



Department for Levelling Up,  
Housing & Communities

Stuart Natkus  
Barton Willmore  
14 King Street  
Leeds  
LS1 2HL

Our ref: APP/C2741/W/21/3282598  
Your ref: 21/00305/OUTM

17 October 2023

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY BARRATT DAVID WILSON HOMES  
LAND TO THE EAST OF NEW LANE, HUNTINGTON, YORK, YO32 9NA  
APPLICATION REF: 21/00305/OUTM**

*This decision was made by the Parliamentary Under-Secretary of State for Local Government and Building Safety, Lee Rowley MP, on behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of Siobhan Watson BA(Hons) MCD MRTPI, who held a public local inquiry between 11-19 January 2022 into your client's appeal against the failure of City of York Council to determine your client's planning application for outline planning permission with all matters reserved except access for circa 300 residential dwellings, associated landscaping, public open space, and the formation of two new vehicle accesses off New Lane, York, in accordance with application Ref. 21/00305/OUTM, dated 29 January 2021.
2. On 10 January 2022, 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 (TCPA) 1990.

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

3. The Inspector recommended that the appeal be allowed and planning permission be granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to that report.

**Environmental Statement**

5. The Secretary of State has concluded that the development does not require an Environmental Impact Assessment (IR6).

Department for Levelling Up, Housing & Communities      Email: [PCC@levellingup.gov.uk](mailto:PCC@levellingup.gov.uk)  
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## **Matters arising since the close of the Inquiry**

6. On 27 June 2022 the Inspector provided the Secretary of State with an addendum report (AR1), advising the Secretary of State on the Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended). This is attached.
7. On 30 June 2022 the Inspector provided the Secretary of State with a second addendum report (AR2), advising the Secretary of State on consultation with Natural England (NE). This is attached.
8. On 13 September 2022, the Secretary of State wrote to NE and the main parties to afford them an opportunity to comment on AR1, which considers the Habitats Regulations Assessment (HRA) implications of the proposal on the Strensall Common Special Area of Conservation (SAC). A list of representations received and further circulations of material is set out at Annex A below. The Secretary of State's conclusions on habitats matters are set out at paragraphs 28-43 below.
9. These representations have all been taken into account by the Secretary of State in reaching this decision. A list of correspondence is at Annex A and copies may be obtained on request to the email address at the foot of the first page of this letter. The Secretary of State is satisfied 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**

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the Huntington Neighbourhood Plan 2021 (HNP) and the saved policies of the otherwise revoked Yorkshire and Humber Regional Spatial Strategy (RSS) 2008. The Secretary of State considers that relevant development plan policies include those set out at IR16.
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). For the reasons given at IR24, the Secretary of State agrees that the weight that can be afforded to the Draft Local Plan 2005 (2005 dLP) is very limited. He further agrees that the policies that are of most relevance to this case are those listed at IR24.
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

## *Emerging plan*

14. The emerging plan (eLP) comprises the emerging City of York Local Plan. The eLP was submitted for examination in May 2018. Examination of the Plan is ongoing. The

Secretary of State considers that the emerging policies of most relevance to this case include the emerging policies identified at IR23.

15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State notes that the Council has submitted the results of its consultation on Main Modifications to the Plan Inspector in June 2023 but the Inspector's Report has not yet been issued. At IR296-301 the Inspector concluded that the emerging plan should carry limited weight. Given the stage the plan has reached, and that there is still uncertainty about the detailed outcomes of the Examination process, the Secretary of State considers that this is still the appropriate weight to be attributed to the eLP.

## **Main issues**

### ***Green Belt***

16. For the reasons given at IR292-295, the Secretary of State agrees with the Inspector at IR295 that case law in the form of the *Wedgewood* case establishes the procedure to follow when determining whether a site is within the Green Belt. The Court set out the following approach to be adopted in such situations:
- a) The RSS 2008, as a high level strategic document, establishes that, in principle, and as a matter of policy, that there is a Green Belt within the 'doughnut ring';
  - b) That policy must be implemented by the decision-maker. But the policy does not state that all land that is, as a high level policy matter, within the inner and outer boundaries of the doughnut, is Green Belt land;
  - c) Where there is no defining Local Development Plan that specifies what is and what is not within the Green Belt, the decision-maker must apply the RSS rationally in order to determine what land within the 'doughnut ring' is and is not to be treated as Green Belt land;
  - d) In doing so, the decision-maker may have regard to the 2005 dLP because the Local Planning Authority has previously taken a policy step to take it into account for development management purposes;
  - e) The decision-maker may take into account the eLP, provided that due regard is had to paragraph 48 of the Framework; and
  - f) The decision-maker may and should take into account site-specific features that may tend to treating the site as Green Belt or not.
17. As set out at paragraph 15 above, the Secretary of State has found that the eLP carries limited weight. For the reasons given at IR302-303, he agrees with the Inspector that the Green Belt boundary in the 2005 dLP carries very little weight (IR302) and the proposed Local Plan allocation in 2014 carries very little weight (IR303).
18. The Secretary of State has gone on to consider site-specific features that may tend to treating the site as Green Belt or not, by reference to the fundamental aim of Green Belt policy (set out in paragraph 137 of the Framework) and the Green Belt purposes (set out in paragraph 138 of the Framework). For the reasons given at IR305-321 he agrees with

the Inspector at IR321 regarding Green Belt purpose four that the site does not have a function to preserve the setting and special character of York as a historic city whether assessed against the historic core or when looked at against the whole of the city.

19. The Secretary of State is in agreement for the reasons given at IR322-324 that the site has limited potential for sprawl within it and no reasonable risk of sprawl across the open countryside. He therefore agrees with the Inspector's conclusions regarding Green Belt purpose one that it is not necessary to keep the site permanently open to check the unrestricted sprawl of the built-up area.
20. For the reasons given at IR325-327 the Secretary of State agrees that any encroachment into the countryside on this site would be contained by the permanent boundaries and the permanent development beyond it (IR327). He agrees overall with the Inspector's conclusions regarding Green Belt purpose three that the site does not need to be kept permanently open to safeguard the countryside from encroachment (IR327).
21. For the reasons given at IR328 and at paragraphs 18-20 above, the Secretary of State agrees that the site does not serve a Green Belt purpose and in accordance with Paragraph 137 of the Framework it is not necessary to keep the site permanently open to prevent urban sprawl. He therefore agrees that there is no conflict with HNP Policy H14. For the reasons given above, the Secretary of State agrees with the Inspector at IR388 that the site is not within the Green Belt.
22. For the avoidance of doubt, he further agrees with the Inspector's conclusions at IR389-392 that were the site in the Green Belt, there would be very special circumstances which would justify the development.

### ***Landscape Character***

23. For the reasons given at IR329-331 the Secretary of State agrees with the Inspector that the proposed development would change the site's appearance from a rural character to a suburban one. He further agrees for the reasons given at IR331 that taking into consideration the residential and commercial buildings to the three sides of the site that the proposed development would not appear out of context with its surroundings.
24. Overall, the Secretary of State agrees with the Inspector's conclusions at IR332 and IR386 that the visual harm would be very localised and not long range but that there would be some harm to the landscape character of the area, and some conflict with Policy H4 of the HNP which seeks to respect the character of the local environment. He attributes this harm moderate weight in the planning balance.

### ***Heritage***

25. The Secretary of State agrees with the Inspector's assessment of the Roman Camp Scheduled Ancient Monument (SAM) at IR359-367 and agrees that the proposal would not harm the significance of the heritage asset (IR367). He further agrees (IR367 and IR383) that the provision of public access and a greater understanding of the significance of the SAM would be a public benefit of the scheme. He attributes limited weight to this heritage benefit.
26. For the reasons given at IR368-370 the Secretary of State agrees with the Inspector that the development of the fields would erode the appreciation of the historic link between the Grade II listed Huntington Grange and the agricultural land (IR370), and would cause less than substantial harm, at the lower end of the spectrum, to the significance of the

building. He further agrees that in this respect there is conflict with Policy H5 of the HNP (IR370). The Secretary of State agrees with the Inspector's at IR384 that the less than substantial harm should carry considerable importance and weight.

27. For the reasons given at IR371 the Secretary of State agrees with the Inspector that the development proposed would not harm the special interest or heritage significance of York Minster.

### **Habitats**

28. The site is within the Zone of Influence (Zoi) of Strensall Common Special Area of Conservation (SAC) (IR334). The Secretary of State has had regard to the Inspector's analysis at IR334-350, but notes the objections of NE which considers that there is insufficient evidence to support the mitigation proposed (IR338).

29. The Conservation of Habitats and Species Regulations 2017 (as amended) require that where a plan or project is likely to have a significant effect on a SAC, either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the SAC, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the SAC in view of the site's conservation objectives. The first step therefore is to determine whether a significant effect is likely, and if it is to then carry out an Appropriate Assessment.

30. Strensall Common SAC is located some 4km from the appeal site as the crow flies and is separated from the site by housing, retail and farming land. Its qualifying features are identified as extensive areas of wet and dry heath. The conservation objectives are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the favourable conservation status of its qualifying features. This is by maintaining or restoring the extent and distribution of the qualifying natural habitats, the structure and function (including typical species) of the qualifying natural habitats, and the supporting processes on which the qualifying natural habitats rely.

31. Strensall Common is currently used for training by the Ministry of Defence (MoD). Public access via Public Rights of Ways and Permissive Paths is possible when training is not taking place and the principal public use of Strensall Common is for dog walking. The Inspector observes that the main issue currently affecting the Strensall Common habitats is a lack of management and hence scrub encroachment, although this is being controlled through management agreements with the MoD and its tenants.

32. The Secretary of State notes that the increase in visitors to Strensall Common from the appeal site would be very minor and not significant in isolation. However, if all other allocated and proposed sites in the vicinity were developed along with the appeal proposal, there could be a significant in-combination effect on Strensall Common SAC. In these circumstances where a likely significant effect cannot be ruled out an Appropriate Assessment is required.

33. The Appellant submitted a Shadow HRA report dated 12 April 2022. This includes proposals for Public Open Greenspace (POS) which seek to retain dogwalkers from the appeal site and to minimise trips off-site for this purpose. The POS would be secured by condition 3 (conditions are set out in Annex B of this letter) and its precise details would be determined under condition 17. Condition 18 would secure a Landscape/Ecological

Management Plan for the site. The long-term management and maintenance of the POS would be secured by a planning obligation in the s.106 agreement which would have to be agreed by the Council.

34. The response from NE dated 1 June 2022 was that there is insufficient evidence to support the mitigation proposed. NE said that it is important that the mitigation is of sufficient scale to be viable and effective, noting that the median route length of visitors within Strensall Common is 2.5km. NE does not explicitly say that the proposed POS as part of the development is too small but expressed concern in relation to potential restrictions on the POS due to the fact that it contains a SAM.
35. NE also said that consideration should be given to whether links and enhancement can be provided from the site to the wider local Public Rights of Way and green infrastructure networks in order to compliment the onsite POS provision. The Pedestrian Access and Movement Plan submitted as part of the application indicates that formal pedestrian and cycle links would be provided through the site where currently none exist. These would provide links between the housing to the north, the adjoining commercial/retail development and New Lane. They would also allow existing residents in the wider area to use the POS proposed within the site.
36. In the light of these considerations the Secretary of State sought an addendum report from the Inspector which was provided on 27 June 2022, and circulated to the parties for their views. NE commented on 10 October that:
  - the HRA should be updated with a more detailed justification for the scale and layout of the mitigation measures proposed, and that an outline management plan or similar document should be provided setting out how the mitigation can be delivered. This is in order to reduce the risk that the proposed mitigation may prove insufficient or unviable at reserved matters or condition discharge stage and provide certainty that adverse effects on integrity can be ruled out.
  - insufficient justification for the scale and nature of the POS is provided in the application and NE therefore recommended the creation of Suitable Alternative Natural Greenspace (SANG) to discourage an increase in visitor pressure on the SAC. The effectiveness of SANG as mitigation will depend upon its scale and design and NE pointed to the Thames Basin Heaths SPA Avoidance Strategy (2019) as a good practice example. This used a metric for a minimum of 8ha of SANG per 1000 new population.
37. The appellant duly provided an updated Shadow HRA report on 21 October 2022, which included the proposal to create a SANG of 2.61ha within the defined area of POS. This would be planted up with a range of semi natural habitats, including wildflower grassland, native hedgerows, native scrub/tree planting and wetland. These would be linked together with a circular walking route of 1.5km (Shadow HRA paragraph 45). Fencing around parts of the greenspace would be installed, together with litter bins and dog waste bins at regular intervals along the route (Shadow HRA paragraph 46).
38. NE considered in a response dated 24 November 2022 that this updated Shadow HRA did not address its concerns about the projected impact of the residential development on

Strensall Common, the size and actual operation of the proposed SANG nor its linkage with the wider green infrastructure network.

39. The appellant rebutted these criticisms in letters dated 4 January 2023, 14 February 2023, and 17 March 2023, whilst the final position of NE in its letters of 25 January 2023 and 6 March 2023 is that a likely significant effect from recreational disturbance impacts on the Strensall Common SAC cannot be ruled out for the project alone, and that having considered the Shadow HRA and proposed mitigation measures it is not possible to ascertain that the proposal will not result in adverse effects on integrity of the Strensall Common SAC.

40. Having considered the material submitted by the appellant and NE, the Secretary of State's conclusions on habitats matters are as follows:

- The current recreational use of the Strensall Common SAC is principally for dog exercise by residents from the surrounding area. Public access is however restricted by its use by the MoD as a training area which means it can be closed. It is therefore important to recognise that access to Strensall Common is restricted which in turn limits the effects of visitor pressures on its conservation features.
- However, a likely significant effect from recreational disturbance impacts on the Strensall Common SAC cannot be ruled out for the project alone, nor in combination with other plans or projects, and an Appropriate Assessment is therefore required. The Secretary of State adopts the Shadow HRA dated 21 October 2022 as his Appropriate Assessment in his role as the competent authority on this matter. This is attached at Annex C.
- In terms of mitigating possible adverse impacts on Strensall Common SAC, a SANG is proposed using part of the POS provision on the appeal site, which is to be secured by a condition and a s.106 agreement.
- NE's concerns about the utility of the proposed SANG are based on the design criteria set out in the Thames Basins Heaths SPA. Whilst these are a starting point, they are not mandatory nor is it appropriate to apply these universally to every site. In this case it is not physically possible to create a SANG meeting all these design criteria. The Secretary of State considers that in the particular circumstances of this case, the proposed SANG is sufficient mitigation.
- In addition to the proposed SANG on the appeal site, open space is also available at existing POS at Monk Stray, and the use of another SANG at Monks Cross proposed as part of another residential development. These will contribute to mitigating further any impacts on the Strensall Common SAC arising from the appeal site.
- The Strensall Common SAC is about 4 km from the appeal site as the crow flies, but as it is only accessible by car, the travel distance to it is much longer, and it has limited car parking capacity. The Secretary of State does not consider it likely that residents from the appeal site would choose to drive to

Strenshall Common to exercise their dogs when a range of much closer alternative open space sites are available within walking distance.

- The Secretary of State concludes that he has sufficient information to reach a decision about the effects of the proposed development on habitats. He concludes that with the proposed mitigation measures the proposal will not result in adverse effects on the integrity of the Strenshall Common SAC. As such he concludes that planning permission could be granted for the proposed development in full compliance with Regulation 63 of The Conservation of Habitats and Species Regulations 2017.

41. The Secretary of State has had regard to AR2. He agrees with the Inspector that under section 281(6) of the Wildlife and Countryside Act 1981, if he is intending to give consent for development that would be likely to damage the features for which the SSSI (in this case Strenshall Common SAC) has been designated he must notify NE prior to reaching the decision. NE must be allowed 28 days in which to comment. If permission is granted against NE's advice, a condition must be attached that prohibits commencement of development from 21 days of the date of that decision. This will allow NE to consider any further action. NE must be sent a copy of the decision.
42. The Secretary of State's conclusion as set out above is that with the proposed mitigation, allowing the development will not be likely to result in adverse effects on integrity of the Strenshall Common SAC. It is therefore his view that section 281(6) of the Wildlife and Countryside Act 1981 is not triggered in this case. In any event, the Secretary of State considers that his references back to the parties of 13 September 2022, 13 October 2022, 27 October 2022, 8 December 2022, 7 February 2023 and 10 March 2023 have given NE sufficient opportunity to comment on the proposal, such that he does not consider it necessary to provide further notification.
43. The Secretary of State nonetheless acknowledges that granting planning permission is contrary to the advice of NE and in these circumstances therefore attaches a condition to the planning permission (condition 29) which states that no development shall commence until 21 days of the date of this decision. He also considers it is necessary to secure the measures which are to be included in the proposed SANG, in order to ensure that it provides appropriate mitigation. The appellant has indicated at paragraphs 48 and 58 of the Shadow HRA that they are content for a condition to be added to require the provision of a SANG Management Plan. The Secretary of State has therefore attached condition 30.

#### *Housing and affordable housing*

44. The Inspector sets out at IR378 that the Council cannot demonstrate a 5-year supply of housing land, as required by the Framework, and that the latest Housing Delivery Test figure was 65%. In the light of the provisions of paragraph 11(d) and footnote 8 of the Framework, the presumption in favour of sustainable development is therefore triggered. For the reasons given at IR378-82, the Secretary of State agrees with the Inspector that the provision of housing is a very significant benefit of the scheme (IR378). He considers that significant weight should be attached to the benefits of housing delivery. He further agrees that the provision of 30% affordable housing, of a tenure and size to be agreed, would also be a very significant benefit of the scheme (IR380). He considers that significant weight should be attributed to the provision of affordable housing. Overall, the



Secretary of State agrees with the Inspector at IR382 that in respect of the provision of housing the scheme would accord with Policies H1, H2 and H3 of the HNP.

#### *Open Space*

45. For the reasons given at IR333, the Secretary of State agrees with the Inspector that there would not be an unacceptable loss of recreational open space.

#### *Ecology*

46. For the reasons given at IR351-358 the Secretary of State agrees with the Inspector's analysis in relation to the ecology of the site itself. For the reasons given, the Secretary of State agrees with the Inspector at IR357 that avoidance of unnecessary impacts have been designed into the outline proposal and that whilst the site layout is currently illustrative, the proposed development is expected to be able to deliver a biodiversity net gain. The Secretary of State agrees with the Inspector that subject to an Ecological Management Plan and a Construction and Environmental Management Plan secured by planning conditions (IR357), he finds no overall harm to biodiversity and no conflict with Policy H17 of the HNP (IR358).

#### *Flooding*

47. For the reasons given at IR372, the Secretary of State agrees with the Inspector's conclusions in relation to flooding.

#### *Traffic*

48. The Secretary of State notes that whilst highways was a putative reason for refusal, highways mitigation has since been agreed between the main parties and therefore there is no longer any objection from the Council in respect of highway safety (IR373). For the reasons given at IR373, the Secretary of State agrees with the Inspector that the evidence indicates that there would be no harm in respect of highway or pedestrian safety.

#### *Schools and Doctors' Surgeries*

49. For the reasons given at IR374 whilst the Secretary of State understands the residents' genuine concerns regarding the capacity of schools and doctors' surgeries, he agrees with the Inspector that there is no substantive evidence that they would be adversely affected by the additional numbers of residents as a result of the proposal. He agrees with the Inspector's analysis and conclusions at IR374 in respect of the matter of schools and doctors' surgeries.

#### *Pollution*

50. For the reasons given at IR375-376 the Secretary of State agrees with the Inspector's conclusions at IR377 that the proposed development would not be harmful in respect of noise or air pollution.

#### **Planning conditions**

51. The Secretary of State has given consideration to the Inspector's analysis at IR284-285, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 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 56 of the Framework and that the conditions set out at Annex B, which include the additional conditions referred to at paragraph 43 above, should form part of his decision.

### **Planning obligations**

52. Having had regard to the Inspector's analysis at IR286-291, the planning obligation dated 13 January 2022 and Deed of Variation dated 19 January 2022, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy (CIL) Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR291 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework.

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

53. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with HNP Policies H4 and H5 relating to landscape character and heritage, and is 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 line with the development plan.

54. As the Council is unable to demonstrate a 5-year housing land supply and the most recent housing delivery test gives a figure of 65%, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

55. Weighing in favour of the proposal are the delivery of housing and affordable housing which each attract significant weight, and a heritage benefit associated with the SAM which attracts limited weight.

56. Weighing against the proposal are the harm to the landscape character of the area attracting moderate weight and the less than substantial harm to the setting of the Huntingdon Grange which is afforded considerable importance and weight.

57. The Secretary of State has considered whether the identified less than substantial harm to the significance of Huntingdon Grange is outweighed by the public benefits of the proposal. Overall the Secretary of State agrees with the Inspector at IR388 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified less than substantial harm to the significance of Huntingdon Grange. He considers that the balancing exercise under paragraph 202 of the Framework is therefore favourable to the proposal.

58. The Secretary of State considers that there are no protective policies which provide a clear reason for refusing the development proposed. He further considers that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development therefore applies.

59. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that despite the conflict with the development plan, the material considerations in this case indicate that permission should be granted.

60. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted.

### **Formal decision**

61. 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 B of this decision letter for circa 300 residential dwellings, associated landscaping, public open space, and the formation of two new vehicle accesses off New Lane, York, in accordance with application Ref. 21/00305/OUTM, dated 29 January 2021.

62. 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 TCPA 1990.

### **Right to challenge the decision**

63. 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 TCPA 1990.

64. 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.

65. A copy of this letter has been sent to the City of York Council and Huntington Parish Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Phil Barber*

Decision officer

*This decision was made by the Parliamentary Under-Secretary of State for Local Government and Building Safety, Lee Rowley MP, on behalf of the Secretary of State, and signed on his behalf*

## Annex A Schedule of representations

### General representations

Party	Date received
K Hollinrake MP	7 March 2023
R Brown	14 May 2023
K Orrell, C Runciman, C Cullwick	11 July 2023
O Sherwood	10 July 2023

### Representations received in response to the Secretary of State's reference back letter of 13 September 2022

Party	Date received
York City Council	10 October 2022
Natural England	10 October 2022
Barton Willmore	21 October 2022

### Representations received in response to the Secretary of State's recirculation letter of 27 October 2023

Party	Date received
Natural England	24 November 2022

### Representations received in response to the Secretary of State's recirculation letter of 8 December 2022

Party	Date received
York City Council	3 January 2023
Barton Willmore	5 January 2023
Huntington Parish Council	5 January 2023

### Representations received in response to the Secretary of State's recirculation letter of 10 January 2023

Party	Date received
Natural England	25 January 2023
Barton Willmore	14 February 2023
Barton Willmore	15 February 2023

### Representations received in response to the Secretary of State's recirculation letter of 20 February 2023

Party	Date received
Natural England	6 March 2023
Natural England	7 March 2023
York City Council	13 March 2023
Barton Willmore	17 March 2023 (misdated as 4 January 2023)

## **Annex B List of conditions**

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority no later than the expiration of three years beginning with the date of the grant of this outline permission; and the development to which this permission relates must be begun no later than the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in complete accordance with the following plans:-
  - 16 5023 – 02A - Location Plan
  - DPL SK004 - Site access plan
  - 16 5023 – 07J - open space
  - 16 5023 – 08I - development areas & heights
- 4) The number of dwellings on the site shall not exceed 300 at any time.
- 5) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the construction period. The plan shall include details of:
  - a dilapidation survey of the highways adjoining the site the method and scope to be agreed with the Local Planning Authority.
  - Means of site access control and the measures to prevent construction/delivery vehicles parking/blocking the highway.
  - Measures to keep the highway clean - to include wheel-washing facilities for the cleaning of vehicles leaving the site, including location and type.
  - Dust - A site-specific risk assessment of dust impacts in line with the guidance provided by the Institute of Air Quality Management and a package of mitigation measures commensurate with the risk identified in the assessment.
  - Air Quality - The air quality impacts associated with construction vehicles and non-road mobile machinery and the proposed mitigation measures, commensurate with the identified risk.
  - Noise - Details on maximum permitted noise levels; noise mitigation measures; and noise monitoring and compliance with relevant standards
  - Vibration - Details of any activities that may result in vibration, including piling. Details shall include maximum vibration levels and any required mitigation and monitoring.
  - Lighting - Details of artificial lighting and mitigation measures, including hours of operation of lighting, and the location and angling of lighting.
  - Complaints procedure - to detail how a contact number will be advertised to the public, investigation procedure when a complaint is received, any monitoring to be carried out, and what will happen in the event that the complaint is not resolved. Written records of any complaints received and actions taken shall be kept and details forwarded to the Local Planning Authority every month throughout the period of construction.

- 6) Construction, loading and unloading on the site shall not take place outside of the hours of 8:00 to 18:00 Monday to Friday and 9:00 to 13:00 Saturday. There shall be no construction, loading and unloading at any time on Sundays and public holidays.
- 7) No development shall take place (including ground works and vegetation removal) until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction shall be undertaken in complete accordance with the approved plan. The plan shall include the following:
- Risk assessment of potentially damaging construction activities.
  - Identification of 'biodiversity protection zones'.
  - Measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements).
  - The location and timing of works to avoid harm to biodiversity features.
  - The times during construction when specialist ecologists will be present on site to oversee works.
  - Details of responsible persons and lines of communication.
  - The roles and responsibilities on site of an ecological clerk of works or a similarly competent person.
  - Use of protective fences, exclusion barriers and warning signs.
- 8) No development shall take place (including the importing of materials and any excavations) until a method statement regarding protection measures for the trees shown to be retained on the approved Open Space Parameter Plan shall be submitted to and approved in writing by the Local Planning Authority. All works on site shall be undertaken in accordance with the approved method statement. For the avoidance of doubt this condition excludes works necessary for routine tree maintenance, pruning and crowning works.
- 9) The method statement referred to in Condition 8 shall include details and locations of protective fencing and construction details where any change in surface material or installation of services is proposed within the canopy spread and likely rooting zone of a tree. No trenches, pipe runs for services or drains shall be sited within the root protection area of the trees on the site which are to be retained without the prior approval in writing of the local planning authority. The protection measures shall be implemented and adhered to throughout the construction period.
- 10) No development shall take place until a Written Scheme of Investigation of archaeological remains shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions and:
- The programme and methodology of site investigation and recording;
  - The programme for post investigation assessment;
  - The provision to be made for analysis of the site investigation and recording;
  - The provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - The provision to be made for archive deposition of the analysis and records of the site investigation;

- The nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 11) No development shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the prior written approval of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority before the commencement of development. The report and findings shall include:
- A survey of the extent, scale and nature of contamination, including contamination by ground gas;
  - An assessment of the potential risks to, human health; property, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; ecological systems; and archaeological sites and ancient monuments;
  - An appraisal of remedial options and proposal of the preferred options.
- 12) No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, the natural environment has been submitted to and agreed in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 13) No development shall place until the remediation scheme submitted in accordance with Condition 12 is carried out in accordance with the approved details. The Local Planning authority shall be given two weeks written notification of commencement of the remediation works. Following completion of the remediation works a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced and approved in writing by the Local Planning Authority before any dwelling is constructed.
- 14) In the event that contamination not previously identified, is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation, risk assessment and remediation must be undertaken in accordance with Conditions 11-13 above.
- 15) No works shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- The means by which the surface water discharge rate shall be restricted to a maximum rate of 3.5 litres per second.
  - The means by which the surface water attenuation up to the 1 in 100 year event with a 30% climate change allowance shall be achieved.

- Full modelling calculations for the above.
- A scheme of future management and maintenance.

The approved scheme shall subsequently be implemented prior to occupation of the first dwelling.

- 16) Prior to commencement of construction, a phasing plan detailing the installation of the road network, pedestrian and cycle access points (as illustrated on indicative drawing 16 5023 - 06 – Rev E Pedestrian Access and Movement) and the open space and green infrastructure (as illustrated on drawing 16 5023-07 Rev C – Open Space) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing plan.
- 17) Prior to commencement of construction, details of the provision of public amenity space shall be submitted to the Local Planning Authority and approved in writing. The development shall be carried out in accordance with the approved phasing plan pursuant to condition 16. The details shall include a masterplan showing areas for natural/semi-natural amenity space, parks/gardens and a children’s play area on-site including equipment. The details shall evidence biodiversity net gain on-site using the DEFRA metric. The development shall be completed in accordance with the approved details in accordance with the phasing plan.
- 18) A Landscape/Ecological Management Plan shall be submitted to and approved in writing by the Local Planning Authority with any reserved matters application. The content of the plan shall include the following:
- Description and evaluation of features to be managed;
  - Ecological trends and constraints on site that might influence management;
  - Aims and objectives of management;
  - Appropriate management options for achieving aims and objectives;
  - Prescriptions for management actions;
  - Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
  - Details of the body or organisation responsible for implementation of the plan;
  - Ongoing monitoring and remedial measures.

The plan shall also set out, where the results from monitoring show that conservation aims and objectives of the plan are not being met, how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The development shall be carried out in accordance with the approved details.

- 19) Prior to commencement of construction of the development, a strategy for the provision of active and passive electric vehicle charging facilities shall be submitted to, and approved in writing, by the Local Planning Authority. The strategy shall include the locations, specification and timescales for the installation of the facilities. The charging facilities shall be installed in accordance with the approved details and maintained and retained thereafter.
- 20) Prior to the commencement of the construction of the development, a scheme to accommodate at least one dedicated car parking space for a car club shall be submitted



to and approved in writing by the Local Planning Authority. The scheme shall identify the location of dedicated car share space(s) and the trigger(s) for installation. The development shall be carried out in accordance with the approved details. The car club space(s) shall be retained at all times for the parking of car club vehicles.

- 21) No dwelling shall be occupied until details of the junction between the internal access roads and the New Lane have been approved in writing by the Local Planning Authority and constructed in accordance with the approved details. A Stage 3 Road Safety Audit in accordance with guidance set out in the Standards for Highways (GG119 Road Safety Audit) shall be carried out and shall be submitted to the Local Planning Authority prior to first use of the access roads by occupiers of the dwellings.
- 22) No dwelling shall be occupied until the following highway works (which include works associated with any Traffic Regulation Order required as a result of the development, signing, lighting, drainage and other related works) have been carried out in accordance with the approved plans:
- Works for the proposed relocation of the two bus stops on New Lane as shown on the Site Access Plan (DPL SK004) (required due to the proposed access road locations), to include real time information displays (which require approval under S278 of the Highways Act).
  - Pedestrian crossings on New Lane as shown indicatively drawing 16 5023 - 06 Rev E - Pedestrian Access and Movement.
- 23) Prior to the first occupation of each dwelling hereby approved details of cycle parking facilities for the relevant dwelling shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall be covered and secure and provide for at least one space per bedroom. The cycle parking shall be carried out in accordance with the approved details and prior to the first occupation of the dwelling to which it relates.
- 24) Each dwelling hereby permitted shall achieve a reduction in carbon emissions of at least 28% compared to the target emission rate as required under Part L of the Building Regulations 2013, or compliance with any approved Part L document dated 2021 or thereafter. Prior to the first occupation of each dwelling details of the measures undertaken to secure compliance with this condition shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 25) Each dwelling shall be plumbed so as to not exceed a target maximum water consumption rate of 110 litres per person per day (calculated as per Part G of the Building Regulations) and shall be retained that way thereafter.
- 26) Before the first occupation of the development hereby permitted a Travel Plan shall be submitted to the Local Planning Authority and approved in writing. The plan shall include details of the Travel Plan co-ordinator and specifically detail measures to promote school travel by sustainable measures and contain mode split targets which have been approved by the Local Planning Authority. The plan shall be implemented in accordance with the approved details within 6 months of the occupation of the first dwelling and results of annual travel surveys shall be submitted annually to the Local Planning Authority.

27) The dwellings hereby approved shall be constructed so to achieve noise levels of:

- 30 dB LAeq (8 hour) and 45dB LAmax no more than 10 times per night inside bedrooms at night (23:00 - 07:00 hrs).
- 35 dB LAeq (16hour) in all other habitable rooms during the day (07:00 - 23:00 hrs).

If internal noise levels are achieved with all windows shut then other means of ventilation shall be provided. The noise mitigation measures shall remain in place thereafter.

28) The permissive routes and public open space hereby approved shall be kept open, free from any obstruction and in a safe condition for use by members of the public at all times unless any temporary closure is reasonably required for essential maintenance.

29) No development shall commence until 21 days of the date of this decision.

30) Prior to commencement of construction, a Suitable Alternative Natural Greenspace (SANG) Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The content of the plan must reflect the Guidelines for Creation of Suitable Alternative Natural Greenspace (SANG) – August 2021 produced by Natural England and include the following in particular:

- Precise definition of the area of the SANG and a description and evaluation of its proposed features;
- Overall establishment of the SANG to provide for a semi-natural landscape;
- How the proposals for the SANG relate to the proposals for the Public Open Space, the subject of Conditions 17 and 18;
- Definition of a footpath network designed to particularly attract dog walkers;
- Proposals for detailed supporting infrastructure including dog waste bins, information boards and signage;
- Details of the body or organisation responsible for implementation of the plan and continuing maintenance of the SANG.

The approved details of the SANG Management Plan shall be implemented by the first occupation of the development.

**Annex C: Shadow Habitat Regulations Assessment (HRA), adopted as the Secretary of State's Appropriate Assessment**



**Shadow HRA - Strensall Common SAC**  
Assessment of Likely Significant Effects on a European Site

**Land on The East Side of New Lane**

Barratt David Wilson Homes

Report Reference: ER-4516-02-E

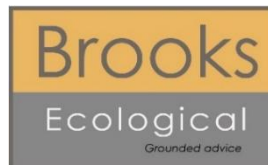
21/10/2022

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Report Title:	HRA Screening Report Land on The East Side of New Lane
Report Reference:	ER-4516-02-E
Written by:	Christopher Shaw BSc (Hons) MCIEEM Senior Ecologist
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Approved for Issue:	Rob Weston BSc MSc MCIEEM Technical Director
Date:	Written 09/12/2020 Amended 18/01/21 Amended 20/01/2021 Amended 01/03/2022 Amended 12/04/2022 Amended 21/10/2022

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# Introduction

1. Brooks Ecological Ltd. were commissioned by Barratt David Wilson Homes to carry out a Habitat Regulation Assessment (HRA) Screening report for their proposed development site known as Land on the east side of New Lane in Huntington, York (see Figure 1), in order to assess whether the proposed activities associated with the Site's development are likely, under the Habitat Regulations, to have a significant effect on Strensall Common SAC or its qualifying interests.

## The Need for this Assessment

2. The Local Planning Authority now request a HRA Screening report for any development that falls within a 5.5km zone of influence around Strensall Common SAC. The Site is situated approximately 3.9km – 4.3km southwest of Strensall Common SAC (see Figure 2) and thus falls within its zone of influence.

**Figure 2** Relationship between the Site & Strensall Common SAC (5.5km radii shown).



**Figure 1** The Site boundary - red line



## Principles of Habitat Regulation Assessments

The Habitat Regulations Directive (92/43/EEC) established a network of Natura 2000 sites, with the goal of protecting sites of exceptional ecological importance. These include Special Protection Areas (SPA's), Special Areas of Conservation (SAC) and (according to national planning policy) Ramsar sites.

The Habitat Regulations Directive (92/43/EEC) is transposed into UK law as the Conservation of Habitats and Species Regulations (Amendment) (EU Exit) Regulation 2019. Following the UK's exit from the EU, SAC's and SPA's in the UK no longer form part of the EU's Natura 2000 ecological network and instead fall within the new National Site Network (NSN).

Under the Habitats Regulations the granting of approval for developments is restricted if they are likely to have a significant effect on an SAC, SPA or Ramsar site. Guidance on undertaking assessment of plans or projects that may impact upon designated European sites recommends a staged approach. These stages are:

**1. Screening-** to check if the proposal is likely to have a significant effect on the site's conservation objectives. If not, you do not need to go through the appropriate assessment or derogation stages.

**2. Appropriate assessment-** to assess the likely significant effects of the proposal in more detail and identify ways to avoid or minimise any effects.

**3. Derogation-** to consider if proposals that would have an adverse effect on a European site qualify for an exemption.

### Stage 1 – Screening

This stage is a simple assessment to check or screen if a proposal is (i) directly connected with or necessary for the conservation management of a European site, (ii) risks having a significant effect on a European site on its own or in combination with other proposals. This stage considers the effects of development in the absence of mitigation. Mitigation measures are only considered if the assessment progresses to Stage 2 – Appropriate Assessment.

#### Assess the likely significant effect

Stage 1 seeks to assess if the proposal could have a significant effect on a European site that could affect its conservation objectives. This should only consider the risk or possibility of a significant effect based on evidence, not hypothetical risks.

The following should be considered: (i) the area over which the proposed activity would take place, (ii) any overlaps or interaction with the protected features of a site in a direct or indirect way, and (iii) the effect of any essential parts of the proposal, such as its location, timing or design.

Only where the risk of the proposal having a significant effect can not be ruled out, does the assessment progress to Stage 2.

#### In combined effects:

It must be checked if this effect could combine with any other proposal planned or underway and affects the same site, that on its own also does not have a significant effect. If, in combination, the proposal could have a significant effect on the European site, the assessment will then progress to Stage 2.

To assess in combination effects, the following will be reviewed:

- applications for a new permission
- applications to change an existing permission
- granted permissions that have not begun or been completed
- granted permissions that need renewing
- plans that have been drafted but not yet adopted

A proposal, alone or in combination with other proposals, could cause a significant effect on a European site if there's:

- a reduction in the amount or quality of designated habitats or the habitats that support designated species
- a limit to the potential for restoring designated habitats in the future
- a significant disturbance to the designated species
- disruption to the natural processes that support the site's designated features
- only reduction or offset measures in place

If there's no likely significant effect on the site, either alone or in combination, then the assessment does not need to progress to Stage 2.

**Stage 2 – Appropriate Assessment (AA)**

Where there is a risk of a likely significant effect occurring, or there is not enough evidence to rule out a risk, then a more detailed and thorough assessment is required, which is appropriate for the nature and complexity of the proposals. The AA should:

- assess the likely significant effects of a proposal on the integrity of the site and its conservation objectives
- consider ways to avoid or reduce (mitigate) any potential for an 'adverse effect on the integrity of the site'

The AA appropriate assessment aims to demonstrate whether an adverse effect on the integrity of the site from the proposal can be ruled out or not. As part of the assessment, any mitigation measures that have been included as part of the proposal to remove or reduce potential adverse effects should be considered.

Test the Integrity of a European Site

The integrity of the site will be adversely affected if a proposal could, for example:

- destroy, damage or significantly change all or part of a designated habitat
- significantly disturb the population of a designated species, for example, its breeding birds or hibernating bats
- harm the site's ecological connectivity with the wider landscape, for example, harm a woodland that helps to support the designated species from a nearby European site
- harm the site's ecological function, or its ability to survive damage, and reduce its ability to support a designated species
- change the site's physical environment, for example, by changing the chemical makeup of its soil, increasing the risk of pollution or changing the site's hydrology
- restrict access to resources outside the site that are important to a designated species, for example, food sources or breeding grounds
- prevent or disrupt restoration work, or the potential for future restoration, if it undermines the site's conservation objectives

If mitigation measures are needed to avoid adverse effects, the Competent Authority should attach conditions or take other necessary steps to make sure the measures are carried out.



## Baseline Information - Summary

### Application Site Location

3. The Site is located along the eastern edge of Huntington, immediately west of Monks Cross. It encompasses a series of agricultural grassland fields, as shown previously in Figure 1 above.
4. Similar grassland fields are present to the south, whilst retail development is found to the east (Monks Cross) and residential development to the north and west (Huntington village).
5. The Site is located between 3.9km – 4.3km southwest of Strensall Common SAC, with housing, retail and farmland separating the two.

### Brief description of proposals

6. Proposals are for a residential development, with associated public open space (POS). This can be seen in the illustrative masterplan shown opposite.

#### Public Open Space Provision

7. A large area of POS will be incorporated into the proposals. This area will be fitted with a network of footpaths that are well connected to the residential development.

Figure 3 Illustrative masterplan



## Strensall Common SAC

### Description

8. Strensall Common is a 570ha site supporting extensive areas of wet and dry heath. The site is represented predominantly by *Erica tetralix* – *Sphagnum compactum* wet heath, although its extent has been reduced by drainage. It is a noted locality for marsh gentian *Gentiana pneumonanthe*, narrow buckler-fern *Dryopteris carthusiana* and the dark-bordered beauty moth *Epione vespertaria* as it is associated with creeping willow *Salix repens* on the wet heath. There is also a complex mosaic of wet heaths with *Erica tetralix* and dry heath elements. The *Calluna vulgaris* – *Deschampsia flexuosa* dry heath is noted for petty whin *Genista anglica* and bird's-foot.

### Qualifying Habitats

9. Annex I habitats that are a primary reason for selection of this site:
- 4010 Northern Atlantic wet heaths with *Erica tetralix*
  - 4030 European dry heaths

### Current threats

10. The site is used for training by the MOD, but this is not thought to compromise the interest of the site. The main issue currently affecting habitats is a lack of management and hence scrub encroachment; this is being controlled through management agreements with the MOD and their tenants.
11. Public access via PRow's and Permissive Paths is permitted when training is not taking place and is subject to an integrated management plan agreed between the MOD, NE and Yorkshire Wildlife Trust. The absence of open access limits the exposure of the interest features to effects associated with visitor pressure.

Figure 4 Strensall Common SAC



## Screening Stage: Test of Likely Significant Effect (TOLSE)

12. The following table provides Stage 1 of the shadow Habitats Regulations Assessment - the Test of Likely Significant Effects (TOLSE) for each of the NSN sites to be assessed – in this case Strensall Common SAC.

**Table 1** Screening Assessment

Sensitive Interest Feature:	Impact:	Assessment
Northern Atlantic wet heath & European dry heath	Direct physical loss or damage to habitat	The Site is well separated from Strensall Common SAC by at least 3.9km of farmland. Direct physical damage or loss of habitat will therefore not occur.  <u>Significant effect likely to occur: <b>No</b></u>
	Damage to habitats resulting from increased recreation pressure.	Strensall Common has limited Public Access, due to its use by the MOD; however, access is still permitted.  A visitor survey undertaken by Footprint Ecology (2019), identified the zone of influence around Strensall Common SAC to be 5.5km. Data collected suggests relatively low levels of use by members of the public, with dog walking being one of the main reasons for visiting. Some of the key issues at the site include disruption to the grazing as a result of dogs off leads and dog fouling. Dog walkers come from local villages and a marked or step increase in housing in those areas may result in increased recreation pressure. In the absence of mitigation, residential development within 5.5km poses a risk of impacting on Strensall Common.  <u>Significant effect likely to occur: <b>Potentially – Appropriate Assessment required</b></u>
	Contamination e.g. introduction of heavy metals, pesticides, nutrients, air and water pollution, introduction of non-native species etc	Strensall Common is over 3.9km from the Site entrance, where most traffic related air pollution would occur. Site is also too far away (over 200m) to be affected by any dust generated by the development. There are no watercourses linking the development site to Strensall Common which could transport contamination. Strensall Common is too far from the Site for invasive species to colonise it as a result of escapes of non-native species from landscape planting. Strensall Common is considered too far away for new residents to be likely to deliberately visit the site to release non-native species.  <u>Significant effect likely to occur: <b>No</b></u>
	Changes to Hydrology	There is no hydrological link between the Site and Strensall Common SAC. All drainage ditches on Site will eventually flow southwards towards the River Foss and River Ouse, which will then discharge into the Humber Estuary. Strensall Common is located upstream of the Site.  <u>Significant effect likely to occur: <b>No</b></u>

## Appropriate Assessment

13. As outlined in Table 1, most significant adverse effects on Strensall Common SAC can be scoped out at the Screening Stage. However, the Visitor Survey has identified the potential for any new development within a 5.5km radius to express an effect on Strensall Common SAC through increased recreational pressure.
14. Damage to Qualifying habitats at Strensall Common, resulting from increased recreation, is therefore taken through to Appropriate Assessment.

### Damage to Habitats from Increased Recreation

#### Summary of Visitor Survey results

15. Following submission of the Local Plan in May 2018, the Council received correspondence from Natural England regarding their HRA. Natural England stated that in reference to the threat posed by recreational pressure on Strensall Common, that they 'did not agree that adverse effects on integrity can be ruled out based on the evidence available'.
16. Accordingly, the Council commissioned Footprint Ecology to undertake a robust and comprehensive visitor assessment survey. The Visitor survey was undertaken in August and September 2018. Key findings included the following:
  17. Virtually all of the visitors surveyed (95%) had undertaken a day trip / short visit directly from home that day. Nearly two-thirds of those interviewed (63%) brought at least 1 dog and most of those interviewed (70%) cited dog walking as their main reason for visiting. Other reasons being walking (14%), outing with family (6%), jogging (5%), cycling (2%) and meeting with friends (2%).
  18. Around a third (32%) of all interviewees were visiting daily, with dog walkers visiting the most frequently, with 43% visiting daily and a further 21% visiting most days. Most of these visits were short, with 73% spending less than an hour at the site. Most interviewees (78%) indicated that they visited Strensall Common equally all year round.
  19. The rural feel/wild landscape was the most common given reason underpinning site choice (52% of interviewees). Close to home was also important (51% of interviewees) and was the most commonly given single main reason for choosing Strensall Common as a destination.

#### Impacts of recreation at Strensall Common

20. The Visitor Survey highlighted the following potential impacts of recreational pressure on Strensall Common:
  - Trampling, leading to vegetation wear, soil compaction, erosion;
  - Increased fire incidence;
  - Disturbance to grazing livestock, resulting in grazing animals avoiding areas of the Common and potential difficulties achieving the right levels of types of grazing;
  - Nutrient enrichment from dog fouling;
  - Contamination of ponds;
  - Contamination from fly tipping, litter etc.; and
  - Damage to infrastructure (gates etc.), whether through wear and tear or direct damage from vandalism.
21. A habitat survey undertaken in September 2018 indicates that recreational impacts are currently evident at Strensall Common, although these are mostly limited in extent and severity and are generally in found in fairly close proximity to the car parks.
22. The most concerning impact is worrying of livestock by dogs, which is already resulting in loss of animals and may jeopardise future grazing. Appropriate grazing will be a vital tool in restoring the SAC to favourable condition.
23. The allocations within the submission version of the York Local Plan include 6653 dwellings within 7.5km of Strensall Common. This represents approximately a 14% increase in the amount of housing. Based on the postcodes of interviewed visitors and the distribution of the housing allocations the Visitor Survey predicted a 24% increase in access at Strensall Common. However, since the visitor survey was completed, one of the allocated sites, the Queen Elizabeth Barracks at Strensall, has been removed. With this removed, the predicted increase in recreation use is only 7% for all other applications.
24. The closest allocation to the Site is the 'Land north of Monks Cross', which is proposed for circa. 970 new houses. The Visitor Survey predicted that this allocation in isolation is predicted to result in a c.2% increase in access to Strensall Common SAC. In comparison, the New Lane Site is further away from the SAC, and considerably smaller in extent (circa 300 new houses). It is therefore reasonable to conclude that the New Lane Site in isolation would account for a less than 1% increase in visitor pressure on

Strensall Common SAC. This is not considered to represent an appreciable impact on the SAC when considered in isolation. However, the development could still have a significant impact when considered in combination with all other developments within 5.5km of the SAC.

#### Potential Approach to Mitigation

25. The Visitor Survey Report provided the following recommendations for mitigation. Some of which can be incorporated into the layout of new developments – but most of which would require action directly from the Local Planning Authority, setting up a Strategic Strensall Common Mitigation Strategy, aimed at addressing the effects of all developments cumulatively within a 7.5km radius of Strensall Common.

##### *(i) Alternative Greenspace*

26. Diverting visitors away from the SAC by providing alternative greenspace is one mitigation option. Suitable Alternative Natural Greenspace (SANGs) are a key component of mitigation approaches around other heathlands, and are considered as suitable mitigation for developments set back from the European site boundary (beyond 400m).

27. The visitor survey results indicate that visitors to Strensall Common undertake relatively long routes, with a median route length of 2.5km when clipped to the SAC boundary. Significant areas of green space would be necessary to accommodate routes of this length. The rural/wild landscape was a key factor determining interviewee's choice of site, again suggesting that any alternative green space provision would have to be significant and have a semi-natural feel.

28. For new development that is set well back from the SAC, such that the main means of access is by car, provision of suitable alternative natural greenspace of a suitable size and quality could work to absorb access, particularly if the new greenspace was targeted towards dog walkers.

##### *(ii) Wardens*

29. Wardens or Rangers can provide a presence on site, able to directly talk to visitors and deal with any problems. At Strensall Common such a role could involve:

- Facilitating the grazing management through liaison with visitors, highlighting where grazing animals are and acting as a 'looker';
- Deterring anti-social behaviour such as motorbikes around the carparks, fire, graffiti etc;

- Dealing with any issues, such as gates left open, bins needing emptying, damage to infrastructure and on-hand to direct the emergency services in the case of a fire;
- Talking to visitors to make them aware of the conservation interest and any particular issues (e.g. fire risks, training, livestock presence);
- Directly influencing the behaviour of any visitors likely to cause problems, for example dogs off leads around livestock;
- Positively engaging with the local community through attending events, hosting guided walks, encouraging wildlife recording and volunteer involvement etc.

##### *(iii) Decreasing drainage*

30. Reducing the amount of drainage, with the potential to restore the site so that it is much wetter. This is likely to be beneficial to the SAC habitats and will reduce the risk of fire. Decreasing drainage would help revert wet heath, mire and transitional vegetation communities towards wetter forms that would once have characterised Strensall Common. It would not affect the dry heath habitat that is on raised ridges.

##### *(iv) Signage*

31. Signage and updated interpretation will play a role in directing visitors and helping explain the issues. Changes to the drainage and the provision of boardwalks and such infrastructure may deter cyclists and horse riders and it may be necessary to review these particular activities and provide some kind of dedicated routes for these activities. These would not necessarily need to be within the SAC.

32. Some of the particular nature conservation interest at Strensall Common is associated with ponds and some of the key ponds are directly adjacent to well-used paths. It is clear from the automated counter images that many of the dogs leaving the site are wet and muddy, suggesting that even during dry conditions they were finding water to splash in. In the key pools, low fencing and signage may be necessary to deter dogs from entering the water or limiting the areas that become turbid.

## In-combination Assessment

### Desk-based study

33. A search has been undertaken for other projects within a 5.5km radius of Strensall Common SAC which could act in combination with this development. The City of York Council Interactive Planning Portal has been used to identify sites.

Planning Ref.	Address	Status	Description
18/00017/OUTM	Site to the West of the A1237 and South of North Lane Huntington York	Awaiting decision	Outline planning application with full details of means of access for residential development of circa 970 dwellings with associated demolition, infrastructure works, open space, primary school, community facilities and convenience store on land west of Monks Cross Link Road and a country park with drainage infrastructure east of Monks Cross Link Road
20/02495/FULM	Paddock Lying Between Park Lodge And Willow Bank Haxby Road York	Awaiting decision	Erection of no.117 dwellings, pumping station and substation together with means of vehicular and pedestrian access, associated parking, landscaping and open space

34. Two planning applications, both awaiting a decision, have been identified within 5.5km of Strensall Common SAC. Both are for large-scale residential developments.
35. Neither of these schemes fall within, or immediately adjacent to Strensall Common, and thus direct physical damage or contamination effects will occur. Likewise, neither Site is hydrologically linked to Strensall Common.
36. Both schemes lie within 5.5km of Strensall Common and are for residential development. Slight increases in visitor pressure could therefore result.

### Summary

37. Recreational impacts are already evident at Strensall Common, although these are currently limited in extent and severity.
38. Based on the Visitor Survey Report, if all allocations within 7.5km of Strensall Common were developed (excluding Queen Elizabeth Barracks at Strensall which has now been removed for the Allocation Plan), it is predicted that there would be a 7% increase in access to Strensall Common.
39. Based on information provided in the Visitor Survey, it is reasonable to conclude that the development at Land off New Lane, Huntington would account for less than a 1% increase in access to Strensall Common SAC.
40. In isolation, the Site is therefore not expected to result in significant adverse effects on the qualifying habitats at Strensall Common SAC. However, in combination with all other developments locally, there is a risk of adverse effects.
41. It is reasonable to assume that all of the allocation Sites will be required to provide their own mitigation, thus removing in-combination effects. However, this can not be relied upon in this assessment.
42. As the Site only expresses an effect when considered in combination with other developments, the most appropriate route for mitigation would be for the developer to provide a financial contribution to York City Council (YCC), which would feed into a Strategic Access Management and Monitoring (or SAMM) plan to deal with the cumulative impacts of recreation pressure at Strensall Common SAC. However, at present, YCC do not have a SAMM in place, thus limiting the options for mitigation.
43. The developer is therefore left with the only other recognised mitigation approach, which is to provide Suitable Alternative Natural Greenspace (SANG) on Site.

## Mitigation

44. In isolation, the Site is not expected to result in significant adverse effects on the qualifying habitats at Strensall Common SAC. However, in combination with all other developments locally, there is a risk of adverse effects. The following mitigation is therefore proposed, in order to provide SANG, which is proportionate to the scale of the development and of the potential impacts.

### Creation of SANG

45. The figure opposite shows the provision of Public Open Greenspace (measuring circa. 3.7ha) that has been designed into the scheme. This will be planted up with a range of semi-natural habitats, including wildflower grassland, native hedgerows, native scrub/tree planting and wetland. These will then be linked together with a circular walking route of 1.5km.
46. The Site is not of a size that would warrant a dedicated car park for visitors and is close enough for residents to access it on foot. Planting and the ancient monument will give the SANG visual appeal and a focal point, along with a variety of habitats. Leaflets will be provided to new residents and information boards will be installed in prominent locations around the walking route, to bring awareness to residents. Fencing will be installed around parts of the greenspace, to enable user to exercise their dogs off the lead safely. Litter bins and dog waste bins will be installed at regular intervals along the route.
47. With this mitigation in place, the Site would not be expected to express an appreciable contribution to the in-combination effect of increased recreational pressure on Strensall Common SAC.
48. Full details of the measures to be incorporated into the SANG can be provided in a SANG Management Plan, which could be made a condition of planning.

Figure 5 Provision of open greenspace within Layout.



## Conclusion

49. This shadow HRA has assessed whether the proposed development at New Lane Huntington will have a significant effect on Strensall Common SAC or its qualifying interests.
50. This assessment has been informed by ecological survey, review of available information and a desk-based survey undertaken by Brooks Ecological. The Visitor Survey undertaken by Footprint Ecology has also been referenced.
51. The first part of this assessment (Screening Stage) took the form of a Test of Likely Significant Effect (TOLSE). Due to the proposed development type the following potential impact pathway has been identified that could potentially impact the identified NSN site.
  - (i) Direct physical loss or damage to habitat
  - (ii) Contamination e.g. introduction of heavy metals, pesticides, nutrients, air and water pollution, introduction of non-native species etc
  - (iii) Changes to Hydrology
  - (iv) Damage to habitats resulting from increased recreation pressure.
52. This concluded that, without mitigation, there will not be a significant effect on habitats associated with Strensall Common SAC - from impacts (i), - (ii), both alone or in-combination.
53. However, from the Visitor Survey, it is stated that any development within 5.5km of Strensall Common SAC could have an effect from increased recreational pressure. This was therefore taken through to Appropriate Assessment (Stage 2).
54. The Visitor Survey predicts that if all allocation sites within 7.5km of Strensall Common were developed, this would lead to a 7% increase in access to the Common. As the development proposed here is for c.300 new dwellings, a very minor increase in footfall at Strensall Common could result from the proposed development, which in isolation would not result in a significant effect.
55. However, in-combination with all other residential developments locally, adverse effects on Strensall Common are possible. As such, mitigation will be required on this, and all other residential developments within the zone of influence for Strensall Common, to reduce the in-combination effects of increased visitor pressure.
56. As the Site only expresses an effect when considered in combination with other developments, the most appropriate route for mitigation would be for the developer to provide a financial contribution to York City Council (YCC), which would feed into a Strategic Access Management and Monitoring (or SAMM) plan to deal with the cumulative impacts of recreation pressure at Strensall Common SAC. However, at present, YCC do not have a SAMM in place, thus limiting the options for mitigation.
57. The developer is therefore left with the only other recognised mitigation approach, which is to provide Suitable Alternative Natural Greenspace (SANG) on Site.
58. Figure 5 above demonstrates that a sufficient provision of Natural Greenspace, with an easily accessible circular walking route, can be provided within the scheme. Most of the key measures required by Natural England for land to be classed as SANG could be provided, full details of which could be outlined in a SANG Management Plan, which could be made a condition of planning.
59. With this mitigation in place, the Site would not be expected to express a significant in-combination effect on Strensall Common SAC, from increased recreational pressure.



## Appendix 1 Strensall Common SAC Citation

### EC Directive 92/43 on the Conservation of Natural Habitats and of Wild Fauna and Flora

#### Citation for Special Area of Conservation (SAC)

<b>Name:</b>	Strensall Common
<b>Unitary Authority/County:</b>	York
<b>SAC status:</b>	Designated on 1 April 2005
<b>Grid reference:</b>	SE651598
<b>SAC EU code:</b>	UK0030284
<b>Area (ha):</b>	569.63
<b>Component SSSI:</b>	Strensall Common SSSI

#### Site description:

Strensall Common is an example of acidic lowland heath represented predominantly by *Erica tetralix* – *Sphagnum compactum* wet heath, although its extent has been reduced by drainage. It is a noted locality for marsh gentian *Gentiana pneumonanthe*, narrow buckler-fern *Dryopteris carthusiana* and the dark-bordered beauty moth *Epione vespertaria* as it is associated with creeping willow *Salix repens* on the wet heath.

There is also a complex mosaic of wet heaths with *Erica tetralix* and dry heath elements. The *Calluna vulgaris* – *Deschampsia flexuosa* dry heath is noted for petty whin *Genista anglica* and bird's-foot *Ornithopus perpusillus*.

**Qualifying habitats:** The site is designated under **article 4(4)** of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:

- European dry heaths.
- Northern Atlantic wet heaths with *Erica tetralix* (wet heathland with cross-leaved heath).

This citation relates to a site entered in the Register of European Sites for Great Britain.

Register reference number: UK0030284

Date of registration: 14 June 2005

Signed: *Ted Salmon*

On behalf of the Secretary of State for Environment, Food and Rural Affairs





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# Report to the Secretary of State

by Siobhan Watson BA(Hons) MCD MRTPI

An Inspector appointed by the Secretary of State

Date 13 June 2022

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**TOWN AND COUNTRY PLANNING ACT 1990**

**CITY OF YORK COUNCIL**

**APPEAL BY**

**BARRATT DAVID WILSON HOMES**

**REGARDING**

**LAND TO THE EAST OF NEW LANE, HUNTINGTON, YORK**

Inquiry opened on 11 January 2022

Land to the east of New Lane, Huntington, York

File Ref APP/C2741/W/21/3282598

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**File Ref: APP/C2741/W/21/3282598**

**Land to the east of New Lane, Huntington, York, YO32 9NA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The application is made by Barratt David Wilson Homes to City of York Council.
- The application Ref 21/00305/OUTM is dated 29 January 2021.
- The development proposed is outline planning permission with all matters reserved except access for circa 300 residential dwellings, associated landscaping, public open space, and the formation of two new vehicle accesses off New Lane, York.

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

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**PROCEDURAL AND BACKGROUND MATTERS**

1. The Inquiry was held virtually between 11-19 January 2022. I made an unaccompanied site visit on the afternoon of 10 January during which I observed the entire site and the view of York Minster from within the site and from the adjoining land at the Vanguard/Monks Cross retail and leisure complex.
2. The appeal was recovered by the Secretary of State (SoS) by a direction made under section 79 and Paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 on 10 January 2022. The reason for this direction is given as "the appeal involves proposals for significant development in the Green Belt". However, the question of whether the site is in the Green Belt is the principal matter of dispute between the main parties and this is a matter which the Secretary of State is to determine.
3. On the information available at the time of making the Direction, the statements of Case and the evidence submitted to the Inquiry, the following are the matters on which the SoS needs to be informed for the purpose of his consideration of this appeal:
  - (i) whether or not the site is within the Green Belt and if so,
  - (ii) the effect upon the openness of the Green Belt and
  - (iii) whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development;
4. The application was submitted in outline with all matters reserved except for access.
5. The Council provided two putative reasons for refusal which concerned an alleged conflict with Green Belt policy and the impact on the local highway network. Subsequently, the Appellant submitted further technical highway evidence which resulted in the Council withdrawing its objection on highway safety. I have considered comments from interested parties in respect of highway matters.

## **ENVIRONMENTAL IMPACT ASSESSMENT (EIA)**

6. The proposed development falls within the description at Paragraph 10(b) of Schedule 2 of the 2001 Regulations<sup>1</sup>. In the opinion of the SoS, having taken into account the criteria in Schedule 3 to the above Regulations, the proposed development would be unlikely to have significant effects on the environment and therefore does not require an EIA. The SoS's Screening Direction has been provided to both parties. I agree that the proposed development is not EIA development and therefore it does not require the submission of an Environmental Statement.

## **THE SITE AND ITS SURROUNDINGS**

7. The site is predominantly flat, agricultural land which has not been previously developed. It lies between the suburban area of Huntington and the Community Stadium/Monks Cross/Vangarde development to the east. It is some 11.6ha in area, up to 340m in width and 400m in length. It is in Flood Zone 1.
8. The site is bounded by a cemetery to the south beyond which there is open countryside. The cemetery land is not fully developed although permission to extend the cemetery was approved under application reference 17/01250/FUL. There is housing development to the north; New Lane to the west, which has housing on the opposite side of the road; and a large retail/leisure development to the east. There is significant built development on three sides of the site. The site's western boundary wraps around the curtilage of Huntington Grange, a Grade II listed house.
9. There are several mature trees on the site but these do not have statutory protection. There are also hedgerows.
10. A triangular section of land within the eastern portion of the site is of archaeological importance. It contains prehistoric and Romano-British features including a temporary Roman camp, possible enclosures / settlement and pits and is designated as a Scheduled Ancient Monument.
11. There is a footpath / cycle route on the south side of the cemetery providing a route between New Lane and the Vangarde shopping / Park & Ride area. This cycle route also adjoins the site to the east.

## **THE PROPOSAL**

12. The appeal proposal seeks outline planning permission for around 300 dwellings, associated landscaping, public open space, two new vehicle accesses and two pedestrian accesses off New Lane with all other matters reserved for subsequent approval. The accesses are shown on Plan DPL SK004. An Illustrative Masterplan (16 5023 – 10H) has been submitted to show how the development might be accommodated on the site but it is not a plan for approval.
13. The plans submitted for approval set the parameters for the layout of the site including vehicular and pedestrian access points and connectivity routes, land uses including developable areas and open space provision, building heights and retained trees and hedgerows. These plans are:

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<sup>1</sup> The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

- 16 5023 – 02A - Location Plan
- DPL SK004 - Site access plan
- 16 5023 – 07J - open space
- 16 5023 – 08I - development areas & heights

## **PLANNING POLICY AND GUIDANCE**

14. The parties refer to a number of local planning policy documents which are listed in Section 4 of the Statement of Common Ground (SoCG) (Document A04).

### **Statutory Development Plan**

15. The current statutory development plan for York consists of the saved Policies from the Regional Spatial Strategy for Yorkshire and Humber 2008 (RSS) (CD4.01) and four "made" neighbourhood plans. The site is within the Huntington Neighbourhood Plan (HNP) (CD4.02) area.

16. The following saved policies are agreed by the Council and Appellant to be relevant to the appeal:

#### ***Regional Spatial Strategy (RSS) (CD4.01)***

- Policy YH9C Green Belts
- Policy Y1C York Sub Area Policy

#### ***Huntington Neighbourhood Plan (HNP) (CD4.02)***

- H1 Meeting Housing Need
- H2 Housing Mix in New Housing Development Proposals
- H3 Affordable Housing Provision and Mix
- H4 Design Principles
- H5 Huntington Character Buildings and Sites of Local Heritage Interest
- H14 Green Belt

### **Non-Statutory Documents**

#### ***The City of York Council Local Plan Publication Draft 2018 (eLP) (CD5.01)***

17. In addition to these plans there is an emerging local plan, the City of York Council Local Plan publication draft 2018 (CD5.01) which was submitted for examination on 25th May 2018. Examination of the Plan is ongoing. Phase 1 hearings took place in December 2019 and Phases 2-4 of hearing sessions were expected to commence from February 2022.

18. The Examining Inspectors instructed the Council to conduct a Regulation 19 consultation in advance of Phase 1 hearing sessions to consider a revised evidence base and resultant proposed modifications to the plan following submission; The 'Proposed Modifications Consultation' took place in June-July 2019. Phase 1 examination hearings sessions commenced in December 2019.

Following these hearings, a timetable to produce further work to clarify points raised through the hearings was agreed with the Inspectors.

19. The Inspectors wrote to the Council on 12 June 2020 (CD5.03) to set out their initial conclusions pertaining to Phase 1 hearing matters, focusing on their conclusions reached in relation to the principle of York's Green Belt including their concerns pertaining the Green Belt Topic Paper Addendum (2019) (CD5.37.01) methodology and invited the Council to respond. The Inspectors suggested 3 options for the Council: "a) to convincingly explain to us how we have misunderstood the Green Belt assessment methodology and that it adequately justifies the proposed Green Belt boundaries; b) to demonstrate that, notwithstanding the methodological flaws, the Green Belt boundaries proposed are justified and reasonable; or c) withdraw the Local Plan from examination."
20. In response, the Council submitted a revised Green Belt Topic Paper Addendum (2021) (CD5.04). This updated evidence base was subject to a Regulation 19 consultation which ended on 07 July 2021.
21. Additionally, the Inspectors requested, in July 2020, that the Council confirm whether the proposed housing requirement (822 dwellings per annum) was still applicable following the release of the 2018 based household projections. In their letter of 6 October 2020 (CD5.17), the Council confirmed it was appropriate to continue with the proposed housing requirement.
22. The Inspectors letter of 25 October 2021 (CD5.21) confirms that the Council will be proceeding to a series of phased hearing sessions between February 2022 and May/June 2022.
23. The emerging policies agreed by the Council and the Appellant to be of relevance to this appeal are:
  - SS1 Delivering Sustainable Growth for York
  - SS2 The Role of York's Green Belt
  - H2 Density of Residential Development
  - H3 Balancing the Housing Market
  - H10 Affordable Housing
  - HW2 New Community Facilities
  - HW3 Built Sport Facilities
  - HW4 Childcare Provision
  - HW7 Healthy Places
  - D1 Placemaking
  - D2 Landscape and setting
  - D6 Archaeology
  - GI1 Green Infrastructure
  - GI2 Biodiversity and Access to Nature

GI3 Green Infrastructure Network

GI4 Trees and Hedgerows

GI6 New Open Space Provision

GB1 Development in the Green Belt

CC1 Renewable and Low Carbon Energy Generation and Storage

CC2 Sustainable Design and Construction of New Development

ENV1 Air Quality

***City of York Draft Local Plan 4<sup>th</sup> Set of Changes (2005 dLP) (CD4.03)***

24. This is not part of the statutory development plan but was approved for development management purposes in April 2005. The main parties agree that the weight that can be afforded to it is very limited. The policies that are agreed to be relevant are:

SP2 The York Green Belt

SP3 Safeguarding the Historic Character and Setting of York

GB1 Development in the Green Belt

**PLANNING HISTORY**

25. There have been no previous applications for development on the site.

**AGREED MATTERS**

26. It is agreed between the two main parties that the appeal proposal would not give rise to any unacceptable impacts in respect of the following matters:

- Ecology and Nature Conservation
- Flood risk and drainage
- Ground conditions and pollution
- Public Rights of Way
- Archaeology
- Indicative housing mix or the amount of affordable housing proposed on the site

27. The site is located within the general extent of the Green Belt as defined within the RSS. It is agreed that Policy Y1C of the RSS indicates that the development plan (expected at that time to be the Local Development Framework) for York should define the detailed boundaries of the outstanding sections of the outer boundary of the York Green Belt about 6 miles from York city centre and the inner boundary in line with Policy YH9C. It is agreed that the development plan process has not yet set the detailed boundaries.

28. It is agreed that significant weight can be applied to policies in the HNP. Policy H14 of this Plan confirms that decisions on whether to treat land as falling



within the Green Belt will be taken in accordance with the approach of the *Wedgewood*<sup>2</sup> case (CD7.01).

29. It is agreed that the correct approach within which to assess whether the site is within the Green Belt or not is the *Wedgewood* approach. If the site is found to be outside of the Green Belt, it is agreed that there are no other outstanding objections that would prevent the proposed development from being found acceptable, the only outstanding issues are:
- Less than substantial harm to the setting of the Grade II Listed Huntington Grange; and
  - Whether there would be landscape harm.
30. The main parties agree that if the site is found not to be within the Green Belt, these identified harms would not outweigh the benefits of the 300 dwellings proposed and that planning permission should be granted.

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<sup>2</sup> *Wedgewood v City of York Council* [2020] EWHC 780 (Admin)

## THE CASE FOR THE COUNCIL

### *Emergence of Council Policy*

31. The site is shown as Green Belt in the draft Local Plans, i.e., the 2005 City of York Draft Local Plan ("2005 2005 dLP") and the Draft Local Plan 2018 (eLP). The site is not allocated for development in the 2018 eLP and is allocated as Green Belt.
32. The Wedgewood case establishes at Paragraph 40 that the Council may have regard to the 2005 dLP as it has previously taken a policy step by resolving to take it into account for Development Management purposes. It may also take account of the eLP, provided it has due regard to Paragraph 48 of the National Planning Policy Framework (the Framework). Furthermore, it should take account of site-specific features that may or may not tend to treat the site as Green Belt.
33. Following on from this, it is the Council's case that the site is in the Green Belt and therefore the "very special circumstances test" in Paragraph 148 of the Framework applies. That test has not been passed.
34. In this case, the policies of the Framework to be applied are those relating to the test of soundness in the Local Plan context, i.e., Paragraphs 137-146. Paragraph 137 sets out that the fundamental aim of the Green Belt is to prevent urban sprawl. The subsequent five purposes must be read in the context of that overall spatial aim.
35. The five purposes operate at the strategic, settlement level so it would be contrary to this to require a narrow interpretation of the term "historic town" to mean anything other than the historic town as a whole. The term should not be limited to the historic core of York.
36. Where an appeal site demonstrates one or more of the five purposes of the Green Belt then it should be considered as Green Belt. There is no measure of the extent to which a site must serve a Green Belt purpose. If the conclusion is that a site serves a purpose to any extent, then it should be considered to be Green Belt.
37. In accordance with the *Wedgewood* judgement, the starting point is the 2005 dLP. Policy SP2 and the Proposals Map (CD4.04) defined the York Green Belt in this draft plan. The 2005 dLP identified the appeal site as serving Green Belt purposes.
38. Although the site was identified as a potential area of search in the 2009 Core Strategy Preferred Options Consultation and the 2011 Core Strategy Publication Draft, these documents were not progressed to examination and do not form part of the evidence base for the emerging Local Plan. No weight should be attached to these documents.
39. The appeal site formed part of a proposed Local Plan allocation site in 2014. However, that draft plan was not taken forward and adopted. Since 2014 there have been significant developments in the evidence base of the Local Plan and its spatial approach. The 2013 City of York Local Plan Preferred Options (CD5.23) and the 2014 Local Plan Publication Draft (CD5.32) do not form part of the Council's evidence base for the eLP. They are documents that were never

progressed past the earliest stages of consultation. They were never examined. On that basis and with the application of accepted planning principles set out in Paragraph 48 of the Framework, it is the Council's case that negligible weight can be given to these documents.

40. The Local Plan evidence base has further developed since 2014 and the short period in which the site was a draft allocation. This has ensured that the emerging Local Plan is based on the latest available evidence. A broad range of evidence has been updated including studies such as the Strategic Housing Market Assessment and Employment Land Review. The Site was removed as an allocation in 2016 and was designated as Green Belt in the 2017 Publication Draft Local Plan.
41. There has been further assessment since the land was proposed as a site allocation and the Council produced the 2018 Green Belt Topic Paper 1 (2018 TP1) (CD5.02).
42. Following the first examination hearings into the eLP, the Local Plan Inspectors wrote to the Council (CD5.03). That letter, dated 12 June 2020, set out their concerns in relation to the evidence, up to that point, on the Green Belt boundaries, that is, the Green Belt Topic Paper 1, 2019 (TP1 2019) (CD5.02) and the Topic Paper Addendum 2019 (TP1 2019 Addendum) (CD 5.37). The Inspectors' concerns with the Council's approach were:
  - A number of the 'drivers and shapers' were of little direct relevance to Green Belt policy (paras 33 – 35).
  - The approach to Green Belt Purpose 4 only identified the areas that are most important to it (as did the Green Belt Appraisal 2003) and para 4.17 of the Addendum (CD5.37) states "areas not identified on the appraisal map may still be important to the historic character and setting [of York] ...". The Inspectors noted this was "an area of potential weakness" (paras 36 -37).
43. The Inspectors noted that there was a gap between the areas identified through the analysis of the purposes (shown in figure 7, CD5.37, page 21) and the Green Belt shown in the policy map. In other words, the Inspectors said that the problem with the original TP1 2019 is that there are parts of the designated Green Belt that do not appear to be covered in earlier analysis. The Inspectors want to understand the analysis that designates sites as Green Belt that may not have been considered to be among the most important sites.
44. It is not only the most important sites that should be designated as Green Belt. Sites that are less important, but nonetheless serve one or more of the five purposes should also be so designated. This approach of identifying only the most important sites, established in the 2003 Green Belt Appraisal (CD5.13), runs through the 2011 and 2013 Historic Character and Setting Updates. It was only with the 2014 Heritage Topic Paper (2014 HTP) (CD5.09) that the error in approach was corrected.
45. In response to the LP Inspectors' letter in June 2020 (CD5.03), the Council published the 2021 Green Belt Topic Paper 1 Revision (TP1 2021) (CD5.04). This supersedes the 2019 Topic Paper 1 Addendum. These documents explain the methodology and assessment results for Green Belt boundaries for the emerging

Local Plan (CD5.01). This document considers the contribution of land to Green Belt purposes.

46. It is the Council's case that the exercise in the TP1 2021 shows a better than previous understanding of York's historic character and its special qualities and this is reflected in the Council's methodology. Principal characteristics were identified in the HTP 2014 (CD5.09) which are fundamental to understanding York's special characteristics, beyond the identification of the most valuable areas which had been the focus of previous studies. TP1 2021 has applied this enhanced understanding in practice. This includes recognition of the importance of York as a compact city, the role of landmark monuments, and the landscape and setting relationship between the main urban area of York and surrounding settlements and countryside. These special characteristics, set out in the HTP 2014, are the essential parts of the setting and special character of the historic town for the purpose of a Green Belt Purpose 4 assessment.
47. In response to the HTP 2014, less growth is being proposed on the periphery of the main urban area and more housing development is proposed in freestanding settlements. This change has affected several sites that have previously been proposed in the Local Plan process. Between the City of York Local Plan Publication Draft 2014 (CD5.32) and the 2016 Preferred Sites Consultation document (CD5.24), nine new housing sites were proposed for allocation and 25 previously proposed sites have been deleted. In addition, the proposed delivery of housing has been reduced by 30% between 2014 and 2018 which has consequently reduced the need for housing sites.
48. Where sites have been allocated in the Green Belt, they have been assessed as being less harmful to the purposes of the Green Belt than developing the appeal site.

*Assessing the Appeal Site against the purposes of the Green Belt*

49. The issue for the SoS is not whether the 2021 TP1 is the appropriate methodology for this site as that is for the Local Plan Inspectors. The issue for this appeal is whether or not the site should be included in the Green Belt.

Paragraph 138 (d) of the Framework – "to preserve the setting and special character of historic towns" (Purpose 4)

50. It is the Council's case that the word "preserve" should be the dictionary definition and should not be taken from the Town and Country Planning Listed Buildings Act 1990 and associated case law because the setting of Green Belt boundaries is not within the scope of the Listed Buildings Act. Furthermore, the concern in this appeal is not the effect of development upon a conservation area.
51. "Special character" is different to the "setting" of a heritage asset. "Character" is defined in The Historic England Good Practice Advice Note 3 – the Setting of Heritage Assets 2017 (CD8.02). The 2015 version (CD8.01) of this document has a similar definition. This is that character is a broad concept, often used in relation to entire historic areas and landscapes, to which heritage assets and their settings may contribute. It is the group of qualities derived from its past uses that make it distinctive. The term "character" should be defined in accordance with the Historic England guidance. The definition of character is different to the definition of the "setting" of a heritage asset. Determining the Green Belt boundary in terms of the

setting of the asset is too narrow and a Purpose 4 assessment is not a heritage impact assessment. The word "special" should be taken to indicate the elements of the character of the city that are the most important.

52. The Council maintains that the definition of "historic town" is a matter of planning judgement and should be against the setting and special character of the City of York as a whole and not only to the historic core of the city. Although the HTP 2014 looked at the historic core of the city, it was not solely concerned with the Green Belt assessment and instead is part of the evidence base for the whole of the plan. York's unique character and form stretches beyond its central core. The Local Plan Inspectors said in their letter dated 12 June 2020 (CD5.03 para 13) that RSS Policy YH9C requires that the detailed inner boundaries should be defined to safeguard the special character and setting of the city. Therefore, "historic town" should be taken as the whole of the City of York.

53. It is the Council's case that heritage expertise is not required to undertake the Purpose 4 assessment. The assessment can be informed by the heritage exercise already carried out, drawing from HTP 2014 which was undertaken in consultation with English Heritage. TP1 2021 confirms that HTP 2014 informs the Green Belt assessment (CD5.04 para 8.17). The Approach to the Green Belt Appraisal 2003 (GBA) (CD5.13) and the HTP 2014 (CD5.09) list the special characteristics and these are a complete list which the Council notes the Appellant concedes.

54. The key special characteristics of relevance are compactness, landmark monuments and character and setting:

- Compactness: This is the recognition of the City of York as a compact city, not just the historic core. Part of compactness is to ensure the separation of identifiable compact districts.
- Landmark monuments: all views of the Minster, revealed, distant or iconic, are important. There is no reference at all to only protecting views that contribute to the significance of the Minster, which are protected through the Listed Buildings Act. Indeed, the SoS concluded in an earlier appeal that a site contributed to Purpose 4 of the Green Belt even where the Minster could not be seen.<sup>3</sup>
- Landscape and setting: This recognises the importance of links between the city as a whole and the surrounding countryside. This includes links to "historically managed landscapes", such as this site which is a field in agricultural use since Medieval times. The countryside that surrounds the strays is important.

55. The openness of the site enables views of the Minster. Views do not have to be iconic to be part of the special character. It is the fact that one can see the Minster from the site that is important. The argument that views are over modern development is a weak point. Most of the distant views (which the GBA 2003 and HTP 2014 say are part of the special character) will be over modern development since the city has developed outwards from the historic core. This is part of the relationship of the development of the city with the Minster and historic core. The Minster remains the dominant building of the city, emphasising its historic origins.

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<sup>3</sup> CD6.05 – IR 234 and 235, DL 12(d).

56. The site provides a link to Monks Stray. Even on the narrow definition put forward by the Appellant, the site would fall to be considered as part of the setting of the historic core because the strays form part of the historic core definition in the HTP 2014.
57. The site separates two identifiable areas. The Appellant agreed that areas could be identifiably distinct by their land uses. The separation of Huntington (residential) from Monks Cross (commercial) is supported by this site.
58. The site forms part of the countryside setting of the city notwithstanding that it is not open countryside. There is no requirement for it to be open countryside.
59. It is clear that this site serves Purpose 4. For this reason alone, the site should be considered as part of the Green Belt.
60. The assessment put forward by the Appellant takes the wrong approach. Alongside the contrived and narrow definitions, the Appellant has undertaken a heritage impact assessment and not a Purpose 4 Green Belt assessment – that is an assessment of spatial policy against sprawl, informed by heritage considerations.
61. The Appellant's heritage witness tells us in her evidence that she has applied her "usual methodology". When one compares the methodology in Appendix 2 to the Appellant's landscape proof of evidence with the methodology in the Heritage Impact Assessment submitted with the application, they are the same. The same methodology was applied by the Appellant's heritage witness to assess the impact of the proposal on designated heritage assets as it was to undertake the Purpose 4 assessment for her evidence to the inquiry. This is using an inappropriate tool for the job. There is no link between a Green Belt assessment and the Listed Buildings Act or section 13 of the Framework on the protection of the historic environment.

Paragraph 138 (a) of the Framework to check the unrestricted sprawl of large built-up areas (Purpose 1)

62. The term "sprawl" relates to the outward spread of development from the built-up area. It is agreed that any sprawl across the site would not be unrestricted. However, sprawl is possible into the site. The key issue is whether the size of the site enables sprawl within it. The site is a considerable size at 11.6ha. The photographs in the Appellant's landscape proof of evidence appendices emphasise its scale. The degree to which the site performs this function is not a specific test of the Framework. Even if the site weakly performs this function, this alone is enough to designate the site as Green Belt.

Paragraph 138 (c) of the Framework to assist in safeguarding the countryside from encroachment (Purpose 3)

63. Encroachment is about development taking place in the countryside. The site is surrounded on three sides by development but it retains a countryside and rural character. It comprises open and undeveloped fields in agricultural use. The urbanising influences do not penetrate the whole of the site. There is no requirement for Green Belt to be "open countryside" in the Framework. Development into this countryside location would amount to encroachment. Therefore the site performs this function.

Conclusion on Green Belt Designation

64. The site performs purposes 1 (sprawl), 3 (encroachment) and 4 (setting and special character of the historic city). As a result, the site should be designated as Green Belt.

*Harm to the Green Belt*

65. The development would harm the openness of the Green Belt. It would also cause harm to the Green Belt by reason of inappropriateness and to three of the five purposes. In accordance with Paragraph 148 of the Framework, each of these should be given substantial weight.

*Any Other Harm*

66. It is agreed by both main parties that the site would cause some landscape harm. Whilst the harm would be localised, the harm must be taken into account and given due weight in the planning balance. Similarly, it is agreed that there is less than substantial harm to the Grade II Huntington Grange. This harm is not sufficient to support a reason for refusal, but the harm must go into the balance and be given considerable importance and weight in line with the established case law<sup>4</sup>.

*Planning Balance*

67. As the site is within the Green Belt, permission should be refused unless the benefits of the scheme clearly outweigh the harm to the Green Belt and any other harm.

68. The benefits of the scheme are the delivery of market and affordable housing. These benefits are in the context of the absence of a 5-year housing land supply and a history of under delivery of market and affordable housing. All of these factors are taken into account in affording significant weight to market and affordable housing.

69. In a number of recent appeal decisions in similar housing supply and delivery contexts, the SoS has not found that the delivery of market and affordable housing has clearly outweighed Green Belt harm<sup>5</sup>. There is nothing in this appeal that suggests that trend should be bucked.

*Conclusions on the Council's Case*

70. In summary:

- The site is shown as being in the GB in the 2005 dLP and 2018 eLP.
- The site comprises an area of countryside in active agricultural use, adjacent to the urban edge, bringing the countryside into the urban area in a manner which is characteristic of the urban pattern of the historic city of York as a whole. There are a number of areas where smaller areas of open land extend into the city, not just the main areas of the strays and ings.
- The site provides a buffer of open land between two districts of the city which have widely differing land use characters.

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<sup>4</sup> Forge Field v Sevenoaks DC [2014] EWHC 1895 (Admin) (CD7.07)

<sup>5</sup> Council's Planning Proof of Evidence (CD9.08, para 5.16)

- The site helps to define the urban edge and to connect with the wider open area of Monks Stray to the south. The division of the urban area by the open areas, with a strong contrast between them, is part of the character of the wider historic city.
  - The site affords open views across it, and from within it, to the historic core of the City and the Minster, enabling an appreciation of that landmark monument and an understanding of the compact nature of the city (i.e. you can see the city centre from the site).
  - The site has development on 3 sides, and that limits, but does not remove, the extent to which the site performs purposes 1 and 3 (the Appellant's landscape witness accepted those functions are performed to a degree), but does not limit purpose 4, because having areas of open land extending into the city (and therefore having development around them) is part of the special character.
71. The site should be considered as Green Belt. The benefits of the scheme do not clearly outweigh the harms and the appeal should be dismissed.



## **THE CASE FOR THE PARISH COUNCIL (RULE 6 PARTY)**

72.The proposal is at odds with the following policies of the HNP:

- H1 Meeting housing need
- H2 Housing mix in new housing development proposals
- H3 Affordable housing provision and mix
- H4 Design Principles
- H5 Huntington Character Buildings and Sites of Local Heritage Interest
- H14 Green Belt
- H17 Biodiversity
- H18 Flooding and water management

73.Policy H14 - Green Belt supports and reinforces the existing Green Belt designation in the Parish and Policy H1 Meeting housing need identifies area "ST8 (off North Lane)", as the only acceptable area of land for major development within Huntington.

74.It is recognised that Paragraph 12 of the Framework allows for a planning decision to depart from an approved neighbourhood plan in special circumstances but special circumstances do not exist in this case.

75.The site lies in the Green Belt as identified in the RSS and the 2005 dLP. Policy H14 of the HNP advises that decisions on whether to treat land as Green Belt should be taken in accordance with the Wedgewood case and that within the general extent of the Green Belt inappropriate development will not be supported except in very special circumstances.

76.There is strong community sentiment and support regarding the Green Belt that generally surrounds Huntington. It is a much prized and loved asset. It is important in retaining the distinct character and setting of Huntington; it prevents urban sprawl; it prevents Huntington merging with nearby villages; it provides opportunities for recreation and leisure; and it contains environment and heritage assets of national and local importance. The proposal represents inappropriate development within the Green Belt.

77.The proposal is poorly designed and not locally distinctive. It would be over-development and would intrude into the open countryside harming the semi-rural character of the area. It would also result in the loss of important views. It would also be harmful to highway safety; to air quality; and the amenity of existing and future residents.

78.The site is of some biodiversity interest. This includes plants and animals, some of which have been identified nationally and locally as of special nature conservation. The proposal would therefore harm biodiversity.

79.The proposal is not in keeping with the current open aspect to the cemetery, which is a quiet place to mourn and reflect.

80. Flooding and surface water drainage are already major issues and concerns in the Parish. The proposal would make the situation worse. In particular, the Parish Council is concerned that it would cause drainage and flooding issues to Huntington cemetery, which currently has to pump surface water to clear it.
81. Huntington has limited services and infrastructure, many of which are already under great pressure. There are acute problems with doctors' surgeries and schools within the Parish, both of which are oversubscribed. While the proposal includes some local services and infrastructure improvements through direct provision and developer contributions, such as in relation to schools, green spaces and affordable housing, these are inadequate to meet the demand it would create.
82. The site is important for the setting of the village and protects the distinctive character of Huntington. It has an attractive visual appearance and provides for informal recreation.
83. The site includes a Scheduled Ancient Monument (SAM) - the remains of a Roman camp. Further investigation may reveal further areas of heritage. The Grade 2 Listed Huntington Grange is just outside of the site on the western edge.
84. The Parish Council recognises that there would be some planning benefits of the proposal, such as the provision of market and affordable housing, but these would not outweigh the harm.

## THE CASE FOR THE APPELLANT

85. The Appellant's case is that the context for this appeal is the national imperative to boost significantly the supply of housing. The housing crisis has been expressed most recently in the White Paper, *Fixing Our Broken Housing Market* (2017) and *Planning for the Future* (2020).
86. The Council fails to publish a 5-year housing land supply (HLS), contrary to the requirement of Paragraph 74 of the Framework. The latest agreed position is a HLS of between 2.79 and 3.45 years and this has been the position for at least 5 years.
87. Affordable Housing (AH) delivery has collapsed. The Council experienced a net reduction in AH provision of 3 homes in 2017/18 and 4 homes in 2018/19. Consequently, lower quartile and median quartile affordability has risen exponentially between 1997 and 2020.<sup>6</sup> This is contrary to Paragraphs 60,61 and 63 of the Framework.
88. The Council is dependent on accessible greenfield sites outside of settlement boundaries. The appeal proposal would deliver market and affordable homes with substantial economic benefits on an accessible site immediately adjacent to a wide range of jobs, services and facilities in Huntington and Monks Cross.
89. The Appellant's primary case is that this site should not be designated for the first time as Green Belt. That was the LPA's consistent position in technical evidence between 2003 and 2014. Indeed, the site was allocated in the City of York Local Plan Publication Draft (2014) (CD 5.32).
90. If the site should be designated as Green Belt, the Appellant submits there are very special circumstances which justify a grant of planning permission.
91. There is no issue with the proposed access because the Council has withdrawn its objection in this respect. The process is explained by a supplementary Highway Note (CD 2.04). Both the LHA and Appellant agree that there will be an acceptable impact on the local highway network, subject to a s.106 payment for off-site highway mitigation which are set out in the s.106 agreed Heads of Terms. There is no expert highway evidence to the contrary.
92. The Council has not adopted a local plan since 1954. It is, therefore, of fundamental importance to understand the legal background to the determination of this Appeal. The "*Wedgewood Approach*" is expressly agreed with the LPA (SoCG at 5.6). This judgment needs to be read and applied.
93. It is, therefore, of concern that the correct legal approach has not been understood by:
  - Members of the Forward Planning team in their consultation response on the application (see Committee Report at 3.1-3.8 CD 3.01);
  - Members of the Planning Committee in debating the application; and
  - The SoS in resolving to call-in the application, on the grounds that the proposal was in the Green Belt.

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<sup>6</sup> Appellant's Planning PoE table 6.3

94. In *Wedgewood*, the Claimant challenged the LPA's decision to grant planning permission for two extensions and additional parking facilities on a site off Thief Lane, to the east of York City Centre.
95. Neither the timing of that decision, nor the nature/use of the development, nor the location of the site are material points of distinction with the proposed applications.
96. The claimant claimed among other things, that the defendant local planning authority (LPA) erred in treating the site as not being in the Green Belt. The Claim was dismissed. In dismissing the Claim, Stuart-Smith J set out the relevant factual background: (**NB** The italics represent the text of the judgement and the **bold** is the Appellant's emphasis)
97. ***"The detailed boundaries of the Green Belt in and around York have not been fixed. The primary [sic] for this is that York does not have a formally adopted Local Plan. A little history is necessary to explain the present position.***
98. *In 1980, the North Yorkshire County Structure Plan stated the principle that there should be a North Yorkshire Green Belt that would include: 'a belt whose outer edge is about six miles from York City Centre.' The plan did not purport to define or establish actual areas of Green Belt. The plan was superseded in 2008 by the RSS, to which I will refer later, as forming part of the development plan for the area.*
99. *In or around 1991, North York County Council produced a draft plan which came to be known as the North Yorkshire County Council Post Modifications York Green Belt Local Plan 1995. This draft plan indicated that the Site would be included in the Green Belt; but the draft plan was never adopted as part of the development plan for York, and the boundaries it proposed were never adopted for any purpose. Specifically, the proposed boundaries were never adopted for development control policy purposes.*
100. *On 1 April 1995, under local government re-organisation, the defendant took over responsibility for most of the area that might have been included as Green Belt if the draft plan had been adopted. According to Mr Glazier, an employee of the defendant, this was one reason why the draft plan was not formally adopted by North Yorkshire County Council. Another reason, according to Mr Glazier, was that in February 1995 the County Council abandoned plans for new settlement in the greater York area. The reason may not matter. What matters is that the County Council decided not to take the draft plan through to adoption.*
101. *In 2005, the Draft Local Plan Incorporating the 4th Set of Changes was approved by the defendant for development management purposes. Although it was not formally adopted as part of a local Development Plan, the defendant then used the 2005 Draft Local Plan as a basis for decision making. The 2005 Draft Local Plan included a proposals map that identified the boundaries of a Green Belt around York. The Site was not included in the Green Belt...*
102. *In May 2008, the Yorkshire and Humber Regional Spatial Strategy ["the RSS"] addressed the principle and the 'general extent' of a Green Belt around York. It included two policy statements that are relevant for present purposes. Policy YH9C stated: "The detailed inner boundaries of the Green Belt around York should be defined in order to establish long term development limits that*

*safeguard the special character and setting of the historic city. The boundaries must take account of the levels of growth set out in this RSS and must also endure beyond the Plan period."*

103. *Policy Y1C stated: 'Plans, strategies, investment decisions and programmes for the York sub area should... 1) In the City of York LDF, define the detailed boundaries of the outstanding sections of the outer boundary of the York Green Belt about 6 miles from York city Centre and the inner boundary in line with policy YH9C and 2) Protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas...'*

104. *It is apparent from the terms of these policies that the RSS did not purport to provide the detailed inner and outer boundaries of the Green Belt. That was also clear from a key diagram included in the RSS, which showed a hatched circular area around York which was described in the legend to the diagram as being the 'general extent of Green Belt (Policy YH9).'*

105. ***The policies do not state or imply that every piece of land within the doughnut ring that is bounded by the inner and outer boundaries shall be Green Belt; nor do they say anything about whether all or some pieces of land within the doughnut ring shall not be Green Belt. No doubt, this lack of detail and precision is attributable to the fact that the RSS was and is a high-level strategic document. It leaves matters of practical detail to lower-level plans and policies.***

106. *On 23 February 2013, the Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013 came into force. In summary, this order revoked most of the RSS, but retained policies YH9 and Y1 and the key diagram. The retained parts of the RSS are and remain the only formally adopted policies or plans for York that relate at all to the Green Belt."*

107. *At Paragraph 20, the Judge addressed the site which had been granted consent, in these terms:*

108. *"There is an emerging local plan for York. It shows the site as being within the urban areas and not within the Green Belt. There is now a publication draft local plan proposals map produced in 2018. Once again, the site is not included in the illustrated Green Belt but is included within the built up area of York. There has recently been consultation on the publication draft local plan. As yet, there has been no suggestion or proposal arising out of or subsequent to the consultation process that the site should be included within the Green Belt."*

109. *It is agreed that there is no factual difference which is material to the correct legal approach: the Wedgewood approach applies to the determination of this Appeal.*

110. *In light of that background, the Judge summarised the position as follows:*

- *As a matter of planning principle, there is a Green Belt area around York.*
- *The detailed inner boundaries and outer boundaries have not been defined by any formally adopted development plan.*

- RSS Policy Y1C states that the detailed boundaries of the outstanding sections of the outer boundary shall be about six miles from York City Centre and that the detailed boundaries of the inner boundary shall be defined in line with Policy YH9C.
- There is no formally adopted development plan that identifies the site as being within the Green Belt, as opposed to being within the general extent of the Green Belt. The most that can be said is that the site falls within the area illustrated by the RSS key diagram as being "general extent of Green Belt" (Policy YH9).
- In accordance with Framework Paragraph 48, the 2005 dLP can be afforded weight according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections to it, and the degree of consistency of the relevant policies in the emerging plan to the policies of the Framework. The draft local plan has been submitted to the Inspector, who has raised certain issues. It is now progressing towards phase two of the inspector's involvement as it approaches adoption.
- The 2005 dLP has been adopted only to be used as a basis for decision making.

111. At Paragraph 34, the Judge asked the question "Is the site within the Green Belt?" The question was answered in this way.

112. ***"In my judgement, it is plain beyond reasonable argument that the detailed boundaries of the Green Belt around York have not been defined. It is therefore impossible to look at any planning or other document and to identify the boundaries of the Green Belt around York. RSS policies YH9C and Y1C make plain that the RSS does not define the geographical boundaries of the Green Belt. Their terms and the key diagram do not address the question whether all land less than about six miles from York city centre is within the outer boundary of the Green Belt, and the RSS leaves the inner boundaries equally ill-defined.***

113. ***The defendant has no formal adopted Development Plan which defines the extent of the Green Belt. Such a policy may come into existence if and when the Draft Local Development Plan is adopted, either in its current form or subject to changes before adoption, but that has not yet happened. The claimant submits that the defendant had an 'interim policy' but has failed to identify any document containing or demonstrating the existence of an interim policy establishing the boundaries of the Green Belt around York, or a binding interim policy requiring the defendant to treat certain land as if it were Green Belt land despite it not having been defined as such.***

114. *How else should the defendant respond when confronted with an application to develop a site that falls within the general area where the York Green Belt may, in principle, be established? The claimant submits that all land within the indicative boundaries created in principle by the RSS are Green Belt unless and until they are removed from it by, for example, a neighbourhood plan. **The defendant submits that the position is more nuanced, because it is rare in principle and absurd in practice to treat all land within the indicative doughnut ring as Green Belt, and a) it is not the purpose of a high-level document such as the RSS to provide an exclusive and workable definition that renders all***

**land within the doughnut ring as Green Belt, and b) it is obvious from the evidence that much of the land within the doughnut ring has none of the characteristics associated with Green Belt.**

115. The defendant draws attention to the decision of the Secretary of State in relation to land at Brecks Lane in Strensall where, in addition to claiming that the site fell within the general extent of the Green Belt, the Secretary of State endorsed the approach of the inspector who then considered site specific features of the site before concluding that it should be treated as Green Belt. In the course of his decision, the inspector referred to the difficulties of simply overlaying the key diagram onto an Ordnance Survey base, which would be an unsatisfactory approach to identifying the Green Belt, given that the key diagram included in the RSS was a 'broad principle plan'.
116. **This appeal seems to me to raise a question that is novel and difficult for the court**, though it is not novel for the city of York. At bottom lies the question whether the adoption of a high-level strategic plan such as the RSS is, of itself, sufficient to constitute and define what is Green Belt land. **If one adopts a binary approach, each alternative is unpalatable. If it is held that more is required in order to create the Green Belt than the RSS, then York has no Green Belt land unless and until a further plan, probably a Local Development Plan, defines the detail of its scope. On the other hand, if it is held that a high-level strategic plan such as the RSS converts everything to which it refers into Green Belt, the restrictions which that would impose on developing land that has none of the characteristics normally associated with Green Belt land would be unsatisfactory from a number of different perspectives.**
117. **In my judgment, the solution to this binary conundrum is to adopt a more nuanced approach, as suggested by the defendant. It must be acknowledged that the RSS, as a high-level strategic document, establishes that, in principle and as a matter of policy, there is a Green Belt within the doughnut ring. That policy must be implemented by the defendant, but the policy does not state that all land that is (as a matter of high-level policy) within the inner and outer boundaries is Green Belt land.**
118. **In the absence of a defining Local Development Plan that specifies what is and is not Green Belt, the defendant must apply the high-level policy rationally in order to determine what land within the doughnut ring is and is not to be treated as Green Belt land. In doing so, it may have regard to the 2005 draft local plan incorporating the full set of changes, as it has previously taken a policy step by resolving to take it into account for development and management purposes. It may take into account the emerging Local Plan, provided it has due regard to the guidance at Paragraph 48 of the Framework. Furthermore, it may and should take into account site specific features that may tend to treating the site as Green Belt or not."**
119. The sections in bold (Appellant's emphasis) comprise "the Wedgewood approach". This was the approach taken by the LPA. The LPA agree this approach and it is enshrined in HNP Policy H14. The Appellant says that it is agreed that

following the *Wedgewood* approach does not raise any arguable issue of prematurity.

120. It follows that a planning judgement is required to determine the issue. The Appellant emphasises two further points:

121. Firstly, this approach was not understood by either the Forward Planning Team or the Planning Committee. The Planning Committee failed to decide whether the site should be treated as Green Belt. They failed to follow the correct lawful approach. This is significant because it is clear that a number of Members of the Planning Committee considered that the site should not be treated as Green Belt and that it formed a logical sustainable site to meet the significant need for housing.

122. Secondly, the LPA must apply the high-level RSS policy rationally. In *Wedgewood* the LPA considered it "absurd" to allocate every piece of greenfield land inside the doughnut ring as Green Belt.

#### Whether the Site Should be Considered Green Belt

123. In light of the SOCG and the cross examination of the Council's planning witness, it the Appellant says that it is common ground that:

- The LPA is significantly dependent on greenfield sites to meet the minimum requirements of a 5-year HLS;
- The LPA is significantly dependent on greenfield sites to meet the minimum requirements of the housing requirement in the Plan period;
- The LPA is proposing significant greenfield allocations on sites that would otherwise be designated as Green Belt;
- In advance of the Examination in Public (EIP), the LPA has recommended and resolved to approve greenfield applications treated as Green Belt (Council's landscape PoE at 5.13);
- Therefore, to deliver a 5-Year HLS and to meet the Objectively Assessed Need (OAN), this LPA is significantly dependent on greenfield land, on accessible sites, adjacent to sustainable settlements, which accord with the draft spatial strategy;
- The appeal site is surrounded on three sides by significant built development and to a fourth side by a permanent cemetery, cycleway and boundary planting;
- The consent would deliver a sustainable pattern of development;
- The proposal would constitute a logical rounding-off of Huntington, given development on all four sides;
- The site is highly accessible to local services, facilities, employment and schools, by modes of transport other than the private car, especially walking;
- There is no highway impact that cannot be mitigated to an acceptable level by offsite highway works, secured through the s.106 agreement;
- The access is acceptable;



- There are no social or physical infrastructure constraints which cannot be addressed by conditions or s.106 contributions;
- The proposal will contribute to the 5-year HLS, when there is a about a 3-year supply, to which "significant weight" should be attached;
- The proposal will make a significant contribution to AH, when there is a significant identified need which will be substantially unmet in the plan period, to which "significant weight" should be attached;
- The proposal derives "very significant weight" from the social role of sustainable development;
- The proposal derives "significant weight" from the economic role of sustainable development;
- A modest ecological benefit can be secured by delivering biodiversity net gain;
- A modest benefit will arise through the provision of public open space (POS) on the site;
- The only claimed adverse environmental impact concerns the Listed Building and landscape;
- There will be less than substantial harm at the lower end of the scale to Huntington Grange;
- There will be no more than the inevitable impact of placing housing on a greenfield site to local landscape and visual amenity at the site's boundary;
- Neither impact results in a conflict with policy. Neither constitutes a freestanding reason for refusal (SOCG at 5.6 and 5.7);
- Taken in isolation, such limited harms are outweighed by the benefits of the 300 dwellings proposed (SOCG at 5.7);
- The principle of development was supported in the 2013 and 2014 Draft Plans.

124. It is the Appellant's case that the Council's planning witness agreed that:

- The proposal would comply with H14 HNP;
- The proposal would comply with the HNP as a whole;
- The proposal would comply with the statutory development plan;
- The proposal would comply with draft eLP policies SS1, SS2 and GB1;
- The proposal would constitute sustainable development (in the terms of the Framework as a whole);
- Applying s.38(6) P&CPA 2004, planning permission should be granted.

125. It follows, that if the site does not materially contribute to Green Belt purposes, consent should be granted.

## Green Belt Policy

126. It is agreed that GB is a spatial designation. "Openness" is not defined in the Framework. It has, however, been considered by the Supreme Court in *Samuel Smiths Old Brewery v North Yorkshire CC* [2020] UKSC 3 (Appellant's landscape PoE at 19 *et seq*). There can be both a spatial and visual aspect to the consideration of openness. However, it needs to be understood that both the *Timmings* case (Appellant's landscape PoE at 16) and the *Samuel Smiths* case were considering the impact on openness in the context of applications for planning permission in the designated Green Belt, i.e. the sites were in the GB and their openness was therefore protected. That is fundamentally different from the position here, where a judgment must be reached on whether it is "necessary" to keep the site permanently open to prevent urban sprawl (Framework para 143(b) and 137).
127. It is common ground that neither the Framework nor Green Belt policy seeks to restrict greenfield development *per se*. Rather, the fundamental aim is to prevent urban sprawl. All greenfield land will be spatially open because it will be free from built development. It is, the Appellant's case, therefore, agreed that something more than a freedom from built development (a greenfield site) is required to justify Green Belt designation.
128. Green Belt policy is seeking to prevent urban sprawl to promote sustainable patterns of development (Framework para 142). It is common ground that the detailed Green Belt boundaries are being identified for the first time and, therefore, the need to promote sustainable patterns of development should be taken into account (SoCG at 4.9). It is significant that it is agreed that this proposal would promote such a sustainable pattern of development. The Council's evidence (Landscape PoE p35) indicates that housing development on the site would constitute a logical "rounding off" of the city. Housing development would, therefore, promote a sustainable pattern of development and the site does not need to be designated as Green Belt.
129. Finally, when defining GB boundaries, plans should (i) not include land which it is unnecessary to keep permanently open (Framework 143(b)); and (ii) define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.

### *Purpose 1 - Sprawl*

130. It is agreed that the central issue is whether there will be unrestricted sprawl. The Appellant makes the following points:
- Sprawl refers to the *ad hoc* uncontrolled expansion of a built-up area (Council's GB Assessment 2003 CD 5.13 at 2.2);
  - Planned development does not constitute sprawl (TP1 Addendum 2019 CD 5.37 at 4.23);
  - Sprawl is the "*spreading out of built form over a large area in an untidy or irregular way*" (CD 5.37 at 4.22 and CD 5.04 at 8.31);
  - If there is a sustainable pattern of development, in accordance with a masterplan, there will not be sprawl;

- Sprawl is the outward spread of development into the open countryside;
- If the area is enclosed by built form, there is a limited potential for sprawl;
- If the area has already been compromised by existing urban influences, there is limited potential for sprawl (CD 5.04 at 8.33).

131. In this context it is the Appellant's case that it is not necessary to keep this site permanently open to check the unrestricted sprawl of York into the open countryside.

132. The site is constrained on three sides by significant existing development. The southern boundary is formed by (i) a field boundary; (ii) a permanent cemetery with consent to expand; (iii) a further boundary; (iv) a cycleway with streetlights and columns linking New Lane to the Vangarde Shopping Centre; and (v) another field boundary. These are physical features that are readily recognisable and likely to be permanent. The site therefore fails to meet Purpose 1 at all for this reason alone.

133. The site is physically divorced from the open countryside by the cemetery, cycleway and planted boundaries. It is visually separated from the open countryside as well. The site is surrounded on three sides by built development which exerts a significant urban influence over the site. In this context, the cemetery is also a suburban feature. There is noise, lighting and activity along all four boundaries of the site. The site is visually and partially enclosed. Therefore, there is limited potential for sprawl on this site.

134. It is the Appellant's case that if consent is granted, the reserved matters approval would be granted in accordance with an agreed illustrative Masterplan. Development would not be ad hoc or uncontrolled. It would therefore be planned and consented under the control of the Council so that there would be no reasonable risk of sprawl.

135. Therefore, there is no material contribution to purpose one. The Appellant's conclusion on Purpose 1 is entirely consistent with the Council's previous conclusions. Firstly, Purpose 1 was specifically considered in the Council's Green Belt Appraisal (GBA) (2003) (CD 5.13 at 2.2). The Appraisal concluded that the site did not contribute to Purpose 1 (see GB Appraisal Map on p.17).

136. Secondly, the Council concluded that the site still did not contribute to Purpose 1 in the Character and Setting Paper (2011), which updated and endorsed the GBA (2003) in respect of the site (CD 5.12). The conclusion of the GBA (2003) was further updated and endorsed in the Historic Character and Setting Technical Paper Update (2013) (CD 5.11). The Council briefly argued that such documents only sought to identify the "most" important areas of the Green Belt. As the Council's planning policy witness expressly conceded in cross examination, that is wrong. The documents considered the boundary (and revisions to the proposed GB boundary) in detail and at the individual site level (see for example the detailed change to site 16 adjacent to the site CD 5.12 on p.35/42). Collectively, the documents are "comprehensive". There is no additional analysis which seeks to define other areas as Green Belt. Further, as conceded, the application site was

specifically considered on a site-specific basis in the preparation of the 2013 and 2014 draft Plans.

137. Thirdly, there is no reference to the site performing Purpose 1 in the Site Selection Paper (2013) (CD 5.28.01). The site was therefore not designated as Green Belt in the 2013 Draft Plan. Rather it was allocated as ST 11 (CD 5.23.01). It was, therefore, the LPA's *resolved position* in 2013 that the site did not perform Purpose 1.
138. Fourthly, there is no reference to the site performing Purpose 1 in the Site Selection Paper Addendum (2014) (CD 5.30.01). The site was therefore not designated as Green Belt in the 2014 Draft Plan either. Rather it was allocated as ST 11 (CD 5.32). It was, therefore, the LPA's *resolved position* in 2014 as well that the site did not perform Purpose 1.
139. There is, therefore, more than a decade of technical appraisal, analysis and evidence from the Council itself, all of which agrees and endorses the Appellant's conclusion on Purpose 1. The LPA have failed to identify any material change in policy or circumstances, which justifies this evidential U-turn. The only material change since 2014 is a reduction in the housing requirement, which was agreed in the cross examination of the Council not to be material to Purpose 1. The Appellant submits that significant weight should attach to this consensus of evidence between the LPA and the Appellant over a very protracted period.
140. It is acknowledged that the site was allocated as Green Belt in the 2005 Plan, but there is no evidence supporting that designation (for Purpose 1 or at all) and it was never tested at EiP. The Council conceded in cross examination that the designation was inconsistent with the 2003 Green Belt Appraisal and that the landowner would have had robust grounds (on that basis) to argue that the Plan was inconsistent with its own evidence base and not "sound".
141. After the 2014 Plan was abandoned, the Council purported to revise its Green Belt Appraisal in the light of a reduced draft revised housing requirement. The Council's revised position did not conclude that the site contributed to Purpose 1 either.
142. The Heritage Impact Appraisal (2017) did not suggest the site was required to prevent unrestricted urban sprawl (see CD 5.09.01 at A2.4.1 on p.163). This is consistent with the SHLAA assessment of the site (site ST 11) in 2017 (CD 5.33.01). The Council conceded in cross examination that this contained the totality of the analysis which preceded the 2018 Publication Draft Plan (CD 5.01).
143. The site is not identified as performing Purpose 1 in the eLP (Feb 2018). The site is not identified as performing any Green Belt purpose at all (see 3.4 – 3.12 CD 5.01). The Inspectors did not consider that the evidence base was sound and/or consistent with the Plan. The Council therefore produced a Green Belt Topic Addendum March 2019 (CD 5.37), to address concerns raised by the EiP Inspectors. The document specifically excludes the appeal site from the Green Belt for Purpose 1 (see 4.22 to 4.26 and Figs 3 and 7 CD 5.37). The site-specific analysis (Doc A1) confirms the site does not contribute to Purpose 1 at all (Doc A3, p258-9).
144. The Council's revised analysis in 2017 and 2019, together with their resolved position in 2018 (to publish the Plan) demonstrates that the site does not

contribute to Purpose 1. The Council has not identified any material change in circumstances since 2017-2019 to justify the evidential changes. The Appellant submits that significant weight should be attached to this further consensus of technical evidence which demonstrates the site should not be treated as Green Belt for Purpose 1.

145. For the first time in almost 2 decades, the Council now asserts that the site must be treated as Green Belt for Purpose 1, in their Green Belt Topic Paper Methodology (2021) (TP1 2021) (CD 5.04). This is the Council's attempt to address significant flaws identified by the EiP Inspectors in respect of the Green Belt Methodology (see CD 5.03).

146. TP1 2021 should be a clarification/explanation of the process. It is not. It is a completely new methodology which has been created to justify the GB boundaries which have already been arrived at, on the basis of a flawed methodology. It is a retrospective justification of the Council's decision to include the site as Green Belt. The Appellant has a number of significant criticisms of this document.

147. Firstly, TP1 2021 fails to explain how or why it is now alleged that the site contributes to Purpose 1, when the totality of its previous analysis reached the opposite conclusion. The Council claims this analysis is merely a clarification of the decision (see CD 5.19 p.5: "...a clarified explanation of the detailed boundary setting methodology ..."). A "clarification" cannot include completely new points which are inconsistent with the previous analysis. This approach is fundamentally flawed.

148. Secondly, the Council places reliance on this new methodology. However, it must be understood that the methodology is neither adopted nor endorsed. The reliance on the methodology as a piece of evidence for this appeal is flawed unless (i) the methodology is robust and (ii) the site-specific assessment is robust. The Inspectors have expressed no view on the methodology or site-specific assessments. In the light of detailed objections through consultation (see CD 5.20 paras 6-11), it would be a procedural failing for the EiP Inspector to express any view on the robustness of this methodology in advance of even hearing the objections to it through the EiP. The Inspectors have, therefore, provided no support or endorsement for this new methodology, as was ultimately accepted by the Council in cross examination.

149. Thirdly, the Appellant has significant criticisms of the Council's revised methodology. In respect of Purpose 1, the Appellant has identified the following methodological flaws:

- None of the questions posed by the methodology ask or answer the correct question posed by the Framework;
- The methodology examines "*the land*" which is materially bigger than the appeal site and includes land to the south of the cemetery (effectively ST 11), which is materially different in character and appearance to the appeal site. The Council's analysis does not disaggregate the appeal site. It is, therefore, not an analysis of the site;
- The methodology simply asks whether sprawl may be "relevant". The fact that sprawl may be a relevant consideration does not demonstrate the site performs Purpose 1 at all;

- Q.4.2 in the methodology is incoherent and internally contradictory;
- Q4.3 in the methodology is unintelligible. This site is not unconstrained by built development or strong boundaries. The answer to the question should be "No" yet the answer is "Yes". There is a second part to the question. However, the use of "therefore" before that second part can only mean that it is the answer to the first part of the question which answers the second part (otherwise the use of "therefore" is otiose). The Council has therefore failed to understand and to answer their own question intelligibly;
- Alternatively, the answer to Q.4.3 can simultaneously be "No" and "Yes". That is irrational. The methodology does not explain which answer should prevail in this scenario. Given the use of "therefore" it should be the answer to the first part: "No". The question is flawed;
- As none of the questions ask the correct question and/or ask any intelligible or relevant question, the methodology is significantly flawed;
- No weight can be attached to this methodology in reversing around 20 years of consistent analysis from the Council itself.

150. Fourthly, the Council's answers to the questions serve to demonstrate that the site does not perform Purpose 1:

- The Council concludes that the land "*could be seen as an ideal area for rounding off.*" This is the LPA's analysis not the Appellant's. This is also consistent with: (a) the map evidence, which shows it will be a rounding off of Huntington (see the Council's landscape PoE Fig 2 and 3); (b) the Council's concession that the development would result in a "sustainable pattern of development"; (c) the Council's planning witness accepted it would be a logical rounding of in planning and accessibility terms; (d) The Appellant's landscape witness said that it was a logical rounding off in examination in chief;
- The Council's landscape evidence is unequivocal that development on the site would not be "*unrestricted sprawl*" (Council's landscape PoE on p. 35). On that basis alone, the site does not meet Purpose 1;
- Whilst the Council argues that the site could sprawl further to the south, this forms no part of the Council's analysis. Further, it is agreed that the cemetery, cycleway and intervening boundary hedges/planting form a permanent logical and defensible boundary. The proposed southern boundary is agreed to be *more* logical, defensible and permanent than the post and rail fence to the south of Forge Close, which the LPA consider to be acceptable (cross examination of the Council's landscape witness);
- Q4.2 of the methodology supports the Appellant's case that the site does not perform Purpose 1;
- In Q.4.3 of the methodology the Council expressly concedes that: "*The land ... is constrained on 3 sides by these boundaries which serve to contain and enclose the land which would prevent sprawl.*" On this basis, Purpose 1 is not met;

- The Council nonetheless argue that a site of around 300m x 400m is large enough to allow sprawl. However, the Council conceded that the site has an enclosed character which is clearly subject to urban influences on at least 3 sides and there is no criticism of the proposed Masterplan (CD 1.08). Implementation of the proposed Masterplan would not, in the Appellant's view, result in sprawl but in a high-quality planned development. There is no material distinction between a site allocated in the Plan and a site granted outline planning permission: both are acceptable in principle, subject to detailed design at the reserved matters application (RMA) which will prevent sprawl.

151. The Appellant therefore submits that when the Council's evidence is applied to its own definitions, the site does not perform Purpose 1. The site is not required to prevent urban sprawl.

### Purpose 3– Encroachment

152. There is no dispute over the definitions of relevant terms and/or the approach required by the Framework: The Council defines "encroachment" as "A gradual advance beyond usual or acceptable limits" (CD 5.04 at 8.36). The Appellant defines encroachment as the spread of urban development across open countryside (Landscape PoE at p23).

153. The Council expressly endorses and applies the Planning Advisory Service (PAS) Guidance as "a useful approach to use in testing this purpose", which requires the decision-maker: "to look at the difference between urban fringe – land under the influence of the urban area – and open countryside, and to favour the latter in determining which land to try and keep open, taking into account the types and edges that can be achieved." (CD 5.04 at para 8.37).

154. It is therefore agreed that the resolution of this issue requires a consideration of: (i) Whether the site is urban fringe (under the influence of the urban area) or open countryside; (ii) The extent to which the site relates to the adjacent settlement rather than to the wider countryside (CD 5.04 at para 8.38); and (iii) Whether development would advance beyond a "usual" or "acceptable" limit.

155. The Appellant's case is that the site does not contribute to Purpose 3. The site is contained on all 4 sides by urban or suburban development and logical/defensible boundaries. On this basis alone, there would not be encroachment into the countryside.

156. There can be no reasonable dispute that the site is heavily influenced by the surrounding stadium, Megabowl, Cinema, Vangarde Shopping Centre and residential development. New Lane is a busy highway. There is activity, noise and significant lighting on all 4 sides of the site. Applying the Council's methodology, the site clearly has the character of urban fringe not open countryside. Indeed, it is agreed that the site does not have the character or appearance of open countryside. Rather, it has an enclosed character (Council's landscape PoE p37). Furthermore, the site is physically and visually divorced from the wider open countryside, which may have a rural character further south. As a result of such significant urbanising influences on 3 sides, the site is not rural open countryside. It is a piece of relict farmland, left enclosed and isolated when the stadium and retail/leisure Park were constructed.

157. The LPA did not consider that the site was required to prevent encroachment into the countryside in:

- The 2003 Green Belt Appraisal (CD 5.13);
- The Character and Setting Paper 2011 (CD 5.12);
- The Character and Setting Technical Paper Update (2013) (CD 5.11);
- The Site Selection Paper 2013 (CD 5.28.01);
- The Draft Plan 2013 (CD 5.23.01);
- The Site Selection Paper Addendum 2014 (CD 5.30.01);
- The Draft Plan 2014 (CD 5.32), in which the site was not designated as GB but allocated as part of ST 11;
- The Heritage Impact Appraisal (2017) (CD 5.09.01 at A2.4);
- The SHLAA Assessment 2017 (CD 5.33.01);
- The 2018 Publication Draft Plan (CD 5.01).

158. The first suggestion that the site performs Purpose 3 is in Doc A1 (2019). However, the point raised is that the site is an "*important gap between the existing residential area and the commercial area of Monks Cross.*" However, that assertion does not support the LPA's case that it is necessary to keep this site permanently open to safeguard the countryside from encroachment. It is a separate point, with which the Appellant disagrees. It relates to the separation of parts of York with a different character, which the LPA claim relates to Purpose 4.

159. The LPA have failed to identify any material change in policy or circumstances which justifies the evidential U-turn. Again, significant weight should attach to this consensus of professional technical evidence over such a long period.

160. The Appellant has a number of significant criticisms of the Council's evidence, based on the latest new methodology (CD 5.04).

161. Firstly, TP1 (2021) fails to explain how or why it is now alleged that the site contributes to Purpose 3, when the totality of its previous analysis reached the opposite conclusion.

162. Secondly, the Appellant has significant criticisms of the LPA's revised methodology. In respect of purpose 3, the Appellant has identified the following methodological flaws:

- None of the questions posed by the methodology ask or answer the correct question posed by the Framework (see paras 5.1, 5.2 and 5.3 at Council's landscape PoE p.36);
- None of the questions ask or answer the issues raised by the Council's definitions and guidance;
- The methodology examines "*the land*" which is materially bigger than the appeal site and includes land to the south of the cemetery (effectively ST 11), which is materially different to the appeal site. The Council's analysis



does not disaggregate the appeal site. It is, therefore, not an analysis of the site;

- Q.5.1 of the methodology considers “the land” as divorced/separated from its context. It therefore specifically ignores the significant urbanising influences of the adjacent settlement. This is a flawed approach, when the Council’s approach specifically requires a consideration of whether the site is influenced by the urban area. The Council recognises that the clear urban influences from the areas to the west, north and east are relevant and must be clarified (Council’s landscape PoE at p36);
- It is not possible to relate Q.5.2 of the methodology to the PAS Guidance: (a) it is not clear why it is necessary to keep a rural business park or other business cluster permanently open; (b) Purpose 3 does not relate to the “function” of the open countryside and neither does the PAS Guidance; (c) the Council’s answers to this question continue to consider the site in isolation from its urban enclosed context;
- The Council recognises expressly that the site does not have the character or appearance of the open countryside but counters that this is “*not the question asked*” (Council’s landscape PoE at p.37). This recognises that Q.5.2 is asking the wrong question because the Council’s methodology recognises that the key issue is whether the site *does* have the character and appearance of open countryside;
- Q.5.3 of the methodology is flawed for this site because: (a) it wrongly claims the site is accessible when it isn’t; (b) it equates “openness” with the “character of the countryside” when openness simply means freedom from built development; (c) because ST 11 is analysed (not the application site) it wrongly asserts that the land contributes to the character of the wider countryside when it doesn’t.

180. Thirdly, the Council’s answers to the questions are inaccurate but, even so, they serve to demonstrate that the site does not perform Purpose 3:

- The Council agrees that the site “*is clearly subject to urban influences from the areas around it to the west, north and east*” and “*it is also subject to urbanising influences from the areas around it*” (Council’s landscape PoE p36);
- The Council accepts that the site is enclosed on 3 sides by built development (Council’s landscape PoE p 37);
- The Council agrees that the site has an “enclosed” character (Council’s landscape PoE at p37);
- The Council concedes that the site “*does not have the character or appearance of open countryside*” (Council’s landscape PoE p37);
- The wider area of open land to the south has “a more rural character” (Council’s landscape PoE p37);
- The appeal site is separated from the countryside to the south by the cemetery and cycleway (Council’s landscape PoE p38).

181. Such evidence robustly demonstrates that development on the site would not encroach beyond an acceptable or usual limit on the open countryside.

182. The site is clearly influenced by the urban area. It cannot be characterised as having a rural character when it is so heavily urbanised by adjacent development and every viewpoint of the site has an urban context and view of the settlement in the foreground and background. The site is urban fringe and not open countryside.

183. The site does not need to be kept permanently open to assist in safeguarding the countryside from encroachment. On the contrary the Council accepts that: New houses on the appeal site would not be out of character (Council's landscape PoE para 3.5.6); the site is of medium susceptibility meaning it has a moderate capacity to accommodate the proposed development of 300 homes, which would generally be in scale and/or character with the existing landscape (Council's landscape PoE para 3.5.6 and Table 4); and the site is medium sensitivity, which means it has a reasonable ability to accommodate the proposed development. The development would be visible but not especially discordant in the local landscape (Council's landscape PoE 3.5.7 and Table 5).

184. It cannot be reasonably argued that this site must be kept *permanently open* to safeguard the countryside, when it has neither the character nor appearance of open countryside, is divorced spatially and visually from the open countryside and can be developed without any unacceptable landscape or visual impact on the local landscape with which it would not be discordant. There is no requirement to treat the site as Green Belt for Purpose 3.

Purpose 4– to preserve the setting and special character of the historic city of York

185. In resolving this issue, the Appellant submits that its evidence: (i) interprets and applies Framework 138(d) lawfully, rationally and reasonably; (ii) in a manner which is clear, transparent and robust; and (iii) consistent with repeated assessments from the Council itself. The Council's current position is: (i) inconsistent with its previous position; (ii) internally inconsistent even now; (iii) not supported by any evidence from a heritage specialist; (iv) not supported by any site specific heritage analysis; and therefore (v) based on a series of assertions about the interpretation and application of Framework 138(d) to excuse the absence of any site specific heritage evidence; (vi) is simply to justify a decision which had already been taken, based on a reduction in housing numbers which all agree is not relevant.

186. The Council has not undertaken a site-specific heritage assessment. TP1 (2021) (CD 5.04) does not assess the site either. It assesses a much larger area equivalent to site ST 11. This assessment cannot be conveniently disaggregated to the site level. It follows that the Council has provided no site-specific heritage analysis in considering Purpose 4.

187. The Council asserted at the Inquiry that a heritage analysis is irrelevant to a consideration of Purpose 4. The Council's approach to the assessment of Purpose 4 is flawed and unreasonable. For two decades at least, the Council has considered that heritage analysis is of central relevance to an assessment of Purpose 4 as set out in GBA (2003), Character and Setting Papers (2011 and 2013), the Heritage Topic Paper (2014), the GB Addendum (2019) and the GB Topic Paper 2021. In addressing Purpose 4, the GB Addendum (2019) specifically refers to the Framework, the PPG *Historic Environment* and Historic

England Guidance to provide policy, guidance and advice on how heritage assets and the historic environment should be conserved regarding significance, character and setting in assessing Purpose 4 (CD 5.37 at 4.11). The same policy/guidance/advice is expressly referenced in TP1 (2021). The Council expressly references the Framework definition of "Heritage Asset and Setting" in considering how significance and character should be conserved (CD 5.04 at 8.11-8.15).

188. The TP1 methodology is derived from the Heritage Topic Paper (2014) which is expressly an assessment of the significance of York as a historic city (CD 5.09 at 1.2). The proposition that the methodology would be based on heritage assessments, when heritage assessment is irrelevant, is perverse.
189. The HTP (2014) was written by multiple heritage experts (CD 5.09 at 3.1) and endorsed by Historic England. The Council has always considered heritage assessment, undertaken by competent heritage consultants, to be an intrinsic element of considering the special character of a historic city.
190. RSS Policy YH9 refers to the need to protect the significant historic character of York, referencing the historic setting. The first spatial principle of SS1 is to conserve and enhance York's historic environment. It cannot reasonably be argued that the significance of the historic city is irrelevant to York's historic character and environment. It would be unlawful to interpret Framework paragraph 138(d) so narrowly as to exclude any consideration of heritage assessment.
191. In cross examination the Council's Policy witness conceded that:
  - Heritage assessment is relevant at a strategic level in considering Purpose 4;
  - Heritage assessment is relevant in understanding the setting and special character of a historic town;
  - The contribution which the site makes to the special character of the historic city has to be understood;
  - Heritage assessment has a "*strong relevance*" in assessing the contribution which the site makes to the special character of the historic city;
  - No witness for the Council had assessed the contribution which the site made to the special character of the historic city.
192. The proposition that you have to understand the contribution which site makes to the special character of the historic city, without undertaking a site-specific assessment, is internally inconsistent and incoherent.
193. In respect of the definitions:
194. "*Preserve*" is well understood in the assessment of the historic environment. It means to do no harm. It does not mean no change. It does not preclude all greenfield development adjacent to cities with a historic core. Rather, the focus is on whether there is "no harm" to the special character of the historic city.

195. The "*Historic City*" is defined by the Council as being the *historic core or the urban nucleus defined by the city walls, the approach roads to the city walls and the ancient strays* (CD 5.09 p.4 and 2.4). The historic city is a spider with legs extending to 6 miles. That does not mean that the whole of the historic city extends to 6 miles and/or that any part of the city which extends to 6 miles must be the historic city. It is the setting and special character of this area to which Purpose 4 is directed to preserving.
196. The Council's methodology expressly refers to the definition of "*Setting*" in the Framework Glossary (CD 5.04 at 8.14): *the surroundings in which the heritage asset is experienced. Its extent is not fixed and may change as the assets 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.*
197. It is clear that the Council considers the historic city to be a "heritage asset." That is consistent with the Framework definition: *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. It includes designated heritage assets and assets identified by the LPA.*
198. "*Significance*" is defined in the Framework as: *the value of a heritage asset to this and future generations because of its heritage interest. The interest maybe archaeological, architectural, artistic or historic. Significance derives not only from the heritage assets physical presence but also from its setting.*
199. In such circumstances, it is reasonable to equate "*special character*" with "*significance*". It may be that the special character of York is wide enough to include purely landscape or visual issues but such issues must relate to an aspect of the special character of York as a historic city, e.g views of York Minster. The Parties agree that Purpose 4 is not a landscape or visual designation.
200. It is clear, therefore, that before any assessment of Purpose 4 can be undertaken, it is necessary to understand the significance or special character of the historic city; the extent of the setting of the historic city; whether the site is located within the setting of the historic city and why; i.e. what aspect of the historic environment can be experienced; whether the site (as part of the setting) contributes to the significance or special character of the historic city.
201. It follows that the setting is not a heritage designation. Its importance lies in the contribution it makes to the significance of the asset, in this case the historic city. It is *not* therefore enough to assert that a site is in the setting of the historic city. There must also be an impact on the significance of the historic city.
202. Once the correct approach is identified, consistent with the Council's own assessments, methodology and definitions, the analysis becomes straightforward. It does, however, mean that an assessment of the site's contribution to the significance of the historic city, as a heritage asset, is fundamental to an assessment under Purpose 4. As it is accepted by the LPA that they have not undertaken such an assessment, no weight can attach to

their evidence on Purpose 4 and it cannot be relied upon to address, critique or contradict the Appellant's evidence.

203. It is not argued by the Council that the site forms part of the historic city for Purpose 4 or at all. There is, therefore, no direct impact on the special character of the historic city. Rather, the issue is whether there is an impact on the setting of the historic city which contributes to its special character or significance.
204. Secondly, the Appellant says that it is common ground that the site does not lie in the setting of York Minster and/or that there would be no impact on the significance of the Minster were the site to be developed. According to the Appellant, the statutory test under s.66 of the Town and Country Planning (Listed Buildings and Conservation Areas Act) 1990 is not engaged.
205. Given that the proposal would preserve the significance of York Minster, there would be no impact on the special character of the historic city as a result of an impact on glimpsed views of York Minster.
206. The Appellant's case is that you experience some brief glimpsed views of the top of York Minster at a distance of 3km away through foliage. However, the site does not contribute to the significance of York Minster. It is therefore agreed that there would be no impact on the significance of York Minster as a designated heritage asset. There is, therefore, no consequential impact on the special character of the historic city because there is no impact on the Minster.
207. Apart from York Minster, you cannot experience the historic city from the site. You cannot see the historic core from the site because of the significance intervening modern suburban and mixed-use development and you cannot see Monk Stray either. Accordingly, the site does not lie in the setting of the historic city.
208. It follows that the site does not need to be kept permanently open to preserve the setting and special character of the historic town.
209. The Appellant's conclusions are consistent with the previous evidence and resolved position of the Council. The LPA did not consider that the site was relevant to Purpose 4 in:
  - The 2003 Green Belt Appraisal (CD 5.13);
  - The Character and Setting Paper 2011 (CD 5.12);
  - The Character and Setting Technical Paper Update (2013) (CD 5.11);
  - The Site Selection Paper 2013 (CD 5.28.01);
  - The Draft Plan 2013 (CD 5.23.01);
  - The Site Selection Paper Addendum 2014 (CD 5.30.01);
  - The Draft Plan 2014 (CD 5.32), in which the site was not designated as GB but allocated as part of ST 11;
  - The Heritage Topic Paper 2014 (CD 5.09);
  - The Heritage Impact Appraisal (2017) (CD 5.09.01 at A2.4);

- The SHLAA Assessment 2017 (CD 5.33.01);
  - The 2018 Publication Draft Plan (CD 5.01).
211. The Council's evidence raises four issues ("the 2021 issues") as compactness, the coalescence of Huntington and Monks Cross, the relationship of the site to Monks Stray, and clear views of the Minster.
212. Thorough Purpose 4 assessments were undertaken in the 2003 GBA and 2014 HTP after which it was concluded that the site made no contribution to Monks Stray and should not be Green Belt. This was further considered and endorsed in 2011 (CD 5.12), 2013 (CD 5.11) and 2014 (CD 5.09). The Council now relies on the same heritage appraisals in 2003 and 2014 which robustly demonstrated that the site did not contribute to the significance or setting of Monks Stray.
213. Compactness is specifically considered in the HTP 2014 (CD 5.09). Again, the HTP 2014 provides no evidential support for the proposition that the site contributes to the special character of the historic city at all.
214. Coalescence is not raised in the 2003, 2011, 2013 or 2014 assessments because the merging of one part of Huntington merging with another part Huntington is not and never has been considered relevant to the special character of the historic city.
215. The Council's Planning Policy witness conceded that the site-specific analysis which took place in 2003 and 2014 specifically took account of compactness, the relationship of the site to Monk Stray, and clear views of the Minster. In publishing the Plan in 2014, the resolved position of the LPA was that the site did not contribute to Purpose 4, which was deemed to be the most important spatial principle in SS1 and SS2 Draft Plan 2014. The 2014 Plan was drafted in the light of the HTP 2014, on which the LPA still rely (see CD 5.32 p.iii at x). There were, therefore, multiple site-specific assessments by the Council from 2003 to 2014 in which the Council specifically concluded that the site did not contribute to Purpose 4.
216. Save for the change in housing numbers, which is agreed to be irrelevant, the LPA have been unable to identify any material change in circumstances to justify their change in position.
217. In respect of the 2018 Draft Local Plan, the Council's current position is not just inconsistent with a decade of technical analysis, it is inconsistent with evidence submitted to the EiP. The 2018 Draft Plan is quite clear that the site does not contribute to Purpose 4 (CD 5.04 at 3.4, 3.5 Fig 3.1). This is consistent with the 2017 Site Selection Paper (CD 5.33.01) which does not refer to any conflict with Purpose 4.
218. In the GB Addendum March 2019, specifically submitted to address defects in the evidence identified by the Inspector, it is specifically accepted that the site does not contribute to Purpose 4 in a strategic context. Two site specific issues are identified:

- The site plays an important role in the preserving the character and setting of Huntington – relevant to purpose 4; and
  - The site keeps an important gap between the existing residential area of Huntington and the commercial area of Monks Cross – purpose 3.
219. The LPA concede there is no mention of compactness, the relationship of the site to Monk Stray, and clear views of the Minster. There is no explanation for the inconsistency. It is quite clear that the Council did not consider such issues to be relevant between 2003 and 2019. They have been raised now *ex post facto* to bolster a decision which the Inspectors considered to be plainly unsound.
220. The Appellant has a number of significant criticisms of the Council's evidence, based on the latest new methodology (CD 5.04).
221. Firstly, TP1 (2021) fails to explain how or why it is now alleged that the site contributes to Purpose 4, when the totality of its previous analysis reached the opposite conclusion.
222. Secondly, the Appellant has significant criticisms of the Council's revised methodology. In respect of purpose 4, the Appellant has identified the following methodological flaws:
- None of the questions posed by the methodology ask or answer the correct question posed by the Framework;
  - Q1.1 refers to the compactness of the whole city, not the historic city. This is flawed. If the compactness of the whole city is relevant, the Council must establish that the claimed compactness of this part of Huntington is a component of the special character of the historic city. They have failed to do so and HTP 2014 does not do it either;
  - Q1.2 is on the premise that if the scale of the city increases it will be harmful to the special character of the city because it is compact. This fails to demonstrate that the scale or identity of the city in this location is a component of its special character. Rather, it simply precludes greenfield development, as any such development will increase the scale of a city by definition;
  - Q1.3 refers to the coalescence of different parts of the city. It does not, however, understand that any such coalescence must relate to the special character of the historic city. It is not sufficient to simply point one ordinary suburban area further connecting with modern development in the same part of the same city;
  - Q2.1 and 2.2 could be relevant but it is agreed that the site does not contribute to the significance of York Minster. The answer is inconsistent with the agreed evidence;
  - Q2.3 and 3.2 do not apply to the site;
223. Even this revised methodology is hopelessly flawed in assessing the contribution of the site to the setting of the historic city. Further, it has not been applied to the site by anybody who is competent to undertake the required assessment of the historic environment and its special character.

224. Thirdly, the analysis is littered with flawed judgments which mean it cannot be relied upon:

*Coalescence of Huntington and Monks Cross*

- The main parties agree that the residential and commercial areas of Huntington have already significantly coalesced to the north of the site. Therefore, they do not have the character of different settlements of different parts of the same settlement (see the Council's landscape PoE Figs 2 and 3);
  - Monks Cross is the name of the shopping centre in Huntington. This is all part of the same area of York. It all lies within the Parish and the HNP area of Huntington. Indeed, the site is not next to Monks Cross. It is next to the Vangarde Shopping and Leisure complex, which is marked on the Council's Landscape PoE plan as Huntington South Moor (JE Fig 3);
  - If permission is granted, there will not, therefore, be any impact on the separate identity of Huntington as a distinct area because all sides of the site comprise Huntington;
  - There is no evidence to demonstrate that the identity of Huntington is a relevant component of the special character of the historic city because it has significance. Around the site it is an unprepossessing suburban area;
  - There is no evidence to demonstrate that the identity of the Monks Cross shopping centre is a relevant component of the special character of the historic city.
225. There is, therefore, no evidential basis to conclude that any claimed coalescence will have any impact on any aspect of the special character of the historic city.

*York Minster*

226. It is the Appellant's case that the site does not contribute to any understanding of the original siting or context of York Minster because it is 3km away and screened by modern suburbs. Similarly, the site does not plan any role in understanding the visual dominance of York Minster.
227. Finally, the Appellant considers that views of the Minster may be relevant to landscape and visual impact. However, there must be more than glimpsed visibility for there to be the identification of an important view. In this regard, the viewpoint is important. There are glimpsed views from the small lengths of pavement to the east of the site, when one is adjacent to the blank elevation of the stadium and Megabowl/Cinema. Such momentary glimpsed, partially screened, oblique views at considerable distance cannot be considered to be important from either a heritage or landscape and visual perspective. They cannot contribute materially to the special character of the historic city.
228. There is, therefore, very considerable common ground between the Appellant and the Council indicating that the site does not contribute to Purpose 4 at all. The Council's latest evidence contains an irreconcilable inconsistency with all of its previously submitted analysis because the Council has decided to undertake a fresh *ex post facto* analysis to justify a conclusion which has already been reached. The site does not contribute materially or at all to purpose 4, as the



Council's own evidence has, for a very considerable period of time, expressly demonstrated.

229. The site should not be treated as Green Belt. On that basis, it is agreed that the site complies with policies SS1, SS2, GB 1 and H14. Consent should therefore be granted.

***Very Special Circumstances should the site be considered to be in the Green Belt***

230. If the site falls to be considered as Green Belt, Paragraphs 147 and 148 of the Framework apply. The Appellant notes that it is agreed that the site would be inappropriate development and that the development should not be approved except in "very special circumstances" (VSCs). VSCs will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
231. In this contested scenario, it is acknowledged that the proposal is inappropriate development. There would be harm to the openness of the Green Belt, limited to an impact on spatial openness, as a result of the development of a site currently free from development.
232. There would be harm to the listed building at the lower end of the scale. There would be an adverse landscape and visual impact. However, it is common ground that the visual envelope is very tightly constrained. The landscape and visual impact would be no more than the inevitable impact of placing housing on a greenfield site. The impacts extend no further than the immediate boundaries of the site. In reality, this site is as good a development site as one can conceive, given the requirement for greenfield sites. Such impacts should be afforded limited weight.
233. The Appellant sets out their view that there are there are VSC's which clearly outweigh the substantial harm to the Green Belt and any other harm. The VSC's comprise:
- The total failure of the Plan-led system;
  - The need for market housing;
  - The need for affordable housing;
  - Lack of affordability of housing in York;
  - The absence of alternative sites to meet such needs outside the Green Belt;
  - The lack of progress made by the LPA through the emerging Local Plan process.
234. The plan making system: A statutory development plan lies at the heart of the planning system. The Framework demands that plans are succinct and up-to-date. There is a statutory requirement for plans to be reviewed at least every 5 years, in order that they are kept up-to-date (Reg 10A Local Planning (England) Regs 2012).

235. The 1990 Act requires the LPA to adopt a Local Plan that is in general conformity with the Structure Plan (s.36(1) and (4)). A new development plan system was introduced by the Planning and Compulsory Purchase Act 2004, requiring the LPA to adopt a Core Strategy, as part of its Local Development Framework.
236. The principle of an outer edge of Green Belt 6 miles from York City Centre was established in the 1980 Structure Plan (CD 5.13 at 2.3). It was agreed by the Council's Planning witness therefore, that the Council failed to adopt a Local Plan at any point between 1980 and 2004; and the Council have failed to adopt a Core Strategy between 2004 and 2022.
237. Therefore, there has been a failure of the plan led system. Consequently, this Council has:
- No strategic or local housing allocations;
  - No adopted housing requirement;
  - No adopted affordable housing requirement;
  - No designated Green Belt boundaries;
  - No statutory development plan which identifies and plans to meet current identified housing needs.
238. This failure by York City Council to adopt a Plan has resulted in the housing crisis in York.
239. Market Housing: The Government's objective is to boost significantly the supply of housing, so that (i) a sufficient amount and variety of land can come forward where it is needed, such as in York; and (ii) the needs of groups with specific housing requirements are actually addressed (Framework Paragraph 60). To determine the minimum number of homes needed, strategic policies should be informed by a local housing needs (LHN) assessment, conducted using the standard method (Framework Paragraph 61). The LPA are not planning to the standard method. Given the date the Plan was submitted, a housing requirement derived using the 2012 Framework and Strategic Housing Market Assessment (SHMA) is used. This is still a minimum requirement (eLP Policy SS2, CD 5.01).
240. A 5-year HLS, to be set out in an annual assessment, is the minimum requirement of national policy (Framework Paragraph 74). The Council fails to comply with such a basic requirement. It demonstrates that the Council has no interest in engaging with the national planning policy imperative to boost significantly the supply of land to demonstrate a 5-year HLS and meet currently assessed need for market and affordable housing.
241. Consequently, the Council has no transparent analysis of the shortfall in housing delivery in the last 10 years. The Council's planning witness did not, however, dispute that the shortfall would be "astronomical". For example, in 2013, the housing requirement was 1250 dwellings per annum (d/pa) (Planning Policy PoE at 4.10). With delivery of 374 d/pa (2013/14) and 523 (2014/15), the annual shortfall was 876 d/pa (2013/14) and 727 d/pa (2014/15). This is a shortfall of 1,603 homes in just 2 years.

242. Housing delivery has been 668 d/pa over the last 10 years or 544 d/pa over the last 3 years (Appellant's Planning PoE Table 7).
243. The LPA has routinely conceded that it cannot demonstrate a 5-year HLS at successive Inquiries over (at least) the last 5 years (see Appellant's Planning PoE at Table 6.2) and currently has between 2.79 and 3.45 years supply.
244. It is agreed that there have been very significant deficits consistently over at least the last 5 years. The response to remedy this situation is the significant release of greenfield Green Belt sites on accessible sites, adjacent to sustainable settlements, consistent with the draft spatial strategy.
245. Further, the LPA has failed to meet the minimum requirement of the Housing Delivery Test (HDT) in national policy. The LPA has failed the HDT every year since its inception. Document ID A4 demonstrates that the LPA has delivered 1,782 homes in the last 3 years (594 d/pa) against a housing requirement of 2,728 (909 d/pa). This is a 65%. This is agreed to be a very significant shortfall and well below the 95% at which remedial action is required.
246. The current housing requirement is 822 d/pa. This is contested through the EiP: amongst other matters, (a) the baseline OAN is contested; (b) the economic and affordability uplifts are contested; and (c) the need to address affordable housing is significantly under-estimated. This is a matter for the EiP (not a s.78 Inquiry). But even applying this contested requirement results in an annual requirement of 986 d/pa (with a 20% buffer applied).
247. The Council must deliver 986 d/pa each year for the next 5 years, just to meet the minimum requirement of national policy against a minimum housing requirement, when annual delivery has been a mere 544 d/pa (Table 7) or 594 d/pa (HDT test results). The Council's planning witness conceded that there needs to be an immediate step-change in the delivery of market housing now.
248. The conclusion of the Inspector at the Land at Moor Lane, Woodthorpe Inquiry was that: "*All parties are agreed that there is a housing crisis in York, with a wholly inadequate identified Housing Land Supply* (CD 6.02 IR 340 and SoS DL 22).
249. In respect of affordability, it was agreed in cross examination of the Council's planning witness that in the period in which the Council have failed repeatedly to adopt a Plan, affordability ratios have risen exponentially. Lower quartile affordability ratios have risen by 126% when the regional increase was only 82%. Median quartile affordability ratios have risen by 117% when the regional increase was only 81%.
250. The Appellant notes that the Council's planning witness conceded that a ratio of about 5 was just about affordable (as banks will lend about 5 times annual earnings), whilst a ratio of 9 meant that even lower and median quartile housing had become unaffordable for a significant proportion of York residents on lower or median incomes. He therefore conceded that there is not just a crisis in housing supply but there is a crisis in the affordability of housing as well.
251. Affordable Housing (AH): There is a very significant need for more affordable housing. The SHMA (2016) estimated the AH need to be 573 AH/pa (SN at 6.38 and CD 5.05). In the last 3 years, total housing delivery has been 544

d/pa. Accordingly, total housing delivery has failed to meet even the AH need, let alone total housing need.

252. Against that need of 573 AH/pa, it is agreed that there was (Appellant's Planning PoE at 6.41):
- A net reduction of 3 affordable homes in 2017/18; and
  - A net reduction of 4 affordable homes in 2018/19; and
  - There was a deficit of over 1,000 AH (1046) which arose in 2 years.
253. The above figures represent affordable homes which should already have been built. The need of 573 AH/pa is not an academic figure. The Council's planning witness accepted this represents real people in real need for an affordable home now. Over a 7-year period, there has been a mere 7% delivery rate, meaning 9 out of every 10 people in need of an AH have not been provided with a home (Appellant's Planning PoE at 6.42).
254. Given the Framework planning policy imperative to boost significantly the supply to address the need for AH (para 60), the Council's planning witness, in cross examination could not dispute that AH delivery had been "*totally unacceptable*" and "*the antithesis of Government policy*".
255. The forward supply is poor. Using a base date of 1/4/2017, only 380 AH will be delivered from a contested supply of 3,578 extant housing consents. That is a mere 11% delivery and only 66% of 1 year's need, from the consented supply.
256. Further, the emerging contested Plan seeks to deliver only 221 AH/pa. There would be an annual shortfall of 352 AH/pa. The Plan is therefore planning to deliver only 39% of the annual AH, significantly less than the agreed need for AH (Council's Planning Policy PoE at 5.6). Accordingly, the Council's planning witness could not dispute in cross examination that affordable housing delivery is also in crisis.
257. Absence of Alternatives Outside the Green Belt: There is no adopted Plan to address the crises in HLS, affordability and AH delivery. It is, the Appellant notes, however, conceded by the Council that any solution would require the significant release of greenfield sites on land that would otherwise be considered to be Green Belt. There is an absence of alternatives outside of the Green Belt to meet housing needs.
258. Lack of Progress on the Emerging Local Plan: The Appellant is clear that the Council has failed to deliver a LP for 54 years. The LPA has failed to adopt any version of any plan with, amongst other things, a housing requirement, allocations and detailed Green Belt boundaries. Throughout that period, the Council have asserted that different Plans have been making progress and nearing adoption. The Council has had numerous versions of a Local Development Scheme, with timetables to adoption which have never come to fruition. According to the Appellant, any assertion that meaningful reliance can be placed on this emerging plan must, therefore, be approached with extreme caution.
259. Work on the Core Strategy commenced after the 2005 dLP was abandoned (but endorsed for development management purposes). This "current" Local

- Plan commenced in 2013 (over 8 years ago), resulting in the Publication Draft (2014), which was again abandoned after a political change in administration.
260. It then took the Council another 4 years before the Plan was submitted to PINS for examination (in 2018). However, the evidence base (including the Green Belt assessment) was incomplete, resulting in an 18-month delay until the first EiP commenced in December 2019. However, the EiP could not continue.
261. Following an initial EiP, the Inspectors wrote to the LPA on 12<sup>th</sup> June 2020 (CD5.03) raising significant concerns over the evidence base, particularly with regards to the Green Belt methodology. This letter provided options to the Council, including the withdrawal of the plan, particularly if delay resulted in the evidence base no longer being up to date.
262. The Inspectors wrote again to the Council on 18<sup>th</sup> December 2020 (CD5.18) highlighting concerns over the lack of further evidence and delays to the process, noting in Paragraph 10:
263. *"Whilst we acknowledge that it is not always possible and practicable, it is always highly desirable that the examination is brought to completion in relatively short order. If swift and meaningful progress cannot be made in the respects that we have set out above, it is very likely that the objective of getting an up-to-date Local Plan for York in place is not best served by prolonging this examination. On that basis, it may be that withdrawal of the submitted Plan and proceeding to examination with a fresh Plan is the most appropriate way forward."*
264. Following the Council's response, the Inspectors wrote back to the Council on 29<sup>th</sup> January 2021 (CD5.20), noting that new work was being carried out and the need for re-consultation:
265. *"Taking into account all of the above, including the satisfactory receipt of the detailed annexes from the Council, the required public consultation identified and the statutory notification period for further hearings, we estimate that the earliest point at which further hearings could be held would be late May/early June [2021]..."*
266. In fact, the Council failed to consult on the new information until May 2021. No adequate explanation has been given for the 18-month delay in the context of a Plan which the Inspectors have warned may now be out of date. At this point, more than 2 years have passed since the commencement of the EiP and the Plan has not progressed to the necessary reconvened sessions.
267. Whilst the EiP is due to reconvene in February 2022, with further substantial sessions later in the year, it is important to understand the significant issues which remain in dispute. It was agreed during cross examination of the Council's Planning Policy witness that issues central to the progress of the Plan remain in substantial dispute, including (but not limited to):
- The baseline housing requirement;
  - The economic uplift to the OAN;
  - The affordability uplift to the OAN;

- The need for AH and the need for more housing sites to meet it;
  - The sites to be allocated;
  - The principle and detail of the substantial new settlements to be allocated remote from existing settlements, which are contested by the local communities, supported by independent technical evidence;
  - The objection sites which are not allocated;
  - The Green Belt assessment methodology;
  - The application of the Green Belt methodology;
  - Detailed Green Belt boundaries;
  - The need for safeguarded land;
  - Whether the Plan is sound.
268. The Appellant notes that the Council appeared in the evidence in chief of their Planning Policy witness to draw some comfort from the simple fact that the EiP Inspectors have agreed to reconvene the EiP. However, he accepted that all of the recently submitted evidence has been the subject of further consultation and objection. The Inspectors have not expressed any resolved view on the Green Belt methodology and its application to Green Belt boundaries. Given that central aspects of the Plan remain contested and yet to be determined through the examination process, it was agreed in the cross examination of the Council's Planning witness that only "*limited weight*" can be attached to the draft Plan.
269. The Inspectors' latest letter expresses the scale of the work still to be done (CD 5.20 paras 6-11). All of the matters raised at the EiP (Dec 2019) will need to be revisited. Indeed, it is therefore clear that the EiP has gone backwards i.e. we are further behind now than December 2019. At the Land at Avon Drive Inquiry (CD 6.05), the LPA had submitted to the SoS that the Plan would be adopted 18 months later in 2018 (SoS DL 8). Indeed, the EiP was assumed (in Jan 2021) to resume in May/June 2021 (see CD 5.20). They will resume in March 2022 at the earliest. There has, therefore, been 10 months slippage in 12 months. The Plan cannot be adopted in the short term. Even then, it will take time for the land supply to respond to the allocations. There is no reasonable prospect this Plan will meet the housing crisis in the short term. The Council must also look to other solutions.
270. Further, the SoS cannot lawfully or rationally prejudge the outcome of the EiP. There is no legal presumption that the Council has submitted a Plan which is sound.
271. Should any aspect of the Plan be found to be unsound, it will either have to be abandoned or made the subject of Main Modifications (s.20(7) P&CPA 2004). The nature of any Main Modifications is unknown at this stage. However, if there is an issue with the housing requirement, the need for affordable housing or one of the allocations, there could be a need for additional allocations, resulting in a further call for sites, updated Habitat Regulation Assessments (HRAs), updated Green Belt Assessments, an updated Plan, and an updated evidence base for the Plan etc. This would be subject to extensive

evidence gathering, consultation, objection and further EiPs, the outcome of which is unknown.

272. It follows that the Council's total reliance on this delayed Plan is flawed. The Appellant firmly submits that despite having a Plan technically submitted for examination, the uncertainty surrounding it and its progress through the next three phases of hearing sessions and the historic levels of delay in producing the document give limited confidence in it being adopted in the near future (Appellant's Planning PoE at 6.54).
273. The Very Special Circumstances (VSCs) Balance: The Appellant explains that in their written evidence, the Council fails to acknowledge the full scale of the crisis in housing land supply, affordability and/or affordable housing. Such benefits have been expressly considered to be capable of constituting VSCs which clearly outweigh the harm to the Green Belt (and other harm):
- See IR 342 and 356 – Land at Moor Lane, Woodthorpe, York (CD 6.02<sup>7</sup>); and
  - See DL 46-49, 53-54 and 78 – Land at Colney Heath (CD 6.07)
274. Whilst the Council conceded that there is a housing crisis in York, it does not consider there are VSCs. The question in the cross examination of the Council's planning witness was: *How bad does the housing crisis have to get before the Council considers that there are VSC's to release this site from the Green Belt, when it is otherwise agreed to be a logical and sustainable development which is acceptable in principle?* He had no answer to this question.
275. He did, however, concede that this site could and would demonstrate VSC's justifying consent but for the emerging Local Plan. Indeed, no other concession is possible, given that the LPA have recommended and resolved to approve housing on 3 sites to be considered as Green Belt (Council Planning Policy PoE at 5.13). The Council, therefore, consider the need for market and affordable housing to constitute decisive VSC's. This is clear from the reasons for resolving to approve development on site ST 8 Land north of Monks Cross (see CD 3.02). The Council's Planning witness conceded that this site would have a greater impact on openness and GB purposes 1 and 3, given it is a site for 970 homes which is a significant incursion north-east from Huntington into the Open Countryside and Green Belt.
276. The sole point of distinction is the draft allocations of the 3 sites. However, given (i) this site is otherwise considered to be a sustainable development and acceptable in principle; (ii) the emerging Plan is of limited weight; and (iii) no material weight can attach to the contention that the Plan will be adopted, this is not a meaningful point of distinction. Rather, this Council is resolving to approve Green Belt sites simply on the basis that it has resolved to allocate them in a Plan yet to be tested.

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<sup>7</sup> The Appeal was dismissed because of site specific impacts which weighed decisively against the proposal (the impact to an SSSI) which are not present on this site. See specifically IR 359

277. It is the Appellant's case that it follows that, as a point of principle, both Inspectors and this Council agree that, on the right site, VSCs can be demonstrated. There is no site-specific objection to this site (unlike Land at Moor Lane, CD 6.02). Accordingly, the Appellant firmly submits that the application of the VSC's on this site are compelling and cannot reasonably be contested. They clearly outweigh the harm to the GB and any other harm.

*Conclusion for the Appellant*

278. It follows that the proposal, in either scenario, complies with the development plan and should be granted consent without delay (Framework para 11). Material considerations further support the grant of consent. In particular, the proposal comprises sustainable development.

279. It is, therefore, the Appellant's case that planning permission should be granted subject to conditions and a s.106 obligation.



## **THE CASE FOR THE OBJECTORS WHO APPEARED AT THE INQUIRY**

### Councillor Keith Orrell, Huntington and New Earswick Ward

280. Councillor Orrell spoke on behalf of himself and the two other ward councillors, Councillor Chris Cullwick and Councillor Carol Runciman. He said that there were no objections to the Green Belt boundary policy in the HNP. The site is allocated in the 2005 dLP as Green Belt and it would be premature to allow development on it before the 2018 eLP has progressed. There was no meaningful consultation by the developer with the public on the appeal application. Local residents have suffered years of development, including at the Vangarde, Monks Cross, the stadium complex and three housing developments. The proposal would lead to flooding, loss of biodiversity and climate change. It would result in urban sprawl. The land is a green lung for Huntington. There would be an increase in traffic and the access point would be problematic.

### **WRITTEN REPRESENTATIONS**

281. Written submissions were received from a great number of individuals. The majority objected to the proposal but some were in support of it.
282. The main points raised in objection to the proposal were that: the proposal would be problematic in respect of surface water drainage in that the drains would be overloaded and local roads and gardens would become flooded; the Roman camp would be harmed; local schools are already at capacity and the development would cause a deterioration in educational standards; doctors and dentists are already oversubscribed; there would be harm to wildlife, including to great crested newts, bats, frogs, deer, foxes and hedgehogs; trees and hedgerow would be removed; there would be a further increase in traffic, especially along New Lane and local parking restrictions have already had to be put in place due to increased traffic from the Monks Cross and Vangarde developments; the additional traffic would be a danger to pedestrians and cyclists; the improved walking and cycling routes will encourage parking within the Brockfield Park estate on match days; there are more suitable brownfield sites; it would spoil the character of the area; the existing fields are enjoyed by the locals and the proposal would remove the small amount of green space that is left; there would be a loss of birdsong and an increase in light pollution; Huntington has already had a lot of development; the additional traffic would increase carbon emissions; there are also plans to build almost 1000 homes on North Lane and there have been many other houses built in the area recently; there would be a loss of privacy to, and an adverse effect from noise upon, the occupiers of dwellings on Forge Close and Saddlers Close; the public open space provided would attract crime and anti-social behaviour, litter and dog mess; there would be disruption during the construction period; there are not many jobs within 1km of the site; a travel plan cannot be enforced; and it would spoil the peacefulness of the cemetery.
283. The main points supporting the scheme are that the proposal would increase the supply of affordable housing which is needed in the suburbs; it is a perfect site for homes as it is close to local amenities; the land is not good quality or attractive; there are no problems with the exiting highways and utilities infrastructure; schools can be expanded; the Council allows development on Green Belt sites in other wards; there is no 5 year HLS; there are refugees in

hotels and they need homes; there are great links to Monks Cross shopping and good bus routes into town and it would make a perfect area for some new builds for families in the area.

## **CONDITIONS**

284. In the event that planning permission is granted the Appellant and the Council have agreed a list of conditions which they would wish to see imposed on the planning permission. I attach at Appendix D of this Report the conditions I recommend if permission is granted. My recommendation takes account of the agreement of the parties and a discussion at the Inquiry.
285. I have considered the conditions agreed between the parties in accordance with the Planning Practice Guidance. As well as the standard time limiting conditions (1&2) it is necessary to define the plans in the interest of certainty (3). The number of dwellings has been capped at 300 because the development has been considered on the basis of that number (4). Conditions are necessary to manage construction in the interest of highway safety, residential amenity and biodiversity (5-7). Conditions are imposed to protect existing trees in the interests of biodiversity and character and appearance (8 and 9). A condition is necessary to protect and record archaeological remains (10). Conditions are necessary to protect against contamination in the interest of public health and ecology (11-14). A surface water condition is necessary in order to prevent flooding (15). Conditions are necessary in respect of the provision of the road network, pedestrian and cycle access points and public amenity space in the interests of living conditions (16 and 17). A Landscape/Ecological Management Plan is required in the interests of biodiversity (18). Conditions require the provision of electric vehicle charging points and a car club space in the interest of reducing carbon emissions (19 and 20). A condition is necessary in respect of highway works at the new junctions with New Lane in the interests of highway safety (21). A condition is necessary to ensure the relocation of bus stops, pedestrian crossings, the provision of cycle parking and the formation, implementation and monitoring of a travel plan in the interest of promoting sustainable travel choices (22, 23 and 26). Conditions in respect of carbon emissions and water consumption are necessary in the interest of climate change (24 and 25). A condition requiring noise attenuation is necessary in the interests of the living conditions of future occupiers (27). A condition is necessary to ensure that the public open space and permissive routes are kept open in the interest of living conditions and access through the site (28).

## **PLANNING OBLIGATIONS**

286. A S.106 agreement has been completed by the parties. The Council has provided a CIL Regulation Compliance Statement which sets out the policy basis for each of the covenants and their compliance with Regulation 122 of the CIL Regulations.
287. The key provisions of the covenants are:
288. An affordable housing provision of 30% of the dwellings of a tenure split to be agreed. It will include discounted sale dwellings and dwellings at an affordable rent. Affordable homes are to be dispersed throughout the site and must be provided before the occupation of 85% of the market dwellings.

289. Public Open Space (POS) to be laid out in accordance with the permission and will be maintained and managed in accordance with a management plan.
290. Financial contributions in respect of: - the provision of at least one car club vehicle; education contributions towards the expansions of Yearsley Grove Primary School, Huntington School and Joseph Rowntree School and towards foundation/nursery education within the vicinity of the site; off-site highway mitigation measures comprising improvements to the operation of traffic signals at New Lane/Malton Road and roundabout improvements at Malton Road/Heworth Road/Heworth Green; off-site sports facilities within the vicinity of the development; subsidised travel measures to provide the first occupier of each dwelling wither with day bus passes for use on bus services in York or a bicycle/bicycle equipment; and the monitoring of compliance with and assisting with the implementation of the Travel Plan.
291. I am satisfied that each of the covenants would be supported by policy and would meet the tests for obligations set by Regulation 122 and echoed by the Framework in that they would be necessary to make the development acceptable in planning terms, would be directly related to the development, and would be fairly and reasonably related to it in scale and kind. The obligations are therefore taken into account in support of the appeal proposal.

## INSPECTORS CONCLUSIONS

### Main Issue – Whether the site should be in the Green Belt

Development Plan [16-24,27-29,31-32,37-49, 75, 89, 92-124, 135-150, 157-179, 186-190, 209-223, 234-237, 258-272, 280]

292. The detailed boundaries of the Green Belt in and around York have not been fixed. In 1980 the North Yorkshire County Structure Plan stated the principle that there should be a North Yorkshire Green Belt that would include a belt whose outer edge is about six miles from York city centre. The plan did not define the detailed areas of Green Belt. The plan was superseded in 2008 by the Regional Spatial Strategy (RSS) which forms part of the development plan for the area.
293. This defines the general extent of a Green Belt around York. It retains two policies that are still relevant, Policies YH9C and Y1C. Policy YH9C requires that the detailed inner boundaries of the Green Belt around York should be defined to establish long term development limits that safeguard the special character and setting of the historic city. The boundaries must take account of the levels of growth set out in the RSS and must also endure beyond the Plan period.
294. Policy Y1C says that plans, strategies, investment decisions and programmes for the York sub area should, in the City of York Local Development Framework (LDF) (a) Define the detailed boundaries of the outstanding sections of the outer boundary of the York Green Belt about 6 miles from York city centre and the inner boundary in line with policy YH9C and (b) Protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas.
295. Case law, in the form of the *Wedgewood* case establishes that the detailed inner and outer boundaries of the Green Belt have not been defined by any formally adopted development plan and that the general extent of the Green Belt is identified in the RSS. It also establishes the procedure to follow when determining whether a site is within the Green Belt.
296. The site is within the general extent of the Green Belt in the RSS and the site is proposed as Green Belt in the 2018 eLP therefore, the proposal would be in conflict with Policies SS2 and GB1 of the eLP which jointly seek to restrict development in the Green Belt. In accordance with Paragraph 48 of the Framework, this emerging plan can be afforded weight according to the stage of preparation, the extent to which there are unresolved objections to it, and the degree of consistency of the relevant policies with the Framework.
297. In this respect, there has been an initial Examination in Public (EIP). Following this, the Planning Inspectorate wrote to the Council on 12<sup>th</sup> June 2020 (CD5.03) raising significant concerns over the evidence base, particularly with regards to the Green Belt methodology. The Inspectors' concerns were that the Council's justification for the Green Belt boundaries was flawed as it included considerations which were irrelevant and failed to provide justification in other areas. The Green Belt Appraisal Map in the TP1 2019 Addendum (Fig 2 CD 5.37) only identified the most important areas for the Green Belt in relation to Purpose 4 rather than all the areas that might be important to the historic character and setting. The Inspectors commented that some of the proposed

Green Belt boundaries, on the face of it, seemed wholly illogical. In short, the evidence base for the Green Belt was not robust.

298. The Planning Inspectorate wrote again to the Council on 18 December 2020 (CD18.5) highlighting concerns over the lack of further evidence. That evidence has since been submitted in the form of the 2021 Green Belt Topic Paper 1 Revision (TP1 2021) (CD5.04) and supersedes the TP1 2019 Addendum. Following its submission, the EIP Inspectors have agreed to reconvene the EIP and they have not expressed any view on the revised Green Belt methodology. The revised methodology is subject to objections and has not been examined in public. Whether or not it is appropriate and robust is a matter for the local plan Inspectors. For these reasons, I give the revised methodology limited weight.
299. At the time of the Inquiry, the further EIP sessions were planned to commence in February 2022 with further substantial sessions later in the year. All of this represents a very significant delay to the local plan process.
300. In addition, there are significant issues which remain in dispute. I heard at the Inquiry these matters of dispute include:- the baseline housing requirement and matters related to the objectively assessed need (OAN); the need for affordable housing and the sites to meet it; the sites to be allocated; the principle and detail of the substantial new settlements to be allocated remote from existing settlements, which have been contested by the local communities supported by technical evidence; the objection sites which are not allocated; the Green Belt assessment methodology and its application; detailed Green Belt boundaries; the need for safeguarded land; and whether the Plan is sound.
301. The eLP cannot be adopted in the short term and there is significant uncertainty as to the outcome due to the question over the Green Belt evidence and the outstanding objections to the plan. For these reasons, I give limited weight to the eLP. The Council agreed this level of weight at the Inquiry.
302. The site is also identified as being in the Green Belt under Policy SP2 of the 2005 City of York Draft Local Plan 4<sup>th</sup> Set of Changes (2005 dLP) (CD4.03) and therefore the proposal would conflict with this policy. However, the dLP is not part of the development plan and was never tested at an EIP. It is only approved by the Council for development management purposes. Moreover, there is no evidence supporting the designation as Green Belt for the purposes of the 2005 dLP and the Council witness conceded at the Inquiry that the designation is inconsistent with the 2003 Green Belt Assessment (2003 GBA) (CD 5.13) . Therefore I give it very little weight in terms of the Green Belt boundary.
303. The site has been explored for allocation in the past and most notably, the site formed part of a proposed Local Plan allocation site in 2014. However, that draft plan was not taken forward and adopted. On that basis, I give very little weight to that proposed allocation too.
304. The Council currently considers that the site serves three Green Belt purposes which I address below.

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To preserve the setting and special character of historic towns (purpose 4) [50-61, 185-229]

305. RSS Policy YH9C indicates that in defining Green Belt boundaries the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas must be considered.
306. The term "special character" is different to that of "setting" and the Framework specifically refers to both these terms in relation to Purpose 4.
307. "Setting" is defined in the Framework as "the surroundings in which a heritage asset is experienced. Its extent is not fixed 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".
308. "Special character" is defined in The Historic England Good Practice Advice Note 3 – the Setting of Heritage Assets 2017 (CD8.02). It says that the character of a historic place is the sum of all its attributes, which may include: its relationships with people, now and through time; its visual aspects; and the features, materials, and spaces associated with its history, including its original configuration and subsequent losses and changes. It says that heritage assets and their settings contribute to character but it is a broader concept, often used in relation to entire historic areas and landscapes. This is a reasonable definition to which I afford significant weight.
309. In respect of the definition of "historic town", the dispute between the parties is that the Council considers that the Green Belt assessment should be undertaken against the setting and special character of the City of York as a whole whereas the Appellant considers that it should be undertaken against the historic core of the City.
310. The whole of the City of York is not "historic" as it contains a lot of modern development. The setting of York was mapped by the 2003 GBA. It says that the setting includes the strays, green wedges and extensions, river corridors and Ings, the rural area, village settings and areas preventing coalescence.
311. The Heritage Topic Paper 2014 (HTP 2014) (CD5.09) identifies six principal characteristics as strategically important to the special character and setting of York as a strong urban form which includes townscape, layout of streets and squares, building plots, alleyways, arterial routes and parks and gardens; compactness; landmark monuments, in particular the City Walls and Bars, York Minster, churches, guildhalls, Clifford's Tower, the main railway station and railway and chocolate manufacturing heritage; architectural character i.e., a rich diversity of age and construction displaying a wealth of detail; archaeological complexity including extensive and internationally important deposits beneath the city; and its landscape and setting within a rural hinterland and the open green strays, and river corridors and Ings which penetrate into the urban area, breaking up the city's built form.
312. TP1 2021 (CD5.04) was informed by HTP 2014 and includes the recognition of the importance of York as a compact city, the role of landmark monuments and the landscape and setting relationship between the main area of York and its surrounding settlements and countryside. However, TP1 2021 does not

contain a heritage assessment specific to the site. Instead it has assessed a considerably larger area containing the site which includes land to the south of the cemetery. Furthermore, the site itself does not lie within any of the areas mapped by the 2003 Green Belt Appraisal or subsequent updates as being most important to York's special character and setting.

313. The site is surrounded on three sides by substantial built development and it is partially enclosed on the fourth side by the cemetery. Cemeteries are common in urban areas and are not a particularly rural feature even though they are not inappropriate development within the Green Belt in relation to Paragraph 150 of the Framework. They are developed land containing rows of headstones and are subject to activity in connection with burials and visiting mourners. The site is, therefore, almost entirely surrounded by developed land. The development surrounding the site has a strong enclosing influence over it due to the surrounding built development.
314. The site is to the north of Monk Stray and a green wedge which both contribute to the setting of the historic town, as defined in HTP 2014, as they provide a legible area of openness through which there is an approach to the core. Furthermore, the site is visually severed from these areas by the illuminated and hard surfaced cycle path and the cemetery. Therefore, it is my assessment that the site is not part of the landscape setting to the historic town.
315. York Minster is one of the City's landmark monuments and is the dominant building of the city, emphasising its historic origins. The 2003 GBA and the HTP 2014 say that views of the Minster, including distant ones are a principal characteristic of York and are extremely important as a principal characteristic of the historic City.
316. The Minster is visible from the site and from the footpath/cycle way between the boundary of the site and the Stadium and Vangarde/Monks Cross complex. However, it is about 3km away from the site. Furthermore, only the upper part of the tower is visible through trees as the rest of it is obscured by intervening development. Due to the distance from the site and the fact that most of it is obscured, it is not an obvious feature from the site and I had to purposefully look for it at my visit. It could easily go unnoticed by a passer-by. It is a very distant view and only a very partial view. The architectural detail of the Minster, even the visible top part of it, cannot be readily seen from the site. Whilst distant views are important, and are common of the Minster, I do not consider that every glimpse of the Minster can be regarded as an important distant view. As this view is fairly obscure, I do not consider it to be important.
317. There is no argument from the Council that the site contributes to Purpose 4 in respect of its archaeology and I have no reason to disagree.
318. Overall, the Minster and the historic core of the city is so obscured by other development that it is impossible to understand the heritage significance of them or the compactness of the historic core from the site. Although the site is a historically managed landscape, the compactness and landscape setting of the city is already protected by the countryside beyond the cycle path.
319. The site partially separates the commercial area of Monks Cross from the residential area of Huntington but they have already coalesced to the north of

the site. There is a historic area of Huntington but this is separated from the site by a substantial amount of modern development. Therefore, the site does not serve a meaningful purpose of separating these areas of different character.

320. I note the Council's reference to a SoS decision where he concluded that a site contributed to Purpose 4 of the Green Belt even where the Minster could not be seen.<sup>8</sup> In the decision, the site was said to continue the character of more extensive areas of countryside. That is different to the appeal before me as the cemetery and cycle path are features which intervene between the appeal site and the open countryside.
321. For the above reasons, I conclude that the site does not have a function to preserve the setting and special character of York as a historic city whether assessed against the historic core or when looked at against the whole of the city.

To check the unrestricted sprawl of large built-up areas (purpose one) [62, 130-151]

322. The site is a considerable size but it has strong physical boundaries due to the development adjoining it which are housing to the north; New Lane and further housing to the west; the Monks Cross development to the east; and the cemetery and the cycle path to the south which is hard-surfaced and has street lighting. The cemetery includes land with planning permission to extend. The boundaries to the adjoining development are readily recognisable and are marked by either hedgerow or fencing together with a clear change in land use. As a result, operational development and land with planning permission combine to totally enclose the site. The existing development is permanent as is the cycle path. Any sprawl would be restricted to the confines of the site itself. Therefore, the appeal site has limited potential for sprawl within it and no reasonable risk of sprawl across the open countryside.
323. In respect of the Council's revised methodology in TP1 2021, the land which included the site was bigger than the appeal site. The Council's analysis did not disaggregate the appeal site and therefore I attach little weight to its relevance to the appeal site's contribution to Purpose one.
324. For these reasons, it is not necessary to keep the site permanently open to check the unrestricted sprawl of the built-up area.

To assist in safeguarding the countryside from encroachment (purpose three) [63, 152-183]

325. The Council endorse in its TP1 2021 (CD 5.04 paras 8.36 and 8.37), the Planning Advisory Service (PAS) Guidance. This defines encroachment as "A gradual advance beyond usual or acceptable limits". It also says that the PAS guidance contains a useful approach to use in testing purpose three as "to look at the difference between urban fringe – land under the influence of the urban area - and open countryside, and to favour the latter in determining which land to try and keep open, taking into account the types of edges and boundaries that can be achieved."

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<sup>8</sup> CD6.05 – IR 234 and 235, DL 12(d)



326. I have already established that the site is almost entirely enclosed by permanent development and the part that is undeveloped has planning permission for the expansion of the cemetery with a cycle path beyond it. The boundaries to these areas have physical features that are readily recognisable and likely to be permanent.
327. The site is countryside in the urban fringe and is visually influenced by the surrounding development. Any encroachment into the countryside on this site would be contained by the permanent boundaries and the permanent development beyond it. The more rural character of the city beyond the cemetery and cycle path would not be unacceptably influenced by its development due to the degree of severance of the site from the open countryside and the adjoining development. For these reasons the site does not need to be kept permanently open to safeguard the countryside from encroachment.

#### Conclusion on the Green Belt

328. For the above reasons the site does not serve a Green Belt purpose and in accordance with Paragraph 137 of the Framework it is not necessary to keep the site permanently open to prevent urban sprawl. Therefore I find no conflict with HNP Policy H14.

#### **Other Matters**

##### Landscape character <sup>[66, 76]</sup>

329. The site is currently flat agricultural land. It is an attractive large green break between developed areas within the street-scene. It can be seen from New Lane itself, the car parking areas around the Monks Cross/Vangarde development and the cycle lane behind the City Stadium and the Vangarde. The view over the site from New Lane is that of the backs or sides of large and dominant commercial buildings and the stadium but the view of these buildings from New Lane is unattractive.
330. The proposed housing would be apparent from the areas of built development on the three sides of the site. It would be partially visible from the cemetery land above the hedging on the southern boundary. It would be even less visible from the cycle way beyond the southern boundary of the cemetery due to the existing hedging. The Council agrees that the proposed development would be visible from only a limited area around the site.
331. The proposed development would change the site's appearance from a rural character to a suburban one due to the construction of new roads, dwellings and the provision of lighting. Although the mature oak trees would be retained there would be some gaps created within the hedges that currently enclose the fields within the site. Nevertheless, due to the residential and commercial buildings to three sides of the site, the change would not look out of place in the street-scene and would simply extend the existing residential area of Huntington. Therefore, it would not appear out of context with its surroundings. Apart from access, all other matters are reserved for subsequent approval and therefore detailed design is not for consideration in this appeal.
332. The visual harm is therefore limited to the loss of the green gap. The visual impact would be very localised and not long range. There would be some harm

to the landscape character of the area and some conflict with Policy H4 of the HNP which seeks to respect the character of the local environment. However, due to the site's location at the edge of an urban area between large areas of existing housing and commercial uses I find no conflict with Policy H1 of the HNP which seeks to ensure that housing is of an appropriate scale within the neighbourhood area and is well-related to the existing urban area of Huntington. Contrary to the case of the Parish Council, Policy H1 does not identify area "ST8 (off North Lane)", as the only acceptable area of land for major development within Huntington.

#### Open Space [13, 282]

333. The existing site is sometimes used by the public but it is private land. The proposal would provide areas of public open space which would be publicly accessible. Therefore I do not consider that there would be an unacceptable loss of recreational open space.

#### Habitats [26, 282]

334. The site is within the Zone of Influence (ZoI) of Strensall Common Special Area of Conservation. There is no dispute between the two main parties in relation to this matter. However, this appeal must be considered under the Part 6 of the Conservation of Habitats and Species Regulations 2017. Therefore, I have had regard to the shadow Habitats Regulations Assessment (shadow HRA) submitted by the Appellant and referred to below.
335. I notified Natural England following the close of the Inquiry when it became apparent that Natural England had not been consulted by the Council. Natural England responded by email on 23 February 2022 to say that the Appellant's assessment appeared to apply mitigation measures at the screening of "assessment of likely significant effects" (LSE) stage which is contrary to the People Over Wind judgement<sup>9</sup>. It considered that the proposal should have been considered in combination with other relevant plans and projects. As a result I gave the Appellant the opportunity to provide further information.
336. Following receipt of the Appellant's revised habitats information, Natural England were re-consulted and responded on 25 March 2022. Its response was that it was still not possible to conclude that the proposal would be unlikely to result in significant effects on the European site due to a lack of information as the assessment remained reliant on mitigation measures in the screening stage.
337. Natural England advised that this matter needed to be further expanded to demonstrate whether sufficient mitigation measures would be provided and how they would be secured, in line with Policy G12a of the eLP Composite Modifications Schedule April 2013 which aims to ensure that adverse effects on Strensall Common SAC. However, this Modification has not been subject to an EiP so little weight can be attached to it. Natural England also referred to the Strensall Common Visitor Surveys<sup>10</sup> for the Appellant to consider. Consequently I gave the Appellant the opportunity to provide further

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<sup>9</sup> People Over Wind & Peter Sweetman v Coillte Teoranta C-323/17

<sup>10</sup> Habitats Regulations Assessment of the City of York Council Local Plan Appendix D

information. This revised information is submitted in the Brooks Ecological shadow HRA report dated 12 April 2022 and it is this latest report which forms the basis of my advice to the SoS.

338. Natural England has responded to my consultation in respect of this report. The response is dated 1 June 2022. Whilst it says that the latest Shadow HRA sets out the assessment process clearly and accurately, it considers that there is insufficient evidence to support the mitigation proposed. Therefore, it maintains reservations to the scheme. In relation to the evidence of mitigation, NE say that it is important that the mitigation is of sufficient scale to be viable and effective. In respect of scale, it notes that the median route length of visitors within Strensall Common is 2.5km. It also expressed concern in relation to potential restrictions on the proposed open space due to the fact that it contains a Scheduled Ancient Monument. Furthermore, it referred me to another appeal<sup>11</sup> proposal as an example of good practice but the full details of this appeal are not before me and it has not yet been determined as it is currently before the SoS, therefore I cannot take it into consideration. I refer to these matters of concern below.
339. The SAC supports extensive areas of wet and dry heath. It is represented predominantly by *Erica tetralix* – *Sphagnum compactum* wet heath, although its extent has been reduced by drainage. It is a noted locality for marsh gentian *Gentiana pneumonanthe*, narrow buckler fern *Dryopteris carthusiana* and the dark-boarded beauty moth *Epione vespertaria* which is associated with creeping willow *Salix repens* on the wet heath. It also contains a complex mosaic of wet heaths with *Erica tetralix* and dry heath elements. The *Calluna vulgaris* – *Deschampsia flexuosa* dry heath is noted for Petty Whin – *Genista anglica* and bird's-foot. The habitats that are a primary reason for the selection of the site are 4010 Northern Atlantic wet heaths with *Erica tetralix* and 4030 European dry heaths.
340. Strensall Common is used for training by the Ministry of Defence. The main issue currently affecting habitats is a lack of management and hence scrub encroachment, although this is being controlled through management agreements with the MOD and their tenants.
341. Public access via Public Rights of Ways and Permissive Paths is permitted when training is not taking place and is subject to an integrated management plan agreed between the MOD, Natural England and the Yorkshire Wildlife Trust. The absence of open access limits the exposure of the interest features to effects from visitor pressure.
342. It is the damage to habitats resulting from increased recreation pressure that is to be considered by the SoS in his Appropriate Assessment. Data collected in the Visitor Surveys suggests relatively low levels of use by members of the public, with dog walking being one of the main reasons for visiting. Dog walkers come from local villages and a marked increase in housing in those areas may result in increased recreation pressure. In the absence of mitigation, residential development within the 5.5km ZoI poses a risk of impacting on the SAC and likely significant effects could not be ruled out.

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<sup>11</sup> APP/C2741/W/21/3282969

343. The site is some 4km south-west of the SAC with housing, retail and farmland separating them. Both main parties agree that the site is within this ZoI. In the ZoI, emerging policy G12a indicates that proposals for housing development, which are not within plan allocations, will not be permitted unless it can be demonstrated that they will have no adverse effects on the integrity of the SAC, either alone or in combination with other plans or projects. It says that any necessary mitigation measures may be sought through planning contributions and must be secured prior to the occupation of any new dwellings and secured in perpetuity. Open space provision must also satisfy policy G16 of the eLP which refers to open space standards for development across York. The Council accepts that the proposal would provide in excess of the policy requirement for open space.
344. Recreational impacts are already evident at Strensall Common, although these are currently limited in extent and severity. Based on the Visitor Survey report, if all allocations within 7.5km of Strensall Common were developed (accounting for some 6653 dwellings), it is predicted that there would be a 24% increase in access to Strensall Common – much of which would be for dog walking. When compared to the proposals at the site (300 residential dwellings), the resulting increase in visitor presence would be very minor and not significant in isolation. However, other projects must be considered in combination with this appeal proposal.
345. The Appellant undertook a search for other projects within a 5.5km radius of Strensall Common and found two large scale residential development proposals, neither of which had been determined when they submitted their shadow HRA. One was for 117 dwellings and the other for 970 dwellings. Neither fall within or immediately adjacent to Strensall Common or were hydrologically linked to it. However, slight increases in visitor pressure could result from them.
346. If all allocation sites were developed, along with the two undetermined proposals and the appeal proposal, there could be a significant in-combination effect on Strensall Common SAC. Mitigation will therefore be required at the site, and all other new residential developments within influencing distance of Strensall Common, to minimise in-combination effects.
347. In keeping with the recommendations outlined in the Visitor Survey Report, it is proposed to provide Public Open Greenspace (POS). This POS seeks to retain dogwalkers on site and to minimise trips off-site for this purpose. This is shown on the submitted Open Space Plan (CD1.06). I note Natural England's concern in relation to the scale of the POS. It does not explicitly say the space is too small but expresses concerns about its usability, particularly as there is a Scheduled Ancient Monument within the space. However, the submitted Pedestrian Access and Movement Plan (CD1.05) illustrates a pedestrian/cycleway crossing the Scheduled Ancient Monument and a primary pedestrian route around the perimeter of it. It is proposed that the site of the Scheduled Ancient Monument would be soft landscaped and that public access would be allowed. In relation to the 2.5km route that people take within the SAC, Natural England have not said that this could not be achieved within the site. Whilst it is clear that a 2.5km linear route through the site would not be possible, I consider that a more circular type of route could be achieved.

348. Natural England also said that consideration should be given to whether links and enhancement can be provided from the site to the wider local Public Rights of Way and green infrastructure networks in order to compliment the onsite green space provision. However, it has not drawn my attention to any specific Public Rights of Way or green infrastructure. Nevertheless, the Pedestrian Access and Movement Plan indicates that formal pedestrian and cycle links would be provided through the site where currently none exist. These would provide links between the housing to the north, the adjoining commercial/retail development and New Lane. They would also allow existing residents in the wider area to use the POS to be provided within the site.
349. Natural England has also referred to the use of a bespoke management plan and planning conditions in order to provide sufficient certainty regarding the proposed mitigation and its delivery. This POS would be secured by the Condition 3 and its precise details would be determined under Condition 17. Condition 18 would secure Landscape/Ecological Management Plan for the site. The long-term management and maintenance of the public open space would be secured by a planning obligation in the S.106 agreement which would have to be agreed by the Council. The Council would maintain control over these matters.
350. Consequently, I am satisfied that the proposed development would not adversely affect the protected sites and would not conflict with eLP Policy G12a.

Ecology of the site itself [26, 78, 282]

351. There is no dispute in relation to ecology between the two main parties. The site comprises a number of agricultural grassland fields. The habitat features include modified grassland, a short field ditch, large numbers of mature native broadleaf trees and native hedgerows.
352. There are Great Crested Newts within off-site mitigation ponds to the southeast. This means that the site lies within the zone of influence of the off-site breeding points and therefore Great Crested Newts are likely to be onsite due to the foraging habitat. However, they are unlikely to be dependent on it. There is no breeding habitat for Great Crested Newts on site. A European protected Species Mitigation Licence would be required to derogate offences resulting from the site's development.
353. Three mature trees have been identified as containing features with bat roost suitability. The habitat on the site is expected to attract low-level foraging and commuting by a range of common bat species. Trees with bat roost suitability will be retained. However, the areas given over to development would offer very low value foraging habitat so there would be a minor displacement of bats into the wider landscape.
354. The site supports a small number of bird territories and displacement of these is inevitable. However, the site is unlikely to support any key bird species and the significance of the impacts is expected to be low. Precautions would be applied regarding the clearance of vegetation. There would be a displacement of bird territories during construction and a small-scale loss of existing nesting habitat. However there would be large scale creation of new nesting opportunities in housing and gardens.

355. No hedgehogs were recorded in the search area although they might be present. The site does not have the potential to support other protected or notable fauna. Direct or indirect impacts upon hedgehogs or other protected or notable fauna are unlikely.
356. About 9 hectares of modified grassland and 0.02 hectares of drainage ditch would be lost. This is low value, degraded, agricultural habitat. Most of the hedgerow network would be retained but about 12% would be lost to facilitate the construction of the site access, internal roads and the footpaths. This represents a small-scale loss of species-poor native field hedgerows. All mature trees would be retained. The proposed areas of public open space would be cleared of vegetation and then subject to habitat creation.
357. Avoidance of unnecessary impacts have been designed into the outline proposal. An Ecological Management Plan and a Construction Environmental Management Plan would be required by planning conditions. The appeal proposal is in outline and the site layout is not fixed. However, an indicative calculation has been undertaken by the Appellant which shows that, based on the illustrative site layout, the proposed development is expected to be able to deliver a biodiversity net gain.
358. For the above reasons I find no overall harm to biodiversity and no conflict with Policy H17 of the HNP which seeks to protect and where possible, provide net gains in biodiversity.

### Heritage

#### Roman Camp <sup>[10, 26, 83]</sup>

359. The Roman Camp on Huntington South Moor is a Scheduled Ancient Monument (SAM). It is the buried and earthwork remains of the north-western part of a pair of Roman camps on Huntington South Moor.
360. The 18th century antiquarians W Stukeley and F Drake noted the earthworks of seven or eight Roman camps to the north of York. Two of these partly survive as very low earthworks on Bootham Stray and Clifton Moor, just over 2km to the west. These are both protected as SAMs. The location of the other five or six sites mentioned by the antiquarians is uncertain but could include the two camps identified in 2002 on Huntington South Moor. All these camps lie close to the Roman legionary fortress of Eboracum, the remains of which lie beneath York city centre. They have been interpreted as either practice camps constructed by the Roman army for training purposes, or temporary camps occupied during the construction of the fortress in the early 70s AD.
361. Although the camp was not identified until March 2002, RAF photographs taken in the early 1950s show the full extent of the camp before the construction of the Ryedale Stadium. These photographs show the camp as a playing card shape, the low bank and outer ditch describing a round cornered rectangle that is typical of many Roman camps. The Ryedale Stadium now overlies the eastern part of the camp. Although there may still be archaeological remains surviving in the area of the stadium, their extent is not known and so this area is not included within the monument. However, the western part of the camp still survives as upstanding earthworks and is included in the monument.

362. As a Scheduled Monument, the camp is considered to be a heritage asset of the highest significance. Surviving above ground earthworks for lowland Roman camps are a rarity amongst those identified within the UK. The heritage significance of the camp derives from the archaeological interest of its above-ground and subsurface remains which are likely to contain insight of the construction of, and life at, a temporary Roman camp.
363. The proposed development does not propose any built form within the bounds of the SAM. Development would therefore not result in any harm to the fabric of the SAM.
364. There is currently no formal public access to the SAM and there is no public information on the monument nearby. The proposal would allow public access to the SAM with one pedestrian and cycle route crossing the monument, which can be achieved with no disturbance below topsoil levels. This would encourage people into the area and would provide public information which would enhance the public appreciation of the monument. Furthermore, the monument itself would be sowed with a different species of ground cover to the rest of the open space within which it would be located. This would aid the legibility of the monument with no impact upon the archaeological remains. The earthwork is currently so slight that it is possible not to notice it when walking over it, so the development would aid the public understanding of the extent and form of the monument.
365. Aspects of the SAM's setting, which contribute towards its heritage significance, include the eastern portion of the camp. This portion of the camp was developed upon in the 1980s and is unscheduled but contributes to the understanding of the layout of the SAM. The second Romano-British camp at Huntington South Moor, about 140m southeast of the SAM forms part of its setting as it contributes further archaeological interest towards the heritage significance of the SAM. Immediately surrounding the SAM are fields, houses and retail development. Aside from the eastern remains built over in the 1980s, the built development around the site does not contribute to the heritage significance to the SAMs setting. The agricultural use and layout of the fields post-date the Roman camp and do not generally make any contribution towards the heritage significance of the asset.
366. However, the openness in the immediate vicinity of the SAM that allows the slight earthworks to be appreciated contributes to the heritage significance of the asset through setting. There would be no buildings within the SAM itself and there would be a buffer of some 40m between the SAM and built development which would retain the immediate openness.
367. In conclusion, the proposal would not harm the significance of the heritage asset. On the contrary, the provision of public access and a greater understanding of the significance of the SAM would be a public benefit of the scheme. In this respect there is no conflict with Policy H5 of the HNP which seeks to protect sites of local heritage interest.

Huntington Grange [8, 29, 66, 83, 123]

368. Huntington Grange is a Grade II Listed Building located just outside of the western boundary of the appeal site. It is a farmhouse constructed in the late 18<sup>th</sup> century and was subject to remodelling in the early 19<sup>th</sup> century. It no longer functions as a farmhouse and has a small non farmyard curtilage. I heard at the Inquiry that it is now used as a cattery. The house has two storeys and consists of 3 bays. It is constructed of Flemish bond brick with the notable architectural features comprising the pilastered doorcase and sash windows with cambered brick arches. Its significance is primarily derived from the fabric of the building.
369. The setting of the building includes a main road with houses opposite and the fields of the appeal site behind. Elements of the building's surrounds which contribute towards its heritage significance through setting include a contemporary outbuilding which is sympathetic to the building and its curtilage. However, the setting contributes a lesser degree to the significance of the building than its architecture.
370. There is partial screening around the curtilage of Huntington Grange which reduces intervisibility between the Listed Building and the appeal site. The proposed development would include additional screen planting. Nevertheless, development of the fields would erode the appreciation of the historic link between the Listed Building and the agricultural land. Therefore, the setting of the building would be harmed by the reduction of the historic illustrative interest of the building. However, as it would harm its setting and not the building itself, and it would be limited to the area outside of its current boundary at the rear of the building, it would cause less than substantial harm, at the lower end of the spectrum, to the significance of the building. In this respect there is conflict with Policy H5 of the HNP which seeks to protect sites of local heritage interest.

York Minster [204-207, 222, 226-229, 311, 315]

371. The special interest and heritage significance of York Minster is well known deriving from, among other things, its historic, archaeological, cultural, architectural and artistic interest. The appeal site lies some 3.5km from the Minster and there is some, albeit limited, intervisibility. Whilst it is common ground between the parties that the site does not lie within the setting of the Minster, that intervisibility indicates that the appeal site can be considered as lying with its setting. Having said that, there is no evidence before me to demonstrate that the site makes any meaningful contribution to special interest of York Minster or that it plays any positive role in that regard. For instance, the site is not identified as forming part of any designed or historic views of or from the Minster. On that basis, and given the distance separation combined with the nature of the immediate surroundings to the appeal site, I am content that the development proposed would not harm the special interest or heritage significance of the Minster.

Flooding [72, 80, 280, 282]

372. Flooding is not a matter of dispute between the two main parties and the neither the Council's drainage engineers nor Yorkshire Water objected to the appeal proposal. The site is in Flood Zone 1 and the flood risk from all sources



is low. A Drainage Strategy has been submitted as part of the appeal proposal and conditions are recommended to ensure that surface water is properly drained. I have no substantive technical evidence to the contrary that the proposal would result in an unacceptable flood or drainage risk. Therefore, I find no conflict with Policy H18 of the HNP which indicates that development should not increase the risk of flooding or exacerbate existing drainage problems.

#### Traffic [280, 282, 283]

373. Highways was a putative reason for refusal. However, since then highways mitigation has been agreed between the two main parties. There is no longer any objection from the Council in respect of highway safety. Mitigations would be provided in the form of planning obligations which would require financial contributions towards improvements to the operation of traffic signals at New Lane/Malton Road and roundabout improvements at Malton Road/Heworth Road/Heworth Green. There would also be a travel plan, a car club space and a sustainable travel incentive contribution. The provision of car parking would be considered at reserved matters stage and although pedestrian routes would be provided through the site, I have no detailed justification to demonstrate that parking on match days would become problematic on local streets away from the stadium arising from the proposed pedestrian routes. I have no technical evidence that the proposals would harm highway or pedestrian safety and the evidence before me indicates that there would be no harm in this respect.

#### Schools and Doctors' Surgeries [81, 282]

374. Residents have expressed concern that schools and doctors' surgeries are at full capacity already. I have no substantive evidence that doctors' surgeries or schools would be adversely affected by the additional numbers of residents as a result of the proposal. The S.106 agreement contains obligations which would make financial contributions to the expansion of Yearsley Grove Primary School and towards projects to support expansion, including specialist and non-specialist teaching spaces, additional outdoor play areas and indoor social space at Huntington School and Joseph Rowntree School. A contribution would also be provided for nursery education within the vicinity of the site.

#### Pollution [282]

375. The site is within an urban area and therefore housing would be a suitable use in terms of noise. Noise generated by people living on the site, including from cars would not be out of character or harm the living conditions of adjoining occupants.

376. An Air Quality Assessment was submitted with the planning application. Road traffic emissions were modelled and concentrations of NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> were predicted at identified sensitive receptor locations. The modelling assessment was undertaken in accordance with Defra Local Air Quality Management Technical Guidance. The development was not predicted to result in any new exceedances of the relevant air quality objectives and the impact of the development on local air quality was predicted to be 'negligible'. Pollutant concentrations were also predicted across the proposed development Site.

Concentrations of NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> were all predicted to be below the relevant air quality objectives.

377. The proposed development would not be harmful in respect of noise or air pollution.

Benefits of the Development Proposed [239-256, 283]

378. The Council can only demonstrate a HLS of between 2.79 and 3.45 years. Over the last 5 years HLS has been within a range of 1.9 to 3.8 years. In addition, the Council has persistently and significantly under-delivered housing for at least 10 years and it does not dispute this fact. It has failed to meet the minimum requirement of the Housing Delivery Test every year since its inception. In the last 3 years the Council has delivered only 1,782 homes against a requirement of 2,728 homes. The latest HDT figure was 65% which is a very significant shortfall in delivery. Therefore, the provision of housing is a very significant benefit of the scheme.
379. Housing affordability in York has risen dramatically in comparison to the rest of the Yorkshire and Humber Region. The Council conceded that an affordability ratio of around 5 is just about affordable. The lower quartile affordability ratio is now around 9 and the median quartile affordability ratio is now about 8. This is significantly above what is considered to be affordable.
380. The Strategic Housing Market Assessment 2016 estimated the AH need to be 573 homes per annum. However, in the last 3 years, total housing delivery has been 544 dwellings. This means that AH delivery has failed to meet need. There is a severe deficit in the provision of affordable homes and in some years, there has been a net loss in the number of affordable homes. The number of affordable homes to be delivered in the pipeline is also extremely low and the eLP would only plan to deliver 39% of the annual AH requirement. At the Inquiry, the Council did not dispute that AH delivery is in crisis. Therefore, the provision of 30% AH, of a tenure and size to be agreed would also a very significant benefit of the scheme.
381. There is an absence of alternative sites outside the greenbelt and the Council conceded that any solution to the provision of housing would require the significant release of greenfield sites on land that would otherwise be considered to be Green Belt.
382. In respect of the provision of housing the scheme would accord with Policies H1, H2 and H3 of the HNP which, in combination seek to provide for a mix of housing tenures and types specifically to meet identified and evidenced housing needs.
383. In addition to the benefits of the provision of housing, there would be a heritage benefit associated with the Scheduled Ancient Monument which is addressed above.

**Planning Balance and Conclusion**

384. The proposal would result in some harm to the setting of Huntington Grange. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the asset's conservation. I have found less than substantial

harm to the significance of this building at the lower end of the spectrum but nevertheless of considerable importance and weight.

385. Under such circumstances, Paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The public benefits of providing both market housing and affordable housing to meet an identified housing need is a clear public benefit that outweighs the harm to the designated heritage asset.
386. In addition to the heritage harm I also find some harm to the landscape character of the area. Therefore I find some conflict HNP Policies H5 and H4 which, in combination seek to protect the character of the local environment and sites of local heritage interest.
387. The main area of dispute between the two main parties is the matter of whether or not the site is in the Green Belt. It is the Council's case that the planning permission should be granted if the site is found to be outside of the Green Belt. This is because it agrees that the public benefits of the provision of 300 dwellings, with a 30% affordable housing provision would outweigh the heritage and landscape harm.
388. I find that the site is not within the Green Belt. The harm to the significance of Huntington Grange and the landscape harm is clearly outweighed by the cumulative benefits of the enhancement of the significance of the Scheduled Ancient Monument, and the provision of market and social housing in a sustainable location. I find no conflict with HNP Policies H1, H2, H3.
389. In the event that the SoS disagrees with me and finds that the site is within the Green Belt, the proposal would constitute inappropriate development in the Green Belt. As such, the Framework requires that the harm by reason of inappropriateness be given substantial weight and that inappropriate development should not be approved except in very special circumstances. There would also be significant harm to the openness of the Green Belt due to the presence of built development where currently there is none, along with landscape harm and less than substantial harm to the significance of the Grade II Listed Building.
390. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations. However, the Council has a very significant shortage of HLS and has done over several years; its delivery of market housing has been astonishingly poor for several years as has its delivery of affordable housing. Furthermore, the future pipeline for affordable housing is very poor. There would also be a public benefit due to the enhancement of the SAM. These factors constitute very special circumstances which clearly outweigh the harm to the Green Belt.
391. The Council has referred to several appeal decisions in support of its case that the harm to the Green Belt would not be outweighed by the benefits. In the 2021 Boroughbridge Road decision<sup>12</sup>, the inspector assessed that on the basis of the 2020 housing delivery test when delivery was better and it was for 60 homes. She took into account that the Council would have to produce an

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<sup>12</sup> APP/C2741/W/21/3271045

action plan for the delivery of housing but now the HDT test shows and markedly poorer performance. The 2019 Boroughbridge Road<sup>13</sup> decision was an even earlier decision and the Council has still not rectified its housing supply position. The 2017 Avon Drive decision<sup>14</sup> was over 5 years ago so the same issue exists in relation to HLS. In the 2020 Moor Lane decision<sup>15</sup> the SoS found harm to the interests for which Askham Bog is cited as an SSSI and the irreplaceable fenland habitat so that the harms were greater than I have found in this case. In general, although the Council has had opportunity to find more land for housing, it still has no local plan and still has not got an up-to-date HLS and its housing delivery shortfall is severe. Its track record of failure to provide sufficient land for housing is now even longer than it was at the time of these decisions. Furthermore, the Council accepts that Green Belt land will have to be released to address the shortage of HLS. For these reasons, I take a different view to the previous Inspectors/SoS.

392. The proposal would therefore still comply with Policy H14 of the HNP which does not support inappropriate development in the Green Belt except in very special circumstances.

393. **RECOMMENDATION**

394. I therefore recommend that the appeal is allowed in accordance with the suggested conditions.

*Siobhan Watson*

INSPECTOR

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<sup>13</sup> APP/C2741/W/19/3227359

<sup>14</sup> APP/C2741/W/16/3149489

<sup>15</sup> APP/C2741/W/19/3233973

## **APPENDIX A**

### **APPEARANCES**

#### FOR THE APPELLANT:

Giles Cannock, of Queen's Counsel

He called:

Stuart Natkus RTPI

Jeremy Smith BSc(Hons)

Dip LA CMLI

Gail Stoten

BA(Hons) MCIfA FSA

Planning Director Barton Wilmore LLP

Director, SLR Consulting Ltd

Heritage Executive Director Pegasus Group

#### FOR THE LOCAL PLANNING AUTHORITY:

Philip Robson, of Counsel

He called:

Jonathan Kenyon

BA(Hons) MA

Jon Etchells

MA BPhil CMLI

Principal Development Management Officer, York  
City Council

Director of Jon Etchells Consulting Ltd.

#### FOR HUNTINGTON PARISH COUNCIL:

Councillor David Jobling

Vice Chairman of Huntington Parish Council

#### INTERESTED PERSONS:

Councillor Keith Orrell

Huntington and New Earswick Ward

**APPENDIX B**  
**DOCUMENTS SUBMITTED AT THE INQUIRY**

- A01 Green Belt Addendum 2019 Annex 3 Extract (CD5.37.01)
- A02 Historic England Advice on the Setting of Heritage Assets Planning Note 3 (Second Edition)
- A03 Appeal Decision APP/J4423/W/20/3262600
- A04 Statement of Common Ground (Updated of CD2.05 updated 07.01.22)
- A05 Housing Delivery Table DLUHC

**APPENDIX B1**  
**Relevant Documents Submitted After the Inquiry**

Consultation Response from Natural England dated 25 March 2022

City of York Council response to Consultation Response dated 25 March 2022 from Natural England, 14 April 2022

Shadow HRA – Strensall Common SAC, Barratt David Wilson Homes, 12 April 2022. Report Reference: ER-4516-02-D

City of York Local Plan Composite Modifications Schedule April 2021

Habitats Regulations Assessment of the City of York Council Local Plan October 2020

Consultation Response from Natural England dated 1 June 2022

## **APPENDIX C**

### **CORE DOCUMENTS**

#### **Documents are on CYC Public Access Appeal Section 21/00032/NON Land to the east of New Lane, Huntington, York, YO32 9NA**

- CD1.01 Completed and signed application form PP-09436489
- CD1.02 Design and Access Statement V:03
- CD1.03 Location Plan\* 16 5023 02A
- CD1.04 Vehicle Access and Movement (Parameter Plan) 165023
- CD1.05 Pedestrian Access and Movement (Parameter Plan) 16 5023
- CD1.06 Open Space (Parameter Plan)\* 16 5023
- CD1.07 Development Areas and Heights (Parameter Plan)\* 16 5023
- CD1.08 Indicative Masterplan 16 5023
- CD1.09 Site Access Plan (Parameter Plan)\* DPL SK004 Duplicate of CD1.19 – both dated 20.11.2020
- CD1.10 Preliminary Ecological Appraisal Report ER-4516-01
- CD1.11 HRA Screening Report - Strensall Common ER-4516-02B
- CD1.12 Ecological Impact Assessment ER-4516-03-B
- CD1.13 Site Inspection Report - Monks Cross Wildlife Area SI-4516-01
- CD1.14 Flood Risk Assessment and Drainage Strategy 0466/3/FRA
- CD1.15 Heritage and Archaeology Statement P20-1905
- CD1.16 Noise Impact Assessment NIA/9409/20/9360/v2
- CD1.17 Transport Assessment 2020209.001
- CD1.18 Travel Plan 2020209.002
- CD1.19 Access Plan DPL SK004 Duplicate of CD1.09
- CD1.20 Air Quality Assessment LDT2352
- CD1.21 Landscape and Visual Impact Assessment and Green Belt Appraisal 403.04993.00067
- CD1.22 Tree Constraints Plan 16459/AJB
- CD1.23 Planning Statement 21\_00305
- CD1.24 Correspondence re DEFRA metric
- CD1.25 Biodiversity net gain calculation referred to in CD1.24 Results displayed in Excel document
- CD1.26 Geo-environmental Investigation 1114a/1

#### **CD2 Additional/Amended Reports and/or Plans submitted after validation**

- CD2.01 Development Areas and Heights (Parameter Plan) 16 5023 – 08I
- CD2.02 Open Space (Parameter Plan) Reference 16 5023
- CD2.03 Amended Plans Technical Note January 2022 **Not provided**
- CD2.04 Highways Technical Note January 2022 **Not provided**
- CD2.05 Statement of Common Ground December 2021 **Not provided**

#### **CD3 Committee Report and Decision Notice**

- CD3.01 Officer's Report to Planning Cttee 4 November 2021
- CD3.02 Committee Minutes Draft

#### **CD4 The Development Plan and the CYC Draft Local Plan (2005)**

- CD4.01 The Yorkshire and Humber Plan - Regional Spatial Strategy May 2008  
Government Office for Yorkshire and the Humber
- CD4.02 Huntington Neighbourhood Plan July 2021
- CD4.02.01 Huntington Neighbourhood Plan Survey Results 2015

CD4.03 2005 DCLP Policy SP2 – page 5 e-page 17 City of York Council 139 pages  
CD4.04 2005 – DCLP – Proposals Map (North) City of York Council  
CD4.05 Regional Spatial Strategy Partial Revocation Order (2013) Secretary of State

### **CD5 Emerging Development Plan and evidence base**

CD5.01 City of York Council Local Plan publication draft 2018 Policy SS2 Page 32, e-page 56 City of York Council  
CD5.01. 01 Proposals Map North 2018 Duplicate of CD5.10 City of York Council  
CD5.02 Green Belt Topic Paper 1 Approach to defining York’s Green Belt 2018 City of York Council  
CD5.03 Letter from PINS dated 12 June 2020  
CD5.04 Green Belt Topic Paper 1 Approach to defining York’s Green Belt Addendum 2021 GB TOPIC PAPER ASSESSMENT METHODOLOGY - 2021 City of York Council  
CD5.04. 01 Annex 1 Evidence Base to Green Belt Topic Paper 1 Approach to defining York’s Green Belt Addendum 2021 EX/CYC/59a City of York Council  
CD5.04. 02 Topic Paper 1 Green Belt Addendum January 2021 Annex 3 Inner Boundary Part 2 s5-6 EX/CYC/59d - Extract – introduction and Section 5 – boundaries 30 and 31 City of York Council  
CD5.05 City of York Council SHMA 2016 G L Hearn  
CD5.05. 01 City of York Council SHMA Addendum 2016 G L Hearn  
CD5.06 City of York Council SHMA update 2017 City of York Council  
CD5.07 City of York Council Housing Monitoring Update May 2021 City of York Council  
CD5.08 City of York Council Affordable Housing Note City of York Council  
CD5.09 Heritage Topic Paper 2014 City of York Council  
CD5.09. 01 Heritage Impact Appraisal September 2017 City of York Council  
CD5.10 Detailed Green Belt boundaries are shown on the policies map Duplicate of CD5.01.01 Proposals Map North 2018 City of York Council  
CD5.11 City of York Historic Character and Setting Technical Paper Update (2013) City of York Council  
CD5.12 City of York Historic Character and Setting Technical Paper (2011) City of York Council  
CD5.13 Approach to the Green Belt Appraisal and maps (2003) City of York Council  
CD5.14 The Inspectors wrote to the Council on 24 July 2018 (EX\_INS\_1)  
CD5.15 The Council responded to the Inspectors in detail on 13 November 2018 EX\_CYC\_7 City of York Council  
CD5.16 The Inspectors wrote back to the Council on 14 December 2018 EX/INS/2  
CD5.17 CYC Letter to Inspectors 6 October 2020 EX/CYC/43 City of York Council  
CD5.18 Letter to CYC 18 December 2020 EX\_INS\_19  
CD5.19 Letter to Inspectors 15 January 2021 EX/CYC/48 City of York Council  
CD5.20 PINS letter of response dated 29 January 2021 EX/INS/21  
CD5.21 PINS Letter to CYC 25 October 2021 EX/INS/25  
CD5.22 CYC Letter to Inspectors 19 November 2021 EX/CYC/67 City of York Council  
CD5.23 Local Plan Preferred Options (June 2013) City of York Council  
CD5.23. 01 Policy H1 in Preferred Options 2013 pages 105/6 e-pages 126 and 7 City of York Council  
CD5.24 City of York Local Plan Preferred Sites Consultation July 2016 SD018 City of York Council  
CD5.24. 01 ST11 in Preferred sites 2016 SD018 pages 151/152 e-page 153-/4 City of York Council  
CD5.25 CYC LP Pre-Publication Draft (Reg 18 Consultation September 2017) SD021 City of York Council



CD5.26 Historic England response to Local Plan Publication consultation (2018)  
CD5.27 Council issued a letter on 6 October 2020 re Housing Needs Update EX/CYC/43  
CD5.28 Site Selection Paper 2013 SD072A City of York Council  
CD5.28. 01 ST11 Site Selection Paper 2013 Extract from SD072A City of York Council  
CD5.29 Further Sites Consultation exercise took place in 2014 City of York Council  
CD5.30 Site Selection Paper Addendum 2014 SD073 City of York Council  
CD5.30. 01 ST11 Site Selection Paper 2014 SD073 extract pages 193/194 e-pages 198/199 City of York Council  
CD5.31 G L Hearn Housing Needs Update September 2020 EX/CYC/43a  
CD5.32 City of York Local Plan Publication Draft (2014) SD010A City of York Council  
CD5.32. 01 Policy SS1 of CoYLP Publication Draft 2014 SD010A - extract page 29 e-page 46, City of York Council  
CD5.33 Annexes to the September 2017 Strategic Housing Land Availability SD054 City of York Council  
CD5.33. 01 ST11 in September 2017 Strategic Housing Land Availability SD054 extract pages 97/98 e-pages 103,104 City of York Council  
CD5.34 Education Supplementary Planning Guidance: Section 106 Agreements (updated June 2019) City of York Council  
CD5.35 Commuted Sum Payments for Open Space City of York Council in New Developments Advice Note June 2014  
CD5.36 Core Strategy Preferred Options (June 2009) City of York Council 209 pages  
CD5.37 Green Belt Addendum March 2019 City of York Council  
CD5.38 Example Objection to the Green Belt methodology – O’Neill for University City of York Council

### **CD6 Relevant Appeal Decisions**

CD6.01 APP/C2741/W/21/327104 5, Boroughbridge Road, York, Sep-21 Paragraph 8 Paragraphs 13 to 18 Paragraph 22 Paragraph 24 Paragraph 29 Paragraph 30  
CD6.02 APP/C2741/W/19/323397 3, Land at Moor Lane, May-20  
CD6.03 Appeal Decision - Miller Homes, N of Boroughbridge Rd – 3227359 Paragraph 14 Paragraph 37  
CD6.04 APP/C2741N/O5/1189897 APP/C2741N/O5/1189885, Land at Germany Beck and west of Metcalfe Lane, Osbaldwick, York Paragraph 15  
CD6.05 APP/C2741/W/16/314948 9 Pilcher Homes - Avon Drive, Huntington 83 pages  
CD6.06 APP/C2741/V/14/2216946 Brecks Lane, Strensall, York March-15  
CD6.07 APP/B1930/W/20/326592 5 & APP/C1950/W/20/326592 6, Roundhouse Farm, Land off Bullens Green Lane, Colney Heath

### **CD7 Relevant Judgments**

CD7.01 Christopher Wedgewood v City of York Council [2020] EWHC 780 (Admin)  
CD7.02 East Northamptonshire District Council v SSCLG (2015) EWCA Civ 137 (Barnwell Manor)  
CD7.03 Jones v Mordue Anor (2015) EWCA Civ 1243  
CD7.04 Catesby Estates Ltd v. Steer, EWCA Civ 1697, 2018  
CD7.05 EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council  
CD7.06 South Lakeland District Council Appellants v Secretary of State for the 7.7 Environment and Another Respondents, [1992] 2 A.C. 14  
CD7.07 EWHC 1895, R (Forge Field Society, Barraud and Rees) v. Sevenoaks

## **CD8 Other**

- CD8.01 Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment Historic England, 2015
- CD8.02 Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets Historic England, 2017
- CD8.03 Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment
- CD8.04 Online Planning Practice Guidance on the Historic Environment Paragraph: 006 Reference ID: 18a-006-20190723
- CD8.05 Online Planning Practice Guidance on the Historic Environment 18a-018-20190723 Revision date: 23 07 2019
- CD8.06 Historic England consultation response 15.6.21 Historic England
- CD8.07 Guidelines on Landscape and Visual Impact Assessment (third edition, GLVIA3). Landscape Institute/IEEMA, 2013. Landscape Institute and Institute of Environmental Management & Assessment
- CD8.08 Assessing Landscape Value Outside National Designations, Technical Guidance Note 02/21, Landscape Institute 2021 Landscape Institute
- CD8.09 Archaeology Consultation Response 15 March 2021 City of York Council
- CD8.10 Historic England Consultation Response 22 March 2021 Historic England
- CD8.11 Report of Archaeological Evaluation October 2021 OSA
- CD8.12 Archaeology Consultation Response 12 October 2021 City of York Council
- CD8.13 Design and Conservation Officer Response 28 June 2021 City of York Council
- CD8.14 Council's Statement of Case City of York Council
- CD8.15 Eastfield Lane, Dunnington Application 20/016626/FULM Committee Report 7 October 2021 City of York Council
- CD8.16 North Lane, Huntington Application 18/00017/OUTM Committee Report 4 November 2021 City of York Council

## **CD9 Proofs of Evidence**

### Appellant's Proofs

- CD9.01 Proof of Evidence (Landscape) Jeremy Smith (SLR)
- CD9.02 Appendix to Proof of Evidence (Landscape) Jeremy Smith (SLR)
- CD9.03 Summary of Evidence Jeremy Smith (SLR)
- CD9.04 Proof of Evidence (Heritage) Gail Stoten (Pegasus)
- CD9.05 Summary of Evidence Gail Stoten (Pegasus)
- CD9.06 Proof of Evidence (Planning) Stuart Natkus (Barton Willmore)
- CD9.07 Summary of Evidence Stuart Natkus (Barton Willmore)

### City of York Council's Proofs

- CD9.08 Proof of Evidence (Planning) Jonathan Kenyon
- CD9.09 Summary of Appeal Decisions Jonathan Kenyon
- CD9.10 Summary of Evidence (Planning) Jonathan Kenyon
- CD9.11 Proof of Evidence Richard Wood
- CD9.12 Proof of Evidence (Landscape and Green Belt) Jon Etchells
- CD9.13 Appendix to Proof of Etchells Jon Etchells

### Huntington Parish Council's Proofs

- CD9.14 Proof of Evidence (Huntington Parish Council) Councillor David Jobling

## **APPENDIX D**

### **RECOMMENDED CONDITIONS SHOULD THE APPEAL BE ALLOWED**

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority no later than the expiration of three years beginning with the date of the grant of this outline permission; and the development to which this permission relates must be begun no later than the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in complete accordance with the following plans:-
  - 16 5023 – 02A - Location Plan
  - DPL SK004 - Site access plan
  - 16 5023 – 07J - open space
  - 16 5023 – 08I - development areas & heights
- 4) The number of dwellings on the site shall not exceed 300 at any time.
- 5) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the construction period. The plan shall include details of:
  - a dilapidation survey of the highways adjoining the site the method and scope to be agreed with the Council.
  - Means of site access control and the measures to prevent construction/delivery vehicles parking/blocking the highway.
  - Measures to keep the highway clean - to include wheel-washing facilities for the cleaning of vehicles leaving the site, including location and type.
  - Dust - A site-specific risk assessment of dust impacts in line with the guidance provided by the Institute of Air Quality Management and a package of mitigation measures commensurate with the risk identified in the assessment.
  - Air Quality - The air quality impacts associated with construction vehicles and non-road mobile machinery and the proposed mitigation measures, commensurate with the identified risk.
  - Noise - Details on maximum permitted noise levels; noise mitigation measures; and noise monitoring and compliance with relevant standards
  - Vibration - Details of any activities that may result in vibration, including piling. Details shall include maximum vibration levels and any required mitigation and monitoring.
  - Lighting - Details of artificial lighting and mitigation measures, including hours of operation of lighting, and the location and angling of lighting.
  - Complaints procedure - to detail how a contact number will be advertised to the public, investigation procedure when a complaint is

received, any monitoring to be carried out, and what will happen in the event that the complaint is not resolved. Written records of any complaints received and actions taken shall be kept and details forwarded to the Local Planning Authority every month throughout the period of construction.

- 6) Construction, loading and unloading on the site shall not take place outside of the hours of 8:00 to 18:00 Monday to Friday and 9:00 to 13:00 Saturday. There shall be no construction, loading and unloading at any time on Sundays and public holidays.
- 7) No development shall take place (including ground works and vegetation removal) until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. Construction shall be undertaken in complete accordance with the approved plan. The plan shall include the following:
  - Risk assessment of potentially damaging construction activities.
  - Identification of 'biodiversity protection zones'.
  - Measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements).
  - The location and timing of works to avoid harm to biodiversity features.
  - The times during construction when specialist ecologists will be present on site to oversee works.
  - Details of responsible persons and lines of communication.
  - The roles and responsibilities on site of an ecological clerk of works or a similarly competent person.
  - Use of protective fences, exclusion barriers and warning signs.
- 8) No development shall take place (including the importing of materials and any excavations) until a method statement regarding protection measures for the trees shown to be retained on the approved Open Space Parameter Plan shall be submitted to and approved in writing by the local planning authority. All works on site shall be undertaken in accordance with the approved method statement. For the avoidance of doubt this condition excludes works necessary for routine tree maintenance, pruning and crowning works.
- 9) The method statement referred to in Condition 8 shall include details and locations of protective fencing and construction details where any change in surface material or installation of services is proposed within the canopy spread and likely rooting zone of a tree. No trenches, pipe runs for services or drains shall be sited within the root protection area of the trees on the site which are to be retained without the prior approval in writing of the local planning authority. The protection measures shall implemented and adhered to throughout the construction period.
- 10) No development shall take place until a Written Scheme of Investigation of archaeological remains shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions and:

- The programme and methodology of site investigation and recording;
- The programme for post investigation assessment;
- The provision to be made for analysis of the site investigation and recording;
- The provision to be made for publication and dissemination of the analysis and records of the site investigation;
- The provision to be made for archive deposition of the analysis and records of the site investigation; f. The nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation

11) No development shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the prior written approval of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority before the commencement of development. The report and findings shall include:

- A survey of the extent, scale and nature of contamination, including contamination by ground gas;
- An assessment of the potential risks to, human health; property, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; ecological systems; and archaeological sites and ancient monuments;
- An appraisal of remedial options and proposal of the preferred options.

12) No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, the natural environment has been submitted to and agreed in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

13) No development shall place until the remediation scheme submitted in accordance with Condition 12 is carried out in accordance with the approved details. The Local Planning authority shall be given two weeks written notification of commencement of the remediation works. Following completion of the remediation works a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced and approved in writing by the Local Planning Authority before any dwelling is constructed.

14) In the event that contamination not previously identified, is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation, risk assessment and remediation must be undertaken in accordance with Conditions 11-13 above.

15) No works shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- The means by which the surface water discharge rate shall be restricted to a maximum rate of 3.5 litres per second.
- The means by which the surface water attenuation up to the 1 in 100 year event with a 30% climate change allowance shall be achieved.
- Full modelling calculations for the above.
- A scheme of future management and maintenance.

The approved scheme shall subsequently be implemented prior to occupation of the first dwelling.

16) Prior to commencement of construction, a phasing plan detailing the installation of the road network, pedestrian and cycle access points (as illustrated on indicative drawing 16 5023 - 06 – Rev E Pedestrian Access and Movement) and the open space and green infrastructure (as illustrated on drawing 16 5023-07 Rev C – Open Space) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved phasing plan.

17) Prior to commencement of construction, details of the provision of public amenity space shall be submitted to the Local Planning Authority and approved in writing. The development shall be carried out in accordance with the approved phasing plan pursuant to condition 16. The details shall include a masterplan showing areas for natural/semi-natural amenity space, parks/gardens and a children's play area on-site including equipment. The details shall evidence biodiversity net gain on-site using the DEFRA metric. The development shall be completed in accordance with the approved details in accordance with the phasing plan.

18) A Landscape/Ecological Management Plan shall be submitted to and approved in writing by the Local Planning Authority with any reserved matters application. The content of the plan shall include the following:

- Description and evaluation of features to be managed;
- Ecological trends and constraints on site that might influence management;
- Aims and objectives of management;
- Appropriate management options for achieving aims and objectives;
- Prescriptions for management actions;
- Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- Details of the body or organisation responsible for implementation of the plan;
- Ongoing monitoring and remedial measures.

The plan shall also set out, where the results from monitoring show that conservation aims and objectives of the plan are not being met, how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives

of the originally approved scheme. The development shall be carried out in accordance with the approved details.

- 19) Prior to commencement of construction of the development, a strategy for the provision of active and passive electric vehicle charging facilities shall be submitted to, and approved in writing, by the local planning authority. The strategy shall include the locations, specification and timescales for the installation of the facilities. The charging facilities shall be installed in accordance with the approved details and maintained and retained thereafter.
- 20) Prior to the commencement of the construction of the development, a scheme to accommodate at least one dedicated car parking space for a car club shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify the location of dedicated car share space(s) and the trigger(s) for installation. The development shall be carried out in accordance with the approved details. The car club space(s) shall be retained at all times for the parking of car club vehicles.
- 21) No dwelling shall be occupied until details of the junction between the internal access roads and the New Lane have been approved in writing by the Local Planning Authority and constructed in accordance with the approved details. A Stage 3 Road Safety Audit in accordance with guidance set out in the Standards for Highways (GG119 Road Safety Audit) shall be carried out and shall be submitted to the Local Planning Authority prior to first use of the access roads by occupiers of the dwellings.
- 22) No dwelling shall be occupied until the following highway works (which include works associated with any Traffic Regulation Order required as a result of the development, signing, lighting, drainage and other related works) have been carried out in accordance with the approved plans:
  - Works for the proposed relocation of the two bus stops on New Lane as shown on the Site Access Plan (DPL SK004) (required due to the proposed access road locations), to include real time information displays (which require approval under S278 of the Highways Act).
  - Pedestrian crossings on New Lane as shown indicatively drawing 16 5023 - 06 Rev E - Pedestrian Access and Movement.
- 23) Prior to the first occupation of each dwelling hereby approved details of cycle parking facilities for the relevant dwelling shall be submitted to and approved in writing by the local planning authority. The facilities shall be covered and secure and provide for at least one space per bedroom. The cycle parking shall be carried out in accordance with the approved details and prior to the first occupation of the dwelling to which it relates.
- 24) Each dwelling hereby permitted shall achieve a reduction in carbon emissions of at least 28% compared to the target emission rate as required under Part L of the Building Regulations 2013, or compliance with any approved Part L document dated 2021 or thereafter. Prior to the first occupation of each dwelling details of the measures undertaken to secure compliance with this condition shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

25) Each dwelling shall be plumbed so as to not exceed a target maximum water consumption rate of 110 litres per person per day (calculated as per Part G of the Building Regulations) and shall be retained that way thereafter.

26) Before the first occupation of the development hereby permitted a Travel Plan shall be submitted to the Local Planning Authority and approved in writing. The plan shall include details of the Travel Plan co-ordinator and specifically detail measures to promote school travel by sustainable measures and contain mode split targets which have been approved by the Local Planning Authority. The plan shall be implemented in accordance with the approved details within 6 months of the occupation of the first dwelling and results of annual travel surveys shall be submitted annually to the Local Planning Authority.

27) The dwellings hereby approved shall be constructed so to achieve noise levels of:

- 30 dB LAeq (8 hour) and 45dB L<sub>Amax</sub> no more than 10 times per night inside bedrooms at night (23:00 - 07:00 hrs).
- 35 dB LAeq (16hour) in all other habitable rooms during the day (07:00 - 23:00 hrs).

If internal noise levels are achieved with all windows shut then other means of ventilation shall be provided. The noise mitigation measures shall remain in place thereafter.

28) The permissive routes and public open space hereby approved shall be kept open, free from any obstruction and in a safe condition for use by members of the public at all times unless any temporary closure is reasonably required for essential maintenance.

-----End of Schedule-----





The Planning Inspectorate

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# **Addendum Report to the Secretary of State**

**by Siobhan Watson BA(Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Date 27 June 2022**

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Town and Country Planning Act 1990

Appeal by Barratt David Wilson Homes

Outline planning permission with all matters reserved except access for circa 300 residential dwellings, associated landscaping, public open space, and the formation of two new vehicle accesses off New Lane

at

Land to the east of New Lane, Huntington, York, YO32 9NA

**File Ref: APP/C2741/W/21/3282598**

**Land to the east of New Lane, Huntington, York, YO32 9NA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The application is made by Barratt David Wilson Homes to City of York Council.
  - The application Ref 21/00305/OUTM is dated 29 January 2021.
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**INTRODUCTION**

1. The Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) (for plans and projects beyond UK territorial waters (12 nautical miles)) require that where a plan or project is likely to have a significant effect on a European site<sup>1</sup> or European marine site, either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Sos in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

**PROJECT LOCATION**

2. The Appeal site and its surroundings are described in paragraphs 7-11 of the main Report. The site is located in Huntington, York and is within the Zone of Influence (ZoI) of Strensall Common Special Area of Conservation (SAC). Details of the development proposed are set out in Paragraphs 12-13 of the main Report. In essence it is an outline proposal for around 300 dwellings with all matters reserved except for access.

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<sup>1</sup>Regulation 8 of the Habitats Regulations 2017, as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (the '2019 Regulations'), defines European sites and European marine sites. European sites include: Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) already existing at 31 December 2020; any Site of Community Interest (SCI) placed on the EU Commission's list or any site proposed to the EU prior to 31 December 2020; and any SAC or SPA designated in the UK after 31 December 2020. European marine sites are defined as European sites consisting of marine areas. As a matter of policy, the Government also applies the Habitats Regulations procedures to possible SACs (pSACs), potential SPAs (pSPAs), Ramsar sites and proposed Ramsar sites, and sites identified, or required, as compensatory measures for adverse effects on any of the above sites.

European sites in the UK will no longer form part of the EU's 'Natura 2000' ecological network. The 2019 Regulations have however created a 'national site network'. The national site network includes existing SACs and SPAs, and new SACs and SPAs designated under the Habitats Regulations 2017 (as amended), as noted above. Ramsar sites do not form part of the national site network, but all Ramsar sites are treated in the same way as SACs/SPA as a matter of policy.

## **THE DESIGNATED SITE, ITS QUALIFYING FEATURES AND CONSERVATION OBJECTIVES**

3. Strensall Common SAC is located some 4km from the appeal site as the crow flies. Its qualifying features are identified as extensive areas of wet and dry heath. It is represented predominantly by *Erica tetralix* – *Sphagnum compactum* wet heath, although its extent has been reduced by drainage. It is a noted locality for marsh gentian *Gentiana pneumonanthe*, narrow buckler fern *Dryopteris carthusiana* and the dark-bordered beauty moth *Epione vespertaria* which is associated with creeping willow *Salix repens* on the wet heath. It also contains a complex mosaic of wet heaths with *Erica tetralix* and dry heath elements. The *Calluna vulgaris* – *Deschampsia flexuosa* dry heath is noted for Petty Whin - *Genista anglica* and bird's-foot. The habitats that are a primary reason for the selection of the site are 4010 Northern Atlantic wet heaths with *Erica tetralix* and 4030 European dry heaths.
4. The Conservation Objectives are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring; the extent and distribution of the qualifying natural habitats; the structure and function, including typical species, of the qualifying natural habitats; and the supporting processes on which the qualifying natural habitats rely. Strensall Common SAC is separated from the site by housing, retail and farming land.

## **HRA IMPLICATIONS OF THE PROJECT**

5. The proposed development would generate recreation pressure impacts that have the potential to affect Strensall Common SAC and the wet and dry heath. The impact pathways are visitors to the common, in particular dog walkers who tramp the ground. Dog walkers come from local villages and a marked increase in housing in those areas may result in increased recreation pressure. In the absence of mitigation, residential development within the 5.5km ZoI poses a risk of impacting on the SAC.

## **ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS**

6. Strensall Common is used for training by the Ministry of Defence. The main issue currently affecting its habitats is a lack of management and hence scrub encroachment, although this is being controlled through management agreements with the MOD and their tenants.
7. Public access via Public Rights of Ways and Permissive Paths is permitted when training is not taking place and is subject to an integrated management plan agreed between the MOD, Natural England and the Yorkshire Wildlife Trust. The absence of open access limits the exposure of the interest features to effects from visitor pressure.
8. In the absence of mitigation, residential development within the 5.5km ZoI, such as that proposed, poses a risk of impacting on the SAC.

9. Recreational impacts are already evident at Strensall Common, although these are currently limited in extent and severity. Based on the Strensall Common Visitor Surveys<sup>2</sup>, if all allocations within 7.5km of Strensall Common were developed (accounting for some 6653 dwellings), it is predicted that there would be a 24% increase in access to Strensall Common – much of which would be for dog walking. When compared to the proposals at the site (300 residential dwellings), the resulting increase in visitor presence would be very minor and not significant in isolation. However, other projects must be considered in combination with this appeal proposal.
10. The Appellant undertook a search for other projects within a 5.5km radius of Strensall Common and found two large scale residential development proposals, neither of which had been determined when they submitted their shadow HRA. One was for 117 dwellings and the other for 970 dwellings. Neither fall within or immediately adjacent to Strensall Common or were hydrologically linked to it. However, slight increases in visitor pressure could result from them.
11. If all allocation sites were developed, along with the two undetermined proposals and the appeal proposal, there could be a significant in-combination effect on Strensall Common SAC.

#### **FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY**

12. In the absence of avoidance or mitigation measures, there remains potential for the development proposal to lead to a significant effect on the Strensall Common SAC via disturbance effects. An Appropriate Assessment is therefore required.
13. The latest information from the Appellant is contained in the Brooks Ecological Shadow Habitat's Regulation Assessment report dated 12 April 2022 (Shadow HRA) and it is this latest report which forms the basis of my advice to the SoS. Natural England (NE) has responded to my consultation in respect of this report. The response is dated 1 June 2022.
14. NE's response is that the Shadow HRA sets out the assessment process clearly and accurately. However, NE considers that there is insufficient evidence to support the mitigation proposed and has requested further details regarding the proposed approach to mitigation. It stated that without this information, NE may need to object to the proposal.
15. In relation to the evidence of mitigation, NE say that it is important that the mitigation is of sufficient scale to be viable and effective. In respect of scale, it notes that the median route length of visitors within Strensall Common is 2.5km. It also expressed concern in relation to potential restrictions on the proposed open space due to the fact that it contains a Scheduled Ancient Monument. Furthermore, it referred me to another appeal proposal as an example of good

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<sup>2</sup> Habitats Regulations Assessment of the City of York Council Local Plan Appendix D

practice but the full details of this appeal are not before me and it has not yet been determined as it is currently before the SoS, therefore I cannot take it into consideration. My response to its concerns in respect of mitigation are addressed below.

16. In keeping with the recommendations outlined in the Visitor Survey Report, it is proposed to provide Public Open Greenspace (POS). This POS seeks to retain dogwalkers on site and to minimise trips off-site for this purpose. This is shown on the submitted Open Space Plan (CD1.06). I note NE's concern in relation to the scale of the POS. It does not explicitly say that the space is too small but expresses concerns about its usability, particularly as there is a Scheduled Ancient Monument (SAM) within the space. However, the submitted Pedestrian Access and Movement Plan (CD1.05) illustrates a pedestrian/cycleway crossing the SAM and a primary pedestrian route around the perimeter of it. It is proposed that the site of the SAM would be soft landscaped and that public access would be allowed, therefore the presence of the SAM would not impact the quantum of POS shown on the plan. In relation to the 2.5km route that people take within the SAC, NE have not said that this could not be achieved within the site. Whilst a 2.5km linear route through the site would not be possible, I consider that a more circular type of route could be achieved.
17. NE also said that consideration should be given to whether links and enhancement can be provided from the site to the wider local Public Rights of Way and green infrastructure networks in order to compliment the onsite green space provision. However, it has not drawn my attention to any specific Public Rights of Way or green infrastructure. Nevertheless, the Pedestrian Access and Movement Plan indicates that formal pedestrian and cycle links would be provided through the site where currently none exist. These would provide links between the housing to the north, the adjoining commercial/retail development and New Lane. They would also allow existing residents in the wider area to use the POS proposed within the site.
18. NE has also referred to the use of a bespoke management plan and planning conditions in order to provide sufficient certainty regarding the proposed mitigation and its delivery. This POS would be secured by Condition 3 and its precise details would be determined under Condition 17. Condition 18 would secure Landscape/Ecological Management Plan for the site. The long-term management and maintenance of the POS would be secured by a planning obligation in the S.106 agreement which would have to be agreed by the Council. The Council would maintain control over these matters.

## **HRA CONCLUSIONS**

19. These conclusions represent my summary and assessment of the evidence presented to me. I have taken into account all the available evidence and have adopted the precautionary principle in carrying out my consideration of the matters raised.

20. Having considered all of the potential significant effects that could arise from the appeal scheme, I am satisfied, in light of the mitigation measures set out above, which can be secured by conditions and planning obligations, that the proposed development would not, either by itself or in combination with other plans and projects, result in a likely significant effect on the Strensall Common SAC.
21. My conclusion is predicated on the circumstances of this particular case, based on the site's unique context and situation and on the basis of securing the identified mitigation measures that I have identified.
22. For the purpose of clarity, the above does not constitute an appropriate assessment for the purposes of the Habitats Regulations. This is a matter for the SoS to undertake as the competent authority.

*Siobhan Watson*

INSPECTOR



The Planning Inspectorate

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# **Addendum Report 2 to the Secretary of State**

**by Siobhan Watson BA(Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Date 30 June 2022**

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Town and Country Planning Act 1990

Appeal by Barratt David Wilson Homes

Outline planning permission with all matters reserved except access for circa 300 residential dwellings, associated landscaping, public open space, and the formation of two new vehicle accesses off New Lane

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**Advice in the Case that the SoS Considers Allowing the Appeal in Respect of Natural England**

The SoS qualifies as a section 28G authority so section 28I of the Wildlife and Countryside Act applies. This means that if he is intending to give consent for development that would be likely to damage the features for which the SSSI (in this case Strensall Common SAC) has been designated he must notify Natural England (NE) **prior** to reaching the decision. NE must be allowed 28 days in which to comment. If permission is granted against NE's advice, a condition must be attached that prohibits commencement of development from 21 days of the date of that decision. This will allow NE to consider any further action. NE must be sent a copy of the decision.

**Suggested condition**

No development shall commence until 21 days of the date of this decision.

**Reason**

To allow Natural England to consider further action.

*Siobhan Watson*





# Department for Levelling Up, Housing & Communities

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

## 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.