Appeal Decision

Inquiry held on 16 and 17 May 2017

Site visit made on 17 May 2017

by Nigel Burrows BA MRTPI

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

Decision date: 20 June 2017

Appeal Ref: APP/V2635/C/16/3154734
Land at Mill House Cottage, Queen Elizabeth Way, Castle Rising, Norfolk, PE31 6AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Stephen Bacon against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice, ref: 15/00117/UNAUTU, was issued on 8 June 2016.
- The breach of planning control as alleged in the notice is described as 'the material change of use of an ancillary outbuilding into a self-contained residential dwellinghouse.'
- The requirements of the notice are as follows: 'The use of the ancillary outbuilding as a self-contained residential dwellinghouse permanently ceases.'
- The period for compliance with the requirements is 6 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections

Procedural Matters

1. At the Inquiry an application for a partial award of costs was made by the Council against the appellant. This application is the subject of a separate decision.

2. All evidence to the Inquiry was given on oath.

3. A supplementary proof of evidence from the appellant's planning witness was submitted at the Inquiry, together with various other documents from the parties to this appeal.

Validity of the Enforcement Notice

4. At the beginning of the Inquiry, submissions were also made on the appellant's behalf concerning the validity of the enforcement notice. The appellant's advocate drew my attention to two defects in the notice, namely, the inaccuracy of the attached plan and the Council's failure to specify all the policies in the development plan that are relevant to the decision to issue the enforcement notice. The appellant's stance is the Council has therefore breached the statutory requirement under section 173(10) of the Act.[1]

5. Turning to the effect of these defects, the appellant agrees the plan can be corrected without causing injustice to the parties. However, it is argued there is no power to 'retrospectively engineer' the decision-making process by inserting the policies that appear in the Council's evidence into the original reasons for issuing the notice. The defect on the face of the notice results from a defect in procedural decision taking; it is not possible to

[1] Together with Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

know what was in the minds of those issuing the notice. Despite the wide powers of correction available to an Inspector under section 176 of the Act, this defect cannot be cured without the Inspector, in effect, becoming involved in the decision-making process.

6. The appellant argues that even if the notice could be corrected, this would result in significant injustice because the Council's highways case has expanded and the planning case has also expanded; for example, the notice made no reference to the protection of the countryside, the principle of development, or design matters. All of these matters now appear to be raised in the Council's evidence to the Inquiry.

7. In response, the Council's advocate considered these were 'bad points' which had been raised after the submissions of the proofs of evidence. The Council acknowledged the enforcement notice was 'not perfect' but it was considered 'good enough'; there are wide powers available to correct defects - provided that no injustice would be caused.

8. The Council's stance is the plan attached to the notice shows the annexe and there was no information from the appellant to say the boundary was wrong; there is no need for a correction. It is true the notice does not cite specific planning policies; however, it is coherent and clear. It refers to an isolated dwelling in an unsustainable location, contrary to policies of the development plan. The appellant understands the points arising from the notice and addresses them in the evidence to the Inquiry. To the extent that it is considered necessary to insert specific policies into the reasons for issuing the notice, there would be no injustice in doing so - they can be obtained from the supplementary proof of the appellant's planning witness. The attempt to attack the decision making process is an issue of governance and would need to be addressed by Judicial Review.

9. The appellant's advocate confirmed that a ruling was required on the validity of the notice. After a short adjournment to consider the submissions from the parties, including the legal authorities cited on the appellant's behalf, I gave the following preliminary ruling:

> '*In my judgement the notice is not defective on its face and is not a nullity. The inaccuracy of the plan attached to the notice is a defect - but it can be corrected by deleting the reference to a plan, without injustice to the parties.*
>
> *The failure to specify development plan policies is a further defect. However, the purpose of the requirement (to inform the appellant of the policy objection) has passed. There is no need to correct this defect. It seems to me that the parties understand the points arising from the notice and address them in their evidence. No injustice is caused in this instance*.'

10. I therefore decided to proceed with the Inquiry and to hear the evidence. Whilst legal submissions upon such matters are ultimately for the Courts to decide, in my judgement the notice is not a nullity as explained in the ruling. This is my formal ruling on the matter.

11. Turning to other matters, the appellant's advocate confirmed that grounds (e) and (g) of the original appeal were now withdrawn. The appeal is therefore proceeding on grounds (a) and (d) as indicated in the final bullet point of the heading above.

12. I also canvassed the need for a correction to the description of the allegation in the notice, in order to make it clear that it was directed at the material change of use of an ancillary outbuilding to a 'separate' self-contained residential dwellinghouse. The Council's advocate preferred the use of the word 'independent'. The appellant's advocate expressed no preference one way or the other. In any event, it was agreed that such a correction would not cause injustice. I shall correct the notice accordingly.

Background

13. Mill House Cottage forms part of a small, loose-knit group of properties situated on the east side of the A149 Queen Elizabeth Way, roughly 2.2 km from the northeast edge of Kings Lynn and about 1.5 km to the east of the village of Castle Rising. The property is a single storey dwelling. There is a detached outbuilding on its north side. The Council

indicates this was originally erected as a garage following the grant of planning permission in 1979.[2] The notice is directed at this structure. The parties refer to it as the 'annexe'.

The appeal on ground (d)

14. The onus is on the appellant under ground (d) to make out the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice. The notice (as corrected) is directed at the material change of use of an ancillary outbuilding into an independent, self-contained residential dwellinghouse. Consequently, the appellant needs to show the matters alleged in the notice occurred at least 4 years before it was issued. The relevant 'benchmark' date in this case is therefore 8 June 2012.

15. The appellant acquired Mill House Cottage during 2013. The appellant indicates that he was given to understand the annexe had been occupied as '*a self-contained dwelling with self-contained facilities for approximately 30 years with separate access, parking, residential curtilage and dividing fence from Mill House Cottage*.' [3] He understood that the main property and the annexe were originally occupied by a married couple, Mr and Mrs Taylor, for a number of years. He indicates they subsequently separated and the annexe was used as self-contained accommodation from the mid to late 1980's.

16. According to the appellant, the first available documentary evidence is the valuation report from W. J. Tawn Surveyors dated March 1986; this states "*Outside: Annexe comprising 'Bed Sitting Room and Utility Room with Separate W.C. Double Garage*."

17. The appellant's stance is this description infers a degree of self-containment. However, the Council argues the description is entirely consistent with the building being a residential annexe, perhaps sometime used for guests but largely a garage/storage space. In any event, this report falls well short of supporting the proposition that the annexe was used as a self-contained dwellinghouse separate or independent of Mill House Cottage.

18. The appellant also derives support from a statement made by Mr Mike Green of M & C Auctions, who cleared the main dwelling and annexe around January 2013. Mr Green remembers the annexe having a large living room and a bedroom with a single bed, plus a brick open fireplace and a television. He states the bathroom was complete with shower, flush toilet and hand basin. Apparently, the kitchen had an electric cooker stainless steel sink top, an American style fridge-freezer together with cutlery, glasses, crockery and general kitchenware; there was food and bottles and cans of alcohol. According to Mr Green, the annexe had clearly been lived in. He states "*It was my clear understanding that the property had at sometime been used as two separate properties*."

19. Mr Green's statement is not a statutory declaration. He did not appear at the Inquiry and his evidence could not be tested. In any event, this evidence also falls short of demonstrating that the annexe was actually used as an independent self-contained dwelling.

20. The appellant's submissions include a statutory declaration from Mr Stanley Smith, a resident who has lived adjacent to the site at Mill House Barns since 1989. However, Mr Smith was called as one of the Council's witnesses at the Inquiry. He also sought to distance himself from certain comments made in the declaration, indicating that he had not written the text of this document. Be that as it may, according to Mr Smith, Mr and Mrs Taylor got on very well and he could not imagine that they lived separate lives. Apparently, Mr Smith visited Mr Taylor on some occasions until he passed away.[4]

21. Mr Smith indicated the annexe was known as the 'garage' during this time. He also indicated that Mr Taylor did not live in the building – he went there from time to time. Mr Taylor sometimes played the bagpipes in the building. Mr Smith confirmed that he did not actually enter the annexe until after it had been purchased by the appellant. At that time he spoke to 'Graham' a builder carrying out works to the structure, which included the insertion of two

[2] Ref: 2/79/1158/F/BR
[3] Proof of evidence from the appellant's planning witness; paragraph 1.11
[4] Apparently, Mr Taylor died around 2001

windows on the rear elevation. He saw the annexe had a fridge - he opened the door and saw some Guinness. According to Mr Smith that is all he saw. He conceded under cross-examination that he could not say the Taylors did not live in the annexe. However, he also said that he could not imagine they lived in the annexe as it was 'very dark accommodation'.

22. After the appellant purchased the property, the annexe was let out on an Assured Shorthold Tenancy (AST) to Mr Heil and Miss Hill during 2015. This was terminated in 2016, apparently as a result of the Council's enforcement action. The annexe remains vacant. This is firm evidence to show the annexe was used independently of the main dwelling. However, it does not help to establish the nature of the use over the relevant 4-year immunity period.

23. The appellant's evidence includes extracts from the Valuation Office Agency and Council Tax records, which list the annexe separately from Mill House Cottage. However, these records do not identify the first date of any separate entries. According to the Council, until 2015 the only liability for Council tax was for the entire property known as Mill House Cottage. In January 2015, the tenants informed the Council they had moved into the annexe; they were billed for Council Tax from May 2015 until they vacated the annexe in June 2016. These records do little to assist the appellant's case and nor does his application to the Council in January 2015 for a new property address.

24. Further documents were submitted during the Inquiry. A letter dated 10 May 2017 from Edmonton Estates Ltd deals with electricity supply and suggests this is relevant to establishing the independent status of the annexe. The company was involved with the letting of the annexe. The letter indicates the annexe has its own direct supply which is metered; there is a 'secondary' meter to Mill House Cottage which solely relates to the supply of that property. The Council's Enforcement Officer, Mr Clarey, acknowledged under cross-examination that the provision of separate electricity meters is of importance in establishing separate residential use. However, as the Council's advocate pointed out in closing submissions, had the property been independently used, one would have expected evidence of independent accounts and independent bills. This has not been provided.

25. The appellant also produced a 'witness statement' dated 11 May 2017 from Mr Paul Tweed, an electrician. He apparently carried out work on the appellant's behalf, including a new control board for the annexe and replaced an analogue meter with a digital meter. He does not say when the work was carried out. Mr Tweed also describes the accommodation and fittings in the Annexe. He states: "*It was very clearly a residential dwelling in its own right and the separate meters for electricity suggests to me that the former occupants paid for their respective consumption of electricity*." However, Mr Tweed's statement is not an affidavit and he appears to rely to some extent upon supposition. He did not appear at the Inquiry and his evidence could not be tested. I therefore consider that limited weight should be given to this evidence.

26. The Council has produced evidence from E.ON UK which refers to a single electricity account. Similarly, the Council's enquiry to Anglian Water revealed a single account, albeit in November 2015 the name of the property was changed from Mill House Cottage to Mill House Annexe. There is no meter at the property; bills are produced on a fixed charge.

27. The Council's evidence also includes sales particulars from Rightmove at the time the property was marketed. These describe the accommodation in the main dwelling and state "… *there is also the outbuilding which has enormous potential as an annexe or even the possibility of linking it to the main residence (subject to relevant planning etc.)*". The sales particulars provide floorplans of the respective buildings, including figured dimensions. The internal layout of the annexe is shown as a garden room, a garage with opening doors, plus two smaller rooms with external doors. One of these rooms appears to incorporate a shower, plus WC; the other incorporates a cupboard.

28. The appellant's planning witness considered the notations on the floorplans were incorrect. He also considered the plans and text did not coincide. However, to my mind, the sales particulars should be afforded significant weight, not least because they appear to provide a contemporaneous account of the building's layout (including room

sizes). There was some discussion at the Inquiry concerning the existence of what appeared to be a fireplace in the garage. However, this is not a decisive factor in support of the appellant's case, as the evidence suggests the accommodation in the annexe was, to use Mr Tweed's description, 'quirky'. The fireplace also appears to have been removed as part of the appellant's subsequent alterations to the annexe, which included the insertion of two new windows upon the rear wall of the building.

29. There was also some discussion at the Inquiry concerning the nature of the enclosure between the annexe and main dwelling. The sales particulars show a low wall and railings. The appellant's' stance is these enclosures would mean that it was no longer possible to drive into the garage; as such, they were installed to separate the buildings. However, given the decorative and fairly open nature of the enclosures, I do not consider that such a conclusion can be safely drawn. In contrast, the privacy fencing recently provided by the appellant clearly appears to be intended to subdivide the buildings. The separate vehicular accesses to the buildings and car parking shown in aerial photographs are not determinative factors one way or the other in this case.

30. The Council cites a letter from the Principality Building Society, which indicates that when a valuation was carried out 'the outbuilding in question was merely an outbuilding'. However, this adds little, if any, understanding of the exact nature of the accommodation. Lord Howard of Rising also gave evidence to the Inquiry. Apparently, he has known the property since 1978. He stated, amongst other things, that a covenant on Mill House Cottage prohibits the use of the property by more than one family. He referred to a solicitor's letter drawing the matter to the appellant's attention. He also said that Mr Taylor was a decorator/handyman. The second entrance to the property was to allow him easy access to the garage where his materials were stored.

31. The Parish Council has provided some background to the property, including its previous owners. Mill House Cottage and the outbuilding were owned by Mrs Phillips of Mill House and used by her chauffeur - before being sold to the Castle Rising Estate. Subsequently, Mr and Mrs Taylor acquired the property. Apparently, Mr Taylor died around 2001. Mrs Taylor lived on her own at Mill House Cottage until she died in 2013. The Parish Council indicates that at the time of Mrs Taylor's death, the property was a small bungalow with an outbuilding containing a double garage. The Parish Council indicates this has been confirmed by adjoining residents. I have taken into account the evidence from Mr Smith and also from Mrs Sheppard, another local resident. Mrs Sheppard states she has lived here for 25 years and, to her knowledge, when the last owner lived at Mill House Cottage the garage was never used as a 'second residence'.

32. The quantum of evidence before me clearly demonstrates the annexe was occupied by tenants as an independent, self-contained dwelling from around February 2015 until their AST was terminated by the appellant - the tenants evidently vacated the property during June 2016. However, the evidence before that period is much less conclusive. Whilst the documentary and photographic evidence shows the annexe appeared to have the facilities necessary for day-to-day living, there is no firm or compelling evidence to demonstrate that it was used as a separate or independent self-contained dwellinghouse.

33. The appellant appears to have carried out extensive works to the annexe following his acquisition of the property in 2013. These works appear to include the replacement of garage doors, the provision of new windows, alterations to its internal layout and the provision of fencing to separate the annexe from Mill House Cottage. Bearing in mind the nature of the annexe prior to 2013, including its 'quirky' nature and 'very dark accommodation', it is difficult to escape the impression these works were intended to make the annexe more suitable and attractive to let. The activities were noticed by residents and eventually triggered the enforcement action by the Council. The appellant also registered the annexe as a separate address, which led to separate Council Tax bills from May 2015.

34. It is well established in planning law that the onus rests with the appellant to make out his or her case. However, on the evidence before me, I find that burden has not been satisfactorily discharged. On the balance of probability, I conclude that at the time the

notice was issued it was not too late to take enforcement action against the alleged breach of planning control. I have therefore concluded the ground (d) appeal should not succeed.

The appeal on ground (a)

35. Taking into account all that I have seen and read, I consider there are two main issues in this appeal. The first is whether the use of the outbuilding as a separate self-contained residential dwellinghouse constitutes an appropriate form of development in this location, having regard to the aims of local and national planning policies and other material considerations. The second is the highway implications of the development.

Issue 1: Appropriateness of the Development

36. The development plan for the area includes the King's Lynn and West Norfolk Borough Council Core Strategy (CS), adopted in July 2011, and the Council's Site Allocations and Development Management Policies Plan (SADMP) adopted in September 2016.

37. The following CS policies are most pertinent to the appeal. CS01 sets out the Council's spatial strategy for the Borough. Policy CS02 deals with the Borough's settlement hierarchy. Castle Rising is identified as a rural village where limited minor development will be permitted which meets the identified needs of the settlement in accordance with policy CS06. Paragraph 6.1.14 indicates that it would be inappropriate to seek further development within smaller villages and hamlets with little or no services.[5] Policy CS06 sets out the strategy for rural areas; this includes the promotion of sustainable patterns of development and the maintenance of local character and a high quality environment. This policy is broadly supportive of the conversion of existing buildings for business purposes. However, conversions to residential use will need to meet four main criteria.

38. Policy DM1 of the SADMP indicates there is a presumption in favour of sustainable development. Policy DM2 is concerned with development boundaries. The areas outside these boundaries will be treated as countryside, where new development will be more restricted and limited to that identified as suitable within rural areas by other policies.

39. The land at Mill House Cottage lies outside any designated development boundary. In planning policy terms, it lies in the countryside where restraint is placed on development.[6] The appellant's stance is that policy CS06 is supportive of the development - albeit this policy is argued to be more restrictive than paragraph 55 of the National Planning Policy Framework (NPPF). It was also suggested policy CS06 has been misunderstood by the Council, because the building is already in residential use. However, there is no dispute that planning permission is required for its use as an independent, self-contained dwelling. This residential use is subject to planning control and falls to be considered against the relevant planning policies. I do not consider that policy CS06 can be dismissed so easily.

40. As previously noted, policy CS06 indicates that conversions to residential use will only be permitted where four criteria are met. The first is that the building makes a positive contribution to the landscape. Given the 'quirky' almost rustic nature of the building it could be argued this criterion is met, notwithstanding its secluded position. The second is that a non-residential use is proven to be unviable. Evidence on the point has not been provided. Having said that, it is difficult to envisage what non-residential use might be appropriate here. The third criterion is the accommodation is commensurate to the site's relationship to the settlement pattern. This appears to be met, insofar as the building is modest in size and forms an unobtrusive part of a small, loose-knit group of properties.

41. The fourth criterion is the building should be easily accessible to existing housing, employment and services. The indications are this small group of properties has no facilities such as employment or services. A limited range of services exists in Castle Rising, however, the site is not well connected to it. Whilst I intend to deal with highways considerations later, it is pertinent to note this group of properties is separated from Castle

[5] Albeit I have borne in mind the distinction between explanatory text and policy addressed in the *Cherkley* case
[6] At the Inquiry, it also transpired the site lies within an AONB

Rising by the A149. There is no designated crossing point, footways or street lighting. As the Council points out, walking to local facilities is 'difficult'[7] and cycling is 'not advisable'.

42. The appellant's highways witness considered the site had 'superb' public transport available. However, that appears to overstate the position; in terms of public transport accessibility, there are some inner city areas that would not warrant such an effusive description. Regular bus services are available to King's Lynn and Hunstanton, which offer a wider range of facilities. However, the bus stops are about 350m from the site on either side of the A149 and are not ideally located, especially for the elderly or infirm.[8]

43. In any event, it is generally recognised there will be more reliance on the car as a mode of transport within rural areas.[9] Paragraph 29 of the NPPF recognises that the opportunities to maximise sustainable transport will vary from urban to rural areas. Paragraph 30 requires local planning authorities to support a pattern of development to facilitate the use of sustainable transport where it is reasonable to do so. This is one of the principles underpinning the relevant planning policies. However, in this instance the appeal site is not identified as a sustainable location for new housing development. Overall, I do not consider the development meets the fourth criterion of policy CS06 or that it contributes to a sustainable pattern of development for the purposes of this policy.

44. Even if the development fell to be considered primarily against the provisions of the NPPF, paragraph 55 states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. In this instance, the site is roughly 1.5 km from Castle Rising and has no physical or functional relationship to it. Paragraph 55 states local authorities should avoid isolated new homes in the countryside unless there are special circumstances. There is no evidence to demonstrate the development falls within the circumstances envisaged in this paragraph.

45. Whilst the annexe is near other buildings, this does not mean that it is not isolated. The building group is not visible from the A149. As the Council's planning witness stated under cross examination, 'small groups of properties can be isolated'. In my judgement, this is the case here. Bearing in mind the location, form and configuration of this group of properties, I agree with the Council's analysis that it would involve an additional isolated dwelling in the countryside. I consider the development is not supported by paragraph 55 of the NPPF.

46. I also consider the development conflicts with the relevant development plan policies that seek to promote sustainable patterns of development in the Borough, including CS02 and CS06. Furthermore, it conflicts with policy DM1 of the SADMP, insofar as it seeks to secure sustainable development, and does not fall within any category of development supported by DM2. I conclude that it constitutes an inappropriate form of development in this location.

Issue 2: Highway Implications

47. The A149 is a designated Principal Route within the Norfolk Route Hierarchy and is also designated as a Corridor of Movement for the purposes of development plan policies. The Council's highway witness indicated the primary purpose of these designated routes is to carry traffic between major centres and to provide linkage to the Trunk Road network.

48. Policy CS11 of the Core Strategy seeks to deliver a sustainable transport network. Amongst other things, proposals should demonstrate that they have been designed to reduce the need to travel, promote sustainable forms of transport appropriate to their location and, furthermore, provide safe and convenient access for all transport modes.

49. Policy DM12 of the SADMP seeks to protect the Strategic Road Network. New development served by a side road that connects to part of this network will be permitted, provided that any resulting increase in traffic would not have a significant adverse effect on the route's national and strategic role as a long distance traffic route, highway safety,

[7] Notwithstanding the existence of a public right of way
[8] At the inquiry it was acknowledged the annexe does not provide family-sized accommodation
[9] As acknowledged in policy CS11 of the Core Strategy

traffic capacity or the amenity and access of adjoining occupiers. Policy DM15 requires proposals to be assessed against various factors, including the provision of safe access.

50. The A149 is a busy route and carries significant volumes of traffic. The traffic statistics provided by the highway witnesses suggests the one-way, peak hour, week-day traffic movements are within the range of 696-806 vehicles. According to the Council's highway witness, survey data indicates a combined flow in excess of 15,000 per weekday vehicles along this section of the A149. Traffic conditions vary, but include commuter, commercial and agricultural traffic together with seasonal tourist traffic.

51. This part of the A149 is subject to a speed limit of 60 mph. The alignment of the carriageway is long and straight with a slight downgrade in a northerly direction. The Council's witness indicated the 85th percentile speed is 58.4/59.1 mph in a northbound/southbound direction, whereas the appellant's witness says it is 59.4/53.5 mph. Some traffic will exceed the speed limit and overtaking appears to be a regular occurrence.

52. The access to Mill House Cottage is a relatively narrow, privately maintained road. It is common ground between the main parties that the sightlines available at the junction of the access onto the A149 meet or exceed the relevant visibility standards. The parties also agree that the use of the annexe as an independent dwellinghouse will generate up to 6 additional vehicle movements per day. I see no reason to disagree.

53. The Council's highways witness calculated this would give rise to a 12.5% increase in vehicle movements, albeit this was revised upwards to 16.6% at the Inquiry.[10] The appellant's stance is this would, on average, involve 1 movement every 2 hours which is de minimis, especially having regard to the volume of traffic on the A149. A further 3 vehicles (at most) turning right would be generated, compared to 18 vehicles turning right per day at the moment. However, I am not entirely persuaded this would be the case given the potential draw of Kings Lynn to the southwest (the nearest main centre). In this respect, the Council's highways witness thought it was highly likely that all inward trips would involve right turns into the access. In any event, the appellant indicates that no personal injury accidents have been recorded at this junction. It is suggested the increase in traffic is so minor that it would be imperceptible and it would not have a 'significant adverse' effect upon highway safety or the highway network.

54. There is no formal right-turn lane for motorists wishing to enter the access to the site when approaching from the Kings Lynn direction. The appellant's highways witness referred to the existence of a 1.3 m ghosted central reserve, the inference being this provides some protection for vehicles turning right. He also appears to describe this arrangement as a 'ghost island junction'.[11] However, the Design Manual for Roads and Bridges indicates that, in certain circumstances, the use of ghost islands can cause safety problems on unrestricted rural single carriageway roads. In any event, the 'ladder hatching' at the junction appears inferior to a ghost island - it is narrower and does not provide a safe refuge for a waiting vehicle. There is no nearside passing bay.

55. The Council contends that drivers on Corridors of Movement do not normally expect to encounter slowing, stopping and turning movements outside of built-up areas. I observed the building group is not readily visible from the A149 and the presence of the access is not particularly noticeable when approaching from the north or the south. There is a strong possibility that northbound traffic is likely to be unexpectedly confronted by slowing, or stationary vehicles waiting to turn right into the access. To my mind, even a modest increase in right turn movements here from the A149 would be wholly undesirable. There is a clear risk this would increase the risk of collisions, due to vehicles being stationary within the middle of a stream of vehicles travelling in opposite directions at comparatively high speeds. There is also a risk that it would hinder the free flow of traffic on the A149, especially at peak periods. Overall, I

[10] Which is based on the six existing dwellings within this loose-knit group of properties
[11] Paragraph 7.4 of Mr Eggenton's proof

conclude there is a clear risk that it would have a significant adverse effect on part of the Strategic Road Network in terms of highway safety and its strategic function.

56. The appellant's highways witness suggested there would be an average gap of 4 to 5 seconds between oncoming vehicles; drivers turning right would be able to manoeuvre safely. The Council's witness disagreed. He said this did not happen in practice. I share this view. Vehicles often tend to 'clump' together, especially at peak periods when there is a more constant flow of traffic, thereby increasing the risk of impatient or poorly judged right-turn manoeuvres. I have borne in mind the Parish Council is concerned this development would hazard road safety and that similar concerns have been expressed by local residents and Lord Howard. According to one resident, right turns into the access from the Kings Lynn direction are '*always potentially risky*'.

57. The Council has produced evidence of personal injury accidents at junctions further to the north and south along the A149. There is a dispute between the main parties about the relevance of these statistics to the current development. In any event, the individual arrangement of the other junctions within the area and their associated accident records do not alter my conclusions concerning the highway implications of the development before me.

58. Paragraph 32 of the NPPF indicates that development should only be refused on traffic grounds where the residual cumulative impacts of the development are severe. Nevertheless, this paragraph also indicates that decisions should take account of whether 'safe and suitable access can be achieved for all people'. In this particular instance, I conclude there is a clear risk that this development would have a significant adverse effect on part of the Strategic Road Network in terms of highway safety and its overall function, contrary to Core Strategy policy CS11 and SADMP policies DM12 and DM15.

Overall Conclusions

59. The appellant has advanced material considerations in favour of the development subject of the notice, including the re-use of previously developed land, the provision of an additional home for small households, additional revenue in the form of Council Tax and additional support for local facilities. Reference is also made to the availability of an internet connection. However, weighing all the relevant considerations in the overall planning balance,[12] I conclude the social and economic benefits advanced in favour of the scheme are significantly and demonstrably outweighed by the inappropriateness of the development in this location and by the adverse highway implications of the scheme.

60. I have taken into account all the other matters raised, but find they do not alter or outweigh the main considerations that have led to my decision. For the reasons given above, I shall uphold the notice with corrections; the deemed application will be refused.

Formal Decision

61. The enforcement notice is corrected by:

(a) Deleting from paragraph 2 (THE LAND TO WHICH THIS NOTICE RELATES) the words ' *as shown shaded on the attached plan'*.

(b) Substituting in paragraph 3 of the enforcement notice (THE BREACH OF PLANNING CONTROL ALLEGED)' the words '*an independent*' for '*a*' before '*self-contained* ….'

62. Subject to these corrections, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nigel Burrows

INSPECTOR

[12] Including the Council's assertion that it has a 5-year supply of housing land (which is not challenged)

APPEARANCES

FOR THE APPELLANT:

Miss Emmaline Lambert	Of Counsel, instructed by Mr Davies
She called:	
Mr Barry Davies	Davies & Co Charted Surveyors
Mr Patrick Eggenton	EAS Transport Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ned Westaway	Of Counsel, instructed by the Solicitor to King's Lynn and West Norfolk Borough Council
He called:	
Mrs Kate Lawty	Senior Planning Officer, King's Lynn and West Norfolk Borough Council
Mr Matthew Clarey	Planning Enforcement Team Leader, King's Lynn and West Norfolk Borough Council
Mr Jon Hanner	Engineer (Highways Development Management) Norfolk County Council

INTERESTED PERSONS:

Lord Howard of Rising

DOCUMENTS SUBMITTED AT THE INQUIRY:

Document	1	Miss Lambert's submissions on the validity of the enforcement notice
Document	2	Copy of delegated authority to issue the enforcement notice, supplied by the Council
Document	3	Miss Lambert's opening submissions
Document	4	Statement by Lord Howard of Rising
Document	5	Plan of accident locations, supplied by Miss Lambert
Document	6	Extract from TD 42/95, supplied by the Council
Document	7	Bundle consisting of letter from Edmonton Estates (10.5.2017), Witness Statement from Mr Tweed (11.5.2017) and two pages of photographs, supplied by Miss Lambert
Document	8	Copy of policy G23 and Castle Rising development boundary, supplied by the Council

Document	9	Russen & Turner's marketing details of Mill House Cottage, supplied by Miss Lambert
Document	10	'Crash Map', supplied by the Council
Document	11	Statement of Common Ground, supplied by the Council
Document	12	Enlarged floor plans accompanying the marketing details of Mill House Cottage, supplied by Miss Lambert
Document	13	Policy CS09 of the Core Strategy, supplied by the Council
Document	14	Mr Westaway's closing submissions for the Council
Document	15	Miss Lambert's closing submissions for the appellant
Document	16	Mr Westaway's' costs application on behalf of the Council