IN THE MATTER OF

THE A47 NORTH TUDDENHAM TO EASTON DEVELOPMENT CONSENT ORDER

FINAL COMMENTS ON THE D9 SUBMISSIONS

MADE ON BEHALF OF THE [redacted]

INTRODUCTION

1. These final comments are made on behalf of Mr Anthony Meynell, Owner of the [redacted] ('the Owner' and 'the Estate') in response to matters set out in the documents submitted by the Applicant at Deadline 9.

2. Plainly, there remains a material degree of disagreement between the Applicant and the Owner. However, these final comments seek to comment on four areas considered to be of particular importance. They are:

    a. the significance of the IHTA designation and what it covers;

    b. whether the Applicant can satisfy the tests for compulsory acquisition;

    c. the nature and extent of consultation; and

    d. the correction of a number of unfair or inappropriate remarks made by the Applicant.

THE SIGNIFICANCE OF THE IHTA DESIGNATION

3. The position adopted by the Applicant in relation to the significance (or lack thereof) of the IHTA designation that applies to the Estate throughout the examination has been one of 'stonewalling'. It denies both the relevance of the IHTA designation to the assessment of the effects of the Scheme, and the inherent value of the Estate for which it has been designated.

4. It is perhaps unsurprising that the Applicant has taken this course. It wholly omitted the designation of the Estate from its considerations during the options appraisal process, and thereafter failed to assess effects upon it in its application materials. Had it ascribed a value that came even close to reflecting either the **"outstanding scenic and historic interest"** for which the Estate **has as a matter of fact been designated (REP1-050; REP1 - 051 [3.3.12])** (recalling that it is one of just c.350 such estates in the country) then it is highly unlikely that it could or would have rationally reached the same conclusion about the appropriateness of adopting a design that uses a substantial proportion of it for construction, and which permanently acquires a portion of the **"landscape incapable of substitutability" (REP1-051, [3.3.4])** for the purpose of its southern roundabout.

5. The Applicant continues to maintain in its final comments that:

    a. the fact that HE were not consulted upon the designation suggests that it cannot have been designated for heritage value;

    b. the designation is irrelevant to the application of the heritage policies contained in NN NPS [5.120] – [5.142];

    c. the buildings do not form part of the value of the Estate for the purposes of the designation; and

    d. there is nothing more that the IHTA designation would require of the heritage and landscape assessments than is presented in the ES.

6. Each of these contentions is addressed in turn below. However, even if all the above contentions were correct in purely heritage terms (which is denied), that still would not overcome the failure of the Applicant to consider the implications of the Scheme for the Estate's designated landscape in its ES. Perhaps even more significantly (given that the Applicant could have cured this defect during the course of the Examination, but elected not to) the absence of any later assessment submitted to the Examination by the Applicant, the ExA does not have the proper information before him to reach a sound conclusion about the significance of the effects of the Scheme on the designated Estate landscape.

7. It is noteworthy that the Applicant has been unable to secure a Statement of Common Ground with Natural England (see **REP9-001**), who it will be recalled raised the need for

the Applicant to consider the implications for the Estate of the IHTA designation in its scoping response in 2019 **(NE Scoping letter, 18 October 2019, section 5 'heritage landscapes').** The Applicant cannot therefore suggest that the statutory consultee for landscape matters is satisfied with its assessment or conclusions as regards the Estate.

8. Dealing in brief with each of the heritage-related contentions above:

    a. **Absence of involvement by Historic England means that the Estate cannot have been designated for its heritage value:** This claim is simply contrary to established fact. Natural England's assessment report confirming the designation in 2011 has been supplied. The section entitled *"Conclusion of Assessment of Quality"* states *"The claim land is considered to be of outstanding scenic **and** historic interest"* (see **REP1-051, [3.3.12]**). That is the view of the lead Government agency tasked with considering the claim for exemption, which has been adopted by HM Treasury, and it is not open to the Applicant to suggest that it does not have the interest ascribed to it.

    b. The same agency specifically distinguished between landscapes generally and 'heritage landscapes', which are within its remit, in its scoping letter (see preceding paragraph for the relevant date).

    c. Moreover, it is clear that Historic England's claim not to have been consulted is inaccurate. The Natural England assessment report expressly states that English Heritage (Historic England's predecessor) was consulted, but did not respond **(REP1-051 at [1.5]).**

    d. **Designation is irrelevant to the application of the heritage policies of the NN NPS:** If, as a matter of fact, the Estate as a whole has been recognised as having outstanding historic interest (as is demonstrated above), it follows that it must be treated as a heritage asset for the purposes of the NN NPS.

    e. Throughout the Examination, the Applicant has focussed on the fact that it is not a 'designated heritage asset', when that has never been suggested (save to the extent that the buildings upon the Estate are designated heritage assets, being subject to the Grade II listing). The Owner's point is that by virtue of the IHTA designation and the reasons for which it was made, the Estate as a whole falls to

be treated as a heritage asset in its own right. In this regard, the ExA is reminded that NN NPS [5.122] expressly states that landscapes may be heritage assets.

f. The Secretary of State is required by [5.123] to consider the impacts on non-designated heritage assets on the basis of clear evidence that the assets have a significance that merit consideration in that process, even though those assets are of lesser value than designated heritage assets. The IHTA designation is plain evidence of the significance that the Government and its lead agency consider the Estate to have in its own right, and not simply as 'setting' for the built assets.

9. **Buildings do not form part of the value of the Estate for the purposes of the designation:** Again, this is simply contrary to established fact. Natural England's 2011 assessment at [3.2.5]-[3.2.10] expressly comments upon *"the contribution of the buildings to the landscape"* and at [3.3.8] notes that the *"national importance"* of the buildings is affirmed by their listing **(REP1-051)**.

10. Natural England also recommended that the taking of the steps set out in the Heritage Management Plan be secured in order to ensure the conservation of in the interest of the asset. The HMP has previously been supplied and the ExA will note the prominent role that preservation of the buildings plays within it. Indeed, Volume 2 of the HMP is entitled (and exclusively concerned with) 'Buildings' **(REP1-049).**

11. The irony of the Applicant's reference to the guidance *'Conditional exemption and Heritage Management Plans: An introduction for owners and their advisers'* in the section of its closing summary which suggests that the buildings are irrelevant to the IHTA designation is not lost on the Owner. At p.8 of that guidance, in the section explaining what 'preservation' means in the context of the conditional exemption, is the following image of the Owner and one of the buildings that has been restored pursuant to the Heritage Management Plan for the Estate.

What does preservation mean in the context of conditional exemption?

Conditional exemption of outstanding heritage property does not necessarily require its preservation as a 'museum piece' but rather the dynamic protection of its significant features. Just as the property that today counts as 'national heritage' reflects the experience and use of centuries, so it will change and adapt as social, environmental and economic circumstances change. The differences for property subject to a Heritage Management Plan are the scale and timing of change and perhaps some changes in management priorities. The effect is to require the owner to think carefully about sudden or fundamental changes, eg in land use or vegetation cover, and about certain applications of technology or intensification, eg to use conservation techniques and materials for repair.

Proposals that preserve outstanding interest and enhance commercial viability. Conversion of the Buttery at Berry Hall to bed and breakfast accommodation

a. **Consideration of the IHTA designation would not require anything more to be presented in terms of environmental information:** As has been set out on many occasions during the Examination, the failure of the Applicant to assess the Estate as an asset in its own right means that it has materially underassessed the impact of the Scheme upon it.

b. There is a clear difference between assessing the impact of a scheme upon the setting to an asset (particularly where limited significance is ascribed to the value of the part of the setting affected by the scheme, as in this case, where limited value was ascribed to the northern fields), and upon the asset itself; or alternatively assessing the impact of the scheme upon the asset but only treating the asset as a very minor part of a much larger whole (in this case, a much larger landscape character area). The ExA is reminded of the vivid description of this issue in the landscape context using the 'football pitches' analogy (see Summary of ISH2 submissions, **REP4-023**).

c. Although this distinction has been lost on the Applicant, it is to be hoped it is not lost on the ExA.

SATISFACTION OF THE TESTS FOR COMPULSORY ACQUISITION

12. The position adopted by the Applicant in its final submissions is that the compelling case for the acquisition of the Owner's land has been made out. The Owner has set out his position on this in other submissions, however, the following points are particularly important to reiterate:

    a. Even on the Applicant's own case, the roundabout could be smaller if the no-NWL scenario arises **(REP6-016 in reply to ExA's Q14.3.1 (p.8))**. As this scheme is not yet committed, there continues to be a material possibility of that scenario arising. The fact that the Applicant has chosen to promote an application without alternative options for the two possible scenarios, means that it is seeking to acquire more land than is actually required if NWL does not go ahead. This alone means it should not be granted the powers of acquisition it seeks in respect of the Owner's land.

    b. Satisfaction of the compelling case test requires the decision maker to balance the public interest in proceeding against both the public and private disadvantages of doing so. The Applicant has failed to assess either:

        i. The implications of the proposal upon the designated Estate in public interest terms (i.e. the implications of the proposal upon the features that resulted in its designation, and the public interest in maintaining those as per the designation);

        ii. The implications of the proposal upon the conditional exemption (i.e. the private financial interest) that the designation confers.

    In the circumstances, the ExA cannot properly carry out that balancing exercise and conclude that it would favour the Applicant as it suggests.

NATURE AND EXTENT OF CONSULTATION

13. In **REP9-039** the Applicant rather unkindly describes the Owner's position on consultation as having *"an air of unreality about [it]"*. This is based on the Applicant's ostensible

position that the Owner has been aware of *"the intention for a roundabout at Wood Lane from October 2017"*.

14. If it is seriously being suggested that there has been an 'intention' on the part of the Applicant to locate a roundabout at Wood Lane since 2017, then it is the Applicant's position which is unreal. Such a suggestion is pure revisionist history. Regardless of whether a plan showing an at grade roundabout had been shown to the Owner at some point in the past, it was not the subject of any actual proposal by the Applicant or consultation until the statutory consultation in February 2020 (and the associated compounds, not until December 2020[1]). The ExA may wish to remind himself of the full history of how/when the Wood Lane junction came to be, as set out in **REP3-043** (pp.18-32; response to Q1.0.6).

15. The Owner's complaint relates not to the admitted fact of the consultation but to its legal adequacy. There is nothing 'unreal' about complaining that consultation has been inadequate where one has been explicitly told that the changes suggested by you cannot be considered because the red line boundary has been fixed.

UNFAIR OR INAPPROPRIATE REMARKS ON BEHALF OF THE APPLICANT

16. There are four unfair or inappropriate remarks made by the Applicant in its submissions that require to be addressed.

    a. **(1) Implied criticism of the Applicant's land agent's failure to respond**: Column G in the table at **REP9-034** suggests that the Applicant's land agent has failed to respond to 'numerous' requests to discuss voluntary acquisition. The Owner's agent and the District Valuer had agreed early in the Examination process to defer discussions while the Owner's proposal for the alteration of the junction location was being explored. After it became apparent that Applicant was not going to change the location, they agreed to resume discussions at a meeting in January

[1] The minute of the section 51 meeting held on 29 June 2020 records that the Applicant informed the Inspectorate at that time that "The Applicant explained that the exact location of the compounds was still to be finalised".

2021. The only period when the Owner's agent did not respond was in fact during a period of paternity leave.

b. **(2) The 'air of unreality' ascribed to the Owner's case on consultation**: This has been addressed above.

c. **(3) The suggestion that the Owner is only concerned with his own property:** This suggestion, also made in **REP9-039,** is wholly unjustified. As has been made plain throughout all of the Owner's submissions, and as was explicitly noted in his WRs, the Owner's particular concern is not with maintaining his private property for his own benefit, but arises out of his sense that he is a custodian of very special Estate, which the Government has seen fit to designate (regardless of the Applicant's view based on the personal views of its consultants) for its outstanding, nationally significant interest. This is quite different from, say, a landowner concerned with preserving the amenity of their land for their personal enjoyment.

d. Indeed, it will be recalled that others concerned with the wider landscape, notably Honingham PC, have actively offered support to his proposals **(REP4-038)**, which would hardly have been likely if they did not have public rather than private benefits.

e. **(4) The suggestion that the Owner's refusal of early access will result in a greater degree of compulsory acquisition than if he had consented:** Allowing early access to complete the diversion works would have compromised the potential delivery of the Owner's preferred alternatives, which have not yet been adjudicated upon by the ExA. Hence allowing early access would have been inconsistent with his in principle position. The Owner did indicate he would allow such early access if the DCO is made notwithstanding his primary case. It is the Applicant that has declined to take up this offer.

NO CONCLUDED AGREEMENT

17. Finally, as at the end of the Examination, it is noted that there remains (as yet) no final agreed Deed of Undertaking between the parties. As such the Applicant's commitments (save to the extent now reflected in the dDCO, i.e. the reduced land take, and the

provision of a crossing in the Merrywood field) are not yet secured. The Owner will update the ExA as to any change in that position.

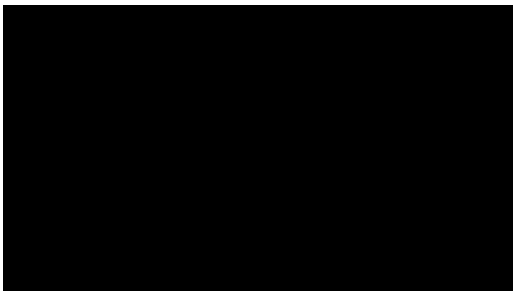
CONCLUSION

18. For all the reasons set out in the totality of the representations made by the Owner, the ExA is respectfully invited to conclude that he has inadequate information before him in relation to the effects of the scheme upon the Estate and recommend that:

    a. the DCO not be made;

    b. the Applicant should not be granted the powers of compulsory acquisition (including temporary possession) sought in respect of the Owner's land.

REBECCA CLUTTEN



12 February 2022