in favour of the proposal.

### *Landscape*

13. For the reasons given at IR14.2-14.9, the Secretary of State agrees with the Inspector's conclusion at IR 14.68 that the loss of open countryside would be contrary to the Framework and to Local Plan policy C2 and CS Policy EQ2, so that the harm to the countryside is a matter to be weighed in the overall balance.

### *Heritage*

14. The Secretary of State has carefully considered the Inspector's detailed analysis of the value of, and potential impact on, the designated heritage assets (IR14.18-14.49). In particular, he agrees with the Inspector at IR14.18 that the WHS is a heritage asset of the highest order, and that Ripon Cathedral, as a Grade I listed building, is also a heritage asset of a very high order (IR14.19). He further agrees with the Inspector (IR14.22) that any impact on heritage assets would be on account of the effects of the development within their settings, rather than on the assets themselves. Overall, and for the reasons given by the Inspector, the Secretary of State agrees with his conclusion at IR14.49 and IR14.69 that the potential impact on the heritage assets should be assessed as extremely limited at most, so that the duty under S66 of the LBCA Act should not lead to a conclusion that development should be prevented.

### *Ecology*

15. For the reasons given at IR14.50-14.56, the Secretary of State agrees with the Inspector's conclusion at IR14.56 that, on balance and taken together with mitigation measures, the ecological impacts of the proposal would be acceptable.

### *Flooding*

16. For the reasons given at IR14.57-14.60, the Secretary of State agrees with the Inspector at IR14.60 that, at worst, the scheme would maintain the current pattern of flooding but that there is a real prospect of significant improvement.

## **Planning conditions**

17. The Secretary of State has given consideration to the Inspector's analysis at IR12.1-12.4 and IR14.62, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 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 206 of the Framework and that the conditions set out at Annex A should form part of his decision.

## **Unilateral undertaking**

18. Having regard to the Inspector's analysis at IR13.1-13.8 and 14.63, the planning obligation signed and dated 3 November 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusions at IR14.63 that all the provisions would satisfy the various tests so that clause 3.2.1 would not apply.

## **Planning balance and overall conclusion**

19. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with policies HD7, HD7A and C2 of the combined Local Plan and selective alterations document or with CS Policy EQ2. The proposals are therefore not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
20. As there is no 5-year housing land supply, paragraph 14 of the Framework indicates that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted.
21. In this case, the Secretary of State gives moderate weight to the loss of open countryside and considerable weight to the potential impact on the heritage assets, and limited weight to identified impacts on ecology and flooding. The Secretary of State considers that the principal benefit is the provision of both market and affordable housing and he gives this significant weight.
22. The Paragraph 134 of the Framework is a 'specific policy' for the purposes of paragraph 14 of the Framework, and the Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the identified heritage assets is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm. Overall the Secretary of State concludes, like the Inspector, that the benefits of the appeal scheme are sufficient to outbalance the identified 'less than substantial' harm to the significance of the heritage assets. He considers that the balancing exercise under paragraph 134 of the Framework is therefore favourable to the proposal.

## **Formal decision**

23. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex A of this decision letter for the erection of up to 390 residential dwellings (including up to 40% affordable housing),

structural planting and landscaping, informal public open space, children's play areas, surface water attenuation, 2 vehicular access points from West Lane and associated ancillary works, with all matters reserved with the exception of site access, in accordance with application ref: 16/05621/EIAMAJ, dated 23 December 2016.

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

**Right to challenge the decision**

25. 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.

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

27. A copy of this letter has been sent to Harrogate Borough Council, Ripon City Council, Ripon Residents Planning Group and the National Trust. 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

**Conditions**

1. Prior to the submission of any reserved matters application, a phasing plan covering the whole site shall be submitted to and approved in writing by the Local Planning Authority (LPA). All reserved matters submissions in relation to the development hereby approved shall be in accordance with the approved Phasing Plan.
2. Application for approval of the reserved matters for the first phase of development shall be made to the LPA not later than 3 years from the date of this permission. The development of that first phase shall begin either before the expiration of 2 years from the date of approval of the last of the reserved matters for the first phase, or before the expiration of 3 years from the date of this permission, whichever is the later.
3. Application for approval of reserved matters for all subsequent phases of development shall be made not later than the expiration of 3 years from the date of this permission and the development shall be begun on each subsequent phase of development not later than whichever is the later of the following dates:
  - i) The expiration of 3 years from the date of this permission,
  - ii) The expiration of 3 years from the final approval of the reserved matters for that particular phase or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. This permission in terms of access relates solely to the two points of vehicular access with West Lane as shown on Proposed Site Access Arrangement ref: 1395/17 rev G, contained in the Transport Assessment by Ashley Helme Associates Ltd (Ref 1395/5/A) dated April 2017. For each phase of development, no development shall take place on that phase, without the prior written approval of the LPA of the remaining access details and those of the other reserved matters:-
  - a) Appearance,
  - b) Landscaping - including the planting of trees and or shrubs, specifying types and species, a programme of planting , the width and surface materials of any footpaths and the timing of implementation of the scheme including any earthworks required,
  - c) Layout,
  - d) Scale.

Any reserved matters application for appearance, layout or scale shall include details of existing and proposed ground levels and finished floor levels. Such details shall provide for the retention of the existing ground levels unless it is clearly demonstrated that a need exists for change. Thereafter the development shall be carried out in accordance with the approved details.
5. The proposed development shall be carried out strictly in accordance with the following Drawings:
  - Location Plan (Drawing No. CSA/3010/118 rev.B)
  - Parameters Plan (Drawing No. CSA/3010/121 rev.B)
  - Development Framework Plan (Drawing No. CSA/3010/106 rev.H)
  - Access Plan (Drawing No. 1395/17 rev.G dated April 2017)
6. For each phase of development, the site shall be developed with separate systems of drainage for foul and surface water on and off site.
7. For each phase of development, no piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall, which shall not be the local public

sewerage, for surface water have been completed in accordance with details submitted to and approved in writing by the LPA.

8. For each phase of development, no development, including demolition, shall take place until a site investigation of the nature and extent of contamination for that phase has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the LPA. The results of the site investigation shall be made available to the LPA before any new construction begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the LPA.

The relevant phase of the site shall be remediated in accordance with the approved measures before new construction begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the LPA. The remediation of the relevant phase of the site shall incorporate the approved additional measures.

9. No development for any phase of the development shall take place until a Construction Method Statement for that phase has been submitted to, and approved in writing by, the LPA in consultation with the Highway Authority. The approved Statement shall be adhered to throughout the construction period. The statement shall provide, but not be limited to, the following:

- a) the location and extent of construction access into the site,
- b) how the existing public right of way on the site is to be protected and kept clear of any obstruction,
- c) the erection and maintenance of security hoarding,
- d) the security arrangements for construction equipment and materials,
- e) how the site will be cleared, the site developed and dwellings constructed, ensuring there is no encroachment on to the Root Protection Areas of the retained trees,
- f) the hours of work during the demolition and construction phases restricted to 07:30 to 18:00 Mondays to Fridays 08:00 to 13:00 Saturdays with no work on Sundays or Bank Holidays,
- g) the parking of vehicles of site operatives and visitors,
- h) loading and unloading of plant and materials,
- i) storage of plant and materials used in constructing the development,
- j) wheel washing facilities,
- k) measures to control the emission of dust and dirt during construction and demolition,
- l) heavy goods vehicle routing,
- m) details of surface water run off control, and
- n) details of any external lighting.

10. Prior to the commencement of development on any phase of development a geological management plan for that phase shall be submitted to and approved in writing by the LPA. The development shall thereafter be carried out in accordance with the approved management plan.

With regard to the geological cliff face in Quarry Moor SSSI, the geological management plan shall include the following:

- making available any bedrock core logs for future study,
- the establishment of a buffer zone between the Whitcliffe Section of the exposed geology within the SSSI and any development, within which construction vehicles and heavy plant shall not operate. The width of the buffer shall be a minimum of 30m from any part of the Whitcliffe Section,  
logging of any foundation sections into the underlying bedrock.

11. For each phase of development, the reserved matters applications shall include:

- (1) Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey showing full details of the internal vehicular road network, cycleways and pedestrian footways;
- (2) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre line of each proposed road showing:
  - (a) the existing ground level,
  - (b) the proposed road channel and centre line levels,
  - (c) full details of surface water drainage proposals;
- (3) Full highway construction details;
- (4) Details of all proposed street lighting;
- (5) Full working drawings for any structures which affect or form part of the highway network;
- (6) A programme for completing the works.

The development shall only be carried out in full compliance with the approved drawings and details.

No dwelling shall be occupied until the carriageway and any footpath/footway from which it gains access is constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and in operation.

The completion of all road works, including any phasing, shall be in accordance with a programme approved in writing with the LPA before the first dwelling of the development is occupied.

12. There shall be no access or egress by any vehicles between the highway and the application site (except for the purposes of constructing the initial site access) until splays are provided giving clear visibility of 36m in a westerly direction and 43m in an easterly direction measured along both channel lines of the major road (West Lane) from a point measured 2.4m down the centre line of the access road. The eye height will be 1.05m and the object height shall be 0.6m. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.
13. No development on any phase of the development shall take place, except for investigative works, until a scheme for the following off site highway works, including timings for implementation of the works, has been submitted to and approved in writing by the LPA:
- (i) Provision of dropped kerbs and/or tactile paving on West Lane, South Grange Road, and Whitcliffe Lane;
  - (ii) Removal and re-alignment of the existing drop kerb crossing and the provision of tactile paving on Hell Wath Grove to serve the sports pitches;
  - (iii) Provision of footways on the southern side of West Lane;
  - (iv) Realignment of West Lane and the junctions of South Grange Road and Southfield Road.

The off site works shall be carried out in full accordance with the approved details.

14. No dwelling shall be occupied on any phase until a scheme for the provision of electric vehicle charging points for that phase, either provided individually or communally, including timescales for implementation, has been submitted to and approved in writing by the LPA. The approved scheme shall thereafter be provided in accordance with the agreed timetable and shall be retained for the lifetime of the development.



15. No development for any phase of the development shall take place until a Construction & Environmental Management Plan (CEMP) shall be agreed in writing by the LPA prior to the submission of a reserved matters or full planning application. The CEMP shall address issues including minimisation of impacts on Quarry Moor SSSI and Hell Wath LNR, the minimisation of impacts of air and water pollution on ecological receptors, impacts on retained trees and hedgerows; impacts on species including bats, great crested newts, nesting birds, hedgehogs and (if necessary) eradication of invasive species. No removal of trees, hedgerows or scrub shall be undertaken before the CEMP has been agreed in writing with the LPA. The CEMP shall be implemented in full accordance with the approved details.
16. No development for any phase of the development shall take place until an Ecological Management and Enhancement Plan (EMEP) for that phase of development has been agreed in writing by the LPA. The EMEP shall be based upon the mitigation and enhancement measures identified in the Ecology chapter of the ES submitted with the planning application. The EMEP shall be implemented in full accordance with the approved details.
17. The proposed development shall be carried out strictly in accordance with the following drawings, unless an updated Tree Survey, which has been submitted to and approved in writing by the LPA, confirms that additional trees are unfit for retention:
  - Tree retention plans: drawing nos. 6197-A-03 rev.A (north) and 6197-A-03.01 rev.A (south)
  - Tree retention access plan: drawing nos. 6197-A-04

Should an updated Tree Survey include updated versions of the above plans, then the development shall be carried out strictly in accordance with the updated versions of those plans.
18. No dwelling on the site shall be occupied until such time as the approved car parking spaces associated with that dwelling have been provided in full accordance with the approved details. The car parking spaces, including garages, shall be retained for that purpose.
19. Prior to the occupation of any dwelling of the site, a master Travel Plan for the entire site, irrespective of phasing, shall be submitted to and approved in writing by the LPA. All subsequent Travel Plans for each phase of development shall be prepared in full accordance with the master travel plan. Prior to the occupation of any dwelling in each phase, a travel plan shall be submitted to and approved in writing by the LPA to include measurable time related targets to encourage the use of alternative modes of transport other than the private car by residents of the site and visitors to their dwellings and proposals for regular review and update. The Travel Plans shall be implemented and the development shall thereafter be carried out and operated in accordance with the Travel Plans.



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

by David Nicholson RIBA IHBC

an Inspector appointed by the Secretary of State

Date: 26 February 2018

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**TOWN AND COUNTRY PLANNING ACT 1990**

**HARROGATE BOROUGH COUNCIL**

**APPEAL BY**

**WHITCLIFFE GRANGE FARM PARTNERSHIP & GLADMAN DEVELOPMENTS LTD.**

Inquiry Held on 24 October – 3 November 2017

Land south-west of West Lane, Ripon

File Ref: APP/E2734/W/17/3181320

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## List of abbreviations used in this Report

AH	Affordable housing
AQMA	Air quality management area
CIL Regs	Community Infrastructure Levy Regulations 2010 (as amended)
DPD	Development Plan Document
EA	Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Statement
FRA	Flood Risk Assessment
GCN	Great Crested Newts
ha	hectare(s)
HBC	Harrogate Borough Council
HE	Historic England
HEDNA	Housing and Economic Development Needs Assessment
LB&CA Act	Planning (Listed Buildings and Conservation Areas) Act 1990
LCA	Landscape character area
LPA	Local Planning Authority
NP	Neighbourhood Plan
NT	National Trust
NPPF	National Planning Policy Framework
NYCC	North Yorkshire County Council
OUV	Outstanding Universal Value
PPG	Planning Practice Guidance
RCC	Ripon City Council
RR	Ripon City Council & Ripon Residents Planning Group
RRPG	Ripon Residents Planning Group
s106	Section 106 of the T&CPA
SoCG	Statement of Common Ground
SoS	Secretary of State (for Housing, Communities and Local Government)
SPD	Supplementary Planning Document
SUDS	Sustainable Urban Drainage System
T&CPA	Town and Country Planning Act 1990
TA	Transport assessment
TPO	Tree preservation order
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UU	Unilateral Undertaking (under s106 of the T&CPA)
WHS	World Heritage Site
WHS MP	WHS Management Plan
YWT	Yorkshire Wildlife Trust

**File Ref: APP/E2734/W/17/3181320**  
**Land south-west of West Lane, Ripon**

- 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 Whitcliffe Grange Farm Partnership & Gladman Developments Ltd. against the decision of Harrogate Borough Council.
- The application Ref. 16/05621/EIAMAJ, dated 23 December 2106, was refused by notice dated 26 July 2017.
- The development proposed is: an application for outline planning permission for the erection of up to 390 residential dwellings (including up to 40% affordable housing), structural planting and landscaping, informal public open space, children's play areas, surface water attenuation, 2 vehicular access points from West Lane and associated ancillary works. All matters reserved with the exception of site access.

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

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## 1. Procedural Matters

- 1.1 The planning application was submitted as a 'second go' following the submission of an appeal against non-determination of an application for up to 430 dwellings<sup>1</sup> for the same site. That appeal was subsequently withdrawn on 15 August 2017.
- 1.2 A Unilateral Undertaking (UU) was submitted under section 106 of the Town and Country Planning Act 1990 (s106)<sup>2</sup>. I deal with the contents and the justification for this below.
- 1.3 The application to which this appeal relates was refused, against officer recommendation, for a single compound reason for refusal<sup>3</sup>. The appeal was recovered by the Secretary of State for Housing, Communities and Local Government (SoS) for his own determination by letter dated 9 August 2017. The reason for this direction was that the appeal involves proposals which would have an adverse impact on the Outstanding Universal Value (OUV), integrity, authenticity and significance of a World Heritage Site (WHS).
- 1.4 The planning application was supported by a suite of reports and, following a SoS screening requirement<sup>4</sup>, included an Environmental Statement (ES)<sup>5</sup>. The planning application was amended and followed by an Addendum ES, with appendices, and updated supporting technical documentation<sup>6</sup>. These were subject to additional consultation by Harrogate Borough Council as the local planning authority (LPA). The Appellants also submitted images obtained by use of a drone from How Hill Tower (in front of the blocked up window) in the

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<sup>1</sup> Appeal ref. APP/E2734/W/16/3165841

<sup>2</sup> Inquiry Document (ID)23

<sup>3</sup> Core Document (CD) 5.02. it reads: *The proposed development represents a substantial intrusion into the open countryside, resulting in harm to the setting of the Studley Royal Park and Fountains Abbey World Heritage Site (WHS) and Registered Park and Garden by extending the settlement of Ripon towards the WHS, harming views of Ripon and its Cathedral from Gillet Hill, which is identified as an attribute contributing to the [OUV] of the WHS, and views of Ripon and its Cathedral from How Hill and How Hill Tower[.] The proposed development would thereby be contrary to Saved Local Plan Policies HD7, HD7A, the NPPF and National (sic) Planning Policy Guidance*

<sup>4</sup> CD1.16: ES p38, letter dated 31 December 2014 setting out the requirements of the Environmental Impact Assessment (EIA) Regulations 2011 and potential effects

<sup>5</sup> Richardson 2.1.7

<sup>6</sup> CD 2.09, CD 2.10 and CD 2.08 – 2.20 dated 10 May 2017

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direction of the site to the LPA on 3 July 2017<sup>7</sup>. While there were criticisms of some of its findings, there was no suggestion that the ES was too poor to be considered as such. Taken with the other evidence at the Inquiry I am satisfied that the requirements have been met.

- 1.5 Statements of common ground (SoCG)<sup>8</sup> were submitted with regard to planning, heritage, ecology and highways. The Planning SoCG includes the site, surroundings, history, planning policy, areas of agreement, including biodiversity, drainage, highways and air quality, and disagreement over heritage and planning balance. Agreed points of particular relevance include: access to services, public transport and the principle of residential development.
- 1.6 The Inquiry sat for 8 days with an accompanied site visit on 23 October and unaccompanied visits on 30 and 31 October 2017.
- 1.7 No applications for costs were made at the Inquiry. However, I made the parties aware of the SoS's powers to instigate costs proceedings, should he so wish, as set out in Planning Practice Guidance (PPG). In their closing statement the Appellants suggested both *unreasonable behaviour* on behalf of the LPA and the National Trust (NT) and *wasted expense*<sup>9</sup>. Regardless of the merits of the arguments, or otherwise, there was a considerable quantity of evidence produced by the NT, which, although a charity, is a private landowner and entitled to protect its assets. One of its concerns was only addressed by the revised s106 UU. There are specific duties<sup>10</sup> imposed on an LPA with regard to costs which do not apply to other participants. Nevertheless, the LPA did call upon a separate witness to support its heritage case as well as relying on the evidence of the NT. Ultimately, the SoS's decision whether or not to instigate a costs application against the LPA will turn on his judgement as to whether, given the quality of this evidence, the LPA's decision to proceed with the Inquiry was reasonable.

## 2. The Site and Surroundings<sup>11</sup>

- 2.1 The appeal site and its surroundings are described in some detail in the ES and Addendum<sup>12</sup>, and more briefly in the Planning SoCG<sup>13</sup> and the Committee Report<sup>14</sup>. There are further descriptions in the parties' proofs of evidence. The Appellants' detailed description and analysis of the landscape of the area is found in the Landscape and Visual Impact Assessment (LVIA)<sup>15</sup>.
- 2.2 The site has no specific landscape designations. It lies within Landscape Character Area (LCA)46<sup>16</sup> (South Ripon Farmland) which covers a large area of

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<sup>7</sup> Richardson §2.2.3: to the LPA on 3 July 2017

<sup>8</sup> Generally between the Appellants and the LPA but also between the Appellants and the NT

<sup>9</sup> Phrases in italics are those used in PPG on awards of costs, ref IDs: 16-030-20140306 to 16-032-20140306. See also references to *extreme positions* in Appellants' closing §§5,21,31,32,38,41,62-64,71,72,74,75,77-79,81,122,152 & 161

<sup>10</sup> PPG Ref IDs: 16-029-20140306, 16-047-20140306, 16-049-20140306, 16-056-20161210

<sup>11</sup> CD1.16. See OS based location plan at ES p754

<sup>12</sup> CD1.16 and CD2.09: ES and Addendum

<sup>13</sup> Inquiry Document (ID)5a: Planning SoCG s2.2 and ID 5c: Landscape SoCG

<sup>14</sup> CD5.1

<sup>15</sup> CD1.16 ES chapter 10

<sup>16</sup> CD12.2

land to the immediate south of Ripon<sup>17</sup>. LCA46 is described<sup>18</sup> as undulating and reasonably well wooded comprising large, with medium to large agricultural fields. Views to Ripon Cathedral are identified as an important characteristic. The appeal site followed this pattern<sup>19</sup> until the mid-late 20<sup>th</sup> century after which it was brought into a single unit making it somewhat larger than adjacent fields. This may have been so that it could be used as gallops for which there is still evidence. Adjacent to LCA46 are LCA45 (West Ripon Rivers Laver and Skell confluence) and LCA44 (Aldfield to Studley Vale Fringe Farmland) which includes the WHS<sup>20</sup>. The former has an intimate setting along the river and is shrouded in dense woodland while LCA44 has large fields and veteran trees reflecting the influence of Fountains Abbey on the landscapes immediately beyond the WHS. The treed character of the area is very important to the setting of the WHS and serves to maintain its separation from Ripon<sup>21</sup>.

- 2.3 The ES identifies that the appeal site lies on a gradual northeast facing slope, with highpoints in the southwest and northwest of the site of around 60m above ordinance datum (AOD) and a low point in the north of the Site of around 48m AOD. Gradients across the site generally range between 1:15 and 1:50. The land surrounding the site rises up gradually in the south to around 110m AOD, with localised highpoints of 130m AOD at Blickley Hills to the south west and 100m AOD at Studley Royal Registered Park to the west<sup>22</sup>. The appeal site is dominated by arable farmland<sup>23</sup>. The entrance to Whitcliffe Grange Farm, referred to as Viewpoint 14<sup>24</sup>, has publicly accessible views over the appeal site. Sectional drawings<sup>25</sup> and an aerial photograph<sup>26</sup> show the topography between parts of the WHS and the appeal site.
- 2.4 The edge of the Nidderdale Area of Outstanding Natural Beauty (AONB)<sup>27</sup> lies 1km to the west of the appeal site. The WHS, the majority of the RPG, and How Hill Tower (see below) all lie within the AONB<sup>28</sup>. The locally designated Skell and Laver Valleys Special Landscape Area (SLA) lies to the west of the Site, immediately adjacent to Whitcliffe Lane, as defined under saved policy C9i). Whitcliffe Woods stand to the northwest side of Whitcliffe Lane and occupy the high ground just above a former quarry<sup>29</sup>. The plantation known as Mackershaw Trough<sup>30</sup> lies between the site and the WHS. The southwest of Ripon was developed in the 1960s to 1980s<sup>31</sup>. There are further dwellings to the east of the site and to the south of Quarry Moor.

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<sup>17</sup> ES 10.4.9

<sup>18</sup> CD12.2 p1

<sup>19</sup> CD1.16 p198-203: OS maps show the change between 1956 and 1979.

<sup>20</sup> CD12.15 p23

<sup>21</sup> CD12.9 Ax 10 p137

<sup>22</sup> CD1.16 ES §10.4

<sup>23</sup> Statement of Common Ground on Ecology Matters at §2.19

<sup>24</sup> As agreed in the landscape SoCG ID5c §4.0. The location is shown in Self Appendix A, the photograph in Appendix C

<sup>25</sup> Self Appendix I

<sup>26</sup> Robinson landscape appendices p47

<sup>27</sup> Ibid p43 letter dated 13 January 2015

<sup>28</sup> See Heritage Plan in the ES p756 CD1.16

<sup>29</sup> OS 1891 ES p584

<sup>30</sup> CD1.16 p758 OS map

<sup>31</sup> See OS maps ES p606-608 dated 1967 (showing houses along South Grange Road), 1976 (showing most of the area to West lane developed) and 1982 (showing it completed)

- 2.5 Hell Wath local nature reserve (LNR) lies approximately 200m to the northwest of the site while the Quarry Moor LNR is also a site of special scientific interest (SSSI) and adjoins the eastern corner. It was common ground between the Appellants and the LPA (but not the RR) that the SSSI habitats are currently in 'favourable condition' and so meeting their conservation objectives<sup>32</sup>. The existing hedgerow between the appeal site and West Lane was ecologically referred to as Corridor A<sup>33</sup>.
- 2.6 The ES<sup>34</sup> refers to a site visit<sup>35</sup> to Quarry Moor at which the current pressures and associated impacts were observed. The key points were that:
- some of the SSSI calcareous grassland is being used for dog exercise which has resulted in some degradation through eutrophication and erosion; Elsewhere fences are being damaged to allow dogs through;
  - dog waste is widespread and frequently left in situ. Some dog waste bins are currently provided throughout the site;
  - litter is an issue with litter picking most weeks;
  - vandalism of seating, bins, interpretation and fences is frequent.
- 2.7 It was common ground between the LPA and the Appellants that the site is in an accessible location<sup>36</sup>.

### *Heritage*

- 2.8 Studley Royal Park, including the ruins of Fountains Abbey was inscribed by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) as a WHS in 1986. Studley Royal Historic Park and Garden (RPG) was registered as Grade 1 in 1984 (and revised in 1999). The Cathedral Church of St. Peter and Wilfred (Ripon Minster) was first listed at Grade I in 1949. How Hill Tower was listed at Grade II\* in 1981<sup>37</sup>.
- 2.9 The latest Periodic Report from the World Heritage Centre, dated May 2014<sup>38</sup>, provides the Statement of OUV/ Significance for the WHS. This begins: *Studley Royal Park, including the ruins of Fountains Abbey, combines into one harmonious whole buildings, gardens and landscapes constructed over a period of 800 years. All, important in their own right, have been integrated into a continuous landscape of exceptional merit and beauty. Of its 4 principal components, it identifies Studley Royal as: one of the few great 18th Century 'green gardens' to survive substantially in its original form: arguably the most spectacular water garden in England. The landscape garden is an outstanding example of the development of the 'English' garden style throughout the 18th century, which influenced the rest of Europe. The garden contains canals and ponds, cascades, lawns and hedges, with elegant temples and statues used as eye-catchers. The layout of the gardens is determined by the form of the natural landscape, rather than a design that is imposed upon it.*

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<sup>32</sup> Ecology SoCG §2.6

<sup>33</sup> Dr Mansfield §5.13

<sup>34</sup> CD1.16 p264 §7.5.8

<sup>35</sup> Ibid, undertaken on the 18 September 2015 and attended by the LPA Ecologist and the Park Ranger responsible for Quarry Moor

<sup>36</sup> Planning SoCG 4.4.2

<sup>37</sup> See Heritage SoCG §1.2 and see CD12.30 for full listings. The site of a medieval chapel and park pale (deer park boundary) near How Hill Tower are also described in CD12.30

<sup>38</sup> CD9.5 §2.1. See also earlier versions at CD9.2 and CD9.4

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- 2.10 Studley Royal Park including the Ruins of Fountains Abbey was inscribed on the World Heritage list in 1986 under two of the defined criteria. These are: Criterion (i): *Studley Royal Park including the ruins of Fountains Abbey owes its originality and striking beauty to the fact that a humanised landscape was created around the largest medieval ruins in the United Kingdom. The use of these features, combined with the planning of the water garden itself, is a true masterpiece of human creative genius;* and Criterion (iv): *Combining the remains of the richest abbey in England, the Jacobean Fountains Hall, and Burgess's miniature neo-Gothic masterpiece of St Mary's, with the water gardens and deer park into one harmonious whole, Studley Royal Park including the ruins of Fountains Abbey illustrates the power of medieval monasticism, and the taste and wealth of the European upper classes in the 18th century*<sup>39</sup>.
- 2.11 In short<sup>40</sup>, Fountains Abbey monastic estate was founded in 1132 and became one of the richest and largest Cistercian abbeys in Britain. It was dissolved in 1539 and sold. Fountains Hall was built in 1597, partly with stone from the monastic complex. Between 1718 and 1742 John Aislable developed the 'Water Garden' along the River Skell. Mackershaw was a managed woodland from the 14<sup>th</sup> century until 1730, when it was purchased by John Aislable and incorporated in the Studley Royal designed landscape. Fountains Abbey was combined with Studley Royal in 1767. Studley Park was landscaped with formal avenues in the later 17<sup>th</sup> century.
- 2.12 The associated landscape garden built by the Aislables between 1670 and 1781 made Studley Royal nationally famous; it was referred to as *The Wonder of the North*. Built on a magnificent scale from the outset, the Aislables contrived design understood and incorporated every major new garden fashion. The resulting gardened landscape revolved around eye catchers, contrived vistas and carefully designed water features and contrasts, using the topography of the Skell valley and the abbey ruins. How Hill Tower was the first eye catcher, built in 1718.
- 2.13 It was a distinctive feature of Studley that William Aislable added to the early works rather than remove them as many of his contemporaries did. When he ran out of space to expand at Studley, his solution was to develop gardens on other family properties, at Laver Banks and especially at Hackfall and in 1767 he bought the Fountains Abbey estate. He landscaped and consolidated the abbey ruins, which became an integral part of the Pleasure Gardens.
- 2.14 The WHS Management Plan (WHS MP) notes<sup>41</sup> that: *The [WHS] boundary largely follows the area in National Trust ownership rather than the extent of the historic estate. Therefore some important elements of the designed landscape lie outside the [WHS] boundary and may be vulnerable to change. The proposed buffer zone, arising out of the [WHS MP] process, would protect the integrity of the wider historic estate.*
- 2.15 In commenting on the Heritage SoCG<sup>42</sup>, the NT commented that the boundary of the WHS is 1.2km to the west of the site; the nearest point of the RPG is

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<sup>39</sup> NT comments on Heritage SoCG and Newman §§7.5-7.6

<sup>40</sup> Extracted from CD12.9 appendix 2 to the WHS MP

<sup>41</sup> CD12.9 p13 column 2

<sup>42</sup> Between the Appellants and the NT

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600m to its north west. How Hill Tower stands 3.4 km to the south west of the site and Ripon Cathedral 1.7km to its north east.

- 2.16 The boundaries to the WHS and the RPG are not identical<sup>43</sup>, as the RPG extends beyond the WHS, but the differences did not feature strongly in the evidence. Rather, they were treated as one and in this report WHS has generally been used as shorthand for both. Evidence from the parties deals with the designed landscape and its relationship with its agricultural surroundings. The designations are the highest that can be applied to a landscape<sup>44</sup>.
- 2.17 As above, there was an accompanied visit to How Hill and Gillet Hill before the Inquiry and an unaccompanied visit during it. Both were physically easy to access but there were no indications to either encourage or prevent walkers from so doing. Views from How Hill Tower were limited to those provided in evidence from high level either from climbing or by drone cameras<sup>45</sup>.
- 2.18 There are two key views towards the site from the direction of the WHS: those from Gillet Hill<sup>46</sup> and from How Hill<sup>47</sup> and its Tower (not in the WHS but see below).
- 2.19 Locating the appeal site from How Hill and Gillet Hill, and assessing both its extent and any likely visual consequences of the proposals, was assisted by large scale photographs<sup>48</sup> and other relevant evidence to hand and by the use of binoculars. Large scale copies of the photographs were provided in hard copy. The aerial photograph<sup>49</sup>, with Studley Roger in the foreground, usefully shows the relationship between Gillet Hill to the right and the appeal site on the edge of Ripon, with Whitcliffe Woods on the high ground adjacent to the site, and Mackershaw Trough stretching between there and far side of Gillet Hill. The Zones of Theoretical Visibility (ZTV)<sup>50</sup> show intervisibility calculated by means of topography with and without intervening woodlands. It was common ground<sup>51</sup> that there is currently no intervisibility between How Hill and the appeal site. Visibility of the proposed houses from How Hill Tower, without potential tree planting, was a matter of photographic evidence rather than one which could be assessed on the site visits.
- 2.20 Later, many features disappeared and the maintained part of the grounds contracted through lack of maintenance, including How Hill. A number of decaying buildings and features from the late 18<sup>th</sup> century were removed by the first Marquis of Ripon c.1870 including the Belvedere on Gillet Hill.
- 2.21 How Hill is a prominent feature in the landscape with views to and from it for some considerable distance. Recent research<sup>52</sup> shows that it has been a focus of human activity since prehistoric times and was acquired by Fountains Abbey

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<sup>43</sup> See Heritage Plan in the ES p756 CD1.16

<sup>44</sup> Dr Clark IC and CD9.1-CD9.4

<sup>45</sup> NT appendix 15.8 p12, Viewpoint 5 How Hill Tower; Self Appendix K photographs

<sup>46</sup> ES photograph 19

<sup>47</sup> Ibid photograph 29

<sup>48</sup> Including the NT's viewpoints 1, 2, 3 and 5 in Robinson's appendices

<sup>49</sup> NT appendices p47

<sup>50</sup> Ibid p15-16

<sup>51</sup> And agreed by Robinson in XX

<sup>52</sup> Newman's evidence

in 1134<sup>53</sup>. A chapel was present here by 1346 but its physical remains are now limited to some architectural fragments within the later structure. The Hill was bought by John Aislabie in 1716 who built a tower<sup>54</sup> here in 1719. This was to be the first structure in his designed gardens and may have been designed by (Sir) John Vanbrugh<sup>55</sup>.

### *Buffer Zone (BZ)*

- 2.22 The WHS is protected by a Buffer Zone (BZ) approved by UNESCO in 2012<sup>56</sup>. The International Council on Monuments and Site (ICOMOS) curates WHS designations on behalf of UNESCO<sup>57</sup>. The Buffer Zone extends out around the WHS in all directions. It is not a heritage asset in and of itself, but it is intended to protect the setting and key views of the WHS. It is not intended to stifle development within it, but rather to guide awareness of the importance and contribution of the area within the Buffer Zone to the significance of the WHS<sup>58</sup>. The BZ submission goes on to describe the area from Mackershaw Trough to How Hill noting that: *Whitcliffe Lane marks both the limit of the viewshed into and out of the [WHS] and a clear landscape feature to form the southern limit of the buffer zone*<sup>59</sup>.
- 2.23 The appeal site is bound by Whitcliffe Lane to the northwest, which separates it from a triangular shaped field bound by Hell Wath Lane to the north which lies within the BZ. Little of LCA46 extends into the BZ, the exception being a small triangular intrusion to the west of Whitcliffe Lane just beyond Whitcliffe Woods<sup>60</sup> and running up to the edge of the RPG.
- 2.24 There is a Felling Licence<sup>61</sup> for Mackershaw Trough. The area of trees on higher ground directly between Gillet Hill and the appeal site is that marked 6(l) on the Felling Licence<sup>62</sup>. Here, some 3.31ha of woodland is scheduled as 'T' on the licence, with a work period of April 2019 – March 2021. The key indicates that 'T' refers to thinning. T30 refers to 30% thinning<sup>63</sup>. The illustrative sectional drawings show that the trees in Mackershaw Trough are lower than those in Whitcliffe Woods although the section line cuts through the middle of the site rather than the area of contended intervisibility.
- 2.25 With regard to How Hill Tower, the relevant segments of Mackershaw Trough are 6(n) 6(m) 6(b) 6(c) and, to a lesser extent, 6(e)<sup>64</sup>. Under the Felling Licence segment 6(n) would be thinned by 30%, work to 6(m) is outside the current licence period, 6(b) and 6(c) are to be selectively felled at 50% and 6(e) is to be clear felled. Licence conditions would require restocking to areas 6(b) 6(c) and 6(e).

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<sup>53</sup> Newman appendix 3 p25

<sup>54</sup> The building was referred to at the Inquiry as How Hill Tower and is in this report. The list description refers to: *Site of medieval chapel and section of Fountains Park Pale, 170m south west of How Hill Farm – Grade II\* listed in 1981. (How Hill Tower)*

<sup>55</sup> Ibid p27. The history is also described in Ax8 to the WHSMP

<sup>56</sup> CD9.6

<sup>57</sup> CD9.3

<sup>58</sup> Heritage SoCG §3.4

<sup>59</sup> Ibid p8 clause iv)

<sup>60</sup> See ID14, CD1.16: ES p756 and CD12.2

<sup>61</sup> CD12.36

<sup>62</sup> Compare the maps on the Felling Licence with the OS map of the area (CD1.16 ES p758)

<sup>63</sup> ID31b NT closing §36

<sup>64</sup> Ibid §37

- 2.26 There was no dispute that Ripon Cathedral is a medieval masterpiece. It is listed at Grade I. The building is called Ripon Minster while the organisation and the site should be referred to as Ripon Cathedral<sup>65</sup>. Views of Ripon Minster were described by HE as dynamic, or kinetic, appearing sometimes dominant, sometimes hidden. Views of the Minster form an integral part of the designed views from the WHS, particularly those from St Mary's where the Avenue and Ripon Gate are aligned with the Minster.
- 2.27 The Liberty of St Wilfred is an ancient boundary, a ten mile circuit<sup>66</sup> created in 937, to grant sanctuary to anyone within about one mile of the cathedral. There is a reinstated boundary stone at the junction of West Lane and Whitcliffe Lane<sup>67</sup> to mark the position of the Liberty at this point. The LPA considered the boundary and boundary stone to the Liberty of St. Wilfred to be non-designated heritage assets with relevance to the setting of Ripon Cathedral.
- 2.28 As with Ripon Cathedral there is a duty to consider whether the setting of Whitecliffe Hall would be affected. There was no evidence at the Inquiry that it would and so, other than to identify where it is and to consider its significance in order to comply with the duty I have taken this matter no further.
- 2.29 Ripon Air Quality Management Area (AQMA)<sup>68</sup> is located on Low and High Skellgate, approximately 1.5km to the north east of the appeal site. It was declared on 26 November 2010 for exceedance of the annual mean objective for NO<sub>2</sub>. The most recent report from HBC was in 2016<sup>69</sup>. The Appellants submitted updated AQ assessment reports in April 2017 and in August 2017, using a new method which more accurately considers emissions from modern diesel vehicles<sup>70</sup>.
- 2.30 The Environment Agency (EA) flood map shows that the Site is located within Flood Zone 1 and outside the 1000-year return period<sup>71</sup>. The Appellants gave the 100 year peak flow in the River Skell as 24m<sup>3</sup> per second<sup>72</sup>. The site generally slopes down towards West Lane where it, and adjoining streets, frequently flood.
- 2.31 As requested by Mr Richmond (see below), I drove past the 6 schools referred to between 08.15 and 08.45 on Tuesday 31 October 2017. This revealed very many children and parents on their way to and from the schools on foot. However, at no point on my tour was there a significant hold up on account of traffic outside any of the schools.

### 3. Planning Policy

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<sup>65</sup> This was helpfully explained by Dr Clark to Inspector's Questions (IQs)

<sup>66</sup> CD4.01 HE comments p1

<sup>67</sup> CD1.16 p205 point F, Appendix 6.2: Map of Heritage Assets

<sup>68</sup> See CD1.16 ES ch8 p435 onwards, particularly p452

<sup>69</sup> Ibid p452-453

<sup>70</sup> Walton p5 s3-4

<sup>71</sup> CD2.17 p10 §4.1.3 and CD2.29 p22 showing flood zones 2 and 3.

<sup>72</sup> Closing §105

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- 3.1 The statutory development plan for the area includes the *saved*<sup>73</sup> policies of the Harrogate District Local Plan (LP), adopted in February 2001, and a Selective Alteration document, adopted May 2004, which should be read alongside. These have been combined into an *augmented composite* document<sup>74</sup>. It was common ground that none of its saved strategic policies are relevant to the appeal and that its development boundaries have been superseded. Of particular relevance to the principal issues are saved Local Plan policies C2<sup>75</sup>, HD7<sup>76</sup> and HD7A<sup>77</sup>. Design policy HD20 is also relevant.
- 3.2 The Harrogate District Core Strategy Development Plan Document (CS), adopted in February 2009, covers the period to 2021 (but 2023 for housing purposes). It predates the National Planning Policy Framework (NPPF). It was agreed that CS policy SG1 does not plan to meet the Borough's full objectively assessed needs (OAN) over the plan period. The LPA acknowledged<sup>78</sup> that the development limits could be given only limited weight, as could CS policies SG1, SG2 and SG3. The CS does not identify settlement boundaries but deferred this to a future Development Plan Document (DPD) which was withdrawn in June 2014. Of the relevant policies<sup>79</sup>, none are cited in the reason for refusal. The city of Ripon is identified as a Group A settlement in the Core Strategy, along with Harrogate and Knaresborough in Policy SG2. CS Policy EQ2<sup>80</sup> was argued to be of particular relevance.

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<sup>73</sup> under Section 119 and Schedule 8 of the Planning & Compulsory Purchase Act 2004

<sup>74</sup> CD7.1

<sup>75</sup> Landscape Character – Policy C2. Development should protect existing landscape character. In locations where restoration of the landscape is necessary or desirable, opportunities should be taken for the design and landscaping of development proposals to repair or reintroduce landscape features, to the extent that this is justified by the effects of the proposal.

<sup>76</sup> World Heritage Site - Policy HD7. Development within the world heritage site of Studley Royal Park and Fountains Abbey will only be permitted in very exceptional circumstances where there is no adverse effect on the cultural, natural and man-made interest which led to the site's designation and either:

A) it is required to enhance the interpretation of the site's cultural, natural and man-made interest for visitors; or

B) it is essential for the management of the site or of visitors to the site.

The council will encourage appropriate conservation and restoration measures. The setting and views of the site are protected by policies C2 and HD7A of this plan and will be afforded the strictest protection.

<sup>77</sup> Parks and Gardens of Historic Interest - Policy HD7A. Development will not be permitted where it would adversely affect the character or setting of parks and gardens included in the English Heritage Register of Parks and Gardens of special historic interest.

<sup>78</sup> Wood §6.6

<sup>79</sup> SG2, SG3, SG4, TRA1, TRA2, EQ2, C1 and TRA3 – Planning SoCG §3.3.5

<sup>80</sup> Policy EQ2: The Natural and Built Environment and Green Belt. The District's exceptionally high quality natural and built environment will be given a level of protection appropriate to its international, national and local importance. In addition, more detailed protection and where appropriate enhancement measures will be applied through the Development Control Policies DPD, relevant management plans and by working in partnership with landowners and interested parties.

Subject to the District's need to plan for new greenfield development, the landscape character of the whole District will be protected and where appropriate enhanced. Where criteria based planning policies cannot provide the necessary protection, local landscape designations will be identified:

- to protect the high quality of the landscape which is important to the setting of the towns of Harrogate, Knaresborough and Ripon;

Priority measures to protect and enhance the District's natural and built environment are to:

- increase wildlife habitats and species in accordance with the District's Biodiversity Action Plan;
- review and update the Council's local Sites of Importance for Nature Conservation;
- improve the conditions of the District's Sites of Special Scientific Interest;
- ensure that new development incorporates high quality locally distinctive design.

- 3.3 The emerging Harrogate District Local Plan (eLP) will be a comprehensive document but is at an early stage<sup>81</sup>. Under Draft Policy DM1: Housing Allocations, this identifies the appeal site as: R8, Land at West Lane, Ripon<sup>82</sup>.
- 3.4 It was agreed that 4 supplementary planning guidance (SPG) documents are relevant<sup>83</sup>.
- 3.5 It was common ground between the Appellants and the LPA that the development plan does not contain a NPPF compliant figure for objectively assessed needs such that NPPF§14 should be engaged<sup>84</sup>. In calculating the housing land supply (HLS) a 20% buffer should be used indicating a persistent under-delivery against the requirement. As of June 2017 this was agreed to be 4.2 years HLS<sup>85</sup>.
- 3.6 The Ripon City Plan (RCP) which, if passed, would be a neighbourhood plan for the parish, has been in development since 2012, was designated on 12 December 2012<sup>86</sup>, and its preliminary draft was subject to Regulation 14 consultation in 2016. The volunteers leading this work are preparing for submission to the LPA which it hopes to do by the end of 2017. The approach in the plan is to develop 1,500 dwellings on brownfield land in the City<sup>87</sup>. The extent to which the appeal site is within the RCP is limited to a narrow finger of land across the middle<sup>88</sup> understood to be an historical anomaly<sup>89</sup>.
- 3.7 The Historic England (HE) publication: *The Setting of Heritage Assets. Historic Environment Good Practice Advice in Planning 3 (GPA3)*<sup>90</sup> sets out 5 steps. These are:
- 1: identifying the heritage assets affected and their settings;
  - 2: assessing whether, how and to what degree these settings make a contribution to the significance of the asset;
  - 3: assessing the impact of the proposed development on the significance of the assets;
  - 4: maximising impact and minimising harm;
  - 5: making and documenting the decision and monitoring outcomes.
- 3.8 GPA3 advises that: *For developments that are not likely to be prominent or intrusive, the assessment of effects on setting may often be limited to the immediate surroundings, while taking account of the possibility that setting may change as a result of the removal of impermanent landscape or townscape features, such as hoardings or planting*<sup>91</sup>.
- 3.9 In the NPPF glossary, the setting of a heritage asset is defined as: *The surroundings in which a heritage asset is experienced. Its extent is not fixed*
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<sup>81</sup> After consultation in November/December 2016 – see SoCG §3.4. See also draft Proposals Map CD8.7 p2

<sup>82</sup> CD 8.2 pp 46-51. The draft allocation is for up to 430 dwellings

<sup>83</sup> Planning SoCG §3.5.1

<sup>84</sup> Planning SoCG §4.5

<sup>85</sup> Ibid §4.6

<sup>86</sup> The Plan showing the extent of the area, and confirming the date, is at CD 8.9.

<sup>87</sup> As advised by Cllr. Horton of RCC, ID7

<sup>88</sup> CD 8.9

<sup>89</sup> Addendum SoCG ID5f §2.1.2

<sup>90</sup> CD12.5. Dr Clark (to IQs) advised the Inquiry was HE note 3 was as rebadging exercise following its change of name from English Heritage

<sup>91</sup> Ibid p8 §15

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*and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.*

- 3.10 The UNESCO World Heritage Committee inscribes World Heritage Properties onto its World Heritage List for their OUV – cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. The [UK] government is a State Party to the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (known as the World Heritage Convention) and it was ratified by the UK in 1984.
- 3.11 A Statement of OUV (see above) is agreed and adopted by the World Heritage Committee for each Site on inscription. The Statement sets out what the World Heritage Committee considers to be of OUV about the WHS in relation to the World Heritage Convention and includes statements of integrity and, in relation to cultural sites or the cultural aspects of 'mixed' Sites, authenticity, and the requirements for protection and management. Statements of OUV are key reference documents for the protection and management of each Site and can only be amended or altered by the World Heritage Committee<sup>92</sup>.
- 3.12 The PPG states that<sup>93</sup>: The UNESCO *Operational Guidelines* seek protection of "the immediate setting" of each [WHS], of "important views and other areas or attributes that are functionally important as a support to the Property" and suggest designation of a [BZ] wherever this may be necessary. A BZ is defined as an area surrounding the WHS which has complementary legal restrictions placed on its use and development to give an added layer of protection to the WHS. The BZ forms part of the setting of the WHS.
- 3.13 The Fountains Abbey & Studley Royal WHS MP includes an expanded Statement of OUV<sup>94</sup>. The vision for the WHS notes that: *Taking the 18th century pleasure gardens as its core and inspiration, the WHS possesses many layers of an extraordinary history that have shaped the abbey, the parkland, the rural setting and extended further afield to other landscapes*<sup>95</sup>. The brief synthesis within the expanded Statement of OUV comments that: *With the integration of the River Skell into the water gardens and the use of 'borrowed' vistas from the surrounding countryside, the design and layout of the gardens is determined by the form of the natural landscape, rather than being imposed upon it*<sup>96</sup>.
- 3.14 The BZ submission includes views from Gillet Hill and How Hill Tower<sup>97</sup>. This protects the integrity of the wider historic estate by including How Hill Tower and Laver Bank which are outlying elements of the designed landscape. An objective of the current WHS MP is to include these areas within the WHS in a

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<sup>92</sup> Heritage SoCG between both the Appellants and the LPA and with the NT §§2.1-2.4

<sup>93</sup> This appears in §33 to chapter 18a of the PPG on Conserving and enhancing the historic environment. The reference should be Reference ID: 18a-033-20140306. Curiously, it is recorded as Ref. ID: 2a-033-20140306 which refers to Housing and economic development needs assessments.

<sup>94</sup> CD 12.9 §1.2 p12

<sup>95</sup> Ibid p9

<sup>96</sup> Ibid p12

<sup>97</sup> CD12.8, fig 3: 'Spectacular views from Gillet Hill to Ripon Cathedral and the North York Moors beyond'

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review of the WHS boundary<sup>98</sup>. The BZ submission Justification sets out the advantages of identifying a buffer zone as including: ...

d) for developers, it will help them develop proposals and suggest mitigation measures which minimise the adverse impact upon the WHS<sup>99</sup>.

3.15 The LCA46 Guidelines contain several Aims including:

- Conserve historic features and patterns that remain in the landscape. Encourage the planting of gaps in existing hedgerows and planting of new hedgerow trees.
- Protect and enhance historic views. Development that detracts from views of the Cathedral or the [WHS] will not be permitted.
- To enhance tree cover, in keeping with the landscape pattern<sup>100</sup>.

3.16 The Nidderdale AONB Management Plan 2014-2019 sets out policies and objectives to conserve the special qualities of the AONB, including Landscape, Natural Environment, Heritage and the Historic Environment, Understanding and Enjoyment, and Living and Working.

#### 4. Planning History

4.1 There is no relevant planning history to the appeal site other than that leading to this application<sup>101</sup>.

4.2 Planning permission for 117 houses has recently been approved at the former Choir School in Whitcliffe Lane within Ripon. It was also common ground<sup>102</sup> that the Defence Infrastructure organisation welcomed the draft housing allocation in the eLP, although it sought a higher yield, that Claro Barracks are still in active use and that there was no evidence to show deliverability of any dwellings here within the next 5 years.

4.3 The Appeal Decision at *Cornwall Rd*<sup>103</sup> refers to recent grants of permission as well as an increased supply as a result of appeals. It was common ground that 534 residential units were approved by the LPA between July 2016 and the end of October 2017<sup>104</sup>.

4.4 The book *The Wonder of the North*<sup>105</sup> and the WHS MP cover the history of the WHS with some references to the wider area.

#### 5. The Proposals

5.1 A detailed description of the proposals, including the key design principles, is given in the ES and ES Addendum<sup>106</sup>. The plans for which approval was sought are as set out in suggested condition 5 (below). The development

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<sup>98</sup> NT comments on SoCG on Heritage

<sup>99</sup> CD12.8 p16 §3

<sup>100</sup> CD12.2 p2

<sup>101</sup> CD5.1 p4

<sup>102</sup> ID5f: Addendum SoCG §2.4

<sup>103</sup> CD10.2. In Harrogate, ref. APP/E2734/W/16/3160792 §87

<sup>104</sup> ID5f: Addendum SoCG §2.3.2

<sup>105</sup> By Mark Newman (also the NT heritage witness)

<sup>106</sup> CD1.16 and CD2.09 s2



principles are shown on the Development Framework Plan. The key points to note are:

- 12.21ha out of 23.19 hectares (ha) would be for residential development of up to 390 new homes with a mix of dwelling types from 1 to 5 bedroom properties;
- two vehicular access points off West Lane with visibility splays;
- footpath links to Whitcliffe Lane and Quarry Moor SSSI as well as West Lane;
- 10.61ha of formal and informal Public Open Space (POS) including recreational routes, areas of amenity, wildflower meadows, structural planting, informal areas of recreation and two equipped areas of play. 37% of the total area of the site would be given over to open space and green infrastructure<sup>107</sup>;
- the Parameters Plan<sup>108</sup> shows: areas of built form; green infrastructure including depths of landscape buffers around the periphery; an area of low density development; views to Ripon Cathedral; non-vehicular access points; retention of the majority of existing boundary hedgerows and trees;
- mitigation would include structural landscaping to the boundaries including reinforcement of existing retained hedgerows, new hedgerow planting and additional tree planting adjacent to West Lane.

5.2 The NT produced large photomontages of views from Gillet Hill and How Hill Tower. These include *two red dots* indicating where some of the proposed houses might be visible in the landscape<sup>109</sup>. Maintenance of the proposed tree planting (to act as screening) would be by way of a management company. A late amendment to the UU (see below), confirmed by the LPA<sup>110</sup>, could transfer a small strip within the site to HBC with a suitable contribution<sup>111</sup> towards maintenance in perpetuity.

5.3 HE commented on this and earlier applications several times<sup>112</sup>. It noted that the scheme would straddle the line of the Liberty which is an aspect of the setting and significance of Ripon Minster. It commented<sup>113</sup> that although the revised information largely addressed its earlier comments with regard to significance and setting it was unable to support the application unless a robust delivery mechanism is secured to deliver the master plan and its associated mitigation. Following amendments provided on 11 July 2017, it queried the location of the site in the view from How Hill Tower and raised concerns with regard to the ownership of intervening vegetation and, most of all, the lack of *guarantee that the arrangement of uses across the application site, the scale or locations of the buildings, or the provision of open space will be developed as proposed*<sup>114</sup>. For this reason, its final recommendation was that the LPA should seek amendments, safeguard or further information or otherwise treat the letter as one of objection.

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<sup>107</sup> SoCG Planning §2.4.1

<sup>108</sup> CD2.12.02

<sup>109</sup> Robinson appendices p20 Viewpoint 1 3D model photomontage view, September 2017

<sup>110</sup> As requested after the close of the Inquiry by email from Heidi Hewitt-Wood, 6 November 2017

<sup>111</sup> Calculated from the HBC's ... and confirmed after the close as requested

<sup>112</sup> CD4.01, CD4.14, CD4.24/CD4.25, CD4.35 Consultation responses dated 9 February, 23 May, 20 June (duplicated) and 25 July 2017. Also, regarding the previous application, Miele appendix 12: Letters of 23 September and 22 December 2014, 27 July 2015, 8 February, 16 March and 24 November 2016.

<sup>113</sup> CD4.01 p1

<sup>114</sup> CD4.35: p2

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- 5.4 The site currently has near to no infiltration capacity<sup>115</sup>, that is to say that there is little or no infiltration through the soil but that rainwater runs off the ground into adjoining areas. Consequently, the Flood Risk Assessment (FRA)<sup>116</sup> found that a full sustainable urban drainage system (SUDS) would be unfeasible<sup>117</sup>. Instead, various sustainable water management measures would be put in place including the use of detention basins, swales, permeable pavements, ponds, oversized pipes, water butts and cellular storage. Ultimately, these would attenuate the surface water to the 1 in 1 year greenfield rate of 25.4l/s<sup>118</sup> to a new surface water sewer via West Lane and Hell Wath Lane, and crossing third party land, to the River Skell<sup>119</sup> upstream from Ripon. Following consultations<sup>120</sup> and submission of the FRA, suggested conditions, and more particularly the obligations (see UU below), would prevent works starting until details of the SUDS features have been approved.
- 5.5 In the event that the SUDS failed or was overtopped, excess surface water runoff would follow its current path to West Lane, as it would have nowhere else to go. The FRA does not propose that the scheme would resolve the existing flooding problems in this area of Ripon<sup>121</sup>. The new sewer would be to an adoptable standard but there was no evidence one way or the other as to the likelihood that Yorkshire Water would adopt it<sup>122</sup>. It was common ground between the Appellants and the LPA (but not the RR) that the site is wholly within Flood Zone 1 and that the proposals would not increase the risk of flooding on site or downstream<sup>123</sup>. No objections were raised by Natural England (NE), the EA, Yorkshire Water, the NYCC Flood Authority or the Lead Local Flood Authority; although some conditions were recommended<sup>124</sup>.
- 5.6 The traffic flow information was used in the air quality assessment<sup>125</sup>. Subject to conditions, reserved matters and the UU, the scheme would include highway mitigations<sup>126</sup>, including reduced emissions and improvements to air quality<sup>127</sup>, which have been designed to take account of the Bellman Walks scheme and the Former Choir School<sup>128</sup>.
- 5.7 Proposed ecological mitigation measures follow a letter from Natural England (NE) and a Report from the HBC Ecologist. The measures would be within the 10.9ha of proposed green infrastructure and include: a buffer zone, boundary strengthening, new hedgerows, trees, grassland and scrub, open water to benefit Great Crested Newts (GCN), hibernacula and underpasses, bat and bird boxes<sup>129</sup>. Conditions and the s106 UU would address indirect impacts<sup>130</sup>.

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<sup>115</sup> CD2.17 §5.5.6

<sup>116</sup> CD 2.17

<sup>117</sup> Ibid §5.5.8

<sup>118</sup> As agreed with NYCC CD2.29 responses to §3

<sup>119</sup> Ibid §5.6.5

<sup>120</sup> Including the Environment Agency (EA), the Local Planning Authority (LPA)/Lead Local Flood Authority (LLFA), and Water Utilities; that is the EA, HBC, NYCC and Yorkshire Water.

<sup>121</sup> Travis §3.3

<sup>122</sup> Travis in XX

<sup>123</sup> Planning SoCG §4.13

<sup>124</sup> Committee Report CD5.1 p5

<sup>125</sup> The Annual Average Daily Traffic Flows, CD12.31 appendix A

<sup>126</sup> Based on the recommendations of the Local Highway Authority, CD4.30 pp3-6

<sup>127</sup> Walton p6 s5

<sup>128</sup> Jackson IC and Transport Assessment CD1.05 and Planning SoCG §4.19.4

<sup>129</sup> SoCG on Ecology between the Appellants and the LPA §3.3

<sup>130</sup> Ibid §3.9

Yorkshire Wildlife Trust (YWT) deferred to the Council's Principal Ecologist with regard to mitigation<sup>131</sup>. The two access points, for which details are not reserved, would result in the severance of Corridor A, and this would be exacerbated by the proposed visibility splays. Part of the proposed mitigation includes enhancing what would be Corridor B on the other side of the appeal site.

- 5.8 Unchallenged evidence<sup>132</sup> was that the site would deliver approximately 210 dwellings in the first five years (including 84 affordable homes), based on two housebuilders developing the site.

## **6. The Case for the Whitcliffe Grange Farm Partnership & Gladman Developments Ltd.**

- 6.1 This case is about housing in a city where there is a real need to be met. The site is agricultural land, with a former gallops, adjoining a suburban area of Ripon; it enjoys no statutory or policy designation. The appeal site is outside areas of Ripon which are highly constrained by flood risk and ground stability. The Council and the NT have gone to extreme lengths in order to justify their positions, sometimes with no evidential or policy support.
- 6.2 The main issues are:
- (a) character and appearance;
  - (b) the setting of the WHS and RPG;
  - (c) the effects on heritage assets including How Hill Tower, and;
  - (d) the planning balance and sustainability.

### *Character and appearance*

- 6.3 The LPA is content so far as landscape or visual effects are concerned. The NT extended its case in important respects only shortly before the Inquiry and adverse inferences should be made on these.
- 6.4 With regard to Gillet Hill, there would be no detectable visibility of the proposals subject to a condition on boundary landscaping. It is 1.5km away and it was only when the crops were harvested that it became apparent that the roofscape and upper floors might be visible for 2 or 3 houses in a very limited area<sup>133</sup>. It should be borne in mind that: the panorama is enormous, it contains eye-catchers including Ripon Minster, the facing materials would not be bright red, as the photomontage, but a recessive colour, and that planting would obscure any effects in due course. It is also worth noting that there is no public right of way onto Gillet Hill. While the public is permitted to walk within the extensive NT ownership, there is no evident desire line or evidence on the ground of particular use, and currently no encouragement for visitors to go up Gillet Hill, whatever is said for the future.
- 6.5 How Hill is some 3.5km from the appeal site. Substantial Inquiry time was taken considering intervisibility even though it was agreed that there is no visibility whatsoever of How Hill or its tower from the appeal site and there is no intervisibility on the ground. Rather, the issue concerned that which might

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<sup>131</sup> Committee Report CD5.1 p7

<sup>132</sup> Richardson §10.4.1

<sup>133</sup> The photomontage with *two red dots* (see above) illustrates this.

be seen from a building to which the Inspector was taken but which he was not able go inside. The relevant windows have been bricked up and the upper floor, under these, has been removed. Even if the windows were opened up and the floor reinstated, the oblique views, obscured by thick walls and mullions, would not look directly over the appeal site or towards Ripon Cathedral. Any future possible view would be from a vanishingly small proportion of a broad, long and expansive landscape that would also encompass the urban and suburban area of Ripon. Any effect from How Hill Tower would be barely detectable. The LPA was wrong to follow the NT's extreme position in the context of heritage.

- 6.6 The only significant view into or across the site is from Whitcliffe Lane at a farm entrance referred to as Viewpoint 14<sup>134</sup>. From here the development would be set back from the boundary by at least 97m<sup>135</sup>, behind a hedgerow to be retained and enhanced. Views would be limited and in the context of both Whitcliffe Grange Farm and the edge of Ripon.

#### *Landscape character*

- 6.7 The appeal site is within LCA46<sup>136</sup>. It is a large arable field. The scheme would change its character to that of residential development. The site lies immediately adjacent to a suburban area of Ripon which lends it part of its characteristics. With regard to the relevant features in the LCA46 guidelines, the scheme would retain hedgerows and plant up gaps, allow public access to views of the Cathedral, and assist with new tree planting.
- 6.8 Neither the LPA nor the NT considered the site to be a *valued landscape* in their statements of case, but they did raise this with witnesses<sup>137</sup>. By reference to its condition, scenic quality, rarity, conservation interest, recreational value or degree of tranquillity, when measured against GLVIA box 5.1<sup>138</sup>, it is not a *valued landscape*. Rather, the argument aims to deprive the Appellants of the *tilted balance* in NPPF§14 through the application of footnote 9. However, it would make no difference to that even if it had merit. Finally, relying on the ancient Liberty of St Wilfred is hopeless as there is no physical manifestation of the boundary.

#### *Mitigation and screening*

- 6.9 Mackershaw Wood intervenes in the views from Gillet Hill and How Hill towards the appeal site. It has a tree felling licence. This is evidence of good husbandry of the woodlands within the BZ<sup>139</sup>. In the long term, change as a result of the licence will be negligible, most of the woodlands would remain intact and none of the directly intervening broadleaf woodlands would be clear felled. The section drawings<sup>140</sup> show that Whitcliffe Wood is far more important as a screen. This is managed by the Wildlife Trust and there was no

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<sup>134</sup> Self Appendix 3. See also the landscape SoCG final page: effect described as 'moderate adverse' but the NT and 'slight adverse' by the Appellants

<sup>135</sup> See Parameters Plan under discussion of conditions below

<sup>136</sup> See ID14 for an overlay with the heritage designations. Note a small area is within but most of it is outside the BZ.

<sup>137</sup> Self and Miele in XX

<sup>138</sup> CD12.1 p84

<sup>139</sup> Dr Clark agreed in XX and others agreed with him

<sup>140</sup> Self Appendix I drawing no. CSA/3010/127A and 128A

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evidence that it is at risk. In the event of a catastrophe which removed Whitcliffe Wood, much of southern Ripon would become visible from Gillet Hill and the appeal site would be seen in that context. If there were any real concern the LPA could impose a tree preservation order (TPO). The suggestion that a TPO would be unenforceable is misguided<sup>141</sup>. There are no practical obstacles to mitigation planting or suggestions that trees or hedges struggle to grow; rather they require thinning. The s106 UU would secure the future of this planting.

#### *Conclusions on character and appearance*

6.10 The appeal site is ideally suited to a substantial amount of residential development and the arguments against are startling in their contrived nature. The site would not be materially detectable from the important but distant viewpoints. From Whitcliffe Lane, views into the site would be screened by planting while there would be public access to the fine views from the site to Ripon Minster.

#### *Setting of the WHS (and RPG)*

6.11 The views relevant to the setting of the WHS are also from Gillet Hill and How Hill. Consideration of How Hill Tower as a listed building overlaps with this. There is also the issue of setting which does not depend on intervisibility but on the contribution which the appeal site might make to the agricultural surroundings to the designed landscape.

6.12 The Appellants have rightly queried whether the appeal site is within the setting of the WHS at all<sup>142</sup>. Gillet Hill is within the WHS and enjoys a fine panorama. However, this is so enormous, and the potential to see the site from within it so very, very small, that it is hard to grasp how an appreciation of the vista might be affected. If nothing could be perceived by the senses there cannot be a setting relationship. With regard to impact, one form of development, such as a tall mast or wind turbine, might affect setting whereas another might not. The NT asserted that any change to setting would be significant<sup>143</sup>. The law on setting is generally agreed<sup>144</sup> with some tension between *Williams*<sup>145</sup> and *Steer*<sup>146</sup>. Nevertheless, for the following submissions, it is assumed that the SoS finds that the site is within the setting of the WHS.

#### *Buffer Zone (BZ)*

6.13 The site is adjacent to, but outside, the BZ which was intended to provide decision makers with a simple indication of where impact on the WHS might be an issue<sup>147</sup>. It is not definitive on setting but it is a carefully considered

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<sup>141</sup> See AA closing §§38-41

<sup>142</sup> Miele §§6.54 – 6.58

<sup>143</sup> Robinson in XX

<sup>144</sup> See the list of legal propositions appended to this closing statement. This was circulated to the advocates in the case in advance so that they would have an opportunity to agree or disagree.

<sup>145</sup> *Williams v Powys CC* [2017] EWCA Civ 427. At §57, Lindblom LJ quotes from Charles Mynors' book: '*In practice, the question is not ... what is the boundary of the setting, but rather does a particular proposed development affect the setting of a listed building in the vicinity.*'

<sup>146</sup> *Steer v SoSCLG, Catesby Estates Limited and Amber Valley Borough Council* [2017] EWHC 1456 (Admin). Comparison of the cases does not help much as it was agreed by Dr Clark and Newman that only the visual sense was seriously relied upon

<sup>147</sup> See BZ proposal at CD 12.8, p16 – advantage 'b' – also 'd'

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boundary. Weight should be given to the site's location outside the BZ as:

- (i) there was no reason to exclude it if inclusion might be helpful;
- (ii) the case now is at odds with its exclusion;
- (iii) the site has obvious development potential as it adjoins Ripon.

The inference must be that the setting objections did not occur to anybody when the BZ was proposed in 2012.

#### *WHS Management Plan (WHS MP)*

6.14 This covers 2015-2021 and followed a long, careful and comprehensive process from 2013-14<sup>148</sup>. It is required to specify how the OUV should be preserved<sup>149</sup>. It says of the BZ: ... *some elements of the designed landscape lie outside the [WHS] boundary and may be vulnerable to change. The proposed buffer zone, arising out of the [MP] process, would protect the integrity of the wider historic estate*<sup>150</sup>.

#### *Impact*

6.15 With regard to Gillet Hill and the WHS MP:

- (i) views out are huge to distant places well beyond Ripon;
- (ii) views were intended to be taken from Gillet Hill but are not designed;
- (iii) there was no suggestion that development in the wider setting should be restricted<sup>151</sup>;
- (iv) there is no reference to the importance of agricultural landscape in the view, the main text nor in the appendices which consider landscape character;
- (v) There is no reference in *The Wonder of the North* to the importance of the agricultural landscape in the view.

The marked up-versions<sup>152</sup> refer to a contrast between the designed landscape created by the Aislabies and the surrounding agricultural countryside. While the book is primarily a discussion of the NT estate, it does not address the agricultural land between Ripon and the WHS.

#### *Method*

6.16 The heritage witnesses properly adopted that of the landscape witnesses with regard to visual effects. With regard to methodology, the LPA argued that the ICOMOS guidance should have been used. This was despite its officers having scoped the ES, commented on the heritage work, obtained the views of HE<sup>153</sup>, considered an addendum to the ES, and concluded that planning permission should be granted. At no stage was it said that the ES methodology was deficient. In fact, either the EIA or ICOMOS guidance can be used, as they take you to the same place, but ICOMOS is international for states which don't have planning guidance<sup>154</sup>. Whatever methodology is used, and whatever value attached to the assets, if the impact would be nil the outcome would be

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<sup>148</sup> As agreed by all witnesses particular Dr Clark in XX. See also the heritage SoCG with the NT and CD 12.9: WHS MP at Appendix 5, p79

<sup>149</sup> For each State Party to the World Heritage Convention and it is UK Government policy to ensure that a MP is in place for all UK WHSs – MP p8

<sup>150</sup> WHS MP at p13, second column

<sup>151</sup> WHS MP App8 p122

<sup>152</sup> ID24 pp2, 5 and 22

<sup>153</sup> As listed above

<sup>154</sup> Miele in XX

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the same<sup>155</sup>. No concern has been received either directly from ICOMOS or via HE<sup>156</sup>.

### *Screening*

6.17 Two areas are relevant: intervening woodland and mitigation planting. The intervening woodland has been dealt with above; mitigation is covered by the UU below. It was acknowledged for the LPA that after 15 years growth any impact would be neutral<sup>157</sup>.

### *How Hill and its Tower*

6.18 Much of the effects on these have been covered above. With regards to heritage, How Hill is not the focus but its Tower. First, there is no current access to the view from the Tower. At worst, the upper storeys and roofs of the scheme might be seen from the Tower<sup>158</sup>. The LPA and the NT therefore relied on GPA3<sup>159</sup>. Their position is extreme as it ascribes the same weight to the viewpoint with or without visitors. That is not to say that significance should be downgraded because it lacks popularity. However, it is not the significance that is at issue but the contribution which its setting makes to that significance. That is a matter of planning judgement but as with Gillet Hill, the WHS MP does not deal with the wider agricultural landscape from How Hill Tower. In any event How Hill Tower which, as a listed building is subject to s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LB&CA Act), is not part of the WHS to which s66 does not apply.

### *Agricultural setting*

6.19 Part of the NT's case (see below) was that the site was part of the agricultural hinterland experienced while journeying to and from the core estate and so part of the designed landscape. There is no support for this in the WHS MP and only references to *rural* and to a former racecourse. Nowhere does it state that agricultural land outside the BZ is important, that there would be risks from building on it; nor does it refer to the separation of the WHS from Ripon. There is no justification in *The Wonder of the North*. For it to be significant it would be necessary for someone on foot to take a distant glimpse of the appeal site, remember it, walk for 10-15 minutes along Whitcliffe Lane, turn off, walk for a further 10-15 minutes, and having then arrived at the boundary of the WHS, consider that their appreciation has been affected by housing they glimpsed at the suburban edge of Ripon.

6.20 For the LPA, rather than the phrase *clear and compelling*<sup>160</sup> there was no evidence to link an appreciation of the agricultural hinterland to OUV<sup>161</sup>. The SoS should be made aware of the state of the evidence at its conclusion.

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<sup>155</sup> Miele in ReX

<sup>156</sup> Dr Clark in XX who was given the opportunity during the course of the Inquiry to ask HE for any such correspondence

<sup>157</sup> Dr Clark in XX

<sup>158</sup> Self in XX by Hunter

<sup>159</sup> CD12.5 p4: appreciating setting: *The potential for appreciation of the asset's significance may increase ... if access to currently inaccessible land becomes possible*

<sup>160</sup> LPA Closing §13

<sup>161</sup> Newman could identify none in XX. None was put to Miele

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### *Other heritage matters*

6.21 The points relevant to How Hill Tower have already been addressed above. Views from Ripon Minster were considered but only, it was explained<sup>162</sup>, as they are part of the setting of the WHS. There are currently no public views from the Minster's towers but there remains a duty to consider the possible effect on the setting of the Cathedral. Conversely, new public access to views from the appeal site to the Minster, specifically designed into the Masterplan, would amount to a public benefit<sup>163</sup>.

### *Conclusions on the settings of heritage assets*

6.22 The effects contended by the LPA and the NT are barely detectable or entirely unjustified. Views from the Minster and the Liberty boundary add nothing.

### *Ecology and geology*

6.23 The two designated sites, Quarry Moor SSSI and Hell Wath LNR would not be directly affected. There were no objections from NE or other statutory consultee. RR agreed that the SSSI's geological interest would be protected by suggested conditions 10 and 16 (see below). Its concerns relate to recreational pressures from future residents. The LPA's principal ecologist agreed that: *likely significant harm to Quarry Moor SSSI and Hellwath (sic) LNR will be avoided by the implementation of ... mitigation*<sup>164</sup>.

6.24 The agreed list of mitigation includes<sup>165</sup>: 10.9ha of greenspace; finance for additional dog waste and litter bins, new interpretation and signage, and the provision of fencing and barriers; an ecological buffer; footpath links including an alternative dog walking route; and strengthening boundary habitats. Of these, the RR only gave evidence on the provision of dog waste and litter bins. Their appraisal of mitigation is therefore partial and misleading.

6.25 The appeal site is dominated by arable farmland with 5 hedgerows and mature trees one of which supports a roost of common Pipistrelle bats. However, the RR ignored the fact that this tree is unsafe and not suitable for retention<sup>166</sup>. Some mature trees and hedgerow would be lost, including two sections 10m long alongside West Lane. However, translocation of the hedgerow and replacement planting would compensate for these in the long term. Enhancements would increase permanent habitat<sup>167</sup> including ponds beneficial to GCN and scrub for a range of birds<sup>168</sup>. Weight should be given to the fact that NE was content<sup>169</sup>.

### *Flooding*

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<sup>162</sup> Dr Clark in XX

<sup>163</sup> To be secured by condition, see CD1.03 and ID10

<sup>164</sup> SoCG on Ecology §3.9

<sup>165</sup> See AA closing §93

<sup>166</sup> See the ES CD1.16, e.g. in the Arboricultural Assessment at p406 at §4.6, and Manners in XX

<sup>167</sup> SoCG on Ecology §3.13

<sup>168</sup> Ibid §3.18

<sup>169</sup> See the case in *Morge (FC) v Hampshire County Council* [2011] UKSC 2 (not presented at the Inquiry)

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6.26 Almost all the appeal site lies within the catchment of the River Skell which has a 100 year peak flow of 24 metres<sup>3</sup>/second (m<sup>3</sup>/s). Built up areas of Ripon<sup>170</sup> lie to the northeast with higher ground to the southwest. Currently, rainwater tends to run to the northeast and sometimes floods these streets. The FRA is based on not exceeding the one year run off rate of about 25 litres/second (l/s). It shows that this could be met through a range of measures including attenuation ponds (with additional benefits for GCN). These measures would reduce flooding to existing built up areas. Surface water from the site would run into a sewer to the River Skell. It would add an undetectable amount to the flow<sup>171</sup>. There were no objections from the Lead Local Flood Authority, the Environment Agency or the statutory water undertaker (Yorkshire Water). The latter's letter<sup>172</sup> was simply concerned to keep water out of its combined sewer. Overall, there would be an advantage to residents from the attenuation measures and a reduction in flood risk.

#### *Traffic*

6.27 The appeal site adjoins Ripon which the LPA considers to be a sustainable settlement for additional housing<sup>173</sup>. The highways authority has agreed the transport assessment (TA), its base data and the measures to assist sustainable travel<sup>174</sup>. The proposals include mitigation which would also give rise to benefits to existing residents<sup>175</sup>.

#### *Air quality*

6.28 The Scientific Technical Officer of the LPA has agreed the ES assessment which found that there would be a negligible impact at 15 existing sensitive receptor locations and a slight adverse impact at one receptor located in the AQMA. The effect of the proposed development on human health was assessed as *not significant*<sup>176</sup>. In addition, measures would be implemented on the site<sup>177</sup> from the DEFRA damage cost contribution of over £225,000. The junction improvement at Skellgate<sup>178</sup> will improve air quality as well as ease traffic problems.

#### *Housing land supply (HLS)*

6.29 The Council cannot demonstrate more than a 4.2 year HLS. The extent of the shortfall and actions being taken to address it are relevant and mean that very substantial weight should be given to the need to make up the shortfall of some 938 market and affordable dwellings. In answer, the LPA referred to some planning permissions but without reference to the number of completions. The allocations in the consultation draft emerging local plan

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<sup>170</sup> Including West Lane and South Grange Road

<sup>171</sup> 1m<sup>3</sup>/s = 1,000 l/s so the one year run off rate would be about 1/1,000 of the 100 year peak flow. The Appellants' closing, §105, characterised this as 0.001% of the flow which may not be a wholly accurate representation

<sup>172</sup> CD 1.08 – App 3; letter dated 14 Sept 2014

<sup>173</sup> Planning SoCG §4.4.1

<sup>174</sup> Highways SoCG with North Yorkshire County Council

<sup>175</sup> Contributions towards a puffin crossing, a bus service and cycling facilities

<sup>176</sup> Walton §4.2

<sup>177</sup> Including Green travel plan, EV recharging infrastructure, parking spaces for low emission vehicles, support for walking and cycling, bike/ebike hire schemes, low/ultra low NOX boilers and funding of public transport improvement measures

<sup>178</sup> CD4.30 p1 and p3

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included the appeal site. While it warrants only limited weight at this early stage, it is the latest attempt to show where development should take place, the CS allocations document having been withdrawn.

*Section 106 unilateral undertaking (UU)*

6.30 Via the substantially agreed UU, and its justification, the scheme would mitigate its off-site impacts. It would also put beyond doubt concerns over screening in perpetuity in the unlikely event that the management company were to fail. The commuted sum for this has been taken from the Supplementary Planning Document (SPD) on Open Space<sup>179</sup> and this calculation was accepted.

*Policy*

6.31 The NT accepted<sup>180</sup> that the first part of saved LP Policy HD7 is concerned with development within the WHS and is not applicable to the appeal site. The second part adds only references. In any event, given the policy in NPPF§134, this adds little. The LPA's digression from its case into landscape character and *Daventry*<sup>181</sup> overlook the finding in *Suffolk Coastal/Hopkins*<sup>182</sup>, which overlapped, that: *The rigid enforcement of such policies [for the preservation of the greenbelt, and environmental and amenity policies and designations such as those referred to in footnote 9] may prevent a planning authority from meeting its requirement to provide a five-years supply.*

6.32 The Appellants have considered the City Plan and note that the appeal site lies outside of the designated neighbourhood plan area with the exception of a small area of land which extends from West Lane into the site. This is understood to be a historical anomaly associated with the respective parish boundaries. As such, the vast majority of the appeal site lies outside of the City Plan area and therefore its policies are not of relevance to the appeal proposals. In any event, only very limited weight can be attributed to the RCP due to its early stage of preparation.

*NPPF§109 and footnote 9*

6.33 In practical terms, triggering the *tilted balance* depends on the heritage issues<sup>183</sup>. RR's reference to soils and NPPF§109.1 is not correct as this is in the context of biodiversity and ecology which should be assessed in the round, as explained in NPPF§118, including consideration of enhancement.

6.34 If less than substantial harm is found under NPPF§134, a non-tilted balance must be applied to harm and public benefits. If this is acceptable, the next balance is NPPF§14 for which there is no other significant harm. The balance here is similar to that under NPPF§134 and so overall it makes little difference<sup>184</sup>.

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<sup>179</sup> ID21

<sup>180</sup> Rowland in XX

<sup>181</sup> *Gladman Developments Limited v Daventry District Council and SoSCLG* [2016] EWCA Civ 1146

<sup>182</sup> CD11.11 *Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents)* *Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant)* [2017] UKSC 37 at §79

<sup>183</sup> Acknowledged by Wood in XX

<sup>184</sup> As acknowledged in §1 to the LPA's closing

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6.35 On the Appellants' evidence there would be no harm under NPPF§134. Taking the LPA's and the NT's cases at their highest, the harm would be limited or very limited. It is a material consideration that potential harm from How Hill Tower cannot presently be experienced. The NT's position that the scales of the balance are fixed by giving the WHS very high heritage value is wrong<sup>185</sup>.

### *Sustainability*

6.36 The appeal site is on the edge of a city in a highly sustainable location for development such that the three roles of sustainability in the NPPF are amply met<sup>186</sup>.

### *Planning balance*

6.37 The LPA agreed<sup>187</sup> that if the NPPF§134 test is passed, and the public benefits outweigh any heritage harm, then the *tilted balance* in NPPF§14 applies unless there are any other material considerations which might significantly and demonstrably outweigh the presumption in favour of development which has been found to be sustainable. All the principal points taken against the Appellants are either neutral through mitigation or result in benefits.

6.38 The LPA and the NT have taken extreme and unjustified positions, namely:

- (i) approaching a barely detectable view from Gillet Hill as visual or heritage harm;
- (ii) suggesting that a TPO would not secure the future of relevant woodland;
- (iii) claiming that the appeal site is a *valued landscape* solely on the basis that it relates to the WHS;
- (iv) raising a landscape objection for something which you cannot see, namely the Liberty boundary;
- (v) claiming as irrelevant the reasons why views from How Hill Tower to Ripon Cathedral are not available and even in theory would be obscured and oblique;
- (vi) maintaining that an agricultural setting beyond the BZ is key to setting without support from the WHS MP or the witness's own published research;
- (viii) failing to identify any effect on OUV in respect of agricultural setting;
- (ix) using a rigged planning balance which will not shift with benefits.

6.39 It follows that the appeal should be allowed and planning permission should be granted.

## **7. The Case for Harrogate Borough Council**

7.1 The central question between the LPA and the Appellants is the balance between harm to the settings of designated heritage assets and the claimed public benefits. In any such case, the balance is tilted in favour of preservation but here the assets are of the highest national and international value including the WHS, the RPG and the Grade I listed Ripon Cathedral. The OUV which comes with a WHS means that it is: *so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity*<sup>188</sup>.

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<sup>185</sup> Richardson IC; Rowland XX and ReX

<sup>186</sup> As above and Richardson IC

<sup>187</sup> Wood in XX

<sup>188</sup> UNESCO Operational Guidelines §49 (Miele Apx14 p193)

- 7.2 The main issues between the Appellants and the LPA are therefore:
- (1) the impact of the development on the setting, significance and OUV of the WHS, RPG and other associated assets at How Hill;
  - (2) the impact of the development on the setting and significance of the Grade I listed Ripon Cathedral, and;
  - (3) the balance between harm and benefits.

*OUV of the WHS, RPG and other associated assets at How Hill*

- 7.3 The change in the Appellants' opinion with regard to heritage<sup>189</sup> led to the *somewhat radical* position of denying that any setting relationship exists between the appeal site and the WHS. This was founded on a misinterpretation of *Williams* and, even on this modified view, the site is within the setting.
- 7.4 The NPPF definition of setting requires one to consider whether a site is within the surroundings in which the heritage asset is experienced. This may be, and often is, visual, but doesn't have to be. Even the visual element may be intervisibility, co-visibility or kinetic. It may involve other senses or none where it rests on historical, functional, cultural or other associations<sup>190</sup>. The contribution that setting makes to significance may be positive, negative or neutral. Even if the site currently makes no contribution, it may fall within the setting if it has the potential to do so in the future. *Williams*, which was superseded by *Steer*, does not alter the finding that it would be an error of law to treat *visual connections as essential and determinative*<sup>191</sup>. Nor does *Williams* set out any hierarchy of connections but avoids any exact definition.
- 7.5 In any event, there is a visual connection as:
- the site abuts the BZ;
  - it is visible in the key views/vistas from Gillet Hill;
  - even with the current screening, it would partially protrude through gaps in the tree cover;
  - it is at least likely to be visible from How Hill or its tower;
  - as the Whitcliffe Wood screening was only established in the late 19<sup>th</sup> century, the appeal site is likely to have been significantly more visible from Gillet Hill, when originally created and enjoyed by the Aislabies<sup>192</sup>;
  - GPA3<sup>193</sup> specifically advises that, when considering the extent of setting, account should be taken of the possibility that impermanent landscape features such as planting may not persist over time;
  - regardless of the law covering felling licences for Mackershaw Wood, there are other significant risks to the trees including storms, disease and other harm that often befalls trees;
  - planting can only ever be regarded as mitigating an adverse impact on setting, not as eliminating it<sup>194</sup>.
- 7.6 There is also an important visual relationship in terms of landscape character. Whatever the walking time between the site and the WHS, the experience is a

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<sup>189</sup> Miele evidence §1.78

<sup>190</sup> GPA3 CD12.5 p9

<sup>191</sup> *Steer* §69

<sup>192</sup> Not conceded by Miele in XX

<sup>193</sup> HE, GPA3: The Setting of Heritage Assets, §15 p8

<sup>194</sup> *Ibid*, §29 p12

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visual and aesthetic matter and it is wrong to deny the contrast between the landscape character on and around the appeal site, to the south of Whitcliffe Lane and adjacent to the BZ, and the designed landscape of the WHS. The kinetic experience here is, and was intended to be, significant. The explicit reference to LCA46 in the WHS MP supports this view. The suggestion that the appeal site is not within the setting of the WHS should be rejected.

### *Contribution of the setting to significance*

- 7.7 The importance of the contrast between the designed part of the 18<sup>th</sup> century landscape and the agrarian surrounds, which includes the appeal site<sup>195</sup>, is supported by:
- the views of HE, who stated that: *views and vistas are key elements of 18<sup>th</sup> century designed landscapes, and ... [are] one of the key attributes of [the WHS] and emphasised, in relation to the Gillet Hill viewing point, the particular importance in the design of the 18<sup>th</sup> century landscape of the panoramic relationship between the contrived landscape of the Pleasure Gardens, and the 'borrowed' views of the 'natural' agricultural landscape around it, the historic core of Ripon with the Minster ... and the wider, 'wilder' landscape beyond, forming the backdrop, which is still very clear today. Therefore the viewer would be looking at a natural and man-made 'composition'*<sup>196</sup>;
  - the BZ submission document<sup>197</sup> which refers to the contrast with the 'agrarian landscape' as an important part of the visual setting generally, the backdrop to views out of the Skell Valley, part of the intended aesthetic effect in views from How Hill, and as an important aspect of the Aislabies' design and therefore the [OUV] of the site;
  - the ICOMOS recommendation on the BZ submission<sup>198</sup> which refers to the protection of key vistas and inclusion of the *visual envelope from within the Park except for the expansive view from the summit of Gillet Hill – which embraces (and historically embraced) the view of the adjacent agricultural fields, including part of the appeal site;*
  - the UNESCO acceptance and approval of the submission<sup>199</sup>;
  - the statement of OUV and the WHS MP<sup>200</sup>, referring to the *'borrowed' vistas from the surrounding countryside*<sup>201</sup>, Gillet Hill as *part of the early 18<sup>th</sup> century landscape commanding spectacular views and their importance to the landscape design*<sup>202</sup>, How Hill as a *key element and early focus of the Aislabies' designed landscape, with its tremendous views extending to the North York Moors*<sup>203</sup>, and the importance of preserving the *contrast between the 18<sup>th</sup> century manicured and designed landscape with the pastoral upland; the remote qualities of the dales and the productive farmland of the Vale of York*<sup>204</sup>.

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<sup>195</sup> Clark §§8.8-8.10.5, pp35-58 and IC; Newman pp21-33 and the extracts from his book.

<sup>196</sup> HE, 16 March 2016 letter (Miele Ax12 p148)

<sup>197</sup> CD12.8 p3, §3(c) p8 and figure 18

<sup>198</sup> CD9.3

<sup>199</sup> CD9.6

<sup>200</sup> CD12.19

<sup>201</sup> Ibid p12, second column

<sup>202</sup> Ibid p122, third column

<sup>203</sup> Ibid pp124-125

<sup>204</sup> Ibid p136, last column

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7.8 It is wrong to infer that the contrast with the surrounding agricultural landscape is not important from the lack of particularity in the WHS MP since that goes beyond its purpose. In any event, there are supportive references. The Appellants not only exclude the site from the setting of the WHS but omit this important element of its contribution.

#### *Value*

7.9 It was accepted<sup>205</sup> that the views from Gillet Hill and How Hill convey OUV to the WHS as they present key views and vistas that were a clearly intended part of the 18<sup>th</sup> century creation. They should be assigned the highest value<sup>206</sup>. The Appellants failure to follow the ICOMOS guidance in this regard was raised by the NT, the Council<sup>207</sup> and HE and has caused these to be undervalued. It is wrong to downplay the Minster in the view from How Hill Tower and it would be surprising if this were not significant at the time that it was built.

#### *Impact*

7.10 The proposals would fundamentally change the character of the site with moderate impact on the separation between the WHS and the City of Ripon and its part in the surrounding agricultural setting<sup>208</sup>. However, regard should be had to the cumulative erosion of the rural setting through the expansion of the city<sup>209</sup>. The effect on summer views from Gillet Hill and How Hill would be minor but the significance would be moderate/major due to their role in the design and in conveying the OUV of the WHS<sup>210</sup>. The scale of effects could increase subject to the future of the intervening woodlands which, following GPA3, should be considered given the assets' status and importance.

#### *Mitigation/enhancement*

7.11 Nothing in the proposals would enhance the OUV or the appreciation of the WHS<sup>211</sup>. The evidence does not show that on-site planting would effectively mitigate views from Gillet Hill and How Hill. Even if it could, this cannot be assumed in perpetuity. Enforcement would be problematic if the proposed management company was wound up, dissolved or struck off for a host of reasons. The legal opinion<sup>212</sup> only confirms this, albeit noting the low risk, while the offer to the Council to take part ownership only highlights the real concern. None of this would overcome the risk to trees of death, disease or storm. The LPA defers to the NT (see below) with regard to evidence on a possible TPO.

#### *Weight*

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<sup>205</sup> Miele in XX

<sup>206</sup> CD9.1 ICOMOS HIA Guidance, p9 matrix.

<sup>207</sup> Its conservation and design officer

<sup>208</sup> As judged in accordance with the ICOMOS guidance

<sup>209</sup> Dr Clark §8.11.2-8.11.4, pp38-39

<sup>210</sup> Ibid. See also the Appellant's and NT's visualisations

<sup>211</sup> Richardson in XX

<sup>212</sup> ID28

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7.12 Even the least harm to a designated heritage asset must be given *great weight* and requires *clear and convincing justification*<sup>213</sup>. The WHS is at *the top of tree*<sup>214</sup> and so the adverse effects on it must be given substantial weight<sup>215</sup>.

*Impact on the setting of Ripon Cathedral (including the Liberty of St. Wilfrid)*

7.13 The Grade I listed Cathedral is a medieval masterpiece and the conservation of its significance is a matter of the highest importance at a national level. The Cathedral has a wider setting that embraces the appeal site in views both from and towards it<sup>216</sup>. It was common ground<sup>217</sup> that:

- setting plays a key part in its significance;
- appreciation of the building and its setting is kinetic;
- An important contributing element and the Minster's visual dominance is the visual banding, raised by HE, in views from the appeal site;
- long views of the Minster from the site are extremely valuable;
- unless carefully designed, development could represent urban sprawl which would diminish the dominance of the Minster.

7.14 It was agreed<sup>218</sup> that the view from the Cathedral tower was significant, despite no public access, that this might be available in future, and that significance should not be given reduced weight for this reason. It was accepted there is a significant historical relationship between the Cathedral and the boundary of the Liberty of St. Wilfrid which is apparent in the form of the boundary stone, West Lane itself, and the boundary of the City.

7.15 The argument that there would be no harm to the setting of the Cathedral is not credible. There would be changes in views from the site and the bridleway which would adversely affect the visual banding. Even where retained, the quality of the extremely valuable long views would be impaired, leading to a moderate adverse effect, and there would be a minor effect on the view out from the Minster's tower. Finally, there would be moderate harm to the legibility of the Liberty boundary and its relationship with the Cathedral. Applying NPPF§132, great or considerable weight is due to the moderate to minor impact on the significance of this Grade I listed building.

*Conclusion on harm to heritage assets*

7.16 The harm from multiple impacts on the same asset and/or harm to multiple assets must be weighed up collectively<sup>219</sup>. It follows that as substantial weight is due to the impact on the WHS, adding the harm to the Cathedral would amount to very substantial harm.

*Overall planning balance*

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<sup>213</sup> NPPF132. *Williams* illustrates this point where there was barely if any intervisibility between the site and the Grade II\* church, and the significance of such visibility was characterised as minor/negligible, but the Court of Appeal refused to accept the argument that even if it had been properly taken into account it was very unlikely to have led to refusal.

<sup>214</sup> Miele §

<sup>215</sup> Insofar as s.66(1) of the Listed Buildings and Conservation Areas Act 1990 applies, given the status of How Hill Tower, any harm which must be given *considerable weight and importance*. CD11.8: *Barnwell Manor Wind Energy Limited v East Northamptonshire DC*

<sup>216</sup> see in particular viewpoint 14 from the bridleway and the view from the Cathedral tower

<sup>217</sup> Following Miele's agreement to HE's summary in the letter of 16<sup>th</sup> March 2016: Apx12 p145-147

<sup>218</sup> Miele in XX

<sup>219</sup> Richardson in XX

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7.17 Conflict with LP Policy C2 and CS Policy EQ2 of the development plan was not disputed given the substantial encroachment into the countryside. Harm to the WHS would breach policy HD7A. However, it was argued that these were inconsistent with the NPPF. In the case of C2, the PPG advises that local policies can seek conservation (or protection) of the wider countryside and preservation of openness remains relevant and appropriate<sup>220</sup>. Nothing in *Suffolk Coastal/Hopkins*<sup>221</sup> overruled this<sup>222</sup>. The NPPF§17.5 principle that planning should: ... *take account of the different roles and character of different areas, ... recognising the intrinsic character and beauty of the countryside* must point towards some form of protection. Even if some inconsistency were accepted, as it is not an ordinary landscape but important to the setting of the WHS, protecting its character is not inconsistent and so C2 should be given significant weight.

7.18 The same applies to EQ2 but, since this refers to protection that is *appropriate* to its importance, it is more consistent and should carry more weight. As to the criticism that HD7A does not reflect the balance with public benefits, policies do not have to set out exceptions or a cost/benefit approach<sup>223</sup> and where there is a breach of one policy this must be considered in the context of the plan as a whole. At worst, there is a minor inconsistency.

#### *NPPF§134 balance*

7.19 The critical balance remains that of whether the public benefits would outweigh the strong presumption against harm to heritage assets of the highest importance. The significant benefits would be the provision of market and affordable housing (AH) where the LPA cannot demonstrate a 5YHLS and there is a significant need. However, they are not nearly enough to justify the harm to the OUV of the WHS and the significance of the Cathedral because:

- the need is temporary, the harm would be permanent<sup>224</sup>;
- the shortfall (0.8 years), though not insignificant, is not severe<sup>225</sup>;
- the supply has increased from 4 to 4.2 years;
- the LPA has been pro-active in granting a large number of permissions<sup>226</sup>;
- permissions/resolutions have been issued for over 534 units in the last 3 months;
- insufficient completions is down to the development industry and not the fault, or within the control, of the Council;
- Ripon has other potential housing sites<sup>227</sup>;
- There is no basis to conclude that either Ripon's or the Borough's housing needs would not be able to be met in future without this site.

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<sup>220</sup> See *Daventry DC v Gladman* CD11.6 §42

<sup>221</sup> *Suffolk Coastal District Council v Hopkins Homes Ltd and another: Richborough Estates Partnership LLP and another v Cheshire East Borough Council* [2017] UKSC 37 (10 May 2017)

<sup>222</sup> Including the potential tension between meeting housing needs and the application of environmental and amenity policies with "full rigour"

<sup>223</sup> See *Bloor Homes v SSCLG* (CD11.4) §§175-186

<sup>224</sup> See the Jodrell Bank appeal decision (CD11.10) where similar observations were made by both the inspector and the SoS at IR297 and DL32.

<sup>225</sup> See the *Cornwall Road* decision (CD10.2) §§85-87 and cf. the 3.3 year supply in the *Jodrell Bank* case (CD11.10) which was not sufficient to justify harm to the setting of a Grade II listed building under NPPF134 or, even with the 'tilted balance' in NPPF 14, a very low level 'impairment' to Jodrell Bank observatory

<sup>226</sup> *Ibid*

<sup>227</sup> CD8.2 shows 26 sites passed screening for obvious constraints



7.20 Turning to other public benefits, these are predominantly mitigation and would lack any enhancement relevant to the WHS. Other wider benefits are potential and/or unquantified, and the principal wider advantages (e.g. SCOOT) could and would be achieved by other means<sup>228</sup>. As the housing benefits would not be sufficient to overcome the presumption in favour of the relevant assets, they cannot reasonably be capable of tipping the balance decisively the other way. The appeal should therefore be dismissed.

## **8. The Case for the National Trust (NT)**

- 8.1 The fundamental concern of the NT is to protect the WHS which it owns and manages. Development within its setting requires the utmost care. The assessment of a potential impact on the OUV should be the most thorough. The Appellants have not fully embraced such an approach and so underestimated or denied the harm that would be caused.
- 8.2 The NT accepts that the LPA only has a 4.2 year HLS, that the provision of housing would be a significant benefit and is not against housing in the right place. It has also been consistent in the need to avoid harm to an asset of outstanding value to humanity of international importance which is preserved by international convention. Of the issues set out, the NT has limited its case to that consistent with its objectives<sup>229</sup> and only addresses character and appearance, the setting of the WHS, the setting of How Hill Tower and the overall planning balance.

### *Character and appearance*

- 8.3 The proposals would cause significant harm to landscape character<sup>230</sup> with moderate visual harm from Whitcliffe Lane in Viewpoint 14<sup>231</sup> and slight impact from Gillet Hill and How Hill Tower subject to boundary screening. While the NT does not claim that the ES is too poor to be considered as such, it has consistently noted the failure of the ES to adequately assess the interrelated landscape and visual impacts. Rather the NT relies on the GLVIA methodology which should be followed unless there is good reason not to do so.

### **Character**

- 8.4 Establishing the value of the site depends on understanding how it operates within the wider landscape<sup>232</sup>. The value of a landscape is not determined solely by designation nor is a national designation needed for it to be *valued* under NPPF§109. The Appellants have only considered it in relation to the site<sup>233</sup>. Its LVIA does not consider the interaction with the wider area or value as set out in GLVIA<sup>234</sup>. The correct assessment<sup>235</sup> considers a number of designations including the WHS, the BZ, the River Skell SLA, the RPG and the

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<sup>228</sup> agreed by Richardson in XX

<sup>229</sup> ID3 §3 and 4

<sup>230</sup> Robinson §14.2.2

<sup>231</sup> Of the landscape SoCG

<sup>232</sup> Accepted by Self in XX as one of two processes; see also ID23: *Wendover* decision

<sup>233</sup> Self §5.12

<sup>234</sup> Box 5.2 criteria; the attempt by Self IC was only partial

<sup>235</sup> By Robinson §8.1-8.3

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AONB. The ES does not follow its own methodology for these giving the WHS and AONB a sensitivity of *high* rather than *very high*<sup>236</sup>.

- 8.5 It was agreed that a *valued landscape* under NPPF§109 need not be designated but must be more than ordinary. Here, the site has a rural undeveloped character with key characteristics of its LCA<sup>237</sup>. The majority of the appeal site was once part of the Studley Estate<sup>238</sup>. It is part of a rural landscape and mosaic of field patterns. It is also within the setting of Ripon Minster and the WHS<sup>239</sup> and this is *highly material*<sup>240</sup> to the consideration of *valued*. As there are only 19 WHSs in England and 2 in Yorkshire this cannot be ordinary. Sensitivity in GLVIA is derived from value and susceptibility but this was done in the LVIA<sup>241</sup>. There is no change in the agricultural character on either side of Whitcliffe Lane.
- 8.6 The appeal site exudes many characteristics of its LCA<sup>242</sup>, whose guidelines recommend protecting and enhancing historic views, and conserving historic features and patterns, maintaining and encouraging the planting of new hedgerows. The scheme would fail these as it would detract from Viewpoint 14 and breach the Liberty of St Wilfred which is an historic feature and pattern in the landscape. The Appellants' assessments do not consider impact on the LCA, its particular qualities or recommendations, or conserving historical landscape patterns. The development would breach policies C2 and EQ2. It would neither protect nor enhance its *valued landscape* as required by NPPF§109.

#### **Visual impact**

- 8.7 The 3 main impacts would be from Gillet Hill, How Hill Tower and Whitcliffe Lane. The latter view would be narrowed and channelled and would detract from the visual appearance of Ripon Cathedral<sup>243</sup>. The Appellants' assessments of How Hill and Gillet Hill assume that neither has public access. While there is no formal path to Gillet Hill, walkers are not prevented and the grassland now sown allows access on the same basis as the rest of the park. There has been public access to How Hill, if not the Tower, since 1990.
- 8.8 The NT's visual material shows that there is some intervisibility between the site and Gillet Hill and that without new screening the development would be seen from here<sup>244</sup>. Although a small percentage of the view, a number of houses (identified by the *two red dots*) would be visible from this location within the WHS, RPG and AONB. While this impact would be slight, to reduce it to neutral would require screening in perpetuity. The scheme would also be visible from How Hill Tower<sup>245</sup> with a similarly slight adverse impact, again

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<sup>236</sup> Accepted by Self in XX

<sup>237</sup> Robinson §10.5

<sup>238</sup> Newman IC

<sup>239</sup> Robinson in XX

<sup>240</sup> Self in XX

<sup>241</sup> CD12.15.39 and Self in XX

<sup>242</sup> ES CD1.16 §10.4.10

<sup>243</sup> ES CD1.16 tables 10.7, VE2 and p777; Robinson §11.3.2; see also the wireframe to VP14

<sup>244</sup> Robinson appendices 15.4 and 15.10: Viewpoint 1 Gillet Hill 1, and Area of proposed development visible within the site from Gillet Hill. The two red dots and two blue shaded areas show the extent of proposed development agreed to be visible from Gillet Hill. The SoS has hard copies of this material as I did during my site visit.

<sup>245</sup> Self in XX

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subject to screening. Overall, there would be moderate harm to Viewpoint 14 and slight harm to How Hill Tower and Gillet Hill.

### Screening

- 8.9 This is relevant to landscape and heritage concerns. The requirements of NPPF17.10<sup>246</sup>, supported by the PPG<sup>247</sup> and GPA3<sup>248</sup>, depend on the retention of the trees now and for future generations<sup>249</sup>. To be effective, it would rely on both on-site and off-site screening.
- 8.10 From Gillet Hill, the existing screening depends on intermittent vegetation mainly in Whitcliffe Woods but also Mackershaw Trough. Whitcliffe Woods are owned privately and managed by the YWT<sup>250</sup>. They are not contemporary with the Aislabie designed landscape, appearing for the first time on the estate plan tentatively dated to 1870 and replaced post WWII<sup>251</sup>. They are outside the control of the Appellants and maintenance in perpetuity cannot be guaranteed. The Woods are mostly deciduous with a poor understorey. It was not disputed that to manage it for nature conservation will require management, including thinning, which would have at least a temporary effect on screening<sup>252</sup>. Planned felling at Mackershaw Trough would also affect a small segment of the view from Gillet Hill<sup>253</sup>.
- 8.11 The view from How Hill is screened by several segments of Mackershaw Trough<sup>254</sup> which are to be partially or clear felled. There will be a reduction in screening under the present licence and no control in the future. Although segment 6(m) is outside the current licence period, work has already taken place here<sup>255</sup>. The hope that the NT might exert some influence in future is not good enough for a WHS. While a TPO could be made, this could not prevent trees being felled in the future if any further forestry licences were granted<sup>256</sup>. Even this could not prevent the effects of disease or weather.
- 8.12 The s106 Undertaking would provide for boundary landscaping to be maintained by a management company. If this were to fail, so would the screening. The legal opinion reinforces the point that there would be a risk of failure<sup>257</sup> and leaves the judgement to the SoS. Even a low risk should not be

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<sup>246</sup> To: *conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations*

<sup>247</sup> Reference ID 18a-028-20140306

<sup>248</sup> CD 12.5: The permanence or longevity of screening in relation to the effect on the setting also requires consideration. Ephemeral features such as hoardings may be removed or changed during the duration of the development as may woodland or hedgerows, unless they enjoy statutory protection

<sup>249</sup> CD 10.4 §17 and 18: the decision for *St George's Rd, Hayle*

<sup>250</sup> Newman §9.12

<sup>251</sup> *Ibid* §9.8

<sup>252</sup> *Ibid* §9.13 acknowledged by Self and Miele in XX

<sup>253</sup> CD 12.36: Segment 6(l)

<sup>254</sup> *Ibid*: Segments 6(n) 6(m) 6(b) 6(c) and 6(e)

<sup>255</sup> NR XIC

<sup>256</sup> The effect of Regulations 13 and 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012/605 is that the prohibition on carrying out works on trees subject to a TPO in Regulation 13 does not apply by virtue of Regulation 14(1)(a)(ii) which provides that the prohibition does not prevent the cutting down, topping, lopping or uprooting of a tree 'in compliance with any obligation imposed by or under an Act of Parliament'. As confirmed in the PPG, a forestry commission licence is granted under an Act of Parliament - Reference ID: 36-081-20140306

<sup>257</sup> ID28: §19

acceptable in the setting of a WHS. The revised s106 UU, with its option for the LPA to take over, is unsound as the LPA has no interest in so doing.

- 8.13 Neither on-site nor off-site screening would provide sufficient certainty that trees would protect the WHS for generations to come. The development would then be seen as intruding into the countryside towards the WHS and, cumulatively with existing development, would cause significant harm.

#### *Cultural heritage*

- 8.14 GPA3 sets out the steps to follow. This must be undertaken for each of: the WHS and its agricultural setting, Gillet Hill and How Hill. It was acknowledged<sup>258</sup> that the WHS as a whole sits *at the top of the tree* in terms of value. Its designed landscape is *a vast enormously complex, subtle, beautiful and unique work of landscape art. Both contemporaries and modern audiences regard it as being of the finest examples of its type in the country if not the world ... . The English Landscape Garden has been described as Britain's principal contribution to the canon of western art and there is no finer or more impressive example than Studley Royal*<sup>259</sup>. Moreover, the understanding of the WHS has been subject to a radical, extensive reassessment and mapping in the last 20-30 years<sup>260</sup>.

- 8.15 The value of Gillet Hill has been downgraded by the Appellants in both the ES and in the evidence. It is within the WHS and so exceptional. It was part of the original designed landscape<sup>261</sup> and can only have been so to obtain the view to the east. As well as a bastion, in c.1670, a Belvedere was added to take in the magnificent views to the east<sup>262</sup>, and a rotating glasshouse<sup>263</sup>. Gillet Hill forms an important part of the designed landscape in that, by necessity, it faces out<sup>264</sup>. The theories that it is of less importance, as it faces out and not over gardened land, have no basis or logic given that the view from the Ripon Gate over agricultural land towards the cathedral was accepted as being of exceptional value<sup>265</sup>. Rather, the view from Gillet Hill expresses the OUV and must be of the highest value.

- 8.16 There is a strong move to make How Hill part of the WHS and as such it should be considered of a piece with the rest of the WHS. The hill was acquired by Fountains Abbey in 1134, purchased by John Aislabie in 1716, and the tower was built 3 years later probably to designs by Sir John Vanbrugh<sup>266</sup>. ICOMOS considers that all components of the Aislabie designed landscape and monastic precinct should be included within the WHS boundary and revision is supported by HE, the NT, and the LPA but the processes involved are slow moving<sup>267</sup>. It is of international importance. Even without its inclusion, as a Grade II\* listed

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<sup>258</sup> Miele §1.11

<sup>259</sup> Newman §4.31

<sup>260</sup> Ibid §1.4

<sup>261</sup> Ibid IC and §4.14

<sup>262</sup> Ibid §4.15

<sup>263</sup> Ibid IC

<sup>264</sup> Ibid §4.13: the nature of the topography is such that sightlines are only available to the east those westward being blocked by the rising ridge and planting

<sup>265</sup> Miele in XX

<sup>266</sup> Newman §4.23 and 6.9

<sup>267</sup> Newman §6.2

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building and a scheduled ancient monument within a Grade I RPG, it should still be given a value of exceptional.

*What comprises the setting of the WHS*

- 8.17 The ES considered that the site was within the setting of the WHS. In evidence, the Appellants<sup>268</sup> took the *somewhat radical* position that it is not, based on developing thinking and on *Williams*<sup>269</sup>. Here the Judge found that: *The setting of a listed building is not a concept that lends itself to an exact definition, applicable in every case. ... I would not wish to lay down some universal principle for ascertaining the extent of the setting of a listed building. And in my view it would be impossible to do so*<sup>270</sup>. But that is a Welsh case that did not consider the NPPF or PPG.
- 8.18 The Judge in *Steer* did look at the NPPF and Lang J found that: *... although the Inspector set out the NPPF definition ... , he adopted a narrow interpretation of setting which was inconsistent with the broad meaning given to setting in the relevant policies and guidance ... . Whilst a physical or visual connection between a heritage asset and its setting will often exist, it is not essential or determinative. The term setting is not defined in purely visual terms in the NPPF which refers to the "surroundings in which a heritage asset is experienced". The word "experienced" has a broad meaning, which is capable of extending beyond the purely visual.*
- 8.19 The Appellants rely on *Williams*<sup>271</sup>: *... if a proposed development is to affect the setting of a listed building there must be a distinct visual relationship of some kind between the two ... .* However, this follows the statement that excludes any comprehensive definition of setting. There was no suggestion that a setting relationship must be visual and there is intervisibility between the site and Gillet Hill and How Hill Tower in any event.
- 8.20 Nor would screening take the site out of the setting of the WHS. GPA3 confirms<sup>272</sup> that: *As screening can only mitigate negative impacts, ... it ought never to be regarded as a substitute for well-designed developments within the setting of heritage assets.* The Harrogate SPD<sup>273</sup> makes clear that screening does not take a site out of the setting of a heritage asset.
- 8.21 The site should also be found to lie within the setting of the WHS because it was part of the estate's former landholdings whose appearance, use and character were in the family's direct control and managed with understanding as to their aesthetic effect. Its agricultural hinterland was experienced while journeying to and from the core estate and it contributed to the overall aesthetic experience. This part of it at least can therefore be considered to be

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<sup>268</sup> Miele IC

<sup>269</sup> CD 11.13: *R (on application of Graham Williams) Appellant v Powys County Council v Colin Bagley* [2017] EWCA Civ 427

<sup>270</sup> Ibid: Lindblom LJ at §56

<sup>271</sup> Ibid

<sup>272</sup> CD12.5 §29

<sup>273</sup> CD 7.9 §2.20: *in carrying out a survey it is important to remember that understanding the heritage asset and its setting is likely to involve more than simply looking around the site. For example, if a high dense hedge planted in the last 20 years blocks the view to and from a heritage asset it does not follow that the land on the other side of the hedge no longer forms part of the setting of the heritage asset. This area might have important historical and aesthetic associations with the heritage asset that make it part of the setting.*

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part of the designed landscape<sup>274</sup>. This accords with the PPG<sup>275</sup> finding in *Steer* that a historic social and economic connection between a site and an asset was not an unmanageably wide concept because a setting must be part of the surroundings of the asset. A site within the historic landholdings of an estate is capable of being considered to be within the setting of an asset. That is the case here.

#### *Contribution of setting to significance*

8.22 When we are dealing with WHS significance the contribution to the significance of the asset from the setting is generally expressed in terms of OUV. The NT has analysed the attributes of OUV and how the setting of the WHS contributes to these criteria.

8.23 First, the settings, views and vistas go to the vital integral relationship between the core and the periphery of a historic designed landscape. GPA3 refers to lines of sight to beyond the park boundary<sup>276</sup>. Aislabie sequestered enormous tracts of countryside into the design so that one experienced a series of aesthetic textures travelling through the landscape, there being *delight and pleasure* from the visual and evidential contrasts between healthy well-managed farmland and the Arcadian pleasure grounds<sup>277</sup>. Whitcliffe Lane played an important role in the monastic history of the WHS as well as in the Aislabie designed landscape and the section close to the appeal site contributes to this, while the intervening woods are difficult to explain unless viewed from Whitcliffe Lane where *they make perfect sense, very handsomely dressing the topography and frame the views further north over the Skell washlands*<sup>278</sup>.

8.24 Next of relevance, a combination of all features into a harmonious whole, can be seen in the family's paintings which show the value placed on the land beyond the core designed landscape<sup>279</sup>. Third, the taste and wealth of powered classes in the 18<sup>th</sup> Century, and the power of medieval monasticism, is illustrated by the broader landscape around the estate. This applies in both periods and the link to Ripon is important through its two Parliamentary seats<sup>280</sup>. Finally, the harmonious qualities, and the rural separation of the estate from Ripon, contribute to the landscape of exceptional merit and beauty<sup>281</sup>. It is wrong to suggest that the WHS MP does not reflect concern with the impacts of development on the rural hinterland. The appeal site is specifically referred to when discussing the wider role of the WHS<sup>282</sup>.

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<sup>274</sup> Newman §7.1

<sup>275</sup> *The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors ... and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.*

<sup>276</sup> CD 12.5

<sup>277</sup> Newman §§7.9 - 7.10

<sup>278</sup> Ibid §§7.12 - 7.14

<sup>279</sup> Ibid §§7.20 - 7.21

<sup>280</sup> Ibid §7.22

<sup>281</sup> Ibid §7.24

<sup>282</sup> CD 12.9 Appendix 10; confirmed by ID 28 and 29

8.25 The limited number of references to the contrasting landscape in the WHS MP, and the NT book<sup>283</sup>, does not show that the site is outside the setting to the WHS. It was agreed<sup>284</sup> that the limit of the BZ is not the whole of the setting. Rather, the choice of Whitcliffe Lane was one of practicality and of following natural features<sup>285</sup>.

#### *Assessing impact*

8.26 The proposals would bring the urban edge of Ripon closer to Studley and represent a significant change to Aislabie's choice of land use as part of his designed landscape. They would abut Whitcliffe Lane and so encroach on the setting of the designed landscape<sup>286</sup>. There would be harm to the designed views from Gillet Hill and How Hill Tower, and harm to the agrarian setting. There would be cumulative harm from all three and from bringing new development closer to the WHS.

8.27 From Gillet Hill, the development would be visible without on-site screening. It would be noticeable for a while at least. It would alter the narrative of the agrarian strip between the WHS and Ripon. Even if completely screened, this of itself would introduce an alien element into the landscape as identified by GPA3. The effect from How Hill Tower would be similar with the added impact on key views from there to Ripon Minster<sup>287</sup>. The argument over alignment is misplaced given its ecclesiastical associations and the reference to the context of edge of Ripon ignores advice in GPA3 on additional harm<sup>288</sup>. There would also be harm to the RPG and to How Hill Tower as a listed building.

8.28 Turning to the agrarian setting, it is clear that the medieval route along Whitcliffe Lane provided a direct link between the City and the Abbey and its network of granges<sup>289</sup>. The southern part of Whitcliffe Lane is part of the circulation route within the Aislabie designed landscape and the northern part of the lane continued to provide convenient local access to and from Ripon. Regardless of intervisibility, putting the development by Whitcliffe Lane will have an impact on the OUV. The distance, in time or miles, between the site and the WHS in no way negates this. While many of the impacts would be negligible, several would be minor or minor to moderate subject to screening.

#### *Public access*

8.29 Efforts were made to equate harm to cultural heritage with public access<sup>290</sup>. Both the PPG<sup>291</sup> and GPA3 explain that these are not inter-dependent. Public

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<sup>283</sup> *The Wonder of the North* by Newman/the NT

<sup>284</sup> SoCG

<sup>285</sup> Miele in XX

<sup>286</sup> Newman §9.21

<sup>287</sup> as acknowledged in the ES: CD1.16 §5.17

<sup>288</sup> That: *Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies, consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset*

<sup>289</sup> Newman §§4.24, 7.12, 7.13, 7.14 and 7.15

<sup>290</sup> E.g. ES CD 1.16 §6.2.10

<sup>291</sup> PPG §13 reference ID 18a-013-20140306: *The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance*

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access is no more than a benefit to be considered under NPPF§134. Plans are already in hand to increase access to How Hill Tower<sup>292</sup>.

### *Planning balance*

- 8.30 As well as LP policy C2 and CS policy EQ2 (see the submissions of the LPA above) LP policies HD7, HD7A, and HD20 are relevant. Policy HD7 protects the WHS and the final part is of particular relevance as it affords the setting and views of the site the strictest protection. As the development would cause significant harm to the setting of the WHS, it cannot be considered to afford it the strictest protection. Policy HD7A protects the setting of the RPG so there can be little dispute that there is a failure to comply with this policy. Design policy HD20 is also relevant. The proposals do not accord with the development plan and so the question is whether there are any material considerations which indicate a decision otherwise.
- 8.31 The scheme would breach NPPF§109 and NPPF§134. Both these disapply the tilted balance in NPPF§14. The need for housing and AH have been acknowledged but would not outweigh the harm the OUV of the WHS.
- 8.32 The eLP should carry no weight. There are no other material considerations that should lead to a conclusion of a grant of permission that would be otherwise than in accordance with the development plan.

## **9. The Case for Ripon City Council (RCC) and the Ripon Residents Planning Group (RRPG)**

- 9.1 As Rule 6 parties, RCC and RRPG (collectively RR) support the heritage and landscape cases advanced by the LPA and the NT but also oppose the development on the grounds of ecology and flooding. With the amendment to the geology condition, that objection has now fallen away.

### *Ecology*

- 9.2 Notwithstanding the SoCG on ecology, it is necessary to go behind this and consider the effects both on the SSSI and biodiversity more widely. The starting point for the Quarry Moor SSSI is the baseline condition. This includes the assessments made by NE and those in the ES<sup>293</sup>. The scheme is currently failing the NE assessment as:
- only 4 frequent and 1 occasional species can be found rather than 4 frequent and 3 occasional;
  - the reason given, that it was a *particularly dry season* would not affect the diversity of species;
  - it depended on an increased frequency in the next assessment;
  - the bottom field of calcareous grassland is being frequently used for dog exercise;
  - dog waste is frequently left in situ;
  - litter, vandalism and degradation are also frequent.
- Current activities include: some dog waste bins, litter picking, and bins, interpretation and fencing. The assessment, and the Appellants' baseline, shows that these are not mitigating the effects of use of the SSSI.

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<sup>292</sup> Acknowledged as likely to proceed by Miele in XX

<sup>293</sup> CD5 ...: Ecology SoCG and CD 1.16: ES s7.5.8 p264

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- 9.3 From the baseline, the development would add visits from around 63 people<sup>294</sup> and 58 dogs per day to Quarry Moor<sup>295</sup>. It would add up to 47 people and 42 dog visits per day<sup>296</sup>. Without mitigation, the consequence of this increased pressure would be a *significant adverse impact upon these designated sites at national and district scales*. This could be as a result of *trampling, erosion and eutrophication of the calcareous grasslands and woodlands, as well as littering the site or damage of seating, bins, interpretation and fencing*<sup>297</sup>.
- 9.4 As to the proposed mitigations<sup>298</sup>, these would have to be 100% effective, for the adverse impact on the SSSI to fall to negligible, and the LPA's ecologist<sup>299</sup> saw these as *very much palliatives to the effective severance of Corridor A*. The evidence and doubts about their effectiveness show that it is more likely than not that there would be an adverse effect on the SSSI.
- 9.5 With regard to the mitigations, there is no dispute that the greenspace and footpaths through the site would provide options. On the other hand, the contribution<sup>300</sup> would be doing more of the same, and so have little effect, would not go very far and would be short term<sup>301</sup>. An ecological buffer zone that would be species rich is neither practical nor likely<sup>302</sup> to recreate magnesium limestone grassland.
- 9.6 Turning to the new corridor and translocated hedgerow, this has not been fully taken into account. The existing hedgerow (Corridor A) is agreed to be important<sup>303</sup>. It is continuous as far as Whitcliffe Lane and then continues towards Hell Wath. What was presented as two new breaks would in fact require the translocation of 134m of hedgerow<sup>304</sup> in order to provide the wider road with new footways and visibility splays. Although translocation would be better than nothing, it would not be mitigation so much as salvage<sup>305</sup>. Trees would be removed for safety reasons when they might support bats for many years and it would be a long time before replacements would be of any use to bats<sup>306</sup>. Any damage from current arable use would apply equally to Corridor B. This key element of mitigation now provides poor habitat connectivity<sup>307</sup> and will not achieve the same level of biodiversity as Corridor A. The proposed underpasses and dropped kerbs are unlikely to have the desired effect. In all these regards, the Appellants' witness erroneously fell back on the SoCG and lack of objection from NE.

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<sup>294</sup> Where it is a destination site for dog walkers – Mansfield in XX

<sup>295</sup> Ecology SoCG §§2.14-2.15)

<sup>296</sup> Ibid §2.16, referring to ES §7.6.36

<sup>297</sup> Ibid §3.8

<sup>298</sup> (summarised in the ecology SOCG at para 3.9; set out in more detail in ES (CD1.16) Table 7.10, page 293; and, ES Addendum (CD2.09) Table 7.10A, page 15). It is these mitigations which Mansfield asserts will reduce a significant adverse impact to a negligible one (see table 7.10 and 7.10A, above)

<sup>299</sup> Ecology SoCG §1.8

<sup>300</sup> Of £20,000 towards additional dog waste and litter bins, new interpretation, new signage, the provision of fencing and barriers

<sup>301</sup> Manners in XX: more bins would only be effective in the short term

<sup>302</sup> Manners §5.39 and XX

<sup>303</sup> Mansfield, and CD5 ...: Ecology SoCG §1.8

<sup>304</sup> Howard (ID20 and ID20a)

<sup>305</sup> Manners IC

<sup>306</sup> Manners in XX

<sup>307</sup> CD2.10 annex E

9.7 Many of the on-site mitigations would rely on a management company. If this fails, which it could for a host of reasons, or if the LPA declines to take on the maintenance, the effectiveness of any mitigations would be significantly reduced casting further doubts when assessing harm. Taken together, it is likely that the proposed mitigations would fail to be 100% effective, that there would be an adverse effect and that the SoS would not be able to discharge his statutory duty under the Habitats Regulations<sup>308</sup>. The Appellants' surveys were insufficient with regard to bats<sup>309</sup>, so the effectiveness of the proposed mitigations cannot be evaluated, and the mitigations would not have the stated effect with regard to GCN.

### *Flooding*

9.8 The proposed SUDS scheme would alleviate the current flooding onto West Lane and beyond. However, there would be an increased flood risk to the City. During a 1 in 100 year flood event the current flow through the City is 105m<sup>3</sup>/s. The combined flows of the Rivers Skell and Laver would need to be reduced to 50m<sup>3</sup>/s upstream of Ripon to prevent a flood in the City<sup>310</sup>. While the proposal to discharge the runoff from the site into the Skell may only amount to 25.4l/s<sup>311</sup>, given the existing flows, such a discharge will increase the risk of flooding in the City. The City's new flood defences cannot cope with current levels of flooding<sup>312</sup> and so a discharge from the site would increase the risk that the defences would be overtopped in future. Increased flow would also damage important local sites such as the Fairy Steps and the weir<sup>313</sup>. The same concerns over a management company apply to the SUDS scheme, and so to flooding, and there is no evidence that Yorkshire Water would adopt the system. If it is not maintained, the water would discharge back onto West Lane with no benefit.

### *Policy*

9.9 If the SoS does not take reasonable steps, consistent with the proper exercise of the authority's functions to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest in making the decision on this appeal, then he will have breached the general duty under s.28G<sup>314</sup>. This would also be contrary to NPPF§118 which expects conservation and enhancement of biodiversity with a presumption against likely adverse effects on an SSSI. Mitigation is not enough and the SoS is not required to find any adverse effect, only that it would be more likely than not, and any adverse effect applies<sup>315</sup>. If opportunities to incorporate biodiversity are not sufficient to mitigate, then the proposal would fail under NPPF§118.2 and should be refused unless the

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<sup>308</sup> Regulation 9(3) of the Conservation of Habitats and Species Regulations 2010, to have regard to the requirements of the Habitats Directive, and Paragraph 99 of the Circular which states that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted..."

<sup>309</sup> Manners s5.5

<sup>310</sup> Cullum-Smith's, Appendix 7. 2006 Flood Alleviation Report, p11.

<sup>311</sup> Travis POE, §5.3

<sup>312</sup> Cullum Smith's photographs

<sup>313</sup> Cullum Smith in XX

<sup>314</sup> A general duty imposed by Section 28G(2) Wildlife and Countryside Act 1981 - Dr Mansfield §6.17

<sup>315</sup> Richardson XX and Clark IC

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harm would be clearly outweighed. It is wrong to say<sup>316</sup> that mitigation is enough and failure to take reasonable steps to enhance the SSSI would also breach the general duty. NPPF§118 is also a NPPF footnote 9 policy. The scheme would conflict with CS Policy EQ2.

- 9.10 The mitigations would have to function at 100% to avoid an adverse effect<sup>317</sup>. From the lack of evidence, they would not. It follows that there would be an adverse effect on the SSSI. Even if they did work at 100%, this would not be enough and an adverse effect is more than likely. Mitigation would not amount to reasonable steps and enhancement must relate to the appeal site<sup>318</sup>.
- 9.11 NPPF§109.3 is relevant on two points, impacts on biodiversity should be minimised and coherent ecological networks must be established that are more resilient to current and future pressures. The inadequate mitigation for the severance of Corridor A, and the failure to mitigate impact on biodiversity, are harms which should be included in the planning balance.
- 9.12 The Appellants set out their view of potential benefits<sup>319</sup>. While significant weight should be attached to the delivery of housing and AH, this should be tempered by the LPA's efforts and the fact that the shortfall would be temporary while harm would be permanent. Ecological benefits would be mitigation at best. The benefit of re-routing surface water away from the combined sewer was a requirement of Yorkshire Water without which it would have objected. Other benefits should have reduced weight as set out by the LPA and the NT.
- 9.13 As above, the scheme would fail the tests in NPPF§118 or NPPF§109 on ecology and NPPF103 on flooding so NPPF footnote 9 excludes the tilted balance<sup>320</sup>. Weighing the biodiversity and flooding harms with the other harms put forward by the LPA and the NT in the ordinary planning balance means that the benefits do not outweigh the harms and the appeal should be dismissed.

## 10. The case for interested parties

- 10.1 Mr **Richmond**<sup>321</sup> is a former councillor, the most senior living ex-Mayor and one of only five Freemen of the City of Ripon. While expressing several concerns, he reserved his main objections to drainage and site access. When he was involved as a councillor in the 1960s and 70s, when South Grange Estate, West Lane and Moorside Lane were developed, he recalled that they included replacing brick sewers with modern pipelines. There have been problems with flooding from the Rivers Ure, Skell and Laver for many years. Despite the proposal to dispose of water into the River Skell, he was not persuaded that this would work when the lagoon is full. With regard to the access roads, the by-pass would do nothing to deflect traffic from this development and these are residential carriageways which would have to

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<sup>316</sup> As Richardson stated

<sup>317</sup> Mansfield accepted in XX that the mitigations would need to work 100% in order to reduce harm from adverse to negligible

<sup>318</sup> SoCG §4.12.1

<sup>319</sup> Richardson p57

<sup>320</sup> CD11.7: *Forest of Dean DC v SOSCLG* [2016] EWHC 421 (Admin) §32

<sup>321</sup> ID6

contend with much greater traffic than was planned, especially around the schools between 08.15 and 09.00.

10.2 Cllr. **Horton**<sup>322</sup> is chair of the Planning and City Plan committees for RCC. He pointed out that the appeal site falls within Littlethorpe Parish Council and any precept would go there rather than to the City which would have to deal with all the problems. Looking at the wider picture, housing has been approved at the former Choir School in Whitcliffe Lane, and this scheme would amount to a 37% increase in this part of the City. A further 221 units have been permitted on 3 sites to the northwest of Ripon and 175 may be allowed just outside the City boundary. More importantly, the Claro and Deverell Barracks are scheduled for closure and sale in 2019 and 2020. Although the City Plan has not allocated sites at this stage, as no target has been provided by HBC, it is at an advanced stage and RCC is confident that housing could be provided without encroaching on green fields.

10.3 Cllr. **Martin**<sup>323</sup> represents the Moorside Ward on both HBC and North Yorkshire County Council (NYCC) and is a member of the Planning committee. He spoke on the impact of increased traffic on the four busy estate roads leading from the site to the City centre:

- 1) via West Lane onto Southfield Avenue and Moorside Dale through an area with parked vehicles on both sides of the road and a busy four way junction with priority to vehicles on the A16;
- 2) via South Grange Road and a very large series of housing developments;
- 3) using Lead Lane with parked vehicles on both sides and two schools;
- 4) via the already congested Whitcliffe Lane with parked vehicles on both sides due to be made worse by 117 houses on the Choir School site.

10.4 The highway authority has not produced the figures to show that the roads can sustain this level of traffic, which would also exacerbate the District's second worst affected air quality location at the traffic lights in Low Skellgate, and used data from 2011. There has been significant housing since then. The scheme would be contrary to Policy SG4 of the Core Strategy and NPPF32 on account of traffic and 109 with regard to air quality. He endorsed the case against the scheme because of the WHS and submitted photographs of flooding from Christmas 2015. He added<sup>324</sup> that sometimes applications should be refused without addressing the question as to what efforts the LPA was making towards meeting its housing need.

10.5 Cllr. **Howard**<sup>325</sup> sought clarification regarding the hedge along West Lane. He raised the issues of translocation as a result of road widening and new pavements. He later added to his point on the hedge having clarified that some 144m of hedge would be affected, including the 10m referred to by the Appellants, of which some 134m would need to be translocated successfully in order for the mitigation to work.

10.6 Cllr. **Williams**<sup>326</sup> has represented Ripon Moorside since 1999. He told the Inquiry that he did not oppose housing but that this would not be in the right

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<sup>322</sup> ID7

<sup>323</sup> ID11

<sup>324</sup> In response to IOs

<sup>325</sup> ID20 and ID20a

<sup>326</sup> Giving oral evidence

location. This site is not. The Ripon City Plan identifies Army Barracks<sup>327</sup> which could be disposed of and provide 1,500 houses. He was concerned with the effects on infrastructure including GP surgeries, local roads, flooding, wildlife, additional classrooms without eroding playing fields, and the need for improved bus services beyond the term of any subsidy.

## 11. Written Representations

11.1 There were 119 objections to the original application<sup>328</sup>. The grounds of objection are summarised in the Committee Report and have generally been taken forward by RCC and the RPPG. Other issues, such as concerns with regard to archaeology and wider infrastructure including health services, schools etc., would be controlled by conditions or mitigated by the s106 UU and these concerns were not repeated at the Inquiry.

11.2 There were a few additional objections made directly to the Inspectorate repeating earlier objections. Given the professional representation made by the RR this should not in any way be taken as a lack of ongoing concern and the Inquiry was well attended throughout.

## 12. Conditions

12.1 The suggested conditions were discussed at the Inquiry<sup>329</sup>. These must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects<sup>330</sup>. Most of these were agreed between the Council and the Appellants, without dissenting voices. Other than a few changes by me, to avoid duplication with reserved matters, for clarity and precision (including the suggested highway conditions<sup>331</sup>), these are set out in the attached Appendix.

12.2 To satisfy the concerns of HE, they include conditions requiring the arrangement of uses across the appeal site, the scale and locations of the buildings, and the provision of open space would be developed as proposed.

12.3 With regard to the geological cliff face in Quarry Moor SSSI, and Cllr. Stanley's evidence on the effects of vibration from traffic on loose material, as agreed by the RR, the provisions in suggested conditions 10 and 16 could cover some relatively straightforward low volume washing as the Council did in 2012<sup>332</sup>.

12.4 The reference to retained trees in suggested condition 15 needs to be related to a tree survey. That submitted is now of some age. For precision and certainty in protecting, conserving and enhancing biodiversity, suggested

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<sup>327</sup> In answer to IOs, he advised that Deverell Barracks closed last year and Claro Barracks is due to close this year. Both are northwest of Ripon. See ID22, CD8.9 and CD8.10 p27, p203, Policy DM1 and p225

<sup>328</sup> CD5.1 p8

<sup>329</sup> ID 10b

<sup>330</sup> NPPF§206

<sup>331</sup> CD4.30 pp3-6.

<sup>332</sup> Hardwick IC

condition 17 would allow for this.

### 13. Obligation

- 13.1 The Unilateral Undertaking (UU) sets out covenants that would be imposed on the owners in favour of HBC and NYCC in the event that planning permission is granted. It would make provisions for 40% of the dwellings to be constructed as affordable housing (AH) in accordance with an AH scheme to include the numbers, type, tenure and location of the AH units as well as their construction, phasing, transfer and occupancy. HBC would have absolute discretion to nominate the transferee subject to an affordable value which is defined as £1,050 and £1,100/m<sup>2</sup> for the flats and houses respectively.
- 13.2 There would be contributions towards AQ (over £225,000), improved bus services (£455,000), cycling (£50,000), secondary schooling (nearly £515,000) junior schooling (around £230,000) primary schooling (over £377,000), off-site open space enhancement for outdoor facilities at Hell Wath (over £142,000), traffic signalling (£91,000), public rights of way (£20,000), nature reserves (£20,000) and travel plan monitoring (£5,000).
- 13.3 The final iteration of the UU<sup>333</sup> includes an offer of transfer of the proposed public open space (POS), the SUDS scheme and boundary landscaping land to HBC. The latter refers to a narrow strip<sup>334</sup> identified as potential transfer land to the LPA [sic]. This area lies along the southwest boundary towards the southern end of the site across the line of sight between potential houses and Gillet Hill (identified by the *two red dots*). The NT claimed that, to be as effective as it argued was necessary, the screening would need to be maintained in perpetuity. The transfer of boundary landscaping land, together with a maintenance contribution of £27,000<sup>335</sup> calculated in accordance with an adopted formula in the SPD, would be intended to achieve this and, as requested, this was confirmed by the LPA after the Inquiry closed.
- 13.4 The SUDS scheme would require approval by HBC and NYCC of details including the extent of storage, and of funding arrangements for maintenance and management. A management plan would be required for the POS, SUDS and boundary land which could include a management company whose primary objective would be to maintain and renew the open space and SUDS in the event that HBC were to decline to accept an offer of transfer of the land.
- 13.5 Justification for the contributions, and reference to the relevant policies, was submitted during the Inquiry<sup>336</sup>. My conclusions on the UU (below) are based on an assessment in the light of the Community Infrastructure Levy (CIL) Regulations 2010, and NPPF§204, which set 3 tests<sup>337</sup> for such obligations.

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<sup>333</sup> Signed and dated 3 November 2017

<sup>334</sup> Shown on drawing no. CSA/3010/132, dated October 2017, included within the UU and defined at 1.1.14. The boundary landscaping land is defined at 1.1.12

<sup>335</sup> Ibid 1.1.13

<sup>336</sup> ID18

<sup>337</sup> CIL Regulation 122: (2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is —

(a) necessary to make the development acceptable in planning terms;  
(b) directly related to the development; and  
(c) fairly and reasonably related in scale and kind to the development.

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From April 2015, CIL Regulation 123(3) also restricts the use of pooled contributions that may be funded via a s106 agreement if five or more obligations for that project or type of infrastructure have already been entered into since April 2010 which could have been funded by the levy.

- 13.6 All the contributions have been assessed against agreed formulae, the calculations have been set out, and the justifications relate the contributions to the impact of the development and to relevant policies. The schools have been identified<sup>338</sup> as have the bus service and the locations of the road junctions and the cycle lanes<sup>339</sup>. The sites of nature conservation importance and outdoor sports facilities are also identified<sup>340</sup>. In each case the relevant council has confirmed that the pooling restrictions would not be exceeded.
- 13.7 The AQ improvements were calculated to fully mitigate any impact. It is likely that this also would result in a significant benefit. However, as the payments would be related to the Government's standard Damage Costs Approach calculation<sup>341</sup>, the works would amount to no more than would be necessary to be sure of full mitigation and so would not fall foul of the requirement that contributions should not be sought over and above what would be needed for mitigation<sup>342</sup>. The LPA also confirmed that it had not collected more than 5 such contributions for this.
- 13.8 Clause 3.2.1 would exclude enforcement of funding in the event that the SoS identifies an obligation which would not satisfy the various tests. The Appellants confirmed that they did not expect this to apply.

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<sup>338</sup> ID18b §2.2

<sup>339</sup> Ibid §§3.2-3.6

<sup>340</sup> ID18a §§3.2; 4.3 [there is some mis-numbering here but the intention is plain]

<sup>341</sup> See AQ Assesment CD12.31 and Walton §5.3

<sup>342</sup> Under CIL Regulation 122: (2)

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## 14. Inspector's Conclusions

From the evidence before me at the Inquiry, the written representations, and my inspection of the appeal site and its surroundings, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

### *Main considerations*

14.1 The main considerations in this appeal are the effects of the proposals on:

- (a) the character and appearance of the area with particular regard to landscape;
- (b) the settings of the Studley Royal Park and Fountains Abbey WHS; Studley Royal RPG; and other heritage assets including Ripon Cathedral and How Hill Tower;
- (c) ecology;
- (d) flood risk; and,
- (e) the balance between harm and benefit with particular regard to NPPF§134, whether footnote 9 should apply and, if not, whether the scheme would amount to sustainable development under NPPF§14.

### *Landscape*

14.2 With regard to landscape character, the appeal site is on the cusp of LCA46 and LCAs 44 and 45. It is close to the WHS (and closer to the RPG), to a SLA and to the AONB. It adjoins the BZ at Whitcliffe Lane. Most of LCA46 comprises small fields with boundary hedges. Across Whitcliffe Lane, in the BZ and generally into LCA44, the extent of trees is identified as important to the setting of the WHS. With a small exception, the boundary of LCA46 generally follows that of the BZ. [2.1][2.2][2.4]

14.3 The topography rises and falls between Ripon and Studley Royal with lower ground along West Lane rising across the appeal site to a ridge roughly along Whitcliffe Lane. On the northwest side of the Lane, opposite the site boundary and on higher ground just above a former quarry, is Whitcliffe Woods. The Woods include mature trees and maps show that it has been a wood for well over a century. It is now managed by YWT. There are few publicly accessible views across the appeal site from Whitcliffe Lane; the clearest of these is from the entrance to Whitcliffe Grange Farm at Viewpoint 14. [2.2-2.4]

14.4 The appeal site has a rural, undeveloped landscape character which would have once reflected the key characteristics and traits of LCA46 but the smaller fields have now been combined, as a result of the gallops, which give it a separate identity. The site enjoys views of Ripon Minster, identified as important in LCA46, but at present these are limited to its private owners. [2.2][2.23][2.26]

14.5 The proposals would alter the character of the site itself to that of a housing development with an extensive landscaped buffer as POS. The arable nature of the field would be lost and most of the gallops would become part of the proposed POS. The proposed screening here would, by itself, have some effect on the character of LCA46. A few trees and a significant amount of hedge would be removed alongside West Lane; new planting would be introduced to the POS. [5.1][6.7][13.3][13.4]



- 14.6 The above changes would result in harm to the open countryside as identified in the Reason for Refusal. The argument that the proposed screening would of itself introduce an alien element into the landscape should be given limited weight. This is because it ignores the position of the site on the cusp of LCA46, where it would be seen as a backdrop to existing woodland with potentially similar species, and on the edge of suburban Ripon where new houses would appear as an urban extension. For similar reasons, there would be no significant impact on the AONB or the SLA. Publicly accessible views of the Minster from new streets within the site would be a small public benefit. [1.2][5.1][7.6]
- 14.7 The site has no public access for recreation, its arable use is unexceptional and it is not tranquil, being close to the edge of Ripon. On the other hand, it is within relatively close proximity of the WHS, which is one of only 19 in England and 2 in Yorkshire, (and a RPG) and adjoins the BZ. It was argued that, in assessing landscape character, the ICOMOS guidance should have been used and that the Appellants' failure to follow this has undervalued wider views of the adjacent agricultural fields from Gillet Hill and How Hill, including part of the appeal site, which were an intended part of the 18<sup>th</sup> century creation. This, it was claimed, means that added value should be attributed to the landscape as a result of its contribution to the settings of these heritage assets and that it should therefore be assessed as a *valued landscape* under NPPF§109. [6.8][8.5][8.6]
- 14.8 Notwithstanding these carefully constructed arguments, NPPF§109 starts the chapter on the natural environment while the historic environment is dealt with in a quite separate section after that. To assess the site as *valued* purely on account of its contribution to the setting of designated heritage assets would be to conflate landscape and heritage issues, amount to double counting and be the wrong interpretation of policy. [6.8][8.5][8.6]
- 14.9 Overall, the harm to the open countryside would conflict with policy in NPPF§17.5 which requires recognition of the intrinsic character and beauty of the countryside. It would be contrary to saved LP policy C2 and CS Policy EQ2. This harm to the countryside is a matter to be weighed in the overall balance.

### *Heritage*

- 14.10 As above, the relevant heritage assets include the WHS, the RPG, and the listed Ripon Cathedral and How Hill Tower. Gillet Hill, and the site of any former Belvedere, lies within the WHS. It was common ground between the Appellants and the LPA that the OUV of the WHS is as identified and described in the WHS MP and that in general the significance of the RPG is contained within the OUV. It was agreed that the BZ was identified through careful analysis by qualified professionals at the NT and HE but that it does not represent the full setting of the WHS. It was also agreed that How Hill and its Tower were not included in the 1986 WHS boundary for reasons of land ownership and practical application, but that they are likely to be included in a future WHS boundary. It was not disputed that plans are already in hand to increase access to How Hill Tower. [2.8][2.11][7.7]
- 14.11 The ZVT and sectional drawings are useful in determining intervisibility with and without intervening woodlands and this is now common ground. Given that the arguments concerned visual effects, the heritage evidence in part

followed from that on landscape. The Appellants and the LPA agreed that the only intervisibility between the WHS and the appeal site is a small part of Gillet Hill from the southern boundary of the site. As above, the site visits took in Gillet Hill and How Hill. Views from How Hill Tower were limited to those provided in evidence from high level cameras. Views out from Gillet Hill and How Hill Tower cover a vast area to distant places well beyond Ripon and as far as the North Yorkshire Moors. The impact of the proposed houses on these views would depend on the details to be submitted at reserved matters stage and on the extent and effectiveness of screening both on and off site. [2.19][6.4][7.5][8.3][8.7][8.8]

- 14.12 The NT's *two red dots* indicate the extent to which houses might be seen from Gillet Hill with Whitcliffe Woods, but without on-site screening, and assuming that the houses would be built on current ground levels, to two full storeys. The bright red roof colour was used for illustration and conditions could control the colour and texture of external materials at reserved matters stage. Nevertheless, without on-site screening it is likely that houses in this location would be noticeable from Gillet Hill for a number of years albeit that identifying them would probably require the use of binoculars. [5.2][6.4][7.5][8.7][8.8]
- 14.13 Under the scheme, roughly half the site would be given over to POS including boundary screening and planting and this could be controlled by conditions and the UU. The intention would be to enhance the existing trees and hedges to provide year-round screening of all built development on the site when viewed from the WHS or even within the BZ. Initially, screening would be dependent on Whitcliffe Woods until any new planting was sufficiently mature. Thereafter, in the longer term, the UU could transfer a small, potentially critical band of screening within the site to HBC, if the LPA thought this important, with a contribution to cover its maintenance in perpetuity. [5.1][6.7][6.17][7.5][7.11][8.9]
- 14.14 The off-site screening, which prevents much more widespread views from Gillet Hill and How Hill Tower, is almost entirely provided by Whitcliffe Woods. These woods are a relatively new feature in that they are not part of the Aislabies' designed landscape, but were planted later, and are now managed for greater nature conservation benefit by the YWT. There was no suggestion that nature conservation would involve more than occasional thinning for good husbandry, that there would be an advantage in any substantial felling in Whitcliffe Woods, or that the trees should be removed as they were not part of the landscape design. [6.9][6.17][7.10][8.10][8.11]
- 14.15 From Gillet Hill, the trees in the Mackershaw Trough provide little in the way of screening the proposed houses that is not more than matched by Whitcliffe Woods on higher ground. The only significant area of trees on higher ground between Gillet Hill and the areas proposed for development is that marked 6(l) on the Felling Licence. Here, some 3.31ha of woodland is scheduled on the licence. However, the annotation against it (T30) indicates only 30% would be felled so that in all probabilities the screening properties would be unaffected. [2.18][2.19][6.9][7.5][8.10][8.11]
- 14.16 Were it accessible, as it may be in future, the view from How Hill Tower to the appeal site would pass over several segments of Mackershaw Trough marked 6(n), 6(m), 6(b), 6(c) and 6(e) on the Licence. However, of these 6(c) and 6(e) are also in the line of Whitcliffe Woods. The licence has no

current plans for felling to 6(m), even if the NT identified that some work has taken place here, and the proposals for 6(n) and 6(b) are for 30% and 50% selective felling. The relevant lines of sight run over all 3 of these areas so that between them, even with proposed felling and some work to 6(m), it is highly probable that there would still be more than enough trees to screen any views of houses even if those buildings were tall enough to be seen above the horizon at that distance. [2.25][6.9][7.5][8.10]

- 14.17 Next was the concern that, if completely screened, this vegetation would of itself introduce an alien element into the landscape. Subject to conditions, the screening vegetation would be of similar species to those of the existing woods. With regard to heritage, it cannot be right to argue both that it is essential to retain the existing screening and that new, matching, screening would be out of keeping. [3.9][8.27]

### **Heritage value**

- 14.18 There was no dispute that Studley Royal Park is a heritage asset of the highest order. Gillet Hill is within the designated area of the WHS. Currently, although How Hill Tower is a Grade II\* listed building, it is not in quite the same league as Gillet Hill. However, given its recently discovered history as the first of Aislabie's designed structures, the post-WHS designation changes in ownership and understanding, and that it is likely to be incorporated into the WHS before long, there is every reason to give it, and the contribution its setting makes to its significance, expressed as its OUV, virtually as much weight as a heritage asset as the WHS itself. [2.10][6.18][7.9][8.14]
- 14.19 Ripon Cathedral, as a Grade I listed building, is also an asset of a very high order and there was no dispute that the site is within its setting. [2.26][6.21][7.14]
- 14.20 It was argued that the Liberty of St Wilfred, and its boundary stone, comprise non-designated heritage assets. It was also said that this was with relevance to the setting of Ripon Cathedral. There is no mention of the Liberty in the draft LP. The NPPF Glossary defines a Heritage asset as: *A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest.* Heritage assets include designated heritage assets and assets identified by the local planning authorities (including local listing). WHSs, Listed Buildings, and RPGs are all designated heritage assets as defined by the NPPF. Given that there is no historic manifestation of the Liberty, but that it requires the use of imagination, coupled with a prompt from the boundary stone, the Liberty should not be regarded as an asset in its own right. That is not to deny that the Liberty is of historic importance, just that it is part of the significance of the Cathedral rather than a separate heritage asset. [2.27][6.22][7.14][8.6]
- 14.21 Given the work that went into identifying the boundary to the BZ, any site contained by it is likely to be within the setting of the WHS. However, the BZ is not determinative of setting but is an indication, primarily for decision makers, of where setting is likely to be a factor. It is therefore mainly an instrument to assist in administration, for example when deciding whether or not to consider the setting of the WHS when dealing with small to medium size development within it. It follows that the BZ is not a heritage asset

either. Similarly, whether or not Viewpoint 14, from Whitcliffe Lane, is within or outside the BZ makes little difference. [2.22][6.13][7.7][8.25]

### **Impact**

- 14.22 The appeal proposals would essentially be restricted to the appeal site. Any impact on heritage assets would be on account of the effects of development within their settings. The HE publication GPA3 sets out 5 steps to be followed. The relevant assets, including the WHS which Gillet Hill is within, its wider agricultural setting, How Hill Tower and Ripon Cathedral are identified above. The BZ gives a rough indication of the WHS for administrative purposes but that is not sufficient for this scheme. The detailed evidence demonstrates that the setting includes the whole of the designed landscape, much of the agricultural land beyond and could potentially stretch as far as the North York Moors. The contribution that these settings as a whole make to the WHS is of the very highest order. Rather the point is whether or not the proposed houses would harm the contribution that the setting to the WHS makes to its significance as expressed through its OUV. [3.9][6.15][7.10][8.14]
- 14.23 With regard to Gillet Hill and How Hill Tower any harm would be on account of intervisibility. The extent of this would depend on the details submitted at reserved matters stage, the efficacy or otherwise of the proposed on-site screening, and the retention of Whitcliffe Woods and Mackershaw Trough. If the consequence of all three were that there would be no intervisibility between either Gillet Hill or How Hill Tower and the proposed houses then there would be no impact on the contribution which setting makes to significance of these assets as a result of direct views. [2.19][6.4][6.5][7.5][8.7][8.8]
- 14.24 Without the details to be submitted at reserved matters stage it is impossible to determine for certain whether or not the proposed houses would or would not be within the setting of the WHS. Moreover, subject to reserved matters, the dwellings could be restricted in height and the roof coverings could be muted in colour. Indeed, the houses might appear or disappear in these views over time depending on any changes to the height of the buildings or the roof finishes. [5.3][6.4]
- 14.25 From Whitcliffe Lane, there would be a few views over the site through gaps in the hedge unless and until screening vegetation reached maturity. This would be particularly apparent from the farm entrance. The NT assessed this as moderate harm to Viewpoint 14 on Whitcliffe Lane. The BZ runs along Whitcliffe Lane for much of its route. This viewpoint is therefore on the very boundary of the BZ, if not outside it, and the BZ itself is not a heritage asset. While there would be some impact on views from Whitcliffe Lane, particularly during the early years, any harm from here should generally be weighed as a part of the harm to the landscape rather than to heritage assets (but see *Agricultural setting* below). Once on site screening matured and obscured any views from Whitcliffe Lane it would also obliterate any views from Gillet Hill or How Hill Tower. [2.3][6.6][8.3][8.8]
- 14.26 As above, the amended UU could transfer a sliver within the site to HBC with a contribution for maintenance in perpetuity. If HBC declined to accept this transfer it should be taken as an indication that it was not unduly concerned about the marginal screening. If it did accept the transfer it would put

beyond doubt that screening could obscure the proposed houses from the WHS. It is therefore highly likely that, after the initial years, on site screening would be as effective as would be necessary. Either way, with regard to intervisibility, after a few years the proposed tree screening on and off site could eliminate any potential harm to the setting of the WHS from the proposed development. [1.4][5.2][6.9][6.17][8.12][13.1]

- 14.27 Although the colour was helpful as an illustration, given how small the *two red dots* are, requiring the use of a bright red colour to highlight potential location of new houses does point up the fact that any impact on views from Gillet Hill would be limited to small spots on a very broad, wide vista. Views from How Hill Tower would be even more distant. For these reasons, even under present conditions, without new planting, the impact of the proposed houses would be at the margins of what could be detected. [5.2][8.8]
- 14.28 At its strongest, the NT case was that there would be slight impact on views from How Hill Tower and Gillet Hill. The balance of evidence suggests that for most of the lifetime of the development there would probably be no direct views at all of the scheme from these vantage points and that any impact during the early years would be on the margins of being noticeable using binoculars even to the most informed observer. Nevertheless, the NT argued that, to reduce this to neutral would require screening in perpetuity. Overall, it assessed that there would be slight harm to both How Hill Tower and Gillet Hill with a cumulative effect.

### **Screening**

- 14.29 Advice in GPA3 also states that, when considering the extent of setting, account should be taken of the possibility that impermanent landscape features such as planting may not persist over time. The Appellants argued that, if the LPA was concerned, it could serve a TPO on either or both woods, although the enforceability of this was challenged. As there are two areas of woodland, with good reason for both to be kept and well-managed, plus proposed on-site screening, the likelihood is that the screening, in one form or another, would persist. [3.8][3.9][6.18][7.5][7.10][8.9][8.14][8.20]
- 14.30 The objectors also raised the prospect that storm or disease might wipe out any or all of the trees, whether on or off-site, regardless of all the efforts available. While there must be a possibility of this occurring, the chances are very low and, as with previous natural disasters affecting trees, the effect would not be permanent. Should a catastrophic storm remove the trees on the high ground at Whitcliffe Wood, screening would then depend on the proposed buffer planting not only to hide the scheme but also the existing built development in southern suburban Ripon. Should a disaster such as disease affect Whitcliffe Wood and the proposed screening, it is likely that it would also affect the designed landscape of the WHS and concern over the appeal site would become relatively unimportant. Moreover, if there were a total loss of trees, while much more of the development on the site would be visible this would be in the context of the existing houses along West Lane and beyond and the development would then be seen as the edge of Ripon. Given that the site slopes down towards the City, the effect on any distant views would be generally limited to the first line of houses and do little more than obscure some of the existing houses and bring sight of built development marginally closer (in the context of the separating distances).

The outcome of such a potential catastrophe would be to superimpose one view of housing with another. The weight to be given to either the chances of disaster arising or the consequential impact should be limited. [2.30][6.9][7.5][7.11]

- 14.31 Taken together, given the ability to control the details of reserved matters, existing off-site woodlands at Whitcliffe Woods and Mackershaw Trough which would be likely to obscure almost all the proposed houses for a considerable period of time, and the potential for new on-site screening, the likelihood of any appreciable impact on views from Gillet Hill, or anywhere else within the WHS, is very low to vanishing. Rather, the probability is that, after the initial years at least, the development would not result in any demonstrable harm to the setting of the WHS. How Hill and its Tower are not within the WHS (see below). Nevertheless, for similar reasons, any impact from the currently inaccessible, and much more distant, tower would be negligible as well and so of even less consequence.

#### **Listed buildings**

- 14.32 In addition, the decision maker has a duty in any case to consider the possible effect on the setting of any other designated heritage assets which, in this case, means not only the Grade II\* How Hill Tower but also the Grade I listed Ripon Cathedral (see below). [2.8][2.21][2.26]
- 14.33 Policy in NPPF§132 sets out that: *When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.* The important point here is not to try and define the extent of a setting but to establish, first, the contribution that setting makes to significance, and second, whether or not development within its setting would harm that contribution to significance. [3.8][3.10]
- 14.34 This was confirmed in *Williams*, where the Judge found that it is the relationship between the heritage asset and the proposal which is key, not just the land on which it would sit. Part of the reason for this, as was touched upon in the Appellants' closing, is that whether or not development on one particular spot is or is not within the setting of an asset will in part depend on the nature of the development. To take this to an extreme, a domestic shed in the garden of one of the houses along West Lane would not be within the setting of the WHS whereas a wind turbine taller than Ripon Minster on the same spot would be. [6.12][7.3][7.4][8.17][8.19]
- 14.35 It follows that the arguments over whether or not the site is within the settings of Gillet Hill and How Hill Tower were largely misplaced. This is not to deny that in some cases it may be the quality of the land that is important to significance while in other cases, as here, it is mostly the absence of development which is relevant. What matters in determining any impact on significance is whether or not the development proposed to go on the site would be within the settings. For the reasons explained above, that remains uncertain and no determinative answer can be given to that question. Nevertheless, given that the balance of probability is that there would be no direct views of the development for the vast majority of its life, the most likely conclusion to be drawn is that the development would not directly affect

the setting of either the WHS or How Hill Tower. Even if there were to be some marginal intervisibility, this is likely to be hard to discern and temporary. It follows that the contribution that the appeal site makes to the significance of the WHS would probably be unaffected by the development. If a judgement is reached that there would be some harm, it should be assessed as the lowest level of less than substantial harm that could be detected. The same would apply to the contribution setting makes to the special interest of the listed How Hill Tower. [2.22][3.8][6.18][7.4][8.22]

### **Agricultural setting**

- 14.36 The third claim with regard to harm to the heritage assets concerned the change to the agrarian (or agricultural) landscape setting to the WHS even without intervisibility. The argument follows the Judgment in *Steer* where it was found that visible changes beyond views from within the asset could still be relevant. The principle behind this Judgment should not be in doubt. It was claimed that, regardless of intervisibility, putting the development by Whitcliffe Lane will have a harmful impact on the OUV of the WHS. [2.2][2.16][6.12][6.15][7.4][8.18][8.21]
- 14.37 Recent research has shown that the Aislabies designed what is now the RPG in marked contrast to the surrounding lands, much of which they owned from time to time. As identified through LCA44, and summarised in the WHS MP, this reflects the influence of Fountains Abbey. It follows that the designed park and gardens were to be seen in the setting of, and in contrast to, the wider agricultural landscape. Whether or not this difference was deliberate on the part of the Aislabies, who must have had some financial limitations over the extent of designed landscape, is less important than the fact that there is a contrast. Consequently, this agricultural landscape is of value to the setting, as a result of its contrast, has become part of the OUV, and so should be taken into account. [6.11][6.18-20][6.38][7.7][7.26-28][8.15][8.21]
- 14.38 The appeal site adjoins the medieval route along Whitcliffe Lane, at right angles to West Lane which very roughly follows a straight line from Ripon Minster to How Hill Tower, and may well have provided a direct link between the City and the Abbey and its network of granges along Whitcliffe Lane. The southern part of the Lane is part of the circulation route within the Aislabies' designed landscape and the northern part of the Lane continued to provide convenient local access to and from Ripon even if it is not on the most direct route from the City to St Mary's Church. Without any intervisibility, there is little evidence that the northern part of the Lane was important to the Aislabies' design such that an appreciation of the contrast between the WHS and the appeal site can only really be made on foot over a significant distance. Moreover, as the proposed houses would be largely screened by new trees and other vegetation from public views along Whitcliffe Lane, there would be negligible impact from the buildings on the rural appearance of this route. [2.15][6.18-20][7.8][7.15][8.24][8.28]
- 14.39 The appeal site is beyond the designed landscape and forms part of this surrounding agricultural land. It is not within LCA44, the treed character of which is very important to the WHS setting, but in LCA46 which is far less directly related. The boundary of these areas also roughly follows that of the BZ. The site is no longer made up of the small fields which are a historic characteristic of LCA46, these having been largely amalgamated. There was

scant evidence that its use as gallops, or as a race course, ever made an important contribution to that contrast. On the other hand, there is a considerable extent of agricultural landscape and the contribution made by the immediate surroundings, as described in LCA44 and referred to in the WHS MP where the contrast can be seen and recognised, is infinitely greater than that provided by, say, the fields bordering the North York Moors. [2.2][3.14][4.4][7.7]

14.40 What is relevant is whether or not a change to the appeal site, including extensive buffer planting, would affect the contribution which the site makes to the wider agricultural landscape that is of some importance to the role which the setting plays in OUV. For all the above reasons, in its current condition the appeal site is not an important part of those surrounding lands which, as the wider agricultural setting, make any relevant contribution to the significance of the WHS. Rather, any such contribution would be so negligible as to be unnoticeable to all but those already embroiled in this debate. It should be given next to no weight. [2.2][2.16][6.11][6.15][6.19][6.38][7.7][8.15][8.21]

14.41 The NT expressed a concern that allowing the appeal might lead to cumulative erosion of the rural setting. However, the site is outside the BZ and there is no other land between the BZ at this point and the edge of Ripon. Not only should each application be treated on its merits, but the likelihood of a substantial further scheme between Ripon and the BZ seems remote. While the NT's concern over possible encroachment are understandable, as a landowner with charitable responsibilities over the WHS, simply extending the urban edge of Ripon in the direction of the WHS does not automatically equate to harm to its OUV. [6.5][6.7][7.13][8.26]

#### **Ripon Cathedral**

14.42 The Reason for Refusal referred to harm to views toward Ripon and its Cathedral from Gillet Hill and How Hill Tower. Nevertheless, at the Inquiry the LPA expressed concern that, unless carefully designed, the scheme could become an urban sprawl around and within the setting of the Cathedral which would diminish the dominance of the Minster. This chimes with the HE concerns over design, the need to require the parameters plan to be followed through conditions and a close examination of details at reserved matters stage. The former should be controlled by the suggested conditions (see below) while there is every reason to suppose that the intense interest taken by the NT and RR, added to that of the LPA, would ensure that the final design is of a suitably high standard. [2.2][3.16][5.1][6.21][7.14][7.15]

14.43 The photographic evidence of views from the Minster's tower was instructive in determining the potential extent of its setting. This illustrates the way that the scheme would slightly extend the suburban limits of the City which are a key component of its setting. While there would be changes to the limited views of the Minster from Whitcliffe Lane, the latter is not a designated heritage asset. With regard to the duty (under s66 of the LB&CA Act) the appeal scheme would not harm the contribution which its setting makes to the significance of the Cathedral. Indeed, the scheme would make public a few of the existing views within the site. While these would not amount to any heritage benefit, they would provide a small public advantage. [2.23][6.21]



14.44 Finally, the Liberty of St. Wilfred's (Liberty of Ripon Minster Boundary) refers back to a fascinating moment in 937 when sanctuary was given to anyone within the City. Whether or not it amounts to a non-designated heritage asset it has significance as a historic boundary that forms part of the setting of the Cathedral. On that basis, as there would be no harm to the setting of the Cathedral, there would be none to the Liberty either. Consequently, even if the Liberty were to be considered a non-designated heritage asset, limited or no weight should be given to potential harm as a result of extending development beyond this line. [2.27][5.3][6.8][6.23]7.14][7.15][8.6]

#### *NPPF§134*

14.45 Policy in NPPF§128 requires a description of *the significance of any heritage assets affected, including any contribution made by their setting*. This is to say, the contribution which a setting makes to its significance in order to better understand that significance. As above, the relevant heritage assets have been described in considerable detail. Under NPPF§132, great weight should be given to the conservation of any designated heritage asset the significance of which can be harmed by development within its setting. There was no dispute that conservation of the WHS warrants the very highest weight. While the test of determining whether there would be substantial or less than substantial harm should be performed for each asset, as required by NPPF§134, as it is a balancing exercise, it then makes more sense for the harm from multiple impacts on the same asset and/or harm to multiple assets to be weighed up collectively under NPPF§134. [2.8-2.16]

#### **Weight**

14.46 As above, the NT argued that there would be harm to the designed views from Gillet Hill and How Hill Tower, claims echoed by the LPA, and harm to the agricultural setting. For the first two to amount to harm the setting would require demonstrable harm as a result of intervisibility. As above, notwithstanding the possibility identified by the two red dots in the NT's large photographs, it is unlikely that any harmful appearance of any houses would be within the setting for any significant period of time. This is because there is likely to be screening either on or off the site, or both, and because conditions controlling reserved matters can dictate the details and facing materials of all the houses which might be visible. Given all these factors, it is unlikely that the extent to which any house might intrude into the setting of the WHS would be sufficient to cause even marginal harm to these views. [6.13][6.18][7.12][7.16][8.12][8.15][8.16]

14.47 The argument was that even a negligible to minor degree of harm should convey an effect on the OUV of moderate to large, on account of the importance of the assets, so as the WHS is at *the top of tree* the adverse effects on the WHS/RPG must be given substantial weight. The LPA claimed that, following NPPF§132, even the most minor harm to a designated heritage asset must be given *great weight*, so that the lowest level of harm to the setting of the WHS should be given substantial weight. This rather simplistic approach to weight and balance has its limitations. Taken to extremes, it could be used to prevent any development in sight of How Hill Tower or Ripon Cathedral which would include most of North Yorkshire. [6.18][7.12][8.28][8.30]

14.48 Certainly the weight to be given to any detrimental impact to a heritage asset should be some sort of product of 'harm' and 'significance'. However, to say

that negligible harm, or any harm whatsoever, should automatically be given substantial weight would be to prejudice the balance required to be taken by the decision maker under NPPF§134. Although the test is worded differently, similar considerations apply to the *considerable weight and importance* to be afforded under s66 of the LB&CA Act. As the Appellants identified, this is an extreme if not unreasonable position. A more balanced approach would recognise that any possible harm which, for views at least, would depend on intervisibility would be marginal at most. This was the stance adopted by the Case Officer. It is also important to recognise that, where there is no more than a possibility of a minute amount of harm, the weight to be accorded to the impact to a heritage asset, on the negative side of the balance, could be limited however important the asset. From the evidence of the photomontages and the site visits, that should be the outcome here.

- 14.49 For the reasons set out above, the appeal site is not important to the wider agricultural setting which contributes to the significance of the WHS. As above, limited or no weight should be given to the impact on Ripon Cathedral including the contribution from the Liberty of St. Wilfred's. Moreover, even if all the alleged heritage harms are taken together and multiplied by the very considerable weight due to such important heritage assets, cumulatively they would not amount to significant, let alone substantial, harm. This is a matter to be weighed in the relevant planning balances. In many planning decisions, the difference between limited weight and no weight might be seen as one of semantics. However, in this case the weight to be given to the preservation of designated heritage assets is such that more precision is needed. From the evidence on site and at the Inquiry, the potential impact on these assets should be assessed as extremely limited at most such that the overall weight to be given to the harm should still be limited.

### *Ecology*

- 14.50 The appeal site adjoins West Lane just beyond the southwest limit of Ripon. This road connects the Quarry Moor SSSI with the lane to Hell Wath LNR and is lined, for most of its route, by a mature hedge along the appeal site boundary. Whitcliffe Lane runs along the northern boundary to the site, intersecting with a break in the mature hedge. [2.6][2.7][5.1]
- 14.51 The proposals include 5 specific features within the proposed green infrastructure. It was common ground between the Appellants and the LPA that likely significant harm to Quarry Moor SSSI and Hell Wath LNR from indirect impacts would be avoided by implementing 5 areas of mitigation through appropriately worded conditions. [5.1][5.7][6.24][9.2][9.4][9.9]
- 14.52 The RR did not agree this and contended that: Quarry Moor SSSI is currently failing the NE assessment despite existing mitigation, that breaks in Corridor A would require extensive translocation, and that it was unlikely that proposed mitigation would be fully successful as it would do no more than build on existing, unsuccessful, efforts. [9.3-9.7]
- 14.53 The hedge between the appeal site and West Lane is currently continuous as far as Whitcliffe Lane where the road intersects. Access would comprise two new entrances through this hedge details for which are not reserved. The breaks would be around 10m but the visibility splays currently shown would require removal of considerably more hedge albeit that this could be

translocated just a short distance into the site behind the visibility splays. Although the existing hedge is not continuous between the two LNRs, the new breaks would undoubtedly disrupt habitat. [3.15][5.7][6.25][9.6]

- 14.54 The existing arable use of the field is of some benefit to some farmland birds and this would be lost. On the other hand, the value of what is essentially monoculture to a few species is far less than should be achieved for a wider range of species by the potentially habitat rich buffer zones. While the RR made great play of the potential inadequacies of a management company, the likelihood is that it would not fail and that the mitigations would be effective and would provide significant overall benefits to GCN. [5.7][6.25][7.11][9.7]
- 14.55 The RRs argued that the Appellants' surveys were insufficient with regard to bats even though the surveys did identify their presence and specific mitigation, which could be enforced through a suggested condition, could protect them. Although one identified tree roost would be lost, this tree has a limited life in any event. Despite the conflicting evidence at the Inquiry, given the views of NE and the HBC ecologist, the balance was that mitigation and compensation, which would be subject to a NE licence, would more than outweigh any resulting harm. [5.7][6.23][9.4][9.6]
- 14.56 Some hedgerow would be lost, including two 10m long sections alongside West Lane. However, this does not include the very lengthy visibility splays which, even subject to conditions, would substantially reduce the existing hedge. On the other hand, translocation of hedge to very close to its current position is likely to be more effective in retaining its wildlife than moving it over a greater distance. On balance, together with all the other mitigation, the proposals would be acceptable. [5.1][5.7][6.4][10.8]

### *Flooding*

- 14.57 The new surface water sewer would be designed so that, in the majority of circumstances, combined with the SUDS measures, it would deal with all surface water run-off. This would be a significant benefit for many neighbouring residents. As well as reserved matters, suggested conditions 5, 6 and 7, together with the extensive provisions in the s106 UU, could control the development in sufficient detail to require it to comply with the FRA. The proposals in this would include separating the foul and surface water and diverting the latter through a series of SUDS measures to control the speed of runoff. Ultimately, this would flow into a proposed surface water sewer which would divert rainfall coming off the appeal site and discharge it into the River Skell near Hell Wath. This would be upstream from Ripon. [2.30][5.4][6.26][9.8]
- 14.58 The RR acknowledged that the proposed SUDS measures, and new surface water sewer, should alleviate the current flooding onto West Lane and beyond. However, they remained concerned that there would be increased flood risk to the City, as a result of the upstream outfall, and that if the SUDS measures were overtopped water would discharge onto West Lane and flood the surrounding streets. [5.4][5.5][9.8][10.1][10.6]
- 14.59 On the first point, the amount of discharge from the proposed surface water sewer would be 25.4l/s. This would be a tiny fraction of the flow of the river in full swell and so highly unlikely to cause an appreciable difference to

downstream flooding whereas it could make a significant reduction in flooding to the northeast of West Lane. Moreover, the favoured discharge point would be approximately 1.2km upstream of the point at which the River Skell meets the River Laver where fluvial flooding can affect urban Ripon, and any increase would be likely to dissipate over the floodplain over that distance. [5.4][9.8]

14.60 On the second point, if the SUDS measures failed through exceptional weather or a failure to maintain the ponds and other features, the result would be that the water would discharge back across West Lane. This is unlikely to cause greater flooding of the adjacent streets than at present. Consequently, at worst the scheme would maintain the current pattern of flooding while there is a real prospect of significant improvement. On this issue, the requirement is not to eliminate all risk of flooding and the proposals would usually result in an improvement and at worst no deterioration in existing flooding to adjacent streets. [9.8]

#### *Other matters*

14.61 The RRs fairly acknowledged that, with the amendment to the suggested condition 10 dealing with geology, that objection has now fallen away. The overwhelming evidence on traffic was that the proposed mitigation, through the suggested highway conditions and planning obligations (above) would also result in significant benefits to existing residents. As a result of the highway improvements there would be a marked reduction in standing traffic and so appreciable improvements in air quality. [2.31][9.1][6.23][10.1-10.4][12.2][13.2]

#### *Conditions and UU*

14.62 For the reasons attached to the suggested conditions, they would be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In the event that the appeal is allowed, and planning permission is granted for the proposals, for those reasons they should be imposed. [12.1-12.3]

14.63 As above, the Community Infrastructure Levy (CIL) Regulations 2010, and NPPF§204, sets 3 tests for such obligations and also restrict the use of pooled contributions. The justifications submitted show that there would be no breach of Regulations by enforcing all the obligations in full and both Councils confirmed that none of the contributions would exceed the limit of five. In the event that the SoS's Decision is delayed for any reason, this should be checked. With regard to clause 3.2.1, the evidence indicated that all of the provisions would satisfy the various tests and that this clause should not be applied. [13.1-13.8]

#### *Benefits*

14.64 The Appellants did not claim that all the houses would be built out within 5 years but that around 210 would be delivered in this period. The Appellants are not house builders and would be entirely reliant on selling the site on to builders. There was no evidence that two or more builders would want to be on site alongside each other when they might be in competition. Nevertheless, nor was there any suggestion that the scheme would not provide some housing and even if there was only one developer on site constructing, say, half that number of houses within 5 years and reducing the

weight is given to the benefits, this would still very clearly outweigh the barely marginal harm. [6.29][6.30][7.1][7.2][9.12]

- 14.65 The NT and LPA sought to play down the benefits of POS and public access. While it is important that these are brought into the balance at the correct stage, they should not be diminished. New public access to views from the appeal site to the Minster, specifically designed into the Masterplan, would be a benefit albeit of limited weight. As above, the measures addressing flooding, traffic and AQ would be no more than required for full mitigation and so should be given limited weight as a benefit. Taken together, the benefits of the scheme should be given considerable weight. [6.10][6.26-6.29][8.29]
- 14.66 It may or may not be true that the situation whereby there have been insufficient housing completions is down to the development industry and not the fault, or within the control, of the LPA. It may even be the case that supply of land with planning permission is not the key factor in housing provision. Nevertheless, the firm onus from the NPPF is for LPAs to make efforts to boost significantly the supply of houses by identifying specific deliverable sites sufficient to provide five years' worth of housing. The Decision in this case, which abides by the NPPF, should therefore be reached on the basis of the efforts to identify sites not on wider reasons for the housing crisis. In this Borough, the only meaningful efforts to achieve this have been through the draft LP which identified the appeal site as a draft allocation. The relevant Councillor, when given the opportunity, could only say that sometimes application must be refused and made no comment with regard to any efforts to improve the situation. [5.8][7.19][10.3]
- 14.67 While there are now 28 other sites under consideration, the appeal site was one of 29, and of the other substantial sites, neither of the barracks referred to by the RR and local Councillors have even been sold and so any development would be likely to be longer than the timetable for the appeal site and so well outside the 5 year requirement. Contrary to the argument that there is no basis to conclude that either Ripon's or the Borough's housing needs would not be able to be met in future without this site, the track record, including persistent under-delivery, points the other way. Indeed, the fact that the LPA was prepared to overturn its officer's recommendation on such evidence rather underlines the inadequacy of its efforts to provide an adequate HLS. [3.3][3.5]

### *Balances*

#### **Landscape**

- 14.68 Overall, the harm through the loss of open countryside would be contrary to saved LP Policy C2 and CS Policy EQ2 and run counter to the NPPF§17.5 which requires recognition of the intrinsic character and beauty of the countryside. This harm to the countryside is a matter to be weighed in the overall balance.

#### **Heritage**

- 14.69 For the reasons set out above, market and affordable housing, together with other lesser benefits, should be given considerable weight on the plus side of the NPPF§134 balance. Even allowing that there might be some discernible impact, and granting that impact any weight in the context of the wide open

views from Gillet Hill and How Hill Tower, and attaching the greatest heritage value to that harm, the overall effect from the collective harms on the negative side of the balance should not amount to more than limited weight. On the balance required under NPPF§134, the public benefits would clearly outweigh this unproven harm. For similar reasons, following the duty in s66, and giving considerable importance and weight to the effect on the setting of How Hill Tower and Ripon Cathedral, should not lead to a conclusion that development should be prevented.

#### **Other matters**

14.70 Taken in the round, concerns with regard to ecology, flooding and other matters could be successfully mitigated against and no other harm was successfully identified. With regard to NPPF§§109 and 118 any harm would be avoided, adequately mitigated, or, as a last resort, compensated for. Unlike the case at *Cornwall Road, Harrogate*, this is not a valued landscape. [4.3][6.26-6.29][6.33][8.4-8.6][9.9][9.13]

14.71 The Appellants evidence on the RCP was unchallenged. Local Councillors argued that, although the RCP has not allocated sites at this stage as no target has been provided by HBC, it is at an advanced stage, and that the RCP identifies Army Barracks which could provide 1,500 houses. However, as it is at the preliminary draft stage, covers very little of the site, and with few steps having been taken with regard to the barracks, it should be given only very limited weight. At the time of the Inquiry, the eLP was at an early stage and should also be given only very limited weight. [10.2][10.6][3.6][6.32]

#### **NPPF§14 balance**

14.72 It follows from the balances under NPPF§§109, 118 and 134 that NPPF footnote 9 does not apply. There was no dispute that the Council lacks a 5 year HLS and that relevant policies are out of date. As there would be no significant adverse impacts, NPPF§14.4 sets a presumption in favour of sustainable development.

14.73 There would be significant social benefits from addressing the under supply of housing in the Borough. There would also be a significant benefit to the local economy during the construction phase and in the longer term new residents would help to support shops and services through an increase in local household spending. There would be little or no environmental harm. From NPPF§14.4, there would be, at worst, marginal adverse impacts which would not come close to significantly or demonstrably outweighing the benefits of the scheme when assessed against the policies in the NPPF as a whole. Unless there would be overriding conflict with the development plan, permission should be granted and this is a material consideration of considerable weight.

#### **Development plan and overall balance**

14.74 It only remains to conclude on the development plan and the balance in s38(6) of the Planning and Compulsory Purchase Act 2004. Saved LP Policies HD7, HD7A relate to the WHS and RPG. Policy HD7 deals with development within the WHS although it refers to the fact that the setting and views of the site are protected by policies C2 and HD7A. Conflict with the development plan could therefore be reinforced by Policy HD7, should there be conflict with policies C2 and HD7A, but not created by it. Policy HD7A does not permit any

development which would adversely affect the setting of the RPG. As above, whether or not the proposals would be within the setting of the RPG would depend on final details and intervening planting. Nevertheless, even if there were some intervisibility for some of the time, it would be marginal and the weight to the conflict with this policy should be limited.

14.75 LP Policy C2 expects development to protect existing landscape character but also looks for opportunities to repair or reintroduce landscape features. The Appellants accepted conflict with this policy insofar as there would be a loss of existing landscape. However, buffer planting including new hedges would aim to reintroduce these features. CS Policy EQ2 is wide-ranging covering landscaping and wildlife habitats. For the reasons set out above, the balance of impact on wildlife habitat would be neutral or better. As with Policy C2, there would be landscape impact and mitigation. In both cases the weight to be given to conflict should be tempered by the mitigation. Moreover, the policies themselves are not entirely consistent with the NPPF and the weight to be afforded to them should be reduced as expected by NPPF§215. It was acknowledged that policies SG1, SG2 and SG3 are not up to date and these should be given limited weight.

14.76 Overall the conflict with policies identified above would be outweighed by the social and economic benefits. Consequently, the conflict with these few policies in the development plan does not alter the presumption in favour of sustainable development which therefore applies.

14.77 For all the reasons set out above, the balance from NPPF§14.4 is a material consideration of such importance that it should outweigh the conflict with policies in the development plan some of which, in turn, should be given reduced weight. Overall, this indicates that planning permission should be granted for the proposed development.

## **15. Inspector's Recommendation**

15.1 I recommend that the appeal should be allowed and that outline planning permission should be granted subject to the attached Schedule of conditions.

*David Nicholson*

INSPECTOR

## Suggested conditions

1. Prior to the submission of any reserved matters application, a phasing plan covering the whole site shall be submitted to and approved in writing by the Local Planning Authority (LPA). All reserved matters submissions in relation to the development hereby approved shall be in accordance with the approved Phasing Plan.

*Reason: To safeguard the rights of control by the LPA in respect of the reserved matters.*

2. Application for approval of the reserved matters for the first phase of development shall be made to the LPA not later than 3 years from the date of this permission. The development of that first phase shall begin either before the expiration of 2 years from the date of approval of the last of the reserved matters for the first phase, or before the expiration of 3 years from the date of this permission, whichever is the later.

*Reason: To ensure compliance with sections 91-94 of the T&CPA 1990.*

3. Application for approval of reserved matters for all subsequent phases of development shall be made not later than the expiration of 3 years from the date of this permission and the development shall be begun on each subsequent phase of development not later than whichever is the later of the following dates:
  - i) The expiration of 3 years from the date of this permission,
  - ii) The expiration of 3 years from the final approval of the reserved matters for that particular phase or, in the case of approval on different dates, the final approval of the last such matter to be approved.

*Reason: To safeguard the rights of control by the LPA in respect of the reserved matters.*

4. This permission in terms of access relates solely to the two points of vehicular access with West Lane as shown on Proposed Site Access Arrangement ref: 1395/17 rev G, contained in the Transport Assessment by Ashley Helme Associates Ltd (Ref 1395/5/A) dated April 2017. For each phase of development, no development shall take place on that phase, without the prior written approval of the LPA of the remaining access details and those of the other reserved matters: -
  - a) Appearance,
  - b) Landscaping - including the planting of trees and or shrubs, specifying types and species, a programme of planting , the width and surface materials of any footpaths and the timing of implementation of the scheme including any earthworks required,
  - c) Layout,
  - d) Scale.

Any reserved matters application for appearance, layout or scale shall include details of existing and proposed ground levels and finished floor levels. Such



details shall provide for the retention of the existing ground levels unless it is clearly demonstrated that a need exists for change.

Thereafter the development shall be carried out in accordance with the approved details.

*Reason: To safeguard the rights of control by the LPA in respect of the reserved matters.*

5. The proposed development shall be carried out strictly in accordance with the following Drawings:

- Location Plan (Drawing No. CSA/3010/118 rev.B)
- Parameters Plan (Drawing No. CSA/3010/121 rev.B)
- Development Framework Plan (Drawing No. CSA/3010/106 rev.H)
- Access Plan (Drawing No. 1395/17 rev.G dated April 2017)

*Reason: In order to ensure that the development is carried out in accordance with the approved drawings.*

6. For each phase of development, the site shall be developed with separate systems of drainage for foul and surface water on and off site.

*Reason: To ensure that the site is properly drained and in order to prevent overloading, surface water is not discharged to the foul sewer network.*

7. For each phase of development, no piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall, which shall not be the local public sewerage, for surface water have been completed in accordance with details submitted to and approved in writing by the LPA.

*Reason: In the interest of satisfactory and sustainable drainage.*

8. For each phase of development, no development, including demolition, shall take place until a site investigation of the nature and extent of contamination for that phase has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the LPA. The results of the site investigation shall be made available to the LPA before any new construction begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the LPA.

The relevant phase of the site shall be remediated in accordance with the approved measures before new construction begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the LPA. The remediation of the relevant phase of the site shall incorporate the approved additional measures.

*Reason: To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with CS policies SG4 and EQ1.*

9. No development for any phase of the development shall take place until a Construction Method Statement for that phase has been submitted to, and approved in writing by, the LPA in consultation with the Highway Authority. The approved Statement shall be adhered to throughout the construction period. The statement shall provide, but not be limited to, the following:
- a) the location and extent of construction access into the site,
  - b) how the existing public right of way on the site is to be protected and kept clear of any obstruction,
  - c) the erection and maintenance of security hoarding,
  - d) the security arrangements for construction equipment and materials,
  - e) how the site will be cleared, the site developed and dwellings constructed, ensuring there is no encroachment on to the Root Protection Areas of the retained trees,
  - f) the hours of work during the demolition and construction phases restricted to 07:30 to 18:00 Mondays to Fridays 08:00 to 13:00 Saturdays with no work on Sundays or Bank Holidays,
  - g) the parking of vehicles of site operatives and visitors,
  - h) loading and unloading of plant and materials,
  - i) storage of plant and materials used in constructing the development,
  - j) wheel washing facilities,
  - k) measures to control the emission of dust and dirt during construction and demolition,
  - l) heavy goods vehicle routing,
  - m) details of surface water run off control, and
  - n) details of any external lighting.

*Reason: In the interests of residential amenity and ecology, to minimise the risk of flooding, to avoid interference with the free flow of traffic, to protect the existing right of way, reduce the potential for crime and to secure safe and appropriate access and egress to the site in the interests of safety and convenience of highway users.*

10. Prior to the commencement of development on any phase of development a geological management plan for that phase shall be submitted to and approved in writing by the LPA. The development shall thereafter be carried out in accordance with the approved management plan.

With regard to the geological cliff face in Quarry Moor SSSI, the geological management plan shall include the following:

- making available any bedrock core logs for future study,
- the establishment of a buffer zone between the Whitcliffe Section of the exposed geology within the SSSI and any development, within which contribution vehicles and heavy plant shall not operate. The width of the buffer shall be a minimum of 30m from any part of the Whitcliffe Section,
- logging of any foundation sections into the underlying bedrock.

*Reason: In the interests of conserving a site of geological importance.*

11. For each phase of development, the reserved matters applications shall include:

- (1) Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey showing full details of the internal vehicular road network, cycleways and pedestrian footways;
- (2) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre line of each proposed road showing:
  - (a) the existing ground level,
  - (b) the proposed road channel and centre line levels,
  - (c) full details of surface water drainage proposals;
- (3) Full highway construction details;
- (4) Details of all proposed street lighting;
- (5) Full working drawings for any structures which affect or form part of the highway network;
- (6) A programme for completing the works.

The development shall only be carried out in full compliance with the approved drawings and details.

No dwelling shall be occupied until the carriageway and any footpath/footway from which it gains access is constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and in operation.

The completion of all road works, including any phasing, shall be in accordance with a programme approved in writing with the LPA before the first dwelling of the development is occupied.

*Reason: In order to secure an appropriate highway constructed to an adoptable standard in the interests of highway safety and the amenity and convenience of highway users.*

12. There shall be no access or egress by any vehicles between the highway and the application site (except for the purposes of constructing the initial site access) until splays are provided giving clear visibility of 36m in a westerly direction and 43m in an easterly direction measured along both channel lines of the major road (West Lane) from a point measured 2.4m down the centre line of the access road. The eye height will be 1.05m and the object height shall be 0.6m. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

*Reason: In the interests of highway safety.*

13. No development on any phase of the development shall take place, except for investigative works, until a scheme for the following off site highway works, including timings for implementation of the works, has been submitted to and approved in writing by the LPA:

- (i) Provision of dropped kerbs and/or tactile paving on West Lane, South Grange Road, and Whitcliffe Lane;
- (ii) Removal and re-alignment of the existing drop kerb crossing and the provision of tactile paving on Hell Wath Grove to serve the sports pitches;
- (iii) Provision of footways on the southern side of West Lane;
- (iv) Realignment of West Lane and the junctions of South Grange Road and Southfield Road.

The off site works shall be carried out in full accordance with the approved details.

*Reason: In order to ensure that the details are satisfactory in the interests of the safety and convenience of highway users.*

14. No dwelling shall be occupied on any phase until a scheme for the provision of electric vehicle charging points for that phase, either provided individually or communally, including timescales for implementation, has been submitted to and approved in writing by the LPA. The approved scheme shall thereafter be provided in accordance with the agreed timetable and shall be retained for the lifetime of the development.

*Reason: In the interests of protecting air quality.*

15. No development for any phase of the development shall take place until a Construction & Environmental Management Plan (CEMP) shall be agreed in writing by the LPA prior to the submission of a reserved matters or full planning application. The CEMP shall address issues including minimisation of impacts on Quarry Moor SSSI and Hell Wath LNR, the minimisation of impacts of air and water pollution on ecological receptors, impacts on retained trees and hedgerows; impacts on species including bats, great crested newts, nesting birds, hedgehogs and (if necessary) eradication of invasive species. No removal of trees, hedgerows or scrub shall be undertaken before the CEMP has been agreed in writing with the LPA. The CEMP shall be implemented in full accordance with the approved details.

*Reason: In the interests of conserving and enhancing biodiversity*

16. No development for any phase of the development shall take place until an Ecological Management and Enhancement Plan (EMEP) for that phase of development has been agreed in writing by the LPA. The EMEP shall be based upon the mitigation and enhancement measures identified in the Ecology chapter of the ES submitted with the planning application. The EMEP shall be implemented in full accordance with the approved details.

*Reason: In the interests of conserving and enhancing biodiversity.*

17. The proposed development shall be carried out strictly in accordance with the following drawings, unless an updated Tree Survey, which has been submitted to and approved in writing by the LPA, confirms that additional trees are unfit for retention:

- Tree retention plans: drawing nos. 6197-A-03 rev.A (north) and 6197-A-03.01 rev.A (south)
- Tree retention access plan: drawing nos. 6197-A-04

Should an updated Tree Survey include updated versions of the above plans, then the development shall be carried out strictly in accordance with the updated versions of those plans.

*Reason: In the interests of conserving and enhancing biodiversity.*

18. No dwelling on the site shall be occupied until such time as the approved car parking spaces associated with that dwelling have been provided in full accordance with the approved details. The car parking spaces, including garages, shall be retained for that purpose.

*Reason: To provide for adequate and satisfactory provision of off-street accommodation for vehicles in the interest of safety and amenity.*

19. Prior to the occupation of any dwelling of the site, a master Travel Plan for the entire site, irrespective of phasing, shall be submitted to and approved in writing by the LPA. All subsequent Travel Plans for each phase of development shall be prepared in full accordance with the master travel plan. Prior to the occupation of any dwelling in each phase, a travel plan shall be submitted to and approved in writing by the LPA to include measurable time related targets to encourage the use of alternative modes of transport other than the private car by residents of the site and visitors to their dwellings and proposals for regular review and update. The Travel Plans shall be implemented and the development shall thereafter be carried out and operated in accordance with the Travel Plans.

*Reason: to establish measures to encourage more sustainable non-car modes of transport.*

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

John Hunter of Counsel	instructed by Harrogate Borough Council (HBC)
He called	
Dr Jonathan Clark BA MA DPhil	FAS Heritage
Richard Wood BA BPI MBA MRTPI	Richard Wood Associates Ltd
Heidi Hewitt-Wood, solicitor	HBC (discussions only)
Michael Parkes BA MRTPI	HBC (discussions only)

### FOR THE APPELLANTS:

Richard Kimblin QC	instructed by Diana Richardson, Gladman Developments Ltd.
He called	
Clive Self Dip LA CMLI MA	CSA Environmental planning practice
Benjamin Jackson BEng MSc CIHT	Ashley Helme Associates Ltd.
Malcolm Walton BSc DipIoA MCIEH AMIOA	Wardell Armstrong LLP
Dr Paul Hardwick BSc PhD FGS	Enzygo Limited
Matthew James Travis BSc MSc, C.WEM M.CIWEM CSci C.Env	Enzygo Limited
Dr Suzanne M Mansfield BSc PhD MCIEEM	FPCR Environment and Design Ltd.
Dr Chris Miele IHBC MRTPI	Montagu Evans LLP
Diana Richardson MA BA MRTPI	Gladman Developments Ltd.

### FOR THE NATIONAL TRUST:

Clare Parry of Counsel	instructed by Sharpe Pritchard
She called	
Alex Robinson CMLI	The Landscape Agency
Mark Newman MA MCIFA FSA	National Trust
Natasha Rowland BSc PGDip MRTPI	National Trust

### FOR THE RIPON RESIDENTS PLANNING GROUP & RIPON CITY COUNCIL:

Philip Robson of Counsel	instructed by Arrowsmith Associates LLP
He called	
Clive Cullum-Smith BLaws	Retired solicitor
Cllr. Michael Stanley BA	Ripon City Councillor
Giles Manners MCIEEM CEnv	MAB Environment & Ecology Ltd
Richard Clark BA PGDipTP MRTPI	Arrowsmith Associates LLP

### INTERESTED PERSONS:

Ex-Mayor Mr Richmond	Freemen of the City of Ripon
Cllr. Horton	Chair of Planning/City Plan Committees RCC
Cllr. Martin	For Moorside Ward on both HBC and NYCC
Kevin Howard	Local resident
Cllr. Williams	For Moorside Ward

## INQUIRY DOCUMENTS

- 1 Opening Statement on behalf of the Appellants
- 2 Opening Statement on behalf of the LPA
- 3 Opening Statement on behalf of the National Trust
- 4 Opening Statement on behalf of the RCC and RRP
- 5a Planning Statement of Common Ground (SoCG) signed and dated 25 September 2017
- 5b Highways SoCG between the Appellants and NYCC signed and dated 12 October 2017
- 5c Landscape SoCG between the Appellants and the NT signed and dated 3 November 2017
- 5d Ecology SoCG signed and dated 22 September 2017
- 5e Agreed SoCG on Heritage between the Appellants and the LPA, dated 7 November 2017, and Draft SoCG on Heritage between the Appellants and the NT dated 20/23 October 2017
- 5f Addendum Planning SoCG signed and dated by HBC on 3 November 2017
- 6 Statement by Mr Richmond
- 7 Statement by Cllr. Horton
- 8a Appellants highways
- 8b Appellants highways
- 9 a and b. Draft iterations of the UU under s106 of the T&CPA 1990
- 9c Final UU signed and dated 3 November 2017
- 10 a, b and c. Draft suggested conditions
- 10d Final draft suggested conditions, including alternatives
- 11 Statement by Cllr. Martin
- 12 Schools
- 13 How Hill Tower drawings – from NT
- 14 Overlay plan of the BZ and LCA46
- 15 Extract from 1892 OS map from Persimmon planning application
- 16 HE responses
- 17 Letter of notification of the Inquiry and its date and venue
- 18a CIL justification by HBC
- 18b CIL justification by NYCC
- 19 Not used
- 20 a and b. Statements by Cllr. Howard
- 21a Harrogate Dist. LP Provision for Open Spac3 June 2006 (revised Sept. 2015)
- 21b Ibid Appendix 2
- 22 Plan draft allocations
- 23 Appeal Decision Ref: APP/J0405/W/3158833, *Land north of Aylesbury Road, Wendover*
- 24 *The Wonder of the North* – numbered extracts
- 25 *The Wonder of the North* – full copy
- 26 PPG extracts
- 27 Woods list pp
- 28 Opinion of Martin Carter, of Counsel
- 29 NYCC Historic Character Area Map + A4 page
- 30 Daventry and Supreme Court
- 31 Closing submissions on behalf of the RCC and RRP
- 32 Closing submissions on behalf of the National Trust
- 33 Closing submissions on behalf of the LPA
- 34 Closing submissions on behalf of the Appellants

## **CORE DOCUMENT LIST - HBC, Appellants and the NT**

### **CD 1 Submitted Planning Application Documents**

- 1.01 Application Covering Letter and Application Form
- 1.02 Site Location Plan
- 1.03 Illustrative Development Framework Plan
- 1.04 Design & Access Statement
- 1.05 Transport Assessment
- 1.06 Travel Plan
- 1.07 Desktop Ground Conditions Report
- 1.08 Flood Risk Assessment
- 1.09 Air Quality report
- 1.10 Noise Screening Report
- 1.11 Statement of Community Involvement
- 1.12 Planning Statement
- 1.13 Foul Drainage Analysis
- 1.14 Utilities Statement
- 1.15 HBC Ecological Tables 1 & 2
- 1.16 ES Chapters & Appendices C1-C15
  - Non-Technical Summary pp1-8
  - C1 Introduction 9-102
  - C2 Development Proposals 103-106
  - C3 Planning Policy Context 107-112
  - C4 Socio-economic Impacts 113-142
  - C5 Consideration of Alternatives 143-146
  - C6 Cultural Heritage 147-250
  - C7 Ecology & Nature Conservation 251-434
  - C8 Air Quality 435-508
  - C9 Geology 509-711
  - C10 Landscape & Visual Impact 712-784
  - C11 Archaeology 785-904
  - C12 Access & Recreation 905-926
  - C13 Soils & Agricultural Land Quality 927-958
  - C14 Drainage 959-1112
  - C15 Cumulative Effects 1113-1116
- 1.17 Landscape & Heritage Views

### **CD 2 Additional and amended documents submitted after Validation**

- 2.01 14th Feb'17 Highways documents issued from GDL (AHA)to NYCC Highways
- 2.02 14th Feb'17 - Revised Travel Plan
- 2.03 14th Feb'17 - Revised Access Plan 1395-17-D
- 2.04 14th Feb'17 -Tables 1-8 (February)
- 2.05 14th Feb'17 -Generated traffic Distribution
- 2.06 17th March '17 Highways documents issued from GDL (AHA)to NYCC Highways
- 2.07 17th March '17 Revised Access Plan 1395-17-F
- 2.08 9th May '17 (Cover Letter) Resubmitted Documents including ES
- 2.09 9th May '17 ES Addendum
- 2.10 9th May '17 ES Addendum Appendices
- 2.11 9th May'17 Revised Development Framework Plan Rev H
- 2.12 9th May'17 Parameters Plan Rev B
- 2.13 9th May'17 Revised Planning Statement
- 2.14 9th May'17 Revised Air Quality Assessment



- 2.15 9th May'17 Revised Transport Assessment
- 2.16 9th May'17 Revised Travel Plan
- 2.17 9th May'17 Revised Flood Risk Assessment
- 2.18 9th May'17 Heritage Response
- 2.19 9th May'17 Drainage Response
- 2.20 9th May'17 Revised Design and Access Statement
- 2.21 17th May'17 (Email) GDL to LPA: Parkland Edge CGI
- 2.22 17th May'17 (CGI) GDL to LPA: Parkland Edge CGI
- 2.23 03 July'17 (Email) GDL to LPA: How Hill Photo Viewpoint
- 2.24 03 July '17 How Hill Photo Viewpoint
- 2.25 11 July'17: Issue of ATC Data sites 1 & 2 from GDL (AHA) to NYCC Highways
- 2.26 11 July'17 (Email Chain): Issue of Air Model Inputs Issued from GDL (WA) to HBC EP
- 2.27 11 July'17 Air Model Inputs
- 2.28 11 July'17: Issue of ATC Data site 1 & 2 from GDL (AHA) to NYCC Highways
- 2.29 July 2017 ENZYGO Drainage Response to NYCC Flood Risk (LLFA)

### **CD 3 Correspondence with Harrogate Borough Council, NYCC & NPCU**

- 3.01 Letter - 29 August 2014 - GDL Request to HBC for EIA Screening Opinion.
- 3.02 Letter - 01 October 2014 - HBC EIA Screening opinion & delegated decision (Ref: 14/03702) to GDL.
- 3.03 Letter - 02 October 2014 - GDL EIA Letter to NPCU (MHCLG – DCLG as was).
- 3.04 Letter - 15 October 2014 - GDL comments upon HBC's Screening Opinion.
- 3.05 Email - 25 October 2016 - GDL to HBC Case Officer (issue of Revised base plans from 1<sup>st</sup> application)
- 3.06 Email - 23 December 2016 - Planning Portal acknowledgement
- 3.07 Letter/Emails - 13 January 2017 HBC Invalidation Letter
- 3.08 Letter/Emails - 23 January 2017 HBC Validation Letter
- 3.09 Email - 25 January 2017 between GDL & HBC re: meeting to discuss Landscape and Heritage & Conservation
- 3.10 Email - 31 January 2017 between GDL & HBC re: meeting to discuss Landscape and Heritage & Conservation
- 3.11 Email - 6th March 2017 GDL re: GDL requested Landscape and Heritage & Conservation comments prior to meeting
- 3.12 Email - 6th March 2017 HBC re: HBC response to GDL request Landscape and Heritage & Conservation comments prior to meeting
- 3.13 Email - 6th March 2017 GDL to HBC explanation of Viewpoint s etc.
- 3.14 Email - 09 March 2017 - HBC Ecology comments
- 3.15 Email - 14th March 2017 - GDL request for Landscape Officer's comments/GDL request for Ext. of Time - HBC advises GDL of Committee dates
- 3.16 Email - 03 April 2017 - Revised Development Plan and Parameters Plan
- 3.17 Email - 4th April 2017 - HBC Landscape and Ecology comments to updated plans
- 3.18 Email - 17th May 2017 - GDL submit Parkland Edge visual to HBC
- 3.19 Email - 1st June 2017 - Georgian Group suggestion to provide viewpoint from How Hill Tower
- 3.20 Email - 1st June 2017 - GDL query concerning HE response dated 23 May 2017
- 3.21 Email 26th June 2017 - GDL request for Landscape, Heritage and Air Quality comments following previously submitted documents by GDL's consultants
- 3.22 Email 6th July 2017 - GDL forwarded AQ correspondence between HBC & GDL
- 3.23 Letter & Email - 17 July 2017 - HBC invite to speak at Committee meeting and GDL's email response

## **CD 4 Consultee Responses to Original 2nd Application**

- 4.01 Consultee Responses
  - 170123 HBC HOUSING pp1-2
  - 170124 HBC EHO (LAND CONTAMINATION) 3-4
  - 170126 NY POLICE 5-17
  - 170126 NYCC ARCHAEOLOGY 18-19
  - 170127 HSE 20-21
  - 170201 HBC ARBORICULTURE 22
  - 170203 NATURAL ENGLAND 23-25
  - 170207 NYCC HIGHWAYS 26-27
  - 170209 HISTORIC ENGLAND (no page no.)
  - 170209 LITTLETHORPE PC (no page no.)
  - 170209 NYCC (LLFA) DRAINAGE 34-36
  - 170210 ENVIRONMENT AGENCY 38
  - 170210 NYCC EDUCATION 39-46
  - 170216 NATIONAL TRUST 47-54
  - 170216 LITTLETHORPE PC 55-57
  - 170223 HBC AIR (ENVIRONMENT) 58-59
  - 170303 NATIONAL PLANNING CASEWORK UNIT (ES) 60
  - 170310 HBC -CONSERVATION & DESIGN 61-64
  - 170313 HBC -LANDSCAPE 65-67
  - 170316 HISTORIC ENGLAND 2 (no page no.)
  - 170310 HBC ECOLOGY 76-77
- 4.02 170123 HBC BUILDING CONTROL
- 4.03 170404 HBC ECOLOGY
- 4.04 170220 RIPON CITY COUNCIL
- 4.05 170401 GARDEN TRUST
- 4.06 170214 NORTH YORKSHIRE GEODIVERSITY PARTNERSHIP
- 4.07 170404 YORKSHIRE GARDEN TRUST
- 4.08 170512 HBC BUILDING CONTROL
- 4.09 170512 LITTLETHORPE PARISH COUNCIL
- 4.10 170515 NY POLICE
- 4.11 170515 RAMBLERS ASSOCIATION
- 4.12 170519 NATURAL ENGLAND
- 4.13 170522 THE YORKSHIRE GARDEN TRUST
- 4.14 170523 HISTORIC ENGLAND
- 4.15 170523 LEAD LOCAL FLOOD AUTHORITY (LLFA)
- 4.16 170524 RAMBLERS ASSOCIATION
- 4.17 170524 YORKSHIRE WILDLIFE TRUST
- 4.18 170525 HOUSING (HBC)
- 4.19 170526 ENVIRONMENT AGENCY
- 4.20 170530 GEORGIAN GROUP
- 4.21 170530 MINISTRY OF DEFENCE
- 4.22 170602 YORKSHIRE WATER
- 4.23 170607 NATIONAL TRUST
- 4.24 170620 HISTORIC ENGLAND
- 4.25 170620 HISTORIC ENGLAND 2
- 4.26 170626 ENVIRONMENTAL HEALTH -HBC (AIR QUALITY)
- 4.27 170711 NYCC FLOOD RISK
- 4.28 170712 NATIONAL TRUST
- 4.29 170713 NYCC HIGHWAYS
- 4.30 170713 NYCC HIGHWAYS (CORRECTED VERSION)
- 4.31 170714 CONSERVATION & DESIGN
- 4.32 170718 YORKSHIRE GARDENS TRUST

- 4.33 170725 ECOLOGY (HBC)
- 4.34 RIPON RESIDENTS PLANNING GROUP (NO DATE)
- 4.35 170725 HISTORIC ENGLAND

#### **CD5 Committee Report and Decision Notice**

- 5.1 170717 Committee Report
- 5.2 170727 Decision Notice

#### **CD6 Relevant Correspondence**

- 6.1 160228 - Correspondence between LPA, Appellant, Cllr Martin and Appellants FRA Consultant
- 6.2 Flood zone application by Ripon Residents Group to re-classify FZ 1 to FZ3B
- 6.3 160628 Enzygo response to Re-classification of Floodzone
- 6.4 150612 - LLFA response to LPA regarding 1st application (14/04972/EIAMAJ)
- 6.5 EA Response to 1st Application (03 November 2014)

#### **CD7 The Development Plan**

- 7.1 Relevant Saved Local Plan Policies
  - CHAPTER 1 - INTRODUCTION 13
  - CHAPTER 2 - PLANNING CONTEXT & STRATEGY 17
  - CHAPTER 3 - COUNTRYSIDE 24
  - CHAPTER 4 - NATURE CONSERVATION 33
  - CHAPTER 6 - HERITAGE & DESIGN 35
  - CHAPTER 7 - RECREATION 43
  - CHAPTER 8 - AMENITY 45
  - CHAPTER 9 - HOUSING 47
  - CHAPTER 12 - TRANSPORTATION 53
  - APPENDIX II - PARKS & GARDENS OF SPECIAL HISTORIC INTEREST 57
- 7.2 Relevant Core Strategy Policies (and their justifications) - EQ2, SG4,
- 7.3 Biodiversity Design Guide Supplementary Planning Guidance (Approved 2002)
- 7.4 HBC Green Infrastructure SPD 2014 (pages 5 & 72)
- 7.5 HDLP Policies Map -Ripon Overview
- 7.6 HDLP Policies Map -Ripon View 3
- 7.7 SoS Direction Letter HLP Policies (Sep 2007)
- 7.8 Annual Monitoring Report Dec 2016
- 7.9 Heritage Management Guidance Main Document Chapter 1 2 4
- 7.10 FASR Buffer Zone rationale April 2013

#### **CD8 Emerging Development Plan & Evidence Base Documents**

- 8.1 2016-October SFRA
- 8.2 2016 -October Site Assessments Vol 3 Ripon
- 8.3 2017 June Local Development Scheme
- 8.4 2017 July Harrogate District Housing Land Supply Update
- 8.5 Strategic Flood Risk Assessment App B Site Assessment
- 8.6 Draft Sustainability Appraisal Oct 2016
- 8.7 EHDLP Proposals Map Ripon
- 8.8 SHELAA July 2016
- 8.9 Ripon Neighbourhood Plan Designated Area Dec 2012
- 8.10 Draft Local Plan 2016
- 8.11 2016 December Annual monitoring report

## **CD9 UNESCO Documents**

- 9.1 Guidance on Heritage Impact Assessments for Cultural World Heritage – ICOMOS 2011
- 9.2 ICOMOS recommendation 2008
- 9.3 ICOMOS recommendation BZ2012
- 9.4 ICOMOS recommendation SOUV 2013
- 9.5 UNESCO periodic report 2014
- 9.6 UNESCO approval BZ2012
- 9.7 UNESCO Approval SOUV 2013
- 9.8 UNESCO repcom 1986
- 9.9 UNESCO Statement Sign 2008
- 9.10 WHS & bufferzone (National Trust 18 Jan 2012)
- 9.11 WHS and bufferzone 2012

## **CD10 Appeal Decisions**

- 10.1 Blean Common, Blean, Kent Ref. 3156397
- 10.2 Cornwall Rd, Harrogate Ref. 3160792
- 10.3 Ripon Rd, Killinghall Ref. 3153512
- 10.4 St George's Rd, Hayle Ref. 3006077

## **CD11 Judgments**

- 11.1 NOT USED
- 11.2 *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, National Trust, the Secretary of State for Communities and Local Government (SoSCLG)* [2014] EWCA Civ 137
- 11.3 *Kedleston Hall*
- 11.4 *Williams v SSCLG*
- 11.5 *Steer v SoSCLG, Catesby Estates Limited and Amber Valley Borough Council* [2017] EWHC 1456 (Admin) – HE was an Interested party
- 11.6 *Gladman Developments Limited v Daventry District Council and SoSCLG* [2016] EWCA Civ 1146
- 11.7 *Forest of Dean District Council v SoSCLG and another* [2016] EWHC 421 (Admin)
- 11.8 *Barwood Strategic Land II LLP v East Staffordshire BC and SoSCLG* [2017] EWCA Civ. 893
- 11.9 *Bloor Homes East Midland Ltd v SoSCLG* [2014] EWHC 754 (Admin)
- 11.10 Appeal decision: *Land off Main Road, Goostrey, Cheshire CW4 8LH* (dated Nov 2016)
- 11.11 *Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant)* [2017] UKSC 37
- 11.12 *Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant)* [2016] EWCA Civ 168
- 11.13 *R (on application of Graham Williams) Appellant v Powys County Council v Colin Bagley* [2017] EWCA Civ 427

## **CD12 Other Documents**

- 12.1 Guidelines for Landscape & Visual Impact Assessment (GLVIA) – 3rd Ed.
- 12.2 HBC\_LCA\_Area\_\_46
- 12.3 Conservation Principles, Policies and Guidance – English Heritage

- 12.4 Seeing History in the View: a method of assessing heritage significance within views – English Heritage 2011
- 12.5 The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning (2015) Historic England (if not already replaced by one that includes Seeing History in the View)
- 12.6 Nidderdale AONB Management Plan 2014-2019
- 12.7 Extract from WHS Buffer Zone submission Maps – Figure 1 (Map 6) and Figure 17 (Map 5)
- 12.8 WHS Buffer Zone submission December 2011
- 12.9 The Fountains Abbey and Studley Royal World Heritage Site Management plan 2015-2021.
- 12.10 141020 -HBC Land Drainage reply to Pre-application enquiry
- 12.11 GPA Note 2 'Managing Significance in Decision-Taking in the Historic Environment
- 12.12 Biodiversity 2020 pages extracts 12-13, 18 & 26-27
- 12.13 ODPM Circular 06/2005 Biodiversity and Geological Conservation-Statutory Obligations and their impacts within the Planning System
- 12.14 Harrogate Biodiversity Action Plan Adopted December 2012
- 12.15 HBC LCA 2004
- 12.16 Lawton Review 2010
- 12.17 LI Photography Advice Note 01-11
- 12.18 NCA - 30 Southern Magnesium Limestone -Natural England
- 12.19 NT - Heritage Assets within Buffer zone
- 12.20 Rotary Walk leaflet (to follow in separate email).
- 12.21 Letter to inspector from council 19 Jun 14
- 12.22 Letter to inspector from council 27 May 14
- 12.23 Site Allocations letter to council from inspector 29 Apr 14
- 12.24 Site Allocations letter to council from inspector 30 May 14
- 12.25 Constraints Plan
- 12.26 CIHT - Planning for Walking (April 2015)
- 12.27 Extract from CIHT Cycle Friendly Infrastructure
- 12.28 How Hill Arch Survey 2007
- 12.29 M Newman Wonder of the North extracts
- 12.30 WHS RPG How Hill listings
- 12.31 WA - AQ Assessment -August 2017
- 12.32 Environmental Protection UK/Institute of Air Quality Management guidance, Land-Use Planning & Development Control: Planning for Air Quality
- 12.33 HBC Air Quality Action Plan 2013
- 12.34 Emissions-of-Nitrogen-Oxides-from-Modern-Diesel-Vehicles
- 12.35 HBC'S position on housing and the local plan - Harrogate Informer
- 12.36 Mackershaw Plantation Felling Licence



# Ministry of Housing, Communities & Local Government

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## **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.