

**LOWER THAMES CROSSING
DEVELOPMENT CONSENT ORDER EXAMINATION**

POST HEARING SUBMISSIONS at DEADLINE 4

on behalf of

KATHRYN HOMES LTD: Unique Reference 20035583

RUNWOOD HOMES LTD: Unique Reference 20035580

RUNWOOD PROPERTIES LTD: Unique Reference 20035582

Introductory remarks

1. These Post Hearing Submissions are made on behalf of Kathryn Homes Ltd, Runwood Homes Ltd and Runwood Properties Ltd (“the Objectors”) at Deadline 4 following on from the Objectors’ appearance at Compulsory Acquisition Hearing 2 (“CAH2”). Each of the Objectors is a registered Interested Party and has separately made Relevant Representations but they share common interests in relation to Whitecroft and so have combined together to appear at CAH2 and to make these joint Submissions. The Objectors are also Affected Persons as set out in the Book of Reference **[REP3-085]**, albeit that Runwood Homes Ltd’s recorded interest relates to a plot elsewhere, and it is in the process of taking a transfer of Whitecroft from Katherine Homes Ltd (as explained in **REP1-373**). That transfer is expected to be completed in a matter of weeks.
2. At CAH2 the Objectors were represented by Michael Bedford KC, instructed by Birketts LLP, with Mr Stuart Cooper, Senior Director of Ardent in support, and the following provides a summary of the submissions made on behalf of the Objectors.
3. The parcels taken from the Objectors on a permanent basis are Plots 29-254 (part of the Whitecroft access), 29-260 (part of the Stanford Road frontage, and 29-261 (part of the rear open field). Temporary possession and permanent rights are also to be taken with regard to Plots 29-258 and 28-08 (also parts of the rear field). Subsoil under Stanford Road is also to be taken for Plots 29-253 and 29-259. The access is obviously an essential component part of the operation of Whitecroft as a care home (albeit the Objectors accept it is to be re-provided in modified form and there are no technical objections to works that comprise that re-provision).
4. The Objectors remain concerned that there are outstanding matters with regard to the shortcomings in Applicant’s assessment of the impacts on Whitecroft which remain unexplained. These matters are set out in **REP1-373**, **REP2-104**, and **REP3-178**. Key concerns are the lack of explanation for the

c.10m error in the heights of two slip road bridge structures in the submission Structures Plans **[APP-044]** and whether those errors have infected any of the impact assessments, and the lack of explanation of why an assumed common level for all terrain and highways is a reasonable worst case for the Air Quality assessment.

5. The Objectors referred to the fact that Whitecroft provides a home for upto 56 residents, with 48 people currently in residence. Reference was made to the fact that many of the residents are placed at Whitecroft by Thurrock Council (and by other local authorities) and that as well as providing homes for those residents, Whitecroft plays an important role in the provision of social care for those local authorities. The Objectors referred to the fact that a resident's typical stay is between 6 months and 48 months (with outliers at each end of that range), with stays largely ending by death, and that consequently for most residents, the extensive period of the construction works in the vicinity of Whitecroft (between 4 and 5 years) will endure for the remainder of their lives (see Plate 214 in **APP-140**). Those persons resident at the outset of the construction period are unlikely to live to experience the operational period. For this reason, the Objectors' comments at CAH2 focused on the construction period impacts of the LTC. The Objectors drew attention to Plate 4.3 of the OTMPC **[APP3-121]** which shows the main works compounds, the haul roads, and the construction routes in the vicinity of Whitecroft.

Agenda Item 3(b)(i): Scope of objections

6. In terms of the relevance of the issues raised by the Objectors to CA matters, the Objectors drew attention to the requirement for a compulsory acquisition of any land for the LTC to satisfy the test in s.122(3) PA 2008 of demonstrating "*a compelling case in the public interest*". The Objectors maintained that that test was not satisfied in relation to the acquisitions proposed at Whitecroft because the purpose of those acquisitions was to deliver a project which, in its present form, had unacceptable impacts on the residents of Whitecroft and it was not in the public interest to impose those impacts on those residents.
7. The Objectors referred, by way of example, to the approach of the ExA examining the A63 Castle Street Improvement Hull DCO 2020 (https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010016/TR010016-000897-TR010016_Final%20Recommendation%20Report.pdf), where unacceptable site specific impacts on a Grade II heritage asset (the Earl de Grey public house) were the primary reason why the ExA concluded that, in planning terms, the harm caused was not justified or outweighed by the benefits of the scheme, and that as a consequence, the statutory test in s.122(3) PA 2008 was not made out. Key paragraphs of the ExA's report are 4.5.37, 4.5.43, 4.5.100 (on the heritage impacts), 6.4.6, 6.4.9 (on the planning balance), 7.6.7

and 7.6.62 (on the consequences for the CA tests). In para 7.6.7 the ExA said:

“Section 122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. I have considered the need for the scheme above and am satisfied that the land is needed to deliver it. However, I have concluded at section 6 of this report that development consent should be withheld. If the SoS agrees with me on that, it follows that there cannot be a compelling case in the public interest for the land needed to implement the scheme to be acquired compulsorily. Consequently, if the SoS accepts my recommendation, s122(3) is not met.”

8. The Objectors acknowledge that the Secretary of State disagreed with the ExA on the drawing of the planning balance in that case, but the Secretary of State did not criticise the ExA’s approach to the CA tests.

Agenda Item 3(b)(ii): CA and/or TP

9. CA: Given that it is necessary to construct the LTC in the immediate vicinity of Whitecroft but that to do so will cause unacceptable impacts for the residents of Whitecroft (which cannot be the subject of meaningful mitigation, as explained in the Objectors’ separate response at D4 to ExQ13.1.13), the Whitecroft needs to be relocated to a new site. To facilitate that relocation, the Applicant needs to acquire the current Whitecroft site. Including Whitecroft within the extent of land that is subject to CA can be seen as necessary in order to offset what would otherwise be the unacceptable impacts of the LTC.
10. Acquisition of Whitecroft for this purpose could properly fall within the scope of s.122(2)(b) PA 2008 as land which *“is required to facilitate or is incidental to [the] development of the LTC”*.
11. The position is not materially different to the position at Five Chimneys Cottages, Stanford Road, Orsett (Plots 29-269 to 29-276 inclusive), which lie a short distance to the east on the northern side of Stanford Road, which are the subject of permanent acquisition in their entirety under the terms of the draft DCO, notwithstanding that the only LTC works proposed encroaching on those plots are the provision of an altered access to Stanford Road and a revised footway along the frontage to serve the realigned Stanford Road (A1013).
12. Were Whitecroft to be included in the extent of land subject to CA, the Objectors indicated that, in principle, they would be prepared to consent to that course of action for the purposes of satisfying s.123(3) PA 2008. An alternative option would be an acquisition by agreement, without the use of CA powers.

13. TP: Having regard to the potentially detrimental consequences of any relocation for the well-being of residents (as explained in the Psychiatric Report of Dr Series in section 14 of **REP1-370**), the Objectors do not consider that a temporary relocation for the duration of the construction works would be appropriate. A temporary relocation would involve two moves for some residents and/or would affect a greater number of residents overall (depending on the actual life expectancy of the particular persons in residence at Whitecroft at the time that the initial move takes place). If the relocation was for a period of 4+ years there would be an expectation that most residents would not survive to experience a return to Whitecroft, but it could not be ruled out that some of those residents would experience two moves. Moreover, a move to an (unknown and unascertainable) avowedly temporary location is unlikely to offer the stable, tranquil, supportive, and caring environment that residents are entitled to expect if that is where they are to end their days.
14. In addition, whilst the primary focus of the Objectors' concerns is the unacceptable construction impacts of the LTC, the Objectors do not accept that it has been demonstrated that the LTC during its operational period would provide Whitecroft with a tranquil, supportive, and caring environment, not least given the oppressive nature of the 9.4 m bund to be constructed on the western boundary of Whitecroft, the loss of open rural outlook, and the uncertainties that remain with both the noise and air quality assessments relied on by the Applicant.

Agenda Item 3(b)(iii): Non-statutory relief

15. The Applicant is not (currently) proposing any form of hardship scheme that is specific to the LTC. The Applicant does have a general discretionary purchase scheme but this is only available to persons who have a freehold or leasehold (longer than 3 years) interest in land. The residents of Whitecroft are (at best) licensees and would not be eligible under the terms of the Applicant's published discretionary purchase scheme.
16. The Applicant could however, in the exercise of its general powers of land acquisition and management for highway purposes, acquire any land, including Whitecroft, if it wished to do so on the basis that the purchase would facilitate the discharge of its functions. If the Applicant concluded that it was in its interests for the purposes of facilitating the delivery of the LTC that it should purchase Whitecroft to enable the care home to relocate, there would be no legal impediment to the Applicant, as a strategic highways company, making such a purchase.

Agenda Item 3(b)(iv): Human Rights and Equalities Duties

17. The Objectors have set out in detail in **REP1-373** their reasons for concluding that, on the evidence currently available, it is not possible to conclude that the

Public Sector Equality Duty (“PSED”) is satisfied. Nothing provided by the Applicant by way of response has addressed the Objectors’ criticisms and the reliance on the conclusions of the HEIA [APP-539] is misplaced since it wrongly assessed noise impacts at Whitecroft by reference to inappropriate noise benchmarks for the general population (despite acknowledging WHO guidance that elderly persons and persons with mental illness (including dementia) are more sensitive to noise impacts), and wrongly placed reliance on noise reductions by reference to unspecified and untested ‘Best Practical Means’ construction mitigation measures.

18. Inevitably, these conclusions also mean that at present there has not been adequate respect paid to the Article 8 rights of the residents in relation to their homes, albeit that this adds little to the failure to satisfy the PSED.

Conclusion

19. The Objectors note the Applicant’s apparent willingness, as expressed at CAH2, to engage with the Objectors to address their concerns but would emphasise that such engagement needs to start by recognising that this is not a case where the impacts on the residents of Whitecroft can be sensibly addressed by the introduction of physical measures, whether that be more bunds or secondary glazing or acoustic ventilation. The engagement needs to start by acceptance that there is an unacceptable juxtaposition between the LTC and Whitecroft and the remedy for that is to relocate Whitecroft. Engagement about how best that can be achieved within a suitable timescale ahead of the likely commencement of construction (if the LTC were to be approved) would be responded to positively by the Objectors.

18 September 2023