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# Appeal Decision

Inquiry held on 19-21 June 2012

Site visit made on 20 June 2012

**by P W Clark MA MRTPI MCI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 16 August 2012**

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**Appeal Ref: APP/F2605/A/12/2172205**

**Land north of Cromwell Road, Weeting, Norfolk IP27 0QS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Childerhouse Lodge Farms against the decision of Breckland District Council.
  - The application Ref 3PL/2011/1102/F, dated 4 October 2011, was refused by notice dated 3 February 2012.
  - The development proposed is 35 N<sup>o</sup> dwellings including a mix of 2, 3, 4 and 5 bedroom dwellings, new access arrangements, 24 allotments, community woodland, public open space and associated landscaping.
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## Decision

1. The appeal is allowed and planning permission is granted for 35 N<sup>o</sup> dwellings including a mix of 2, 3, 4 and 5 bedroom dwellings, new access arrangements, 24 allotments, community woodland, public open space and associated landscaping on land north of Cromwell Road, Weeting, Norfolk IP27 0QS in accordance with the terms of the application, Ref 3PL/2011/1102/F, dated 4 October 2011, subject to the conditions set out in the schedule appended to this decision.

## Application for costs

2. At the Inquiry an application for costs was made by Childerhouse Lodge Farms against Breckland District Council. This application is the subject of a separate Decision.

## Procedural matters

3. The application was amended during its consideration by the Council. A condition makes clear to which drawings this permission applies.
4. A draft planning obligation was submitted with the appeal and considered during the inquiry. With the agreement of the main parties, it was amended and executed following the close of the inquiry and has been taken into account. It provides for the allotment land to be made available to the Parish Council, for an ecological mitigation area to be provided and managed on land outside the application site but within the control of the appellant, for 14 dwellings to be provided as affordable housing and for a permissive path to be provided around the allotments and to the east and south of the site.

## **Main Issues**

5. The five reasons for refusal resolve into four main issues. They are the effects of the proposal on;
  - Biodiversity, with particular reference to the Breckland Special Protection Area and the Stone Curlew,
  - The character and appearance of Cromwell Road,
  - The sustainability of the pattern of development in Breckland and,
  - Housing supply in Breckland.

## **Reasons**

### Biodiversity

#### *a) The SPA*

6. Weeting village is surrounded on three sides, at a distance, by land designated a Special Protection Area (SPA). Its qualifying features include the Stone Curlew (breeding), the European Nightjar (breeding) and the Woodlark (breeding). It comprises a number of SSSIs. To the west of the village is one known as Breckland Farmland (although it includes forest belts, arable and non-arable land). Beyond it is Weeting Heath SSSI. These two SSSIs support Stone Curlews' breeding grounds.
7. The approach to be taken in considering a development proposal that might affect an SPA is set out in ODPM Circular 06/2005. The first stage in the process is to establish whether the proposed development is directly connected with, or necessary to, nature conservation management of the SPA. That is not the case with this appeal proposal, so consideration passes to the second stage.
8. The second stage is to determine whether the proposal is likely to have a significant effect on the interest features of the site, either alone or in combination with other plans or proposals. All parties are agreed that the development proposed would be sited far enough away from Nightjar or Woodlark breeding areas to have no adverse effects on them. I have no reason to disagree.
9. For Stone Curlews, Footprint Ecology (FE) were commissioned by Breckland Council when making an Appropriate Assessment of its Core Strategy. This establishes, amongst other things, an inverse correlation between the nesting propensity of Stone Curlews and the distance to and quantity of human habitation, irrespective of intervening screening.
10. On this basis, the Core Strategy includes policy CP10 which establishes two buffer zones. The orange buffer zone extends 1,500m from the edge of those parts of the SPA that support or are capable of supporting Stone Curlews. The blue buffer zone does the same for other land (outside the SPA) supporting the qualifying features of the SPA. Within the zones an Appropriate Assessment is required for any development to show that it will not adversely affect the integrity of the SPA. The whole of Weeting lies within the orange zone. The appeal site is variously estimated at 160m (Council) to 220m (RSPB) from the SPA boundary. For this reason also, the Core Strategy, in policy SS1

- specifically states that Weeting will not see a new housing allocation for the remainder of the plan period.
11. I note that the examination of the Council's Core Strategy had misgivings about policy CP10 and called for further urgent work to provide a better understanding of the interactions between Stone Curlews and human settlement. Nevertheless, the Core Strategy was found sound.
  12. The matter was further considered in the examination of the Breckland Council Site Specific Policies and Proposals DPD, when an allocation of about 130 dwellings on a site including, but much larger than, the current appeal site was promoted by a developer. Although some further research work had been done, there were concerns about its methodology and approach. Reassurances were not provided to a level which would enable a definitive conclusion to be reached. The evidence submitted did not provide the necessary confidence to conclude that such a significant development at Weeting would not have had a detrimental impact on Stone Curlews. The precautionary principle was applied. The site put forward had not been subject to the equivalent level of sustainability appraisal or public consultation as other allocations. Sufficient land was allocated elsewhere. The DPD was found sound without an allocation at Weeting.
  13. Despite subsequent research by the Landscape Science Consultancy Ltd (LSC) which finds no avoidance of development by nesting Stone Curlews and offers reasons for the differences with the Footprint Ecology (FE) Study, the research by FE has not been disproven. Natural England accepts that the LSC report represents a significant step forward in understanding the relationship between Stone Curlews and development. Yet the examination of the Thetford Area Action Plan DPD held that LSC's work was not sufficiently well founded, particularly in relation to the likely impact of development on breeding protected species, to justify overriding the protection afforded by the 1,500m buffer.
  14. Policy CP10 does no more than replicate the second stage of assessing a development proposal in relation to a SPA, by requiring an Appropriate Assessment in each case. Both parties in the present appeal accept the need for an Appropriate Assessment of the current appeal proposal. The *Waddensee Judgment* ruled that an Appropriate Assessment of a proposal is required if the possibility cannot be excluded, on the basis of objective information, that the proposal will have a significant effect on that site, either individually or in combination with other plans or projects. Although there are misgivings about the FE research and its significance, the risk of a significant effect cannot be excluded and so consideration passes to the third stage.
  15. The third stage is an Appropriate Assessment of the proposal's implications for the SPA in view of the SPA's conservation objectives. Both parties have attempted an Appropriate Assessment. So has Natural England. They disagree as to the conclusion which should be reached.
  16. The appellant employed Norfolk Wildlife Services (NWS) to make a Site Specific Assessment with respect to Stone Curlews. Natural England disagrees with the appellant's methodology but reaches the same conclusions. The RSPB considers that the appellant's assessment does not provide the necessary information for the decision taker to undertake a Habitats Regulations Assessment. The Council was entitled to require the applicant to provide such

information as may reasonably be required to undertake the assessment but no additional information was sought. In the light of the appellant's robust defence of the NWS report against the criticisms made by the RSPB, I am not convinced of its inadequacy.

17. The Council (as does the RSPB) relies on the same research (by FE) that underpinned its Habitats Regulations Assessment of the Core Strategy. This led the Council to conclude, in its Appropriate Assessment of the current proposal, that an absence of adverse effect upon the Stone Curlew special interest feature of the SPA cannot be established. It concludes that there must therefore be a presumption against consent for the appeal proposal.
18. There are some difficulties with this approach. In its evidence to the examination of the Thetford Area Action Plan, the Council confirmed that the buffer zone does not represent a blanket "no development zone" rather, one in which proposals will be carefully scrutinised for their impact on the integrity of the SPA. However, the scrutiny given by the Council goes no further than the research which established the buffer zone itself.
19. Secondly, there is a difference between the tests carried out at the second (or screening) and third (or Appropriate Assessment) stages of assessing the effects of a proposal on an SPA. The second stage examines whether there is a likelihood of an effect on the interest features of the site. All parties agree there is a risk. The third stage examines that risk to see whether the development will in fact have an adverse effect on the integrity of the site.
20. Integrity of the site is defined in paragraph 20 of ODPM Circular 06/2005 - as the coherence of the site's ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified. It is not for the decision-taker to show that the proposal would harm the site in order to dismiss the appeal. It is for me to consider the scheme's likely and reasonably foreseeable effects and to ascertain that they will not have an adverse effect on the integrity of the site before the appeal may be allowed. Based on the judgement in *ADT Auctions Ltd v Secretary of State & Hart DC (2000)*, it is implicit that the adverse effect has to be significant. If the proposal would adversely affect integrity, or the effects on integrity are uncertain but could be significant, then consideration would have to pass to stages four, five and six.
21. An assessment should be proportionate. It does not need to be unduly elaborate. The level of detail should be consistent with the likely impact. In my view the information provided between them by the Council, Natural England, the appellant and the RSPB is sufficient for me to reach a conclusion in the light of the best scientific knowledge in the field.
22. In undertaking an Appropriate Assessment, the impact of the proposal on the SPA needs to be considered in the light of the site's conservation objectives. The conservation objectives for the arable component of the SPA set out at the time of its designation include an extent objective (not affected by the current proposal) and a population objective to maintain pairs within acceptable limits. The European Site Conservation Objectives for Breckland SPA published on Natural England's website at the current time are to avoid, firstly, the deterioration of the habitats of the qualifying features and, secondly, the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims

of the Birds Directive. These aims are, subject to natural change, to maintain or restore; the extent and distribution of the habitats of the qualifying features; the structure and function of the habitats of the qualifying features; the supporting processes on which the habitats of the qualifying features rely; the populations of the qualifying features; the distribution of the qualifying features within the site.

23. Paragraph 9.1.3 of the Habitat Regulations Assessment, carried out for the Breckland Council Core Strategy and Development Control Policies document, identified seven likely significant effects from housing development then proposed. Four of these are relevant to the present case: the observed decrease in densities of nesting curlews in proximity to housing; reductions in the densities of stone curlews from their avoidance of roads; increased disturbance to birds from recreational activity as a result of increased population; increased fire risk, trampling and fly-tipping from increased population. These are the four factors examined by NWS in the appellant's assessment. The RSPB considers this list incomplete, adding pets and urban predators, noise, light pollution and increased traffic.
24. So far as the two potential effects of avoidance of roads and increased traffic are concerned, I note that the FE report identified avoidance of trunk and A-class roads up to 1000m and 500m respectively but came to no conclusions on other roads. The LSC report confirmed avoidance of otherwise suitable sites within 1km of a trunk road but observed no evidence to indicate avoidance of other classes of road such as A-roads or B-roads. The proposal would make no changes to the pattern of roads within the vicinity of the SPA but, like any development, would lead to a proportionate increase in traffic. Given that the development would represent an increase of approximately 3.8% in the population of Weeting, that the effects of traffic growth disperse with distance and that the population of Weeting is not the sole source of traffic on surrounding roads passing within 500m of the SPA, any effect would be so minimal as to be indistinguishable from annual variations in traffic volumes.
25. There is a drove road, leading from the application site, which crosses Weeting Heath. This is a potential source of recreational activity, fire risk, trampling and fly-tipping. Natural England advises that there may be increased recreational disturbance to birds from walkers (and walkers with dogs) arising from the associated housing proposed in this appeal. This will need mitigation by the provision of alternative routes to encourage walkers away from Breckland Farmland and Weeting Heath SSSIs. The appeal proposes more than this, including not just the provision of a permissive footpath and signage from the site to Angerstein Close to the east but also closure of the permissive path to the west which leads to the drove road across Weeting Heath. These matters are secured by conditions (5), (10 - in part), (13) and (14). They will reduce the risks of disturbance, not just from the 35 houses proposed in this scheme but also from residents of Angerstein Close whose inhabitants are presently assisted in reaching the drove road through the SSSI from the existing permissive path through the site.
26. The RSPB is concerned that the appellant's assessment omits the impacts of pets and predators. In paragraph 4.7 of its Statement of Case dated 25.4.12 it notes that movements of uncontrolled pets away from their homes can exceed 1km. Yet the evidence is that the records of nesting Stone Curlews are all

- more than 1km from the site. Although adult Stone Curlews may forage closer to the appeal site, their size makes them an unlikely victim of a domestic cat.
27. The development would not represent a new isolated source of noise or lighting pollution but would be subsumed into the general effects of the rest of Weeting. Cumulative noise is not simply additive; new noise is partly masked by existing noise. In paragraph 1.3 of its Inquiry Statement dated 29 May 2012 the RSPB lists these and other possible explanations of the apparent correlation between housing development and its avoidance by Stone Curlews. The RSPB statement goes on to observe, in paragraph 1.4, that it is not understood which (if any) of these reasons may be responsible for the observed pattern of nest sites selected by Stone Curlews. I agree and therefore have not attempted to measure these effects independently of the observed correlation, to which I now turn.
28. The FE report itself qualifies its recommendations in two ways relevant to this appeal site. Firstly, it differentiates between arable and semi-natural habitats. It specifically confines its recommendations to restrictions on housing development within 1,500m of arable land suitable for Stone Curlews. Yet, as acknowledged by the Council's witness during cross-examination, all recorded nesting curlews within the SPA (i.e the habitat of the qualifying feature) and within 1,500m of the appeal site were on non-arable land. The RSPB points out that there is arable land, potentially suitable for nesting Stone Curlews, within 1,500m of the appeal site but that is not actually the habitat of the qualifying feature, only potentially so.
29. Secondly, in making its observation that new housing may need to be at least 1,500m from any Stone Curlew habitat on arable land, to avoid potential impact on Stone Curlew nesting densities and rates, the FE report qualifies the term new housing development as "non-infilling". Natural England, in its appraisal of the site, describes the current appeal site as filling in a gap between existing buildings. From my site visit I observed that the appeal site is bounded by existing residential development on two sides and by farm buildings on a third. Although, as the RSPB points out, not every segment of a projection from the site towards the SPA would be blocked by existing development, I concur with Natural England's description of the proposal as "effectively tucking a smaller site with fewer houses into existing housing".
30. These two points suggest that the application of the FE report to the current appeal site may not be appropriate. I find, on balance, that the FE report does not demonstrate that this appeal proposal will lead to an adverse effect on the integrity of the site. Equally, without scientific proof that there will be no adverse effect, the possible effects on integrity are uncertain so I now turn to examine them. For this purpose, and as representing the "worst case" scenario, I have presumed that the FE report's findings are applicable. The "best case" scenario would be based on LSC's findings that there is no correlation between housing and Stone Curlews' nesting preferences.
31. FE's report includes a prediction of the effects of growth in Thetford and consequent traffic increases on nesting Stone Curlews in its study area. The summary concludes that development of 8,000 new homes in two growth areas in combination with traffic increases of 35% would result in approximately 5 nests fewer per year on arable land, a "depression factor" of around 3%.

32. The appeal site is for just 35 dwellings. Section 9 of the NWS report attempts to apply FE's depression factor to Weeting. It concludes that it would represent a risk of less than 0.01% to the population needed to maintain the SPA population of Stone Curlew and a smaller risk to the size of the present Stone Curlew population supported by the SPA. The RSPB points out that FE's depression factor is derived from a study of the particular circumstances appertaining to land around Thetford and should not be applied to Weeting. But that applies equally to the whole FE report and so it can only be used as an indicator; it should not be ruled out altogether. The RSPB does not provide any more applicable depression factor which could be used to calculate the significance of the effect.
33. Although Natural England does not accept NWS's methodology, this difference of scale is a factor included in NE's assessment of the likelihood of a significant effect on the SPA which led to no objection being made. In cross-examination, the Council's witness also accepted that the effects of 35 dwellings at Weeting would be less than the effects of 8,000 houses at Thetford.
34. Over the period covered by the FE research, the number of dwellings in the study area increased from about 150,000 in 1988 to 210,000 in 2006. Yet the number of Stone Curlew nests also increased from 83 to 246. It would appear therefore that the effects of other factors benefiting Stone Curlews can far outweigh the negative effects of increased housing development, its consequent growth in traffic and the other consequential potential impacts noted by the RSPB.
35. Natural England, in its advice raising no objection to the appeal proposal, points to some of the other factors which would apply in this case. Firstly, in addition to the difference of scale already noted, it looks to the pattern of existing housing adjacent to the appeal site, such as Angerstein Close. This is not screened from the SPA. The application site does not materially extend this development but rather fills in a gap between existing buildings. Secondly, the Weeting Heath SSSI and National Nature Reserve is managed specifically for the Stone Curlew. This is a major influence on Stone Curlew nesting. Although Stone Curlew may forage on arable land within the SPA closer to Weeting, foraging is less likely to be affected by housing than nesting.
36. Natural England is the Secretary of State's scientific adviser on the subject of biodiversity. Its evidence should only be rejected where there is clear objective scientific evidence which contradicts it. There is none in this case.
37. In summary, research showing that Stone Curlews nesting on arable land are disturbed by residential property within 1,500m does not prove that development on this site would have any effect on nesting Stone Curlews as a qualifying feature of the SPA because none have been observed nesting on arable land within the SPA and within 1,500m of the site. For the same reason of distance, the risk of chicks being predated by domestic cats can be discounted. Risks of disturbance by walkers and their dogs will be mitigated by condition. Although not completely screened from the SPA by continuous existing development, the site is surrounded by housing on two sides and by farm buildings on a third and so constitutes an infill site rather than an extension into the countryside. Though some of its findings may be pertinent, for the above reasons the recommendations of the FE report cannot be directly applied to the site.

38. Though not strictly directly applicable to Weeting, their application of their findings to the situation in Thetford, provides the best available scientific estimate of an order of magnitude of any effect - but shows it would be insignificant. From this, I conclude, in the words of paragraph 20 of Circular 6/2005, that the Appropriate Assessment enables me to ascertain that the proposal will not have an adverse effect on the integrity of the SPA, measured in terms of the level of population of the species for which it was classified. There is no suggestion of any further housing development with which it would need to be jointly appraised.
39. I conclude that the effects of the proposal on the Breckland SPA would not adversely affect its integrity. This conclusion is not of general applicability; it is specific to this site and this proposal. The proposal would therefore comply with the requirements of policy CP10 of Breckland Council's Adopted Core Strategy and Development Control Policies Development Plan Document in that respect. This policy provides that permission may be granted for development within the orange buffer zone provided it is demonstrated by an appropriate assessment that the development will not adversely affect the integrity of the SPA.

*b) Outside the SPA*

40. The Stone Curlew is protected in its own right, irrespective of the SPA. There is evidence that nesting attempts have been made on land to the north of the appeal site, outside the SPA. Because this is arable land, the FE research is undoubtedly valid and suggests that birds making further attempts at nesting might be disturbed by the closer proximity to housing which the appeal site would represent.
41. In mitigation of this possible effect the appellant proposes that land outside the site, but in his control, should be managed by rotation of crops so that in any one year, 2ha of land would provide suitable nesting sites for Stone Curlew. This land would be located more than 1,500m from the appeal site. In addition, the layout of the development would focus housing to the south of the site and would provide a buffer zone of allotments to the north, screened by tree belts and fenced to prevent access to the land to the north of the site. Natural England supports this mitigation but considers that more detailed information needs to be provided and made deliverable by the development. This can be secured by conditions (10 - in part) and (12).
42. With this mitigation in place, I conclude that the effects of the proposal on the Stone Curlew outside the SPA would be acceptable. The proposal would satisfy the requirements of policy CP10 of Breckland Council's Adopted Core Strategy and Development Control Policies Development Plan Document in that respect.

*Character and appearance of Cromwell Road*

43. Much of Weeting comprises bungalows of 1950s and 1960s vintage. They are of various designs with little in common but concrete roof tiles on shallow pitches and a generally unassuming appearance. Cromwell Road may once have followed this pattern but has been much redeveloped in recent years so that the references in the Council's reasons for refusal to a structured or uniform pattern and layout are no longer recognisable.
44. Number 6, which is proposed to be demolished to provide access to the site, was originally identical to numbers 5 and 13 which remain, but it has been

extended to its rear. Others which originally fronted Cromwell Road between numbers 6 and 13 have been redeveloped with two storey houses on the frontage and a succession of culs-de-sac in the backland. The proposal would lack the frontage development of two storey houses but would otherwise follow this now established pattern.

45. The design of the individual houses proposed would follow a modern East Anglian vernacular. There is no reason to disagree with the Council's assessment in its Committee report; "In visual terms it is considered that the relatively spacious layout of the scheme is appropriate to this edge of village location and the design and range of the housing units and the traditional palette of external materials proposed is sympathetic to this rural location." This can be secured by condition (6).
46. I conclude that the proposal would be consistent with the character and appearance of Cromwell Road. It would comply with policies DC1 and DC16 of the Council's adopted Core Strategy and Development Control Policies Development Plan Document. Amongst other things, these require the highest standards of design with regard to be had to the quality of townscape or landscape proposed.

#### Sustainable pattern of development

47. As noted above and for the reasons given, Weeting has no allocation of growth in the Core Strategy or in the Site Specific Policies and Proposals DPD, though early drafts of the Core Strategy, made before the designation of the SPA and analysis of its implications, proposed allocations of 50-100 dwellings. Its settlement boundary is tightly drawn around existing development. The site lies outside the settlement boundary. In villages not identified for a specific level of growth in the settlement hierarchy, Core Strategy policy CP14 would only permit residential development where there are suitable sites available inside the defined settlement boundaries or for other reasons not applicable in this case.
48. Weeting is defined as one of fourteen service centre villages. These contain adequate services and facilities to meet the day to day requirements of their existing residents. The council's strategy for all local service centre villages will be primarily around service protection and enhancement. Core strategy policy SS1 explains that development is envisaged to meet local needs but only four of the service centre villages are given an allocation of growth.
49. Weeting has recently lost its hourly frequency of bus services to Brandon but is connected thereto by a recently laid combined footpath and cycle path. It retains some public transport, a post office, convenience shop and a primary school. So, it is not an unsustainable location. The examination of the Core Strategy observed that Weeting's current identification in the spatial strategy was endorsed because of the application of the precautionary principle in relation to the SPA but noted that in other respects it is, or could be, a sustainable service centre. The appellant's contention, that of all possible sites around Weeting (all outside the settlement boundary) this is the most suitable and sustainable, is not contested by the Council.
50. The Chairman of the Parish Council estimates the current population of Weeting as about 2,000-2,500 people. The appellant suggests there are about 900 existing dwellings. The proposal would represent an increase of about 3.8%.

Evidence from the Parish Council suggests there are about 70 individuals who, having been born and/or raised in the village cannot find housing therein. Reference is also made to children of existing inhabitants and their spouses who are still living with their parents as evidence of local housing need. The proposal would provide 14 affordable homes, secured by planning condition (7), and so would tend to provide for local needs in accordance with policy SS1.

51. I conclude that the proposal would have an acceptable effect on the sustainability of the pattern of development in Breckland. It would lie outside the settlement boundary so would not comply with Core Strategy policy CP14. It would provide, partly through the affordable housing proposed, development proportional to local need and so would comply with Core Strategy policy SS1.

#### Housing supply in Breckland

52. The Council accepts that it does not have a five year housing supply identified but it does not rely on unidentified windfalls in making its calculations. It has consistently underperformed in maintaining an identified five-year housing supply. Even the recent confirmation of the soundness of the allocations in the Thetford Area Action Plan did not quite achieve a five-year supply. Depending on the method used to allocate previous shortfalls, the District currently has identified a housing supply adequate for 3.4 or 4.55 years. Some doubts remain about the deliverability of a single, very large, urban expansion of Thetford because of infrastructure constraints. On the other hand, windfalls lie outside its calculations. This appeal proposal would represent a windfall. As such, its development would help to make good the shortfall in the supply of identified sites.
53. In other circumstances, as paragraph 49 of the National Planning Policy Framework makes clear, housing applications should be considered in the context of the presumption in favour of sustainable development. In this particular case, as paragraph 119 of the Framework also makes clear, that presumption does not apply because the development requires Appropriate Assessment under the European Union Birds Directive.
54. I conclude that, although there is no positive presumption in favour of this development proposal, it would make a positive contribution towards remedying the shortfalls in the identified supply of housing land in Breckland. That is a point in its favour to be balanced against any other negative characteristics.

#### Conclusions and other matters

55. In the event of the appeal being allowed, the Council suggests a number of conditions. I have considered these in the light of advice contained in Circular 11/95, *the Use of conditions in planning permissions*, preferring the model conditions suggested therein, where appropriate. Conditions requiring a bat survey prior to the demolition of number 6 Cromwell Road and a contaminated land survey and remediation programme are unnecessary because there is no suggestion that bats are present in the building or that the land has been subject to uses likely to lead to contamination. Condition (2) is included for the reason given in paragraph 3 above.
56. A number of conditions are necessary to satisfy objections otherwise made by the Environment Agency or the County Council as highway authority and as archaeological authority. These include conditions (3) and (4) concerning road

- and drainage specifications and details, condition (9) requiring a programme of archaeological investigation and condition (15) requiring the avoidance of foundation designs presenting a risk to the principal aquifer underlying the site.
57. Conditions (5), (10 - in part), (13) and (14) are required to avoid bird disturbance from walkers, as explained in paragraph 25. Condition (6) is required for the reasons given in paragraph 45. Condition (7) is required for the reasons given in paragraph 50 and to satisfy Core Strategy policy DC4 (requiring 40% of the total number of housing units to be provided as affordable housing). Condition (8) is required to satisfy Core Strategy policies CP12 and DC14 (requiring all new development of more than ten units to supply at least 10% of the energy used on site through on-site or decentralised renewable sources).
58. Condition (11) (particularly clause (vi)) is required to minimise disturbance to birds outside the SPA during construction. Condition (12) is required to compensate for disturbance to birds outside the SPA as explained in paragraph 41.
59. Some of these conditions would be satisfied by the provisions of the unilateral undertaking. They are nevertheless retained as conditions in the event of the unilateral undertaking being challenged, found defective or otherwise overturned.
60. With these conditions in place, I conclude that the proposed development would not adversely affect the integrity of the Breckland SPA, would provide adequate compensation for any possible disturbance of protected Stone Curlews outside the SPA, would have no adverse effect on the character and appearance of Cromwell Road, would be in a sustainable location despite being outside the settlement boundary of Weeting village and would make a positive contribution towards the supply of housing in Breckland. None of the development plan policies referred to in this decision are inconsistent with the National Planning Policy Framework. I have considered all other matters raised but they do not cause me to come to a conclusion other than that this appeal should be allowed.

*P. W. Clark*

Inspector

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Other than as required by other conditions, the development hereby permitted shall be carried out in accordance with the following approved plans: 448/01 revision D, 448/02, 448/03 revision A, 448/04, 448/05, 448/06, 448/07, 448/08 and 448/09.
- 3) No development shall take place until such time as detailed plans and specifications of the roads, footways, foul and surface water drainage have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. Before any dwelling is first occupied the roads, footways and drainage serving that particular dwelling shall have been completed in accordance with the approved details.
- 4) Notwithstanding the details shown on the approved plans, the access road junction with Cromwell Road shall incorporate kerbs set at a radius dimension of not less than 8.0m and be related to the existing road alignment.
- 5) Notwithstanding the details shown on the approved plan 448/01 revision D, no dwelling shall be occupied until the part of the existing permissive path to the west of the access road giving access to land to the west of the site has been closed and access prevented by boundary treatment to be approved in accordance with condition 10. That part of the permissive path shall remain closed and access prevented thereafter.
- 6) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
  - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 14 housing units;
  - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no RSL involved);
  - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

- v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 8) No development shall take place until details of a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. The approved scheme shall be retained as operational thereafter.
- 9) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 10) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include boundary screening, means of enclosure (including those to prevent access to land to the north of the site); hard surfacing materials; minor artefacts and structures (eg. street furniture, fire hydrant, play equipment, refuse or other storage units), lighting (including details to minimise light pollution of surrounding undeveloped land); retained and new tree and shrub planting. The development shall be carried out in accordance with the approved details. No dwelling shall be occupied until its means of enclosure and the means of enclosure to prevent access to land north of the site has been completed. The means of enclosure shall be retained thereafter. Any planting shall be carried out during the planting season (November – March) immediately following the commencement of the development or in accordance with a programme to be submitted and approved as part of the details. Any trees or plants which, within a period of five years from their planting, die, are removed or become seriously damaged or diseased shall be replaced during the next following planting seasons with others of the same size and species.
- 11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in constructing the development
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v) wheel washing facilities
  - vi) measures to control the emission of dust dirt light and noise during construction
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

- 12) No development shall take place until a scheme of habitat management to facilitate the breeding of Stone Curlew on 2 ha of land situated more than 1,500m distant from any dwellings built on site has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved scheme has become operative. The approved scheme shall be retained in operation thereafter.
- 13) No development shall take place until details of a scheme to provide signage for a circular walk around the site and identifying the existence and availability of existing walks available to the public to the east of the site has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. No dwelling shall be occupied until the signage is in place. The signage shall be retained thereafter.
- 14) No dwelling shall be occupied until details of a scheme (or schemes) for the provision, management and maintenance of the allotments, woodland walk, communal open space and permissive path has been submitted to and approved by the local planning authority. The development shall be carried out in accordance with the approved details. The schemes shall be retained operational thereafter.
- 15) The construction of the development shall not involve piling or other foundation designs using penetrative methods.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Michael Horn	Solicitor to Breckland District Council
He called	
David Spencer BA MRTPI	Deputy Planning Manager for Breckland and South Holland Councils
Gilbert Addison BA CEnv	Consultant on the Natural Environment, Capita Symonds
Chris Raine BA MRTPI	Senior Planning Officer, Capita Symonds

### FOR THE APPELLANT:

Timothy Leader	Of Counsel, instructed by Erica Whettingsteel of EJW Planning
He called	
Erica Whettingsteel BA(Hons) DipTp DipUD MRTPI	Managing Director of EJW Planning Ltd
Chris Smith BSc, DipStats	Manager, Norfolk Wildlife Services

### INTERESTED PERSONS:

Michael Nairn	Chairman, Weeting Parish Council
Cllr Ian Monson	Norfolk County Councillor

## DOCUMENTS

- 1 Notification of date, time and place of Inquiry
- 2 Notification to Press
- 3 Supplementary Appendices to Erica Whettingsteel's evidence, including letter from Orbit Homes
- 4 Report to Breckland Council on the Examination into the Site Specific Policies and Proposals Development Plan Document
- 5 Breckland Local Development Framework Adopted Core Strategy and Development Control Policies Development Plan Document
- 6 Habitat Regulations Assessment: Breckland Council Submission Core Strategy and Development Control Policies Document
- 7 Memo dated 31.10.11 from Gilbert Addison to Development Control
- 8 Report of *Hargreaves v Secretary of State for Communities and Local Government and Cornwall Light and Power Co Ltd* [2011] EWHC 1999 (Admin)