

**LOWER THAMES CROSSING
DEVELOPMENT CONSENT ORDER EXAMINATION**

WRITTEN REPRESENTATIONS

at DEADLINE 1 on behalf of

KATHRYN HOMES LTD: Unique Reference 20035583

RUNWOOD HOMES LTD: Unique Reference 20035580

RUNWOOD PROPERTIES LTD: Unique Reference 20035582

INTRODUCTION AND OVERVIEW

1. These Written Representations are made on behalf of Kathryn Homes Ltd, Runwood Homes Ltd and Runwood Properties Ltd (“the Objectors”) at Deadline 1. Each of the Objectors is a registered Interested Party and has separately made Relevant Representations but they share common interests and so have combined together to make these joint Written Representations setting out the details of their objections to the Lower Thames Crossing.

2. As was explained at OFH2, Katherine Homes owns the site of the Whitecroft Care Home, Stanford Road (A1013), Orsett, Thurrock. Runwood Homes operates the Care Home. Runwood Properties owns adjacent land to the east and south which provides part of the rural setting of the Care Home. All three companies are related, with Runwood Homes as the parent company of Kathryn Homes and also sharing directors with Runwood Properties. Runwood Homes is in the process of acquiring ownership of the site of Whitecroft from Kathryn Homes and the transfer is expected to be completed later in the summer.

3. A general explanation of the location and current operation of the Whitecroft Care Home was provided by the Objectors at OFH2 and that information is also set out in the Post Hearing Submissions following OFH2. It is therefore not repeated here. In summary, the Care Home is located in close proximity to

the major Baker Street intersection of the LTC/A13/A1089 and it provides 56 bedspaces catering primarily for persons suffering from dementia and other cognitive impairments. For most residents, Whitecroft is their final home and therefore caters for their 'end of life' needs. A typical stay at Whitecroft will be between 6 months and 48 months. As at July 2023, there were 48 residents at Whitecroft and of those, 34 residents (71%) were living with some form of dementia-related condition.

4. The effects on Whitecroft of the construction and subsequent operation of the LTC project (including the various other highways that are to be altered in conjunction with the LTC (A122) itself), by reason of their proximity, magnitude, intensity, and duration, are such that if the project secures development consent it is likely that Whitecroft has no realistic future as a care home catering for vulnerable elderly people. There are significant shortcomings in the Applicant's assessment of those effects, and the Objectors are not satisfied that complete or accurate information has been provided to date to allow a full assessment of the effects. At the very least the deficiencies need to be remedied so that the ExA is in a position to make a properly informed judgment.
5. However, based on the information that is available, the Objectors do not consider that the effects are compatible with a continuance of the care home operation. The juxtaposition of the LTC and the care home is unacceptable. A caring, supportive, and tranquil environment addressing the particular needs of a vulnerable community cannot be provided or maintained in the midst of one of the largest construction sites in the country. Given the extended duration of the construction period and the age/longevity of the residents of Whitecroft, it is not acceptable to impose the effects on them for what, for many, will be the remainder of their lives. Nor do the Objectors consider that there is meaningful mitigation that could reduce the effects to an acceptable level. For this reason, the operational effects of the LTC are secondary because the care home is unlikely to survive the 5+ years of construction activity. However, if it did do so, the enduring impacts of the LTC during its 60+ years of operation would also fail to provide the caring, supportive, and

tranquil environment that is required. Either way, Whitecroft does not have a realistic future if the LTC is granted development consent. The proper (and obvious) answer, if the LTC is to proceed, is to relocate the Whitecroft Care Home to a new site before construction commences.

6. Whilst the impacts on the residents of the Whitecroft Care Home are the main focus of these Written Representations, it is also the case that the LTC proposals will have impacts on local employment at the care home if it cannot endure and on the availability of care home placements in the Thurrock area, and also that the proposals will have negative impacts on the historic environment by adversely affecting the significance of the listed farmhouse at Whitecroft, which have not been adequately assessed by the Applicant.

7. The structure of these Written Representations is as follows:

- Introduction and Overview (this section)
- Description of physical works and activities comprised in the LTC
- Shortcomings in the Applicant's assessment of effects on Whitecroft
- The Objectors' provisional assessment of effects on Whitecroft
- Scope for mitigation of effects
- Meeting the Public Sector Equality Duty
- Need for relocation
- Conclusion

8. These Written Submissions are accompanied by the following specialist technical reports, attached as Annexes:

- Annex A: Psychiatric report by Dr Hugh Series (July 2023)
- Annex B: Review of Chapter 12 of the ES (noise and vibration) by BY Acoustics (February 2023)
- Annex C: Air Quality Review by Air Quality Consultants (May 2023)
- Annex D: Technical Note on Construction Traffic by Transport Planning Associates (July 2023)
- Annex E: Heritage Representation by HCUK Group (July 2023).

9. The Objectors remain willing to engage with the Applicant on the question of relocation but there should be no doubt that the proposals in their current form, which are wholly inadequate as regards their impacts on the residents of Whitecroft, are simply not acceptable and so should not be approved.

DESCRIPTION OF THE PHYSICAL WORKS AND ACTIVITIES

10. The Objectors recognise that the ExA will be familiar with the LTC proposals both in overall terms and insofar as they impact on the Whitecroft Care Home. They also welcome the ExA's intention to undertake an internal and external site inspection. However, as a means of drawing attention to the scale and magnitude of the physical works and activities, especially during the lengthy construction period, the Objectors provide the following summary. Whilst the construction effects will be experienced before the operational effects (and in practice are likely to have decisive effects for the future of Whitecroft), it is convenient to describe the permanent works first, because the construction activities and temporary works are to be undertaken in order to achieve the permanent works, which will then be in use for the (assumed) 60 year operational period.
11. A good starting point for an overview of the project so far as it affects Whitecroft is Plate 2.7 of the Project Description in Chapter 2 of the Environmental Statement (ES) [APP-140]. This shows Section 7 of the project, which covers the area in the vicinity of Whitecroft.
12. There is also a more detailed Junction Layout plan showing the area in the immediate vicinity of Whitecroft affected by the roads and junctions connecting the LTC. This is the second plan within **PDB-003**. The Objectors note that the ExA has requested as part of Action Point 2 from OFH2 that the Applicants submit vertical cross-sections taken in places on this plan and the Objectors will be particularly interested to see cross-section G-G (and will comment on it in due course once available). The Objectors would also

respectfully request that the ExA considers asking the Applicant to prepare a further cross-section on a north/south alignment that passes through main building at the Whitecroft (i.e. the listed farmhouse) and extends to include both the LTC to the south and the A13 to the north.

13. In addition, given the intensive use that is proposed to be made of the haul road to the west of Whitecroft during an extended period of the construction of the LTC (discussed further below), the Objectors would request that the ExA considers asking the Applicant to prepare an east/west cross-section through the site of Whitecroft which shows (for the construction period, rather than for the operational period when the haul road is proposed to be replaced by a bund) the relationship of the haul road to Whitecroft. This request is elaborated in the TPA Report (at Annex D) at paras 4.22 and 4.23.

14. The Objectors also note that (under Article 6(2)(a) of the draft DCO [**AS-039**]) the limits of deviation would permit the Applicant to construct the development in the vicinity of the Whitecroft with vertical deviations of 0.5 metres upwards and 1 metre downwards. The Objectors would therefore also respectfully request that the ExA considers asking the Applicant to prepare equivalent cross-sections using the upper and lower limits of the limits of deviation for all structures, carriageways, embankments, and cuttings in the vicinity of Whitecroft (e.g. 500 m from the site boundaries).

15. Plans which illustrate the scope of the works in the vicinity of Whitecroft are set out below:

- Sheet 29 of the General Arrangement Plans in **APP-017** shows the new roads, new bridges, and earthworks in the vicinity of Whitecroft;
- Sheet 2 in Section 11 of the Environmental Masterplan in **APP-165** shows the proposed landscaping in the vicinity of Whitecroft;
- Sheet 7 of the Structures Plans in **APP-043** shows (in green) the various new bridges in the vicinity of Whitecroft;

- Sheets 35 (A1013 (Stanford Road) bridge over A1089), 36 (A1013 bridge over A122 (LTC), 37 (A1013 bridge over A13 westbound slip to LTC), 40 (A13 southbound slip to A1089 bridge over A13 slip to LTC), 77 (A13 northbound slip to LTC bridge over A13 slip to LTC southbound)¹ of the Structures Plans in **APP-044** shows the bridges in plan and elevation (including the height Above Ordnance Datum (AOD) of the Finished Road Level (FRL));
- Sheet 4 of the A13 Junction Plans and Profiles in **APP-035** shows the profile of Stanford Road as proposed to be re-aligned, including how it rises to the west to pass over the LTC and the A1089;
- Sheets 28 and 29 of the Temporary Works Plans in **AS-037** show the construction compounds and access routes/haul roads in the vicinity of Whitecroft. The Stanford Road compound is work no. CA7 and the Brentwood Road compound is work no. CA6 on Sheet 28 and the Whitecroft is on Sheet 29;
- Sheet 29 of the Utilities Works Plans in **AS-031** shows the utilities works (both overhead power lines and underground cabling) in the vicinity of Whitecroft.

16. There do not appear to be any photomontages which directly show the changes at Whitecroft in the Application (save that in the consultation material there were photomontages of the current and proposed western outlook from Whitecroft which are reproduced as Figures 8 and 9 of the TPA report (Annex D).

17. There are some illustrative images in the Project Design Report for Part D (North of the River- Tilbury to the A13 Junction) in **APP-511**. On p.58 there is a general bird's eye view from the east, with Whitecroft shown contained by (well-established) new planting between it and the LTC. On p.60 there is a general elevated view from the south looking towards Whitecroft. On p.61 there is a general bird's eye view from the north. Given the maturity of the

¹ NB: there seems to be an issue about the correctness of the FRL shown on Sheet 40 and Sheet 77, see next footnotes.

new planting, these images show a position several years after the completion of the project. There are no equivalent images to show the position at the end of the construction period or the year of opening of the LTC.

18. In summary terms, the project involves the following permanent works in the vicinity of Whitecroft:

- Re-aligning Stanford Road by moving the carriageway some 18 metres to the north and re-providing it at a higher level of some 0.6 metres. Currently Stanford Road is at about 25 m AOD, which is effectively the same level as Whitecroft. The access into Whitecroft will have to be reconstructed to enable it to connect with the new (higher) alignment of Stanford Road.
- Stanford Road as it proceeds west will have to increase in height to pass over three new bridges crossing in turn (a) a slip road from the A13 (westbound) to the LTC (southbound), (b) the main line of the LTC, and (c) the main line of the A1089. The bridges have the following FRLs: (a) 25.79m AOD, (b) 31.93m AOD, and (c) 35.41m AOD.
- Building, on an embankment with an approximate height of 9.5 metres, a new slip road to connect the A13 (westbound) to the A1089 (southbound). The slip road will be about 290 metres to the north of Whitecroft.
- The above slip road has to pass on a bridge over the slip road taking the A13 westbound to the LTC southbound. The height of that bridge, in terms of the FRL is 32.6 m AOD.²
- Building to the immediate north of that slip road, a slip road to take the A13 westbound to the LTC northbound. The height of that bridge over

² NB: there seems to be an inconsistency in the plans, as explained at para 3.10 of the TPA Report (Annex D). Sheet 5 of **APP-035** suggests that the slip road for the A13 westbound to A1089 is at a height of 32.6m AOD at chainage 0+100, which is effectively just beyond the western end of the bridge crossing the slip road for the A13 westbound to the LTC southbound. This is some 7.2 m above pre-existing levels at that point (25.4m AOD). However, Sheet 40 of **APP-044** suggests that the FRL of the bridge is only 21.94m AOD. This would make that bridge below pre-existing levels. This is inconsistent with what is shown on the General Arrangement plan (Sheet 29 of **APP-017**). A discrepancy of over 10 m in the height of the bridge is more than inconsequential. At the present time it seems prudent to assume that the General Arrangement plan and Sheet 5 of **APP-035** are correct.

the slip road taking the A13 to the LTC southbound in terms of FRL would appear to be about 32.3 m AOD.³

- Excavating a drainage swale between the re-aligned Stanford Road and the above new embankment (as shown on Sheet 29 of the Drainage Plans in **APP-049**).
- Creating a cutting to a depth of 8.4 metres to accommodate the slip road for the A13 westbound to the LTC southbound, which arcs westwards around Whitecroft from north to south. That cutting is 69 metres from the grounds of Whitecroft at its closest point.
- Also creating a cutting to a depth of 2.5 metres to accommodate the main line of the LTC.
- Constructing a landscaped bund to a height of 9.4 metres, covered with predominantly non-native planting, between the cutting for the slip road for the A13 westbound to the LTC and the western boundary of Whitecroft.
- Woodland planting along the frontage of Whitecroft to the re-aligned Stanford Road.
- Relocating overhead power lines that run to the south of Whitecroft so that they are approximately in the same position where they run just south of the LTC but are some 350m further south where they cross the A1089.
- Highway lighting for the new roads will reflect the principles indicated in the Project Description in **APP-140**.

19. During the construction stage, the following works are proposed in the vicinity of Whitecroft:

- The construction and operation of a 0.5ha construction compound (the Stanford Road compound (Work No. CA7) some 285 metres to the south east of Whitecroft.

³ NB: there is a similar inconsistency in the plans. This is discussed in the TPA report (Annex D, paras 3.8 and 3.9). Sheet 9 of **APP-035** suggests that the slip road is at 32.3 m AOD at chainage 0+500 whereas Sheet 77 of **APP-044** suggests a FRL for the bridge on its eastern side of 20.29 m AOD. They cannot both be correct and at the present time it is assumed **APP-035** is correct. Sheet 8 of **APP-035** also gives a similar message to Sheet 9, showing the FRL of the bridge as 32.37m AOD.

- The construction and operation of an 11 hectare construction compound (the Brentwood Road compound (Work No. CA6) some 745 metres to the south east of Whitecroft. The Brentwood Road compound will also accommodate the Brentwood Road Utility Logistics Hub.
- The construction of three new bridges for the re-aligned Stanford Road to the west of Whitecroft and a new bridge for the A13 westbound slip road to the A1089 southbound to the north of Whitecroft. The construction of the bridges will reflect the principles (including the potential for piling foundations) set out in the Project Description in **APP-140**.
- The excavation of the cuttings for the LTC and the various slip roads and the construction of all the new and improved roads.
- The provision of a haul road/access route at the top of the cutting for the A13 westbound slip road to the LTC, with a turning area close to Stanford Road.
- A construction access from the haul road to the Stanford Road compound.
- The provision of a haul road (Haul Road 4) to connect the Stanford Road compound to the Brentwood Road compound.
- The provision of a haul road access route at the top of the cutting on the south side of the main line of the LTC.
- Various utilities works as shown on Sheet 29 of **APP-023**.

20. The construction period for Section C is expected to last for 4 years and one quarter⁴ from Q1/2025 to the end of Q1/2029 (Plate 2-14 in **APP-140**). Whitecroft lies between 2 areas of construction works (as shown in Plate 2-14), and if added together 'high intensity' works will extend for all but 2 quarters of that period. The Stanford Road compound is expected to be operational for 24 months and the Brentford Road compound for 53 months (Table 2.11 of **APP-140**).

⁴ There is some confusion as to the extent of the construction phases because of inconsistent information on the duration of Phase 11, as explained at para 4.9 of the TPA Report (Annex D)

21. As the ExA is well aware, since the submission of the Application, the Department for Transport has announced that there will be a two years delay before the start of construction of the project (if consented). The calendar dates above are therefore likely to change but it has not been suggested by the Applicant that the construction periods (in months and years' duration) will be thereby changed.
22. For Haul Road 4 (between the Stanford Road compound and the Brentwood Road compound), activity is expected from Phase 2 (starts 01/09/2025) to Phase 11 (ends 31/12/2030): Tables 8.1 and 8.3 of **APP-529**. It is apparent from the Construction Noise and Vibration Assessment [**APP-444**] that the un-numbered haul road from the Stanford Road compound to the south and west of the Whitecroft will be in use for a similar period (see Link ID34 as shown on Plate 2.3 and Table 2.5 of **APP-444**). Based on Table 8.1 of the Transport Assessment (**APP-529**) and Table 2.5 of the Construction Noise and Vibration Assessment (**APP-444**), within that period daily construction vehicle haulage movements on the haul road will vary but with a peak of 121 construction vehicle haulage movements per day in the five months of Phase 6. That Phase is preceded by the five months of Phase 5, where there will be 56 construction haulage movements per day, and is followed by the seven months of Phase 7, where there will be 75 construction vehicle haulage movements per day. There will therefore be a continuous period of 17 months where there will be over 50 construction vehicle haulage movements per day (and a 12 months period with 75 movements or more per day) on the haul road. The mix of construction vehicles has not been specified and nor has there been any profile provided within the working day to enable an assessment of whether there will be concentrations of movements at particular times or concentrations of larger/noisier HGVs and similar construction machinery.
23. The Applicant assesses that the works around Stanford Road are 'substantial' including 'significant construction activity from piling activities and earth works to road construction': p.50 of Table 1.3 of the Construction Supporting Information in **AS-050**.

24. Construction hours are as indicated in the Project Description, including periods when extended working will be required at weekends and for 24 hours. In summary the 'normal' construction hours will be 07:00 to 19:00 weekdays, 07:00 to 16:00 Saturdays plus up to one hour before and/or after for mobilisation (start-up and close down) procedures.

25. The extended working for Section C is expected to include the following activities and time periods:

Work No.	Construction activity	Compound	Period of Extended Working	Comments on activity at works site	Comments on use of roads or haul roads
7D	Construction of new bridge taking A1013 (Stanford Road) over A1089	Brentwood Road	3 x 48 hr weekend periods	Activity at the site unlikely to have a notable impact on Whitecroft	Construction traffic movements between the Compound and the site using Stanford Road or the haul road may have an impact on Whitecroft
7E	Demolition of existing bridge structure for A1013 over A1089	Brentwood Road	1 x 48 hr weekend period	Demolition at the site may have a noise impact on Whitecroft	Construction traffic movements between the Compound and the site using Stanford Road or the haul road may have an

					impact on Whitecroft
7E	Construction of new bridge taking A13 westbound to A122(LTC) northbound in viaduct over A1089	Brentwood Road	3 x 48 hr weekend periods	Activity at the site unlikely to have a notable impact on Whitecroft	Construction traffic movements between the Compound and the site using Stanford Road or the haul road may have an impact on Whitecroft
7C	Box jack under existing A13 east of A1089 to carry it over A122(LTC)	Brentwood Road	Continuous 24 hr/7day working operations for 3 month period	Works at site may have limited impact on Whitecroft which could be increased by the duration of the works	
7D	Resurfacing of existing A1013 and over tie ins between existing and new infrastructure	Brentwood Road	3 x 48 hr weekend periods	Likely to have a noise impact on Whitecroft due to proximity	
MU46	Installation of a multi-utility corridor via trenchless construction methods under	Stanford Road	Either extended working (daylight hours including weekends) for trenchless installation of two	Activity at the site unlikely to have a notable	Construction traffic movements between the Compound and the site

	the A13 to connect to the existing networks along Mill Lane		<p>pipes and telecommunications ducting beneath A13, for approximately 26 weeks</p> <p>Or extended working (including night time) for trenchless installation of two pipes and telecommunications ducting beneath A13, for approximately 16 weeks.</p>	impact on Whitecroft	using Stanford Road or the haul road may have an impact on Whitecroft
MU47	Installation of multi-utility corridor to connect the A1013 at Stanford Road from Hornsby Lane junction south within the vicinity of Hornsby Lane before passing under A122(LTC) and heading west to A1089. Trenchless installation beneath A1089.	Brentwood Road	<p>Either extended working (daylight hours including weekends) for trenchless installation of pipes under A1089 for approximately 24 weeks</p> <p>Or extended working (including night time) for trenchless installation of pipes beneath A1089 for approximately 16 weeks.</p>	Activity at the site unlikely to have a notable impact on Whitecroft	Construction traffic movements between the Compound and the site using Stanford Road or the haul road may have an impact on Whitecroft

26. The Construction Noise and Vibration Study Area in **APP-309** shows (on p.4) that Whitecroft was a location for the assessment of construction noise (location CN85) but it was not a location for the assessment of construction vibration (and there seems to be no construction vibration location nearby). Given that box jacking is proposed as part of Work 7C for a continuous 3 month period for 24/7 working, this is a significant omission.
27. There is a Health and Equalities Impact Assessment in **APP-539** which includes some commentary relevant to Whitecroft at paras 7.9.21 and 7.9.51. However, much of the Assessment looks at matters at Ward level rather than site/institution level, so the results are at a 'high level'. There is no specific assessment of care home provision in the area or of the implications for Thurrock if the provision at Whitecroft is lost.

SHORTCOMINGS IN THE APPLICANT'S ASSESSMENT OF EFFECTS

28. The technical experts engaged by the Objectors have been hampered in providing a full assessment of the effects of the LTC on residents of Whitecroft by deficiencies and shortcomings in the Application material. In their reports in the accompanying Annexes they identify the detailed matters where information is either lacking or appears to be incorrect.
29. In summary, the following matters are identified, based on the Objectors' review of the Application material:
- inconsistencies in the Application material about the physical characteristics of the proposed works (in particular between **APP-017**, **APP-035**, and **APP-044** as regards the heights of the bridge and slip road for the A13 westbound to the A1089 in the vicinity of the slip road for the A13 westbound to the LTC southbound to the north of Whitecroft, and similarly for the heights of the bridge and slip road for the A13 westbound to the LTC northbound in the vicinity of the slip road for the A13 westbound to the LTC southbound to the north of Whitecroft). These inconsistencies are critical to understanding the adequacy of the

operational noise and air quality assessments (as well as the visual impacts of the proposals) because the height of traffic on elevated carriageways and bridges is clearly an important input to modelling the propagation of noise and the dispersal of airborne pollutants;

- omissions from the Application material, including a failure to undertake a construction vibration assessment at or in the vicinity of Whitecroft, a failure to provide detailed assessment results (including the assessed facades and calculated ‘with mitigation’ levels) for the construction noise assessment at Whitecroft (CN85); a failure to undertake noise and vibration assessments for Whitecroft reflecting the vulnerabilities of the residents and greater susceptibility to impact from noise/vibration than the general population (this is considered in more detail below in relation to discharge of the Public Sector Equality Duty); failure to demonstrate that proposed Best Practical Means (BPM) construction practices will achieve effective mitigation of construction noise impacts. These matters are explained further in Annex B;
- failure to explain or evidence the local terrain modelling used for the air quality assessment. See further the comments in Annex C;
- failure to provide any profile or breakdown of construction traffic using the haul roads in the vicinity of Whitecroft. See further comments in Annex D;
- wrongly assessing the residential community at the Whitecroft as a single residential receptor in the baseline assessment in **APP-382** (Table 3.2, reference VR-S11-R-020) to inform the landscape and visual appraisal in **APP-145** (a visual sensitivity of “*moderate*” is recorded in Tables 7.24 and 7.32, whereas as per Table 7.4 a “*dense residential area*” (such as Whitecroft with over 50 residents at one location) should have been given a “*high*” sensitivity);
- inconsistencies in the Application material as regards the assessment of heritage impacts at Whitecroft (in particular between **AS-045** and **APP-549**). In **AS-045** it is recognised that both the construction and the permanent effects of the LTC on Whitecroft as a heritage asset will be “*moderate adverse*” and so “*significant*” (paras 6.6.155, 6.6.340, and Table 6.7). Conversely, it is contended in **APP-549** that the cultural heritage

effects on Whitecroft during both construction and operation will be a “barely perceivable effect” (paras 6.13.96(a) and 6.13.145(a)).

- there is a failure to adequately assess or explain the extent of heritage harm to the significance of the Grade II listed Whitecroft Farm House by reason of the extent of the proposed works. This is explained further in the Heritage Representation (Annex E);
- masking (and so under-estimating) health and equalities impacts by assessment at ward level rather than at site/institution level;
- failure to assess how emergency services access to Whitecroft will be maintained during the weekend and night-time closures of Stanford Road that are proposed. Table 8.5 of **APP-529** indicates that the closures of the A1013 at nights and weekends was “*excluded from the analysis*” due to their “*short duration*” and the Objectors have been unable to identify how emergency access is to be maintained during such closures;
- omission of Whitecroft as an existing business in the Population & Human Health Chapter of the Environmental Statement (**APP-151**);
- failure to assess the social, health, community, and economic consequences of the likely closure of Whitecroft, especially as regards the provision of care home placements for the local communities of Thurrock; and
- consequential failure to accurately or adequately assess the cumulative intra-project impacts of the proposed works on Whitecroft and its residents and employees by reason of the preceding deficiencies. This is a particular failure with regard to the health impacts of the construction and operation of the LTC on the vulnerable residential community at the Whitecroft.

30. On the question of cumulative impacts, it is clear that the Application does not provide adequate information on how the various different impacts of the proposals, across all environmental topics, impact on specific receptors. Nowhere is there an assessment bringing together noise, vibration, lighting, landscape and visual impacts, traffic impacts, dust impacts, health impacts community severance (including emergency services access), employment, and heritage impacts so far as they affect the particular receptors at

Whitecroft. Had such an exercise been undertaken, it would have shown that the combined impacts of the proposals on Whitecroft were patently unacceptable and that is especially the case for the vulnerable residents of the care home.

THE OBJECTORS' PROVISIONAL ASSESSMENT OF EFFECTS

31. In the light of the shortcomings in the Applicant's material, the Objectors' assessment of the effects of the LTC on Whitecroft is necessarily provisional. However, based on the information that is available, it is apparent that the effects are not compatible with the maintenance of a caring, tranquil and supportive environment for the residents of Whitecroft.

32. Dr Series, a consultant old age psychiatrist who specialises in the treatment of older people with mental health problems, concludes in his report (Annex A) that the residents of Whitecroft are *"at risk of the adverse impact of increased noise levels, increased light levels..., and risk from traffic"* and that *"any increase in noise is likely to reduce the quality of life of residents... There may be increased levels of aggression, and an increased rate of admission to hospital for dementia-related problems. There may be adverse effects on physical health as well as mental health."* Dr Series notes the possibilities of acoustic insulation but concludes that *"Residents currently benefit and are aware of the passage of fresh air from open doors and windows, and this benefit would be lost if air conditioning were used for ventilation instead of open windows"* and that *"Access to external space is critical for the well-being of residents for recreational purposes and for meeting friends and family. It will be extremely difficult to achieve any substantial mitigation of... noise pollution in external spaces."* Whilst Dr Series recognises that there are disadvantages involved in relocating residents elsewhere (in that change is inherently disturbing), he concludes that *"A permanent relocation would involve only one move, and would have the enduring benefit of a potentially improved environment elsewhere."* Dr Series' overall conclusion is stark: "As

an old age psychiatrist I would be reluctant to recommend to patients and their families that a care home located close to a major traffic interchange should be considered for all the reasons set out above." Whilst the language used by Dr Series is measured, it is perfectly clear that if the LTC project proceeds, Whitecroft has no future as a care home.

33. Dr Series' report was informed by the BY Acoustics report (Annex B) and by the Air Quality Consultants report (Annex C). In the light of the conclusions of the latter, Dr Series does not consider that, if it is correct, air quality changes will have an effect on residents' well-being. It should however be noted that the Air Quality Consultants report does indicate that there are some omissions/failings in the Applicant's assessment (as listed in para 3.3) which could impact on the conclusions of that assessment. A particular concern is the absence of explanation of the local terrain modelling especially as regards the alignment of the LTC where it joins the A13. Given that the Objectors have identified inconsistencies in how the Application has presented information about the heights of two slip road structures in close proximity to Whitecroft (as set out above), it is critical that the Applicant gives further detail on the modelling exercise that has been undertaken so that it can be appropriately scrutinised.

34. The BY Acoustics report (Annex B) concludes that *"The ES contains insufficient detail to support its claims that the care home is not subject to significant adverse effects."* The BY Acoustics report sets out detailed criticisms of the Applicant's assessment, including the reliance on unspecified mitigation measures, such that *"there can be little confidence that the claimed attenuation will actually be achieved and maintained in practice"*. The report also notes that the Applicant's assessment has not reflected *"the fact that the care home residents can be considered a vulnerable group and therefore potentially more sensitive to noise than the general population"*. The omission to make allowance for this factor in the Applicant's assessment is clearly a significant failing in the light of Dr Series' comments on the greater effects of noise on the well-being of elderly persons with dementia-related conditions. This point is also critical to the discharge of the Public Sector Equality Duty,

discussed further below. The inconsistencies in the heights of structures and the potential consequences for the operational noise assessment has already been noted above and the Applicant needs to provide further detail of the modelling so that its assessment work can be effectively scrutinised.

35. The need for further assessment to support the Applicant's contention that the impacts are capable of mitigation is further borne out by the findings in the TPA report (Annex D) on the levels of construction traffic in close proximity to Whitecroft, especially construction vehicle haulage movements associated with the extensive and extended use of the haul road to the immediate south and west. The TPA Report concludes that *"there is insufficient information in the documents to enable a proper assessment of the impact of construction traffic on The Whitecroft"*.

36. If the evidence does not progress to remedy these deficiencies, there is only one tenable conclusion: the impacts that the LTC will impose on the residents of Whitecroft are unacceptable and the reason for that is the juxtaposition of inherently incompatible land uses.

SCOPE FOR MITIGATION

37. The Objectors have taken a pragmatic view and so have not sought to suggest that the LTC should be re-routed to some different location further west or further east so as to avoid its impacts on Whitecroft.

38. The Objectors do not consider that the incompatibility of maintaining a satisfactory environment for a care home for vulnerable people and constructing and operating a major new road and its associated junctions in such close proximity can be addressed by a package of mitigation measures. Imposing acoustic glazing for doors and windows and/or air conditioning or other mechanical ventilation of the buildings on residents who have enjoyed an environment of open windows and fresh air in a tranquil rural setting would not be acceptable. As well as the marked change this would produce for residents' internal environment, it would fail entirely to address the external environment. The importance of access to quality outdoor space with a sense

of tranquility is clearly set out in Dr Series' report. Bunds or acoustic fencing or similar would not provide an answer to that issue (even if acceptable from a heritage perspective which must be doubtful). Isolating the residents behind a series of bunds or other barriers, so that they are shut off from the wider world and effectively 'imprisoned' in their final home would not be acceptable.

39. Given that the residents of Whitcroft are predominantly permanently 'at home' both day and night, restricting the working hours to (e.g.) a conventional working day or preventing Saturday or overnight working would not bring significant relief because residents would still be faced with noise and disturbance for five days a week for the bulk of their waking hours. Also, such measures would in all likelihood serve to extend the construction period by months (if not longer). Limits of the types of plant or machinery that could operate close to Whitcroft would be similarly of little benefit (even if practical).
40. Excluding the limits of deviation, especially the vertical limits, from all works in the vicinity of Whitcroft (e.g. for any works within 500 m of the Whitcroft site boundary) would at least crystallise the impacts to ensure they remained as currently assessed but since those impacts are not acceptable it would not resolve the Objectors' concerns.
41. Removal of the haul road to the south and west of Whitcroft, removal of Haul Road 4, and removal of the Stanford Road compound could provide some degree of amelioration for some of the impacts but the noise, disturbance and vehicular activity needed to construct the LTC project would not be much abated, given that both major 'mainline' works and associated slip road works would still need to be carried out in the immediate vicinity of Whitcroft.
42. The Objectors note that the ExA did ask at OFH2 for consideration to be given, on a without prejudice basis, to the scope for mitigation and the Objectors have given this matter serious thought. However, the Objectors do not consider that there is any practical package of measures that could provide meaningful relief.

THE PUBLIC SECTOR EQUALITY DUTY

43. There is no doubt that the residents of Whitecroft have “*protected characteristics*” under s.4 Equality Act 2010 by reason of “*age*” (s.5(1) EA 2010) and “*disability*” (s.6(1) EA 2010). There is also no doubt that both the Applicant and the Secretary of State are subject to the Public Sector Equality Duty (“PSED”) in s.149(1) EA 2010, the Applicant by reason of s.150 and para 1 (“*Transport*” as regards a strategic highways company) of Schedule 19 to the EA 2010 and the Secretary of State by reason of s.150 and para 1 (“*Ministers of the Crown and government departments*”) of Schedule 19 to the EA 2010.
44. The PSED in s.149(1) EA 2010 applies to the “*exercise of the functions*” of the Applicant and the Secretary of State and required the Applicant in formulating its proposals and requires the Secretary of State in determining the Application for development consent to have “*due regard to the need*” (amongst other things) “*to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it*”. This aspect of the PSED entails having “*due regard, in particular, to the need to.... (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it*” (as required by s.149(3) EA 2010). The PSED carries with it a duty of reasonable enquiry so that the person subject to the PSED is sufficiently informed as to the implications of a proposed decision for persons with protected characteristics so as to discharge the PSED when exercising their functions: see R (Devonhurst Investments Ltd) v Luton Borough Council [2023] EWHC 978 (Admin) at para 47 (per Mrs Justice Steyn), citing earlier caselaw to the same effect.
45. In the present case it is quite clear from the expert psychiatric report from Dr Series (Annex A) that the residents of Whitecroft are disproportionately and

differently affected by disturbing noise events in comparison to persons who are not suffering from dementia-related or other cognitive impairments. It is also clear from the expert report from BY Acoustics (Annex B) that the Applicant's noise assessment has not been undertaken with any special regard to this factor and that its criteria for assessing noise impacts are generic for the general population rather than specific to a vulnerable sub-group. This deficiency is of serious concern, given that the World Health Organisation's 'Guidelines for Community Noise' provide specific advice on the treatment of vulnerable sub-groups, including persons with particular diseases or medical problems and the elderly in general (as set out Appendix A of Annex B), and the advice in DMRB (LA111) allows for the use of alternative methods of assessment where warranted by local circumstances (as set out at paras 3.1.1 to 3.1.6 of Annex B).

46. As matters stand, it is clear that the noise assessment supporting the Application is inadequate to appropriately inform the Secretary of State of the impacts of the LTC on the residents of Whitecroft with protected characteristics, and that as a result the Applicant's assessment does not allow the Secretary of State to properly discharge the PSED when making a decision on the Application. The point, of course, goes wider because the same deficiency in assessment means that the LTC has not been designed, in so far as it impacts on Whitecroft, by a process that allowed the Applicant to discharge the PSED, in breach of the Applicant's own obligations in that regard when exercising its functions of formulating the project. The Applicant's assessment, and so the proposals that are informed by it, are not therefore fit for purpose. It is perhaps unsurprising to find that the shortcomings in the noise assessment, by failing to reflect the particular vulnerabilities of the residents of Whitecroft, have resulted in the Applicant putting forward a proposal that is not acceptable as regards its impacts on those residents.

47. This deficiency must be remedied, if the LTC is to proceed, by the Applicant carrying further noise assessment work using appropriate criteria to reflect the special noise sensitivities of the residents of Whitecroft, unless of course the Applicant removes the problem by making arrangements for the prior

relocation of Whitecroft so that its residents will not be impacted by noise from the construction and operation of the LTC.

THE NEED FOR RELOCATION

48. Whilst the mitigation hierarchy is most developed in the context of biodiversity impacts, it underpins all areas of environmental assessment and the effects of development on all receptors. The hierarchy can be seen to have informed para 7 of Schedule 4 to the Infrastructure Planning (EIA) Regulations 2017 which require an Environmental Statement to “*explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.*”

49. In this case, avoidance of the adverse impacts is not possible if the Whitecroft Care Home remains in close proximity to the LTC. Prevention of those impacts is not practical and any attempts at reduction will not provide meaningful mitigation and the residual impacts will remain as an unacceptable imposition on the residents of Whitecroft. Offsetting is therefore the only remaining option, and that can (and should) be achieved by the relocation of Whitecroft. This can be seen as a form of offsetting or compensatory provision to remedy the unavoidable impacts of an unacceptable juxtaposition. This is not a new matter and has been raised by the Objectors throughout its discussions with the Applicant and in its representations in response to consultations on the LTC since at least September 2019. It is disappointing that the Applicant has not engaged with the Objectors in this regard but the Objectors remain ready and willing to participate in that process.

CONCLUSION

50. In the absence of proposals from the Applicant for the relocation of Whitecroft, there is only one proper (and human) response to the circumstances here: the

LTC should not be permitted to proceed in its current form and the Applicant must be required to reconsider its proposals.

18 July 2023