



Department for
Communities and
Local Government

DLA Piper UK LLP
Princes Exchange
Princes Square
LEEDS
LS1 4BY

Our Ref: APP/E2001/A/14/2219468
and
APP/E2001/E/14/2219469
Your Ref: AJB/AS/357942/1

15 July 2015

Dear Sir or Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 –
SECTION 20
APPEALS BY YORKSHIRE EVERGREEN – THE FIELD STATION, GRIMSTON, HULL
APPLICATION REFS: DC/13/03244/STPLF/STRAT & DC/13/03245/STLBC/STRAT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector who considered written representations and made a site visit on 25 November 2014 concerning your client's appeals against the refusal of East Riding of Yorkshire Council ('the Council') to grant:

full planning permission for the erection of a building following demolition of existing buildings at the Field Station, Grimston, Hull, HU11 4QE in accordance with application ref DC/13/03244/STPLF/STRAT, dated 30 September 2013 (**Appeal A**); and

listed building consent for the same proposal as appeal A, in accordance with application ref DC/13/03245/STLBC/STRAT, also dated 30 September 2013 (**Appeal B**).

2. On 13 June 2014 the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that Appeal A be dismissed and planning permission refused, and that Appeal B be allowed and listed building consent granted subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation on Appeal A and has decided to allow the appeal and grant planning permission. He agrees with the Inspector's recommendation on Appeal B. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. Applications for full award of costs in regard to both appeals were made by the appellant against the Council. These applications are the subject of a separate costs decision letter, also being issued today.

Matters arising after the Inspector completed his report

5. The Secretary of State is in receipt of correspondence listed at Annex A to this letter which was not seen by the Inspector before he completed his report. Some of this correspondence raised new potential material planning considerations and so on 23 April 2015 the Secretary of State wrote to the appellant and the Council to invite any further representations on that correspondence. Both parties emailed to confirm that they did not wish to make any further representations.
6. The other correspondence listed at Annex A, and also some emails from members of the public who object to the proposals, raised issues that have either been considered by the Inspector or which are not material to the decision. The Secretary of State has given careful consideration to all these representations, but as they do not raise new issues that would affect his decision he has not considered it necessary to circulate them to the Council and appellant for comment. Copies of all the correspondence listed in Annex A may be obtained on written request from the address at the bottom of the first page of this letter.

Policy considerations

7. In this case, the development plan comprises the saved policies of both the Joint Structure Plan for Kingston Upon Hull and East Riding of Yorkshire adopted in 2005 (SP) and the Holderness District Wide Local Plan adopted in 1999 (LP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR15 – 19.
8. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (the Framework), the accompanying planning practice guidance, and the English Heritage / Historic England guidance entitled '*The Setting of Heritage Assets*'.
9. The Secretary of State notes that the Council is currently preparing a new East Riding Local Plan. However, as the outcome of the public examination is not yet known, he agrees with the Inspector that limited weight can be attached to the policies contained in the document at this stage. He also notes that the main parties agree that policies set out in a draft Allocations Document submitted for examination at the same time are not relevant (IR14). For these reasons he attributes limited weight to the emerging Plan.

Main issues

Listed buildings

10. In view of the Grade 1 listed status of Grimston Garth, including structures that form part of its curtilage, and the Grade 2* status of the stable block (IR5), in deciding these appeals the Secretary of State has paid special regard to the desirability of preserving these buildings or their setting or any features of special architectural or historic interest which they possess, as required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

11. The Secretary of State agrees with the Inspector's assessment and conclusions on the harm that the proposal would cause to listed heritage assets (IR179 – 194). He agrees that the walled garden forms a curtilage structure of the Grade I house (IR180) which, together with the separately listed stable block, provide key constituents of the house's interest. The Secretary of State agrees that these features should be regarded as contributing to the significance of a unified heritage asset and that harm to one component or its setting would be intrinsically harmful to the significance of the whole (IR181).
12. The Secretary of State further agrees that, notwithstanding the changes to the walled garden, the original form and character of the walled enclosure remain clearly recognisable on the approach to the house from the village, and that, together with the stable block, it provides an important element of the setting of the principal building (IR182).
13. The Secretary of State agrees with the Inspector that the harm to the significance of the listed buildings, in the terms of the Framework, would be less than substantial (IR194), taking into account the lack of direct impact on the principal building and its immediate setting, as well as the reasons given in paragraph 14 below.
14. The Secretary of State considers the overall harm to the setting of listed assets in this case would be of a particularly low order for three reasons. First, ground level views of the proposed building from outside the walled enclosure would be prevented (IR190) and so the harm to the setting of Grimston Garth's curtilage structures would be confined to appreciation of the walled space from within (IR191). Second, it is unlikely that any minor perception of the roof of the proposed building from upper floor turret rooms of Grimston Garth would represent a harmful change to the setting of the principal building (IR192). Third, the harm to the setting of the Stable Block, as viewed from within the walled enclosure, would be minor (IR194).
15. The Secretary of State considers that the Appeal A proposal conflicts with SP Policy ENV6 in regard to protecting the setting of listed buildings, and consequently also conflicts with SP Policy SP5, and conflicts with LP Policies G6 and Env22 on the preservation of the setting of listed buildings. He also considers that there is conflict with LP Policy ENV21 in so far as the Appeal A proposal can be considered to be an alteration or an addition to the listed wall because of its very close proximity.

Living conditions

16. For the reasons at IR195 – 211, the Secretary of State agrees with the Inspector's conclusions that, subject to suitable conditions, the proposal would not give rise to unacceptably adverse effects on residents' living conditions and would comply with the objectives of LP Policy G3 and of national policy guidance (IR212). The relevant conditions are included in Annex B.

Other matters

17. For the reasons given, the Secretary of State agrees with the Inspector's assessment of the various matters at IR213 – 220, including the local economic benefits of the Appeal A proposal identified at IR217. The Secretary of State gives these public benefits moderate weight.

Conditions

18. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions at IR226 – 231. He agrees that the conditions in Annexes 1 and 2 of the

Inspector's report, and which are reproduced in Annexes B and C of this letter, accord with the requirements of paragraph 206 in the Framework and the associated guidance (IR226).

Overall balance and conclusion

Appeal A

19. The Secretary of State has given careful consideration to the Inspector's overall conclusions at IR221 – 225. He has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
20. The Secretary of State considers that the Appeal A proposal broadly complies with development plan policies which support local economic development, notably SP Policy EC7, but that there is some conflict with the policies on heritage assets. While he recognises that the development plan pulls in different directions in relation to this proposal, the Secretary of State concludes that the proposal is in compliance with the development plan overall.
21. In accordance with Framework paragraph 215, the Secretary of State has considered the degree of consistency between the relevant policies in the existing plans and the Framework. The Secretary of State notes that the development plan policies that seek to preserve the setting of listed buildings are not fully consistent with Framework paragraph 134, as this states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. That weighing of harm against benefits is a consideration which, with the exception of LP Policy ENV21, is absent from the development plan policies identified at paragraph 15 above. Nevertheless the Secretary of State has given considerable weight to all those policies because they seek to protect the historic environment.
22. The emerging new East Riding Local Plan is a material consideration which the Secretary of State has taken into account with reference to paragraph 216 of the Framework. The proposal broadly accords with Policy EC1 in the emerging Plan. Policy ENV3 in the emerging Plan supports the sustainable use of heritage assets and requires any harm to the significance of a heritage asset to be outweighed by public benefits (IR19 refers), and is therefore also relevant. However, for the reasons at paragraph 9 above, he attributes limited weight to relevant policies in the emerging Plan.
23. The Secretary of State gives considerable importance to the desirability of preserving the setting of the listed buildings. However, in view of his conclusion that in this case the harm to the setting of heritage assets arising from the Appeal A proposal would be of a particularly low order, he attaches limited weight to that harm.
24. The Secretary of State agrees with the Inspector that, subject to suitable control by planning conditions, the proposal would not adversely affect the living conditions of nearby residents and would not have an unacceptable impact on highway safety. These are therefore neutral considerations that do not weigh in the planning balance.
25. In line with paragraph 134 of the Framework the Secretary of State has weighed the less than substantial harm to heritage assets against the public benefits of the proposal set out at paragraph 17 above. He considers that the public benefits of the

proposal clearly outweigh the low order of harm to heritage assets and consequently he concludes that planning permission should be granted.

Appeal B

26. The Secretary of State agrees with the Inspector that listed building consent should be granted for the reasons at IR225, subject to conditions.

Formal decision

27. Accordingly, for the reasons given above, the Secretary of State:

disagrees with the Inspector's recommendation on Appeal A and hereby allows this appeal and **grants** full planning permission for the erection of a building following demolition of existing buildings at the Field Station, Grimston, Hull, HU11 4QE in accordance with application ref DC/13/03244/STPLF/STRAT, dated 30 September 2013, subject to the conditions in Annex B of this letter.

agrees with the Inspector's recommendation on Appeal B and hereby allows this appeal and **grants** listed building consent for the erection of a building following demolition of existing buildings at the Field Station, Grimston, Hull, HU11 4QE in accordance with application ref DC/13/03245/STLBC/STRAT, also dated 30 September 2013, subject to the conditions in Annex C of this letter.

28. An applicant for any consent, agreement or approval required by a condition of this permission and listed building consent, or for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
29. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decisions may be challenged by making an application to the High Court within six weeks from the date of this letter.
31. A copy of this letter has been sent to East Riding of Yorkshire Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

An official of the Department of Communities and Local Government

Authorised by the Secretary of State to sign in that behalf

Annex A

Representations received by the Secretary of State which the Inspector did not see

From:

Chair of Medical Research Charities: Letter dated 29 October 2014

University of Leicester: Letter received 18 November 2014

The Physiological Society: Letter dated 24 November 2014

Former Chief Executive of the Medical Research Council: Letter received 4 January 2015

Run Free Alliance: Letter dated 24 January 2015

Cruelty Free International (formerly the British Union for the Abolition of Vivisection: Letter dated 28 January 2015 with appendices. (Attached to this was an earlier letter dated 23 July 2014 with appendices, which the Inspector had seen before completing his report.) Also a letter dated 1 June, with appendices.

The Minister for Life Sciences: Letter dated 2 February 2015

Annex B

Schedule of conditions imposed on full planning permission for the erection of a building following demolition of existing buildings at the Field Station, Grimston, Hull, HU11 4QE in accordance with application ref DC/13/03244/STPLF/STRAT, dated 30 September 2013 (Appeal A, ref APP/E2001/A/14/2219468)

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location plan (Drawing Number YE 10 2012 3 Rev 0)
 - Existing and Proposed Site Plan (Drawing Number YE 10 2012 2 Rev 3)
 - Proposed Plans, Elevations and Sections (Drawing Number YE 10 2012 4 Rev 5)
 - Wall Elevations (Drawing Number YE 10 2012 10 Rev 0)
3. No development shall take place until details of the materials to be used in the construction of the development hereby permitted, including colour finish, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
4. No development shall take place until details of the means of dealing with foul and surface water drainage and wash waters arising from the development have been submitted to and approved in writing by the local planning authority. The drainage works shall be carried in accordance with the approved details prior to the commencement of use of the building hereby permitted.
5. No development shall take place until details of an odour/waste management scheme have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
6. No development shall take place until a scheme of measures to control noise emanating from the building hereby permitted, including any noise from mechanical ventilation, has been submitted to and approved in writing by the local planning authority. The noise control measures shall be carried in accordance with the approved scheme prior to the commencement of use of the building hereby permitted, and thereafter shall be kept in effect at all times.
7. Details of any external plant and machinery associated with the development hereby permitted, together with details of any noise control measures associated with the plant and machinery shall be submitted to and approved in writing by the local planning authority before its installation. The development shall not be brought into use until external plant and machinery is installed. The plant and machinery shall thereafter be operated in accordance with the approved details and noise control measures.
8. Details of any external lighting associated with the development hereby permitted, together with measures to minimise light pollution, shall be submitted to and approved in writing by the local planning authority before its installation. Any lighting shall

thereafter be installed in accordance with the approved details and measures to reduce light pollution.

9. The development shall not commence until a scheme showing the location of any external plant including generators and groundwater pumps to be used during the demolition and construction phases has been submitted to and approved in writing by the local planning authority. The scheme shall address the sound output of external plant, and any measures to be taken to prevent noise and vibration problems to neighbouring residential properties. The approved scheme shall thereafter be implemented in accordance with the approved details.
10. During the demolition phase of the development hereby permitted, no deliveries shall be taken at or despatched from the site and no loading or unloading shall take place outside the hours of 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturday, nor at any time on Sundays and Bank Holidays.
11. During the construction phase of the development hereby permitted, no deliveries shall be taken at or despatched from the site and no loading or unloading shall take place outside the hours of 07:00 to 19:00 Monday to Friday, 07:00 to 13:00 on Saturday, nor at any time on Sundays and Bank Holidays.
12. During the demolition phase of the development hereby permitted, no demolition work shall take place outside the hours of 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturday, nor at any time on Sundays and Bank Holidays.
13. During the construction phase of the development hereby permitted, no construction work shall take place outside the hours of 07:00 to 19:00 Monday to Friday, 08:00 to 13:00 on Saturday, nor at any time on Sundays and Bank Holidays.
14. No development shall take place, including any works of demolition, until a Construction and Construction Traffic Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - a. delivery times for construction materials;
 - b. traffic calming and/or safety measures on the public highway in Grimston Lane;
 - c. temporary directional signage;
 - d. hours of construction;
 - e. the parking of vehicles of site operatives and visitors;
 - f. loading and unloading of plant and materials;
 - g. storage of plant and materials used in constructing the development;
 - h. wheel washing facilities;
 - i. measures to control the emission of dust and dirt during construction;
 - j. a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - k. surveys of Grimston Road and Grimston Lane before and after construction;

- I. a methodology for reporting on and repairing any damage to the public highway as a consequence of the construction operations.
15. No development shall commence until a scheme for the provision of new passing places have been submitted to and approved in writing by the local planning authority and the approved passing places have been constructed and completed in accordance with the approved plans.
16. Prior to the commencement of the development hereby permitted, a travel plan shall be submitted to and approved in writing by the local planning authority. The submitted travel plan shall include provision for the appointment of a travel plan coordinator; measures to reduce the number of single occupancy car journeys; a timetable and targets for reducing the number of single occupancy car journeys; and measures for monitoring the effectiveness of the travel plan, including annual monitoring reports submitted to the local planning authority. The approved travel plan shall thereafter be carried out in accordance with the approved details.
17. Two bat boxes (such as Schwegler 2F, 1FQ or 1FW bat boxes or direct woodcrete equivalents) and two artificial nests for small birds (such as Schwegler 1FB bird box, 2H robin box, Schwegler bird houses or sparrow terraces, or direct woodcrete equivalents) shall be erected on the site in accordance with the manufacturers' recommendations prior to first use of the building hereby permitted and shall be retained thereafter.
18. No outdoor runs for dogs shall be created for use in conjunction with the building hereby permitted.

Annex C

Schedule of conditions imposed on listed building consent relating to the erection of a building following demolition of existing buildings at the Field Station, Grimston, Hull, HU11 4QE, in accordance with application ref DC/13/03245/STLBC/STRAT, dated 30 September 2013 (Appeal B, ref APP/E2001/E/14/2219469).

1. The works hereby authorised shall begin not later than three years from the date of this decision.
2. The works hereby authorised shall be carried out in accordance with the following approved plans:
 - Site Location plan (Drawing Number YE 10 2012 3 Rev 0)
 - Existing and Proposed Site Plan (Drawing Number YE 10 2012 2 Rev 3)
3. No works shall take place until a method statement and remediation strategy have been submitted to and approved in writing by the local planning authority. The method statement shall outline how buildings and plaster proposed for demolition/removal will be detached from the listed wall. The remediation strategy shall show how the wall and ground surface will be made good following the removal of these existing features, and shall include details of materials, construction techniques and finishes. The works shall be carried out in accordance with the approved method statement and remediation strategy.

Report to the Secretary of State for Communities and Local Government

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

Date: 26 February 2015

**TOWN AND COUNTRY PLANNING ACT 1990
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990**

EAST RIDING OF YORKSHIRE COUNCIL

THE FIELD STATION, GRIMSTON, HULL HU 11 4QE

APPEALS BY YORKSHIRE EVERGREEN

Site visit made on 25 November 2014

The Field Station, Grimston, Hull HU11 4QE

File Refs: APP/E2001/A/14/2219468; APP/E2001/E/14/2219469

Appeal A: APP/E2001/A/14/2219468
The Field Station, Grimston, Hull HU11 4QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Yorkshire Evergreen against the decision of East Riding of Yorkshire Council.
- The application Ref DC/13/03244/STPLF/STRAT, dated 30 September 2013, was refused by notice dated 2 December 2013.
- The development proposed is described as erection of a building following demolition of existing buildings.

Summary of Recommendation: That the appeal be dismissed.

Appeal B: APP/E2001/E/14/2219469
The Field Station, Grimston, Hull HU11 4QE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Yorkshire Evergreen against the decision of East Riding of Yorkshire Council.
- The application Ref DC/13/03245/STLBC/STRAT, dated 30 September 2013, was refused by notice dated 3 December 2013.
- The works proposed are described as erection of a building following demolition of existing buildings.

Summary of Recommendation: That the appeal be allowed and listed building consent granted subject to conditions.

Procedural Matters

1. The applications for planning permission and listed building consent that have given rise to these appeals were refused by the East Riding of Yorkshire Council ('the Council') on 2 and 3 December 2013 respectively. The appeals against refusal were submitted on 27 May 2014.
2. The appeals were recovered for determination by the Secretary of State by letter dated 13 June 2014, because they involve proposals giving rise to substantial regional or national controversy.
3. An application for costs has been made by the appellants against the Council. That application is the subject of a separate Report.
4. I carried out a site visit on 25 November 2014, accompanied by representatives of the appellants and the Council. As well as inspecting the appeal site itself and its surroundings and access route, I carried out visits at the request of residents to see three houses near the site.

The Site and Surroundings

5. The appeal site lies some 450m from the North Sea coast, close to the small remote hamlet of Grimston. The site principally comprises part of the former walled garden of Grimston Garth, a large house dating from the late C18

designed by the noted architect John Carr. Grimston Garth is listed Grade I, and the walled garden forms part of the curtilage of the listed building. The house's stable block, one wing of which has been converted to residential use, also dates from the late C18 and is separately listed Grade II*. Between the walled garden and the stable block, which stand some 50m to the north of Grimston Garth, is a currently vacant dwelling known as Selbourne House.

6. The walled garden, Selbourne House and other land and buildings on the approach to the site were previously sold off from the main house and are now under the control of the appellants. Grimston Garth, the stable block and extensive parkland remain in separate ownership but share the common access road. The access opens off the end of the narrow main street of Grimston village, some 200m from the main body of the appeal site. The street is lined on both sides by a small number of former estate cottages and detached houses. The village is reached by the narrow Grimston Road and Grimston Lane, which pass through flat agricultural land for some 1.6km from the B1242 coastal route.
7. The site has been in use for many years as an animal breeding, rearing and research establishment. The majority of the enterprise is carried on within the former walled garden, which forms a square enclosure some 64m by 64m in extent. The brick walls are approximately 3.5m high and are topped by wire fencing. Much of the space within the walls is occupied by single storey buildings that house the animals and other facilities, separated by paved walkways. These buildings are generally of late C20 date and of functional character and construction. There is also a rectangular area of lawn within the south-western quadrant of the enclosure, next to the main walkway. A further range of buildings is located in a Victorian extension to the original walled garden to the south, closer to Grimston Garth but screened from it by a belt of woodland. Staff and visitor car parks enclosed by palisade fencing are located outside the walls to the west and north, monitored by a security cabin. There is a further palisaded compound of buildings to the north.
8. The site currently employs 39 people but has in the past employed up to 90 staff. The use of the site is regulated by the Home Office.

The Proposals

9. Planning permission is sought in Appeal A to allow demolition of several existing buildings within the walled garden and the erection of a larger single new building. The buildings to be demolished are said to date from the 1970s. They comprise a row of kennels built directly against the original southern wall of the former garden, a line of small single-storey storage/service buildings adjoining the western wall, and a building made up of a double row of kennels, one end of which is terminated by a taller flat-roofed element and the other end is built against the eastern wall. The total area of buildings to be demolished is 612sqm.
10. The proposed building would primarily be used for the breeding and holding of dogs, but could also be adapted for the breeding of ferrets. The building would occupy the footprint of the double kennel block and the current lawn area. It would comprise a single-storey steel portal frame structure with an exterior finish of profiled metal cladding and a shallow pitched roof. External openings would be limited to a small number of personnel doors and one roller shutter

door. Daylight would be provided by rooflights integral to the roof structure. The building would measure some 60m by 20m (1197sqm in area) and would be 3.6m high at each of its twin ridges and just over 3.2m high at its long eaves. It would be separated from the original walls on three sides by a 2.1m clear gap.

11. The application for listed building consent was made on the same application form as that for planning permission and the proposed works are not separately described. The report on the application to the Council's Planning Committee made clear that listed building consent is required only for the demolition of structures physically attached to the original brick walls, which as a curtilage structure form part of the listed building.¹ The erection of the new building as a free-standing structure within the curtilage does not require listed building consent. I have assessed the appeals on this basis.
12. The applications were supported by: a Design, Access, Planning and Heritage Statement²; a Noise Impact Analysis³; an Analysis of traffic flow⁴; a Flood Risk Indicator⁵. These were supplemented during consideration of the applications by further brief statements in respect of: Objections on Moral and Ethical Grounds⁶; Tourism⁷; Concerns expressed by Residents⁸; Points Raised in a Petition⁹; Highway Safety and Traffic Generation¹⁰; Outdoor Runs¹¹.

Planning Policy

Development plan

13. The development plan for the area currently consists of the saved policies of Joint Structure Plan for Kingston Upon Hull and East Riding of Yorkshire adopted in 2005 ('JSP') and the Holderness District Wide Local Plan adopted in 1999 ('LP').
14. Work has been carried out on a new East Riding Local Plan, with a Strategy Document ('SD') submitted for examination in April 2014. As the outcome of the examination is not yet known and the scale and nature of any objections have not been explained, limited weight can be attached to the policies contained in the Document at this stage. The main parties agree that policies set out in a draft Allocations Document submitted for examination at the same time are not relevant.
15. Policy EC7 of the JSP seeks to direct employment development to identified towns, but supports such development within rural areas where the scale of development and the level of traffic generation is appropriate to the character and appearance of the surrounding area. Similar support for appropriately

¹ Application No. 13/03245/STLBC: Report to Planning Committee 13 November 2013, para 1.6

² Appeal Bundle Appendix 6

³ Appeal Bundle Appendix 7

⁴ Appeal Bundle Appendix 8

⁵ Appeal Bundle Appendix 9

⁶ Appeal Bundle Appendix 10

⁷ Appeal Bundle Appendix 11

⁸ Appeal Bundle Appendix 12

⁹ Appeal Bundle Appendix 13

¹⁰ Appeal Bundle Appendix 14

¹¹ Appeal Bundle Appendix 15

scaled and sited rural development is expressed by emerging Policies S4 and EC1 of the SD.

16. Policy SP5 of the JSP seeks a high quality of design in new development, which should harness local heritage and landscape distinctiveness and integrate visually and physically with its surroundings. Policy ENV6 requires that the setting, character or appearance of listed buildings should be protected and, where appropriate, enhanced.
17. LP Policy G1 indicates that the Council will provide opportunities for sustainable economic development. Policy G2 requires that development will be located where services, facilities and a transport network exist or can be provided efficiently and with minimum environmental impact. Policy G3 states that development must take full account of the need to protect the environment, safeguard and improve the quality of life of residents, and protect the main environmental assets of the area, including listed buildings. Policy G6 indicates that development which is in accordance with other policies of the LP will be permitted if it is in sympathy with the appearance and character of the local environment and is appropriate in scale, mass, design, materials, layout and siting and in relation to adjoining buildings and spaces, and if it safeguards, amongst other things, heritage features.
18. The appeal site lies within the Undeveloped Coastal Zone as defined by the LP, within which Policies ENV5 and ENV8 aim to restrict development to minimise coastal erosion and flooding. Policy ENV8 states that within this zone, further than 30m from the cliff edge, extensions to or conversions of existing buildings may be permitted. Beyond 200m from the eroding cliff, some development may be permitted if the developer is able to demonstrate that a location beyond the coastal zone would be inappropriate.
19. LP Policy ENV21 states that permission will not be given for any alteration or addition that would adversely affect the special architectural or historic character of listed buildings, unless it can be demonstrated that every effort has been made to avoid such damage and there are very special circumstances that, on balance, justify development. Policy ENV22 seeks to preserve and enhance the setting of listed buildings by appropriate control of new development. Emerging SD Policy ENV3 supports the sustainable use of 'heritage assets' and requires any harm to the significance of a heritage asset to be outweighed by public benefits.

Law and national policy

20. In considering proposed development affecting a listed building, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to have special regard to the desirability of preserving the listed building or its setting.
21. The recent judgment of the Court of Appeal in the case of *Barnwell Manor*¹² has re-affirmed the importance of this requirement. Application of the judgment to the circumstances of an individual proposal means that 'considerable and

¹² *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, National Trust, The Secretary of State for Communities and Local Government* [2014] EWCA Civ 137

- importance and weight' must be given to the desirability of preservation in any assessment of the merits of the proposal. There would be a 'strong presumption' against the grant of planning permission for any development that would conflict with the objective of preserving the listed building or its setting.
22. A similarly worded duty under Section 16 of the Act applies to the consideration of proposals for listed building consent.
 23. Government policy guidance set out in the National Planning Policy Framework ('NPPF') confirms the great weight in favour of the conservation of 'designated heritage assets', such as listed buildings. The more important the asset, the greater the weight should be. The particular significance of any heritage asset likely to be affected by a development proposal should be identified and assessed. Any harm should require clear and convincing justification. The conservation of heritage assets in a manner appropriate to their significance is a core planning principle of the NPPF.
 24. The achievement of high quality design and a good standard of amenity for existing and future occupants of land and buildings is another core principle of the NPPF. Significant adverse impacts on health and quality of life from noise as a result of new development should be avoided and other adverse impacts should be mitigated and reduced.
 25. The NPPF confirms the Government's commitment to securing sustainable economic growth, including support for expansion of existing business sectors. Economic growth in rural areas is supported, with endorsement of the sustainable expansion of all types of business in rural areas through well designed new buildings.
 26. Further guidance on the application of policy is to be found in the national Planning Practice Guidance ('PPG').

Planning History

27. Applications for planning permission (Ref 11/01324/STPLF) and listed building consent (Ref 11/01325/STLBC) were made in 2011 for the demolition of existing buildings and the erection of four new buildings, primarily to be used for animal breeding. Listed building consent was granted by the Council, subject to conditions, for the works which included the demolition of the buildings now proposed in the current appeals as well as the temporary removal of part of the original garden wall. Three of the proposed new buildings would have occupied much of the space within the walled garden, with the fourth outside the wall to the south. Planning permission was refused on grounds of inadequate information about highway safety impacts of construction and delivery traffic. The subsequent appeal (Ref APP/E2001/A/11/2156819) was recovered by the Secretary of State for his own determination and was dismissed on 25 January 2012, because of adverse effect on the setting of the listed buildings and unacceptable impact on the living conditions of nearby residential occupiers due to noise.
28. Planning permission (Ref 01/06874/PLF) was granted by the Council in 2002 for the erection of a building housing 17 kennels, to be located on the lawned area within the walled garden. The appellants' view that implementation of this permission was lawfully commenced is disputed by the Council.

29. Planning permission (Ref 13/03289/STPLF) was granted by the Council in January 2014 for the erection of electrified security wires and security camera, the retention of an existing outbuilding, perimeter fencing, fixtures, fittings and other security measures and the removal of existing razor wires and security cameras which are within the curtilage of a Grade I listed building. An associated application for listed building consent (Ref 13/03290/STLBC) was also approved.

Other Agreed Facts

30. A draft Statement of Common Ground¹³ ('SoCG') between the appellants and the Council has been provided by the appellants. Whilst this has not been signed by the parties, there appears to be no significant dispute over its accuracy as a statement of areas of agreement and ongoing objection.
31. Both applications were recommended by Council officers for approval subject to conditions.
32. Planning permission was refused for one reason:
The proposed development will have an unacceptable impact upon local amenity and the quality of life for local residents. For this reason the application fails to comply with Policy G3 of the Holderness District Wide Local Plan.
33. Listed building consent was refused for one reason:
Having special regard to the desirability of preserving the listed wall and its setting and the setting of Grimston Garth the Council considers the proposed development will have an unacceptable impact upon those heritage assets as the proposed building is not in keeping with the rest of the site. For this reason the application is considered to conflict with policies ENV22 and G6 of the Holderness District Wide Local Plan.
34. The draft SoCG includes two sets of conditions suggested for imposition in the event of the appeals being allowed. Two conditions, in relation to the provision of outdoor runs and of highway passing places, remain in dispute. The merits of the proposed conditions are considered later in this report.

The Case for the Appellants¹⁴

35. The main issue arising in the appeal against the refusal of planning permission is the impact of the proposal on the amenity of dwellings nearby, due to noise. A secondary issue concerns the ability of the local highway to accommodate construction traffic and specifically whether improvements are necessary as a consequence of granting planning permission. There is no disagreement with the Council that if improvements are necessary they are capable of being secured by condition. This secondary issue does not, therefore, justify the refusal of planning permission.
36. The issue raised by the Council in the appeal against the refusal of listed building consent is the impact of the proposal on the setting of a listed garden wall.

¹³ Appellants' Statement of Case Appendix 1

¹⁴ Taken mainly from Appellants' Statement of Case

37. Since refusal, the appellants have continued to liaise with Council officers through dialogue and correspondence on the detail and scope of matters in dispute and have sought to gain clarification of the Council's concerns. The Council's Planning Committee has clarified that the amenity issue referred to in the reason for refusal was that of noise nuisance in relation to its consideration of the requirement for the provision of outside runs for dogs. Consequently the sole issue in respect of the planning appeal concerns outside runs for dogs.
38. The Secretary of State's decision on the previous appeal (Ref APP/E2001/A/11/2156819)¹⁵ is a material consideration of significant weight because there should be consistency in administrative decision making. The Council has previously held materially similar, if not more intrusive, development to have an acceptable impact on the listed building.

Policy

39. It is agreed with the Council that the appeals raise no conflict with LP Policies ENV8 and ENV5 in respect of the Undeveloped Coastal Zone. The previous Inspector reached a similar conclusion and that analysis was accepted by the Secretary of State in his Decision Letter ('DL')¹⁶.
40. LP Policies G1 and G2 support sustainable economic development within the plan area. The previous Inspector took the view that the remoteness of the appeal site counted against the development meeting sustainability criteria, including reducing the need to travel. But as the proposals relate to an existing business and developed site, sustainability considerations needed to be weighed against the economic benefits of job retention and support for economic development. The Secretary of State agreed with the Inspector that the degree of conflict with policy in this regard would not compromise the Government's key sustainable development principles. The proposal benefits from the presumption in favour of sustainable development arising from paragraph 14 of the NPPF and this is the view of the Secretary of State.
41. Subject to traffic generation and the heritage impact of the development being acceptable, the appeal proposals accord with the support for economic growth within JSP Policy EC7. Strong support for such sustainable rural economic growth is derived from the NPPF.
42. The SoCG identifies policies relevant to the assessment of the proposal against the requirement to preserve and enhance the setting of heritage assets. The guidance produced by English Heritage *The Setting of Heritage Assets* (October 2011) does not direct there should be no change but that change should be managed. Decisions relating to the impact of development on the setting of heritage assets need to be based on the nature, extent and level of significance of the heritage asset and taking account of the benefit of the proposed development.
43. The SoCG also identifies policies which are relevant to the protection of residential amenity.

¹⁵ Appellants' Statement of Case Appendix 5

¹⁶ DL para 13

Noise

44. The sole issue raised by the Council is the potential harm to residential amenity. The Council's only potential cause for concern is derived from the provision of any outside runs. The Council agrees that in the absence of outside runs, there will not be any additional noise generated by the proposed development that would affect the amenity of nearby houses. The appellants have been clear and consistent throughout the application process that the proposed development does not include outside runs. This is plain from the submitted plans and has been repeatedly pointed out to the Council. Accordingly, the reason for refusal is wholly without foundation.
45. A Noise Impact Analysis¹⁷, submitted with the applications, was commissioned to predict the change in external sound levels at nearby properties due to the proposed development, namely noise caused by barking dogs that would be housed in the new proposed building. The predicted sound levels used in the Noise Impact Analysis are based on a recording of 200 adult beagles in an existing building on the site. The Committee Report confirms that the Council's Public Protection Team is satisfied that the report suitably analyses anticipated noise output and that the appropriate methodology for assessment of noise from this development is to apply the BS4142 standard. The Noise Impact Analysis concludes that the worst case anticipated level of noise at the nearest residential property is such that there is a "positive indication that complaints are unlikely". There is, therefore, no conflict with any national and/or local planning policy.
46. The Committee Report and SoCG confirm that the protection of the amenity of residents during the construction phase could be controlled by conditions that restrict the hours within which construction and deliveries can take place. The Inspector in the previous appeal similarly accepted that the construction period would be relatively short-lived and its impacts could be adequately managed and controlled.
47. A Revised Noise Impact Analysis¹⁸, produced in support of the appeals, adds information and updates the application report in line with a discussion and subsequent agreement with the Council's Environmental Health Officer ('EHO'). The Revised Noise Impact Analysis states that at full capacity the proposed building would house 200 adult dogs together with up to 180 puppies. It also assesses the anticipated noise associated with external fixed plant and any potential impact of road traffic noise generated by the operation of the proposed development.
48. The overall conclusion of the updated noise assessment in respect of noise from barking dogs remains unchanged and demonstrates that this is within acceptable limits based on a BS4142 assessment. There remains no conflict with any national and/or local planning policy based on an agreed objective assessment. The SoCG records that the Council's only criticism of the noise impact assessment is that it does not address a scenario where outside runs for dogs are provided. It is unreasonable for the Council to require the noise assessment to take account of a matter which does not form part of the

¹⁷ Appeal Bundle Appendix 7

¹⁸ Appellants' Statement of Case Appendix 6

proposal, and never has, and in any event is capable of being controlled by a planning condition.

49. An assessment of intended external fixed plant, based on a methodology agreed with the EHO, concludes that on a worst case scenario the sound levels with appropriate attenuators fitted would be at least 9 dB below the daytime background and at least 2 dB below the night time background at any noise sensitive premises. This demonstrates that appropriate external fixed plant could be operated within acceptable levels. As part of proposed conditions, details of any external construction plant and equipment would be required to be approved by the Council prior to installation. Such details would address the design and method of construction and installation, the specific location of the plant and would determine whether attenuators need to be fitted. The Revised Noise Impact Analysis confirms that it is feasible to locate the fixed plant in locations that would not make it visible from outside of the wall.
50. In respect of road traffic noise associated with the operation of the proposed development, the updated noise assessment concludes that there will be no quantifiable change in noise assessed against existing noise interference given the low frequency of additional trips.
51. The previous appeal decision considered the issue of noise. The Inspector noted that whilst no outside runs were proposed, no noise assessment had been carried out. In the absence of an assessment he was not in a position to conclude that the proposal was acceptable or that any potential harm could be mitigated by the imposition of a condition¹⁹. The Secretary of State agreed that in the absence of an objective assessment there was not sufficient evidence to conclude that noise from the development could be suitably mitigated²⁰. Consequently, in this regard the previous appeal was dismissed because of a lack of information and not a consequence of noise impacts having been adjudged to be unacceptable.
52. For the above reasons, there is no basis for refusal on the grounds of noise from the proposed building, fixed plant, construction noise or road traffic noise associated with the operation. The Council agrees. The Council's position is solely on the basis that outside runs are provided for dogs but such provision does not form part of the proposals. There is no conflict with any planning policy.

Provision of outside runs

53. The advice of Council officers in the Committee report correctly points out that the matter of provision of outside runs is a licensing matter and is not a planning related consideration. The recommendation in European Directive 2010/63/EU²¹ ('the EU Directive') that dogs should "where possible" be provided with outside runs has now been brought into UK law. It has not however brought about any change to or changes in the effect of the licensing requirements relating to the keeping of animals in the time since the previous appeal decision.

¹⁹ Inspector's Report ('IR'), para 66

²⁰ Secretary of State's Decision Letter ('DL') para 16

²¹ Appellants' Statement of Case Appendix 9

54. The appellants currently operate lawfully under licence from the Home Office, as the Competent Authority, without outside runs. The licence is the subject of regular review. As outside runs are not currently a requirement of the licence, there is no evidential basis on which to conclude that outside runs will be a condition of any future licence post-consent. These appeals must be determined on the basis that the licensing regime does, and will continue to, operate correctly. On this basis, outside runs are not required. This is, however, a licensing matter not a planning matter.
55. The nub of the Council's concern appears to be that, in due course, the law may change making the provision of outside runs mandatory and that at that later time, the provision of outside runs would/might not in itself require planning approval. The Council's concerns are therefore predicated on an as yet unplanned change in the law and have no foundation. The previous Inspector and the Secretary of State have already reached a clear conclusion that this is not a planning matter.
56. Even if the Council's concerns were considered to be a material planning consideration, a planning condition could be imposed requiring the new proposed building to be constructed in accordance with the approved plans and that no outside runs for dogs should be created for use in conjunction with the proposed new building. Any variation or discharge of such a condition would require an application to the Council, such as under section 73 of the Town & Country Planning Act 1990, who would have control over the issue. The appellants do not consider that any case has however been made for the need to impose such a condition. As this matter could and should if necessary have been dealt with by a planning condition, the reason for refusal is unreasonable. Even if in due course, there were to be a change in legislation for the mandatory provision of outside runs for the provision of dogs or the Home Office were to impose this as a requirement of the licence for operation of the new building, the appellants could utilise the building for the keeping of other animals that would not require the keeping of outside runs under the terms of a licence from the Home Office. This further underpins the erroneous approach of the Council in confusing licensing matters with planning considerations.
57. If the Home Office were to require outside runs as a consequence of the operation of the new proposed building for the keeping of dogs or other animals at some time as a condition of the licence in order to comply with the licensing regime in force from time to time, the appellants would not be able to comply with the terms of the licence and the proposed development could not operate. That is not considered to be likely but is, in any event, a matter of commercial risk for the operator and not a planning matter for determination at this appeal.

Heritage

58. The designated heritage assets relevant to the current proposal are the garden wall, Grimston Garth and the stable block.
59. The previous Inspector took the view that the existing development on the site detracted from the character and appearance of the wall and obscured significant sections of it. He noted a benefit of the appeal proposal as exposing more of the wall, particularly the southern section. However, he also noted that the four rectangular buildings proposed would occupy a significant footprint within and just outside the walled former kitchen garden, and that the ridge

height would exceed that of the walled enclosure by about 2m. The proposals would have a more regimented layout and utilitarian appearance than the existing buildings and lead to the loss of the remaining lawn area. He went on to conclude that the scheme would result in a scale of development which would be more imposing and less subordinate than the existing. As a result the proposal would detract from the setting of the listed wall²².

60. However, it should be noted that the Inspector evidently did not have information about the development approved on the site of the existing lawn and which is agreed to have been lawfully implemented (Ref: 01/06874/PLF approved on 13 March 2002)²³.
61. With regard to the impact on Grimston Garth, the Inspector noted that despite the level of screening the height of the appeal proposal would result in a more intrusive development above the walled former garden on the approach to the main house and that it would lead to a greater imbalance between the principal building on the estate and those buildings, structures and spaces around it, such as the walled garden, which ought to maintain a subordinate scale and appearance²⁴.
62. The reason for refusal of the current listed building consent application cites the impact on the setting of Grimston Garth but this no longer appears to form part of the Council's main concerns, based on the appellants' understanding of the SoCG. The potential impact of the current scheme on this heritage asset, along with the adjoining Grade II* Stables, have nevertheless been considered and assessed by the appellants in an updated heritage assessment²⁵.
63. A heritage assessment was submitted with the appeal applications (as part of a combined Design, Access, Planning and Heritage Statement²⁶) and explains how the appeal proposal has been scaled down, ridge height lowered and positioned so as to address matters raised by the Inspector in the previous appeal decision. This represents a high quality iterative design approach which is endorsed in national guidance. The Inspector's concerns are summarised in the Committee Report. The supporting heritage statement responds to those concerns and notes that demolition of existing buildings will provide greater exposure to the listed wall and that the proposal will not be visible from Grimston Garth, the listed stables nor from views outside of the walled garden. The statement also proposes details of materials chosen to blend in with the surrounding buildings and structures. The appellants' evidence demonstrates that (if anything) the impact of the development on the listed building will be positive. The development therefore complies with national and/or local planning policy.
64. The SoCG records that the buildings to be demolished have no heritage value and all detract from the setting of the listed buildings. The same point is made in the Committee Report. The professional views of the Council officers support

²² IR para 61

²³ Appellants' Statement of Case Appendix 4

²⁴ IR para 62

²⁵ Appellants' Statement of Case Appendix 7

²⁶ Appeal Bundle Appendix 6

the appellants' contention that all of the Inspector's concerns have been satisfactorily addressed. There is no justified evidential basis for refusal:

- a. The new building would have less impact on the listed wall than the existing structures and so any impact would be positive. The proposed layout would no longer be regimented.
 - b. The proposed development would be much less intrusive. The proposed building would not be visible from outside of the wall, most views are screened and no other vantage points exist (accepting that there are instances where the building may exceed the height of the listed wall in places by up to 400mm).
 - c. The proposal would preserve and/or enhance the listed wall and its setting. There would be an improvement over the existing situation.
 - d. Materials are an important element but can be adequately conditioned to be approved by the Council after the grant of permission.
65. The updated heritage assessment for these appeals provides a detailed heritage appraisal of the history of development at and around the appeal site including Grimston Garth and the listed stables. The assessment takes into account best practice from English Heritage and relevant national and local policy and guidance in order to fully explain the significance of the identified heritage assets and assess the impact of the proposed development upon that significance, in accordance with Chapter 12 of the NPPF. The assessment responds to the reason for refusal and to concerns raised by third parties. Particular account has been given, in the updated assessment, to the statutory requirement to have special regard to the desirability of preserving listed buildings and their settings.
66. The following points from the updated heritage assessment are highlighted:
- a. The Council now effectively adopts the previous Inspector's concerns as the basis for its reason for refusal, which is therefore contrary to its position when it approved the listed building consent for the larger proposal in 2011.
 - b. The proposed development would not result in substantial harm to any of the identified heritage assets or their settings (as a component of their significance).
 - c. There would be no harm to the setting or significance of Grimston Garth because of the lack of inter-visibility and lack of any visual impact.
 - d. The proposed development would better reveal and provide a minor enhancement to the setting of the listed wall.
 - e. The new building would not impact on the listed wall itself as it would be set back and of an appropriate scale relative to the existing development.
 - f. The appearance of the new building would offer an improvement and the choice of steel framing and cladding would provide scope for a more reversible form of development in the interests of the long term preservation of the listed wall.
 - g. The Council has already granted planning permission in 2002 for the erection of a building on the remaining lawn area, which has been partially

- implemented²⁷. The parallels in advice of Council officers to the members on that occasion in the corresponding committee report are noteworthy and which were accepted by members. The Council has not been consistent in its approach to decision making at this site and this further points to the unreasonable reason for refusal.
- h. The updated assessment contains a cross-section plan (Figure 23) which shows that the building would not be visible from outside the walled garden.
 - i. Account has been taken of the requirement for the installation of some fixed ventilation plant (dealt within the updated noise report) in arriving at conclusions on overall heritage impact.
67. The original and updated heritage assessments and the professional advice of the Council officers all support the conclusion that the appeal proposal does not give rise to any residual heritage concerns, but addresses all of the heritage matters raised by the Inspector and Secretary of State in the previous appeal. There is no evidence or support for the wholly unsubstantiated reason for refusal of the listed building consent. On the contrary, the impact will be positive from a heritage perspective and the development complies with local and national policy and satisfies the statutory test.

Highway safety and traffic generation

68. The Council's Highways Team do not raise any objection to the proposed development subject to the imposition of conditions to secure passing places. The previous Inspector considered that the traffic generation from the materially larger scheme would be acceptable subject to the provision of passing places along Grimston Road and Grimston Lane.
69. A Traffic Flow Analysis was submitted by the appellants to provide details of the level of trips generated by the existing and proposed development. The analysis concludes (and is accepted by the Council's officers) that the proposal would not result in any significant increase in vehicle movements to and from the site and that an increase during construction would be short-lived. The requirement for passing places for construction traffic is not justifiable as the scale of the current proposal has reduced significantly from the 2011 appeal scheme.
70. It has been agreed with the Council that the passing places can, if considered necessary, be implemented entirely on land within the highway boundary.
71. An updated Highways Statement²⁸ has been produced in support of the appeals to address the issue of passing places. Key points are:
- a. The appeal site is quite rural but is the site of an existing facility. If the proposed development was to be disaggregated from the existing facility it would instead lead to a greater number of movements as stock dogs for later sale would be imported to the existing site. There is little scope to improve journeys on foot and limited scope to travel by bus. There is potential for employees to cycle dependent upon their journey distance. Car sharing is an existing practice and provides a feasible option. The appellants do not

²⁷ Appellants' Statement of Case Appendix 4

²⁸ Appellants' Statement of Case Appendix 8

- consider that the proposed development warrants a travel plan, and understand that this view is shared by the Council, but agree that an enforceable plan could be put in place, if considered necessary and secured by condition.
- b. The additional traffic that would be generated by the operation of the proposed development would be imperceptible and not material.
 - c. The construction period would be relatively modest and over that period construction traffic levels would not be significant, such that impacts are predicted to be low. The scope for conflicts with HGV movements along Grimston Road and Grimston Lane would be remote, the road already benefits from informal passing places, there is generally good inter-visibility and conflicts can be managed or mitigated through a Construction Management Plan.
72. The highway related impacts of the proposed development are very minor and certainly not severe (in terms of NPPF paragraph 32). Any potential impacts associated with HGV conflicts during construction do not justify the Council's request for the provision of passing places as they would be capable of being adequately managed or mitigated by alternative means.

Other concerns raised by residents/interested persons

73. A number of concerns have been raised in relation to the moral and ethical nature of the proposed development. The appellants refer to the comments of the Secretary of State in the previous appeal decision letter in which he confirms that such matters are either not material planning considerations or do not carry significant weight in the case of this development. The Home Office has granted a licence to the appellants and thereby consider the use to be lawful.
74. There are no proposals for the provision of additional external lighting as part of the proposed development. In any event, the provision of any lighting is capable of being controlled by condition.
75. The potential for an impact upon tourism in the area was considered by the Inspector in 2011 for the larger scheme who concluded that most tourists heading for coastal towns or villages would generally be unaware of the existence of this development and therefore would be unlikely to adversely affect the local economy or tourism.
76. Concerns have been raised in relation to the removal/control of waste disposal and in respect of odour generated by the keeping of animals in the new building. These matters were considered by the previous Inspector and determined to be inherently capable of being controlled through management measures. The existing operation is currently managed and there are no instances of odour nuisance from the site.

Benefits of the proposal

77. The proposal would contribute towards the Government's overarching objective to secure economic growth²⁹. The scheme would safeguard existing employment and generate, over time, 10 new jobs. These are particularly important in a rural area where job opportunities are inevitably limited. There would also be benefits of the investment for the local economy in terms of construction work. The previous Inspector noted that the remoteness of the appeal site counted against the development meeting sustainability criteria. However, the creation of employment opportunities within rural areas is a component of securing a sustainable pattern of development.
78. Information submitted with the appeals in the form of a letter from the Association of British Pharmaceutical Industries and corresponding supporting statement explains how, if approved, the proposed development would be expected to provide a great economic boost for the area. It also explains that the appellants' business is important to the national economy as only one of two suppliers of UK-bred dogs in support of the UK life sciences industry. The proposal would enable animals to be bred on site avoiding the need for animals to be imported. Imported animals presently have to be sourced from outside the European Union. The proposal therefore would have benefits in avoiding the need to transport animals to the site from abroad with obvious implications for the demand for travel and benefits to the national economy.
79. The current proposal would also have a beneficial impact on heritage assets. The existing buildings on the site harm the setting of the listed wall. The current proposal would expose the length of wall presently hidden without the adverse impact arising from the height of the previous appeal scheme.

The Case for the Council³⁰

Noise and Amenity

80. The Council's Planning Committee confirmed on 19 December 2013 that the loss of amenity referred to in the reason for refusal of planning permission is the noise nuisance in relation to the requirement for the provision of outside dog runs.
81. Outside runs for dogs are required by the EU Directive which states that: "Dogs shall where possible be provided with outside runs"³¹. The Council considers that this requirement has the potential to impact upon the amenity of residents as the provision of an outdoor run could be made without any need to obtain formal planning permission or listed building consent.
82. The Council agrees with the appellants that the EU Directive has now been brought into UK Law. As such, the appellants' Statement of Case, is incorrect in stating that the Council's concerns are predicated on an as yet unplanned change in the law and have no foundation³². The Council's concerns are predicated on a current situation which has changed since the determination of

²⁹ NPPF paras 18-19

³⁰ Taken mainly from the Council's Statement of Case

³¹ European Directive 2010/63/EU, Annex III, Section B, Paragraph 4

³² Appellants' Statement of Case para 59

the previous appeal. This change in law raises a material planning consideration which should be considered as part of this appeal and was discussed by members in their consideration of the application at Planning Committee.

83. The appellants then state that a change to other legislation is not a planning matter for consideration as part of this appeal. This is accepted, however, this change to legislation is considered to give rise to a matter which is a material planning consideration. They state that a condition could be used to ensure outside runs are not provided³³. Such a condition would not comply with the test of 'reasonable in all other respects' as set out in the PPG, because such a condition would prevent compliance with other legislation which has been put into place to protect the welfare of animals.
84. The existing unit currently operates under licence from the Home Office without outside runs³⁴. The existing site does have access to outdoor runs and as such currently complies with the EU Directive.
85. Outdoor runs are a mandatory requirement for the breeding and keeping of dogs where this is possible. It is considered that the use of outdoor runs cannot be prevented by the imposition of planning conditions. Outdoor runs could take the form of non-permanent structures which do not require any form of planning permission. Proposed and existing buildings and the site's walled boundary could also be used to enclose external spaces.
86. LP Policy G3 requires all development to take full account of the need to safeguard and improve the quality of life of residents. The appellants have not undertaken sufficient survey work for the Council to be confident that noise generation would not result in future amenity issues for local residents.

Heritage

87. The proposed development is considered to have an impact upon the setting of a Victorian walled garden which is located within the grounds of the Grade I listed Grimston Garth. The wall is therefore curtilage listed. Stables adjacent to the site are Grade II* listed in their own right and the proposed building and site is visible in the context of this building. The site is also visible from the current access road into Grimston Garth, particularly to the northeast of the site when slightly elevated views are provided. It is considered that these heritage assets are all of high significance given their individual and collective value.
88. The Council asserts that the proposal would have an adverse impact on heritage assets to warrant the refusal of listed building consent. In making this judgement the Council has placed significant importance and weight on protecting the setting of heritage assets in accordance with Sections 16 and 66 of the Planning (Listed Building and Conservation Areas) Act 1990.
89. The Council contends that the proposed building would have a utilitarian appearance, use unsympathetic materials and result in a more regimented layout, which would be detrimental to the character and appearance of the walled garden and its setting. The proposed unit would have the appearance of a standard industrial building that would be steel clad and would make no

³³ Appellants' Statement of Case para 60

³⁴ Appellants' Statement of Case para 58

attempt to disguise its use despite its location close to brick, stone and slate buildings. The building would dominate the walled garden and would result in the enclosure of space. The development proposed is considered to be inappropriate within the setting of a curtilage listed structure.

90. The main entrance into the walled garden is currently characterised by an area of open space which allows an appreciation of its historic use and the space which would have historically existed. This includes views towards the opposite side of the walled garden and therefore an appreciation of the historic internal setting. This would be lost by the introduction of this building which would be the prominent feature upon entering the site and would erode the appreciation of the site's historic use.
91. In considering the previous appeal the Inspector stated that development ought to maintain a subordinate scale and appearance³⁵. The current proposal is for a building similar in height to the adjacent walled garden, but which would exceed the walled garden in height in some places. Although the current application is a significant improvement over the original application/appeal it would not be subordinate in terms of its scale and appearance. As such this development would have an adverse impact upon the setting of a Grade I curtilage listed structure.
92. The removal of lean-to type structures from this listed wall would result in physical improvements to the listed wall and remediation. This would not improve the wall's setting which would always be viewed in the context of an imposing modern industrial unit. The physical improvements secured would not outweigh the harm caused by the enclosure of space and the introduction of a building which would make little or no attempt to preserve or enhance the setting of a curtilage listed walled garden to a Grade I listed building.
93. LP Policy G6 requires the safeguarding of heritage features of importance and where possible measures to enhance and manage these features. It is considered that the design of the proposed building makes little effort to safeguard the setting of the listed wall and that more opportunities exist to enhance existing features. LP Policy ENV22 also seeks to preserve and enhance the setting of listed buildings and the proposal is also contrary to this policy for the same reasons.

Response to appellants' Grounds of Appeal

94. The appellants' Statement of Case states³⁶ that this development benefits from the presumption in favour of sustainable development as outlined in paragraph 14 of the NPPF, and that this is the view of the Secretary of State, referring to paragraph 50 of the previous Inspector's report. However, the Inspector did not come to a definite conclusion on this matter, and the Secretary of State afforded little weight to the NPPF, which was then in draft form. There remains a need to carry out an assessment of the proposal against the NPPF, whose policies, as a whole, define sustainable development.

³⁵ IR para 62

³⁶ Para 21

95. The presumption in favour of sustainable development does not apply in this instance because the scheme does not comply with the NPPF's core planning principles in respect of high quality design and a good standard of amenity and of conservation of heritage assets. The reasons for refusal of the previous appeal aligned with these principles.
96. The expansion and preservation of an existing business is considered to support the principle of development in this location and therefore, on balance, outweighs the unsustainable nature of the business's existing location. The development must however be considered unsustainable due to its adverse impact upon the setting of a listed building and the loss of residential amenity.
97. The appellants' Statement of Case asserts³⁷ that planning permission 01/06874/PLF has been lawfully implemented. The appellants requested confirmation of the implementation of this planning permission in February 2008 and were informed in reply that the planning permission had lapsed one year earlier and that a new application was required. No evidence has been submitted which challenges this position. No formal application has ever been submitted for a Certificate of Lawful Development. As such no fallback position is considered to have been proven that could be given weight in these appeals.
98. The updated Highways Statement submitted in support of this appeal states that in weeks 1-17 there would be 8 trips a day by van (1 trip equals two movements), and this would increase to 16 trips per day during weeks 13-40. During weeks 13-40 there would also be a total of 186 trips by HGV's and concrete mixers, which averages to almost 7 trips per day, but there are peak periods including 80 concrete mixers in a 1 week period. There would then be 8 trips a day by van in weeks 40-43.
99. If vehicle movements are averaged it is clear that the new development would result in more daily movements than the previous appeal scheme, which proposed 12/13 vehicles per day equating to 24-26 movements per day, but over a longer 18 month construction period.
100. Despite the appellants' concerns regarding the provision of passing bays their inclusion is still considered to be justified as traffic movements would give rise to highways safety concerns. Passing places would improve highways safety in the area, protect highways verges and protect residents in Grimston. The condition to secure passing places was recommended by the previous Inspector, who clearly felt that the condition complied with the relevant tests as were then contained within Circular 11/95. It is considered that the condition continues to comply with the six tests now set out in the PPG.

Other Representations

Objections

101. The proposals have attracted a very large volume of objection, both at the application and appeal stages, from all over Britain and from many other parts of the world. The great majority of the objections are directed specifically to Appeal A (the application for planning permission) or, where not specified, raise

³⁷ Para 39

issues relevant to that appeal rather than to listed building consent matters. Some objections make a common submission addressed to both appeals.

Local objections

102. The objections raised by residents of Grimston and nearby villages, by the Parish Council, and by local councillors reflect those raised in the previous appeal and relate primarily to traffic and access, effect on residents' living conditions, and effect on the local economy and environment.
103. With regard to traffic, concern is raised that the existing road network is unsuitable for the size and type of commercial vehicles servicing the site at present and that such vehicle movements, as well as by staff cars, would increase as a result of the proposed development. The roads leading to the site are narrow, poorly surfaced and lack passing places. Particular concern is expressed about the narrowness of the main approach to the site through Grimston village, which has in the past been blocked by vehicles visiting the site, and the safety risk to children, pedestrians and horse riders who use the road. On my visit to the site, I was shown Blacksmith's Cottage, where power lines had been snagged by a large lorry visiting the site, and Greenacre, which has concealed access to its parking area.
104. There would be harm due to the noise and vibration of increased commercial traffic, which is said already to adversely affect living conditions, particularly in houses such as Blacksmith's Cottage that stand close to the road. Other harm to quality of life, in what residents wish to see as a quiet rural area, would arise from noise and odour of increased animal numbers at the site and from external lighting. There is also concern that protests outside the site, which can entail considerable police presence, would become more disruptive.
105. The cost of such policing is seen as a drain on the local economy. There is concern that the proposed development would be harmful to local tourism, which include holiday let resorts and caravan sites. Efforts made to improve the local environment to attract visitors would be undermined. The treatment of the listed wall, particularly the security fencing and lighting erected in the past, causes further harm to the quality of the local environment.

Grimston Garth

106. Detailed submissions³⁸ have been made on behalf of the residents of Grimston Garth, which are supported by a planning report with an accompanying note of advice by Counsel, a noise report and a traffic report. On my visit to the site I was able to inspect the immediate environs of the house and of the stable block and to appreciate their relationship with the appeal site.

Heritage assets

107. The advice by Counsel refers to the judgment by the Court of Appeal in the case of *Barnwell Manor*, and concludes that it is no longer acceptable merely to carry out a simple balancing exercise of heritage harm against public benefits,

³⁸ Letter from Farrer & Co. dated 22 July 2014, with attached reports; also letter, reports and e-mails at application stage

but that any finding of harm to setting of a listed building gives rise to a strong presumption against planning permission being granted.

108. Contrary to the appellants' Built Heritage Assessment, the previous appeal decision confirms that the walled garden forms part of the curtilage of the Grade I listed Grimston Garth. The noted local historian Dr David Neave has made submissions on the appeals, which show that Grimston Garth is one of the most important small historic landscaped parks in the East Riding, which should be included in the national Register. The house, stables, walled garden and parkland were built or laid out within a few years and have undergone limited change. They form one unified heritage asset and should be treated as such. The appeal proposals would add to the cumulative substantial harm already caused to the walled garden.
109. The proposed building would be considerably larger in area than the existing buildings, with further erosion of the lawn area as one of the only undeveloped segments within the walled garden. The height and length of the building would be overly dominant on the setting of the listed wall, entirely covering its interior. The previous Inspector found that the regimented layout and utilitarian appearance of the buildings then proposed and the loss of the remaining lawn area would detract from the setting of the listed wall. The current scheme has been reduced in area but does not address these impacts.
110. With its ridge height of 3.6m, the building would have a dominating effect on the setting of the wall, whose height is noted as 3.2m, and which would appear subservient to the new building. The building could be visible above the wall. The appellants rely on screening by woodland to conclude that there would be no visibility from Grimston Garth, but as some of these trees are deciduous such screening would not necessarily be effective at all times of the year. There would be an adverse effect on the setting of Grimston Garth and of the stable block, causing less than substantial harm. Potential harm through noise and odour impacts should also be assessed.
111. With regard to the 2002 permission granted by the Council, the advice by Counsel is that even if the approved building were still implementable, it would have to be shown that it represented a realistic fallback option.
112. There has been a failure to assess the deliberate damage to the listed wall by the erection of unauthorised buildings structures, contrary to the guidance of the NPPF. The Council has not taken any enforcement action or precaution proceedings. The benefit of removal of existing structures could be achieved through these other means. The Secretary of State concluded in the previous appeal that the enhancement resulting from the exposure of the wall would not outweigh the harm of the new buildings.
113. The report concludes that there are no material considerations to outweigh the harm caused or the strong presumption against granting permission. The appellants appear to rely on the value of scientific research, which is contested by objectors. The appellants refer to the merit of job retention and creation, but there is no obligation in place to confirm this. Jobs at the appeal site tend to be low skilled. There is no evidence that they would relocate in the event of the appeals being dismissed and the site is not a key employment site in the area, with many more suitable sites available.

Noise

114. The noise report considers the appellants' Noise Impact Analysis and its revision, and shows fundamental errors in the conclusion of 'No Observable Effect', arising from incorrect application of BS4142. The worst case noise levels for barking dogs need to be increased by 5 dB(A), based on the appellants' own readings. Background noise levels may fall well below those assessed. The rating level for barking dogs has been set higher during the day time than the night time.
115. The report omits consideration of potential occupiers of Selbourne House, which was occupied from 1972 to 2010. Other dwellings such as the Stables and Grimston Garth are also in close proximity and could be subject to noise pollution. Skylights in the proposed roof would not offer sufficient insulation.
116. The report concludes that at least the night time noise should be classed as potentially audible, and hence above the No Observable Effect level. Absence of noise analysis was a concern in the previous appeal, but the current submissions are undermined by errors. The Secretary of State does not have sufficient information to reach a conclusion on noise impacts.

Traffic

117. There are serious doubts over the ability to deliver passing places within the highway boundary. It would be inappropriate to impose conditions requiring use of land outside the appellants' control. Construction and operational traffic could have a detrimental impact on residential amenity. All traffic to and from the site would pass through the village along a narrow road populated by young families.
118. There is confusion in the presentation of the appellants' traffic survey data, which calls into question the conclusions of their analysis.

Conclusion

119. The NPPF's presumption in favour of sustainable development does not operate in favour of proposals that fail to comply with other policy requirements of the NPPF. The appeal proposals fail to accord with heritage, noise and transport policies. The Secretary of State's concerns in the previous appeal decision have not been addressed.

Wider Objections

120. The great majority of the objections received focus on moral, ethical and scientific issues arising from the use of animal in research, but many also draw attention to site-specific issues. An on-line petition with 25,885 signatures refers to likely poor conditions for breeding dogs, including the absence of outside runs, adverse visual impact on the countryside and surrounding area, and disturbance to residents due to noise, traffic and protests. A second petition, with some 15,500 signatures, also relates to the moral/ethical issue but refers to the unsuitability of local roads for high volumes of construction traffic, adverse effect on local tourism due to publicity of demonstrations, and pressure on the police service. A great number of the individual representations follow a common format, which includes reference to inadequate road capacity, limited job creation and lack of outdoor runs.

121. These concerns also feature in the more detailed submissions made by a number of organisations opposed to use of animals in research. Among the concerns raised are inadequacy of information about the number of dogs to be housed at the site and consequent doubt over the accuracy of predicted vehicle movements, unproven future demand for animals, welfare issues arising from reliance on roof lighting, increased staff travel, lack of response to issues from the previous appeal such as details of plant and machinery, renewable energy and travel plan.
122. The submission by the BUAV³⁹, a national body opposed to animal experiments principally on ethical grounds, acknowledges that the appeals have to be determined in accordance with planning law, and not on considerations of ethics or the efficacy of animal experimentation, but draws attention to two particular issues: provision of outside runs and disturbance to residents from protests outside the site.
123. The submission on outside runs is supported by a note of advice by leading Counsel which concludes that failure to provide outside runs is a material planning consideration that could be relied upon in any refusal of planning permission. The noise reason for dismissal of the previous appeal was based primarily on the risk of noise from outside runs. As runs could not be provided at the site without unacceptable harm to residents' living conditions, the provision of runs is a material consideration. So also is the failure to provide them. If planning permission were granted, either the Home Secretary would refuse a licence due to the absence of outside runs, in accordance with the terms of the EU Directive, or would decide to grant a licence as provision would not be possible on this site. In the former scenario, permission should not be granted as the permission would be incapable of implementation. In the latter scenario, the outcome would be directly contrary to the purpose of the Animals (Scientific Procedures) Act 1986 ('ASPA') and of the EU Directive. The potential to undermine a different statutory regime must be a consideration of very considerable weight. Runs could be provided if the business were more suitably located. Approval of planning permission without runs would render meaningless the requirements of ASPA. Without more specific evidence the risk of infection would not be sufficient reason to avoid provision of outside runs, as runs are specifically required by ASPA and the Directive.
124. The submission states that protests at the site would be likely to increase if permission were granted. The appellants have raised the prospect of serious criminal wrongdoing linked to protect activity. Even if wholly lawful, protests would adversely affect the amenity of the local population.

Support

125. Local support for the proposals has been expressed by two suppliers of goods and services to the existing site operation. One of these is the firm's vet, who refers to the much greater activity and staff numbers found at the site in the past, and considers that the appeal proposals would enhance the welfare of animals on the site by the provision of new purpose-built facilities.

³⁹ Letter dated 23 July 2014, with appended Statement and attachments

126. At the sub-regional scale, support is expressed by the Humber Local Enterprise Partnership, which regards the company as a local SME whose expansion would be consistent with local economic strategy, and whose commitment to use of local suppliers and labour would be welcome.
127. At the national scale, the proposal is supported by a number of bodies involved in the organisation and promotion of scientific research, and by the research arms of two universities, all of which welcome the potential greater availability of locally bred animals for what is seen as very important research, and some of which also refer to animal welfare benefits of reduced need to import animals for research purposes. One of these bodies⁴⁰, takes issue with the objections made on scientific grounds.

Response by the Appellants⁴¹

Response to the Council's Statement

128. The Council's reasons for refusal should (as a matter of law) be "full"⁴². Whilst the Council's Statement of Case should clarify and particularise the reasons for refusal, the appellants contend that the Council's case has instead evolved since refusal without any justifiable reasons. In the case of the sole reason for refusing planning permission, the Council's stance now hinges on an assertion that there has been a substantive change in the law since the Council considered the previous larger development on this site. This assertion is not consistent with the written advice of officers in the report to Planning Committee, and there is no evidence of any revised advice being given, either at the Committee or since. This is of particular importance, given the appellants' position that there has not been the alleged change in the law concerning the provision of outdoor runs. Accordingly, there are now aspects of the Council's case which are not just inconsistent with the view of its own professional officers but also inconsistent with the Council's own resolved position.

Policy

129. The previous appeal was determined in the context of policy within PPS1: Delivering Sustainable Development and the Ministerial Statement of March 2011 which set out the presumption in favour of sustainable development, later incorporated into the draft NPPF and then the definitive version. The question of whether the 2012 appeal proposal represented sustainable development was clearly addressed by the Inspector and Secretary of State in their considerations of those proposals. The Inspector and then Secretary of State undertook a balancing approach to identify where the proposal would contribute towards a sustainable pattern of development and those areas where the proposal was not consistent with the delivery of a sustainable pattern of development. Any alleged disadvantages of the location of the site in this regard are outweighed by the benefit of securing economic development in an area where such development is supported by Development Plan policy and where, of course, the existing facility is already located.

⁴⁰ Understanding Animal Research, Letter dated 27 June 2014

⁴¹ Taken mainly from the appellants' Response to LPA's Statement of Case

⁴² Town and Country Planning (Development Management Procedure)(England) Order 2010 Article 31(1)

130. The appellants' Statement demonstrates that the proposal accords with all of the core principles of the NPPF. However, notwithstanding this, the approach taken by the Council to judging whether the proposal represents sustainable economic development is flawed. It is necessary to take an approach which balances any alleged conflict with the core principles against the degree of compliance. This is the approach adopted by the Inspector and Secretary of State in determining the previous appeal and is manifestly the correct one.

131. The proposed development has support from Development Plan policies which encourage economic development, support the rural economy and policies of the Submission Strategy Document which generally aim to build a strong and competitive economy and particularly support the rural economy. Significant weight should be attached to these policies in determining these appeals. In failing to take such (agreed) policy compliance into account, the Council has failed to take a balanced and/or lawful approach to the determination of the appeals.

Noise and Amenity

132. The issue arises solely because the Council allege wrongly that the appeal proposal will be required to provide outside runs for dogs. The point is now beyond any doubt because the Licensing Authority (the Home Office) has recently expressly confirmed that outdoor runs will not be required. A copy of the Home Office decision letter is provided⁴³.

133. The Council's case to support its reason for refusal is not altogether clear in light of contradictory statements, such as where the LPA accepts that change to other legislation is not a planning matter but then goes to suggest that it is in this case⁴⁴.

134. The Council explains for the first time that the reason for refusal is "predicated" on a change in law that it states has taken place since the 2012 appeal. The Council goes on to treat outdoor runs as a necessary component of any application for the proposed development and therefore by implication, any such development without runs cannot be lawful under other legislation. In effect, the Council suggests that failure to provide outdoor runs is a material consideration. This is a point also relied upon by BUAV. Consequently, the Council contends that the imposition of a planning condition would be unreasonable. The appellants dispute each of these assertions.

135. The change in UK law, to which the Council refers, is that relating to the use of animals in experiments and testing which is regulated under the ASPA. ASPA was revised to transpose (enact into UK Legislation) the EU Directive on the protection of animals used for scientific purposes. The revised legislation, enacted by the Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012, came into force on 1 January 2013. 'Guidance on the Operation of ASPA' was published on 13 March 2014 by the Home Office (as the Licensing Authority)⁴⁵. The following points are relevant to understanding the flawed approach now adopted by the Council:

⁴³ Appellants' Response to LPA's Statement of Case Appendix 1

⁴⁴ Council's Statement of Case para 6.6

⁴⁵ Appellants' Response to LPA's Statement of Case Appendix 2 provides extracts from these documents.

- a. The 2012 Regulations import the requirements of Annex III of the Directive into ASPA in exactly the same form as in the Directive. The Regulations require regard to be had to any code of practice approved by Parliament under ASPA. A draft code of practice document has been published and has been the subject of public consultation, but not yet adopted. The current draft code repeats the terms of the Directive, namely that dogs shall where possible be provided with outside runs. The March 2014 Guidance does not contradict or elevate the above requirement into a mandatory requirement to provide outdoor runs. The Council's alleged 'change in UK law' since the 2012 Appeal is not material. The amendment to ASPA has clearly not altered the legal requirement on this issue. There has not been a substantive change in the law that goes beyond the requirements of the Directive.
- b. The provision of outdoor runs is a consideration on the grant of any licence under ASPA. The expression "...where possible..." requires the exercise of a judgement based on evidence as part of the licensing procedure. Provision of outdoor runs is not mandatory (contrary to the Council's suggestion) pending the exercise of that judgement by the appropriate decision maker. Even then, the provision of outdoor runs relates to the keeping of dogs whereas the proposed development would also be suitable for the keeping and breeding of other species for which there is no similar requirement to consider the provision of outdoor runs.
- c. The decision on licensing in England is determined by the Home Office. The Council should not involve itself in the outcome of that decision. In this case, the Home Office has already determined that this facility need not provide outdoor runs. The site already keeps dogs without the use of outdoor runs and this has been the subject of inspections by the Home Office and the grant of licences. The Licensing Authority has therefore confirmed on more than one occasion that the provision or use of outdoor runs is not required in conjunction with the appeal site for the keeping of animals. Importantly, this is not due to noise concerns. Rather, the Home Office has confirmed that outdoor runs are not "possible" due to the risks to the dogs cause by exposure to infectious agents in the environment that would be injurious to the dogs' health status. The Council's basis for dismissing the use of a planning condition is therefore demonstrably without any foundation and this addresses the Council's erroneous suggestion that a condition offends the "reasonable" tests as set out in the NPPF and corresponding guidance.
- d. If, for reasons which cannot currently be conceived, the Home Office were to change its mind and require that the appellants provide outdoor runs as a condition of its operations at this site, then the appellants could not operate lawfully unless such runs were provided. That is a commercial risk which the appellants run, like many others involved in licensing regimes. The Council would nonetheless have the means to control any such provision either through the Environmental Protection Act as a statutory nuisance or enforcement of the proposed planning condition. Either way, residential amenity would be protected in accordance with planning policy.
- e. The Council's contention that the appellants' noise survey is inadequate is therefore also flawed. The appellants' noise assessment does not assess noise associated with outdoor runs because none are proposed and there is no

mandatory requirement for the appellants to do so. This was well understood by the Council's officers and the Secretary of State (on the previous appeal).

136. The Council states that the existing site has access to outdoor runs and the implied suggestion is that but for that provision the existing operations will not comply with the Directive. This is incorrect. The appellants lawfully operate the existing site without outdoor runs under the terms of its pre-existing licence from the Home Office. The existing outdoor runs have been used in the past but are not utilised at present. They would be demolished to make way for the proposed new building.
137. The Council advances no credible justification for adopting a different approach on the provision of outdoor runs to that of the Secretary of State who determined the 2012 Appeal, the Home Office and/or its own officers. Moreover, the Council provides no evidence of its own to support the claim that, if outdoor runs were provided, noise arising from the proposed development would actually be harmful to the amenity of the residential properties located closest to the site. The Council does not provide any positive case of harm.
138. The Council does not otherwise criticise the findings of the appellants' noise assessment supporting the appeals and does not raise any other concerns in respect of amenity. This is to be expected, given that the scope, methodology and results were agreed with the Council's EHO.
139. For all of the above reasons, the Council's case in respect of the sole reason for refusal of the planning permission has no foundation. In the absence of a valid objection on the grounds of noise and amenity, the Council's contention that the proposed development does not accord with LP Policy G3 is flawed.

Heritage

140. The Council's Statement set out its justification for refusing listed building consent⁴⁶. No adverse impact on heritage assets or their setting is cited as a basis for the refusal of the planning permission. The Council's position is therefore totally inconsistent.
141. The Council's Statement makes no attempt to justify a different stance to that adopted in approving listed building consent in 2011 for a larger development on this site. The previous decision is a material consideration of significant weight because there should be consistency of decision making. There has been no material change in the Act or in national or local policy.
142. The Council has not carried out any heritage assessment based on recognised guidance and best practice and does not attempt to respond to the appellants' Built Heritage Assessment supporting the appeals. No evidence is therefore before the Secretary of State to explain the Council's case contrary to the professional advice of its officers, which considered the impact on heritage assets to be acceptable.
143. The Council makes no distinction between the existing site and the site of the proposed development, which is all contained within the walled garden. Hence, the proposed development will not be visible from the listed stables or from

⁴⁶ Paras 6.12-6.19

Grimston Garth. Visibility from the access road is of the existing site and exterior of the walled garden, not of the proposed development. The Council acknowledges⁴⁷ that much of the existing site is in any event substantially screened by trees and particularly between the site and Grimston Garth.

144. The Council's Statement⁴⁸ continues to fail to address how the weight that it attaches to Sections 16 and 66 of the 1990 Act differs to that which was attached to it by Council officers reporting to Planning Committee. There is no suggestion in the evidence that the officers failed to apply correctly the relevant legal and/or planning policy tests. The appellants therefore submit that significant weight should attach to the professional views of the Council's own officers on the acceptability of the heritage impact.
145. There is a long and established lawful use of the walled garden for the breeding of animals in a 20th and 21st century context. This is reflected in the existing modern buildings within the walled garden. To revert to traditional building materials and forms would confuse the historical development of the site and thereby harm the significance of the walled garden. Appropriate choice of materials can be controlled by the imposition of a planning condition.
146. The Council's reference to regimented layout and dominance of the proposed development is clearly taken from the Inspector's comments on the larger development previously proposed. The Council continues to fail to acknowledge the loss of a greater number of existing buildings and the observations of their Conservation Officer.
147. The existing view of the lawned area (referred to by the Council as "open space") from the main entrance to the walled garden is obscured by conifer hedging and in any event, the appellants consider that the alleged impact of the new building is overstated. The appellants consider that the new building would have no greater than neutral impact on the setting of the walled garden. The Council fails to recognise the beneficial effect of demolition of a number of buildings that would better reveal the significance of the listed wall by pulling development away from it, allowing the original form of the wall to be appreciated.
148. The Council stresses that it has not formally accepted that permission granted in 2001 to erect a building on the lawned area remains extant. This however misses the appellants' point, which is that the Council has previously approved development on the lawned area, with its attendant impact, contrary to its current concern. The Inspector and Secretary of State were unaware of this fact when dealing with the previous appeal and no reference was made to this planning approval in the officer's reports to Committee in respect of the current proposals.
149. The Council's Statement⁴⁹ ignores the significant four-fold reduction in size of the proposed development and reduction in height relative to the previous scheme and the acknowledgment of the Council's conservation officer that the proposed development would now be subordinate. The proposed development is

⁴⁷ Para 3.3

⁴⁸ Para 6.13

⁴⁹ Para 6.16

for a building that would be significantly lower than the previous appeal proposal, and which will not be visible from outside of the walled garden from any view from Grimston Garth or other vantage point. Within the walled garden there are a variety of building heights, and the proposed building will not appear out of place to that existing character.

150. Views of the walls from outside of the walled garden would in no way be compromised by the proposed development. Views of the walls from inside of the walled garden would not be compromised to any greater extent than is currently the case. Demolition of the existing buildings would improve the setting of the walls in so far as it would reveal a currently concealed flank of the walled garden. To the extent that the walls would be seen in the context of a new building on part of the lawned area this has to be understood having regard to the absence of buildings that would be demolished. The new building would not be seen in all views from within the walled garden.

151. The Council fails to provide credible justification for the assertions in its Statement on heritage impact and therefore has no basis to find conflict with LP Policies G6 and ENV22.

Highway Safety/Traffic Generation

152. The Council's Statement⁵⁰ set out its justification for requiring the provision of passing places as a condition of the grant of planning permission. It is clear that the passing places are not required to mitigate any traffic impacts during the operation of the proposed development but are concerned solely with mitigation during construction.

153. The Council's case for passing places appears to rest solely on a proposition that a higher frequency of trips would occur during the foreshortened construction period than predicted for the previous appeal proposal. The Council does not put forward its own calculation of construction traffic generation and does not consider the probability of two HGV's meeting where they cannot pass or the consequence of such an occurrence. The Council incorrectly assesses⁵¹ one trip to equal two movements; one trip means one movement. The Council's assessment is therefore inadequate and fails to have regard to a number of other material considerations:

- a. The construction period would be nearly half that of the original construction period, which is a substantial reduction.
- b. Certain construction activities would be very short lived. For example, the concrete mixer trips would be generated by a discrete activity, namely the casting of the floor slabs, of no more than 1 week duration.
- c. The frequency of trips quoted (of up to 16 trips per day) would still be very low and only of the order of 1 or 2 additional trips per hour.
- d. The Council has given no consideration to whether the levels of traffic generated by the proposed development are likely to lead to conflict along Grimston Road and Grimston Lane.

⁵⁰ Paras 7.8-7.12

⁵¹ Para 7.8

- e. No consideration has been given to the extent to which the proposed use of the network would differ from current traffic utilising the network (for example, the use of these roads by HGVs and other large vehicles visiting Grimston Garth and the neighbouring farm that shares the access road.
 - f. The LPA has also had no regard to the existing opportunities for road users to avoid or overcome rare instances of conflict and the further measures that the appellants propose as part of the Construction Management Plan. In particular, the more frequent trips by a concrete mixer during one particular week could be managed by controlling trips to and from the site to avoid conflicts on the adjacent road network. Such measures would be meaningful, capable of being implemented and enforceable.
154. The comments of the previous Inspector on the merit of passing places have to be understood in the context of the longer construction period associated with the earlier proposal. The scheme now would reduce the duration of the whole process so that the construction period proper, as distinct from demolition or commissioning, would be only 27 weeks long and for half of this period there would be no traffic generated other than cars or light vans.
155. Construction impacts are a necessary and inevitable consequence of development but it is rare that such impacts cannot be sufficiently mitigated by means such as a Construction and Construction Traffic Method Statement. Given the generally modest and short-lived impacts likely to occur here, the low probability of two HGV's meeting at a location where they could not pass and the low level consequences of such an occurrence, the appellants contend that the impacts can be sufficiently mitigated without the need for passing places.

Conclusion

156. The Council's reason for refusal of planning permission is predicated on a flawed understanding of the proper application and relevance of the ASPA licensing regime which the Home Office has put beyond doubt. The Council's reason for refusal of the listed building consent is contrary to the advice of its officers and the Council has provided no evidence to substantiate its claims.

Response to third party representations

157. The vast majority of representations raise matters that are not material land use considerations, namely those on moral/ethical and scientific grounds. To the extent that these matters are at all material, they are either matters that go to the licensing of the operations by the Home Office under ASPA or are to be afforded very little weight. This has already been confirmed by the Secretary of State in the determination of the previous appeal.
158. A number of third parties have misunderstood that the proposed development will not lead to an intensification of current activities to/from and within the site for reasons that the appellants have explained in the supporting documents.
159. A number of representations are directed at concerns pertaining to the existing operations and other operational development within the existing site rather than the proposed development and are not material to the appeals and are in any event unsubstantiated.

BUAV

160. The majority of submissions by the BUAV and those supporting the organisation relate to moral/ethical and the science of the appellants' operations. The BUAV also seeks to address the matter of no provision of outdoor runs as part of the proposed development and provides a copy of legal advice it has received. The appellants make the following additional points with reference to that advice note.
161. No party (including BUAV) has established that there would be an unacceptable impact on residents if outdoor runs were provided. No prediction of noise from the proposed development on the assumption of outdoor runs was provided with the appeal applications as no outdoor runs are promoted. The advice has clearly been written on a misunderstanding of the appellants' case. The appellants' decision that it is not "possible" to provide outdoor runs, because of the concern over pathogenic contamination to the dogs, has been expressly endorsed by the Home Office. No weight should attach to the conclusion in the advice.
162. The opinion that outdoor runs must be a material consideration is not supported by the analysis in the note of advice. The two scenarios which are envisaged are flawed. The first fails to recognise that the proposed development could be used to house other animals that do not require runs. The second assumes that runs could not physically be provided within the site. That is not the basis of the non-provision in this case.
163. BUAV's legal adviser passes comment on the adequacy of scientific evidence provided by the appellants. As this is outside the competence of a planning lawyer, no weight can reasonably or rationally attach to these comments. Instead, very significant weight should be attached to the opinion of the competent Licensing Authority, who are clearly persuaded by the appellants' case on this issue as they have indicated that outdoor runs would not be required.

Residents of Grimston Garth

Heritage assets

164. It is claimed that the appellants have misunderstood and undervalued the status of the garden wall, which should be considered as Grade I rather than Grade II* listed. The wall itself is not separately listed, and relies upon being within the curtilage of a listed building to benefit from any listing protection. Defining the curtilage of a listed building is subject to a number of factors, including historical association, land ownership and physical characteristics and relationships. It is a matter of judgement (exercised as a matter of fact and degree) whether a building lies within the curtilage of a listed building or not, and ultimately, this is a decision for the courts. However, in this case, it is accepted by all parties that the wall lies within the curtilage of a listed building, either the Grade I Grimston Garth or the Grade II* stable block. For the purposes of considering the acceptability of any harm to the wall, the same level of regard as defined by paragraph 132 of the NPPF has to be given for both Grade I and Grade II* structures.
165. The appellants consider that due to its position away from the listed wall and as it has been designed to an appropriate scale, the proposed building would not

be observable above the wall when viewed from any vantage point outside of the walled garden. Notwithstanding this, a suitably worded planning condition could provide the Council with control over the proposed slab, eaves and ridge levels of the new building, if required, which would ensure that it is built to avoid any view of it from outside of the walled garden.

166. The English Heritage guidance (2011) acknowledges that the assessment of an asset's setting and the impact upon it is primarily a visual one, as the definition of setting relies upon the need to "experience" the asset. The Council's Conservation Officer agreed with the appellants that the proposed building would have no impact on the setting of either Grimston Garth or the stable block. In considering that the proposed building would be visible outside the walled garden, the objectors have overestimated the likely impact of the proposed development.
167. The objectors conclude that recent case law, such as the *Barnwell Manor* judgment, directs that the appeals should be dismissed. The appellants' assessment of the impact of the proposed new building is that it would have a neutral effect on the significance of the listed wall. This is also the position of the Council's Conservation Officer. The proposed building would not cause harm to the fabric of the wall and its existing setting would be protected by the ability to see the entirety of the wall. The relevant legal test in s.66 is passed and paragraphs 133 and 134 of the NPPF are not engaged.
168. The contention that the structures to be removed are unlawful is unfounded. The Council carried out a detailed review of the consent status of the buildings within and affecting the wall in 2012, and has confirmed that, save for the security measures on the wall, it was satisfied that the structures within the wall have been carried out lawfully. The appellants' assessment is that the removal of the kennel buildings would allow improved appreciation of the significance of the wall, so that the overall proposals would have a minor beneficial effect. The acceptability of the new building in heritage terms is not therefore contingent upon the benefit of removing the kennels to offset some harm caused by the proposed development.
169. The provision of additional employment at the site would be in accord with national and local policy in favour of economic development in rural areas. The objectors' data shows that many local residents are forced to travel to find work. The availability of alternative sites is not significant to the appeal decisions.

Traffic

170. The objectors' consultants acknowledge that the Council has agreed that the passing places are deliverable within the highway boundary. No details have been provided of any specific location where they consider that there might be an issue with the delivery of passing places. It has been agreed with the Council that passing places are needed only to mitigate the effects of construction traffic, and not operational traffic. The road through the village is already used by other traffic, including agricultural vehicles, generally at low speeds to reflect the surroundings.
171. Other than one typographical error, the presentation of the highways survey data is correct. In any event the appellants have relied on the higher figures gained from the most recent March 2014 survey.

Noise

172. The objectors' consultants are critical of the appellants' noise survey submitted with the appeals but otherwise appear to accept the findings of the appellants' noise assessment. They do not conclude that the noise associated with the appeal proposals would be unacceptable.
173. The appellants consider that their noise assessment is still representative and realistic but have made detailed adjustments in response to the objectors' concerns⁵², covering short duration noise and distance and line of sight adjustment. No adjustment is required for rooflights, which would be specified to match roof insulation values. Selbourne House is not assessed as it not in use and is under the appellants' control. The revised findings show that all noise associated with the proposed development would still fall below existing background levels at both Grimston Garth and the stable block and would not give rise to complaints.

Inspector's conclusions⁵³

174. Based on the evidence submitted, I consider that the first main issue for the Secretary of State's assessment in the determination of both appeals is whether the proposal would preserve the listed buildings and their setting.
175. The second main issue for consideration in Appeal A is the effect on the living conditions of nearby residents, primarily due to noise and disturbance.
176. There is a further issue in Appeal A of the effect on highway safety.
177. As outlined earlier in this report, the erection of the proposed new building does not require listed building consent, as it would not be attached to the garden wall and hence would not involve works to any part of the listed building. Only the proposed demolition of existing buildings requires listed building consent. [11]
178. The Council's reason for refusal of the application for listed building consent, which gives rise to Appeal B, specifically refers to the effect of the proposed new building on the setting of Grimston Garth and of the garden wall. As the erection of the new building does not require listed building consent, the issue of its effect on the setting of these heritage assets is a planning permission matter that falls to be considered under Appeal A. [11, 32, 33]

Listed buildings

179. As a Grade I listed building, Grimston Garth is a designated heritage asset of the highest significance⁵⁴. Much of the house's special interest clearly lies in its highly distinctive form and design. But its significance as a heritage asset is also very much derived from the completeness of its historic context. The list entry

⁵² Appellants' Response to LPA's Statement of Case Appendix 4

⁵³ Numbers in square brackets [] refer to earlier paragraphs in this report from which the conclusions are drawn.

⁵⁴ NPPF para 132

records the house's parkland setting, complete with separately listed stable block and gatehouse, walled garden, haha and icehouse.

180. The walled garden is one of a set of contemporary ancillary features of the principal building. In my opinion there is no doubt that it forms a curtilage structure of the Grade I house. This was the view taken by the Inspector in the previous appeal and endorsed by the Secretary of State in his decision⁵⁵. The historical and physical evidence does not support the conclusion of the appellants' Heritage Assessment in the current appeal that the walled garden should be regarded as part of the curtilage of the stable block. Although the stable block has been seen as of sufficient quality to be Grade II* listed in its own right, it is also a curtilage building of the main house. [63, 108, 164]
181. The intact survival over time of the parkland and the group of original features around Grimston Garth is illustrated in the Heritage Assessment and in the submissions on behalf of the residents of the house. They form the classic components of an English country house. Both the walled garden and the stable block provide key constituents of the house's interest. I endorse the view that all should be regarded as contributing to the significance of a unified heritage asset. Harm to one component or its setting would be intrinsically harmful to the significance of the whole. [108]
182. The walled garden has undergone change as a result of its separate use and the amount of building and alteration that has taken place. Nevertheless the original form and character of the walled enclosure remain clearly recognisable on the approach to the house from the village. Together with the stable block, it provides an important element of the setting of the principal building. The walled garden also forms part of the setting of the stable block. [87]
183. The garden's contribution to the architectural and historic interest of the listed building does not lie merely in the structure of its brick walls, but also depends on its character as an enclosed space, illustrating its original function. At present, this remains readily understandable despite the number of buildings that have already been allowed to fill large parts of the space. From within the main gate in the west wall, the openness of the lawn area, which is not obscured by the existing hedge, allows a clear appreciation of the extent of the space. I noted on my visit to the site that the length of the south wall can be seen above the lean-to kennels. Ahead, the gate in the east wall closes the view, with the gable of Selbourne House rising behind it. From the southern side of the lawn, there is a clear view along the kennels to the east wall returning round, with the roof the stable block appearing beyond, and then its tower. From the east side of the lawn, on a secondary axis of the layout, the vista is closed by the arched gateway in the south wall and the top of the west wall can be seen above the store/service units. [59, 90]
184. The buildings proposed for demolition are anonymous in character and make no positive contribution to the significance of the heritage asset. The row of kennels and the store/service units partly obscure the listed walls but are relatively modest in scale. Their construction has caused some harm to the original fabric by covering over the wall surface and joining in of roofs and vertical elements. Openings have been made through the wall to link the

⁵⁵ DL para 9; IR para 5

- kennels to similar buildings on the opposite side. The double-kennel block is built against the wall at one end only, but causes much more harm to the character of the space by the size and location of its intrusive footprint and by the scale of its double-height tower. [59, 92]
185. The removal of these buildings would allow the fabric of the wall to be repaired and reinstated, the details of which could be subject to later approval, and would allow the entire southern half of the garden to be revealed as a clear space. This, together with suitable reinstatement of the ground under the locations of the buildings, which could also be approved by means of a condition, would enhance the setting of the heritage asset. [59, 92, 147, 150]
186. It is claimed on behalf of the residents of Grimston Garth that some or all of these buildings have been unlawfully erected and that their removal could be secured through enforcement action. It is argued that no weight should therefore be given to their removal in favour of the proposed replacement building. The Council is satisfied that all buildings on the site have received the necessary consents, which suggests that the objectors' analysis is not well founded, and that there has not been deliberate damage to the heritage asset in the terms of paragraph 130 of the NPPF. But irrespective of any weight that the proposed demolition might add to the case for a proposed replacement building, the removal of the buildings would be beneficial in its own right. There is strong justification to allow listed building consent for the works of demolition, which would preserve the listed building and its setting. The same works were granted consent by the Council in 2011. [112, 168]
187. The proposed building would completely fill the space created by the demolition, other than a narrow strip next to the walls. As a result, virtually the entire interior of the walled garden would be filled by buildings. Any sense of the scale and extent of the walled space would be very difficult to perceive, as almost all views of the walls from the centre of the garden would be lost. Even views along the main east-west spine would be impinged upon, as the proposed building would be closer than the existing kennels to the buildings to the north. The views of the south wall and its gate from within the centre of the garden space would be blocked. The view of the stable block from within the garden would be lost. There would be a considerably adverse effect on the character of the space. [90, 91, 92, 109, 150]
188. The opening of close-up views of the lower part of the walls would not compensate for the loss of the appreciation of space. Because the proposed building would be virtually equal in height with the walls, the gap around the edges of the site would comprise a rather bleak narrow corridor. The building would not appear subordinate in scale, but would tend to dominate the immediate context of the listed structure.[63, 66, 92, 146, 147]
189. The proposed building would be monolithic in form and of the most utilitarian design. Its unbroken length along the central spine path would contribute to a feeling of a regimented layout, emphasised by the unrelieved extent of metal cladding for the external wall surface. The appellants suggest that the use of traditional materials would confuse appreciation of the site's historical development. This is not borne out by other buildings on the site, a number of which make extensive use of brick without in any way hiding their origins. The use of traditional forms of construction is not necessarily a pre-requisite of

successful design in a historic context, and there should be no requirement for the building to 'disguise its use', as suggested by the Council. But the proposed design in this instance shows little or no acknowledgement of the sensitivity of the location. The matter could not be resolved by a condition on approval of materials, as suggested by the appellants. [64, 66, 89, 145]

190. For the most part, the proposed building would be no higher than the surrounding walls, so that ground-level views from outside the walled garden would be prevented. The plans suggest that only part of the eastern wall would be slightly lower than the proposed ridge height, and precise levels could be secured by a planning condition. However, it appeared from the site visit that the confined layout of Selbourne House and the adjoining stable block would prevent views of the top of the proposed gable above the wall. [59, 61, 143, 149, 165]
191. The absence of direct external views would not mitigate the harm caused to the appreciation of the walled space from within. The proposal's siting, scale and design would not preserve the setting of the listed walled enclosure, and would be contrary to LP Policies G6 and ENV22. [93]
192. The site visit showed that a glimpse of the north-west turret of Grimston Garth could be obtained from the rear of Selbourne House through the belt of trees that separates them. The corresponding view back from the base of the turret revealed glimpses of the flag pole that stands near the south-eastern corner of the walled garden. But even when deciduous trees were not in leaf, the views were very constrained. It appears unlikely that any minor perception of the roof of the proposed building from upper floor turret rooms would represent a harmful change to the setting of the principal building. Potential noise and odour impacts on living conditions are considered later in this report, but they would be unlikely to affect the significance of Grimston Garth as a building of special interest. [110, 166]
193. The appellants seek to derive support for the proposals from the permission granted in 2002. The plans provided show that was for a building of rectangular form occupying most of the area of the lawn. As the appellants have not refuted the Council's statement on the matter, it appears unlikely that a lawful start was made on the building out of this permission. But even if it had, in order to carry weight as a fallback the permission would have to have a realistic prospect of full implementation. The evidence, including the lapse in time between the grant of permission and the claimed commencement, the failure to carry on with the project since, and the fact the building would be of a type very similar to the double-kennel block now proposed for removal, suggests that this building would not meet the appellants' current requirements and would have little prospect of now being built out. Given the length of time since that permission was granted, the Council's rejection of the current proposal cannot be seen as seriously inconsistent. Account must also be taken of refinements in the interpretation of law and policy since 2002 and especially the fact that the Council now had the benefit of the Secretary of State's decision on the previous appeal. [97, 111, 147]

Conclusion on listed buildings

194. To conclude on this issue, the demolition of the existing buildings would better reveal the significance of the heritage asset and there should in my view be no

obstacle to the grant of listed building consent for these works in their own right. The proposed replacement building would, for the reasons set out above, cause harm to the setting of the walled garden that would thus fail to preserve the setting of the listed building as a whole. There would also be a minor adverse impact on the setting of the stable block. The benefit of the removal of the existing buildings would not outweigh the harm that would arise. Because the walled garden is a curtilage structure, albeit an important one, and because of the lack of direct impact on the principal building and its immediate setting, the harm to the significance of the listed buildings, in the terms of the NPPF, would be less than substantial.

Living conditions

195. The proposed development could impact on nearby residents' living conditions in a number of ways. The primary concern raised by the Council and some residents, particularly those at Grimston Garth, relates to noise.

Noise

196. The Council raises no objection to the potential for noise generated from within the proposed building, based on the findings of the appellants' Noise Impact Analysis and later Revised Noise Impact Analysis. [44, 47, 48, 80]
197. The noise report submitted on behalf of the residents of Grimston Garth reviews these two submissions and provides some alternative measurements of background noise levels. The report does not dispute that BS4142:1997 provides an appropriate standard for the consideration of noise impacts, but finds flaws in the assessment. As a result, the report raises the prospect that noise from dogs within the building could be audible, at least at night, at the nearest dwellings, which are the stable block and Grimston Garth. [116]
198. The appellants have updated their assessment in the light of these criticisms. I accept that these amendments comprise a reasoned response. I agree that it is not necessary to include Selbourne House in the assessment as it is fully in the appellants' control, and that the degree of sound insulation provided by rooflights, and indeed by the building fabric generally, could be secured by a planning condition. I find no reason to disagree with the revised calculation of effects at the stable block and Grimston Garth, which show that the predicted rating level would be below existing background levels in both daytime and night time conditions. In the daytime, when BS4142 would be most applicable, the results suggest that complaints would be unlikely. [173]
199. Other noise associated with use of the proposed building, through the operation of fixed plant, could be controlled by a suitable condition. [49]
200. The Council's case rests on the potential risk of harm to nearby residents' living conditions in the event of the future provision of outside runs for dogs. [48, 80]
201. The appellants have emphasised that the proposal does not include the provision of outside runs. Some open areas on the site have been enclosed by low fences to form outdoor runs, but these are not in current use, and would be lost to make way for the proposed new building. It is clear that the proposal as currently framed would not give rise to any risk of harm to living conditions due to noise from use of outside runs. [44, 136]

202. It appears that the breeding programme now envisaged would require the dogs to be kept indoors. But the use for which permission is sought would not be restricted to this one type of operation. Other forms of dog rearing in the building, within the terms of the permission, could benefit from the availability of outdoor runs. The Council's view that outdoor runs could be formed in the future without planning permission is not disputed by the appellants, who suggest that any concern about this issue could be dealt with by a planning condition, while reserving their position that such a condition would not be necessary. [56, 81, 85]
203. In the previous appeal, the lack of adequate assessment of the potential effect of noise on residents' living conditions was critical to the Secretary of State's decision to dismiss the appeal on this ground. The situation in the current appeal is somewhat different, in that sufficient assessment has been provided to show that the proposed building would be capable of use without harm. However, the potential for harm from outdoor runs remains unquantified. It has not been shown that unacceptable harm would necessarily result, as asserted by BUAV. The appellants acknowledge that their noise assessment has not addressed the issue, as they have no current proposal to form outdoor runs. [27, 51, 123, 134, 135, 137, 162]
204. In the absence of detailed assessment, and in the light of the previous decision, I consider that the risk of harm would be sufficient to justify imposition of a condition to prevent the creation of outdoor runs without further approval. Any intended formation of outdoor runs could then be subject to detailed evaluation in advance. The condition would not inhibit lawful use of the building, which the appellants state has been designed to accommodate a variety of options for animal breeding and holding. Subject to this condition, the noise from dogs would not cause conflict with the requirements of LP Policy G3 or the guidance of the NPPF. [56, 85, 86, 135]
205. It is clear that the basis of the Council's concern on this matter lies in the application of the EU Directive and its requirement for outdoor runs to be provided "where possible". The Directive and its application in English law through ASPA are part of a separate regulatory regime from the land use planning system. In the previous appeal, the Secretary of State endorsed the Inspector's view that the Directive, as a piece of non-planning legislation, did not need to be taken into account in the planning decision. In my view, the subsequent incorporation of the Directive into law would not lead to any different conclusion. [54, 81, 82, 135]
206. The Council appears to accept that a change in other legislation is not a material consideration in the planning decision, but asserts that the change gives rise to a matter which is material, in effect the requirement for the provision of outdoor runs. However, even if this were correct, the requirement is not mandatory. The appellants have now provided confirmation from the Home Office, as regulatory authority, that the reasons why the provision of outdoor runs would not be "possible" in this instance have been accepted, and that a request for exemption from this requirement has been granted. [82, 135, 163]
207. There is no evidence that this regulatory provision is likely to change in the future. Even if it were to, it should not be seen as necessarily determinative of land use planning decisions. Failure to provide outdoor runs cannot be regarded

as a material consideration in the determination of the current proposal. It is not uncommon for operation of land and buildings to be regulated under other licensing regimes as well as the planning system, which operates within its own framework of policies and procedures. The Council should not have concluded that a legitimate land use objective of protection of residents' living conditions could not have been secured by a condition because of conflict with the requirements of another regulatory regime. A condition would not impact on the implementation of the development. The Council has not referred to any specific guidance in the PPG or elsewhere that would indicate that a condition of this nature would not be reasonable. [83, 85, 123, 133, 134]

208. In the light of the Home Office decision, the grant of planning permission would clearly not prevent the building from use for its intended purpose and there would be no conflict with the implementation of ASPA, as suggested by BUAV. Any future conflict with the regulatory regime would be a licensing matter. The proposed building would be capable of different modes of use and operation. [123, 134, 162]
209. On the matter of noise from traffic serving the site, the Council accepts the appellants' forecast that operational traffic would not significantly increase as a result of the proposed development, and would principally consist of additional car traffic. No clear evidence has been produced for the appeal that would point to a different conclusion. Most houses in the village are set back from the road. While noting the likely effect of vehicle noise at those few houses, such as Blacksmith's Cottage, with windows close to the narrow main street, the evidence suggests that there would not be significant additional adverse effects on living conditions. [50, 104]
210. Construction traffic would be confined to a relatively limited period. Its additional noise would be disruptive but would not justify rejection of the appeal proposal. A Construction and Construction Traffic Method Statement, secured by a planning condition, would allow times of deliveries to be controlled. Further protection from noise during construction could be secured by conditions controlling hours of demolition and construction work and the specification and location of external plant. [34, 104, 154, 155]

Other living conditions matters

211. I have found no reason to conclude that other aspects of the proposal that could impact on nearby residents, including odour and waste management and provision of outdoor lighting, could not be controlled by suitable planning conditions. The evidence of local residents suggests that protests at the site entrance can be disruptive. However, there appears no reason to conclude that the change in operation of the site likely to arise from the appeal proposal would necessarily result in an increase in protest activity. These matters were not given significant weight by the Secretary of State in the previous appeal decision. [34, 104, 124]

Conclusion on living conditions

212. I conclude that, subject to suitable conditions, the proposal would not give rise to unacceptably adverse effects on residents' living conditions and would comply with the objectives of LP Policy G3 and of national policy guidance.

Other matters

Highway safety

213. Concern about the highways impacts of the intended future operation of the site must be placed in the context of its long-established use, and the evidence of considerably greater activity at the site in the past. The key highways issue in the current appeals is whether the proposed development would add to existing levels of traffic to the extent that harmful consequences would arise. The appellants' predicted traffic flows suggest that there would be no significant increase in vehicle movements and that commercial vehicle numbers should decrease. These figures are not disputed by the Council as highway authority, and weight must be given to this view. The criticism of the appellants' methodology on behalf of the residents of Grimston Garth does not fundamentally dissent from the analysis. [69, 71, 118, 171]
214. The very modest increase in vehicle movements would primarily be made up of staff car traffic. There would be scope to mitigate this by the implementation of a travel plan, which could provide a structured approach to the encouragement of vehicle sharing and use of non-car modes. A suitable form of condition to secure this has been agreed in the SoCG. [34, 71, 125]
215. Residents' anxiety that the immediate local highway infrastructure is inherently inadequate appears to relate as much to the existing operation of the site as to the future operation of the appeal proposal. Instances of conflict between vehicles legally using the highway and existing overhead services must be a matter of concern, but should be for resolution by the highway authority and the relevant utility providers. Measures to promote vehicle speeds and driver behaviour appropriate to the residential environment of the village and to avoid conflict with other users would also fall within the remit of the highway authority. [103, 159]
216. The issues of narrowness of local roads and the lack of passing places would be particularly acute during the construction period. There would be a considerable number of heavy vehicle movements, with certain weeks of the building project likely to be particularly affected. I acknowledge the appellants' view that the proposed Construction and Construction Traffic Method Statement could have some success in regulating the times of deliveries to seek to minimise conflict, but the movements of other road users would not be within the appellants' control. I give greater weight to the assessment of the highway authority that the formation of passing places in advance of construction would be justified. This was the view taken by the Inspector in the previous appeal, albeit for a different construction programme, and endorsed by the Secretary of State⁵⁶. The approval and implementation of a scheme of passing places could be secured by a planning condition. A suitable form of condition is set out, but not agreed, in the SoCG. [34, 69, 70, 71, 72, 98, 99, 154]

Economic issues

217. The appellants state that the proposal would result in the creation of 10 additional jobs over an initial three year period. Whilst this provision is not

⁵⁶ DL para 14; IR para 57

secured by any form of planning obligation, the increased size of the proposed building and its intended purpose give good grounds to accept the figure as a reasonable prediction. Even if these jobs would be relatively low-skilled, their provision must be seen as a consideration of positive weight in support of the proposal. The Council accepts that this benefit would outweigh the site's poor location in terms of sustainable access, and this echoes the conclusion of the Secretary of State in the previous appeal⁵⁷. There would also be a short-term benefit in employment terms as a result of the investment in the construction of the proposed building. [40, 77, 96, 113, 169]

218. There is insufficient information to allow much weight to be attached to any intended economic benefits from the use of local suppliers. At the national scale, the support for the proposal on behalf of elements of the scientific research community is to be noted. Whilst these supporters clearly feel that the increased supply of home-bred animals would help to sustain what is said to be an important sector of activity, there is limited evidence of the precise economic benefits that this might produce. It is acknowledged that alternative forms of supply would continue. [78, 126, 127]
219. Concern has been raised about potential adverse effects on the local tourism industry, but it is again difficult to conclude that the appeal proposal would add in a significant way to any harm already experienced. The proposal is not in a highly visible location or close to major attractions. One of the ways in which it is feared tourism might be affected relates to the impact of protests at the site. There is no clear evidence that such protests would be likely to increase as a result of the appeal proposal, nor that the cost of policing them would put any undue strain on police resources. The Secretary of State endorsed the conclusion of the previous Inspector that these were not matters of significant weight⁵⁸, and I find no reason to reach a different view. [105, 162]

Moral/ethical issues

220. Like the previous Inspector, I have given careful consideration to the clearly deeply felt moral and ethical objections raised to the enhancement of the existing operations at the site. However, I have found no reason to differ from his conclusion, which was endorsed by the Secretary of State in the appeal decision⁵⁹, that such considerations are not material to the planning decision and that separate legislative controls exist, outside the land use planning regime, to secure the welfare of animals bred and used for research purposes. For the same reasons, I do not attach weight to the claimed animal welfare benefits of any reduction of the need to import animals potentially achieved by the appeal proposal. [120, 127, 158, 161]

Overall Conclusions

Appeal A

221. With regard to Appeal A, I have concluded that, subject to suitable control by planning conditions, the appeal proposal would not adversely affect the living

⁵⁷ DL para 13; IR para 51

⁵⁸ DL para 17; IR paras 72-78

⁵⁹ DL para 17; IR para 77

conditions of nearby residents and would not have an unacceptable impact on highway safety. However, the proposal proposed building would not preserve the setting of the listed buildings because of its inappropriate siting, scale and design.

222. The harm to the significance of Grimston Garth as a heritage asset would be less than substantial. The harm to the significance of the stable block would overlap with the harm to the unified grouping that makes up the country house and its ancillary structures. In such circumstances, the guidance of paragraph 134 of the NPPF is that the harm should be weighed against the proposal's public benefits. In this instance, the public benefits would primarily comprise the potential for a modest amount of job creation, at both the operational and construction phases. Other economic benefits would add a very limited amount of additional weight. The removal of existing structures and the repair and reinstatement of the listed wall would also constitute a public benefit, but one that could be secured irrespective of the Appeal A proposal.
223. The *Barnwell Manor* judgment has re-affirmed that less than substantial harm does not equate to a less than substantial objection. The judgment is clear that, in the case of such harm to the setting of a Grade I listed building, the "strong presumption" against the grant of planning permission, identified by previous judgments as the correct application of Section 66 of the Act, continues to apply. In the light of the considerable importance and weight to be given to the desirability of preserving listed buildings and their settings, I consider that the harm in this instance would not be outweighed by the public benefits. [20, 21]
224. The proposal would be contrary to development plan policy and to a core planning principle of the NPPF. It would not accord with the environmental and social dimensions of sustainable development. The presumption in favour of sustainable development set by paragraph 14 of the NPPF would not apply. I consider that the proposal should not be granted planning permission.

Appeal B

225. With regard to Appeal B, I have concluded that the demolition of the existing buildings and the making good, subject to conditions, of the original wall and the footprint of the demolished buildings would preserve the listed building and enhance its setting. Listed building consent should in my view be granted.

Conditions

226. Should the Secretary of State decide to allow Appeal A and grant planning permission, a schedule of conditions that should be imposed is attached at Annex One to this report. Should Appeal B be allowed, and listed building consent granted, a schedule of conditions that should be imposed is attached at Annex Two. I am satisfied that the recommended conditions would meet the tests set out in paragraph 206 of the NPPF and accord with the guidance of the PPG.
227. The conditions are modelled on those set out in the SoCG, subject to some amendment in the interests of precision and enforceability. There are three additional conditions that were not previously agreed, as outlined above.
228. With regard to Appeal A, standard recommended conditions are required on the time limit for commencement and compliance with approved plans. Approval of

details of materials is needed to ensure that the setting of the listed wall would be respected. Approval of details of drainage is required in order to prevent the risk of pollution and flooding. A number of conditions are needed to avoid harm to the living conditions of nearby residents. As well as those agreed by the parties on approval of odour control/waste management and details of external plant and lighting, a specific condition is required to secure the noise insulation of the building fabric, including matters such as the performance of rooflights. [175] For the same reason, there is a need for the disputed condition to prevent the future addition of outdoor runs without further detailed assessment.

229. Protection of neighbours' living conditions would also justify a number of conditions on the construction process, including the approval of details of external plant, limitation of hours for deliveries and working, and the approval of a Construction and Construction Traffic Management Plan. The latter is also justified in the interests of highway safety, as would the approval and implementation of passing places.
230. The approval and implementation of a travel plan and of measures to enhance the site's biodiversity are justified by national and local policies in support of sustainable development.
231. With regard to Appeal B, corresponding conditions to those above are required to control commencement time and the approved plans, although only those plans showing the buildings to be demolished require approval in this instance. Approval of a method statement for the demolition of the existing buildings and a remediation strategy for the making good of their location and of the fabric of the listed wall is required in order to ensure that the wall and its setting would be preserved. As no new building would be approved by the listed building consent, a condition requiring approval of materials is not needed.

Recommendations

Appeal A: APP/E2001/A/14/2219468

232. I recommend that the appeal should be dismissed.
233. Should the Secretary of State conclude that the appeal should be allowed, I recommend that planning permission should be granted subject to the conditions set out in Annex One to this report.

Appeal B: APP/E2001/E/14/2219469

234. I recommend that listed building consent should be granted subject to the conditions set out in Annex Two to this report.

An Inspector appointed by the Secretary of State

Annex One

Appeal A: APP/E2001/A/14/2219468

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location plan (Drawing Number YE 10 2012 3 Rev 0)
 - Existing and Proposed Site Plan (Drawing Number YE 10 2012 2 Rev 3)
 - Proposed Plans, Elevations and Sections (Drawing Number YE 10 2012 4 Rev 5)
 - Wall Elevations (Drawing Number YE 10 2012 10 Rev 0)
3. No development shall take place until details of the materials to be used in the construction of the development hereby permitted, including colour finish, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
4. No development shall take place until details of the means of dealing with foul and surface water drainage and wash waters arising from the development have been submitted to and approved in writing by the local planning authority. The drainage works shall be carried in accordance with the approved details prior to the commencement of use of the building hereby permitted.
5. No development shall take place until details of an odour/waste management scheme have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
6. No development shall take place until a scheme of measures to control noise emanating from the building hereby permitted, including any noise from mechanical ventilation, has been submitted to and approved in writing by the local planning authority. The noise control measures shall be carried in accordance with the approved scheme prior to the commencement of use of the building hereby permitted, and thereafter shall be kept in effect at all times.
7. Details of any external plant and machinery associated with the development hereby permitted, together with details of any noise control measures associated with the plant and machinery shall be submitted to and approved in writing by the local planning authority before its installation. The development shall not be brought into use until external plant and machinery is installed. The plant and machinery shall thereafter be operated in accordance with the approved details and noise control measures.

8. Details of any external lighting associated with the development hereby permitted, together with measures to minimise light pollution, shall be submitted to and approved in writing by the local planning authority before its installation. Any lighting shall thereafter be installed in accordance with the approved details and measures to reduce light pollution.
9. The development shall not commence until a scheme showing the location of any external plant including generators and groundwater pumps to be used during the demolition and construction phases has been submitted to and approved in writing by the local planning authority. The scheme shall address the sound output of external plant, and any measures to be taken to prevent noise and vibration problems to neighbouring residential properties. The approved scheme shall thereafter be implemented in accordance with the approved details.
10. During the demolition phase of the development hereby permitted, no deliveries shall be taken at or despatched from the site and no loading or unloading shall take place outside the hours of 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturday, nor at any time on Sundays and Bank Holidays.
11. During the construction phase of the development hereby permitted, no deliveries shall be taken at or despatched from the site and no loading or unloading shall take place outside the hours of 07:00 to 19:00 Monday to Friday, 07:00 to 13:00 on Saturday, nor at any time on Sundays and Bank Holidays.
12. During the demolition phase of the development hereby permitted, no demolition work shall take place outside the hours of 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturday, nor at any time on Sundays and Bank Holidays.
13. During the construction phase of the development hereby permitted, no construction work shall take place outside the hours of 07:00 to 19:00 Monday to Friday, 08:00 to 13:00 on Saturday, nor at any time on Sundays and Bank Holidays.
14. No development shall take place, including any works of demolition, until a Construction and Construction Traffic Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - a. delivery times for construction materials;
 - b. traffic calming and/or safety measures on the public highway in Grimston Lane;
 - c. temporary directional signage;
 - d. hours of construction;
 - e. the parking of vehicles of site operatives and visitors;
 - f. loading and unloading of plant and materials;

- g. storage of plant and materials used in constructing the development;
 - h. wheel washing facilities;
 - i. measures to control the emission of dust and dirt during construction;
 - j. a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - k. surveys of Grimston Road and Grimston Lane before and after construction;
 - l. a methodology for reporting on and repairing any damage to the public highway as a consequence of the construction operations.
- 15.No development shall commence until a scheme for the provision of new passing places have been submitted to and approved in writing by the local planning authority and the approved passing places have been constructed and completed in accordance with the approved plans.
- 16.Prior to the commencement of the development hereby permitted, a travel plan shall be submitted to and approved in writing by the local planning authority. The submitted travel plan shall include provision for the appointment of a travel plan coordinator; measures to reduce the number of single occupancy car journeys; a timetable and targets for reducing the number of single occupancy car journeys; and measures for monitoring the effectiveness of the travel plan, including annual monitoring reports submitted to the local planning authority. The approved travel plan shall thereafter be carried out in accordance with the approved details.
- 17.Two bat boxes (such as Schwegler 2F, 1FQ or 1FW bat boxes or direct woodcrete equivalents) and two artificial nests for small birds (such as Schwegler 1FB bird box, 2H robin box, Schwegler bird houses or sparrow terraces, or direct woodcrete equivalents) shall be erected on the site in accordance with the manufacturers' recommendations prior to first use of the building hereby permitted and shall be retained thereafter.
- 18.No outdoor runs for dogs shall be created for use in conjunction with the building hereby permitted.

Annex Two

Appeal B: APP/E2001/E/14/2219469

Schedule of Conditions

1. The works hereby authorised shall begin not later than three years from the date of this decision.
2. The works hereby authorised shall be carried out in accordance with the following approved plans:
 - Site Location plan (Drawing Number YE 10 2012 3 Rev 0)
 - Existing and Proposed Site Plan (Drawing Number YE 10 2012 2 Rev 3)
3. No works shall take place until a method statement and remediation strategy have been submitted to and approved in writing by the local planning authority. The method statement shall outline how buildings and plaster proposed for demolition/removal will be detached from the listed wall. The remediation strategy shall show how the wall and ground surface will be made good following the removal of these existing features, and shall include details of materials, construction techniques and finishes. The works shall be carried out in accordance with the approved method statement and remediation strategy.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.