BROADLAND DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY: Monte Blackburn Ltd and Pigeon Investment Ltd against the refusal of Broadland District Council to grant full planning permission for a proposed roadside development of a petrol filling station, two drive-through restaurants and a 24 space HGV parking area together with various infrastructure and landscaping works at Land South of Broadland Gate, Adjacent to Postwick Interchange, Postwick, NR13 5NP

PLANNING INSPECTORATE REFERENCE: APP/K2610/W/18/3205994

LOCAL PLANNING AUTHORITY REFERENCE: 20170095

LOCAL PLANNING AUTHORITY STATEMENT OF CASE

1. THE APPEAL PROPOSAL

1.1 The application for planning permission to which this appeal relates was received on 18 January 2017 and declared valid on 19 January 2017. It sought full planning permission for a petrol filling station, two drive-through restaurants and a 24 space HGV parking area together with various infrastructure and landscaping works on the site.

1.2 The application was refused planning permission by the Council’s Planning Committee on 31 January 2018 with the decision notice being issued on 22 February 2018.

2. THE SITE AND ITS LOCATION

2.1 The appeal site has an area of just over 2 hectares and is located approximately 6 kilometres to the east of Norwich and a short distance north of the village of Postwick. The site is adjacent to the recently constructed Postwick Interchange road network and sits to the south of Broadland Gate and immediately to the south of the A47 trunk road.

2.2 The site is formed of two fields separated by a linear group of trees and one native species hedgerow. The western side of the site is comprised of hardstanding and was used as a compound for construction vehicles until the end of November 2016 but is currently vacant. The eastern side of the site comprises of unmaintained
grassland with dense scrub around its boarders. The site is also currently bounded by some mature trees to the north of the site and a mixture of fencing to the southern boundary. There is a general fall in levels across the site from north to south and west to east.

2.3 The site is bounded by the A1042 road to the south and the A47 to the north. There is a small area of undeveloped grassland to the east of the site and immediately to the west of the application site is a parcel of vacant land which is also under the applicants’ ownership.

2.4 Vehicular access to the site is currently taken from an existing point off the A1042 from the south, via an existing roundabout.

3. RELEVANT PLANNING HISTORY

3.1 There have been a number of applications in recent years for highway improvement works within close proximity to the site however there is no relevant planning history specific to the application site.

4. RELEVANT PLANNING POLICIES

4.1 Confirmation of the planning policies that are relevant to this appeal are set out in the committee report that was forwarded to the Planning Inspectorate with the appeal questionnaire.

4.2 It should be noted that a new version of the National Planning Policy Framework (NPPF) was published on 24 July 2018, since the decision was issued for the application. Despite this, it is considered that the revisions to the NPPF have not resulted in any material changes to the decision making or to the decision made by the Local Planning Authority. Notwithstanding this, the decision notice previously stated that the application was in conflict with paragraphs 109 and 120 of the NPPF. These paragraphs are now covered by paragraphs 170 and 180 of the 2018 version of the NPPF.

4.3 Copies of the development plan policies referred to above were forwarded to the Planning Inspectorate with the appeal questionnaire. Policy TS1 of the Development Management DPD wasn’t forwarded with the appeal questionnaire so this is attached to this statement as Appendix A. A copy of the Site Allocations DPD (SA DPD) was not forwarded either. For completeness, a copy of the covering page, inside page and parts of the SA DPD that are relevant to the site are attached to this statement as Appendix B.

5. EXPLANATORY COMMENTS

5.1 The Local Planning Authority (LPA) considers the main issues for consideration in the determination of this appeal are:-

(i) The location of the site outside the settlement limit and with no specific allocation for future development in the Site Allocations DPD.

(ii) The impact of the development on the nearby public water supply borehole.
5.2 As stated in section 4 of this statement the planning policies that are relevant to this appeal are listed in the committee report. In determining the application, all of the listed policies were considered to be relevant but only a small number were referred to in the decision notice and are policies that the proposed development is considered to be contrary to.

6. STATEMENT OF CASE

6.1 The LPA considers that the decision notice adequately sets out its position on the reasons for refusing planning permission. However, there are some additional items that the LPA would like to draw to the Inspector’s attention. The application was refused for two reasons.

The location of the site outside the settlement limit and with no specific allocation for future development in the Site Allocations DPD.

6.2 The site is located outside of any defined settlement limit. Policy GC2 of the Development Management DPD (2015) (DM DPD) states that ‘new development will be accommodated within the settlement limits defined on the policies map’. Policy GC2 however, continues to state that ‘outside of these limits, development which does not result in any significant adverse impact will be permitted where it accords with a specific allocation and/or policy of the development plan.’

6.3 With regards to a 'specific allocation' the Site Allocations DPD map for Thorpe St Andrew (east including Postwick) shows part of the site as ‘Proposed Postwick Hub Scheme’ (see Appendix B) although this relates more specifically to the surrounding road network rather than the site itself. This was a highway scheme for the improvement of the A47 Postwick Junction, which tied in with the scheme for the proposed Norwich Northern Distributor Road, known as the Broadland Northway. These schemes have now been implemented. The Site Allocations DPD did not allocate the Postwick Hub Scheme but the map shows the area as proposed transport improvement. There is no policy that allocated the land for transport related use or any other.

6.4 Policy TS1 of the DM DPD is relevant as it covers the protection of land for transport improvements. Policy TS1 states that 'land required for the improvement of the transport network will be safeguarded'. Appendix 4 of the DM DPD contains the Policies Map (see Appendix C). The key illustrates areas to which Policy TS1 applies including ‘Protection of Land for Transport Improvements for the Proposed Postwick Hub Scheme’. Policies Map 6 shows the application site and therefore it is clear the designated area is safeguarded for the specific highway scheme. It is not however, allocated for general transport improvements.

6.5 In paragraph 6.4 of the appellants statement it is stated that the proposed provision of a petrol station, road side food and drink facilities and dedicated HGV parking spaces can be considered as 'transport improvements' under Policy TS1 of the DM DPD. The appellants statement’s note that it is their opinion that ‘the proposed development of road side services would accord with this land use allocation, as it would provide a further enhancement to the recently upgraded local and strategic highway network.’
6.6 This however is not correct. As explained above the intention of Policy TS1 of the DM DPD is to protect land against prejudicial development which would prevent the land being used for transport improvements rather than seeking to allocate the land for said use as suggested by the appellant in their statement.

6.7 Notwithstanding the above, in paragraph 6.12 of the appellants statement it states that 'if it is concluded that Policy TS1 is ‘spent’ as a result of the works, identified under this policy, having been completed, or it is not considered the proposed development accords with the policy, due to the works not constituting ‘transport improvements’, the development plan would then seem to be absent / silent with specific regard to the provision of ‘roadside facilities’. Paragraph 6.12 continues to note that 'in this respect there is no specific policy which assists in the consideration of suitable sites and no alternative allocations for such facilities identified within the development plan for the area. As such it is the appellant's opinion that the presumption in favour of sustainable development (Paragraph 11 of the NPPF) is engaged, meaning that the development should be approved unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF'. Paragraph 6.13 of the appellants statement then states that the approach to be taken is ‘to consider the weight to be accorded to potentially relevant policies, alongside other material considerations but within the so called ‘tilted balance’ set by paragraph 14 (now Paragraph 11) of the NPPF’.

6.8 Whilst it is accepted that the development plan doesn't identify provision for ‘roadside facilities’ this is due to there not being a strategic need for such development and this is no different to a number of other uses that may be proposed within an application. Policy GC2 of the DM DPD is considered to be relevant as it clearly sets out the policy for the location of new development and therefore it is considered that the development plan is not absent / silent regarding this application and it is up-to-date. As such the proposal does not accord with an up-to-date development plan, and so the provisions under paragraph 11 of the NPPF do not apply.

6.9 In regard to the reference in Policy GC2 of the DM DPD as to whether the development results in any significant adverse impacts this leads on to the second reason for the refusal.

The impact of the development on the nearby public water supply borehole.

6.10 The second reason for the refusal is the impact that the proposed development will have on the nearby, Anglian Water operated, public water supply borehole. The proximity of the public water supply borehole to the site can be seen from the Map attached within Appendix D of this statement. Anglian Water has provided comment on the appeal which is attached in Appendix E and this is considered to cover this point.

6.11 Notwithstanding this, Policy EN4 of the Development Management DPD states that ‘development proposals will be expected to include an assessment of the extent of potential pollution. Where pollution may be an issue, adequate mitigation measures will be required’. Policy EN4 continues to state that ‘development will only be permitted where there will be no significant adverse impact upon amenity, human health or the natural environment.’ The supporting text within Policy EN4 at
paragraph 3.29 explains that in considering development proposals, regard will be
given to the risk and impact of potential pollution including that of land, water, noise
or air; either arising from the development or on the development from existing
uses. In this case regard is therefore specifically given to the risk and impact of
potential pollution to the public water supply borehole arising from the development
as well as the subsequent risk to human health.

6.12 Policy 1 of the Joint Core Strategy (JCS) is wide ranging but of relevance to the
appeal proposal, it sets out that environmental assets of the area will be protected,
maintained, restored and enhanced. It continues to state that, amongst other
things, development will ‘minimise water use and protect groundwater sources’.

6.13 The site is recognised by the Environment Agency as a Source Protection Zone 1
(SPZ1) due to its close proximity to the public water supply borehole. SPZ1’s are
designated to inform the planning process as to where the highest level of
protection to groundwater quality is required. It is considered essential to protect
the public water supply sources from contamination from any activities that might
cause pollution. The environmental sensitivity at the site is therefore considered to
be very high.

6.14 Anglian Water who operate the borehole, have strongly objected to the application
as they have stated that insufficient information has been provided to demonstrate
that the development would not have an adverse effect on the nearby water supply
borehole.

6.15 It is considered that if there was to be any leak from the proposed underground fuel
tanks then the proposal could result in contamination to the borehole which would
have a detrimental impact on water quality and risk to public health.

6.16 It is considered that the engineering design, as submitted with the application, fails
to provide long-term safeguards to adequately protect the groundwater source. The
application is therefore considered to conflict with Policy EN4 of the Development
Management DPD, Policy 1 of the Joint Core Strategy and Paragraphs 170 and 180
of the National Planning Policy Framework. With this in mind it is considered that
the application will result in a significant adverse impact and therefore, when
coupled with the sites location outside the settlement limit, it is considered that the
application also fails to accord with Policy GC2 of the DM DPD.

6.17 As previously set out in the decision notice it is recognised that the proposal will
result in some modest economic and social benefits but the proposal would not
provide any environmental benefits. However it is considered that the benefits
related to the development are outweighed by the harm caused and the substantial
conflicts with development plan policies noted above. Overall it is concluded that
the proposal would conflict with the development plan and that this conflict is not
outweighed by other material considerations.

7. OTHER MATTERS

7.1 A separate statement specifically addressing the Appellants application for an
award of costs in relation to the appeal can be found in Appendix F of this
statement.
7.2 A statement of common ground has been written and agreed and is to be sent over separately by the appellants.

8. **SUMMARY**

8.1 In summary, there is a risk of contamination at this environmentally sensitive site and it is considered that the application fails to provide long-term safeguards to adequately protect the nearby groundwater public water supply borehole from potential pollution arising from the development as well as the subsequent risk to human health. The application is therefore considered to conflict with Policy 1 of the JCS and Policy EN4 of the DM DPD which states that development will only be permitted where there will be no significant adverse impact upon amenity, human health or the natural environment. Given this significant adverse impact and the fact that the development is located outside of the defined settlement limits for the area, it is also considered that the application fails to comply with Policy GC2 of the DM DPD.

9. **CONCLUSIONS**

9.1 The Local Planning Authority remains of the view that the proposed development is unacceptable for the reasons set out in the decision notice.

9.2 The Inspector is respectfully invited to share this view and dismiss the appeal. If, after consideration of the representations made, it is decided that the appeal should be allowed, the Local Planning Authority recommends that the planning conditions and informatives outlined in the below Appendix G are imposed.
Appendix A

Transport and Safety Policies

Policy TS1 – Protection of land for transport improvements
Land required for the improvement of the transport network will be safeguarded.

8.5 Paragraphs 29 – 41 of the NPPF set out the Government’s view on promoting sustainable transport. In particular, paragraph 31 states that local authorities should work with neighbouring authorities and transport providers to develop strategies for the provision of viable infrastructure necessary to support sustainable development. Paragraph 41 states that local planning authorities should identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice. Paragraph 162 states that local planning authorities should take account of the need for strategic infrastructure including nationally significant infrastructure within their areas. Paragraph 203 states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

8.6 Policies 6, 9 and 12 of the JCS aim to encourage walking and cycling as the primary means of travel with public transport for wider access, particularly through the implementation of the Norwich Area Transportation Strategy (NATS). Policy 9 refers specifically to the Norwich Policy Area and Policy 12 refers specifically to the fringe parishes.

8.7 Future development will necessitate further improvements to the transport network. Such improvements will need to be protected from prejudicial development. Those improvements already identified as being necessary are indicated on the policies maps. These include the Drayton High Road (A1067) near the junction with Middletons Lane and Hospital Lane; and, in Reedham an area for a possible future rail link; and the route of the Northern Distributor Road. Also within the OSRT Growth Triangle AAP areas are identified for ‘link roads’ serving development and rail halts serving the Norwich to Cromer/Sheringham railway. This policy will also apply to any other transport schemes that are proposed.
The Site Allocations DPD was adopted on 3 May, 2015
Appendix C

Development Management DPD (2015)

Appendix 4 - Policies Map

General Considerations
GC2 Settlement Limit - See Site Allocations DPD

Environment
EN1 Internationally Designated Area of Biodiversity Importance
- e.g. Natura 2000 Sites / SPA's / SAC's / Ramsar Sites
- Nationally Defined Area of Biodiversity Importance
- e.g. SSSI's / National Nature Reserves
- Locally Defined Area of Biodiversity / Geodiversity Importance
- e.g. County Wildlife Site / Local Nature Reserves / RGRS
- Ancient Woodlands

EN2 Green Space
- Conservation Areas
- Ancient Monument
- Historic Parkland / Historic Gardens
- Commons / Village Greens

Economy
FC1 Strategic Employment Sites

Retail
R1 District, Commercial and Local Centres

Transport & Safety
TS1 Protection of Land for Transport Improvements
- for the Proposed Northern Distributor Road
- for the Proposed Postwick Hub Scheme
TS2 Trunk Road
- Principal Route
- Main Distributor Route
TS5 Airport Development Boundary
TS6 Airport Safeguarding Boundary
- Airport Public Safety Zones

Other features
- Area Beyond Boundary of Broadland Local Plan
- Norwich Policy Area
- Growth Area Triangle
Planning Appeal Statement

Land South of Broadland Gate, Adjacent to Postwick Interchange

Planning Application Reference: 20170095

Appeal Reference: APP/K2610/W/18/3205994

May 2019

Introduction

Ahead of the Appeal Hearing scheduled for 10 July 2019 please find enclosed a Technical Note provided to us by our appointed consultant Mott MacDonald.

The Note provides additional technical rationale behind our continued objection to the above planning application on the basis of the potential risk to public water supply.

Based on the Technical Note and previously provided information we wish to confirm that the appeal site lies within a Source Protection Zone 1 (SPZ 1) for an Anglian Water public water supply source. SPZs are designated by the Environment Agency to inform the planning process as to where constraints and measures would be required to provide the highest level of protection to groundwater quality. It is essential to protect the public water supply sources from contamination from any activities that might cause pollution, both during construction and when operational.

It is considered that if there was to be any leak from the proposed underground fuel tanks then the proposal could result in contamination to the borehole which would have a detrimental impact on water quality and risk to public health. Should contamination to the public water supply borehole occur, Anglian Water would need to seek alternative sources of supply to customers until such a time as the groundwater is fully remediated, which is likely to take years, or suitable complex high cost and unsustainable treatment processes can be built and commissioned.
The submitted documentation does not provide the sufficient level of detail required to ensure the proposal will not have a detrimental impact on water quality, which could lead to restriction of the public water supply and implications on public health. It is not appropriate for the detail to be dealt with via conditions as this proposal presents extremely high levels of risk.

Detail needs to be presented upfront outlining the risk and proposed mitigation measures from construction, operation and decommission. For the reasons outlined below and detailed in previously submitted comments Anglian Water strongly objects to the proposed development. The application is considered to conflict with Policy EN4 of the Development Management DPD, Policy 1 of the Joint Core Strategy and Paragraphs 170 and 180 of the National Planning Policy Framework.
Technical Note

Project: Postwick Planning Appeal APP/K2610/W/18/3205994

Our reference: 406427

Anglian Water reference: 00020573

Prepared by: Jane Dotridge

Date: 01/05/2019

Subject: Comments on Planning Appeal for Land South of Broadland Gate, Adjacent to Postwick Interchange, Postwick, Planning reference 20170055

1 Background

The comments in this document are intended to form the basis of a statement to summarise Anglian Water’s position on the appeal for the planning application for the petrol station at Postwick. This does not consider the revised planning application for the same site. It is based on review of the documents on Broadland District Council’s planning portal, which are the same as before but with the addition of the Appeal Statement of Case. Without any additional information, there is no reason for Anglian Water to change their position relating to the risks to groundwater and the public water supply abstraction at Postwick, thus the statements dated 18/12/2017 and 6/6/2017 are still pertinent.

These comments do not consider additional information presented in support of the revised planning application 20190300, although this does include a substantial amount, but by no means all, of the additional information requested by Anglian Water during the meetings on 22/5/18 and 14/8/18.

1.1 Council’s reason for refusal (22 February 2018)

Broadland District Council’s reasons for refusal include:

The site is recognised by the Environment Agency as a Source Protection Zone 1 (SPZ1) due to its close proximity to a public water supply borehole. SPZ1’s are designated to inform the planning process as to where the highest level of protection to groundwater quality is required. The environmental sensitivity at the site is therefore considered to be very high. Anglian Water have strongly objected to the application as they have stated that insufficient information has been provided to demonstrate that the development would not have an adverse effect on the nearby water supply borehole. It is considered that if there was to be any leak from the proposed underground fuel tanks then the proposal could result in contamination to the borehole which would have a detrimental impact on water quality and risk to public health. Should contamination to the public water supply borehole occur, Anglian Water would need to seek alternative sources of supply to customers until such a time as the groundwater is fully remediated or suitable complex and high cost treatment processes can be built and commissioned. It is considered that the engineering design, as submitted with the application, fails to provide long-term safeguards to adequately protect the groundwater source operated by Anglian Water. The application is therefore considered to conflict with Policy EN4 of the Development Management DPD, Policy 1 of the Joint Core Strategy and Paragraphs 109 and 120 of the National Planning Policy Framework. [REASON 2]

This document is issued for the party which commissioned it and for specific purposes connected with the above-captioned project only. It should not be relied upon by any other party or used for any other purpose.

We accept no responsibility for the consequences of this document being relied upon by any other party, or being used for any other purpose, or containing any error or omission which is due to an error or omission in data supplied to us by other parties.
1.2 Applicants comment in appeal statement of case (June 2018)

Section 6.30 states that: 6.30 During the course of the LPA’s determination of application 20170095, the appellant was able to robustly demonstrate, through specialist and highly technical information produced by EPS, that there will be no risk to ground water and human health from the proposed underground fuel tanks and crucially, this conclusion was accepted by the statutory body on ground water, the EA. Whilst further details pertaining to the tank’s design and EG Group’s future monitoring of them was to be agreed by condition, the principle of underground tanks was considered to be acceptable. In an effort to respond positively to AW, the appellant went over and above what was reasonably required of them and incurred significant delays in the determination of the planning application as a result.

2 Comments on the application and appeal

2.1 Appeal statement of case

Section 6.30 of the appeal statement claims that ‘the appellant was able to robustly demonstrate, through specialist and highly technical information produced by EPS, that there will be no risk to ground water and human health from the proposed underground fuel tanks and crucially, this conclusion was accepted by the statutory body on ground water, the EA.

One of the fundamental principles of contamination risk assessment is that it is not possible to demonstrate No risk in situations where there are viable pollutant linkages, combining source (the petrol tanks), pathways (subsurface transport in unsaturated and saturated zones) and receptor (Postwick abstraction boreholes). Risk is defined as ‘a combination of the probability, or frequency, of occurrence of a defined hazard and the magnitude of the consequences of the occurrence’ (CLR11, Environment Agency 2004).

CLR11 further clarifies that where there is a pollutant linkage, and therefore some measure of risk, then appropriate criteria are required to judge whether the risk is acceptable or not. In this case the argument is about whether the information provided in the application and appeal is sufficient to allow informed judgement of the acceptability of the risks, relying on engineering solutions and operational procedures to mitigate the risks. I concur with Anglian Water’s previous statements that insufficient evidence has been provided to demonstrate that the risks are acceptable. This is particularly important for operational procedures, including spill procedures, pollution prevention and monitoring, which cannot be guaranteed throughout the lifetime of the petrol station through planning conditions.

Appendix C of the appeal statement of case includes the Proposed Site specific Membrane Lined Cell design with a method statement for tank installation, but as far as I can tell, this is the same as the original application and there is no new relevant technical information.

Although the Environment Agency did not enforce their initial position that the development is unacceptable in SPZ1, the comment in the appeal statement of case that the conclusion that there is no risk to groundwater was accepted by the EA is not consistent with the EA’s comments in their letter of 24 September 2017. The EA requires further consideration of the level of environmental protection provided by the proposed design of the vault, details and validation.

The EA’s letter states that:
Thank you for your consultation received on 14 September 2017. We have reviewed the EPS Strategies Design, Implementation & Operational Method Statement of 12 September 2017 (ref: UK17.2609B). Overall we accept this document but have the following comments that are pertinent and require consideration and alterations in due course.

One of the most fundamental sentences in section 2.1 of the document states “It is acknowledged that the Environment Agency have subsequently raised a preference for a conventional concrete vault over the above-described form of tertiary containment. However, EuroGarages and EPS would be keen demonstrate that the proposed design (once finalised) is at least equal to such a vault in terms of the level of environmental protection it would offer and would demonstrate that position as part of the process of complying with conditions attached to the decision notice.”

It is key that the standard of tertiary containment should be demonstrated in the form of quality design and detail, followed up with validation. In our recent meeting we discussed the use of landfill standard containment systems with associated quality assurance of validation testing of the containment membrane due to the very high sensitivity of the site location.

It is also noted that the HSE advised against the development and National Grid lodged a holding objection due to the presence of a high pressure gas main at the site. Although this is unlikely to pose a direct risk to the development, there is still a possibility that damage to the gas main could impact on the integrity of the fuel tanks. In the longer term, earthquake damage is also a possibility, although unlikely, e.g the Colchester earthquake of 1884 with a magnitude of 4.6.

The comments previously made by Anglian Water therefore still stand, as does the local authority’s reason 2 for refusal.

### 2.2 Additional information provided in 2018

During 2018, there were two meetings between Anglian Water and EPS to discuss the details of the tertiary containment, on 22/5/18 and 14/8/18. In addition, EPS provided a Remediation Options Appraisal, Proposed Petrol Filling Station on Land south of Broadland Gate, Postwick, Reference UK17.2609D dated 4 July 2018, and AW sent comments on that report on 17/8/18. The receipt of this document and the second meeting occurred after the planning appeal was lodged. The minutes of the meetings and the comments on the Remediation Options Appraisal summarise AW’s and my concerns and the information needed to allay those concerns. In the second meeting, EPS agreed to send Pollution Prevention Plan and finalise Hydrogeological Risk Assessment/Remedial Options Appraisal. These documents have not yet been provided, although some of this information is in the revised planning application made in 2019.

In my opinion, the additional information provided during 2018 is not adequate to provide the detail required to deal with the concerns about risks to groundwater and the Postwick abstraction, and to show that the risks are acceptable during construction and operation. Thus, there is no evidence to justify a change in Anglian Water’s position.
Appendix F

COMMENTS ON THE APPELLANT’S APPLICATION FOR AN AWARD OF COSTS

1.1 This statement specifically addresses the appellant’s application for an award of costs in relation to the appeal referred to above (APP/K2610/W/18/3205994).

1.2 The National Planning Policy Guidance (NPPG) is clear at paragraph 28 that all parties in planning appeals and other planning proceedings normally meet their own expenses with paragraph 30 indicating that costs may only be awarded when a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

1.3 In this instance, the Council strongly disputes that it has acted unreasonably and caused the appellant to incur unnecessary or wasted expense.

1.4 In an attempt to address the cost claim submitted by the appellant it is considered appropriate to respond to each of the points raised in paragraphs 9.4 to 9.7 of the appellant’s statement.

Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

1.5 In paragraph 9.4 of the appellant’s statement it is disputed that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. As stated within the Local Planning Authorities Statement of Case the application is considered to conflict with Policies within the development plan and therefore the Council disagrees that they have prevented or delayed development which should clearly be permitted.

Vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis.

1.6 In paragraph 9.6 of the appellants statement it is argued that with regards to the second reason for refusal, the Council relied upon vague and general assertions from Anglian Water on the potential for the proposed underground fuel tanks to leak into the surrounding ground water and the impacts such a leak would have on human health. It is argued however that both during the course of the application and at the planning committee meeting that Anglian Water provided detailed comments and justified reasons for objecting to the application. The Council therefore disagrees that this amounts to unreasonable behaviour.

Refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.

1.7 Finally in paragraph 9.7 of the appellant’s statement it is argued that appropriate planning conditions would have enabled the proposed development to go ahead. Members considered at the planning committee meeting, as advised by Anglian
Water, that given the potential risk that the proposal causes to the nearby borehole that additional information was required upfront to ensure that there would not be any pollution to the public water supply borehole or subsequent risk to human health. Again it is not considered that this amounts to unreasonable behaviour.

1.8 The Council therefore fully disputes the claim being made by the appellant and the Local Planning Authority does not consider that unreasonable behaviour has been demonstrated.

1.9 The Inspector is therefore respectfully requested to refuse the application for an award of costs.
Appendix G

Conditions

(1) The development to which this permission relates must be begun not later than THREE years beginning with the date on which this permission is granted.

(2) The development hereby permitted shall not be carried out otherwise than in accordance with the approved plans and documents.

(3) No works or development shall take place until a scheme for the protection of the retained trees to comply with the relevant sections of BS5837:2012 - Trees in relation to design, demolition and construction - Recommendations (section 5.5 the Tree Protection Plan) has been agreed in writing with the LPA. This scheme shall include:

(a) A plan to a scale and level of accuracy appropriate to the proposal that shows the position, crown spread and Root Protection Area (paragraph 4.6.1) of every retained tree on site and on neighbouring or nearby ground to the site in relation to the approved plans and particulars. The positions of all trees to be removed shall be indicated on this plan.

(b) The details of each retained tree as required at paragraph 4.4.2.5 in a separate schedule.

(c) A schedule of tree works for all the retained trees in paragraphs (a) and (b) above, specifying pruning and other remedial or preventative work, whether for physiological, hazard abatement, aesthetic or operational reasons. All tree works shall be carried out in accordance with BS3998, 2010, Tree Work - Recommendations.

(d) The details and positions (shown on the plan at paragraph (a) above) of the Ground Protection Zones (section 6.2).

(e) The details and positions (shown on the plan at paragraph (a) above) of the Tree Protection Barriers (section 6.2 paragraph 6.2.2 and Figure 2), identified separately where required for different phases of construction work (e.g. demolition, construction, hard landscaping). The Tree Protection Barriers must be erected prior to each construction phase commencing and remain in place, and undamaged for the duration of that phase. No works shall take place on the next phase until the Tree Protection Barriers are repositioned for that phase.

(f) The details and positions (shown on the plan at paragraph (a) above) of the Construction Exclusion Zones (section 6.2).

(g) The details and positions (shown on the plan at paragraph (a) above) of the underground service runs (section 7.7).
(h) The details of any changes in levels or the position of any proposed excavations within 5 metres of the Root Protection Area (paragraph 4.6.1) of any retained tree, including those on neighbouring or nearby ground.

(i) The details of any special engineering required to accommodate the protection of retained trees (Annex A General advice for other interested parties), (eg in connection with foundations, bridging, water features, surfacing).

(j) The details of the working methods to be employed with the demolition of buildings, structures and surfacing within or adjacent to the RPAs of retained trees.

(k) The details of the working methods to be employed for the installation of drives and paths within the RPAs of retained trees in accordance with the principles of ‘No-Dig’ construction.

(l) The details of the proposed planting pit soil structure system to be used for the trees proposed within the hardsurfaced areas (such as GreenBlue Urbans ‘Rootspace’ system).

In the event that any tree(s) become damaged during construction, the Local Planning Authority shall be notified and remedial action agreed and implemented. In the event that any tree(s) dies or is removed without the prior approval of the Local Planning Authority, it shall be replaced within the first available planting season, in accordance with details to be agreed with the Local Planning Authority.

(4) Prior to the commencement of the use hereby permitted the proposed access / on-site car and cycle parking / servicing / loading, unloading / turning / waiting area shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan (1944AK-SK001) and retained thereafter available for that specific use.

(5) Development shall not commence until a scheme detailing provision for on-site parking for construction workers for the duration of the construction period has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented throughout the construction period.

(6) No works shall commence on site until the details of wheel cleaning facilities for construction vehicles have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

(7) For the duration of the construction period all traffic associated with the construction of the development permitted will use the Approved Wheel Cleaning facilities provided referred to in condition 6.

(8) Notwithstanding the details indicated on the submitted drawings no works shall commence on site, unless otherwise agreed in writing, until a detailed scheme for the off-site highway improvement works as indicated on drawing number 19944AK-
SK002 have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

(9) Prior to the commencement of the use hereby permitted the off-site highway improvement works referred to in condition 8 shall be completed to the written satisfaction of the Local Planning Authority in consultation with the Highway Authority.

(10) The development hereby permitted shall not be commenced until such time as a scheme to install, monitor and maintain the underground tanks has been submitted to, and approved in writing by, the Local Planning Authority.

The scheme shall include the full structural details of the installation, including details of excavation, the tank(s), tank surround, tertiary containment, associated pipework, monitoring system and maintenance, monitoring & sampling schedule. The scheme shall be fully implemented and the tanks and associated infrastructure subsequently maintained and monitored, in accordance with the scheme, or any changes as may subsequently be agreed, in writing, by the local planning authority.

(11) The development hereby permitted shall not be occupied until such time as a validation report has been completed, which includes evidence that the tanks and associated infrastructure have been completed in accordance with the scheme approved under condition 10. The validation report should be submitted to, and approved in writing by, the Local Planning Authority.

(12) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

(13) Notwithstanding the approved plans and documents full details of the surface water drainage shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency. The development shall then be carried out in accordance with these approved details.

(14) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

(15) Prior to commencement of development, in accordance with the submitted drainage strategy (drawing 16325, C-55 Rev B), detailed designs of a surface water drainage scheme incorporating the following measures shall be submitted to and agreed with the Local Planning Authority in consultation with the Lead Local Flood Authority. The approved scheme will be implemented prior to the first occupation of the development. The scheme shall address the following matters:
I. Detailed infiltration testing in accordance with BRE Digest 365 representative of the location and depth of the proposed soakaways.

II. Combined surface and foul water runoff rates will be attenuated to no more than 11 l/s, as approved by Anglian Water.

III. Provision of surface water attenuation storage, sized and designed to accommodate the volume of water generated in all rainfall events up to and including the critical storm duration for the 1 in 100 year return period, including allowances for climate change, flood event.

IV. Detailed designs, modelling calculations and plans of the drainage conveyance network in the:

- 1 in 30 year critical rainfall event to show no above ground flooding on any part of the site.

- 1 in 100 year critical rainfall plus climate change event to show, if any, the depth, volume and storage location of any above ground flooding from the drainage network ensuring that flooding does not occur in any part of a building or any utility plant susceptible to water (eg pumping station or electricity substation) within the development.

V. Finished ground floor levels of properties are a minimum of 300mm above expected flood levels of all sources of flooding.

VI. Details of how all surface water management features to be designed in accordance with The SuDS Manual (CIRIA C697, 2007), or the updated The SuDS Manual (CIRIA C753, 2015), including appropriate treatment stages for water quality prior to discharge.

VII. A maintenance and management plan detailing the activities required and details of who will adopt and maintain all the surface water drainage features for the lifetime of the development.

(16) Notwithstanding the approved development, no works shall commence within the area identified within the yellow area on drawing no:12a until a scheme for the construction of the HGV parking area has been submitted to and approved in writing by the Local Planning Authority in consultation with National Grid.

(17) Prior to the first occupation of the site a scheme detailing the provision of fire hydrants within the development shall be submitted to and approved in writing by the Local Planning Authority in consultation with Norfolk Fire and Rescue Service.

(18) (A) No development shall take place until an archaeological written scheme of investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and

- The programme and methodology of site investigation and recording
- The programme for post investigation assessment
- Provision to be made for analysis of the site investigation and recording
Provision to be made for publication and dissemination of the analysis and records of the site investigation.

Provision to be made for archive deposition of the analysis and records of the site investigation.

Nomination of a competent person or persons/organization to undertake the works set out within the written scheme of investigation.

No development shall take place other than in accordance with the written scheme of investigation approved under part (A).

The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological written scheme of investigation approved under part (A) of the condition and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Prior to the first occupation of the development a detailed scheme showing all of the outdoor lighting for the development shall be submitted to and approved in writing by the Local Planning Authority.

Prior to the first occupation of the development details shall be submitted to and approved in writing for the provision and location of bird boxes and bat boxes to be erected within the application site.

Reasons:

1. The time limit is imposed in compliance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. For the avoidance of doubt and to ensure the satisfactory development of the site in accordance with the specified approved plans and documents.

3. To ensure that the trees to be retained are adequately protected from damage to health and stability throughout the construction period and in the interests of visual amenity and to conserve the contribution of trees to the character of the area in accordance with Policies GC4 and EN2 of the Development Management DPD 2015.

4. To ensure the permanent availability of the parking / manoeuvring area, in the interests of highway safety and in accordance with policy TS3 of the Development Management DPD 2015.

5. To ensure adequate off-street parking during construction in the interests of highway safety in accordance with policy TS3 of the Development Management DPD 2015.
(6) To prevent extraneous material being deposited on the highway in accordance with policies GC4 and TS3 of the Development Management DPD 2015.

(7) To prevent extraneous material being deposited on the highway in accordance with policies GC4 and TS3 of the Development Management DPD 2015.

(8) To ensure that the highway improvement works are designed to an appropriate standard in the interests of highway safety and to protect the environment of the local highway corridor in accordance with policy TS3 of the Development Management DPD 2015.

(9) To ensure that the highway network is adequate to cater for the development proposed in the interests of highway safety in accordance with policy TS3 of the Development Management DPD 2015.

(10) To protect and prevent the pollution of the water environment (particularly the Secondary (undifferentiated) and Principal aquifers, Source Protection Zone 3 and future Source Protection Zone 1, nearby water features and EU Water Framework Directive Drinking Water Protected Area) from potential pollutants associated with current and previous land uses in accordance with Policy EN4 of the Development Management DPD 2015 and paragraphs 170, 179 and 180 of the National Planning Policy Framework and

(11) To protect and prevent the pollution of the water environment (particularly the Secondary (undifferentiated) and Principal aquifers, Source Protection Zone 3 and future Source Protection Zone 1, nearby water features and EU Water Framework Directive Drinking Water Protected Area) from potential pollutants associated with current and previous land uses in accordance with Policy EN4 of the Development Management DPD 2015 and paragraphs 170, 179 and 180 of the National Planning Policy Framework and

(12) To protect and prevent the pollution of the water environment (particularly the Secondary (undifferentiated) and Principal aquifers, Source Protection Zone 3 and future Source Protection Zone 1, nearby water features and EU Water Framework Directive Drinking Water Protected Area) from potential pollutants associated with current and previous land uses in accordance with Policy EN4 of the Development Management DPD 2015 and paragraphs 170, 178 and 179 of the National Planning Policy Framework.

(13) To protect and prevent the pollution of the water environment (particularly the Secondary (undifferentiated) and Principal aquifers, Source Protection Zone 3 and future Source Protection Zone 1, nearby water features and EU Water Framework Directive Drinking Water Protected Area) in accordance with Policy EN4 of the Development Management DPD 2015 and paragraph 170 of the National Planning Policy Framework and

(14) To ensure the process does not cause, or create preferential pathways for, the movement of contamination into the underlying aquifer, or impacting surface water quality in accordance with Policy EN4 of the Development Management DPD 2015.
(15) To prevent flooding by ensuring the satisfactory management of local sources of flooding surface water flow paths, storage and disposal of surface water from the site in a range of rainfall events and ensuring the surface water drainage system operates as designed for the lifetime of the development. This is in accordance with National Planning Policy Framework paragraph 163 and 170, Policy 1 of the Joint Core Strategy and Policy CSU5 of the Development Management DPD 2015.

(16) To ensure the satisfactory construction of the HGV parking area and to ensure that there is no harm caused to the gas pipeline in accordance with Policies GC4 and EN4 of the Development Management DPD 2015.

(17) To ensure adequate water infrastructure provision is made on site for the local fire service to tackle any property fire and to ensure the satisfactory development of the site in accordance with Policy GC4 of the Development Management DPD 2015.

(18) To enable the County Archaeologist to keep a watching brief on the site in accordance with Policy EN2 of the Development Management DPD 2015 and paragraphs 187 and 199 of the National Planning Policy Framework.

(19) To prevent any light pollution and to ensure the satisfactory development of the site in accordance with Policies GC4 and EN2 of the Development Management DPD 2015.

(20) To enhance the biodiversity within the site in accordance with Policy EN1 of the Development Management DPD 2015.