

**LOWER THAMES CROSSING
DEVELOPMENT CONSENT ORDER**

**RESPONSE TO THE SECRETARY OF STATE'S
LETTER DATED 19 APRIL 2024**

on behalf of

KATHRYN HOMES LTD: Unique Reference 20035583

RUNWOOD HOMES LTD: Unique Reference 20035580

RUNWOOD PROPERTIES LTD: Unique Reference 20035582

INTRODUCTION

1. This Response is submitted to the Secretary of State for Transport (“the SoS”) on behalf of Kathryn Homes Ltd, Runwood Homes Ltd, and Runwood Properties Ltd (“the Objectors”). 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 this Response in order to provide the SoS with a final update on relevant matters as requested by the SoS at paragraph 9 of the SoS letter dated 19 April 2024.

2. By way of context, it can be noted that by a letter dated 28 March 2024 the SoS first requested an update on the discussions between the Applicant and the Objectors on negotiations for an agreed purchase of the site of the Whitecroft Care Home and asked for responses by 11 April 2024. By coincidence, on the same day (28 March 2024) the Objectors had sent to the SoS their Post Examinations Submissions, which provided the SoS with the update requested. The Objectors formally responded to the SoS’s request in a letter dated 11 April 2024 from their solicitors, Birketts LLP. That letter appended to it a further copy of the Post Examination Submissions and relied upon them in its response.

3. The Applicant responded to the SoS's request within Annex C of its letter dated 11 April 2024 (Item No.8 in Table C.1). In formulating that response, it would appear that the Applicant had not seen the Objectors' Post Examination Submissions. Whilst those Post Examination Submissions have not yet been published by the Planning Inspectorate ("PINS") on the LTC project page, the Objectors can confirm that a copy of the Post Examination Submissions was supplied directly to the Applicant on 25 April 2024.

THE APPLICANT'S POSITION AND THE OBJECTORS' RESPONSE

4. Before responding to the SoS's most recent request for an update, the Objectors make the point that the Applicant's response in Table C.1 of Annex C of the letter dated 11 April 2024 is disappointing. Notwithstanding the statement in Table C.1 that *"It is unlikely that an agreement [for the purchase of Whitecroft] will be concluded prior to the end of the DCO decision period [20 June 2024, unless extended by the SoS]"*, that position was not advanced by the Applicant to the Objectors at their joint meeting three days previously on 8 April 2024. More importantly, the logic of that position makes the Applicant's primary stance in Table C.1, that *"the current drafting of the draft DCO provides sufficient protection to the Care Home owners"*, untenable and incomprehensible.
5. The current drafting of the DCO make no provision for the acquisition of the whole of the Whitecroft site by the Applicant. It merely provides for the acquisition of plots on the Stanford Road frontage (and powers of temporary possession and acquisition of rights). The most recent version of the draft DCO is the version that the Applicant submitted to the SoS with its letter dated 11 April 2024 (paragraph 1.3.4 refers), which is now available on the PINS website. As regards Whitecroft, that version is in the same terms as the final draft DCO considered by the ExA [REP10-006].
6. If the final DCO as made by the SoS was to be in the same terms as the Applicant's most recent draft DCO, it would not provide any protection, let alone *"sufficient"* protection, to the Objectors, nor to the vulnerable residents of Whitecroft, were the LTC to proceed. Nor would that version of the draft

DCO contain any measures that would allow the SoS to discharge the Public Sector Equality Duty (“PSED”), for all of the reasons set out in the Objectors’ Post Examination Submissions and in the prior submissions on the PSED, as listed at paragraph 6 of the Post Examination Submissions. As is also set out at paragraph 8 of the Post Examination Submissions, the Applicant relies on a relocation of Whitecroft in order to satisfy the PSED (which applies to the Applicant as well as to the SoS), and yet there is no mechanism to achieve that relocation in the most recent draft DCO. It is worthwhile repeating what the Applicant set out in its Closing Submissions [REP10-021] at paragraph 9.9.25 (with added emphasis):

“As a result of the Applicant making provision to purchase the care home, existing residents would be relocated to a replacement facility. Whilst residents of the care home may experience temporary disruption associated with relocation to a new home, the acquisition of the care home ensures that residents (who exhibit protected characteristics by virtue of age and/or disability under the Equality Act 2010) would not be exposed to potential differential effects associated with construction noise activities during the construction phase of the Project. The Applicant set out how the draft Development Consent Order makes provision that if appropriate the Care Home could be acquired with a view to relocation (see Annex A.8 of the Applicant’s post hearing submissions for ISH14 [REP8-114]). In response to this the Care Home owners have stated at Deadline 9A that they agree that this achieves the outcome they seek [REP9A-143].”

7. Hence, the Applicant’s primary stance, as advanced in Table C.1, is both untenable and incomprehensible, even on its own case. In the absence of the amendment to Article 30 of the draft DCO (as proposed by the Applicant in REP8-114), there is no assurance that the Applicant would not in future seek to dispute the question of material detriment and so delay or potentially frustrate the Objectors’ ability to compel a purchase of Whitecroft.
8. In addition, the provisions in section 8 and Schedule 2A to the Compulsory Purchase Act 1965 would (in the absence of amendment to Article 30) only be

available to the Objectors once Notice to Treat was served in relation to the frontage plots, and that would come too late in the process to enable the relocation of Whitecroft ahead of the commencement of construction activity in the vicinity. It is, therefore, essential that, if a concluded agreement is not reached, that the Objectors are able to compel the acquisition of Whitecroft as soon as construction of any part of the LTC commences, in order to allow time for that relocation, which is likely to entail securing planning permission for an alternative site to be used as a care home (whether by converting existing buildings or by constructing new ones). Necessarily, such a relocation process will take a considerable amount of time,

9. In Table C.1 the Applicant does also refer to its secondary position, said to be on a 'without prejudice' basis, of amending Article 30 of the draft DCO to enable the Objectors to compel a purchase of Whitecroft. On analysis, it is apparent that that secondary position is the only logical position for the Applicant, and it is disappointing that the Applicant seeks to maintain its 'without prejudice' status.

THE UPDATE REQUESTED BY THE SOS AND THE OBJECTORS' RESPONSE

10. The SoS letter dated 19 April 2024 requests *"a final update on the discussions between the Applicant and the operators of the Whitecroft Care Home by the 9 May 2024 and requests that they set out the proposed approach if an agreement cannot be reached."*
11. Following the meeting between the Applicant and the Objectors on 8 April 2024, the Objectors issued revised Heads of Terms to the Applicant on 24 April 2024 which have been acknowledged by the Applicant, but no substantive response has been provided. The Applicant has asked the Valuation Office to undertake an inspection of Whitecroft and, whilst the Objectors have engaged with the Valuation Office, the Objectors have just at today's date received confirmation from the Valuation Office that such an

inspection can take place on 16 May 2024. Valuation is not, however, the real issue here: it is more a question of the Applicant's commitment to deliver on its proposal for an acquisition by agreement. Notwithstanding the Objectors' attempts to make progress with the negotiations, the Applicant's limited and lacklustre engagement in the process has made that difficult. Nonetheless, the Objectors remain of the view that, if the Applicant were so minded, it would be entirely possible that a concluded agreement for the purchase of Whitecroft could be in place by 20 June 2024.

12. However, the SoS has also asked to be informed as to what should happen if no agreement is reached. From the Objectors' perspective, the proposed approach, on the assumption that no agreement has been reached, is that **if a DCO is to be made to authorise the LTC, this can only be on the basis that the DCO as made requires the Applicant to acquire the whole of the Whitecroft site**, so as to enable the relocation of the Care Home prior to the commencement of construction activity in the vicinity of Whitecroft.

13. The mechanisms to achieve this are set out in paragraph 11 of the Objectors' Post Examination Submissions (noting a minor drafting issue as regards the terms of Article 30 of the DCO as explained at paragraph 13 of those Submissions). **The Objectors' preference is for route (b) as described at paragraph 11, which not only amends Article 30 of the DCO (as suggested by the Applicant) but also brings the Objectors' land interests at Whitecroft (as listed at paragraph 12 of those Submissions) into the scope of the compulsory acquisition.** This provides greater clarity than route (a) alone. However, as an essential minimum, it would be necessary to follow route (a) in order to provide the Objectors with a mechanism to require the Applicant to acquire Whitecroft and so enable the relocation of the Care Home.

9 May 2024