

# Greater Norwich Development Partnership

## Regulation 19 Publication and Sustainability Appraisal Consultation

Joint Core Strategy for Broadland, Norwich and South Norfolk  
Addressing the Judgment of Mr Justice Ouseley in Heard v Broadland District Council,  
South Norfolk District Council and Norwich City Council

August 2012

Jobs, homes, prosperity for local people





# Regulation 19 Publication and Sustainability Appraisal consultation

August 2012

## 1. Introduction and Background to the Proposed submission Publication

This proposed submission document has been produced to address the Judgment made by Mr Justice Ouseley in the High Court on 24 February 2012, in the case of Heard v Broadland District Council, South Norfolk Council and Norwich City Council. It is important to understand that this is not a review of the whole JCS; it is a reconsideration of only those parts of the JCS which were remitted by the Judgment and Court Order

The Joint Core Strategy for Broadland, Norwich and South Norfolk (JCS) was adopted in March 2011. A legal challenge to the adoption of the JCS was received on 3 May 2011 from Stephen Heard, Chairman of Stop Norwich Urbanisation. High Court Judge Mr Justice Ouseley made his judgment on 24 February 2012 (Appendix 1) and published his final order on 25 April 2012 (Appendix 2).

Mr Justice Ouseley found that those parts of the Joint Core Strategy concerning the Broadland part of the Norwich Policy Area (the NPA – described in Appendix 3), including the North East Growth Triangle (a total of 9,000 dwellings) should be remitted for further consideration and that a new Sustainability Appraisal for that part of Broadland in the NPA be prepared.

The remitted parts of the JCS are treated as only having been taken up to the Regulation 19: Publication of a Local Plan Stage (previously known as the 'pre-submission stage'), and not having been examined or adopted. Broadland District Council, Norwich City Council and South Norfolk Council, together with Norfolk County Council have continued to work together as the Greater Norwich Development Partnership (GNDP). The Partnership has undertaken further work to reconsider the remitted parts of the JCS.

If the Partnership does not work to repair the JCS and the planned and measured growth that the Strategy provides, it will be very hard to control development that could spring up piecemeal based on speculative planning applications.

2. **Housing and employment requirement and distribution following the Judgment and Court Order**
  - 2.1 The Joint Core Strategy requires 37000 homes and 27000 jobs to be delivered to 2026. The Court Order does not affect the overall policies in the plan, the total housing numbers or the distribution of housing and employment, other than that in the Broadland part of the Norwich Policy Area.
  - 2.2 The Court Order only relates to the distribution of housing identified within the Broadland part of the NPA (a total of 9000 homes) and associated employment. Housing and employment distribution in South Norfolk and Norwich City remains the same as does housing and employment distribution in the rural part of the Broadland area not in the NPA.
  - 2.3 The Court Order sets out the work to be undertaken and identifies the parts of the JCS that have been remitted.
  - 2.4 The Court Order includes a schedule identifying the parts of the JCS to be remitted and sets out the action to be taken by the Councils to bring the remitted parts of the JCS to a position where they can be re-submitted for Examination in Public by an independent Inspector.
  
3. **The Sustainability Appraisal Report and Reasonable Alternatives for the distribution of 9000 homes**
  - 3.1 Work has been done to verify that 9,000 is the appropriate number of houses to be considered. A housing numbers paper is part of the evidence base that concludes 9,000 is the correct number for four key reasons:
    - The court order did not remit the total number of houses
    - The housing totals remain in the Regional Strategy
    - Local evidence supports the regional totals
    - Latest forecasts continue to support the same housing totals
  - 3.2 It is a statutory requirement that all Development Plan Documents (DPDs) must undergo a Sustainability Appraisal (SA). DPDs include core strategies, in this case the Joint Core Strategy. SA involves identifying the likely effects of a DPD on the economy, the community and the environment – the three dimensions of sustainable development – with a view to avoiding and mitigating adverse impacts and maximising positive ones.
  - 3.3 The Sustainability Appraisal also meets the requirements of the Strategic Environmental Assessments (SEA) required by the European Directive 2001/42/EC. The SEA is an environmental assessment of plans and programmes prepared by public authorities that are likely to have significant effects upon the environment.
  - 3.4 Following the Judgment the GNDP has taken a fresh look at the housing and employment distribution in the NPA and identified

reasonable alternatives that have undergone a full Sustainability Appraisal. The Sustainability Appraisal Report explains the process in detail.

- 3.5 The Sustainability Appraisal Report for the proposed submission parts of the JCS has been carried out by URS and is published on the GNDF website as part of the evidence base.
- 3.6 In doing so the screening considered the broad principles of concentration versus dispersal and the merits of each. One of the important conclusions from the early part of the screening process was that a floating small sites allowance of 2,000 is appropriate for the Broadland part of the NPA' leaving 7,000 new homes to be appropriately located in the NPA.
- 3.7 The process examined, in detail, 11 potential growth locations at three different scales of strategic growth and 7 potential combinations of those locations to accommodate the 7,000 dwellings and 25 hectares of employment land.
- 3.8 These were assessed against the JCS objectives which include factors such as: providing educational facilities to meet the needs of a growing population; promoting economic growth; minimising the impact on climate change; protecting and enhancing the individual character and culture of the area; reducing travel need and impact, enhancing the natural and historic built environments. For example when considering the scale of housing growth housing numbers would have to be in blocks of 1,000 in order for a primary school to be justified and in blocks of at least 7,000 to justify a high school.

#### 4. Three reasonable alternatives have been identified for the remaining 7000 homes

- 4.1 A cautious approach to rejection was taken throughout the screening process as outlined in 3.8 above. The process resulted in the identification of three reasonable alternatives:

##### **Alternative one (the remitted parts of the JCS)**

7,000 in the combined NE (inside and outside) sector (rising to 10,000 beyond the plan period) including 25 hectares of employment land at Rackheath

##### **Alternative two (Growth focussed in the North East, inside the line of the Northern Distributor Road)**

7,000 in North East (inside NDR) sector (rising to 10,000 beyond the plan period) including 25 hectares of employment land at Broadland Business Park or Norwich International Airport in addition to those in the adopted policies of the JCS

**Alternative three (Growth focussed in South West with the balance in the Broadland part of the NPA).**

- 4,600 South West (making a total of 7,000 at this location in the plan period (rising to 10,000 beyond) when combined with growth identified in the adopted JCS)
- 2,400 across the Broadland part of the NPA made up of two small scale locations of at least 1,000 each in North East sector (inside NDR) and North West Sector.
- An additional 25 hectares of employment land in association with the large scale strategic housing development in the South West or at Norwich International Airport.

**5. The most appropriate option for the distribution of 9000 homes**

5.1 Broadland District Council, Norwich City Council and South Norfolk Council reviewed the results of the draft Sustainability Appraisal and agreed that the alternative to take forward as the most appropriate option for the distribution of 9,000 homes was

- Old Catton, Sprowston, Rackheath and Thorpe St Andrew growth triangle :7,000 dwellings by 2026 continuing to grow to around 10,000 dwellings eventually
- Broadland smaller sites in the Norwich Policy Area :2,000 dwellings

5.2 This most appropriate option is, in fact, the same text as remitted and remains the best option for strategic growth in the Broadland part of the Norwich Policy Area.

5.3 This Joint Core Strategy Proposed Submission content is being published for comment, under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

5.4 A number of supporting documents have been prepared to support the Joint Core Strategy proposed submission content. These include a Sustainability Appraisal Report, updated proposals maps, an updated Statement of Consultation and a Habitats Regulations Assessment and Position Statement. All supporting documents are available at [www.gndp.org.uk](http://www.gndp.org.uk).

5.5 The Joint Core Strategy Proposed Submission Content has been published in order for representations relating to issues of soundness to be made, prior to its submission to the Secretary of State. All valid representations will be considered alongside the submitted document by an independent planning Inspector, who will conduct an examination. The anticipated timetable following Publication is:

- Submission – December 2012
- Examination in Public – March 2013
- Adoption – June 2013

- 6. Publication of the Joint Core Strategy proposed submission content**
- 6.1 The Joint Core Strategy proposed submission content will be published for a period of 8 weeks from 10 August 2012 until 5pm on 8 October 2012.
- 6.2 This is an unusual set of circumstances that brings a complexity to this stage of the process. In order to review the proposed submission parts of the Joint Core Strategy in context it is necessary to publish the complete Joint Core Strategy document. However, only the annotated parts of the document are to be considered under the Regulation 19 Publication. These parts are clearly referenced in the schedule at the end of this document.
- 6.3 The documents which have been published for comment are listed below:
- Joint Core Strategy Proposed Submission Document, including a schedule of the proposed submission content.
  - Joint Core Strategy for Broadland, Norwich and South Norfolk, highlighting the proposed submission content
  - Sustainability Appraisal of the JCS following the High Court Order
  - Policies Maps highlighting consequential changes
  - Habitats Regulations Assessment and Position Statement
  - Statement of Consultation and Position Statement
  - Statement of Compliance with Statements of Community Involvement and Position Statement
  - Statement of Compliance with the Duty to Cooperate
  - Diversity and Equality Impact Assessment and Position Statement
  - NPPF Compatibility Self Assessment Checklist
  - The full evidence base
- 6.4 There are other documents that accompany the SA and proposed submission schedule. If you were involved in the process previously you will find that many of these are unaffected by this work, however they have been reviewed and updated where appropriate.
- 6.5 All the evidence and responses relating to the Joint Core Strategy up to adoption in March 2011 are available on the GNDP website [www.gndp.org.uk](http://www.gndp.org.uk).
- 7. Making a representation**
- 7.1 Representations are invited under Regulation 20 of the Town and Country (Local Planning) (England) Regulations 2012, over an 8 week period from 10 August 2012 to 8 October 2012. Representations must be received by 5pm on Monday 8 October 2012 in order to be considered.

- 7.2 During the publication period you are invited to make representations on the Proposed Submission JCS content, as identified in the schedule. Your representation should relate to whether the proposed submission content complies with the legal requirements and is considered to be 'sound'.
- 7.3 All valid representations will be considered alongside the submitted documents by an independent inspector who will conduct an examination of the Joint Core Strategy submitted content.
- 7.4 Representations about the Joint Core Strategy may be made on
- the way the strategy is prepared (i.e. whether the Joint Core Strategy is **legally compliant** under the provisions of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011) and the Town and Country Planning Regulations 2012)
  - the **soundness** of the strategy (whether it is positively prepared, justified, effective and consistent with national policy).
- 7.5 If your representation seeks a change to the proposed submission content you will need to say why it is not currently sound and provide evidence or clear reason why it should be changed.
- 7.6 You should also think about how you want your representation to be considered, whether by written representation; or by exercising your right to be heard by the Inspector (please note you will only be heard where you are seeking a change to the proposed submission content).
- 7.7 Representations should be made via the GNDP consultation portal at [www.gndp.org.uk](http://www.gndp.org.uk). A detailed guidance note is available to download. It is recommended you read the guidance note before making your representation.
- 7.8 You can also make your representation in writing. A form and guidance note can be downloaded from [www.gndp.org.uk](http://www.gndp.org.uk). This can be emailed to [jointcorestrategy@gndp.org.uk](mailto:jointcorestrategy@gndp.org.uk) or printed and sent to the Greater Norwich Development Partnership, PO Box 3466, Norwich, NR7 7NX.
- 7.9 If you have any questions please telephone the GNDP on 01603 430144 or email [jointcorestrategy@gndp.org.uk](mailto:jointcorestrategy@gndp.org.uk).
- 7.10 Broadland District Council, Norwich City Council and South Norfolk Council, with Norfolk County Council and the Broads Authority will continue to work together as the Greater Norwich Development Partnership to bring new homes and jobs in the three districts.



Joint Core Strategy for Broadland, Norwich and South Norfolk: Regulation 19 Publication of proposed submission content

The schedule below details the parts of the Joint Core Strategy which are published for comment between 10 August 2012 and 8 October 2012. Representations should only be made on the proposed submission content specified in this schedule.

**Note: This proposed submission schedule is the same as the schedule accompanying the court order**

Proposed submission Reference (Court schedule reference in brackets)	Section of Joint Core Strategy	JCS page no.	Proposed submission text/diagram (underlined) [N.B. the words in square brackets are included for clarification purposes only]
PS-1 (1)	01 Our Strategy – fourth paragraph under heading “The dilemmas”	P.10	[In assessing the evidence to help identify the most appropriate locations for growth outside of the urban area,] <u>the area to the north east of the city [and the A11 corridor to the south west perform well. This allows] for a concentration of new [development to maximise the use of existing infrastructure...]</u>
PS-2 (2)	01 Our Strategy – fifth paragraph under heading “the dilemmas”	P.10	<u>In the case of Broadland, the historical pattern of development lends itself to further expansion with new growth locations in the parishes of Old Catton, Sprowston and Thorpe St Andrew, and the development of a low carbon community focussing on Rackheath, given its existing employment opportunities and railway line. The growth in these locations relies on the implementation of NATS.</u>
PS-3 (2)	01 Our Strategy – sixth paragraph under heading “the dilemmas”	P.10	<u>By contrast,</u> [the historic pattern of development in South Norfolk has focussed on its network of villages and market towns, such as Long Stratton and Wymondham, and has retained strategic green gaps between settlements.]

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PS-4  (3)	04 Spatial vision: third paragraph	Page 20	[Growth will be focussed on brownfield land in the Norwich urban area] <u>and in a very large mixed use urban extension within the Old Catton, Sprowston, Rackheath and Thorpe St Andrew growth triangle (Appendix 5).</u>
PS-5  (4)	04 Spatial vision: under the heading “Climate change and sustainability” 3 <sup>rd</sup> bullet point	Page 20	<u>inspired by the proposed exemplar at Rackheath,</u> [zero carbon development will be the standard to be achieved through advances and innovation in the design, construction and management of sustainable communities and new buildings which improve energy efficiency and use renewable energy.]
PS-6  (5)	04 Spatial vision: under the heading “Working and getting around” Second bullet point	Page 21	[investment at strategic and other employment locations will help create a stronger economy (including at Norwich city centre; Norwich Research Park, Hethel Engineering Centre,) <u>Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle</u> [Longwater, Wymondham and around Norwich International Airport).]
PS-7  (6)	Key diagram – and under objective 3	Page 27	<u>The notation of the area to the northeast of the urban area as one of the “strategic employment sites” and “major housing growth and associated facilities”</u>

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PS-8  (7)	05 Area-wide policies, Policy 4 Housing Delivery: under “Housing with care”	Page 41	[Mixed tenure housing with care will be required as part of overall provision in highly accessible locations. In particular provision will be required in Norwich, and the major growth locations of] <u>Old Catton, Sprowston, Rackheath and Thorpe St Andrew growth triangle</u> , [Cringleford, Hetherset, Wymondham and Long Stratton, and at Aylsham, Acle and Wroxham.]
PS-9  (8)	05 Area-wide policies, Policy 4 Housing Delivery: Table following paragraph 5.25	Page 43	The figure of <u>9,000</u> for the ‘New Allocations to 2026’ in the Broadland (NPA) and the total of <u>11,099</u> recorded in the table for the ‘New Commitment to 2026’ in the Broadland (NPA).
PS-10  (9)	06 Policies for Places: Introduction paragraph 6.3	Page 55	[Large-scale mixed-use developments in the Norwich Policy Area are provided...]  <u>in a major urban extension in the Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle, and ...</u> [at Cringleford, Easton/Costessey, Hetherset, Long Stratton and Wymondham.]
PS-11  (10)	06 Policies for places, Policy 9 Strategy for growth in the Norwich Policy	Page 56	2nd bullet point <ul style="list-style-type: none"> <li>• <u>Old Catton, Sprowston, Rackheath and Thorpe St Andrew growth triangle: 7,000 dwellings by 2026 continuing to grow to around 10,000 dwellings eventually</u></li> </ul>

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	Area: 2 <sup>nd</sup> & 8 <sup>th</sup> bullet points		8th bullet point <ul style="list-style-type: none"> <li>• <u>Broadland smaller sites in the NPA: 2,000 dwellings</u></li> </ul>
PS-12  (11)	06 Policies for places, Policy 9 Strategy for growth in the Norwich Policy Area: Final bullet point:	Page 57	Final bullet point <ul style="list-style-type: none"> <li>• [new employment development to serve local needs of major growth locations] <u>including around 25ha of new employment land at Rackheath</u></li> </ul>
PS-13  (12)	06 Policies for places, Policy 9 Para 6.7	Page 57	Paragraph 6.7 to read <u>The Old Catton, Sprowston, Rackheath and Thorpe St Andrew growth triangle incorporates land at Rackheath promoted for an eco-community under the governments Eco-towns programme and development of the rest of the area will be expected to reflect similar high standards.</u>
PS-14  (13)	Para 6.12 4 <sup>th</sup> bullet point	Page 58	4 <sup>th</sup> bullet point <ul style="list-style-type: none"> <li>• <u>Rackheath: around 25ha of new employment land for a range of employment uses to strengthen the employment role of this location and provide local opportunities for the new community in this area</u></li> </ul>

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PS-15  (14)	Diagram after the end of the paragraph 6.12 – Relationship between strategic growth locations within the Norwich Policy Area	Page 59	The notation for ‘Major housing growth and associated facilities’ and ‘Strategic employment locations’ entitled <u>Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle</u>
PS-16  (15)	Diagram after para 6.12, entitled “Main Housing Allocations”	Page 60	<u>Notation showing 10,000 new houses to the north east of the urban area within the Norwich policy area, and</u> <u>Notation showing 2,000 houses in the NPA part of Broadland. and</u> <u>Notation for the Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle</u>
PS-17  (16)	Policy 10 -- Locations for major new or expanded communities in the Norwich Policy Area: first	Page 63	[Major growth] in the <u>Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle, and [at Cringleford, Easton/Costessey, Hethersett, Long Stratton and Wymondham will be masterplanned as attractive, well-serviced, integrated, mixed use development using a recognised design process giving local people an opportunity to shape development.]</u>

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	sentence		
PS-18  (17)	Policy 10 Paragraph headed “Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle”	Page 63	<p>Heading and paragraphs as follows:</p> <p><b><u>Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle</u></b></p> <p><u>This location will deliver an urban extension extending on both sides of the Northern Distributor Road. Complete delivery of the extension is dependent on implementation of the Northern Distributor Road. However, there is scope for partial delivery, the precise extent of which will be assessed through the Area Action Plan. The structure of the local geography suggests that this new community will take the form of a series of inter-related new villages or quarters and will include:</u></p> <ul style="list-style-type: none"> <li>• <u>at least 7,000 dwellings (rising to a total of at least 10,000 dwellings after 2026)</u></li> <li>• <u>a district centre based around an accessible ‘high street’ and including a new library, education and health facilities. This may be provided by building on the proposed centre at Blue Boar Lane or by the creation of a second district centre elsewhere in the Growth Triangle. The development will also require new local centres</u></li> <li>• <u>new pre-school provision and up to six new primary schools plus a new secondary school with an initial phase to open as early as possible. To facilitate early provision the early phases of development will concentrate on family housing</u></li> </ul>

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			<ul style="list-style-type: none"> <li>• <u>new employment allocations for local needs including expansion of the Rackheath employment area</u></li> <li>• <u>retention of existing important greenspaces and significant levels of heathland re- creation to provide stepping stones to link Mousehold Heath to the surrounding countryside. Building design including, for example, appropriate use of 'green roofs' will help provide linkage between greenspaces</u></li> <li>• <u>restoring and conserving historic parkland and important woodland. A significant area north of Rackheath will be provided as green space to act as an ecological buffer zone and ensure no significant adverse impacts on the Broads SAC, Broadland SPA and Broadland Ramsar site</u></li> <li>• <u>Bus Rapid Transit to the city centre, possibly via Salhouse Road and Gurney Road, and a choice of safe and direct cycle routes to the centre</u></li> <li>• <u>safe and direct cycle and pedestrian routes, and orbital bus services, to Broadland Business Park, Rackheath employment area, airport employment areas and to the surrounding countryside</u></li> <li>• <u>new rail halts at Rackheath and Broadland Business Park</u></li> <li>• <u>permeability and community integration across the Northern Distributor Road and with existing communities. This will be crucial for the successful development of the area</u></li> </ul>

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			<ul style="list-style-type: none"> <li>• <u>a new household waste recycling centre.</u></li> </ul> <p><u>A single co-ordinated approach will be required across the whole area. This will be provided through the preparation of an Area Action Plan (or any future equivalent process). More detailed masterplanning will be required for each quarter.</u></p>
PS-19  (18)	Policy 10:  Para 6.15	Page 66	<p><u>The major urban extension in the Old Catton, Sprowston, Rackheath, and Thorpe St Andrew growth triangle will provide a concentration of growth which can support local services, facilities, and infrastructure including secondary education, high quality public transport links and significant green infrastructure. An Area Action Plan and a sustainable development code are being developed. The growth triangle is proposed to accommodate 10,000 dwellings after 2026. A large part of the [development at Rackheath was promoted as an eco-community under the previous Government's eco-towns programme.] The Rackheath low carbon development remains part of this strategy.</u></p>
PS-20  (19)	Para 6.16 second line	Page 66	<p>[This makes a] <u>similar</u> [large-scale urban expansion inappropriate.]</p>
PS-21  (20)	Para 6.19	Page 66	<p>[In particular it is necessary to allow] <u>significant development in the growth triangle and [the full implementation of the remainder of the Norwich Area Transportation Strategy. The completion of appropriate improvements at Postwick junction would allow for some development] in the Old Catton, Sprowston, Thorpe St Andrew growth triangle [in advance of the NDR] (see</u></p>



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			<u>supporting text for Policy 20).</u>
PS-22  (21)	Para 6.20 fourth sentence	Page 67	[The growth] <u>in the Old Catton, Sprowston, Rackheath, Thorpe St Andrew area</u> [will require the implementation of bus priority routes into the city centre including] a [Bus Rapid Transit] <u>route which may be via Gurney Road/Salhouse Road.</u>
PS-23  (22)	Paragraph 6.22	Page 67	<u>A new secondary school is needed to serve the new community in the north east.</u> [The form and location of secondary provision for growth in the west and south west is] <u>more</u> [complex and yet to be determined.]
PS-24  (23)	Diagram following policy 10, entitled "Green infrastructure priority areas supporting key growth locations"	Page 69	The 'Growth location' and 'Green infrastructure priority area' to <u>the northeast of the urban area</u> and <u>priority corridor A</u> entitled 'Norwich to the Broads'
PS-25  (24)	Policy 12: The remainder of the Norwich urban area, including the fringe	Page 74	[It will be expanded] <u>through significant growth in the Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle, and smaller</u> [urban extensions at Cringleford, and Easton/Costessey (Policy 10).]

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	parishes: 1 <sup>st</sup> paragraph		
PS-26 (25)	Policy 15 Service Villages third paragraph	Page 84	[In addition to the settlements above, Easton] <u>and Rackheath</u> [have equivalent status to a Service Village while providing a location for significant housing growth.]
PS-27 (26)	Paragraph 6.77	Page 90	[The proposed large-scale housing areas will provide for shops and services to meet local needs where they are not able to benefit from existing centres.] <u>The Old Catton, Rackheath, Sprowston and Thorpe St Andrew growth triangle in particular will be sufficiently large to require a district centre. Preferably this will include a food store as an anchor and sufficient leisure and ancillary activities to provide for the attraction of a range of trips. This may be through building on the proposed centre at Blue Boar Lane or the creation of a second district centre elsewhere in the Growth Triangle. This will be determined through the Area Action Plan for the area.</u>
PS-28 (27)	Policy 19, The hierarchy of centres Point 3.	Page 89	[New district centres/high streets to be established] <u>within the Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle, [at Blue Boar Lane, Sprowston and Hall Road, Norwich.] The Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle will be served by a district centre. This may be provided by building on the proposed district centre at Blue Boar Lane or the creation of a second district centre elsewhere in the Triangle as determined</u>

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			<u>through the Area Action Plan for the Growth Triangle.</u>		
PS-29 (28)	07 Implementation and monitoring, Paragraph 7.16	Page 95	[Subject to acceptable improvements to Postwick junction (in the form of Postwick Hub or a suitable alternative) there is significant potential for further development] <u>in the growth triangle</u> [before confirmation of delivery of the NDR.]		
PS-30 (29)	Table in paragraph 7.16 first line	Page 95	<b>[Location]</b>	<b>[Level of growth supported by current evidence]</b>	<b>[Constrained development]</b>
			<u>Growth Triangle</u>	[At least 1600 dwellings (plus 200 exemplar at Rackheath prior to Postwick junction improvements)]	<u>New employment allocation at Rackheath</u>
			<u>Smaller sites in Broadland NPA</u>	[Delivery of the smaller sites allowance will be dealt with on a site by site basis]	
PS-31 (30)	Para 7.17	Page 95	<u>Broadland District Council is committed to preparing an Area Action Plan (AAP) for the growth triangle. As part of the preparation of this AAP there will be an investigation of any potential that may exist for further growth to take place (in addition to that shown in table 1 above) without confirmation of the delivery of the NDR. This will include testing whether interim schemes and/or alternatives to</u>		

<b>Proposed submission Reference</b> (Court schedule reference in brackets)	<b>Section of Joint Core Strategy</b>	<b>JCS page no.</b>	<b>Proposed submission text/diagram (underlined)</b> [N.B. the words in square brackets are included for clarification purposes only]
			<p><u>the NDR could help to facilitate growth without compromising the spatial vision and objectives of the JCS. Therefore, the analysis would need to cover capacity of all infrastructure, not just road capacity, the implications of particular sites, and the nature of the proposed development. [It will be essential that the growth is delivered in accordance with the overall strategy, taking account of its wider impact across the Norwich area, including a full range of infrastructure provision, services and high-quality public transport and walking / cycling provision.]</u></p>
PS-32  (31)	Para 7.18	Page 96	<p>[Development beyond the pre-NDR threshold] <u>established through the AAP process</u> [will not be possible without a commitment to the NDR. If it becomes clear that there is no possibility of the timely construction of the NDR, a review of the JCS proposals] <u>for the growth triangle</u> [and the implications for the strategy as a whole would be triggered.]</p>
PS-33  (32)	Appendix 5 <i>Old Catton,            Sprowston,            Rackheath,            Thorpe St Andrew            Growth Triangle</i>	Page 107	<p>The whole appendix '<u>Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle</u>', including map</p>
PS-34	Appendix 6 housing trajectory -- table entitled	Page 113	<p>The figures in the second to fourth rows are published as Proposed Submission content namely the lines entitled '<u>Rackheath</u>', '<u>Remainder of Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle (inside NDR)</u>', and</p>

Proposed submission Reference (Court schedule reference in brackets)	Section of Joint Core Strategy	JCS page no.	Proposed submission text/diagram (underlined) [N.B. the words in square brackets are included for clarification purposes only]
(33)	"Growth locations"		<p><u>'Additional smaller sites around Broadland NPA (2000)'</u>.</p> <p>The totals derived for Broadland in the first row and the Total in the last row of the table shall be read in the light of this Proposed Submission context.</p>
PS-35  (34)	Appendix 7 First paragraph	Page 115	[Additional infrastructure will be needed beyond this date,] <u>including in the growth triangle where 3,000 dwellings are proposed after 2026.</u>
PS-36  (34)	Appendix 7 Table 1 Implementation Framework	Page 115 - 160	<p>The implementation framework lists the infrastructure required to facilitate the development promoted in the plan. Under the remit of the Proposed Submission publication all references in the list in relation to the North East Growth Triangle and the strategic housing growth identified in the part of the Norwich Policy Area in Broadland District are published for comment. This applies where:</p> <p><u>In Column 2 (headed "Scheme") where there is a reference to Rackheath</u></p> <p><u>In Column 3 (headed "Required for growth in") where there is a reference to Old Catton, Sprowston, Rackheath and Thorpe St Andrew Growth Triangle, or to 'Broadland: smaller sites in the NPA (2000 dwellings)'</u>.</p>
PS-37	Proposed submission Policies map	N/A	All instances of the <u>'Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle'</u> boundary, hatching and notation on the Amended Proposals* Map for Joint Core Strategy and the 'Changes to Local Plan Proposals* Map for

<b>Proposed submission Reference</b> (Court schedule reference in brackets)	<b>Section of Joint Core Strategy</b>	<b>JCS page no.</b>	<b>Proposed submission text/diagram (underlined)</b> [N.B. the words in square brackets are included for clarification purposes only]
(35)	amending the Broadland Proposals* Map		Joint Core Strategy' for <u>Old Catton (32A), Rackheath (33), Rackheath (34), Salhouse – Station Road (38), Spixworth (40), Sprowston (41A), (41D), (41E), Thorpe End (19), Thorpe St Andrew (44A), (44B), (44D), (44F).</u>  (* in line with the Town and Country Planning (Local Planning) (England) Regulations 2012, Proposals maps are now known as Policies maps)

## Glossary

### **Appropriate Assessment (see also Habitats Regulations Assessment)**

Analysis of the impact of plans and strategies on areas of designated European environmental importance such as Special Protection Areas, Special Areas of Conservation and Ramsar sites.

### **Area Action Plan (AAP)**

A Development Plan Document within the Local Development Framework that establishes a set of development proposals and policies for a specific area.

### **Core Strategy**

A spatial planning strategy that sets out long term objectives for planning.

### **Development**

Defined in planning law as ‘the carrying out of building, engineering, mining or other operations in, on, over, or under land, or the making of a material change of use of any building or land’.

### **Development Plan**

A set of plans guiding future development in the area. The development plan consists of the Regional Spatial Strategy and locally prepared Development Plan Documents.

### **Development Plan Document**

Locally prepared document on a specific topic which forms part of the development plan and which subject to independent examination before adoption. Also commonly referred to as DPDs.

### **Environmental statement**

Written statement, submitted with certain kinds of planning application, which set out the anticipated effects of the proposed development. Such statements deal with the full environment effects of major development proposals and include any mitigation measures needed under the Town and Country Planning (environmental impact) Regulations 1999.

### **Green infrastructure**

Green spaces and interconnecting green corridors in urban areas, the countryside in and around towns and rural settlements, and in the wider countryside. It includes natural green spaces colonised by plants and animals and dominated by natural processes and man-made managed green spaces such as areas used for outdoor sport and recreation including public and private open space, allotments, urban parks and designed historic landscapes as well as their many interconnections like footpaths, cycleways, green corridors and waterways.

### **Habitats Regulations Assessment (HRA)**

Under the Habitat Regulations it is a statutory requirement for local authorities to undertake an assessment of land use plans to ensure the protection of the integrity of sites designated as Special Protection Areas (SPA) and Special Areas of Conservation (SAC).

### **Infrastructure**

The network of services to which it is usual for most buildings or activities to be connected. It includes physical services serving the particular development (e.g. gas, electricity and water supply; telephones, sewerage) and also includes networks of roads, public transport routes, footpaths etc as well as community facilities and green infrastructure.

### **Local Development Framework (LDF)**

The Local Development Framework (LDF) is the term used to describe the set of documents which will eventually include all of the planning authority's local development documents, one of which will be the Core Strategy.

### **National Planning Policy Framework (NPPF)**

The National Planning Policy Framework was published by the Government in March 2012 and sets out the planning policies for England and how these are expected to be applied. It provides a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities. The National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions.

### **Northern Distributor Road (NDR)**

A dual-carriageway road proposed to the north of Norwich, linking the A47 to the south-east of the city with the A1067 in the north-west.

### **Norwich Area Transportation Strategy (NATS)**

Statement of strategic transportation policy for Norwich and surrounding area, most recently adopted in 2004.

### **Norwich fringe**

Area next to the city of Norwich, but lying in another administrative district which is predominantly developed, including open spaces encompassed within the developed area. For Broadland this includes the continuously built up parts of Hellesdon, Drayton, Taverham, Old Catton, Sprowston and Thorpe St Andrew and in South Norfolk it includes Colney, Costessey, Cringleford and Trowse.

### **Norwich Policy Area**

Part of the county which is centred on and strongly influenced by the presence of Norwich as a centre for employment, shopping and entertainment, generally comprising the fringe and first ring of large villages around the city of Norwich, but extending to Long Stratton and Wymondham (see Appendix 4).

### **Policies Maps**

Maps of the local planning authority's area, based on an ordnance survey map, which geographically illustrate the application of the policies in the adopted development plan. These maps were previously known as **Proposals Maps**.

### **Proposals Maps**

See **Policies Maps**



### **Regional Spatial Strategy (RSS)**

Broad strategy setting out spatial planning policies for a region. It forms part of the development plan for the area along with locally prepared Development Plan Documents, which must be in general conformity with it. The Regional Spatial Strategy for this part of England is called the East of England Plan.

### **Regulation 19: Publication of a Local Plan Stage (previously known as the 'pre-submission stage')**

Before submitting a local plan document to the Secretary of State the local planning authority must publish the proposed submission documents to enable representations to be made under Regulation 20 of the Town and Country (Local Planning) (England) Regulations 2012. Representations received are collated and submitted to the Secretary of State and are considered alongside the submitted document by an independent Planning Inspector who will conduct an Examination in Public of the Submission Documents.

### **Site allocation DPD**

A document used to identify sites to accommodate the range of land uses necessary to implement the objectives of a Core Strategy.

### **Strategic Environmental Assessment (SEA)**

The SEA is an environmental assessment of plans and programmes prepared by public authorities that are likely to have significant effects upon the environment and is a legal requirement of the European Directive 2001/42/EC. SEA is usually carried out as part of a wider Sustainability Appraisal.

### **Sustainability Appraisal (SA)**

An appraisal which involves identifying the likely effects of a DPD on the economy, the community and the environment – the three dimensions of sustainable development – with a view to avoiding and mitigating adverse impacts and maximising positive ones. It is a statutory requirement that all Development Plan Documents (DPDs) must undergo a Sustainability Appraisal (SA).

### **Sustainable development**

The main dimensions of sustainable development as identified in the UK's strategy for sustainable development ('a better quality of life, a strategy for sustainable development' 1999) are as follows:

- social progress which recognises the needs of everybody
- effective protection of the environment
- prudent use of natural resources
- the maintenance of high and stable levels of economic growth and employment

**Please note:** A full glossary of terms is available in The Joint Core Strategy for Broadland, Norwich and South Norfolk

Appendix 1: High Court Judgment



Neutral Citation Number: [2012] EWHC 344 (Admin)

Case No: CO/3983/2011

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24/02/2012

Before :

**MR JUSTICE OUSELEY**

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Between

HEARD

**Claimant**

- and -

**BROADLAND DISTRICT COUNCIL**  
**SOUTH NORFOLK DISTRICT COUNCIL**  
**NORWICH CITY COUNCIL**

**Defendants**

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**Mr R Harwood** (instructed by **Richard Buxton Solicitors**) for the **Claimant**  
**Mr W Upton** (instructed by **Sharpe Pritchard Solicitors**) for the **Defendants**

Hearing dates: 6<sup>th</sup> and 7<sup>th</sup> December 2011  
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**Approved Judgment**

## Appendix 1: High Court Judgment

### MR JUSTICE OUSELEY:

1. The Claimant, Mr Heard, challenges the adoption by the Defendants of their Joint Core Strategy on 22 March 2011, a development plan document created under the Planning and Compulsory Purchase Act 2004 for their areas. The challenge is brought under s113 of that Act, on the grounds that the Joint Core Strategy, JCS, was not within the powers of the Act, or there had been a procedural failing which had prejudiced the Claimant.
2. The three Defendants are district councils: Broadland DC and South Norfolk DC which surround Norwich City Council's area to the north and south respectively. The three have co-operated to produce a Joint Core Strategy for their areas. This includes the Norwich Policy Area, NPA, which covers the whole of the City Council's area and, putting it very broadly, the parts of the other two Councils' areas which lie closer to the City.
3. Part of the JCS involves meeting the growth requirements for the NPA laid down in the Regional Spatial Strategy, RSS, as adopted in 2008; it is now the Regional Strategy. The JCS, in order to meet its statutory obligation to conform generally to the RSS, had to provide for the stipulated levels of growth; but it was for the JCS to decide where that should take place. The JCS includes, as part of its provision for the RSS requirement, major growth in an area to the north east of Norwich known as the North East Growth Triangle, predictably, NEGT.
4. Mr Heard is a resident in that area north east of Norwich which is earmarked for major growth in the JCS. He is the chairman of an action group, Stop Norwich Urbanisation, SNUB. Although opposed to urbanisation generally, Mr Heard contends that the JCS is unlawful because the Strategic Environmental Assessment, SEA, which the Councils had undertaken, did not comply with two requirements: first, that it explain which reasonable alternatives to urban growth in the North East Growth Triangle they had selected to examine and why, and second, that it examine reasonable alternatives in the same depth as the preferred option which emerged. It was not said that the examination of the preferred option was itself inadequate, nor that changes in circumstance required a further examination of previously discarded alternatives. The Defendants contended that the work they had done was sufficient for these purposes.
5. His second ground was that the Strategic Environmental Assessment was further unlawful since it did not assess the impact of a proposed new highway, the Northern Distributor Road, the NDR, or of alternatives to it. The NDR was fundamental to the achievement of the full development of the North Eastern Growth Triangle, though there was a case for it even without that development. The Defendants contended that the NDR had been adequately assessed in documents prepared by the highway authority, Norfolk County Council, and that although the JCS supported and in some ways promoted the NDR, it was not for it to assess it or to consider

## Appendix 1: High Court Judgment

alternatives to it. The County Council was part of the informal Greater Norwich Development Partnership, GNDP, with the three District Councils.

### The legislative framework

6. A plan such as the JCS has to be subject to what is called Strategic Environment Assessment, by virtue of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment.” This has been transposed into domestic law by the Environmental Assessment of Plans and Programmes Regulations 2004 SI no.1633. Regulation 8 prohibits a plan being adopted until regulation 12, amongst others, has been complied with. Regulation 13 requires the plan, when in draft, and its accompanying environmental report to be subject to public consultation. Regulation 8 prohibits the adoption of a plan before the environmental report and the consultation response have been taken into account. These reflect requirements of the Directive. Environmental assessment is thus, as Mr Upton submitted, a process and not merely a report.
7. Regulation 12 (2) (b) requires an environmental report “to identify, describe and evaluate the likely significant” environmental effects of implementing the plan, and of “reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme”. The report has to include such of the information set out in Schedule 2 as is reasonably required although it can be provided by reference to relevant information obtained at other levels of decision-making. Item 8 in the Schedule is “an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties...encountered in completing the information.” Mr Upton for the Defendants emphasised the word “outline”. It is not, he said, a requirement to give reasons for selecting the option eventually pursued; but one would normally expect them to emerge reasonably clearly from the assessments.
8. European Commission has provided guidance on Article 5(1) of the Directive, the equivalent of regulation 12 of the UK Regulations, as to what level of assessment is required for alternatives. Alternatives to the option being promoted should be evaluated on the same basis and to the same level as the option promoted in the plan:

“In requiring the likely significant environmental effects of reasonable alternatives to be identified, described and evaluated, the Directive makes no distinction between the assessment requirements for the drafted plan or programme and for the alternatives. The essential thing is that the likely significant effects of the plan or programme and the alternatives are identified, described and evaluated in a comparable way. The requirements in Article 5(2)

## Appendix 1: High Court Judgment

concerning scope and level of detail for the information in the report apply to the assessment of alternatives as well. It is essential that the authority or parliament responsible for the adoption of the plan or programme as well as the authorities and the public consulted, are presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option. The information referred to in Annex I should thus be provided for the alternatives chosen.”

9. Mr Upton suggested that it was too simplistic to say that all alternatives had to be assessed to the same degree throughout a process in which, as the Directive and Regulations envisaged, options were progressively narrowed and discarded as successive stages moved towards a preferred option. Those options discarded at earlier stages did not have to be revisited at every subsequent stage; see *City and District Council of St Albans v Secretary of State for Communities and Local Government* [2009] EWHC 1280 (Admin), Mitting J para 14.
10. The guidance also deals with what constitutes a reasonable alternative: it must be realistic, fall within the legal and geographic competence of the authority, but it otherwise depends on the objectives, and geographical scope of the plan. Alternative areas for the same development are an obvious example. The longer term the plan, the more likely it will be that it is alternative scenarios which are examined.
11. Article 1 of the Directive is relevant because it makes clear that the objective of the Directive in providing for environmental assessment is to protect the environment and integrate environmental considerations into the adoption of plans with a view to “promoting sustainable development”. This, with Article 4, which permits a national authority to integrate compliance with the Directive into national procedures, has led to the practical implementation of the Directive through the requirement in s19(5) of the 2004 Act that a plan be subject to a Sustainability Appraisal, SA, rather than through a separate document entitled an environmental report. Article 4(3) also recognises that there may be a hierarchy of plans, and that the assessment will be carried out at different levels.
12. To avoid duplication in this process, Article 5(2) permits the decision as to what information is reasonably required to take account of “the contents and level of detail in the plan ..., its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process....” This is reflected in regulation 12 of the domestic Regulations. Mr Harwood for the Claimant submitted, and I accept, that while options can be rejected as the plan moves through successive stages, and do not necessarily require to be re-examined at each

## Appendix 1: High Court Judgment

stage, a description of what alternatives were examined and why had to be available for consideration at each stage, even if only by reference back to earlier documents, so long as the reasons there given remained sound. But the earlier documents had to be organised and presented in such a way that they could readily be ascertained and no paper chase was required to find out what had been considered and why it had been rejected; see *Save Historic Newmarket Ltd v Forest Heath District Council* [2011] EWHC 606 (Admin), Collins J, paras 17 and 40.

13. At para 40, he said, and it provides a useful summary of the test:

“40. In my judgment, Mr Elvin is correct to submit that the final report accompanying the proposed Core Strategy to be put to the inspector was flawed. It was not possible for the consultees to know from it what were the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in the residential development made no difference. The previous reports did not properly give the necessary explanations and reasons and in any event were not sufficiently summarised nor were the relevant passages identified in the final report. There was thus a failure to comply with the requirements for the Directive and so relief must be given to the claimants.”

### **The facts**

14. The plan-making process is rather convoluted and the sequence of documents constituting it needs to be set out. I could not readily discern it from the parties' submissions.
15. Although the way in which the NDR was treated is the subject of a separate ground, the Northern Distributor Road and the North East Growth Triangle are closely linked and it is convenient to deal with them together chronologically, though it must be noted at the outset that it is Norfolk County Council which bears statutory responsibility for the transportation strategy, and not the Defendants.
16. The County Council consulted on various Norwich Area Transportation Strategy, NATS, options in 2003. An SEA was carried out in 2004 for the NATS, voluntarily since it preceded the coming into force of the Directive; it was not itself subject to public consultation. A number of options, sieved from a larger variety, were fully considered including three which involved differing lengths of NDR, and three which involved no NDR, but improved public transport and other measures to reduce car usage instead. The preferred strategy included what then was called the three quarter NDR; the NATS had been designed to help deliver the growth that would occur in the Norwich area with or without a supportive transport infrastructure,

## Appendix 1: High Court Judgment

and to address the problems it would create. The NDR was identified as an important element to enable growth within and around Norwich; without it, developer led schemes to provide accessibility to individual developments would lead to a disjointed network. The NDR was “the only feasible solution for dealing with growth and transport problems and issues on a long-term basis.”

17. Policy 2 of the NATS, adopted in 2006, provided that an NDR would be developed for implementation in conjunction with other measures. Its precise alignment was not for decision at that stage.
18. The County Council adopted its Second Local Transport Plan in 2006 as required by the Transport Act 2000. A Strategic Environmental Assessment was undertaken for this purpose, published in 2006, and summarised in the LTP itself. It assessed the overall environmental effect of the LTP, the impact of the two potential major schemes, one of which was the NDR, and the environmental effect of the LTP with and without those major schemes. An Environmental Report was consulted on with the Provisional LTP in 2005, but it did not deal with the NDR. The rather longer SEA of 2006, which was not itself consulted on, did not assess the LTP without the NDR alone, nor alternatives to the NDR. The LTP promoted the NDR as a major scheme, describing its purpose, advantages, position in the development plan framework, and its financing status.
19. Meanwhile, other parts of the development plan process were under way. The revised Regional Strategic Strategy, RSS, had been going through its draft stages, themselves informed by a Sustainability Appraisal at two stages which incorporated a Strategic Environmental Assessment. This was adopted in May 2008, as the East of England Plan, EEP, by the Secretary of State for Communities and Local Government. It became part of the statutory development plan framework under the 2004 Act, and local development plan documents such as the JCS had to conform generally to it. It covered the period 2001-2021.
20. The EEP dealt with transportation; Policy T15 identified the Norwich area as one which was likely to come under increasing transport pressure as a result of underlying traffic growth and the RSS development strategy. Appendix A listed the NDR as one of the regionally significant investments currently programmed for the region, a Major Local Transport Plan Scheme.
21. Policy NR1 dealt with Norwich as a “Key Centre for Development and Change”, a regional focus for housing, employment and other activities: 33000 additional houses were to be provided in the NPA between 2001-2021, facilitated by LDDs prepared jointly by the three Defendants; requirements for consequential transport infrastructure “should be determined having regard to” the NATS. Policy H1 elaborated the housing strategy, setting district totals conforming to that total for the NPA parts of the three involved here.

## Appendix 1: High Court Judgment

22. During the preparation of the revised RSS, the three Defendant Councils had begun work on their Joint Core Strategy. In November 2007, the Councils issued, for public consultation, an “Issues and Options” paper. This identified the housing requirements for the NPA in the then draft EEP. The three strategic options for dealing with the required growth were dispersing growth across a large number of small scale sites, medium concentration on large estate size sites of 15-3000 units, or Larger Scale Urban Extensions and new settlements in the range 5,000-10,000 dwellings. An initial assessment of the broad locations for major growth, including the north east sectors inside and outside the NDR, was appended; a full sustainability appraisal was promised at the preferred options stage, but early indications on a comparative basis were provided under the heading “Some issues relating to potential growth locations”. Comments were sought on which broad strategy should be preferred, (Q11) and on the various major growth locations outlined, (Q12). Potential combinations for large scale growth were identified and comments sought as to which were preferred (Q13):

“As well as identifying smaller urban extensions and growth in villages, the main pattern of large-scale growth could be:

- a) concentration on the north east and south west of Norwich and at Wymondham
- b) as a) plus a fourth location for large scale growth
- c) as a) plus two or more locations for medium scale growth
- d) a different combination for major growth options
- e) a more dispersed pattern of growth (perhaps an average of 1,500 dwellings in ten locations).”

23. This document also dealt with strategic infrastructure priorities. The NDR had been identified as essential to managing the demand for travel arising from the levels of growth planned in the EEP, providing access to the potential growth areas on the north eastern fringes of Norwich and enabling traffic to be removed from the city centre and improvements to non-car based transport.

24. The Sustainability Appraisal for the Issues and Options paper assessed the different strategies for locating growth, (Q11 above). There was also an appraisal of the growth locations identified in the appendix, (Q12): north-east sector inside NDR, north-east sector outside NDR, east sector outside



## Appendix 1: High Court Judgment

NDR, and south and south west sectors; 12 sectors in all, including some combinations. The potential combinations for large scale growth, (Q13), were grouped for appraisal under two heads, which represented a concentrated option and a more dispersed option; option C was regarded as middle ground between the two and option D, a different combination of major growth areas, was not assessed at all. The responses were reported at length.

25. In August 2008, there was a technical consultation with statutory bodies on the practicalities of various major growth options in the NPA. It proposed that the planned housing should be in large scale developments concentrated in particular locations with a mixture of small scale development dispersed around the area: it put forward three options of combinations of large scale development, totalling 24000, allied to options for smaller scale development. No large scale site exceeded 6000, most were between 2-4000. The large-scale options were set out in Policy 5; no decision had yet been made on which was to be favoured. Appendices described them in more detail. Each involved development in the north-east sector with a NDR. (The 33000 units over the period 2008-2026 for the NPA included allocations and permissions as yet unbuilt, so the figure for new allocations was 24000, reduced later to 21000.)
26. In February 2009, the four authorities in the GNDP agreed on a favoured growth option as the basis for public consultation. The reports analysing why that option emerged were not before me, and are not part of the Sustainability Appraisals or Strategic Environment Assessments. Regulations requiring the production of a preferred options report had been changed.
27. The statutory public consultation did not begin until March 2009. The document included as Policy 2 what was required by the EEP for the NPA, and as Policy 5 what was by now the favoured option for providing for that growth in the NPA, a variant of the third option in the technical consultation paper, with 21000 in the larger locations, in Norwich, and in the North East Growth Triangle on each side of the NDR, moderate growth broadly to the south west of Norwich, with some sites elsewhere identified for small scale development.
28. The commentary to Policy 5 said that there was no significantly different public preference for the locations for major growth, but that the technical consultation included three more detailed options for larger growth in the NPA which were described in appendices. All required the NDR, and all involved major development in the NEGT. The favoured option, said the commentary, drew upon the consultation response and evidence, but was not specific as to what that was.
29. A draft Sustainability Appraisal was produced in April 2009. It dealt with the three original growth options in the technical consultation document of 2008, plus a variant, and with the newly favoured option. These all

## Appendix 1: High Court Judgment

included the north-east sector with NDR. It appraised the various locations for major growth in Policy 5. It did not deal with the responses to the technical consultation.

30. In August 2009, a report on both statutory consultations was published.
31. Before the JCS was submitted to the Secretary of State for examination, a Sustainability Appraisal report and the pre-submission JCS were issued for yet further public consultation in November 2009. This SA was intended to fulfil the role of the SEA under the Directive and transposing regulations.
32. This SA makes the point that it was not the first stage of SA. However, the summary of the appraisal findings states that a key task of the JCS is to develop a “spatial strategy for distributing” the housing targets set for the area by the EEP. One component was a “major urban extension to the North-East of the city, based around two or three centres either side of the proposed” NDR. The summary noted the “broadly positive sustainability effects” of this element. Another element, because it included major development at Long Stratton, had some local benefits but strategic drawbacks.
33. The SA said that it set out the legal requirements of the SEA Directive and explained how they were or would be met. Chapter 5, (it meant 3), would provide “an outline of the reasons for selecting the alternatives dealt with ....”
34. Chapter 3 entitled “Developing the Options” set out the requirement that “reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme are identified, described and evaluated.” Paras 3.3.2-3.3.3 read:
  - “3.3.2 The Pre-Submission JCS sets out the GNDPs current preferred approach in a series of draft policies. These policies represent the GNDPs preferred options, which have been selected and refined following consultation on alternative options that has occurred in the past. In particular, options were published and consulted during the ‘Issue and Options’ consultation in 2007. All options presented in the Issues and Options consultation document were also subjected to SA to establish the relative merits of options in sustainability terms and inform the identification of preferred options. The findings of the Issues and Options SA were summaries in a brochure, which is available to download from the GNDP website.

## Appendix 1: High Court Judgment

3.3.3 Following the Issues and Options consultation the GNDP were able to identify many of their preferred options. However, it transpired that there was a need to consult further on options for the spatial approach to growth. Identification of a spatial approach to growth is the single most important decision to be made by the JCS, and the decision with the most wide ranging and potentially significant sustainability implications. The section below gives further details as to how the preferred approach was developed.”

35. The “Options for the spatial approach to growth” summarised the process by which the preferred option had been arrived at. It started with the three broad strategies from the Issues and Options paper, and the five options for their spatial distribution. The three new distribution options at the technical consultation stage were then set out as above; the NEGOT was common to them all. Subsequent tables briefly rehearsed the relative sustainability merits of those three options. The preferred option was then set out; paragraph 3.3.8 said that after the technical consultation, the GNDP “were able to identify their preferred option” for the spatial distribution of growth, which had been published for public consultation. It had not changed since then, when it had been the subject of SA. It had been re-appraised as part of this SA in the “light of further clarity about its implementation”.
36. Although the later SEA checklist says section 3.2 is where the alternatives are considered along with chapter 5, the relevant passages on alternatives for this case are those which I have cited, save for the introduction to chapter 4 which refers to the directive obligation to provide an outline of the reasons for selecting the alternatives dealt with and a description of how the assessment was undertaken. Chapter 5 concerns the preferred options themselves.
37. The appraisal in the annexe to the SA is an appraisal only of the preferred options against a comprehensive array of policies. It is not an examination of alternatives.
38. It included this on Policy 8 “Access and transport”, which both sides put some reliance on:

### “Recommendations

- One key area of concern relates to whether the NDR, which is promoted through this Policy, would preclude sustainable patterns of travel and transport associated with the North East Growth Triangle. It will be of great importance

## Appendix 1: High Court Judgment

to ensure that the NDR does not have this effect. It will be important to design in ambitious measures that encourage residents to meet more of their needs locally by sustainable modes of travel, and that also allow ease of access to Norwich by rapid public transport. When considering the necessity for the NDR it should be possible to assume minimal use of this road by residents of the Growth Area.”

39. Policy 8 said that the transportation system would be enhanced to develop the role of Norwich as a Regional Transport Node, particularly through the implementation of NATS, including construction of the NDR. Implementation of NATS was fundamental to the strategy, enabling the capacity which it would release in Norwich to be used for non-car modes of transport, and providing the access necessary to key strategic employment and growth locations. A corridor, 100m either side of the centre line of the current scheme, was protected and would be shown on the Broadland DC adopted Proposals Map. The NDR “is recognised” in the EEP, is a major scheme in the Local Transport Plan and is in the Department of Transport’s Development Pool. This policy was to become Policy 6 in the adopted JCS.
40. Certain changes were made to the JCS which warranted further SA on these “focussed changes”. The only point of relevance is that it is clear that the only purpose of the SA was to appraise those specific changes and not alternatives more generally.
41. The JCS was submitted in March 2010 for examination by Inspectors appointed by the Secretary of State. This was held in November and December 2010; their report to the Councils was published in February 2011, and concluded that the JCS was sound and in conformity with the EEP, but certain changes were required.
42. Issue 6 examined whether the JCS provided an appropriate and deliverable distribution of the planned growth required by the EEP for the NPA, coupled with a sustainable pattern of transport infrastructure. One of the issues was whether the distribution was sound given its asserted dependence on the NDR, which might not be built. The NEG and NDR were closely linked in this argument; the Inspectors rejected a non-NDR package of transportation interventions in para 51:

“It has been argued that a non-NDR package of NATS interventions has not been modelled and that this could conceivably produce a better overall solution. However, we are not convinced that such an option would be realistic and place weight on the DfT’s favourable ‘in principle’ assessments and the judgements which led to the NDR’s acceptance into

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‘Programme Entry’ and the ‘Development Pool’, as discussed above.”

43. The Inspectors nonetheless saw the NDR as uncertain and particularly uncertain in timing. They asked whether suitable changes could be introduced to increase the resilience of the JCS in the face of this uncertainty. They thought that the JCS tended to portray the situation in terms which were too stark: no NDR, no development in the NEG. Changes were proposed which provided “an appropriately qualified partial alternative approach to development in North East Norwich”. Essentially, some development could take place in certain parts without an NDR, but were it not to have happened by the time that threshold had been reached, an Action Area Plan, AAP, would investigate whether any additional growth could take place in the NEG without it, and subject to any further development which that AAP might show to be satisfactory, there would be a complete review of the JCS proposal for the NEG.

44. The Inspectors rejected the argument that there should be no growth in the NEG with or without the NDR, but concluded, para 59:

“The AAP is the proper mechanism for carrying out the site-specific investigations, considering the alternatives and undertaking the public consultations necessary to establish the point at which non-delivery of the NDR may, or may not, become a ‘showstopper’ for further development in the growth triangle. The JCS should not go beyond its strategic role and fetter the necessary thorough investigation through the AAP by making premature commitments based on untested scenarios.”

45. They then turned to the NEG. After some comments about how the scale of development came to be in the EEP, the Inspectors dealt with the merits, para 72:

“Moreover, there are strong reasons to support the selection of this area as a location for a major urban extension. Fundamentally, if development is to take place at the overall scale proposed by the GNDP constituent authorities (which we have found sound), the pattern of small towns and villages in Broadlands offers no realistic alternative ‘dispersal’ options capable of accommodating such numbers in ways likely to be sustainable and capable of respecting the characters of the host settlements. There is no evidence that Norwich could accommodate more than already reflected in the JCS account of existing commitments, and it appears (from our consideration

## Appendix 1: High Court Judgment

of the South Norfolk options) that redistribution from the north of the NPA to south is not a viable option. Concentrating the proposed development at this major growth location is the most effective way of maximising its contribution to the NPA's sustainability and providing infrastructure economically."

46. After dealing with the arguments for and against other parts of the proposed distribution of growth, the Inspectors identified the next sub-issue as "Does the JCS distribution represent "the most appropriate plan when considered against reasonable alternatives?"". The question is drawn from PPS12. They said, para 90:

"With regard to the North East Norwich growth triangle, we have already concurred with GNDP's judgement that from a relatively early stage in the evolution of the JCS there has been no reasonable sustainable alternative to a substantial urban extension in that location if this scale of growth is to be accommodated."

47. They then referred to the 5 options for South Norfolk, including Long Stratton, which had been developed between May 2008 and February 2009. These had been subject to a comparative SA in February 2009. More evidence was now available. Para 94 contained this conclusion:

"We therefore conclude that South Norfolk's view that the JCS distribution represents the best overall 'political fit' is not inconsistent with judgements that it (a) represents the most appropriate plan when considered against the reasonable alternatives and (b) broadly fulfils GNDP's duty under S39 of the 2004 Act to exercise its DPD-making functions with the objective of contributing to the achievement of sustainable development."

48. Their overall conclusions on Issue 6 were in para 95:

"Our broad conclusion is that the major principles of NATS, as reflected in the JCS, represents a sound and sustainable transport strategy for the NPA. The implementation of these measures would enable the JCS to proceed with a pattern of growth which is justified, effective and consistent with national policy. This conclusion is subject to a number of necessary changes that have been discussed above. Together, these give the JCS greater resilience and effectiveness in the case of delay to, or non delivery of, the NDR by

## Appendix 1: High Court Judgment

indicating a mechanism for transparently establishing the maximum extent to which development at the growth triangle could proceed before triggering the need for review of the JCS in that respect.”

49. They recommended various changes as their analysis had foreshadowed.

50. The JCS, with the incorporation of the required changes, was adopted in March 2011. An Environmental Statement was required to accompany it by the 2004 Regulations. It had to set out, among other matters, the reasons for choosing the plan as adopted, in the light of other reasonable alternatives. It said this on that topic:

“5.1 The iterative plan making process set out above, informed by SA and consultation throughout, involved consideration of a number of reasonable alternatives.

5.2 This is particularly the case in relation to the spatial location of growth. At the Issues and Options stage ten potential growth options were put forward (plus brownfield sites in the city & suburbs). The Sustainability Appraisal was used to select options to take forward along with other evidence such as the water cycle study, public transport modelling and discussions with children’s services.

5.3 The former preferred options document considered alternatives for growth options and area-wide policies. The alternatives were assessed and captured in the SA document and remain in it as evidence of considering reasonable alternatives.

5.4 The strategy submitted to the Secretary of State has a relatively concentrated pattern of growth in Broadland, based on sustainable urban extensions and a more dispersed pattern in south Norfolk, with growth focussed on a number of existing settlements. Earlier plan drafts, supported by the SA, included options that had promoted a somewhat less dispersed pattern of growth in south Norfolk, with more limited development at Long Stratton.

5.5 Having regard to the technical evidence and public comment, the strategic preference of

## Appendix 1: High Court Judgment

the GNDP was to promote growth in Long Stratton to achieve the consequent environmental improvements to the village.

5.6 The strategy has been adopted subsequent to a formal Examination in Public. The independent Inspectors concluded that the plan is sound, subject to a number of required changes. These changes have been incorporated into the adopted strategy.”

51. The rest of the section summarised the support given by the Inspectors to the adopted strategy.

52. Policy 9 covers the growth strategy for the NPA: new allocations for a minimum of 21000 houses are to be identified across a number of locations against which the minimum number of houses in each was noted. This would be supported by construction of the NDR. Policy 10 identified the locations in the NPA for major new or expanded communities, including the NEGT on both sides of the NDR, the complete development of which required the NDR, but the scope for partial delivery, as required by the Inspectors is also reflected in the policy.

### **Ground 1: SEA and alternatives**

53. Mr Harwood’s Skeleton Argument for the Claimant contained a number of what seemed to me to be rather carping criticisms of the SEA and JCS, but he refined and improved his submissions in oral argument. He focussed wisely on the appraisal of alternatives to the NEGT, the Claimant’s area of interest.

54. None of the high level options for growth in the Issues and Options Paper, (Q11), were actually chosen. The initial assessment of growth options, (Q13), did not cover two of the five options for the location of growth: 3 and 4 in the JCS SA, also denoted as C and D. D did not include growth in the NEGT. Three more specific options were put forward in the statutory technical consultation paper, but the Councils were not relying on the SA accompanying that paper. There was no analysis of why the alternatives selected at that stage only included ones with growth in the NEGT. The preferred option emerged from that process as a mixture of options 2 and 3, and the Environmental Report/SA of September 2009 dealt with it. There was no comparable assessment of reasonable alternatives considered by the three Defendants in it; the assessment of the options from the technical consultation paper was not done on the same basis as that of the preferred option. There was no explanation of the alternatives selected. It contained no cross-reference to any other paper where the identification and equivalent appraisal of alternatives could be found. Its summary was silent on that topic. It was possible that the options



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considered in the Issues and Options SA were reasonable options, even the only reasonable ones considered, but the SA did not say so, and it was not obvious why every combination of options included a north east sector, especially as the NDR on which it depended was uncertain. There was no comparable assessment of reasonable alternatives against the one preferred, nor could there be one until the preferred option had been identified. It was not his argument that there was some topic of assessment which those options had failed to consider, nor did that meet his argument.

55. Mr Upton, for the Councils, took me through the evolution of the planning documents, placing considerable weight on the April 2009 SA accompanying the public consultation document, and the September 2009 SA. It was for the three Councils to decide what were reasonable alternatives in the light of the SA scoping report of December 2007 and the requirements of the RSS. A range of reasonable alternatives had been identified and assessed, in a way appropriate for the level at which the JCS was operating in the plan-making hierarchy. Many alternatives supported by SNUB were not alternatives which conformed to the RSS, and so could not be considered as alternatives at all. A wide range of options had been assessed on a comparable basis; the later document of September did not have to continue to examine so wide a range as at earlier stages as the *St Albans* case held. There really was only one sensible way to meet the growth requirements, as the Inspectors found.

### Conclusions on Ground 1

56. I accept much of what Mr Upton said as a description of the way in which the JCS had been arrived at. It could not be stigmatised as unreasonable. The JCS had been the subject of frequent public consultation. The preferred option had been properly assessed itself. A number of alternatives had been assessed.

57. I did not find it easy, however, to discern from Mr Upton's submissions how he answered the essential factual contention at the heart of Mr Harwood's submissions. Certainly it was not by showing me any document in which the outline reasons for the selection of alternatives at any particular stage were clearly being given. This is not the failing of the advocate, but in the factual material which he had to present. Nor was there any discussion in an SA, in so far as required by the directive, of why the preferred options came to be chosen. Nor was there any analysis on a comparable basis, in so far as required by the directive, of the preferred option and selected reasonable alternatives.

58. The Issues and Options Paper and its Sustainability Appraisal are in themselves perfectly sensible papers. However Option D, the different combination of growth areas, was not assessed, and the SA itself did not explain why not. There was therefore no assessment of an alternative which did not include development in the NEG, nor an explanation of why that was not a reasonable alternative, even though one which might have

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been identified as an option. This was not unimportant in the light of uncertainty over the NDR and its significance for the full development of the NEGТ.

59. The statutory technical consultation produced three more options but did not itself consider any option which did not include development in the NEGТ, with an NDR. It did not describe the selection of those options.
60. There was an important report to the Councils in February 2009 which led to the selection of the preferred option; it explains why it was preferred, and could contain information as to why the options examined had been selected. But that was not produced before me, and more importantly, it was not cross-referred to or publicly available as part of any SA. By the time of public consultation in March 2009, the preferred option had been selected.
61. The April 2009 SA did not explain what alternatives had been chosen for examination; it explained the ones which had been considered but not why it was those ones which had been considered and not others. It did not explain why the preferred option had been selected. Again, the only options considered involved development in the NEGТ, and the NDR.
62. The crucial stage was the SA submitted in September 2009 in connection with the pre-submission JCS, which the Councils intended as the fulfilment of their directive obligations. It would have been open to the Councils to describe here the process of selection of alternatives for examination at each stage. They could have done this by reference to earlier documents, if earlier documents had contained the required material. But the earlier documents do not contain the required information as to why the alternatives considered had been selected. If the outline of the reasons for the selection of alternatives was not dealt with in the earlier documents, the Councils had to provide them in this document. But that is missing from the SA.
63. The SA itself only describes what has been done. It contains no further analysis of the selection of alternatives for consideration at various stages, nor for the choice of the preferred option. It contains only a brief assessment of the alternatives, and does not itself contain the explanation which it implies is in the earlier documents, but, which in fact, on this particular aspect is simply not covered in them. Crucially, it is not possible to tell from the SA itself or from earlier documents what the Councils' answer is to the Claimant's question: were the only alternatives it was thought reasonable to select ones involving development in the NEGТ, and if so -in outline- why so, especially in view of the uncertainty over the NDR, and the importance attached to the NDR in achieving the JCS with development in the NEGТ. The SA is wrong in saying that all the options in the "Issues and Options" paper were assessed.

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64. I accept that the Inspectors' report contains much which is supportive of the JCS, including the statement that there was no reasonable alternative to a substantial urban extension in the NEGТ, notwithstanding problems with the NDR. But although their report evidences a view about alternatives, it is not itself part of the SA. They may be required to consider alternatives by the Secretary of State in PPS12, but that is not in fulfilment of the directive obligation or of those in the regulations. It is possible of course, as well, that such a view is affected by a lack of examination of an alternative; and it is also possible that the answer to why no non NEGТ growth scenario was considered is so obvious to a planner that it needs no explanation; it could not have been considered a reasonable alternative. But I did not receive such an explanation either from the Councils, nor does the Inspectors' conclusion suffice to answer it.
65. The final ES with the final JCS does not take matters further.
66. I conclude that, for all the effort put into the preparation of the JCS, consultation and its SA, the need for outline reasons for the selection of the alternatives dealt with at the various stages has not been addressed. No doubt there are some possible alternatives which could be regarded as obvious non-starters by anyone, which could not warrant even an outline reason for being disregarded. The same would be true of those which obviously could not provide what RS required, or which placed development in an area beyond the scope of the plan or the legal competence of the Defendants. But that is not the case here on the evidence before me, in relation to a non NEGТ growth scenario, with or without NDR, and especially with an uncertain NDR. Without the reasons for the earlier selection decisions, it is less easy to see whether the choice of alternatives involves a major deficiency.
67. I accept that the plan-making process permits the broad options at stage one to be reduced or closed at the next stage, so that a preferred option or group of options emerges; there may then be a variety of narrower options about how they are progressed, and that that too may lead to a chosen course which may have itself further optional forms of implementation. It is not necessary to keep open all options for the same level of detailed examination at all stages. But if what I have adumbrated is the process adopted, an outline of the reasons for the selection of the options to be taken forward for assessment at each of those stages is required, even if that is left to the final SA, which for present purposes is the September 2009 SA.
68. The reasons for the selection of the preferred option, as distinct from the reasons for the selection of the alternatives to be considered, have not been addressed as such either in the SA, although some comparative material is available. The parties dispute the need for these reasons. It was very surprising to me that the reason for the selection of the preferred option was not available as part of the pre-submission JCS or the accompanying

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September SA, nor readily available in a public document to which the public could readily be cross-referred, with a summary.

69. This is not an express requirement of the directive or regulations, and I do not regard European Commission guidance as a source of law. However, an outline of reasons for the selection of alternatives for examination is required, and alternatives have to be assessed, whether or not to the same degree as the preferred option, all for the purpose of carrying out, with public participation, a reasoned evaluative process of the environmental impact of plans or proposals. A teleological interpretation of the directive, to my mind, requires an outline of the reasons for the selection of a preferred option, if any, even where a number of alternatives are also still being considered. Indeed, it would normally require a sophisticated and artificial form of reasoning which explained why alternatives had been selected for examination but not why one of those at the same time had been preferred.
70. Even more so, where a series of stages leads to a preferred option for which alone an SA is being done, the reasons for the selection of this sole option for assessment at the final SA stage are not sensibly distinguishable from reasons for not selecting any other alternative for further examination at that final stage. The failure to give reasons for the selection of the preferred option is in reality a failure to give reasons why no other alternatives were selected for assessment or comparable assessment at that stage. This is what happened here. So this represents a breach of the directive on its express terms.
71. There is no express requirement in the directive either that alternatives be appraised to the same level as the preferred option. Mr Harwood again relies on the Commission guidance to evidence a legal obligation left unexpressed in the directive. Again, it seems to me that, although there is a case for the examination of a preferred option in greater detail, the aim of the directive, which may affect which alternatives it is reasonable to select, is more obviously met by, and it is best interpreted as requiring, an equal examination of the alternatives which it is reasonable to select for examination along side whatever, even at the outset, may be the preferred option. It is part of the purpose of this process to test whether what may start out as preferred should still end up as preferred after a fair and public analysis of what the authority regards as reasonable alternatives. I do not see that such an equal appraisal has been accorded to the alternatives referred to in the SA of September 2009. If that is because only one option had been selected, it rather highlights the need for and absence here of reasons for the selection of no alternatives as reasonable. Of course, an SA does not have to have a preferred option; it can emerge as the conclusion of the SEA process in which a number of options are considered, with an outline of the reasons for their selection being provided. But that is not the process adopted here.
72. Accordingly, the Claimant succeeds on this ground.

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### Ground 2: the absence of an assessment of the NDR in the JCS SA

73. Mr Harwood submitted that there was a duty on the councils to have regard to the LTP under regulation 15 (1)(b) and (c) of the Town and Country Planning (Local Development)(England) Regulations 2004 SI No. 2204. The RSS required regard to be had to the NATS. It did not require the NDR. Since the NDR was part of the JCS, and was said to be “promoted” through it, the JCS SA had to include an environmental assessment of the NDR. Instead, it had been taken as part of the baseline for the assessment of other development, colloquially as a given and not as a JCS proposal; Mr Doleman, a transportation planner with the County Council, made as much clear in his witness statement. The County Council was part of the GNPD, which as a partnership would promote the NDR, with the JCS supporting its provision and protecting its alignment, opposing inconsistent development. The NDR and NEG T went together: there may have been a case put forward by the County Council for the NDR without the NEG T, but there was no case for the full NEG T without the NDR. If the NDR were undesirable, it would affect the whole growth strategy, or at least the distribution of the major growth areas. The JCS protected an alignment corridor for the preferred three-quarter length NDR, yet that had not been assessed. However, his real concern was not with alternative alignments but with alternatives to the NDR altogether. Nothing in the Inspectors’ report showed that there were no reasonable alternatives to the NDR. Given that there remains uncertainty over whether the NDR will be built, and the effect which that would have on the NEG T, there had to be alternatives to the NDR and NEG T. Those had not been considered.
74. The JCS did not cross-refer to other documents, notably the voluntary SA which accompanied the NATS, or the SA which accompanied the LTP. The NDR was not dealt with as a discrete option in them either. The voluntary NATS SA could not be equivalent to a statutory SA since the SA had not been subject to public consultation, unlike NATS itself, nor could any decision have been made in the light of consultation responses to it.
75. Mr Upton’s essential contentions were that the NATS and LTP determined what infrastructure was required to support the level of development and its location. The RS explicitly required account to be taken of the NATS, of which NDR was part. The LTP had taken the general level and distribution of growth in the draft EEP into account. Mr Upton took me through the various planning documents which showed that the NDR had been part of the baseline since at least 2007. His submission was supported by PPS 12: “Local Spatial Planning”; para 4.10 said that “the outcome of the infrastructure planning process [here the NATS and LTP] should inform the core strategy and should be part of a robust evidence base”. It recommended that those responsible for delivering infrastructure and those responsible for the core strategy align their planning processes. Para 4.28 emphasises the importance of not advancing a core strategy which depended on others for its implementation when those others had not

## Appendix 1: High Court Judgment

agreed it. No challenge had been made to the adequacy of its SEA. Incorporation into the JCS did not require a separate SEA. There was no need to duplicate or to repeat SEAs.

76. Those two plans were also the statutory responsibility of the County Council as highway and transportation authority. There were no reasonable alternatives for the District Councils to consider in promoting the JCS, since transportation was not within their statutory competence. So it had rightly been treated as part of the baseline, though the various levels of development in various locations on the NDR and on the roads leading to it would be relevant. Besides, the Inspectors had concluded that there was no reasonable alternative to the NDR. The reference in the SA of September 2009 to the NDR being promoted through the JCS was no more than a reference to its being relied on in the JCS. The detail of the route would be dealt with in the Broadland DC AAP.

### Conclusions on ground 2

77. The starting point to my mind is that proposing or planning the NDR is not within the remit of the JCS. It is for the highway authority to plan and promote the NDR through its plans. The NDR is outside the Defendants' legal competence. There is no substance in the suggestion that the existence of the informal GNDP alters the allocation of statutory responsibility because it includes the Defendants, and all four Councils are in harmony on this issue.

78. Of course, there are references in the JCS to the role of the NDR, and there is a relationship between the policies for accommodating growth in the JCS, and the infrastructure to support it. The promotion of the NDR, its status in the EEP, NATS and LTP, and its budgetary status, make it a relevant factor in the judgment of where growth should be. It would be unwise, if not impossible, to create a coherent strategy for any plan if the proposals for major infrastructure were ignored. It may make it unreasonable to consider alternative means of providing for growth which do not use that proposed infrastructure. That may be very relevant to how the defendants approached, albeit not explicitly, the selection of reasonable alternatives for examination. Their uncertainty may have to be planned for as well, as the Inspectors' recommended amendments showed. But none of that, including reliance on it for the selection of the preferred option, makes the NDR part of the JCS in the sense that the environmental effect of the NDR has to be assessed, growth in the NEGTS or not, as a proposal of the JCS. That does not turn the JCS into a plan or proposal for the infrastructure on which it relies.

79. True it is as well that the land use plan has to provide for safe-guarding of the corridor for the NDR, since to fail to do so could prevent its development, but that safe-guarding does not make the NDR a proposal of the plan for which alternatives and impacts have to be assessed. The fact that the JCS talks of promoting the NDR, a safeguarding and supportive role,

## Appendix 1: High Court Judgment

does not amount to its adoption by another authority or create an obligation to assess it and alternatives. It merely reflects the importance which another public body's infrastructure proposal has.

80. In so far as the concern was with alternatives to any NDR rather than with alternative NDR alignments, that did not fall within the scope of the JCS. The alignment corridor itself is not a choice made within the JCS; the corridors were assessed in the 2006 LTP. Nor is the corridor a matter of concern to the Claimant who seeks an alternative to any NDR. The effect of different alignments within the protected corridor would be for assessment when the precise line came to be chosen.
81. The Defendants were right in my judgment to treat it as part of the baseline against which the environmental effects of the growth strategy were assessed. Of course the effects of the growth may be additional to the effects of the NDR which are part of the baseline in the assessment of the strategy, but the NDR is not itself a proposal for assessment in the JCS.
82. The second reason why this ground fails is that the NDR has been subject to environmental assessment as part of the adoption of the NATS, albeit voluntarily, and as part of the LTP. Those plans have been adopted. This challenge cannot review any inadequacies in that assessment. The time for such a challenge is long past. It is not the function of the JCS to remedy any deficiencies in earlier assessments undertaken for the purposes of other plans.
83. Accordingly this ground of challenge fails.

### Discretion

84. Mr Upton submitted that no relief should be granted were he to lose on either of these grounds. A great deal of work had been done; the claims were in reality that the SEA had not been expansive enough on one topic. A number of alternatives had clearly been examined on a comparable basis as required. The reasons for selection and choice between alternatives and the preferred option were spelt out in a publicly available report, even though it was not part of the SEA. The Inspectors' Report gave reasons justifying the selection of the preferred option over the alternatives. The Directive had been substantially complied with. The Claimant had not been prejudiced by any procedural failings; he had put forward no realistic alternative which had been ignored.
85. Mr Harwood submitted that the failings he identified went to substance and not to procedure, and so questions of substantial compliance with procedural requirements did not arise. The obligation was to identify and explain the selection of reasonable alternatives, to assess them on a comparable basis, to consult the public about the plan and SA, and to reach a decision in the light of their responses. That was the essence of the process of environmental assessment. *Berkeley v Secretary of State for the*

## Appendix 1: High Court Judgment

*Environment* [2000] UKHL 36, [2001] 2 AC 603 also showed that a disparate collection of documents, a paper chase through which the public might find its way, did not constitute substantial compliance with Directive requirements on environmental assessment. This case was to be distinguished from *Younger Homes (Northern) v First secretary of State and Calderdale District Council* [2004] EWCA Civ 1060, Laws LJ at paras 42-47.

86. S113 of the Planning and Compulsory Purchase Act 2004, as amended by the s185 of the Planning Act 2008, gave a wide variety of powers, short of quashing the whole JCS and starting again, which should be exercised here if relief were to be granted.

### **Conclusions on discretion**

87. I am satisfied here that I should not exercise my discretion against the grant of any relief. There has been a series of failings in relation to the directive obligations. The Defendants may well be right that the option of no NEGT growth is unrealistic. But I cannot regard there as being substantial compliance with the directive. I will hear submission on the precise form of relief, in the light of the powers in s113 of the 2004 Act, as amended.





**In the High Court of Justice  
Queen's Bench Division  
Administrative Court**

CO Ref: CO/ 3983/2011



HEARD

Claimant

and

**BROADLAND DISTRICT COUNCIL  
SOUTH NORFOLK DISTRICT COUNCIL  
NORWICH CITY COUNCIL**

Defendants

**Order by Mr Justice OUSELEY**

1. I have approved the Order in the form submitted with two amendments: 1 paragraph 8 is deleted since it would not be right for an order to be made in respect of the Secretary of State, a non party, let alone without notice, and without any evidence that it could be necessary. The Order therefore reflects the expectation that he will do what statute already requires him to do. 2 paragraph 9 is consequently amended by the deletion of "thereafter" and the insertion of "after that examination" after "consider".

2. I have not altered the Schedule from that submitted by the Defendants. I am grateful to Counsel for their co-operation and hard work on this.

(a) I do not accept Mr Harwood's submission on the housing totals point in item 33. It seems to me that the Defendants' proposals do not prevent full argument on the NEGT. If further changes are required by modification, so be it. The removal of the totals would put uncertainty over what was required in other areas as a minimum. The meaning of the Defendant's proposed reading of the totals, given the deletion of some components seems to me clear.

(b) I did deal with the business park in the hearing on 29 February. But I accept the arguments, if new, that this is not a NEGT dependant proposal, and it does not have to be in the NEGT. It may be relevant to whether there should be a NEGT, but that is not the point.

Signed Mr Justice Ouseley 25 April 2012

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Sent to the claimant, defendant and any interested party / the claimants, defendants, and any interested party's solicitors on (date):

Case ref CO/3983/2011

**IN THE HIGH COURT OF JUSTICE  
QUEENS BENCH DIVISION  
ADMINISTRATIVE COURT**

**In the matter of  
Planning and Compulsory Purchase Act 2004, s.113**

**Before Mr Justice Ouseley  
29<sup>th</sup> February 2012**

**BETWEEN**

**HEARD**

**Claimant**

**- and -**

**BROADLAND DISTRICT COUNCIL  
SOUTH NORFOLK DISTRICT COUNCIL  
NORWICH CITY COUNCIL**

**Defendants**

**ORDER**

**UPON** hearing Mr Richard Harwood of Counsel for the Claimant and Mr William Upton of Counsel for the Defendants

**IT IS ORDERED THAT:**

1. The Claim be allowed;
2. The parts of the policies and text of the Joint Core Strategy for Broadland, Norwich and South Norfolk (hereafter referred to as the "JCS") set out in the schedule attached to this Order shall be remitted and be treated as not having been adopted;
3. The steps in the process that have resulted in the adoption of the remainder of the policies and text of the JCS shall be treated as having been taken;

## Appendix 2 Mr Justice Ouseley's Narrative, Court Order and Schedule

4. The steps in the plan preparation process of those parts of the JCS set out in schedule attached to this Order shall be treated as having been taken up until the pre-submission stage and not having been taken thereafter;
5. The Defendants shall prepare a Sustainability Appraisal ("SA") of those parts of the JCS identified in the schedule attached to this Order, taking into account in particular the strategic growth in the North-East Growth Triangle and the reasonable alternatives (if any) to this;
6. Following their consideration of the SA, the Defendants shall publish the relevant parts of JCS (subject to amendments, if any) and its submission documents (including the SA) under regulation 27 of the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended, or as repealed and replaced) before submitting the relevant parts of the JCS to the Secretary of State for examination under section 20 of the Planning and Compulsory Purchase Act 2004 and the relevant regulations;
7. Following consideration of the representations received to the Regulation 27 Publication the Defendants shall submit the relevant parts of JCS and its submission documents (including the SA and the representations received) to the Secretary of State for examination under section 20 of the Planning and Compulsory Purchase Act 2004 and the relevant regulations; alternatively, the Defendants may withdraw the remitted parts of the JCS.
8. The Defendant Councils shall consider after that examination whether or not to adopt the relevant parts of the policies and text of the JCS in the light of the Secretary of State's or Inspector's report and recommendations, pursuant to the Planning and Compulsory Purchase Act 2004 and the relevant regulations.

### **IT IS FURTHER ORDERED THAT**

9. The Defendants shall pay the costs of the Claimant in the sum of £29,000 (including VAT).

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10. For the avoidance of doubt, this order encompasses the costs previously reserved in this case.

11. Permission to appeal is refused to the Defendants.

**By the Court**

IN THE HIGH COURT OF JUSTICE  
QUEENS BENCH DIVISION  
ADMINISTRATIVE COURT

In the matter of Planning and Compulsory Purchase Act 2004, s.113

Before Mr Justice Ouseley, 29<sup>th</sup> February 2012

BETWEEN

HEARD

Claimant

- and -

BROADLAND DISTRICT COUNCIL  
SOUTH NORFOLK DISTRICT COUNCIL  
NORWICH CITY COUNCIL

Defendants

**SCHEDULE TO THE ORDER**

The parts of the Joint Core Strategy for Broadland, Norwich and South Norfolk (“the plan”) to be remitted following the High Court Judgment:

Reference	Part of plan	Text/diagram for remittance (in italics) [N.B. the words in square brackets are not remitted, and are included for clarification purposes only]
1	01 Our Strategy – fourth paragraph under heading “The	<i>the area to the north east of the city</i> and

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	dilemmas”	<u>for a concentration of new [development]</u>
2	01 Our Strategy – fifth paragraph under heading “the dilemmas”	<u>In the case of Broadland, the historical pattern of development lends itself to further expansion with new growth locations in the parishes of Old Catton, Sprowston and Thorpe St Andrew, and the development of a low carbon community focussing on Rackheath, given its existing employment opportunities and railway line. The growth in these locations relies on the implementation of NATS.</u>  and  <u>By contrast,</u>
3	04 Spatial vision: third paragraph under the heading “The spatial vision”	[Growth will be ...] <u>and in a very large mixed use urban extension within the Old Catton, Sprowston, Rackheath and Thorpe St Andrew growth triangle (Appendix 5)</u>
4	04 Spatial vision: under the heading “Climate change and sustainability” 3 <sup>rd</sup> bullet point	<u>inspired by the proposed exemplar at Rackheath,</u>
5	04 Spatial vision: under the heading “Working and getting around” Second bullet point	<u>Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle</u>

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6	Key diagram –and under objective 3	The notation of the area to the northeast of the urban area as one of the “ <i>strategic employment sites</i> ” and “ <i>major housing growth and associated facilities</i> ”
7	05 Area-wide policies, Policy 4 Housing Delivery: under the heading “Housing with care”	<u><i>Old Catton, Sprowston, Rackheath and Thorpe St Andrew growth triangle.</i></u>
8	05 Area-wide policies, Policy 4 Housing Delivery: Table following paragraph 5.25	<u><i>The figure of ‘9,000’ for the ‘New Allocations to 2026’ in the Broadland (NPA) and the total of ‘11,099’ recorded in the table for the ‘New Commitment to 2026’ in the Broadland (NPA).</i></u> [The total recorded for the NPA is not remitted.]
9	06 Policies for Places : Introduction paragraph 6.3	[Large-scale mixed-use developments in the Norwich Policy Area are provided... <u><i>in a major urban extension in the Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle, and ...</i></u>
10	06 Policies for places, Policy 9 Strategy for growth in the Norwich Policy Area:  2 <sup>nd</sup> & 8 <sup>th</sup> bullet points	<u><i>Old Catton, Sprowston, Rackheath and Thorpe St Andrew growth triangle: 7,000 dwellings by 2026 continuing to grow to around 10,000 dwellings eventually</i></u>

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		<u>Broadland smaller sites in the NPA: 2,000 dwellings</u>
11	06 Policies for places, Policy 9 Strategy for growth in the Norwich Policy Area:  Final bullet point:	<u>including around 25ha of new employment land at Rackheath</u>
12	06 Policies for places, Policy 9 Para 6.7	<u>The Old Catton, Sprowston, Rackheath and Thorpe St Andrew growth triangle incorporates land at Rackheath promoted for an eco-community under the governments Eco-towns programme and development of the rest of the area will be expected to reflect similar high standards.</u>
13	Para 6.12 4 <sup>th</sup> bullet point	<u><b>Rackheath:</b> around 25ha of new employment land for a range of employment uses to strengthen the employment role of this location and provide local opportunities for the new community in this area</u>
14	Diagram after the end of the paragraph 6.12 – Relationship between strategic growth locations within the Norwich Policy Area	Notation for major housing growth and associated facilities and strategic employment location entitled “ <i>Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle</i> ”.



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15	Diagram on the following page after para 6.12, entitled “Main Housing Allocations”	<p><i>The notation showing 10,000 new houses to the north east of the urban area within the Norwich policy area, and</i></p> <p><i>The notation for 2,000 houses in the NPA part of Broadland. and</i></p> <p><i>The notation for the Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle</i></p>
16	Policy 10 -- Locations for major new or expanded communities in the Norwich Policy Area: first sentence	<p><u>[Major growth] in the Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle, and</u></p>
17	Policy 10 Paragraph headed “Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle”	<p>Heading and the two paragraphs headed <u>“Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle”</u></p>
18	Policy 10:  Para 6.15	<p><u>The major urban extension in the Old Catton, Sprowston, Rackheath, and Thorpe St Andrew growth triangle will provide a concentration of growth which can support local services, facilities, and infrastructure including secondary education, high quality public transport links and significant green infrastructure. An Area Action Plan and a sustainable development code are being developed. The growth triangle is proposed to accommodate 10,000 dwellings after 2026. A large part of the</u></p> <p><u>[development at Rackheath ...]</u></p>

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		and then <i><u>The Rackheath low carbon development remains part of this strategy.</u></i>
19	Para 6.16 second line	<i><u>similar</u></i>
20	Para 6.19	<i><u>significant development in the growth triangle and</u></i> and <i><u>in the Old Catton, Sprowston, Thorpe St Andrew growth triangle</u></i> and <i><u>(see supporting text for Policy 20).</u></i>
21	Para 6.20 fourth sentence	<i><u>in the Old Catton, Sprowston, Rackheath, Thorpe St Andrew area</u></i> and <i><u>‘a’ and ‘route which may be via Gurney Road/Salhouse Road’</u></i>
22	Paragraph 6.22	<i><u>A new secondary school is needed to serve the new community in the north east.</u></i> and, in the second sentence <i><u>‘more’</u></i>
23	Diagram following	

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	policy 10, entitled “Green infrastructure priority areas supporting key growth locations”	The growth location and green infrastructure priority area to the northeast of the urban area and priority corridor A entitled "Norwich to the Broads"
24	Policy 12 :The remainder of the Norwich urban area, including the fringe parishes: introductory paragraph	<u>[It will be expanded] through significant growth in the Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle, and smaller</u>
25	Policy 15 Service Villages  third paragraph	<u>and Rackheath</u>
26	Paragraph 6.77	<u>The Old Catton, Rackheath, Sprowston and Thorpe St Andrew growth triangle in particular will be sufficiently large to require a district centre. Preferably this will include a food store as an anchor and sufficient leisure and ancillary activities to provide for the attraction of a range of trips. This may be through building on the proposed centre at Blue Boar Lane or the creation of a second district centre elsewhere in the Growth Triangle. This will be determined through the Area Action Plan for the area.</u>
27	Policy 19, The hierarchy of centres Point 3.	<u>within the Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle.</u>  and

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		<u>The Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle will be served by a district centre. This may be provided by building on the proposed district centre at Blue Boar Lane or the creation of a second district centre elsewhere in the Triangle as determined through the Area Action Plan for the Growth Triangle.</u>
28	07 Implementation and monitoring, Paragraph 7.16	<u>in the growth triangle</u>
29	Table in paragraph 7.16 first line	<u>Growth Triangle</u> and <u>New employment allocation at Rackheath</u> and <u>Smaller sites in Broadland NPA</u>
30	Para 7.17	<u>Broadland District Council is committed to preparing an Area Action Plan (AAP) for the growth triangle. As part of the preparation of this AAP there will be an investigation of any potential that may exist for further growth to take place (in addition to that shown in table 1 above) without confirmation of the delivery of the NDR. This will include testing whether interim schemes and/or alternatives to the NDR could help to facilitate growth without compromising the spatial vision and objectives of the JCS. Therefore, the analysis would need to cover capacity of all infrastructure, not just road capacity, the implications of particular sites, and the nature of the proposed development</u>
31	Para 7.18	<u>established through the AAP process</u> and

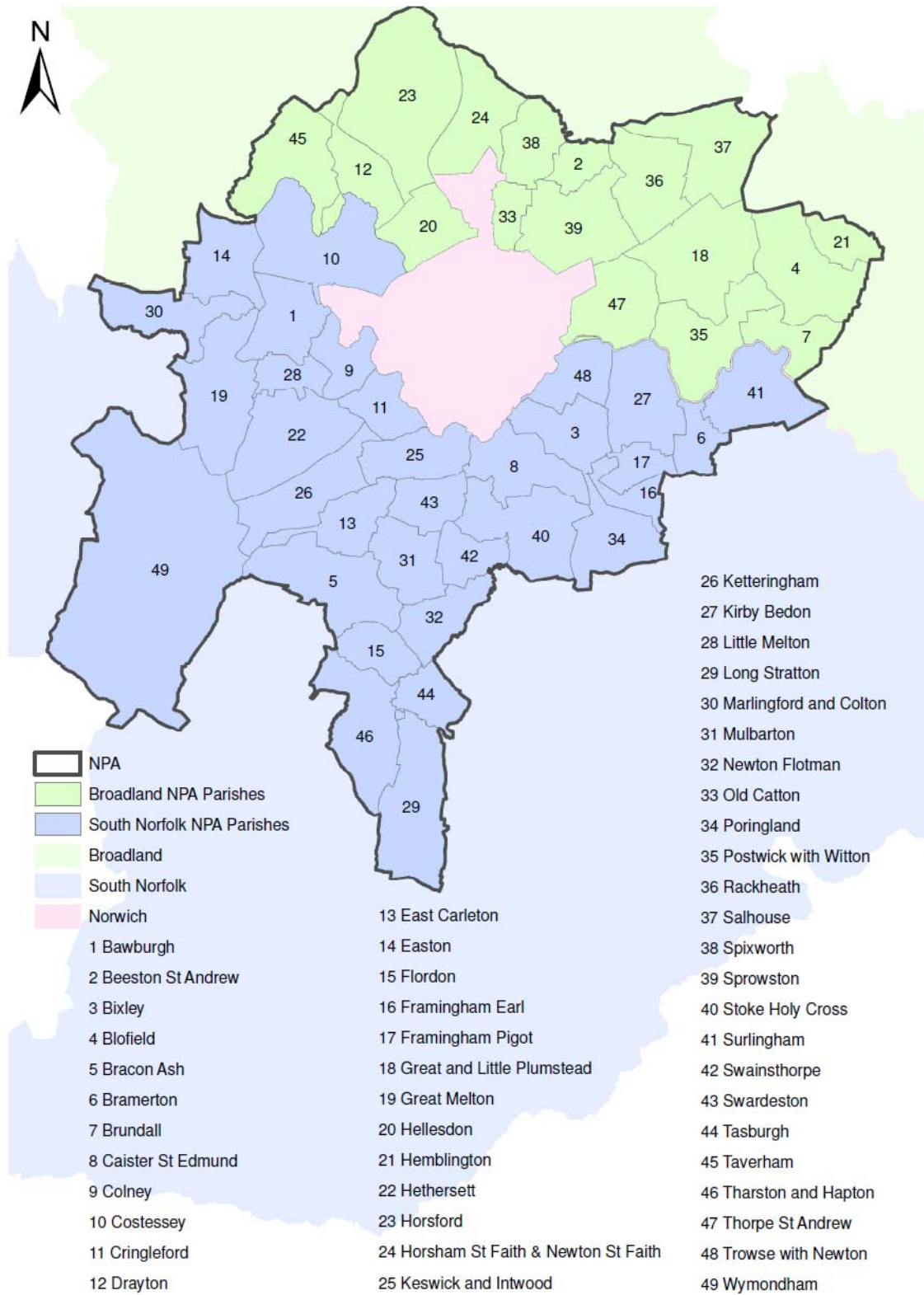
## Appendix 2 Mr Justice Ouseley’s Narrative, Court Order and Schedule

		<i>for the growth triangle</i>
32	Appendix 5 <i>Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle</i>	The whole appendix, including map
33	Appendix 6 housing trajectory -- table entitled “Growth locations	<p>The figures in the second to fourth rows are remitted, namely the lines entitled “<i>Rackheath</i>”, “<i>Remainder of Old Catton, Sprowston, Rackheath, Thorpe St Andrew growth triangle (inside NDR)</i>”, and “<i>Additional smaller sites around Broadland NPA (2000)</i>”.</p> <p>The totals derived for Broadland in the first row and the Total in the last row of the table shall be read in the light of this remittal</p>
34	Appendix 7 Table 1 Implementation Framework	<p>The implementation framework lists the infrastructure required to facilitate the development promoted in the plan – so the inclusion in the list in relation to the North East Growth Triangle and the strategic housing growth identified in the part of the Norwich Policy Area in Broadland District is remitted. This applies where:</p> <p><u>In Column 2 (headed “Scheme”) where there is a reference to <i>Rackheath</i></u></p> <p><u>In Column 3 (headed “Required for growth in”) where there is a reference to <i>Old Catton, Sprowston, Rackheath and Thorpe St Andrew Growth Triangle</i>, or to ‘<i>Broadland: smaller sites in the NPA (2000 dwellings)</i>’.</u></p>

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		The mention of <u>“Including in the growth triangle where 3,000 dwellings are proposed after 2026”</u> in the introduction to Appendix 7 .
35	Submission proposals map amending the Broadland Proposals Map	<u>Remit the ‘Old Catton, Sprowston, Rackheath, Thorpe St Andrew Growth Triangle’ boundary, hatching and notation on the Amended Proposals Map for Joint Core Strategy and the ‘Changes to Local Plan Proposals Map for Joint Core Strategy’ for Old Catton (32A), Rackheath (33), Rackheath (34), Salhouse – Station Road (38), Spixworth (40), Sprowston (41A), (41D), (41E), Thorpe End (19), Thorpe St Andrew (44A), (44B), (44D), (44F).</u>

# Appendix 3: Norwich Policy Area



For more information or if you  
require this document in another  
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Regulation 19 Publication and  
Sustainability Appraisal Consultation

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