

Borough Council of
**King's Lynn &
West Norfolk**



Borough Council of King's Lynn and West Norfolk

Local Plan Review (submitted March 2022)

**Statement of Common Ground between the Environment Agency and Borough
Council of King's Lynn and West Norfolk**

November 2022

Introduction

- 1.0 Section 110 of the Localism Act (2011) established a duty to cooperate in relation to Local Plans and sustainable development, or use of the land. The duty to cooperate requires cooperation during the preparation of development plan documents and other local development documents between relevant bodies including, among others, The Environment Agency.
- 2.0 Paragraph 27 of the NPPF sets out the requirement to produce one or more Statement(s) of Common Ground to form part of the evidence required to demonstrate compliance with the duty to cooperate. Such a document should be a written record of the collaboration and progress made between authorities, detailing where agreement has been reached and where there are outstanding issues.
- 3.0 Since the launch of the Local Plan Review in 2016, the Borough Council of King's Lynn and West Norfolk (BCKLWN) has actively engaged with statutory bodies in accordance with the requirements of the Duty to Cooperate. Strategic issues identified through this process, together with the outcomes of ongoing engagement with the relevant consultation bodies, are highlighted and summarised in the DtC Statement, May 2021.
- 4.0 Furthermore, the Norfolk Strategic Planning Framework (NSPF) was prepared as a SoCG for Norfolk planning authorities. The document contains 31 Agreements (for which the Borough Council is a signatory) which allow plan-making across Norfolk to be coordinated, to the benefit of all partners. It does not address cross-boundary issues that extend beyond Norfolk; i.e. to the west and south of the Borough. Three principal matters are identified as going beyond the scope of the NSPF (Norfolk County boundary):
 - Green Infrastructure (GI) RAMS;
 - Coastal Management; and
 - Wisbech Fringe.
- 5.0 Combined, the NSPF and DtC statements (references D13 and A6, respectively) demonstrate that the plan has been prepared in accordance with the DtC.

Statement of common ground

- 6.0 This statement of common ground (SoCG) relates to ongoing effective joint working between Kings Lynn and West Norfolk Council (BCKLWN) and The Environment Agency.
- 7.0 Though the organisations have worked closely together during the plan making process ensuring mutually beneficial objectives for both parties, a small number

of matters remained unresolved at the time the local plan was approved by Council for consultation and submission to the Secretary of State (8 July 2021).

- 8.0 An agreed position between The Environment Agency and BCKLWN was produced and submitted in advance of submission of the Plan in March 2022 (A12-1¹). This set out an agreed position, allowing the parties to agree detailed responses to The Environment Agency's Regulation 19 representation, post-submission. It is emphasised that the statutory DtC is not necessarily a duty to achieve full agreement on all matters.
- 9.0 This Statement of Common Ground is intended to be a written record of further progress made on planning for strategic matters between the two authorities, providing evidence that the duty to cooperate has been fulfilled. It is intended to provide clarity to the inspector on the resolution of remaining issues between the two parties.

¹ https://www.west-norfolk.gov.uk/download/downloads/id/7085/a12-2_historic_england_final_socg_-_28_march_2022.pdf

Policy/ Map/ Para no. etc	Rep No	Main Issues Raised at Reg 19	BCKLWN response	Environment Agency response	Remaining unresolved issues
Overall comments re Policy E1.15		<p>Allocation policy E1.15 is unsound because it is not justified, and therefore is not compliant with national policy.</p> <p>The objections relate to both the location of the site and the lack of current evidence or justification for its continued allocation in the Local Plan.</p>	This represents a significant unresolved objection. The Borough Council's detailed response and potential resolution are set out below.	The Environment Agency welcomes BCKLWN's additional work to address the outstanding/ unresolved objection re Policy E1.15 prior to submission of the Local Plan in March 2022. It is accepted that the sequential and exception tests have been carried out for this site.	<p>The Environment Agency has not assessed the quality of the test beyond flood risk technical matters, including whether:</p> <ul style="list-style-type: none"> • limiting the area of search to West Lynn, rather than considering the whole district, is appropriate, • the benefit of regenerating this site, through a residential development, outweighs the flood risk identified within the SFRA, • The Sequential or Exception test has been

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					<p>passed, as this is outside of their remit.</p> <p>There remains an outstanding flood risk technical issue within the West Lynn Sequential Test document related to the definition of the level of flood risk at this site.</p> <p>For clarity:</p> <p>The site is located within Flood Zone 3a and in an area of risk of flooding due to the overtopping and/or failure of the flood defences that form the Eastern Boundary of the site.</p> <p>Due to the site location, flooding will occur rapidly,</p>

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					with high flood depths and velocities. The BCKLWN's Level 2 SFRA gives the site a hazard rating of 'danger for most'. Policy LP25 should ensure that no internal flooding will occur during a design flood.
Various (overall comment)		No concerns regarding the soundness of other policies of the Local Plan, however wish to make advisory comments	<p>The Borough Council will review all the detailed comments from the Environment Agency. Where appropriate, amendments to Local Plan policy and/ or supporting text will be made. These will take the form of:</p> <ul style="list-style-type: none"> • Additional Modifications (AMs) – minor amendments (e.g. grammatical and/ or factual corrections) of no material consequence for the direction or soundness of the Plan; or • Main Modifications (MMs) – proposed changes (e.g. to policy wordings) that represent a material amendment to the direction of 	The Environment Agency accepts BCKLWN's approach to managing changes to the submitted Local Plan during the ongoing examination process. Detailed changes to the Plan text (proposed Main Modifications), as agreed between the parties, are noted at the Annex (below).	No remaining/ unresolved issues

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			the Plan and which will therefore need to be subject to MM consultation in the aftermath of the examination hearings (late 2022/ early 2023).		
Various (overall comment)	512, 514, 516, 518, 519, 520, 525, 527, 528	<p>Detailed changes have already been agreed as AMs (A2) and/ or MMs (F21):</p> <ul style="list-style-type: none"> • Paragraph 6.1.4 (MM, p93) • Policy LP17 (MM, p105-106) • Policy LP18 (AM11, AM12, MM, p111) • Paragraph 6.11.2 (AM15) • Paragraph 6.11.4 (MM, p134) • Policy LP25 (AM15, MM, p134) • Policy E1.1 (AM10, AM15, AM41) • Appendix B (AM41) 	<p>Changes to the following policies and/ or text are proposed to address specific concerns raised by the Environment Agency and/ or other relevant statutory consultees (e.g. Anglian Water, Lead Local Flood Authority, Water Management Alliance):</p> <ul style="list-style-type: none"> • Paragraph 6.1.4 • Policy LP17 • Policy LP18 • Paragraphs 6.11.2-6.11.4 • Policy LP25 • Policy E1.1 • Appendix B 	The Environment Agency has considered BCKLWN's proposed MMs and AMs, and supports and endorses these changes.	No remaining/ unresolved issues
Various (overall comment)	513, 515, 517, 521, 522,	<p>Other Environment Agency representations re:</p> <ul style="list-style-type: none"> • Paragraph 6.3.9 	Several representations by the Environment Agency regarding changes to individual policies and/ or supporting text were previously considered by BCKLWN (A8). These	The Environment Agency notes that BCKLWN systematically considered all representations (A8) and BCKLWN's reasonings in	No remaining/ unresolved issues

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	523, 524, 526	<ul style="list-style-type: none"> • Policy LP18 • Policy E1.KLR • Policy E1.5 • Policy E1.8 • Policy E1.10 	do not relate to matters of overall soundness and in some cases further changes to the Plan were not deemed necessary or appropriate.	respect of representations 513, 515, 517, 521, 522, 523, 524 and 526 that further changes to paragraphs 6.3.9 and policies LP18, E1.KLR, E1.5, E1.8 and E1.10 are not needed to make the Local Plan sound.	
Section 3	511	<p>Dependence upon Flood Defence Infrastructure The strategic objectives for Kings Lynn are dependent upon the Flood defence infrastructure that are managed and maintained by the Environment Agency, the Internal Drainage Boards, Anglian Water and other Risk Management Authorities.</p> <p>All proposals that have the potential to pose a risk to this infrastructure should be resisted.</p> <p>New developments within areas benefiting from this infrastructure should contribute to their maintenance and enhancement directly as they will not attract any central</p>	<p>The Environment Agency's concerns regarding future funding arrangements for maintenance of flood management infrastructure are noted.</p> <p>The planning system cannot be utilised to mitigate existing problems. Developer contributions can only be used to avoid exacerbation of existing problems and issues.</p> <p>Nevertheless, it is considered appropriate for site-specific policies to highlight particular matters of concern that should be noted when determining planning applications. Any such amendments to individual site-specific policies will be set out as MMs and/ or AMs, as appropriate.</p>	BCKLWN's recognition of the Environment Agency's concerns re longer term arrangements for the maintenance of flood risk infrastructure is welcome. Such changes are identified at the Annex (below), or will be agreed between the parties prior to publication of MMs following the examination hearings.	<p>The Environment Agency considered draft Main Modifications proposed by BCKLWN in September 2022. Amended policy wording was put forward by the Environment Agency. If these changes are accepted as Main Modifications by BCKLWN, then the Environment Agency is satisfied on this matter.</p> <p>Funding for the maintenance, upgrading and</p>

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		<p>government funding to take into account the increase reliance on them. For Internal Drainage Boards and Anglian Water this can be in the form of fees but for Environment Agency Assets there is no obvious financial route. This should be a factor for all developments in defended areas, especially those in close proximity to the defences.</p>			<p>potential replacement is determined by the properties and assets they protect. However, this cannot include new developments built after 2012. This means that this development will be reliant upon defences they do not contribute towards. The amended policy seeks to ensure the development contributes towards the costs associated with these assets. The Environment Agency do not promote the intensification of development behind existing defences unless both parts of the Exception Test can be met.</p>

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Policy E1.15 (detailed comment)	510	<p>The Environment Agency's concerns re the status of part of the site as active flood defences are summarised as follows:</p> <ul style="list-style-type: none"> • Located directly adjacent to the flood defences therefore the failure and overtopping of the defences will have immediate impacts to the development • Potential to impact the operation and maintenance of the flood defences 	<p>The site has been assessed through the Sustainability Appraisal. This concludes:</p> <p>Site E1.15 is a key brownfield, regeneration site capable of bringing benefits to both sides of the riverfront. Based upon a balance of factors; the results of the Sustainability Appraisal, site specific factors and consultation responses received to date, it is considered appropriate to continue to allocate sites E1.14 and E1.15 for residential development in West Lynn.</p> <p>The allocation of site E1.15 is supported by evidence; the main evidence base consisting of the UDS, Flood Risk Assessment (including sequential test) and Sustainability Appraisal. Notwithstanding, it is accepted that the supporting text to E1.15 does not provide sufficient explanation or justification for the site allocation (paragraphs 9.2.2.1-9.2.2.2).</p> <p>It is accepted that Policy E1.15 should give specific recognition to the</p>	<p>The Environment Agency accepts BCKLWN's position that additional text/ criteria are necessary to address the matter of operational flood defences that are situated within the site boundary. Detailed changes to the Plan text (proposed Main Modifications), as agreed between the parties, are noted at the Annex (below).</p>	No remaining/ unresolved issues

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			fact that the site incorporates operational Great Ouse flood defences. Recognition of this can be addressed through addition of references to the Environment Agency's operational requirements within the policy text.		
Policy E1.15 (detailed comment)	510	<p>The Environment Agency's concerns re NPPF compliance are summarised as follows:</p> <ul style="list-style-type: none"> • No justification re flood risk sequential test and exception test; cf policy E1.14 • Given that the housing allocations within the Local Plan exceed what is required, expect the LPA to present strong evidence that there is a need for this allocation 	<p>It is accepted that the supporting text to site specific policy E1.15 does not provide sufficient justification for the continuation of this as an allocation in the Local Plan Review. Main Modifications to the Local Plan Review are necessary to overcome the Environment Agency's concerns. The EA's representation suggests a way forward, with specific reference to the sequential and exceptions test supporting text for E1.14 (Land West of St Peter's Road).</p> <p>National Planning Policy Framework/ Planning Practice Guidance National policy directs how the sequential and exceptions tests need to be applied, in practice, to site selection. The national Planning Practice Guidance (PPG: Flood risk</p>	<p>The Environment Agency accepts BCKLWN's position that additional text/ criteria are necessary to address the matter of applying the Sequential and Exceptions Tests to justify the continued allocation of this site in the Local Plan; i.e. compliance with latest Government policy (NPPF) and guidance (Planning Practice Guidance). The additional supporting Sequential Test document (A13) addresses the Environment Agency's previous concerns.</p> <p>Detailed changes to the Plan text (proposed Main Modifications), as agreed between the parties, are noted at the Annex (below).</p>	<p>The site is also identified as being within the 1 in 200 year Annual Exceedance Probability (AEP) event (including an allowance for climate change, even when the impact of defences are considered. This scenario is the now explicitly defined as being the 'design' flood event.</p> <p>The Environment Agency needs to be satisfied that this information, contained within</p>

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			<p>and coastal change²) advises that, for plan-making, “the Sequential Test should be applied to the whole local planning authority area” (paragraph 020). If the Sequential Test is exclusively applied, large areas of the Borough (including most of the King’s Lynn urban area) would be precluded from hosting new development in view of their overall flood risk status.</p> <p>The SA process concluded that application of the Sequential Test alone is not appropriate or reasonable. Therefore, the Exception Test should be applied, requiring “proposed development to show that it will provide wider sustainability benefits to the community that outweigh flood risk” (PPG, paragraph 023). The SA report reflects the Exception Test, explaining that “decisions to allocate sites in those large parts of the Borough that are at a higher risk of flooding, where the need for development to sustain the local community and its services has been judged to outweigh the presumption against development in higher flood risk areas”. This allows</p>		<p>the SFRA, and the updated Planning Practice Guidance (August 2022) has been given due consideration.</p> <p>The Environment Agency also needs to be satisfied that the updated Sequential Test is fit for purpose; ideally presented before the hearings. While draft Main Modifications/ wording can be agreed between the parties, the Sequential Test work needs to have been done before hand.</p>

² <https://www.gov.uk/guidance/flood-risk-and-coastal-change>

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			<p>for sequential testing to be undertaken on a settlement-by-settlement basis, comparing potential site options for each settlement.</p> <p>This approach has allowed for sequential testing of potential site allocations to be restricted to West Lynn.</p> <p>Sequential test In terms of the sequential test, the Bankside site (as E1.14) lies within Flood Zone 3a (High probability of flooding) identified by the Strategic Flood Risk Assessment and in the flood defence breach Hazard Zone. None of the available sites in the settlement (West Lynn) are at a lower risk of flooding. Therefore, the sequential test set by the National Planning Policy Framework is met for E1.14.</p> <p>The PPG was comprehensively updated in August 2022 in respect of the sequential test. This broadens the scope of the sequential test from exclusively Flood Zones 2 and 3 (i.e. fluvial flood risk) to all forms of flooding, in mapping (assessing)</p>		

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			<p>probability and assessing vulnerability across all flood zones. The sequential test (sites in and around West Lynn) has taken account of the following:</p> <ul style="list-style-type: none"> • Strategic Flood Risk Assessment (Levels 1 and 2)³ • Housing and Economic Land Availability Assessment (HELAA) • Site specific representations for West Lynn put forward through Regulation 19 consultation (August/ September 2021) <p>In order to address the Environment Agency's concerns about retention of E1.15 as a housing land allocation, the Borough Council needs to demonstrate that the sequential test has been satisfactorily undertaken. A bespoke sequential test for West Lynn was prepared in March 2022 to support the submission Plan (A13⁴).</p>		

³ https://www.west-norfolk.gov.uk/info/20173/information_for_planning_agents/391/flood_risk_assessment_-_level_1

⁴ https://www.west-norfolk.gov.uk/download/downloads/id/7098/a13_draft_west_lynn_flood_risk_sequential_test_-_march_2022.pdf

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			<p>The West Lynn sequential test considered six separate sites (including E1.15). This process identified one possible alternative (Land between Clenchwarton Road and Orchard Grove) to E1.15. However, the Clenchwarton Road site is in the same EA Flood Zone as E1.15 but is constrained by other factors such as biodiversity and development capacity. The sequential test concluded that there are no suitable alternative site allocations to E1.15.</p> <p>Exception test In addition to the sequential test, the Borough Council must demonstrate, to the satisfaction of the Planning Inspector, that the former Del Monte factory site (E1.15) fulfils the exception test.</p> <p>Overall, the significant brownfield site is allocated first and foremost due to its prominence as a key waterfront regeneration site. While housing numbers for the Borough may exceed overall Local Housing Need, this does not remove the requirement to deliver housing in accordance with the spatial strategy, which focuses</p>		

Policy/ Map/ Para no. etc	Rep No	Main Issues Raised at Reg 19	BCKLWN response	Environment Agency response	Remaining unresolved issues
			upon King's Lynn (including West Lynn).		

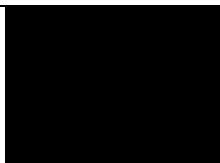
Resolution– agreements between the parties

Proposed Main Modifications need to be agreed between the parties, prior to the examination hearings taking place during autumn 2022.

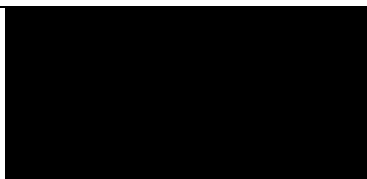
Proposed Main Modifications (MMs) – BCKLWN’s draft wording put forward as an Annex to this SoCG (below), covering the following:

- **Addition of explanation/ justification for why the Bankside site (E1.15) fulfils the flood risk sequential test, with reference to all potential sources of flooding, supported by an updated sequential test for West Lynn as a supporting evidence base document for the site**
- **Addition of explanation/ justification for why the Bankside site (E1.15) fulfils the flood risk exception test (the content of this Statement, above, goes a long way to fulfilling this requirement)**
- **Replacement of paragraphs 9.2.2.1 and 9.2.2.2 with additional background information to the Borough Council’s regeneration strategy and aspirations for the Great Ouse waterfront (east and west banks), as necessary to provide sufficiently robust justification to fulfil the sequential and exception tests**
- **Addition of references to potential future strategic options for enhancements to, and maintenance of, flood defences within Policy E.1.15 and/ or the supporting text; e.g. adaption or construction techniques**
- **Additional/ strengthened criteria within Policy E1.15 regarding the need for EA/ public access to flood defences for repairs and maintenance throughout; i.e. no loss of current levels of access to defences**

1. Signatories



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Annex – Section 9.2.2/ Policy E1.15 – revised wording

Green text = Suggested Main Modifications [F21]

Red text (~~strikethrough~~ and/ or underlined) = Changes agreed between Environment Agency and BCKLWN through Statement of Common Ground

9.2.2 E1.15 West Lynn – Land at Bankside Policy

Site Allocation Introduction

9.2.2.1 The former Del Monte site at Bankside, West Lynn is a derelict brownfield site capable of achieving a high density, waterfront development. The Del Monte Factory was closed in 2008. The site was cleared soon after and has lain derelict since 2008/09. It was known that the future of the Del Monte factory at West Lynn was in doubt some time before closure. The 2006 Urban Development Strategy (UDS)⁵ proposed focal points for residential development across King's Lynn, including the Del Monte site. Although dated, the UDS emphasised a need for key views to be made clearer and more attractive across the Great Ouse, from both the east and west banks through a viable development scheme. The Borough Council's current regeneration priority projects (e.g. Nelson Quay) reiterate the importance of the King's Lynn riverfront areas.

9.2.2.2 The site should include additional car parking to serve the West Lynn Ferry, which gives it direct access to King's Lynn town centre.

Site Description and Justification

9.2.2.3 This site is allocated to provide sustainable residential development, making best use of previously development land in accordance with NPPF paragraph 119.

Sequential Test

9.2.2.3 National planning policy and guidance (NPPF and PPG updates; July 2021/ August 2022) broadened the scope of the sequential test from Flood Zones 2 and 3 (i.e. fluvial flood risk) to cover all forms of flooding, in mapping (assessing) probability and assessing vulnerability, from all sources of flood risk, across all flood zones. Current guidance requires that the Sequential Test should be applied at the whole local authority area. This was ruled out through the Sustainability Appraisal process as not being a reasonable alternative as it would lead to large parts of the Borough, including many of the most sustainable locations (with most of the King's Lynn urban area), being precluded from further development. The Sustainability Appraisal concluded that if the Sequential Test is exclusively applied, large areas of the Borough would be precluded from hosting new development in view of their overall flood risk status. This is borne out by the Level 2 Strategic Flood Risk Assessment Breach Outline Map⁶.

⁵ https://www.west-norfolk.gov.uk/info/20010/regeneration/509/urban_development_strategy

⁶ https://www.west-norfolk.gov.uk/download/downloads/id/5708/appendix_b1_-_2018s0277_-_bcklwn_breach_outline.pdf

9.2.2.4 The former Del Monte Factory site is located directly adjacent to the Great Ouse flood defences. In consultation with the Environment Agency, with regard to flood risk, the Borough Council prepared an updated sequential test for West Lynn⁷ (March 2022; updated November 2022), to ensure that national policy has been adhered to in the case of the proposed site allocations (both E1.14 and E1.15). This was published alongside the submission Local Plan, concluding that there are no suitable alternative site allocations to E1.15 and therefore passes the sequential test.

Exception Test

9.2.2.5 Through the Sustainability Appraisal process it was concluded that application of the Sequential Test alone is not appropriate or reasonable. Therefore, the Exception Test should be applied, requiring “proposed development to show that it will provide wider sustainability benefits to the community that outweigh flood risk” (PPG, paragraph 031). Accordingly, the spatial strategy and Borough Council’s own priorities (e.g. focus upon the A10/ Main Rail Line Strategic Growth Corridor and wider regeneration benefits for the King’s Lynn urban area that outweigh future flood risk) allow for sites to be assessed on a settlement by settlement basis.

9.2.2.6 The Borough Council remains committed to successful redevelopment of this challenging brownfield Bankside site. The site is allocated first and foremost due to its prominence as a key waterfront regeneration site. For the Exception Test to be satisfactorily met, a site-specific flood risk assessment would be required, in accordance with Policy LP25 and national guidance. It is necessary for the flood risk assessment to demonstrate that the housing development on the site would be safe, and the adjacent Great Ouse flood defences would not be compromised or adversely affected. There is a requirement for the site owner and/ or prospective developer to provide such an assessment with supporting mitigation measures as required.

Policy E1.15 West Lynn – Land at Bankside

Land amounting to 2.6 hectares is allocated for residential development of at least 120 dwellings. Development will be subject to compliance with all of the following:

1. Provision of additional car parking and cycle storage to serve the West Lynn Ferry;
2. Development should conserve and where appropriate enhance Kings Lynn Conservation Area and associated listed buildings and their settings;
3. Submission of a site specific Flood Risk Assessment, **in accordance with LP25 and the National Planning Policy Framework (and associated guidance)**. This must consider the residual risk of flooding **now and in the**

⁷ https://www.west-norfolk.gov.uk/download/downloads/id/7098/a13_draft_west_lynn_flood_risk_sequential_test_-_march_2022.pdf

future, to the site in the event of a breach of the flood defences and overtopping of the tidal River Great Ouse defences. This should include details of the impact and likelihood of a breach occurring. A sequential approach should be adopted regarding the layout of the site, with the most vulnerable development situated in areas at lowest risk of flooding (i.e. shallower flood depths) and no aspect of the development should encroach on to the defences or hinder the regulators access to them⁸;

4. Submission of details showing how sustainable drainage measures will integrate with the design of the development and how the drainage system will contribute to the amenity and biodiversity of the development. A suitable plan for the future management and maintenance of the SUDS should be included with the submission;
5. The precise provision of open space will be considered with regard to the proximity of the development to existing safeguarded facilities (such as the nearby recreational facilities to the west of the site). The Borough Council will consider flexibility of open space provision where this would result in qualitative and quantitative benefits to the community;
6. Financial contributions towards the provision of infrastructure;
7. Provision of affordable housing in line with the current standards.;
8. Provision of vehicular access to the entire length of the Great Ouse flood defences, to the satisfaction of the Environment Agency, to ensure the ongoing repair, maintenance and potential improvements of them; and
9. Wherever possible, financial contributions should be made for the maintenance of the defences and opportunities for enhancing these defences should be incorporated into the design of the development.

⁸ The flood defences themselves and associated access road should not be used as amenity space to service the development; e.g. installing viewing platforms, play equipment