

**Application Number:** WNS/2022/1525/FUL

**Location:** Land North Of Whiston Road, Cogenhoe, Northamptonshire

**Proposal:** Hybrid planning application: Outline planning permission sought for up to two self-custom build dwellings, with access for consideration. Full planning permission sought for restoration works to existing brick lean-to structure.

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**Applicant:** Mr Carl Merrick

**Agent:** **Aitchison Rafferty**

**Case Officer:** Tom Ansell

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**Ward:** Hackleton and Grange Park

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**Reason for Referral:** **Called in by local ward member on basis of app being recommended refusal at delegated level.**

**Committee Date:** 12/01/2023

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## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

**RECOMMENDATION:** REFUSE PERMISSION

### **Proposal**

The application has two elements to it:

- Outline permission is sought for two self/custom-build dwellings located within the plot, with all matters reserved except for access.
- Full permission is sought for restoration works to a brick lean-to structure that appears to belong (or at least is presently associated with 2 Whiston Road).

### **Consultations**

The following consultees have raised **objections** to the application:

- Parish Council

The following consultees have raised **no objections** (conditional or otherwise) to the application:

- Anglian Waters, Environment Agency, Economic Development, Environmental Protection, Local Highway Authority, Archaeology Advisor, Natural England (subject to the Council seeking appropriate mitigation of impact of development on SPA), , Ecology (also confirming that provision of contribution in Unilateral Undertaking sufficient to overcome Natural England's requirements), Lead Local Flood Authority

A number of letters of objection have been received from three separate properties. No letters of support have been received.

## **Conclusion**

The application has been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance as listed in detail at Section 8 of the report.

The key issues arising from the application details are:

- Principle of development (including legal agreement)
- Design, layout and visual impact
- Impact on residential amenity
- Impact on highway safety
- Impact on flood risk
- Impact on heritage
- Impact on ecology
- Impact on Special Protection Area
- Impact on archaeology

The report looks into the key planning issues in detail, and Officers conclude that the proposal should be refused for the reason set out at the end of the report.

## **MAIN REPORT**

### **1. APPLICATION SITE AND LOCALITY**

- 1.1 The application site is a 0.2ha parcel of land located in the open countryside around 250m (as the crow flies) from the very eastern edge of Cogenhoe (Manor Court). The last recorded use of the site was a shoe factory, destroyed by fire in 1909. The remaining evidence of this appears to be a small lean-to structure that adjoins the neighbouring property Armadale House (and which is subject to the 'full' part of this application). The site has not been in any use, active or otherwise, in recent times, although it has been recently cleared by the applicant in relation to this proposal.
- 1.2 To the south-west of the site lie a pair of semi-detached properties (1 and 2 Whiston Road), and to the north-east is a large, attractive dwelling called Manchester House. However, this modest collection of buildings lie quite clearly in open countryside, the agrarian landscape is particularly evident to the south-east where it slopes upwards quite noticeably.

### **2. CONSTRAINTS**

- 2.1. The application site is within open countryside; and lies within 2km of two local wildlife sites. Around half of the site lies within an area noted for having a high risk of surface water flooding, and there are noted archaeological assets in the vicinity. The site is also within the zone of influence of the Upper Nene Valley Gravel Pits Special Protection Area (SPA).
- 2.2. The lean-to brick structure and Manchester House are both considered to be non-designated heritage assets, although the latter has no association with any aspect of the proposed development.

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The development seeks outline permission for two self/custom-build dwellings, with all matters reserved except for access. This is a resubmission of a previously refused scheme S/2020/1193/OUT.

- 3.2. This resubmission also proposes the restoration of the existing brick lean-to structure, which appears to be the last remaining evidence of the shoe factory that burnt down on site in 1909. Full permission is sought for this aspect.

#### **4. RELEVANT PLANNING HISTORY**

- 4.1. The following planning history is considered relevant to the current proposal:
- 4.2. Advice for developing this site was first sought in 2020 via a pre-application submission. This sought advice for three dwellings and associated garage space. This submission did not specify self or custom build housing; and appears to have been seeking advice on a market housing site. The Council provided its policy position based on the limited information available at the time.
- 4.3. Following this, the Council received an outline application reference S/2020/1193/OUT. This was effectively the same scheme as that being considered under this application, minus the 'full' aspect of the restoration of the lean-to. This application was refused by the Council in October 2020, and this refusal was challenged by the applicant at appeal, which was subsequently dismissed. This dismissal was subsequently challenged legally on the basis that the Inspector had incorrectly described the pathway between the site and the village as being 'unlit'. The legal challenge was also subsequently dismissed with the Judge advising that the word 'unlit' was interpreted to mean poorly lit or not well illuminated.
- 4.4. Following this decision, pre-application advice (P/WNS/2022/0017/PRM) was sought on a very similar scheme, the main difference being the submission of more information considered by the applicant to be material to the merits of the case. The pre-application advice was given on 4<sup>th</sup> April 2022, and the Council essentially reinforced the position it held in October 2020, rebutting points made by the agent. Pertinently, one of those points emphasised that the conflict was not 'technical' but fundamental to the Council's housing strategy. The pre-application advice concluded by reiterating the findings of the Planning Inspector's appeal decision when the October 2020 refusal was dismissed:

*'I have found that the appeal scheme would conflict with the Council's development plan. I accept that increasing local housing provision and construction would be benefits. Nevertheless, those benefits would not outweigh the harm to the objectives to protect the open countryside and encourage that residential development is located with ready access to local services. Accordingly, there are no other material considerations which lead me to the conclusion that the Council's development plan should not be followed.'*

#### **5. RELEVANT PLANNING POLICY AND GUIDANCE**

##### **Statutory Duty**

- 5.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

##### **Development Plan**

- 5.2. The Development Plan comprises the West Northamptonshire Joint Core Strategy Local Plan (Part 1) which was formally adopted by the Joint Strategic Planning Committee on 15<sup>th</sup> December 2014 and which provides the strategic planning policy framework for the

District to 2029, the adopted Local Plan (Part 2) and adopted Neighbourhood Plans. The relevant planning policies of the statutory Development Plan are set out below:

West Northamptonshire Joint Core Strategy Local Plan (Part 1) (LPP1)

5.3. The relevant policies of the LPP1 are:

- SA – Presumption in Favour of Sustainable Development
- S1 – Distribution of Development
- S10 – Sustainable Development Principles
- H1 – Housing Density and Mix and Type of Dwellings
- BN2 – Biodiversity
- BN4 – Upper Nene Valley Gravel Pits Special Protection Area
- BN5 – The Historic Environment and Landscape
- R1 – Spatial Strategy for the Rural Areas

Local Plan (Part 2) (LPP2)

5.4. The relevant policies of the LPP2 are:

- SS1 – The Settlement Hierarchy
- SS2 – General Development and Design Principles
- LH1 – Residential Development inside and outside Settlement Confines
- LH5 – Self and Custom-Built Homes
- HE1 – Significance of Heritage Assets
- HE7 – Non-designated Heritage Assets
- NE1 – Upper Nene Valley Gravel Pits Special Protection Area

**Material Considerations**

5.5. Below is a list of the relevant Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Housing Supplementary Planning Document (Adopted 2021)

**6. RESPONSE TO CONSULTATION**

Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council’s website, via the online Planning Register.

<b>Consultee Name</b>	<b>Comment</b>
Anglian Water	<i>‘Having reviewed the development, there is no connection to the Anglian Water sewers, we therefore have no comments.’</i>
Environment Agency	<i>‘The Environment Agency does not wish to make any comments on this application. It does not appear to match any of the criteria on our consultation checklist, ‘When to consult the Environment Agency’.’</i>
Economic Development	<b>No objections</b>
Environmental Protection	<b>No objections</b> subject to the following conditions being imposed:

	<ul style="list-style-type: none"> <li>• Noise (pre-occupation of dwellings)</li> <li>• Construction and Environment Management Plan</li> <li>• Land contamination</li> <li>• EV charging infrastructure requirement</li> </ul>
Local Highway Authority	<i>'In regards to the access detailed on drawing number 6993 01 Rev D the LHA has no objections to raise as the pedestrian and vehicular visibility is achievable and all other dimensions drainage and surfacing meets the required standards. Parking is in line with Northamptonshire Parking Standards.'</i>
Archaeology	<i>'Significant sub-surface archaeological remains are known from the wider landscape east of Cogenhoe but there is little to indicate high archaeological potential within and around the site.'</i>
Cogenhoe & Whiston Parish Council	<b>Object</b> to the development on the basis that it conflicts with local planning policies SS1, LH1 and LH5. Noted that application S/2020/1193/OUT was refused on similar grounds and at appeal too. Potential loss of privacy/overlooking and loss of light to both Manchester House and 2 Whiston Road. Issues with highway safety and speeding on the road due to it not 'feeling' like a 30mph speed limit. History of flooding issues (reference to December 2012 made). History of subsidence problems for adjacent properties, suggesting land is not stable. Potential impact on trees, ecology and the Special Protection Area.
Natural England	<i>'The proposal is within the zone of influence of the Upper Nene Valley Gravel Pits Special Protection Area (SPA), and therefore is expected to contribute to recreational disturbance impacts to the bird populations for which the SPA has been notified.</i>  <i>Mitigation for these impacts is available via a financial contribution towards a strategic mitigation project, set out within the Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document.'</i>
Ecology [in respect of general ecological matters]	<i>'Based on the findings of the report it is unlikely that the development proposed will have a significant impact on protected species or habitats if the mitigation and enhancements identified in Preliminary Ecological Appraisal by ecologylink dated September 2020 are followed fully and successfully.'</i>
Ecology [in respect of mitigation proposed for impact on Special Protection Area]	<i>'Having reviewed the submitted Unilateral Undertaking dated 16th November 2022, the inclusion of a Strategic Access Management and Monitoring Contribution overcomes the comments made by Natural England by ensuring that the impact on the SPA from a net increase in residential units within 3km of the SPA will be sufficiently addressed.'</i>
Lead Local Flood Authority	<i>'As the proposed development of two properties is classed as minor development, we are not able to provide a detailed response. I note the application has been accompanied by a detailed drainage strategy, and welcome that the proposals are set back from the existing culvert and flood risk area, and furthermore that the culvert will be refurbished and replaced.'</i>

## 7. RESPONSE TO PUBLICITY

Below is a summary of the third party and neighbour responses received at the time of writing this report.

7.1. There have been a number of objections from three properties regarding this development, raising the following issues:

- The application is broadly similar to previous applications that were refused and dismissed at appeal, and nothing has changed in the locality since then.
- The site is outside the village confines in open countryside
- Planning history on other sites along Whiston Road (all refusals)
- Concerns over highway safety/speeding (33.6% of vehicles speed along this stretch of road according to a July 2017 speed survey).
- Concerns over flood risk (photos from December 2020 have been submitted to support this) and works to culvert being insufficient to mitigate this
- Concerns over subsidence risk
- Concerns over visual amenity impact on landscape/character of the village, notes that Waendal Walk passes through Cogenhoe
- Concerns over neighbour amenity impacted by any dwellings within the plot
- Self-build housing requirements are being met within the village by other applications (*Officer's note; application referenced has yet to be determined and is within the settlement confines, therefore not being submitted under LH5*)
- Restoring the lean-to structure would not appear to require planning permission (*Officer's comment; planning permission may be sought for development that does not require planning permission, and applications must be appraised accordingly*)

### Agent's response

On 25<sup>th</sup> August 2022 and 25<sup>th</sup> October 2022, the agent provided responses to comments made both by consultees and neighbours. These letters are published on the Council's website for full consideration.

## 8. APPRAISAL

### Principle of Development – Self-build Housing

#### *Legal agreement*

- 8.1. Notwithstanding any of the arguments that will be made below, taking all other matters aside for one moment, in terms of mechanisms, the scheme is now supported by a Unilateral Undertaking, in late draft form, ready for review by a Council solicitor. The UU clearly shows an intent to secure houses of a self/custom-build nature for those with a local connection, and so it is agreed that the scheme before the Council is accompanied by the appropriate mechanism required to help meet a demonstrable need for such housing.
- 8.2. In the event the application is approved against Officer's recommendations, it is essential that this would be subject to the successful completion and signing of this document by the applicant following its review by the Council's legal team.
- 8.3. On the basis of that taking place, the UU would be sufficient in supporting the approval and securing the delivery of the self-build homes. The absence of a suitable mechanism as a reason for refusal 'falls away' from this resubmission.

### *Policy context*

- 8.4. The adopted Development Plan for South Northamptonshire comprises the West Northamptonshire Joint Core Strategy (LPP1) and the Local Plan Part 2 (LPP2).
- 8.5. LPP1 – this Plan was adopted in December 2014. Spatial Objectives 1, 3, 11 and 12 are amongst those that provide direction to the policies of the LPP1. These seek to provide a range of housing in sustainable locations; to reduce the need to travel and promote sustainable travel modes; to ensure all residents have access to a home that they can afford and that meets their needs; and state that housing development will be focused at the most sustainable location of Northampton, supported by Daventry, Towcester and Brackley in their roles as rural service centres. Limited development will take place in the rural areas to provide for local needs and to support local services. Alongside this is the objective to protect and support rural communities to ensure they thrive and remain vital. The LPP1 policies most important for determining the acceptability in principle of development are policies SA, S1, S3, S10 and R1.
- 8.6. LPP2 – this plan was adopted in July 2020 and replaces Saved Policies from the 1997 Local Plan. LPP2 establishes a new settlement hierarchy and settlement confines for the District as well as a range of general development management policies used to determine proposals. Policy SS1 establishes that Croughton is a Secondary Service Village (B), which are settlements that are likely to have a more limited range of services but still provide scope to meet some local needs for housing, employment and service provision. The most important policies in LPP2 for determining the acceptability in principle of development are Policies SS1 and LH1.
- 8.7. Housing Land Supply – a Housing Land Availability Study South Northants Area from May 2022 demonstrates that there is a supply of **6.9 years** of deliverable housing sites, and this supersedes the April 2021 study which found there was a supply of 6.32 years of deliverable sites.
- 8.8. The LPP1 is now over 7 years old. Accordingly, a review of the LPP1 policies was undertaken in accordance with the Town and Country (Local Planning) (England) Regulations 2012 (as amended). This review identified that many of the policies in the LPP1 remain up to date and consistent with the NPPF. It is on that basis that they should continue to be given full weight as part of the development plan for the purposes of decision making. This includes policies S1 and R1 and, importantly, Policy S3 which should continue to be used for the purposes of 5-year housing land supply calculations until such time as the West Northants Strategic Plan is produced.
- 8.9. Policy S1 sets out the general distribution of growth across West Northamptonshire, with development in rural areas being limited with an emphasis on enhancing and maintaining character and vitality, shortening journeys and facilitating access to jobs and services, strengthening rural enterprise and linkages between settlements, and respecting tranquillity.
- 8.10. Policy R1 addresses the specific distribution of rural growth, which is to be informed by settlement hierarchies established in LPP2. In all cases development in the rural areas will be required to provide an appropriate mix, including affordable housing; to not affect open land of particular significance to the form and character of the village; to preserve areas of historic and environmental importance; to protect residents' amenities; to be of an appropriate scale; to promote sustainable development and to be within existing confines unless there are particular or exceptional circumstances. R1 goes on to say that once the requirement for the rural areas has been met development will only be permitted

where specific criteria apply, including the retention of a local facility or service (criteria (ii)) where this is supported by an effective community consultation exercise (criteria (iii)).

- 8.11. The proposed development is not considered by Officers to comply with the requirements of Policy R1 in respect of its location outside the village confines. The application is directly in conflict with R1(g) as there are no exceptional circumstances (as set out by the policy) that would justify development outside the confines in this instance. The development would provide affordable housing and could make appropriate contributions to local infrastructure but is not exceptional in this respect.
- 8.12. In terms of LPP2, such development is also not supported by Policy SS1 for Primary Service Villages and Policy LH1 concerning residential development inside and outside of settlement boundaries. New development should be within the settlement boundary unless otherwise indicated in the Plan.
- 8.13. Policy LH1 refers to policy LH5 within the Plan. This advises that proposals for self and custom-build houses on sites in the open countryside and which are *'immediately adjoining the confines of Rural Service Centres, Primary, Secondary (A and B) and Small Villages'* can be supported where they help to meet demand as demonstrated by Part 1 of the Council's Self and Custom Housebuilder Register and is compliant with other policies of this plan.

#### *Assessment*

- 8.14. The site's compliance with LH5 has been previously appraised and tested at appeal. The proposal relates to two or more custom build sites and therefore must fall within the above requirements LH5(2.).
- 8.15. Cogenhoe is identified as a Secondary Service Village A under Policy SS1 of the Local Plan Part 2 Settlement Hierarchy. Policy LH5 is clear in its requirements of self-build dwellings in that that must immediately adjoin the settlement confines.
- 8.16. The Council adopted a Housing SPD in 2021, and a definition of *'immediately adjoining'* is provided within this:

*'The Council considers that for a site to be considered as 'immediately adjoining' the settlement confines, the site (and any associated scheme) must have a clear, physical and relatable connection with the settlement confines boundary defined in the SNP2LP, thereby appearing as a natural, contextually appropriate extension to it.'*

- 8.17. The relationship of the site with the village is considered a fundamental issue. The site is a considerable distance from the confines and cannot, in any sense whatsoever, be considered to 'immediately adjoin' the confines of Cogenhoe, as explicitly required by LH5. The distance in a straight line between the eastern edge of Cogenhoe and the site is approximately 250m.
- 8.18. The agent has previously argued that this matter is a 'technical conflict' and that, when weight is given to other relevant material considerations, including the under-delivery of self-build plots within the district, this is sufficient to outweigh the harm arising from this technical conflict.
- 8.19. Officers continue to strongly disagree with this position. The LPP2 recognises that meeting its housing requirements is unlikely to be achieved relying on new development being located solely within the confines of existing settlements. However, to avoid permitting new development in unsustainable locations, and to avoid permitting 'isolated'



homes in the open countryside in alignment with the NPPF, the Plan directs specific types of new development to locations immediately adjoining the confines of settlements.

- 8.20. This is critical both in terms of visual amenity - new built form can be sited and laid out to relate well to the existing settlement – and in terms of practicality, to ensure new houses are in locations that remain as close as possible to existing facilities within the settlement.
- 8.21. The agent has disputed the use of the word ‘isolated’ and submits that the ‘infill’ nature of the site, completing a gap between dwellings on either side, prevent this from appearing as ‘isolated’ development. However, this has been covered both by previous Officers *and* the Planning Inspector. It is considered that the site *is* physically remote from the settlement, with its only link being a poorly lit footpath. The presence of other dwellings either side alone does not, in Officer’s view, make the term ‘isolated’ inappropriate; in fact, the cluster of three units (or five, if the two propose are included) would be isolated relative to the settlement.
- 8.22. This is consistent with the Inspector’s conclusion in paragraph 9:

*“I acknowledge that the site is located between existing dwellings situated adjacent to open agricultural fields. Nevertheless, the intervening space between buildings is substantial. Although the proposed dwellings would be close to three existing properties forming a row of five, the area otherwise exhibits high degrees of openness. The development would still be seen in the context of open agricultural fields opposite and further afield which dominate views. On balance, I find that the new dwellings proposed would be physically isolated when considering the site location as a whole and its most dominant characteristics.”*

- 8.23. Pertinently, two dwellings of any character or appearance in this location, characterised strongly by its open and rural surroundings, would serve to harmfully urbanise the site and erode the openness that defines the agrarian landscape surrounding it.
- 8.24. The agent continues to argue that the site constitutes previously developed land (PDL). Again, this has been addressed by previous Officers and also the Inspector. The NPPF defines previously developed land as:

*‘Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and **land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.**’*  
[emphasis added]

- 8.25. The last recorded use of the site was a shoe factory, which was destroyed by a fire in 1909. The remaining evidence of the factory is a small lean-to building which adjoins the neighbouring property Armadale House, 2 Whiston Road and the low brick wall that fronts the site. The renovation of this lean-to building is now part of the proposal. The site has been left to become overgrown until reasonably recently, at which point was cleared seemingly by the applicant as part of the current submissions.

8.26. The Inspector offered the view that *'the suggested use of previously developed land carries limited weight when applying the terms of the Council's development plan and the strategic aims of relevant housing policies'*.

8.27. As there remains no information or evidence that the site has been in any other active use in recent times, the scheme is considered to be new development within the open countryside.

#### *Conclusion*

8.28. In summary, the proposed development is not considered to amount to a technical breach of one criterion of one policy but directly conflicts with the strategic aims of the housing policies and the prescribed criteria set out under Policy LH5. As a result, the development, in principle, is considered unacceptable.

#### *Other material considerations*

##### *Renovation of lean-to brick building*

8.29. The application seeks full permission to replace the existing roof, repair the street-facing window, re-point the brickwork joints, install softwood timber doors to the existing openings, and carry out other works to restore the building to a usable state. It is suggested that securing the renovation of the remaining part of the factory, which is considered to be a non-designated heritage asset, is a benefit of the scheme to which weight should be afforded.

8.30. Officers have no concerns with the principle of renovating and securing the lean-to brick building. The question here is whether the positive weight afforded to this aspect alone is sufficient in outweighing the harm identified as being caused by the direct conflict with the strategic aims of the Council's housing policies and prescribed criteria of LH5.

8.31. Officers have previously questioned whether permission is actually required at all for the works proposed to the lean-to structure. Irrespective of permitted development rights, and what might or might not apply to the building given its use (or lack thereof), it is not statutorily listed, and the works proposed amount to in situ repairs and reinstatement of doors within existing openings. Such works rarely require the benefit of permission, if the building is not protected by a statutory listing or Article 4 direction.

8.32. Permission can be sought for works that do not require permission, and the Council is technically obliged to grant permission. However, the argument that *appears* to be submitted here by the agent is that the permission is essential to the longevity of the non-designated heritage asset; and should be seen as an opportunity to use planning conditions to secure those works. Officers question whether conditions can be reasonably imposed, in line with the relevant tests, on works that do not appear to require permission in the first place.

8.33. However, notwithstanding any of the above, while the modest public benefits of faithfully reinstating the lean-to brick structure are noted, particularly inasmuch as it remains one of the last remaining elements of the shoe factory, such benefits are insufficient in outweighing the significant harm caused by the direct conflict with the Plan.

##### *Nether Heyford appeal decision*

8.34. Amongst arguments surrounding the isolation (or not) of the site relative to the settlement, the significance of the conflict with the requirement for the site to be 'immediately adjoining' and the overall suitability of the site for development, the agent

also emphasises the fact that the Council's present rate of delivery of self and custom-build plots is not meeting the demand established by Part 1 of the register. It is submitted that this should weigh in favour of the Council granting permission.

8.35. This argument (along with others raised by this appeal) has been recently assessed by an Inspector determining an appeal on a *reasonably comparable* site, outside of the confines of Nether Heyford (APP/W2845/W/22/3295911). This site lay beyond the confines of the settlement, had no immediate relationship with the confines or any built form within the settlement, and proposed a dwelling in a location near an existing cluster of buildings, including dwellings.

8.36. The Inspector provides the following conclusions on the weight to be afforded to under-delivery of self and custom-build plots:

*'I acknowledge that demand for self and custom build plots has been less than supply and this proposal would help meet demand. Despite this, the Council has an overall 5-year supply of housing land and I consider that Policy LH5 remains broadly in line with paragraphs 60 and 62 of the National Planning Policy Framework (the Framework), in seeking to deliver self and custom build homes. Consequently, the local policy is not silent on the matter and I do not consider the policy to be out of date, hence Framework paragraph 11d is not engaged.'*

8.37. The agent refers to a recent appeal decision in Greens Norton (APP/Z2830/W/21/3267906) as being *'relevant'*, insomuch as its conclusions on the Council's housing land supply. The Council's interpretation of the Greens Norton appeal is that the Inspector does not conclude with certainty whether there is a shortfall or not. Instead, the figures for the administrative area are provided (as given by the Council at the time and the appellant), and the Inspector advises that *'even if I were to conclude there is a shortfall in the 5-year HLS on the scale suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole'* [emphasis added].

8.38. As such, the Council has a housing supply of 6.9yrs and no mechanisms within the NPPF are therefore triggered. Consistently, with the Nether Heyford appeal Inspector's conclusions, it is submitted that the Plan is not silent on the matter of self and custom build housing, and the policy is not out of date. The Plan is sufficient in permitting the delivery of self-build housing plots *where they are sited in locations that are policy compliant* and where they comply with other policies within the Plan.

8.39. Looking at the Nether Heyford appeal further, the Inspector's conclusions on the separation of the site from the settlement are consistent with the conclusions reached by the Inspector in the previous Cogenhoe appeal:

*'In addition, while the proposed dwelling would be near a couple of other dwellings, it would be physically separate from the nearest settlement, with the canal and a couple of fields located between the site and Nether Heyford. As such, in my planning judgement, it would be an isolated home in the countryside, which Paragraph 80 of the Framework says should be avoided, other than in exceptional circumstances. I have been presented with no substantive evidence which would lead me to conclude that any of the Framework exceptions apply.'*

8.40. While the site near Cogenhoe isn't separated by a canal, in terms of distance and in terms of it being located close to a small cluster of other buildings, it is nearly directly

comparable. This is because the Nether Heyford site was 270m from the settlement confines, and the new dwelling in that instance would have been sited near to a group of existing buildings and dwellings lying adjacent to the canal.

### Conclusion

- 8.41. The site has already been thoroughly appraised in respect of its suitability for self-build or custom-build plots, as part of a previous application and appeal, and then in a subsequent pre-application. Officers have carried out a further appraisal as part of this application, too.
- 8.42. The Council has maintained a consistent position throughout these processes, and given the strength and unambiguity of the Inspector's recent decision (notwithstanding any comments about the footpaths and lighting), as well as a recent appeal decision which reinforces both the Council's and previous Inspector's approach, the Council sees no reason to deviate from its strongly held view that the development represents unsuitable new residential built form in an unsustainable, open countryside location. Such development would harmfully urbanise the site and erode the openness that characterises the surrounding agrarian landscape.
- 8.43. The scheme would fail to comply with a fundamental aspect of policy LH5; and approving it would severely undermine the spatial strategy that intends to ensure housing needs are met in the most sustainable locations available, even when these are required to be outside of the confines of settlements. Such a strategy does not just apply to self and custom-build units, but also entry level exception sites and specialist housing (i.e. for older persons). As such, the harm arising from such a conflict (and the potential harm to the spatial strategy caused by any undermining of it) cannot be outweighed by any material considerations.
- 8.44. The application should therefore be refused, as it is fundamentally unacceptable in principle.

### Design, layout and visual impact

- 8.45. The Council has already expressed the view above that permitting any form of residential scheme in this location, irrespective of architectural style or design approach, will result in harm to the appearance and setting of the site and through urbanisation (i.e. intensification of built form) and erosion of the openness experienced from vantage points around the site, noting its proximity to a generally agrarian landscape.
- 8.46. In terms of the physical design, layout and finish of the dwellings, this matter cannot be fairly appraised at this moment in time, because the application seeks outline permission with all matters reserved (except for access). While indicative street scenes have been provided, the eventual design and appearance of the individual units are unknown at this time.
- 8.47. Therefore, notwithstanding the Council's position on the development of the site in general, it is not reasonable to refuse the application on the design, layout or finish of the dwellings as these matters are simply not known.

### Impact on residential amenity

- 8.48. The application is outline only, with all matters reserved except for access. The indicative site layout plan intends to demonstrate how the site can accommodate two units side-by-side, in a way that avoids causing harm to amenities of 2 Whiston Road and Manchester House. The indicative layout appears to achieve this, with both dwellings

maintaining suitable distances from the neighbouring properties to avoid impacting upon light and outlook.

- 8.49. Notwithstanding this, Officers submit that full control over the impact on amenities would remain with the Council during any subsequent reserved matters application. At this point, when the exact layout, scale and positioning of the dwellings is known, visits to the neighbouring properties could be undertaken to carry out a full appraisal, and if required amendments might be requested to fenestration locations and/or the positioning of elements of the build.
- 8.50. Nonetheless, Officers are satisfied that the site and submitted documents demonstrate that it can facilitate the construction of two dwellings without adversely affecting the amenities of neighbouring dwellings.

#### Impact on Highway Safety

- 8.51. Access is the only matter not reserved for later appraisal. The submitted plans have been provided intending to demonstrate a safe entry point onto Whiston Road for both dwellings.
- 8.52. The Local Highway Authority has no concerns over this proposed access point. Suitable visibility is achievable, both for vehicles and pedestrians, and all other matters relating to access points are also shown or covered on the drawing.
- 8.53. It is noted that concerns raised by third parties include the potential impact on highway safety of having an access point in this location, onto a stretch of road where it is alleged many people speed. One of the third parties highlights a speed survey undertaken in 2017 where it was revealed that 33.6% of vehicles recorded over a two-week period were speeding.
- 8.54. Officers acknowledge that the number of vehicles speeding appears to be quite high. However, for the purposes of determining what visibility splay the new access should be required to comply with, 33.6% is not the majority of vehicles; the speed survey's findings reveal that the majority of vehicles using this road obey the 30mph speed limit.
- 8.55. Consequently, the Council confirms that a 2m x 43m visibility splays is appropriate, and the plans show that this can be provided to the satisfaction of the LHA. Therefore, only limited weight is afforded to the behaviour of road users along this stretch of Whiston Road.

#### Impact on Flood Risk

- 8.56. The Lead Local Flood Authority has provided some observations on the proposal, although it is noted that the scheme falls outside of this consultee's usual scope for providing a response.

*'As the proposed development of two properties is classed as minor development, we are not able to provide a detailed response. I note the application has been accompanied by a detailed drainage strategy, and welcome that the proposals are set back from the existing culvert and flood risk area, and furthermore that the culvert will be refurbished and replaced.'*

- 8.57. Officers previously assessed this matter, bearing in mind that the northern part of the site is at a high risk of surface water flooding. The same Drainage Strategy Report that supported the original application is submitted with this application, largely because the

scheme hasn't changed between the two applications. The conclusion reached by Officers previously:

*'The Officer is satisfied that at this stage of the development process the applicant has addressed the issues surrounding flood risk in accordance with the guidelines. The properties are sited outside of the high-risk zone and proposed to be raised; however, this is not to be considered under this Outline application but will be assessed through the Reserved Matters when full details of layout and design are provided and therefore further details on finished floor levels and suitable mitigation measures can be assessed and conditioned where necessary.'*

8.58. As there are no changes between the submissions, this conclusion carries forwards to this application.

#### Impact on heritage

8.59. Policies HE1 and HE7 of the Part 2 LP guide development affecting non-designated heritage assets. HE1 requires developments affecting the significance of non-designated assets to be supported by a proportionate but thorough and systematic heritage assessment. HE7 requires alterations, additions and changes of use affecting non-designated assets to *'respect the character, appearance and setting of the asset in terms of design, materials, form, scale and massing'*.

8.60. The scheme is not supported by a proportionate, thorough and systematic heritage assessment, despite part of the proposal involving the renovation of the lean-to brick structure which is one of the last remaining elements of the shoe factory that burnt down in 1909. Nonetheless, the agent has emphasised the importance of the permission securing the renovation and reinstatement of the lean-to brick store as a non-designated asset.

8.61. As previously stated, Officers have no concerns or objections to the brick lean-to store being renovated and reinstated faithfully, as shown on the submitted plans. Given the scale of works to the building are modest and simply intend to, effectively, repair it in situ (i.e. the roof, the mortar work for the bricks, installing appropriate doors, repair the existing window), it is questionable whether permission is required at all. On the basis that permission is *unlikely* to be required, requesting a heritage assessment does not seem reasonable.

8.62. Again, as previously concluded, while there are certainly modest public benefits to be achieved here inasmuch as having the lean-to brick structure faithfully reinstated helps keep some of the site's history publicly visible, such benefits are insufficient in outweighing the significant harm caused by the direct conflict with the Plan arising from the proposed scheme for two self-build dwellings.

8.63. Therefore, while the Council can support the works to the brick store in isolation (and indeed, might not be able to resist it anyway due to the works amounting to *de minimis* in situ repair works to a non-listed building), the application fails on account of the wider, more severe conflict that remains with the Plan.

#### Ecology Impact

##### *Legislative context*

8.64. The Conservation of Habitats and Species Regulations 2017 provide for the designation and protection of 'European sites' and 'European protected species' (EPS). Under the

Regulations, competent authorities such as the Council have a general duty to have regard to the EC Habitats Directive and Wild Birds Directive.

- 8.65. In terms of EPS, the Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in the Regulations, or pick, collect, cut, uproot, destroy, or trade in the plants listed therein. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of 3 strict legal derogation tests:
- a. Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
  - b. That there is no satisfactory alternative.
  - c. That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

#### *Policy Context*

- 8.66. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity. Paragraph 175 states that planning authorities should refuse planning permission if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for and should support development whose primary objective is to conserve or enhance biodiversity. Opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 8.67. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on nature conservation.
- 8.68. National Planning Practice Guidance (PPG) states that Local Planning Authorities should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.
- 8.69. Policy NE3 of the Part 2 LP seeks to conserve and wherever possible enhance green infrastructure. Policy NE4 seeks to protect and integrate existing trees and hedgerows wherever possible and requires new planting schemes to use native or similar species and varieties to maximise benefits to the local landscape and wildlife. Policy NE5 requires that proposals aim to conserve and enhance biodiversity and geodiversity in order to provide measurable net gains. Development proposals will not be permitted where they would result in significant harm to biodiversity or geodiversity, including protected species and sites of international, national and local significance, ancient woodland, and species and habitats of principal importance identified in the United Kingdom Post-2010 Biodiversity Framework.

8.70. Policy BN2 of the JCS 2014 states that development that will maintain and enhance existing designations and assets or deliver a net gain in biodiversity will be supported. Development that has the potential to harm sites of ecological importance will be subject to an ecological assessment and required to demonstrate: 1) the methods used to conserve biodiversity in its design and construction and operation 2) how habitat conservation, enhancement and creation can be achieved through linking habitats 3) how designated sites, protected species and priority habitats will be safeguarded. In cases where it can be shown that there is no reasonable alternative to development that is likely to prejudice the integrity of an existing wildlife site or protected habitat appropriate mitigation measures including compensation will be expected in proportion to the asset that will be lost. Where mitigation or compensation cannot be agreed with the relevant authority development will not be permitted.

#### *Assessment*

8.71. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are present on or near the proposed site. , The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains buildings, dense scrub (now cleared), tall ruderal vegetation, scattered trees, hard standing and bare ground. There are hedges on the three of the boundaries. The site had some suitability to support nesting birds.

8.72. In order to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 the LPA must firstly assess whether an offence under the Regulations is likely to be committed. If so, the LPA should then consider whether Natural England would be likely to grant a licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.

8.73. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.

8.74. The application is supported by a Preliminary Ecological Appraisal Review letter which establishes that the site has not changed since its original surveying in 2020. The assessment from 2020 is therefore still valid, and its recommendations, which have been considered by the Ecology Officer, remain applicable.

8.75. Officers are satisfied, on the basis of the advice from the Council's Ecologist, and subject to conditions, that the welfare of any EPS found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged.

#### Impact on Special Protection Area

8.76. Notwithstanding the above ecological appraisal, Natural England provided the following response to the application:

*'The proposal is within the zone of influence of the Upper Nene Valley Gravel Pits Special Protection Area (SPA), and therefore is expected to contribute to recreational disturbance impacts to the bird populations for which the SPA has been notified.*



*Mitigation for these impacts is available via a financial contribution towards a strategic mitigation project, set out within the Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document.*

*Notwithstanding this, Natural England's advice is that this proposed development, and the application of these measures to avoid or reduce the likely harmful effects from it, may need to be formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment in view of the European Site's conservation objectives and in accordance with the Conservation of Habitats & Species Regulations 2017 (as amended).'*

8.77. In response to this, the applicant has, within the draft Unilateral Undertaking, proposed the requested financial contribution towards a strategic mitigation project, as required by the noted Supplementary Planning Document.

8.78. This contribution and mitigation have been reviewed by the Council's Ecology Officer. The following response was offered:

*'Having reviewed the submitted Unilateral Undertaking dated 16th November 2022, the inclusion of a Strategic Access Management and Monitoring Contribution overcomes the comments made by Natural England by ensuring that the impact on the SPA from a net increase in residential units within 3km of the SPA will be sufficiently addressed.'*

8.79. As a result of this, Officers are comfortable confirming that no specific harm will arise to the protected species within the Special Protection Area.

#### Impact on archaeology

8.80. Despite being within an archaeological asset site, the archaeologist has confirmed that, on balance, they do not consider there to be a requirement for any archaeological investigations ahead of any works being undertaken on site.

### **9. FINANCIAL CONSIDERATIONS**

9.1. A development of two dwellings creating approximately 400sqm of new floor space will attract a CIL liability in accordance with the Council's charging schedule. This would be for the 2023 rate (£261.99sqm), so a 400sqm development, before any exemptions are applied, would attract a CIL liability of just over £100,000.

9.2. As the dwellings are both for self/custom-build developers, it is envisaged that each plot would come forwards separately as individual reserved matters applications, and that self-build exemptions would be sought and applied at that time.

9.3. However, at Outline stage, there is no CIL liability, as the total floorspace is unknown.

### **10. PLANNING BALANCE AND CONCLUSION**

10.1. Application S/2020/1193/OUT sought outline consent for two self/custom-build dwellings, served by a single access. The Council appraised that scheme and refused it in October 2020. A Planning Inspector conducted their own, independent appraisal when the Council's decision was challenged, and concurred with the Council's conclusions, dismissing the appeal. The Inspector's decision was legally challenged, due to them describing the path to the village as being 'unlit'. While the pathway was demonstrably

not unlit, this legal challenge was also dismissed. Therefore, the original decision of the Council was upheld.

- 10.2. Before the Council is, essentially, the same scheme in terms of the self/custom-build aspect; two plots proposed in a location significantly distant from the settlement of Cogenhoe. A further element has been added, the renovation and restoration of a brick lean-to structure. The brick lean-to is identified as a non-designated heritage asset given its historic association with a now-destroyed shoe factory, and the (simplified) argument submitted is that positive weight should be afforded to the opportunity the application presents in securing the restoration of this asset.
- 10.3. Taking this new element separately, there are no concerns whatsoever about restoring and renovating the lean-to structure, and indeed the mainly in situ repair work identified and described on the plans could be argued to fall outside the scope of being 'development' and instead *de minimis* maintenance works. Limited positive weight is afforded to securing this building's longevity, as it would not appear that the permission sought is necessary for such renovation works to be carried out.
- 10.4. Notwithstanding this, any positive weight afforded to the retention of the non-designated asset is significantly outweighed by the fundamental conflict the scheme continues to have with the Development Plan. Specifically, the requirements of policy LH5 that stipulate a self-build plot to '*immediately adjoin*' the confines of the relevant settlement, and the definition of '*immediately adjoin*' subsequently provided by the Council's Housing SPD.
- 10.5. A recent appeal decision within the Council's district for a comparable scheme of one self-build plot some distance outside of the settlement confines (APP/W2845/W/22/3295911) reinforces both the Council's original position when refusing S/2020/1193/OUT in October 2020, and the subsequent Inspector's conclusions.
- 10.6. This appeal decision advises that the under supply of self-build plots should be afforded limited weight, due to the Council having a five-year housing supply and relevant, up-to-date policies within the Plan that encourage the delivery of self and custom build plots on suitable sites within the district. No 'tilted balance' is engaged.
- 10.7. The plot is not a suitable site within the district, and the scheme remains, as it was before, unacceptable in principle. The conflict with the Development Plan goes beyond 'technical' as suggested by the agent; and is more fundamental. Permitting the scheme would severely undermine the Plan's strategy of directing certain types of housing to appropriate locations immediately adjoining settlement confines.
- 10.8. This strategy acknowledges housing demands cannot be entirely met within settlement confines; and seeks to ensure new built form outside the confines relates well, visually, to the settlement. Given its relative isolation from the settlement, any housing development on this site would result in an urbanisation of the site and an erosion of the openness that characterises this part of the district due to the surrounding agrarian landscape.
- 10.9. Consequently, notwithstanding the fact that the renovation and repair works to the lean-to are supportable *in isolation*, the Council must remain consistent with the position it established in October 2020, and the position established by an Inspector in the subsequent appeal, in that the development is unacceptable in principle and should be refused.

## **11. RECOMMENDATION**

11.1. Detailed recommendation here and full list of conditions and reasons here

### **RECOMMENDATION – REFUSAL FOR THE REASON SET OUT BELOW**

- 1. The outline application for two self/custom-build plots fails to comply with the Council's policies in the adopted Development Plan which seek to guide certain types of new development to appropriate locations immediately adjoining the confines of settlements. The application site lies significantly outside the settlement confines of Cogenhoe as designated in the adopted South Northamptonshire Local Plan Part 2 (LPP2) and is therefore in open countryside. The site does not immediately adjoin the settlement confines as defined by the Council's adopted Housing SPD, and as such cannot be regarded as complying with policy LH5 of the LPP2. This fundamental conflict with the Plan threatens to undermine its strategy of meeting housing demands in suitable edge-of-settlement locations, and results in harm which is not outweighed by any material considerations. Furthermore, none of the other exceptions listed in Policy LH1 of the South Northamptonshire Local Plan (Part 2) apply to the development. Consequently, the scheme is unacceptable in principle, conflicting with policy R1(g) of the LPP1 and policies LH1 and LH5 of the LPP2, as well as the Council's adopted Housing SPD.**