

IN THE MATTER OF

THE A47 NORTH TUDDENHAM TO EASTON DEVELOPMENT CONSENT ORDER

CLOSING SUBMISSIONS ON BEHALF OF THE [REDACTED]

A. INTRODUCTION

1. These closing submissions are prepared on behalf of the freehold owner of the [REDACTED] Honingham, Norfolk ('the Estate'), Anthony Meynell (IP 200/8350) ('the Owner'). The Owner is also one of the Trustee freehold owners of [REDACTED], which forms part of the Estate and on whose behalf he is authorised to speak. These closing submissions are made also on their behalf.
2. In these closing submissions the Owner will refer to documents lodged during the Examination by their reference in the Examiner's Library and will adopt abbreviations commonly in use in the Examination.
3. The purpose of these closing submissions is to assist the Ex A in his consideration of the Application after its closure, by highlighting to him:-
 - a. **the agreement(s) reached with the Applicant at the time of writing;**
 - b. **any changes in the overall case of the Owner which have occurred since the RRs and WRs were lodged** as a result of information coming to his notice during the course of the Application to date; and
 - c. **the Owner's position on each of the Issues listed in the 'issues' section of the SoCG** agreed with the Applicant (Table 3-2, in these closing submissions referred to as the 'SoCG Issues Table').
4. These three matters are dealt with in turn below at **sections B – D** below.
5. For the avoidance of any doubt these closing submissions are not intended to supersede any submissions lodged by the Applicant except insofar as the Owner's position is changed as a result as confirmed in this document (or otherwise recorded in the SoCG), but to assist the EX A by

summarising the Owner's position and in section D guiding him to the most relevant of the submissions on each matter still at issue.

6. Finally, in view of time constraints, the Owner has not lodged separate submissions for Deadline 9 in response to the Applicant's at Deadline 8. The Owner replies to such as it considers most relevant within these closing submissions but it should not be taken that any other submissions by the Applicant at Deadline 8 on matters which remain between the parties are accepted. Should the Ex A indicate his preference to see for clarity specific submissions from the Owner on the Applicant's Deadline 8 submissions at the same time as its Deadline 9, the Owner will be happy to do so.

B. AGREEMENTS REACHED WITH THE APPLICANT AND MITIGATION MEASURES NOT AGREED

7. As will be apparent from the above, the parties have been able to conclude a SoCG which records the extent of in principle agreement reached between them. This includes in principle agreement about certain measures which should assist with mitigating the impact of the DCO upon the Estate in the event it is made (as to which see para 8 below).
8. The ExA will note that in a number of instances the SoCG records that the agreement reached is intended to be captured within a "Deed of Undertaking" to which both parties will be signatories and which can therefore be relied upon by the ExA in reaching his decision. In others they are stated to be subject to Heads of terms for an intended Land Agreement.
9. At the time of writing, however, no final form of agreement for the Deed has been concluded by the parties and a mechanism has not been agreed as to how the Applicant's agreement to the matters referred to as being included in Heads of Terms will be formally secured. Whilst it is to be hoped that both uncertainties can be resolved by the end of the examination, or shortly thereafter, there is as yet no certainty that this will be the case. To the extent that the intended agreement is not concluded, the ExA will not be able to rely on any matters that are said to be the subject of agreement/commitment within the SoCG as having been secured. The possibility of the Applicant offering a unilateral form of undertaking is noted, but in this instance the ExA will not have the certainty that the commitment offered is in a form that would have been acceptable to the Owner and as such cannot necessarily be relied upon as addressing the issues raised by him.
10. It is in any event noted that the measures intended to be subject to the bilateral undertaking ('the Proposed Undertaking') are without prejudice to the Owner's primary case (as contained in these

closing submissions and their appendices), whereby he maintains his objection to the making of the DCO.

11. There also remain many issues which are not the subject of agreement between the parties, as described in the SoCG Issues Table. Any issues in relation to which the ExA is unable to recommend the imposition of controls through the DCO itself will fall to be taken into account as adverse consequences flowing from its grant, and militating against it.

C. CHANGES IN THE OWNER'S CASE.

12. In addition to the agreement reached, noted in section B above, as a result of information that has come to light, and further discussion held during the course of the Examination, there have been a small number of changes to the Owner's case as set out in his WRs.
13. The changes are in summary:

- a. December 2020 targeted consultation: The Owner now accepts that, as a matter of fact, a targeted statutory consultation took place in December 2020 when the overall concept for the Wood Lane Junction ('WLJ') was presented, the cycleway across Plot 9/1g was introduced, his access via the Old Back Drive was cut off and the Temporary Compounds in Plots 8/5a, 9/1a and 9/1f were revealed. The Owner nevertheless maintains that that consultation was flawed because of the failure to carry out the consultation at a time when the Owner could have influenced the proposals, as set out in the sections of the WRs dealing with the common law requirements as to adequacy of consultation.
- b. Meetings with the Applicant pre-DCO: The owner acknowledges that he met with the Applicant's representatives before the DCO Application was made, on 10 October 2017, the 16 December 2019 and the 17 December 2019, in addition to the meetings on 27 January 2020 and 14 December 2020 which are referred to in his witness statement at REP1-045. The Owner's recollections of those earlier meetings are set out in a supplemental statement by him lodged with these closing submissions at Deadline 9 (ACM 22). The Applicant and the Owner have agreed upon the matters covered in the 10 October 2017 meeting (see SoCG Table 2-1 at that date) and the Applicant has acknowledged (see SoCG table 2-1 at 27 January 2020) that it might have been told of the

Estate's heritage designation at that point. However by declining to agree the content of the two meetings in December 2019 the Applicant continues not to admit (but provides no evidence to dispute the fact) that it was told by the Owner at each of those meetings in 2019 and again in 2020 not only of the Estate's heritage designation but also of the Owner's suggestion that the WLJ be adjusted northwards to a more suitable location and which would avoid impact on the Estate. The Applicant further still does not admit that Mr Powis of the Applicant had told the Owner on 14 December 2020 that they had not done so because, as he said, the scheme's red line boundary had been fixed (REP1-045 para 207(3)).

D THE OWNER'S POSITION ON THE ISSUES NOT AGREED IN THE SoCG ISSUES TABLE (Table 3-2)

14. The Owner's summary position on the issues addressed below are dealt with in the order in which they appear in the SoCG Issues Table (Table 3-2).

15. **Item 1 - Scheme objectives.** The Scheme Objectives are set out at APP-003 para 2.2.1. The Owner's position as to compliance with the Scheme Objectives relates to the Wood Lane Junction and compliance in relation to it with the following parts of the Scheme Objectives (references to documents will be given at the end of this paragraph and later in the submissions):

- a. ***Improved environment*** – "*Protect the environment by minimising adverse impacts and, where possible, deliver benefits.*" For all the reasons given in his submissions regarding landscape and biodiversity he Owner believes that by failing to locate the junction north of the existing A47, failing to minimise size of roundabouts, and failing make more use of existing roads and other existing assets in the vicinity of the junction, this objective is not satisfied in relation to the Wood Lane Junction and its associated works regarding **i) its precise location and size**; including the dumbbell roundabouts, the cyclepath across plot 9/1g and drainage from the junction to the River Tud (the last two if not moved as is now contemplated) **ii) excessive loss of trees and hedgerows** due to i); and that in consequence of the loss of trees and hedgerows, **iii) damage to the more sensitive landscape south of the existing A47 (including but not limited to the heritage landscape of the Estate) will occur unnecessarily**. The proposed mitigations do not adequately compensate.
- b. ***An accessible and integrated network*** – "*... considers local communities ... a safer route between communities for cyclists {etc} with improved connectivity*". For the reasons given

in his Transport submissions regarding lack of convenient and safe east-west connectivity through the junction is not met (particularly absent Work 26a).

c. **Value for Money** – “... delivers good value for money”.

The Owner believes that money will be spent unnecessarily due to the Applicant’s choice of precise location and size of the junction. Location north of the existing A47 would have required less diversion of east-west utilities (water main and electricity), less requirement for new roads and less loss of sensitive landscape (thus requiring less mitigation). The Applicant did not, but could have made a small adjustment of the route no more than 50-100m north when it determined a need for a larger junction at Wood Lane to have achieved this¹.

As to the design of the junction which by what the Owner describes of its failures, goes to the failure to satisfy the Scheme Objectives, the Owner’s submissions are mentioned are included within the Transport submissions at REP1-057 and also contained in his comments at REP3-044 on the Applicant’s responses to the Ex A’s questions Q1.0.1 and Q1.0.6 (REP3-044, pages 5 and 18) and the subsequent questions on transport, landscape and biodiversity matters.

16. Item 2 - Consultation and scoping (First part).

The Owner’s position as to the adequacy and lawfulness of the consultation undertaken with him is summarised in the following paragraphs (by reference to the items in SoCG item 2).

- a. **(item i) Lawfulness** As per SoCG, table 3-1, the Owner accepts on the basis stated in the SoCG the mitigating steps on temporary compounds and the closure of the A47 access. His remaining case concerns the lawfulness and adequacy relating to the Wood Lane Junction (including its associated items ie drainage, sideroads and cyclepath location). As to background see paras 7 to 16, paras 32 and 33 and (referencing only the junction) paras 34-36 of his WRs (Rep1-044).
- b. **(item ii) Adequacy of consultation on Wood Lane Junction.** See REP1-044 paras 22-24. In addition, the Owner points out the facts appearing from the evidence given during the DCO process that the junction area was not environmentally assessed until after the consultation (see in particular APP-045 and APP-046 and their replacements) sufficiently

¹ As an indication, see (without the current Wood Lane Junction) the lesser cost of Option 3 below Option 2 referred to in the Applicant’s Scheme Assessment Report PRD meeting minutes, Appendix J (referred to at SoCG

to inform its design and as a result the public were presented with a junction design which had not been prepared with the benefit of sufficient prior assessment

- c. **(item iii) Proper reporting of the junction in the Scoping Report** – The Owner maintains the view that it was not properly reported and that the scale of the change should have warranted seeking a further opinion - see Scoping report page 2 fig 1-1 and description at 1.3.1; Scoping Opinion paras 2.3.1 to 2.3.3, and 2.3.9
- d. **(item iv) that Highways England took note of Natural England’s Scoping Opinion** – The Owner maintains that the Applicant did not take note of the Opinion in regards to looking for IHTA heritage property in the Scheme Area on the HMRC website and the Applicant appears to have conceded this - See Scoping Opinion pdf page 165/184; absence from APP-045; evidence of Paul Bennett at ISH2 and ISH3, and REP6-033, para 3.1.
- e. **(item v) that the Applicant took proper note of the Owner’s submissions or expressed proper willingness to reconsider after consultation.** – see Rep1-044 paras 34-35; Mr Powis’ statement on 14 Dec 2020 that they had not done so because the red lines were fixed (REP1-045 paras 35, 215 and 217(3)).

17. Item 2 - Consultation and scoping (Second part, meetings).

The Owner’s position as to the matters discussed at the non-agreed meeting held on **16 December 2019** is as per the SoCG Issues Table 3-2, item 2 and Annex B to the SoCG. As to the meeting on **17 December 2019** referred to as not agreed, the Applicant has not suggested what they believe did happen. Mr Meynell has confirmed his recollections in a further statement supplied to the applicant on 8 Feb 2020 (ACM 22) as being as set out at REP1-045 paras 34 and 208/9. As to **14 December 2020** the Owner refers to REP1-045 paras 35, 215 and 217(3).

- 18. Item 3 - Alternatives:** The Owner’s position as to the availability and preferability of alternatives is that there were and are reasonable, feasible and cost-effective alternatives both to the precise location of and type and size of grade-separated junction at Wood Lane, once a grade-separated junction had been chosen, and for the detailed design of elements of the junction as proposed which impact on the Estate (see WRs referred to below, a summary at the CAH1 submissions (REP4-022 paras 3-7) and ISH2 Submissions (REP4-023 para 17-25, paras 26-32 and App A). These alternatives in summary include:

- a. *Relocation of the junction north of the existing A47* by one or other of the Alternatives proposed during the DCO in any or all of the RRs, WRs and the presentation of alternatives at REP3-045, or any adjustment of them which would have satisfied such of the objections raised as to individual design details by the Applicant at REP6-016 as were valid.
- b. *Reduction in the size of the south dumbbell* with or without a small relocation east, to avoid impacting through the north woodland belt G232 into the open part of the Estate's arable field in Plot 9/1b providing a backdrop to its public view as seen from the south, at Stop 3 of the ASI, with consequent movement north of the de-trunked approach road to it from the east to avoid impacting through the woodland belt G159 (as mentioned in REP1-057, para 4.13, in REP3-045 and later, in REP7-037 App C, and REP8-029, para 1).
- c. *Relocation of the cycleway in Plot 9/1g to run round beside the northern edge of the estate* following the route of the closed sections of Dereham Road and Berry's Lane with a short link between them within Plot 9/1f, or from Plot 9/1f directly to the junction of the new Dereham Road link with the de-trunked A47, following the route of the diverted electricity cables as an option for the design modification offered by the Applicant at SoCG Table 3-1 item 12 (see para 22 below)

While spending much work in criticising matters of detail in the Owner's suggestions for alternatives (see REP6-016 in particular), some aspects of which were incorrectly interpreted, at no point has the Applicant worked on making any suggestion themselves since the DCO on any aspect of the junction design save (for which the Owner is grateful) in relation to the drainage route by Berry's Lane and, recently to consider some redesign of to the cycleway.

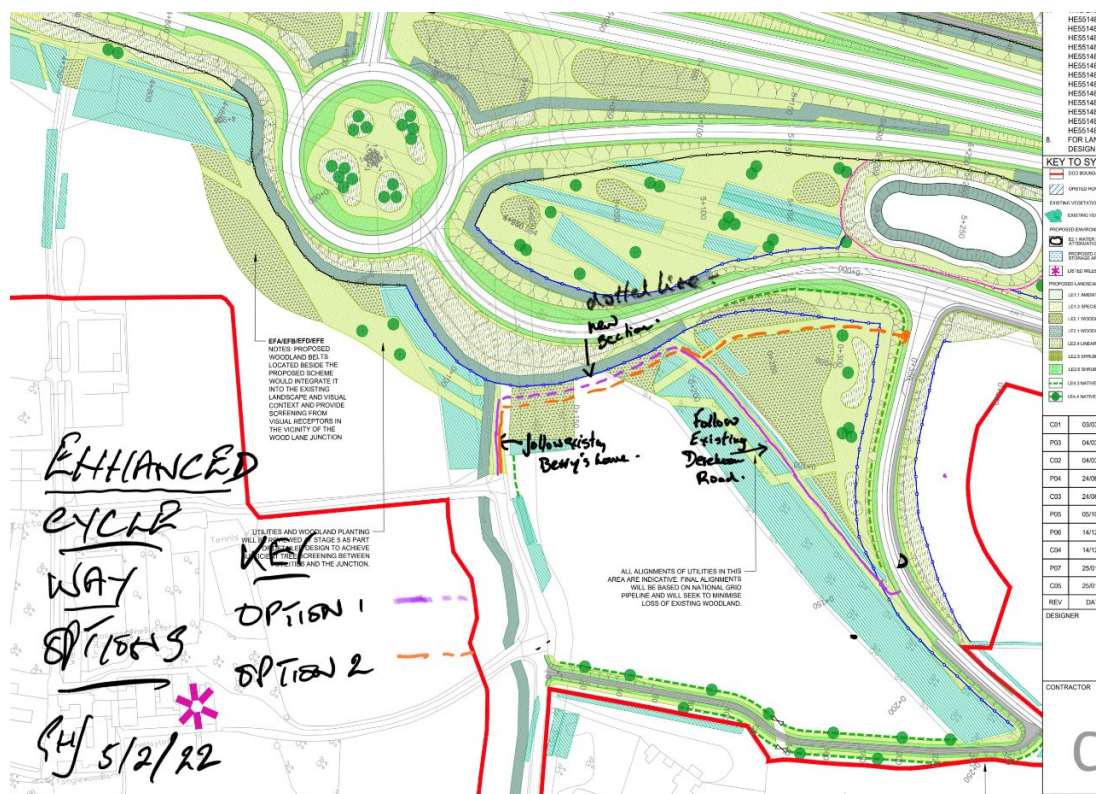
19. ***sub-items i. to iii - the period prior to the DCO*** application. Alternatives were available and should have been considered before the chosen design was pursued, both in terms of location and grade-separated design, the latter both in relation to junction type and the size of dumbbell roundabouts if a dumbbell option were to be chosen, and in terms of the alignment of non-trunk approach roads – See REP1-057 (Transport consultant), the Owner's comments on the Applicant's reply to ExQ1, Q1.0.6 (REP3-044 page 18) and to Q1.0.1 in terms of the design of what was chosen; and see the Owner's Transport reps listed in the SoCG at item 4 in the table at Annex C. As to the size of dumbbells in particular see REP7-037 Annex D generally, including page 6A and Conclusion, para 5. referring to the reasons given for the selected design in the Applicant's Junction and Sideroad strategy at para 2.4.

20. **Sub-item iv – the period after the DCO application.** It remains the Owner’s view and that of his Transport consultants that the alternatives proposed at REP3-045 would be feasible despite the Applicant’s views in its Revised Appraisal at REP6-016 (see most recently REP7-020 and REP7-037). The Applicant’s objections as to additional land take failed to take account of the land that could have been returned to the owners north of the existing A47, particularly that on the east side of the junction. Norfolk County Council’s reply did not address the benefits which would result (listed in REP3-045), perhaps influenced by its partial position as promoter of the NWL.
21. Even if the location of the junction was not moved, there are and should be alternatives in **(a)** the size of the south dumbbell (REP-037 referred to at para 18), **(b)** the design of the non-trunk roads (see para 23 below) and **(c)** the relocation of the cyclepath to run on the to be closed existing Dereham Road and Berry’s lane with a shorter link between them.
22. **Sub-item v – alternative location of Construction compound 2** – The Owner’s case remains (see REP1-057 para 6.2) that this could have been more conveniently located to the north, if the alternatives proposed were adopted, and even had they not been, that there was still less sensitive land to the north² more convenient for it. The Applicant has responded but the response does not make a compelling reason to the Owner. The Owner remains of the view that had the Applicant chosen when it drew the DCO boundary (which it varied for the Dec 2020 targetted consultation) it could more reasonably have located the compound in one or other of the large fields to the north of the junction, of which parts are being taken in any event (see footnote 2 above) and have drawn the line to set it there where there are no human or cattle receptors and where the land is not designated under IHTA, instead of in the more sensitive land to the south of the A47. Had this been done it would have fewer adverse effects³ and been no less convenient.
23. **The Honingham FP3 conversion to cycleway (in Plot 9/1g)** – The Owner has submitted in the presentation of Alternatives (REP3-045) that if any of the alternatives were adopted, walkers could continue to use the existing footpath and cyclists and horses pass by Dereham Road and the portion of Berry’s Lane to be closed to traffic with a connector between them.
24. Even if the junction remains as it is proposed, the to-be-closed sections of Dereham Road and Berry’s Lane could still be retained for use as the route for cyclists and walkers instead of being, as the Environmental Masterplan (D8 version, sheet 8 (REP8-011)) proposes, converted to grass

² See APP-051, Table 12.2 with relative sensitivity and proportionate land take of the Owner’s land (Holding 10) compared with that to the north west (Holding 1) and the North-east (Holding 7); shown on fig 12.2 at APP-077. See on this also Issue item 10 below.

³ Than the large adverse residual effect for Holding 10 (APP-051, table 12.2)

with no use at all. Only a short link between them would need to be created beneath the embankment carrying the De-trunked A47 to the south dumbbell roundabout. The Applicant has agreed to review the design of the cycleway to mitigate impacts as mentioned in SoCG, Table 3-1, item 12. The Applicant is invited to give consideration to this method of redesigning the cycleway as being both cheaper and more convenient for users, as well as minimising land take by removing the need to acquire permanently Plot 9/1g and by creating the cycleway instead within Plots 9/11, 9/1f and 9/2d which it desires to take in any event. The Ex A is invited to consider directions in this regard if appropriate. (see plan below).



25. **Item 4 - Design of non-trunk roads:** This is relevant to the Owner in relation to (1) the Owner's alternatives and (2) the de-trunked A47 approach road to the Wood Lane junction south dumbbell. DMRB's Introductory Memo (GG101) advises that the DMRB should be used for trunk roads and motorways (into., para 1) and advises that it need not be used on non-trunk roads if its use would result in overdesign (extract at REP7-037 App D page 1), with the agreement of the local highway authority. The Applicant appears not to have realised this. In its appraisal of alternatives (see original in tracked version REP6-016) it began by asserting that DMRB was

required for its sideroads (original para 3.4.1 line 1). The revised version (see the tracking in para 3.4 at REP6-016) deleted the word “required” and prefaced the para by a new 3.4.1 which said it had used it in the absence of a directive from the local highway authority. It does not state if it had asked for a directive or considered asking for one.

26. The Owner’s view that the DMRB does not need to apply to the link and side roads if it will result in overdesign (which the Owner’s Traffic and Highways consultants believe it has) is set out most recently in REP7-020 and supported by the DMRB (REP7-037 App D page 1). The fact that Norfolk County Council now desire to classify all non-trunk roads in the vicinity of the junction as Class C except for a short stretch to take the B1535 at Wood Lane into the junction, only strengthens the case not to use the DMRB for their design.
27. The issue of side road design as such arose in connection with the Applicant’s criticism in its appraisal of alternatives at Rep16-016 of the Owner’s alternatives as a reason not to accept the side road design proposed (see plans with REP3-045) for the link to the Owner’s alternative junctions from the exiting A47 to which the Owner’s Highway consultant replied (REP4-023 App A, para 2.3).
28. It is also relevant to the approach to the south dumbbell from the de-trunked A47 currently proposed by the Applicant where not using DMRB on the south east approach road plus reduction of the roundabout size would significantly reduce the embankment of the south side of the junction and the approach road over the existing ground level and draw the junction back into the woodland through which it is now penetrating, with a resultant improvement in Scheme benefits and reduction in impact for the Estate (see REP7-037, APP C, photos 4-6) and REP8-029, para 2).
29. **Item 5 - Wood Lane Junction: The Owner addresses the various aspects of this item as follows**
30. **Item 5 (i) – Location** – The Owner’s case remains that the junction could have been better located when first designed by a small adjustment northwards which would not have compromised the intentions of the PRA “passing north of the A47 to the north of Honingham” for all the reasons given in the DCO submissions, first in RR-075, then in REP1-057, thereafter see REP3-044 comments on reply to ExQ1 in particular Q1.0.1 Good Design; for excessive movement of utilities see REP3-044 Q1.0.12, at page 37, and finally the submissions on Transport set out in SoCG Annex C, item 7.3.

31. **Item 5 (ii) - form** – The Owner still maintains that the junction has been oversized for the predicted traffic levels for all the reasons given in the Transport submissions mentioned at (i); that if it were genuinely needed to cater for a large traffic flow a two bridge roundabout would have taken less room than the two currently sized dumbbells; and that if the dumbbell solution was followed the dumbbells if designed more thoroughly could have achieved less land-take.
32. The Applicant justifies its choice by hierarchy (see REP6-016 para 3.3.6) and reference to CD 122 – although it concedes that there is no express hierarchy in the words of CD122 since it replaced the earlier document referred to (as Mr J Ellis for the Owner states at REP7-024 Annex A para 2.2). But the Applicant fails to explain that the words in CD122 on which it relies “the advantage of requiring less land” are informed by the illustration beside them showing two small dumbbells which are far smaller than those selected by the Applicant. (see the extract from CD122 at pages 59-60 showing the words and illustration (copy at REP7-037 App D pages 6 and 6A. It was misleading of the Applicant to use the phrase which they did out of context when the lateral land-take proposed for the dumbbells (300m) is nearly double that of the single two-bridge roundabout option described as the “most common grade separated junction layout” in the next paragraph of CD122 at page 6A in REP7-037. (see commentary on App D page 6 at Rep7-037 p xi).
33. Further as to the size of the dumbbells chosen see the Conclusion to the introduction to REP7-037 (REP7-037 App D pp xviii-xix).
34. The Applicant has at Deadline 8 lodged a drawing showing the entry splays to the junction’s south dumbbell from the link road and de-trunked A47 for the first time. It is these splays and the approach to them and not primarily the ICD, which are the most important defining factors to determine the capacity of a junction (see REP7-037 App D) and the ICD of an optimally designed roundabout derives from the design of its entrances. The Applicant has not demonstrated a design process which shows that the chosen ICD for its dumbbells has been derived from an exercise to minimise land-take in the size of ICD (see REP7-037 App D refs to CD116 pp34 and 124/5 (at APP d pp14-15) and APPD p 53 and pp60-61). The Applicant’s Junction and Sideroad Strategy para 2.4 (see ref at REP-037 APP D, at para 5 on page xvii) confirms that after review the ICD was adjusted to the maximum permitted (100m) without, so it appears, any further work to attempt by adjustment to reduce it below the maximum as advised in the design advice referred to in REP7-037 App D. This demonstrates to the Owner the correctness of the views of his consultants as to the junction’s likely overdesign (with or without NWL).

35. **Item 5 (iii) need for the size chosen in view of NWL uncertainty** There appears to be agreement between the parties that the junction can be reduced in size without NWL, but not on how much. With NWL the Owner asserts that it has been overdesigned and can still be reduced but the Applicant believes not. The question was asked by the Ex A IN ExQ3 at Q14.3.2.

- a. The Owner's Transport consultant at REP1-057 (paras 3.29-3.30) advises that the junction can be reduced in size with NWL and should be redesigned without it. He confirms his advice at REP7-024 Annex B and addresses the Applicant's reply to the question
- b. The Applicant suggests recently (see REP6-016 in reply to ExA's Q14.3.1 (page8)) that without NWL the roundabout could be reduced to 80m Inscribed circle diameter (ICD) (but without providing any design evidence).
- c. Mr Ellis (REP7-024 Annex A at sect 4 replies and comments on the Applicant's assessment of that and of the "near certain" state of the NWL as being over-optimistic. The Owner submits that the Applicant has produced no evidence to support the design at the size it asserts with or without NWL. It has provided statements but no transparent evidence of its workings and only at REP8. (see above para 33)
- d. As to the current certainty or not of the NWL the BBC published a report on 2 February 2022 (bbc.co.uk) under the headline "Bats spell Route change for planned Norwich Western Link Road" under which it is stated "the proposed route of a controversial new road will have to be altered due to the discovery of bats in the area. Norfolk County Council said it would have to change the proposed route of the Norwich Western Link ... It has been beset by problems in the last year, from rising costs to consultation delays, while a survey has found "notable bat activity" in a wood". The full report is available on searching the headline. It was earlier reported in January in the Eastern Daily Press that Norwich City Council had resolved to oppose the NWL on planning (available by search of edp24.co.uk). It appears to the Owner therefore that the statements supplied by the Applicant to thee Ex A as to the "near certainty" are at best over optimistic **and at worst now misleading**

36. **Item 5 (iv) usage given traffic movements with and without NWL** – The Owner refers to the Traffic Consultant's report at REP1-057 paras 3.23-3.31, his opinion as the overdesign (para 3.26) which he maintains at REP7-024 Annex B.

37. **Item 5 (v) relevance of NWL or not to the design**

The Owner submits as follows

- a. In REP4-016 the reference to a “hypothetical no [NWL]” for the reasons given in paragraph 35 d would be more accurately exchanged for a reference to a “hypothetical NWL”.
- b. As to the other references to the NWL / no NWL situation in REP4-016:
 - i. There is nothing to suggest that the three objectives referred to could not be achieved with a smaller roundabout.
 - ii. Even if The Applicant are correct in claiming that they were obliged to consider the NWL as “certain development” or “near certain” for the purpose of traffic modelling, the Owner does not believe that it follows from this that the modelling should then dictate scheme design regardless of other factors, such as compulsory purchase of third party land.
 - iii. Similarly, the claim that overcapacity is effectively permissible under the DCLG guidance of 2013 should not be taken as valid regardless of other issues, such as additional compulsory land take.
 - iv. The timeline used already looks misleading.
 - v. The reference to the “unlikely event that NWL does not proceed” shows too much optimism bias for a scheme (a) for which no application has been made, and which (b) has not been agreed by the Council of the City which is completes a ring road for (c) does not seem to have assured funding and (d) is subject to growing doubt as to its efficacy.

38. Item 5 (vi) sufficiency of detail of south dumbbell design to usage to minimise land take (rephrase)

The owner’s submissions on this are covered in paragraphs 32-37 above

39. Item 5 (vii) – is land-take the minimum

The Owner repeats paras 32-37 as to the junction itself, and refers also to the proposal as to the cycleway and the additional land in the Estate which has now been indicated would not be used for the junction, including the reservoir and the proposed woodland surrounding the south dumbbell, which could in that case be occupied temporarily instead of being taken permanently

40. Item 5 (viii) appropriate east west NMU if 26a not carried out

The Applicant having confirmed that Work 26a will not proceed over the NWL if the NWL is built, are likely to cause cyclists travelling between Honingham and Hockering, to go through the junction to avoid a long detour to the north. It is a Scheme objective to make cycle journey between communities safer which this will not do.

41. Item 5 (ix) – sufficient provision for agricultural vehicles now using Berry’s Lane

The Applicant has offered no convenient alternative for north south agricultural vehicles about which the Owner spoke at ISH2 (REP4-023). Were the option for the cycleway referred to at paragraph 24 above to be implemented, arrangements could be made to permit limited agricultural vehicles to use it. The Owner would be willing to discuss terms to take ownership of the route subject to a public bridleway, in order to be able to control the agricultural vehicular use. He make journeys to Honingham fortnightly or more often to supply logs to The Honingham Buck and others in Honingham and the current proposed lengthy diversion on public highways via Mattishall Road will be considerably less convenient to him and also disruptive to other road users

42. Item 6 - Compulsory acquisition: The Owner refers to the law and guidance in his WRs at REP1-044 in paras 99-105. Of the reasons at REP1-044 para 106, there remain those at a. and b. Reasonable alternatives and minimising land- take and impact; and associated with the former the failure to consider the Heritage qualities and the disproportionate impact of the Scheme upon the Estate (see REP1-044 para 116-117 and 118-119). The limitation of the case to these is confirmed in the submissions to CAH2 at REP4-024 (paras 6 and 7). The issue of compelling reasons is also referred to in the Owner’s comment on ExQ1, Q5.0.6 (REP3-044 pp61-62). No progress was made in the event on agreeing one of the alternatives proposed at REP3-045 and the Applicant contests the Owner’s case for them.

43. (At CAH3 (REP7-016 left hand column) various areas of potential compromise were discussed as the Ex A will recall, now to a great extent reflected in SoCG Table 3-1 of agreed items as mentioned above). While these result in some mitigation, the Owner’s case on Compulsory Purchase remains.

44. As to the “minimum necessary” the Owner refers to his comment on ExQ1 Q5.0.9 (REP3-044 page 74) and to the three items listed at para 17 above.

45. Item 7 – IHTA designation: The Owner maintains his case expressed in his WRs, as to the failure of the Applicant to take into account either **(a)** the Estate’s IHTA designation *per se* or **(b)** the qualities for which it was designated.

46. This case is expressed at REP1-044 paras 38, 39(a) and the impacts upon the matters are listed at para 40 c, d and e (mitigated but not extinguished if all the Applicant's agreements at Table 3-1 (some of which are not certain) are effected, and para 41 a. The impacts at Para 41 a. would be mitigated to a greater or lesser (but in each case significant) extent, by any of the alternatives summarised in para 22 above.
47. The WRs at paras 43-57 explain the reasons for considering the IHTA designation and its qualities. The qualities for which the IHTA designation were made referred to at item (b) above are also alluded to at the ISH2 submissions covered in the Written Summary at REP4-023 para 46-62, (esp 61-62) and in the subsequent heritage and landscape submissions referred to in the sections below as to Heritage and Landscape.
48. **The Owner would like to emphasise again here (as has been done throughout) that in relation to the Estate, heritage and landscape qualities should not be separated from each other in consideration as the usual categories for scoping envisage, but need to be combined and considered together, since it is the combination of them in this case which creates the quality of the Owner's Estate, as recognised by HMRC on the recommendation of Natural England. It was apparent to the Owner at ISH2 particularly and ISH3, that it was the Applicant's failure to combine the two, which in turn arose directly from its failure to look for, ask for and hence understand the heritage designation from the papers supporting it and from visiting the estate as whole to understand it, before designing the current junction, that has been a major cause in the Estate's quality being missed in the assessments and the resultant impacts being suffered, if the DCO is permitted to proceed as the Applicant asks. Had the Applicant complied with the Natural England scoping request and followed it up in 2019 before starting the design the current situation might never have happened. The Owner did his best by emphasising the designation on each occasion that he was approached, and it is apparent now that those he spoke to cannot have understood it. (see REP1-044 para 115).**

49. **Item 8 – Heritage.** The issue at SoCG item 8 sets out succinctly the Owner's case.

- a. **Item (i) entity as a whole and not just setting of listed buildings**
- b. **Item (ii) assessment of listed curtilage insufficient (cc wall and cobblestones).**

The importance of the entity as a whole is described in the Owner's Statement at REP1-045 and both issues in the report of Mr Thomas at REP4-015, Annex C, and at REP6-033 App A and REP8-020 at B) replying in each case to submissions by the Applicant's heritage consultant, Mr Bennett,

As to impacts, the Applicant has not yet agreed to carry out any monitoring of the crinkle crinkle wall but has agreed to reinstate the cobblestones at the Main Drive entrance if it were to become obliged to lift them.

50. **Item 9 - Biodiversity:**

- a. **Item (i) Estate as an individual entity (not part of landscape area) and in combination with heritage** - addressed under IHTA and heritage (above) and at Landscape (see item 11 below) but see in particular APP-023 para 46 et seq.
- b. **Item (ii) Assessment insufficient in respect of Landscape, biodiversity and trees.** See Item 11 below for Landscape; for biodiversity and trees generally the Owner commented on ExQ1 questions 3.0.4 to 3.0.16 (REP3-044 pp38-57) and while the Applicant has resolved most since then and on bats is surveying the trees on the Estate by the junction now for hibernation; nevertheless the Owner's comment 28 on Q3.0.7 remains unaddressed and in particular in relation to the disproportionate loss of existing mature trees in and the junction for their biodiversity value (including 9 of the 12 Grade A trees to be lost on the route, which might have been avoided if the critical assessment was carried out before the design, not after (see REP4-025, item 5.07.3 and reference to BS5837:2012 paras 4.4.11 and 4.4.1.2 on pp 14/15)
- c. **Item (iii) assessment of northern woodland.** The Owner's case remains as set out at REP1-044 paras 82-88 and the Owner's Arboricultural Consultant, HC Coombes' Report at REP1-058. It is supplemented by Mr Coombes' response to the Applicant's reply to the report, at REP4-025, items 5.07.1 to 5.07.8, including in particular the reference to 5.07.3 in the previous sub-para above.
- d. **Item (iv) interference with management of hedgerows**

The Owner refers here to the hedges currently maintained by him on the boundaries of the Estate in Plots 9/1b and 9/1l to be taken permanently while not being needed for the new highways. Provided they as well as the woodland and rides adjacent to them, can be confirmed by the Applicant as falling within items 4-6 of Table 3-1 this item need not be at issue.
- e. **Item (v) CSS field margins, nectar areas and Wild bird feeding areas resolved.** To clarify this item, the Owner agrees that the impacts on these from the Temporary possession has

been resolved by the mitigation effects in SoCG Table 3-1 para 14. However, the margins permanently to be lost in Plots 9/1b and 9/1f have not been included in the Applicant's assessment in App-051 para 12.10.64

51. **Item 10 Population and human health (ES Ch 12 (APP-051)):** The Owner's agricultural Holding is Holding 10 (APP-071 fig 12.2), assessed as mixed farming with very high sensitivity and daily access (APP-051 para 12.7.20) Temporary construction effect is recorded at APP-051 para 12.10.44 with moderate impact and very large adverse residual effect. Permanent impact is assessed at APP-051 para 12.10.64 as minor/slight.

- a. **Item (i) Effect on farming business.** The Owner's case is set out in the WRs at REP1--044 paras 72-81 referring to REP1-045 paras 85 et seq, and in relation to failure to assess the Owner's CSS Mid-tier agreements. The continuing CSS agreement has now been recognised. The mitigation steps at SoCG Table 3-1 will reduce but not eliminate the adverse impacts, due to effective loss of all arable land to arable farming temporarily during the works (REP1-045 Table 2 item1). The Owner acknowledges with thanks the Applicant's offer to erect cattle fencing around these remaining parts in order to mitigate that residual loss. It will not totally mitigate it however because of the way the holistic farming relied on the arable land for feed and as land on which to spread manure (see REP1-045, agricultural section)
- b. **Item (ii) Assessment on forestry business** – see REP1-045 page 52. APP-051 while mentioning a "mature shelter belt"⁴ area being lost (APP-051 para 12.10.64) as part of the agricultural holding did not assess the forestry business or impacts
- c. **Item (iii) Assessment on Christmas Tree business** – see REP1-045 page 53 for impacts. Again not assessed in APP-051. There will remain after the mitigations offered, a potential loss of business due to the current convenient access for passing trade off the A47 being lost by the closure of Berry's Lane.

The Owner accepts that the SoCG agreed matters at Table 3-1 if implemented will address some of the problems described in the above references which had previously not been assessed. On the assumption of implementation he agrees the overall assessed impacts on the assumption that they cover all businesses, save as to the potential future adverse impact on the Christmas Tree business form passing trade off the A47 after completion of construction due to the closure of Berry's Lane, which could be moderate rather than minor.

⁴ G232; contrast this description with that by the Applicant's Arboricultural expert at APP-091

52. **Item 11 - Landscape and visual impact:** The Owner does not agree the assessments for Landscape and visual impact assessment. See for Landscape in its own right ISH2 (REP4-023 paras 46-60) and REP7-023 and REP8-020.
53. **Item 12 - Tree protection:** This item refers to the Owner's request at REP8-020 section D) items CH8 on page xi to LV4 on page xiii; the reasons are given there.
54. The item also refers to a request made to the Applicant that the Applicant should consider and if not agreed, the Ex A should consider directing, the retaining and protection of selected trees in Woodland belt G232 which will be taken permanently to be felled although being sited in the south dumbbell roundabout at a point where new planting has been indicated. This is of particular importance not only for the protection of the Estate from the mainline behind them, but as importantly for the improvement of the roundabout if it is to remain of the size intended. If the retention of these trees can be protected by direction by the Ex A for the benefit of the landscape as a whole (not just for the Estate) that will help considerably in this area to reduce net harm, provide more quickly a potential bat crossing and enhance the junction. The Owner suggested as follows:

“ Trees in south dumbbell roundabout

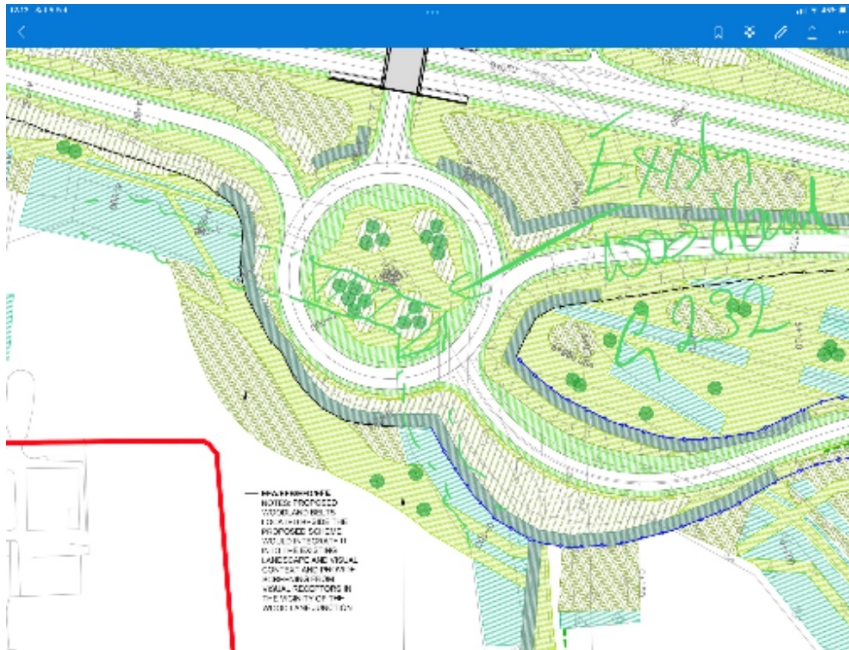
Looking at the revised Environmental Masterplan with the latest sections, we have seen that NH is proposing to plant standard trees within the roundabout which happen to be exactly where the trees are currently in the north woodland belt of the Estate, at the precise point where we stopped to look at them with the Ex A on the ASI (the corner where the belt moved from east west to more north south, next to the existing junction.

From the sections, the junction at that point in the roundabout appears to be at the same ground level as existing.

It seems a waste to remove all the existing trees in that point, only to plant new ones where the current ones were. It also loses 30 years of growth which the existing trees have, before the new ones would reach the same point. Keeping selected trees from the existing would save money and also keep more protection for the Estate from the mainline beyond it.

Anthony and I propose that NH should agree ... to keep those trees in that area or such as will best serve the purpose that NH is proposing in the EM for trees within the roundabout at that point and agree with Anthony which are the best to keep and how/ when to remove selected others in such a way as their stumps will shoot (as Chestnuts do) to create more woodland, there, and that as he has suggested (in the SoCG returned to Michael and the D8 submissions) in relation to the woodland south of the dumbbell he should be permitted to manage these by suitable arrangements when needed, going forward. This will both improve

the roundabout and help to reduce the impact on the Estate, if the roundabout is not reduced in size or relocated. [See Plan below]



55. **Item 13 - National Grid Gas Works:** The Owner does not consider the fact that the Applicant decided not to progress early access for the National Grid Gas Works to be relevant to the Examination. The early completion of those works is not (and never has been) part of the application for development.

56. **Item 14 - Operational mitigation measures:** The Owner’s reasons for his view that a permanent noise/ screening bund is required between the Estate and the southern dumbbell of the proposed roundabout are set out at REP8-020, Part D), item NV2. Page xiv. At APP-051 the applicant’s views on noise are at page 66 last bullet of penultimate set and the following para – Applicant while stating a large increase will occur due to the introduction of a high speed dual carriageway, concluded not to provide mitigation for receptors “far from the ...Scheme” where the noise levels will be too high to be offset by this”. Berry Hall receptors being 200m approx. from the dumbbell carriageway and in a direct line from the open mainline beyond are not “far”. The bund will also provide screening from headlight glare on the roundabout and a barrier for visual receptors within the Estate and on the footpath to the south seen at ASI.

E. CONCLUSION

57. The Owner still strongly believes in the benefits to the local communities, as well as to his Estate, which would result from the alternatives he has proposed, whether moving the NWL north of the A47, or absent that either or both of his others.
58. He submits for the reasons given in these closing submissions, that the Applicant has provided no compelling reason to acquire either all or, if that were not so, every part of the land sought to be acquired from him
59. He is grateful for the mitigation items agreed to by the Applicant to date which are recorded in the soCG at Table 3-1, without prejudice to his primary contentions, and will work with the Applicant to agree formal security for them if possible before Deadline 10 for confirmation to the Ex A or if that does not prove possible, as soon as possible after that in order to inform the Secretary of State. He hopes that agreement can be reached on the further items mentioned here but if not, that his concerns will be considered by the Ex A.

Anthony Meynell

For and on behalf of the [REDACTED] and the Merrywood Trustees

9 February 2022