Notice of Meeting

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Eastern Area Planning Committee

Wednesday 20 December 2017 at 6.30pm

in the Calcot Centre, Highview (off Royal Avenue), Calcot

Members Interests

Note: If you consider you may have an interest in any Planning Application included on this agenda then please seek early advice from the appropriate officers.

Date of despatch of Agenda: Tuesday 12 December 2017

FURTHER INFORMATION FOR MEMBERS OF THE PUBLIC

Note: The Council broadcasts some of its meetings on the internet, known as webcasting. If this meeting is webcast, please note that any speakers addressing this meeting could be filmed. If you are speaking at a meeting and do not wish to be filmed, please notify the Chairman before the meeting takes place. Please note however that you will be audio-recorded.

Plans relating to the Planning Applications to be considered at the meeting can be viewed in the Calcot Centre between 5.30pm and 6.30pm on the day of the meeting.

No new information may be produced to Committee on the night (this does not prevent applicants or objectors raising new points verbally). If objectors or applicants wish to introduce new additional material they must provide such material to planning officers at least 5 clear working days before the meeting (in line with the Local Authorities (Access to Meetings and Documents) (Period of Notice) (England) Order 2002).

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact the Planning Team on (01635) 519148
Email: planapps@westberks.gov.uk

Further information, Planning Applications and Minutes are also available on the Council's website at www.westberks.gov.uk

Any queries relating to the Committee should be directed to Stephen Chard on (01635) 519462
Email: stephen.chard@westberks.gov.uk

To: Councillors Peter Argyle, Pamela Bale, Graham Bridgman, Keith Chopping, Richard Crumly, Marigold Jaques, Alan Law (Vice-Chairman), Alan Macro, Tim Metcalfe, Graham Pask (Chairman), Richard Somner and Emma Webster

Substitutes: Councillors Lee Dillon, Sheila Ellison, Nick Goodes, Tony Linden, Mollie Lock and Quentin Webb

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Agenda

Part I

Page No.

1. **Apologies**
To receive apologies for inability to attend the meeting.

2. **Minutes** 5 - 18
To approve as a correct record the Minutes of the meeting of this Committee held on 29 November 2017.

3. **Declarations of Interest**
To remind Members of the need to record the existence and nature of any personal, disclosable pecuniary or other registrable interests in items on the agenda, in accordance with the Members' Code of Conduct.

4. **Schedule of Planning Applications**
(Note: The Chairman, with the consent of the Committee, reserves the right to alter the order of business on this agenda based on public interest and participation in individual applications.)

(1) **Application No. & Parish: 17/02295/MDOPO - 129, 129a, 131, 133, 137 and land at 139 and 141 Bath Road, Thatcham** 19 - 88

Proposal:	Application to modify planning obligation: To discharge the S106 obligation in connection with planning consent 15/02077/OUTMAJ (outline application for development of 26 apartments and 7 houses). Matters to be considered: Access, Layout and Scale.
Location:	129, 129a, 131, 133, 137 and land at 139 and 141 Bath Road, Thatcham, Berkshire.
Applicant:	Ressance Land No.9 Limited.
Recommendation:	To **DELEGATE** to the Head of Development & Planning to **GRANT PERMISSION** for the reasons set out in section 7 of this report.

Items for Information

5. **Appeal Decisions relating to Eastern Area Planning** 89 - 90
To inform Members of the results of recent appeal decisions relating to the Eastern Area Planning Committee.

Background Papers

(a) The West Berkshire Core Strategy 2006-2026.
(b) The West Berkshire District Local Plan (Saved Policies September 2007), the Replacement Minerals Local Plan for Berkshire, the Waste Local Plan for Berkshire and relevant Supplementary Planning Guidance and Documents.
(c) Any previous planning applications for the site, together with correspondence and report(s) on those applications.
(d) The case file for the current application comprising plans, application forms, correspondence and case officer's notes.
(e) The Human Rights Act.

Andy Day
Head of Strategic Support

If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.

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DRAFT

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

EASTERN AREA PLANNING COMMITTEE

MINUTES OF THE MEETING HELD ON WEDNESDAY, 29 NOVEMBER 2017

Councillors Present: Peter Argyle, Pamela Bale, Graham Bridgman, Keith Chopping, Richard Crumly, Marigold Jaques, Alan Law (Vice-Chairman), Alan Macro, Tim Metcalfe, Graham Pask (Chairman), Richard Somner and Emma Webster

Also Present: Sharon Armour (Solicitor), Gareth Dowding (Senior Engineer), Charlene Hurd (Democratic Services Officer), David Pearson (Development Control Team Leader) and Simon Till (Senior Planning Officer)

PART I

35. Minutes

The Minutes of the meeting held on 8 November 2017 were approved as a true and correct record and signed by the Chairman, subject to the following amendments:

Item 32(1) Application 17/01540/RESMAJ

Page 11, third bullet point: Councillor Bale ~~queried whether~~ ***was pleased that*** there were permitted development restrictions placed on the houses.

Page 11, eight bullet point: her article was in the Pangbourne Magazine *[2015].*

Page 20, fourth paragraph: Councillor Law stated that it would be the foundation that would be reduced in height rather than the ridge height of the properties.

36. Declarations of Interest

Councillors Graham Bridgman and Keith Chopping declared an interest in Agenda Item 4 (1), but reported that, as their interest was a personal or other registrable interest, but not a disclosable pecuniary interest, they determined to remain to take part in the debate and vote on the matter.

37. Schedule of Planning Applications

(1) Application No. & Parish: - Beech Hill Road, Beech Hill, Reading, Berkshire RG7 2AT

(Councillor Graham Bridgman declared a personal interest in Agenda Item 4(1) by virtue of the fact that he was aware of, and to an extent had been involved in, discussions with those associated with the application/site and local residents. As his interest was personal and not prejudicial or a disclosable pecuniary interest, he determined to remain to take part in the debate and vote on the matter.)

(Councillor Keith Chopping declared a personal interest in Agenda Item 4(1) by virtue of the fact that he had attended the venue for functions, albeit not for some time. As his interest was personal and not prejudicial or a disclosable pecuniary interest, he determined to remain to take part in the debate and vote on the matter.)

The Committee considered a report (Agenda Item 4(1)) concerning Planning Application 17/01524/COMIND in respect of retrospective permission for the temporary change of use

of land to the south of the existing hotel to assembly and leisure for holding events ancillary to the use of the hotel as a venue for weddings and leisure events and the temporary retention of three conjoined marquees on the land for a period of 12 months. Erection of a new 3 storey extension to the existing hotel to provide 16 new bedrooms, restaurant extension and internal alterations and improvements, formalised parking area and associated landscaping. Permission for the temporary siting of a marquee extension to the existing garden marquee immediately to the rear of the existing hotel to be removed following completion of the hotel extension. Following removal of the existing 3 conjoined marquees on land to the south of the site, temporary erection of a new single marquee for 25 occasions per year for purposes of assembly and leisure ancillary to the use the main site as a venue for weddings and leisure events. Use of the remaining land adjoining the temporary single marquee site and parking areas to the south of the hotel only for purposes ancillary to the use of the main hotel site as an assembly and leisure venue for weddings and leisure events for 25 days per year.

In accordance with the Council's Constitution, Mr Geoff Mayes, Parish Council representative, Mr Chris Bridges, objector, and Mr Graham Bell, applicant/agent, addressed the Committee on this application.

Mr Geoff Mayes in addressing the Committee raised the following points:

- In general, the Parish Council supported the application to build a 16 room extension, a single storey extension to the dining area, remove the existing garden marquee and the associated tents.
- They recognised the plans to construct a permanent pavilion.
- He disagreed with the contention of West Berkshire Council following the 2010 planning permission, that construction was commenced on the works which covered the application including the pavilion area.
- The garden marquee location was a source of unacceptable noise currently under scrutiny and monitoring by environmental health.
- The Parish Council wished to have it confirmed that there was no possibility, or intention, to further extend the hotel as detailed in the extant planning permission of 2010 – assuming the current application was approved.
- The Parish Council did not support the change of use proposals in respect of the agricultural land in the southern part of the site - permission should not be granted for this.
- Planning control had been very weak and views of the site had been spoilt since the mid 2000's. The site was also a major noise pollutant for residents to the south of the site.
- It was suggested that the temporary marquee would be better sited where the present garden marquee now stood – behind the main hotel.
- The Parish Council wanted to see a tightly controlled programme of work, actively monitored by West Berkshire Council, with completion of the hotel extensions within 2 years.

Councillor Alan Law asked Mr Mayes to clarify those elements of the current application which the Parish Council contested/supported – as detailed in point 6.1.6 of the Officer's report. Mr Mayes stated that they disagreed with the proposed siting of the temporary marquee, provision of a parking overspill car park and change of use associated with the agricultural land.

Councillor Pamela Bale asked whether the Parish Council requested enforcement action following the erection of multiple marquees/ supporting structures. Mr Mayes advised that the Parish Council reported issues associated with the noise levels from the site in 2016 but he could not say whether they requested enforcement action earlier than this.

In response to questions asked by the Committee, Mr Mayes stated that he wanted clarification from Officers regarding, potential, further development of the site as permitted under planning application 09/02252/XCOMIND.

Mr Chris Bridges in addressing the Committee raised the following points:

- He spoke in support of the application in 2007 but, since then, there had been a catalogue of missed opportunities to mitigate the extent of works undertaken.
- The site was visible from the nearby road and he considered the extent of development as an abuse of a rural location.
- The current issues were inherited by the new management since the site licence was transferred from Trunkwell Legacy in 2016.
- Noise was an issue from the site [garden marquee] but noise levels from the grand marquee were closely monitored through a Noise Management Plan.
- The site did not provide staff accommodation and there was heavy vehicle movement to/from the site as a result of staff travel and goods' deliveries.
- He disagreed with the location of the overspill car park.
- He accepted the application, in principle, according to the approval granted in 2007.

Councillor Graham Bridgman asked Mr Bridges to confirm what his stance would be on the application had it been presented to him for the first time, without the colourful history known to him now. Mr Bridges believed that he would accept the application because he strongly supported local businesses and because it would be similar to the application he had originally supported in 2007.

In response to questions asked by the Committee, Mr Bridges advised that he lived adjacent to the site. He also stated that he supported the need to introduce a programme of works – in light of the history of the site, albeit through a different owner to that in place now.

Councillor Tim Metcalfe asked Mr Bridges to confirm his stance on the location of the overspill car park. Mr Bridges advised that the neighbouring car park was used by the Thrive Trust would be available for use outside core hours (evenings and weekends)and could be used by the hotel. He considered that this was a far more logical solution to an overspill issue and would avoid the need to change the use of agricultural land.

Mr Graham Bell in addressing the Committee raised the following points:

- He sat in a similar position some years ago to discuss a controversial matter in relation to a local asset, the small shop in the church, which was now a well used and well established part of the local community.
- The hotel was a well liked venue with supporting links to the local church and offered one of only a few amenities in the local area.
- The site was good for Beech Hill – proving 2 local jobs within a very small community.
- The venue was well known for corporate events, weddings and social events. The applicant sought to improve the venue for future events.

- The proposed hotel extension sought to provide fewer bedrooms because the requirement for en-suite bathrooms had changed significantly since the previous application was submitted.
- Planning permission was already in place for parking at the paddock and landscaping formed part of the current application.
- The current application reflected careful consideration of the site with help from the Planning Officers to minimise adverse impacts. It aimed to remove the large structure and replace with a [occasional use] temporary structure to allow flexibility for events.
- The applicant had a genuine vision for the site but the scheme of works required significant funding which would be a challenge to conjure.
- The impact from noise had decreased significantly with only three complaints having been registered in 2017 - to date.
- There was plenty to like about the application, and very little to dislike. He hoped that the Committee would support it.

Councillor Graham Bridgman asked a series of questions relating to the construction of the pavilion, the order of work (including timelines) and the conditions relating to the removal of the garden marquee. In response to these questions Mr Bell advised that it was likely that the pavilion would be made from permanent materials. However, he was not privy to the planning details but he was confident that the drawings illustrated a need for brick walls and glazed windows. Mr Bell stated that the scheme of works would commence in summer 2018 with an initial focus on the hotel extension followed by the work on the car parks. The construction of the pavilion would follow this work – all of which should take approximately 2 years in total to complete.

Mr Bell advised that his knowledge around the garden marquee was limited – noting that the most recent information had been provided in the update report so he was not able to discuss that with the applicant prior to the meeting. Notwithstanding the fact that the current garden marquee was a lawful structure and had events booked for the next 12 to 18 months – the removal of the garden marquee would be part of the overall process and, where possible, events would be transferred into the pavilion to allow removal of the garden marquee according to the proposed conditions.

Councillor Bridgman highlighted an inconsistency in conditions 7 & 8 which referred to the number of days the temporary marquee could be used alongside the paddock parking. Mr Bell advised that the overspill car park would only be required on the day of the event so he was not clear about the reference to using the paddock for 3 days.

Councillor Keith Chopping was concerned that the temporary marquee could be considered a permanent marquee if it remained in situ to accommodate consecutive events. Mr Bell agreed that there could be an issue if there were consecutive events but that this would be avoided where possible. He assured the Committee that the applicant sought to deliver a different style of wedding event to those previously held at Trunkwell House – making use of the proposed pavilion in the majority of cases but having a temporary marquee available for exceptional cases.

Councillor Marigold Jaques highlighted that the site lacked accommodation for staff and the plans failed to mention any extensions to the kitchen which, in her opinion, would be necessary if the hotel expanded. Mr Bell agreed that the plans did not show changes to the internal layout. Mr Bell did not have any more information to provide the Committee regarding staff accommodation.

Councillor Tim Metcalfe asked whether the site had a staff travel plan in place. Mr Bell advised that a travel plan was requested by the Highways Officer.

In response to questions asked about the new marquee and noise limitation, Mr Bell stated that the noise management plan would inform the conditions for use to minimise the impacts to local residents. Furthermore, it was expected that the hardstanding pavilion would be used for the majority of events which would reduce the noise levels further.

Councillor Mollie Lock, speaking as Ward Member, in addressing the Committee raised the following points.

- She raised concerns on behalf of the residents of Beech Hill. The hotel itself did not cause significant concerns and it was a valued asset in the area – providing jobs for local residents.
- There were concerns relating to the proposed use of the paddock as overspill parking.
- Residents were concerned about the multiple structures in place, including a portakabin and the affect this had on the nearby trees.
- Residents had raised concerns regarding noise which was still an issue when people left the tented areas and congregated outside.
- She asked when condition 3 (removal of the Grand Marquee) would take effect from when/if the application was approved.

Councillor Law asked for clarification regarding Councillor Lock's position on the proposed parking in the paddock. Councillor Lock advised that she contested the acceptability of the proposed overspill parking.

Councillor Bale asked whether parking was an issue in the local area - on event days. Councillor Lock advised that the parking was an issue as it spilled off-site and that the Parish Council had met to discuss measures to alleviate pressure in the village.

Councillor Bridgman highlighted the parking blocks, as detailed within the current site plan, and asked Councillor Lock whether the current provision was insufficient therefore, resulted in overflow parking in/ around the village. Councillor Lock advised that the provision was sufficient and the public generally used the venue's designated parking.

In response to questions asked by Members of the Committee, Simon Till advised that permission 152769 was approved on the same land proposed for hotel extensions within the current application. Therefore, if the current application was approved, it would supersede the hotel extensions approved in permission 152769. However, Members were advised that permission 09/2252/XCOMIND would remain valid if the current application was approved due to the proposed land for development being unaffected by the current application.

Councillor Chopping asked whether a programme of works with an end date could be conditioned if the application was approved. David Pearson stated that it could fail the tests of 'reasonable and enforceable' to impose a finish date on the development.

In response to questions asked by the Committee, Simon Till explained that the portakabin was in situ to provide temporary office accommodation while the refurbishment of the boutique hotel was underway. Part of the General Permitted Development Order allowed for the provision of such temporary structures, but it must be removed once the development was completed.

The Committee was advised that noise levels would be monitored through the Noise Management Plan and mechanisms within the Environmental Health Team.

Councillor Emma Webster supported the venue and how it supported the local community in terms of employment. She suggested that condition 5 could be amended to allow seamless trade. The proposed change would enforce the removal of the garden marquee 12 months post the first anniversary of the first use of the hotel extensions. David Pearson advised that this could be incorporated into the condition if Members were minded to approve the application.

Councillor Bridgman requested clarification regarding the number of days the proposed [temporary] marquee could be in situ alongside the use of the paddock for overflow parking (conditions 7&8). Simon Till advised that the total number of days per year was 125. There had been drafting error and that the reference to 3 consecutive days in condition 8 was incorrect. Members heard that the condition 7 proposed 5 days for the erection and dismantling of the temporary marquee with a limit of 1 day for each event held in the marquee and condition 8 proposed a maximum of 3 consecutive events on the paddock land.

Councillor Law stated that he supported the majority of details within the application but he was troubled by the overflow parking proposals – he was minded to request a deferral to allow the applicant time to reconsider the parking proposals. David Pearson advised against deferring the application and suggested that overflow parking would ensure that any impacts within the village were minimised.

Councillor Bridgman suggested that this was a complex case because of the history regarding the site and issues associated with noise. He noted that there was a lot of controversy around the use of an overflow car park and the change of use proposal. He acknowledged that West Berkshire Council failed to use enforcement powers when necessary but he considered that the current proposal sought to take a pragmatic approach towards addressing these issues.

He acknowledged concerns regarding the impact of traffic in/around Beech Hill and noted that the overflow car park aimed to minimise the effect. Notwithstanding the fact that elements of the parking layout had existing planning permission.

Councillor Bridgman supported the application - including the suggested change to condition 5.

Councillor Webster upheld her suggestion to amend condition 5 of the application and stated that, in doing so, she would fully support the application. Therefore, Councillor Webster proposed acceptance of Officer's recommendation to grant planning permission, including the additional condition and amendments to conditions stated on the update sheet. The proposal was seconded by Councillor Richard Crumly.

Councillor Law stated that he agreed with the economic benefits delivered by the venue but he also had three key concerns regarding the application: the temporary marquee; the sequence/ frequency of events; and car parking. He was especially concerned about the location of the temporary marquee – noting that it would be better positioned at the rear of the hotel but he suspected that this option was not followed through because it would interfere with the potential development under application 09/2252/XCOMIND. He disputed the need for a permanent overflow car park and suggested that there could be an agreement to use the adjacent Trust's car park as/when required. He was minded to approve the application minus the proposal to deliver additional parking but noted that this was not possible so he suggested that the Committee deferred the decision.

Councillor Alan Macro considered that the current application aimed to make the best of a less desirable situation. However, he could not support the proposed overflow car park either and was cautious about the [proposed] number of days the temporary marquee could be in place. For those reasons he could not support the application.

David Pearson advised that the planning application proposed that the temporary marquee could be in situ for [up to] 125 days per annum and that, in terms of the worst case scenario, if the current appeal went ahead, an Inspector might take a view that the Grand Marquee was in fact lawful and therefore be deemed a permanent feature with no control over its usage. The Committee was reminded that the Inspector's decision would be made based on lawfulness and not the desirability of its retention assessed against planning policies.

Councillor Keith Chopping stated that he understood the situation in respect of lawful structures since reading the report and hearing the discussion this evening. He believed that the majority of concerns had been addressed, therefore he supported the application. However, he was mindful of the fact that the venue could generate noise complaints and was insistent that this should be monitored closely going forward.

Councillor Metcalfe highlighted concerns regarding the internal layout of the kitchen and dining area. Although this was not a matter for planning consideration, he was concerned that this could lead to accidents in the future.

He requested that the conditions were amended to insist that landscaping occurred at the earliest opportunity, noting that the condition currently linked to the first use of the temporary marquee. Simon Till advised that the condition requested sight of the landscaping plans within 12 month of the application being approved and that Part A of the condition stated that landscaping should commence at the first 'planting season' after first use of the temporary marquee. Councillor Bridgman agreed that the condition could be improved and requested an amendment to condition 13 stating that landscaping should commence 12 months after the completion of any development on site. David Pearson advised Members that the change should pass the reasonability test. He suggested that linking landscaping to the development of the hotel could be considered unreasonable. He proposed that the condition could be amended to request submission of landscaping details within 6 months, sticking with the original requirement for completion of landscaping if Members were concerned about the timescales associated with the condition.

Councillor Webster accepted the proposed changes to conditions 5, 7 and 8 and the proposed alteration to condition 13 and upheld her proposal to accept Officer's recommendation. The proposal was seconded by Councillor Richard Crumly.

In considering the above application Members voted in favour of the proposal to accept Officers recommendation.

RESOLVED that the Head of Planning and Countryside be authorised to grant planning permission subject to the following conditions

Conditions

1. **Approved plans**

   The development hereby permitted shall be carried out in accordance with drawing numbers 70009715-SK-101 Rev. A and 635-LA-01 Rev. A received by email dated 17 November 2017, and drawing numbers 1604-RFT-00-XX-DR-A-0001-SO-, 1604-RFT-00-01-DR-0102-A-SO-P01, 1604-RFT-00-02-DR-A-0103-SO-P01, 1604-RFT-00-GF-DR-A-0101-SO-, 16104-RFT-00-02, 3.-DR-A-0104-SO-01, 16104-RFT-00-ZZ-DR-A-0401-SO-P01 and the location plan received 19 June 2017. Any material change to the approved plans will require a formal planning application to vary this condition under Section 73 of the Act. Any non-material change to the approved plans will require a non-material amendment application prior to such a change being made.

Reason: For the avoidance of doubt and in the interest of proper planning.

2. **Samples of materials**

Development of the approved extensions to the hotel building on the site shall not commence until a schedule and samples of the external materials to be used in construction of the dwellings has been submitted and approved in writing under a formal discharge of conditions application. Development of the hotel buildings shall take place in accordance with the approved schedule and samples of materials.

Reason: Additional information on materials is required due to the visual sensitivity of surrounding views from the AONB. This condition is imposed in accordance with the National Planning Policy Framework (2012) and Policies CS14 and CS19 of the West Berkshire Local Plan Core Strategy (2006-2026) 2012.

3. **Removal of Grand Marquee**

Within 12 months of the date of this decision the three conjoined marquees located in the paddock land alongside the south western boundary of the site known as the Grand Marquee and any associated structures or temporary buildings shall be removed from the site.

Reason: The permanent retention of the large conjoined marquee would result in a severe detrimental impact to the quality of the landscape surrounding the site and views from the public right of way to the west and Beech Hill Road to the south. This condition is imposed in the interests of visual amenity in accordance with the requirements of the NPPF and Policies CS14 and CS19 of the West Berkshire Local Plan Core Strategy (2006-2026) 2012.

4. **Noise Management Plan**

The approved temporary marquee and marquee extension shall not be taken into use until a scheme, known as a Noise Management Plan, has been submitted and approved under a formal discharge of conditions application. The noise management plan shall specify the provisions to be made for the control of noise emanating from all proposed works on the site including the temporary marquee, marquee extension and hotel extensions. Thereafter, the temporary marquee, marquee extension and hotel extensions shall not be taken into use until the approved noise management plan has been fully implemented and all future operations and events will be undertaken in accordance with its provisions.

Reason: To protect the occupants of nearby residential properties from noise disturbance in accordance with the NPPF (2012), Policy CS14 of the West Berkshire Local Plan (2006-2026) 2012 and Policy OVS6 of the West Berkshire District Local Plan (1991-2006) Saved Policies 2007.

5. **Removal of garden marquee**

The marquee immediately to the west of the hotel shown on the approved drawings as the Garden Marquee shall be removed from the site within 12 months of the first use of the hotel extensions hereby approved as specified on drawing number 635-LA-01 Rev A (Landscape principle strategy plan).

Reason: In order to prevent the overdevelopment of the site and in the interests of neighbouring amenity in accordance with Policy CS14 of the West Berkshire Local Plan (2006-2026) 2012 and Policy OVS6 of the West Berkshire District Local Plan (1991-2006) Saved Policies 2007.

6. **Elevations of temp marquee**

Within 3 months of the date of this planning permission full elevations of the temporary marquee to be located on the southern part of the site shall be submitted and approved under a formal discharge of conditions application. The temporary marquee shall be erected and thereafter retained in accordance with the approved elevations.

In the interests of visual amenity and proper planning in accordance with the NPPF (2012) and Policies CS14 and CS19 of the West Berkshire Local Plan Core Strategy (2006-2026) 2012.

7. **Temporary marquee**

The temporary marquee hereby approved shall not be used for more than 25 events per calendar year. Each event shall consist of no more than 5 days in total for the erection and dismantling of the marquee and not more than 1 day per event for the use of the marquee for purposes of entertainment and leisure ancillary to the use of the hotel as an assembly and leisure venue for weddings and leisure events. A record shall be kept of the events held in the marquee to be presented in writing to the Local Planning Authority or its representative on request.

Reason: In order to ensure that the use of the temporary marquee is limited so as not to result in harm to visual amenity and surrounding residential amenity in a rural location in the countryside, in accordance with the NPPF (2012), Policies CS14 and CS19 of the West Berkshire Local Plan (2006-2026) 2012 and Policy OVS6 of the West Berkshire District Local Plan (1991-2006) Saved Policies 2007.

8. **Temporary use of paddock**

The use of the paddock land surrounding the temporary marquee to the south of the hotel for purposes of entertainment and leisure ancillary to the use of the hotel as an assembly and leisure venue for weddings and leisure events shall be for no more than 25 days per year, and no more than 3 consecutive events per year.

Reason: In order to prevent undue levels of disruption to nearby

residential amenity in accordance with the NPPF (2012), Policy CS14 of the West Berkshire Local Plan Core Strategy (2006-2026) 2012 and Policy OVS6 of the West Berkshire District Local Plan (1991-2006) Saved Policies 2007.

9. **Construction method statement**

No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. The statement shall provide for:

(a) The parking of vehicles of site operatives and visitors
(b) Loading and unloading of plant and materials
(c) Storage of plant and materials used in constructing the development
(d) The erection and maintenance of any security hoarding
(e) Wheel washing facilities
(f) Measures to control the emission of dust and dirt during construction
(g) A scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: To safeguard the amenity of adjoining land uses and occupiers and in the interests of highway safety. This condition is imposed in accordance with the National Planning Policy Framework (March 2012), Policies CS5 and CS13 of the West Berkshire Core Strategy (2006-2026), Policy TRANS 1 of the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007).

10. **Vehicle parking provided to standards**

The approved temporary marquee and Garden Marquee extension shall not be taken into use until details of the parking areas and turning spaces have been submitted to and approved in writing by the Local Planning Authority. Such details shall show how the parking spaces are to be surfaced and marked out. The approved temporary marquee and Garden Marquee extension shall not be taken into use until the parking spaces and turning areas have been provided in accordance with the approved details. The parking and turning spaces shall thereafter be kept available for parking of private motor cars and light goods vehicles at all times. No parking of vehicles shall take place on the site other than within the approved areas.

Reason: To ensure the development is provided with adequate parking facilities in order to reduce the likelihood of roadside parking which would adversely affect road safety and the flow of traffic. This condition is imposed in accordance with the National Planning Policy Framework (March 2012), Policy CS13 of the West Berkshire Core Strategy (2006-2026) and Policy TRANS1 of the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007).

11. **Traffic Management Plan**

Within three months of permission being granted, a Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. Such details shall show how parking and accessibility to/from the site are to be implemented. Thereafter, the Traffic Management Plan shall be adhered to in accordance with the approved details.

Reason: To ensure the development is provided with a managed parking and accessibility methodology to mitigate the risk of delays on the adopted highway and to reduce the reliance on private motor vehicles. This condition is imposed in accordance with the National Planning Policy Framework (March 2012), the West Berkshire Core Strategy (2006-2026), Policy TRANS1 of the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007) and the Supplementary Planning Document Quality Design (June 2006).

12. **Tree protection**

No development of the hotel extensions hereby approved (including site clearance and any other preparatory works) shall take place on site until a scheme for the protection of trees to be retained is submitted to and approved in writing by the Local Planning Authority. This scheme shall include a plan showing the location of the protective fencing, and shall specify the type of protective fencing. All such fencing shall be erected prior to any development works taking place and at least 2 working days' notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities or storage of materials whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority.

Note: The protective fencing should be as specified at Chapter 6 and detailed in figure 2 of B.S.5837:2012.

Reason: To ensure the enhancement of the development by the retention of existing trees and natural features during the construction phase in accordance with the objectives of the NPPF and Policies CS14, CS18 and CS19 of West Berkshire Core Strategy 2006-2026.

13. **Landscaping**

Within 6 months of the date of this permission a detailed scheme of landscaping for the site shall be submitted and approved under a formal discharge of conditions application. The details shall include schedules of plants noting species, plant sizes and proposed numbers/densities, an implementation programme and details of written specifications including cultivation and other operations involving tree, shrub and grass establishment. The scheme shall ensure;

a) Completion of the approved landscape scheme within the first planting season following first use of the approved temporary marquee.

b) Any trees shrubs or plants that die or become seriously damaged within five years of the first use of the approved temporary marquee shall be replaced in the following year by plants of the same size and species.

Reason: To ensure the implementation of a satisfactory scheme of landscaping in the interests of improving the visual contribution of the site to surrounding amenity and to soften the visual impact of the temporary marquee on views from Beech Hill Road and the public right of way to the south and west of the site, in accordance with the NPPF and Policies CS14, CS18 and CS19 of the West Berkshire Core Strategy 2006-2026.

14. **Drainage**

No development of the hotel extensions hereby approved shall take place until details of sustainable drainage measures to manage surface water within the site have been submitted and approved under a discharge of conditions application. The details shall address the matters below:

a) Incorporate the implementation of Sustainable Drainage methods (SuDS) in accordance with the Non-Statutory Technical Standards for SuDS (March 2015), the SuDS Manual C753 (2015) and West Berkshire Council local standards;

b) Include and be informed by a ground investigation survey which establishes the soil characteristics, infiltration rate and groundwater levels;

c) Include a drainage strategy for surface water run-off from the site to retain rainfall run-off within the site and allow discharge from the site at no greater than the existing run-off rate;

d) Include pre-treatment methods to prevent any pollution or silt entering SuDS features or causing any contamination to the soil or groundwater;

e) Include construction drawings, cross-sections and specifications of all proposed SuDS measures within the site; and

f) Include a timetable for the implementation of all SuDS measures on the site and a management and maintenance plan for the lifetime of the development. This plan shall incorporate arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a residents' management company or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

Thereafter the SuDS measures shall be implemented and maintained in accordance with the approved timetable.

Reason: To ensure that surface water will be managed in a sustainable manner; to prevent the increased risk of flooding; to improve and protect water quality, habitat and amenity and ensure future maintenance of the surface water drainage system can be, and is carried out in an appropriate and efficient manner. This condition is applied in accordance with the National Planning Policy Framework, Policy CS16 of the West Berkshire Core Strategy (2006-2026), and Part 4 of Supplementary Planning Document Quality Design (June 2006). A pre-condition is necessary because insufficient detailed information accompanies the application; sustainable drainage measures may require work to be undertaken throughout the construction phase and so it is necessary to approve these details before any development takes place.

15. **Arboricultural Method Statement**

No development of the approved hotel extensions shall take place until an arboricultural method statement has been submitted and approved under a formal discharge of conditions application. The statement shall include details of the implementation, supervision and monitoring of all temporary tree protection and any special construction works within any defined tree protection area. Thereafter the development shall incorporate and be undertaken in accordance with the approved statement.

Reason: To ensure the protection of trees identified for retention at the site. This condition is imposed in accordance with the National Planning Policy Framework (March 2012) and Policies CS14, CS18 and CS19 of the West Berkshire Local Plan Core Strategy (2006-2026) 2012.

38. Appeal Decisions relating to Eastern Area Planning

Members noted the outcome of appeal decisions relating to the Eastern Area.

39. Site Visit

A date of 13 December 2017 at 9.30am was agreed for site visits if necessary. This was in advance of the Eastern Area Planning Committee scheduled for 20 December 2017.

(The meeting commenced at 6.30pm and closed at 8.45pm)

CHAIRMAN …….

Date of Signature …….

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Item No	Application No. and Parish	8/13 week date	Proposal, Location and Applicant
(1)	17/02295/MDOPO Thatcham Town Council	31st January 2017	Application to modify planning obligation: To discharge the S106 obligation in connection with planning consent 15/02077/OUTMAJ (outline application for development of 26 apartments and 7 houses. Matters to be considered: Access, Layout and Scale. 129, 129a, 131, 133, 137 and Land at 139 and 141 Bath Road, Thatcham, Berkshire. Ressance Land No.9 Limited

To view the plans and drawings relating to this application click the following link: http://planning.westberks.gov.uk/rpp/index.asp?caseref=17/02295/MDOPO

Recommendation Summary:	To **DELEGATE** to the Head of Development & Planning to **GRANT PERMISSION** for the reasons set out in section 7 of this report.
Ward Member:	Councillor Ardagh-Walter Councillor Goodes
Reason for Committee determination:	The overage clause that this application seeks to remove was requested by the Eastern Area Planning Committee as part of their resolution to grant permission for application 15/02077/OUTMAJ.
Committee Site Visit:	Not required

Contact Officer Details	
Name:	Emma Nutchey
Job Title:	Principal Planning Officer
Tel No:	(01635) 519111
Email:	emma.nutchey@westberks.gov.uk

1. RELEVANT PLANNING HISTORY

1.1 There is a comprehensive planning history relating to this site, however the history relevant to this modification application relates to application 15/02077/OUTMAJ under which outline planning permission was granted for the erection of 26 apartments and 7 houses. This item was considered and approved by the Eastern Area Planning Committee on the 1st June 2016 as per the officer recommendation with the addition of an overage clause to review the affordable housing contribution.

2. PUBLICITY

Site notice not required

3. CONSULTATIONS AND REPRESENTATIONS

Thatcham Town Council	Object: Conditions imposed for the benefit of residents of Thatcham should not be relaxed.
Housing	Concern for setting a precedent however advice sought from planning regarding policy position.
Representations	The public are not consulted on modification applications

4. DESCRIPTION OF PROPOSAL

4.1 This modification application seeks to make changes to the legal agreement secured under application 15/02077/OUTMAJ under which outline planning permission was granted for the erection of 26 apartments and 7 houses. This item was considered and approved by the Eastern Area Planning Committee on the 1st June 2016 as per the officer recommendation with the addition of an overage clause to be agreed by the Council and applicant. Planning permission was subsequently granted on the 29th September 2016 following completion of the legal agreement.

4.2 The legal agreement, dated the 26th September 2016 secures the provision of an overage clause. Schedule 3 of the agreement states that prior to the occupation of the penultimate residential unit the developer shall carry out a viability review to determine whether the viability of the development has materially improved since planning permission was granted and if so to determine the value of any off-site affordable housing contribution that is to be provided. The off site affordable housing contribution should be 60% of the development profit after accounting for developer profit identified in the viability review provided it does not exceed the sum of one million one hundred and fifty two thousand four hundred and seventy seven pounds (£1,152,477.00).

4.3 This modification application seeks to remove the overage clause set out in Schedule 3.

5. CONSIDERATIONS:

5.1 As part of this assessment consideration must be given to:

1) The extent any overage clause is supported within the development plan and national/local guidance

2) The extent to which the provision of affordable housing is under target at this development.

The planning policy position:

5.2 There is no development plan policy or local guidance to support the principle of such an overage clause.

5.3 The National Planning Policy Framework (NPPF) paragraph 173 states that the costs to be applied to a development, with affordable housing being recognised as one of these costs, should, when taken into account with the other development costs, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable. No reference is made within the NPPF to the use of overage clauses.

5.4 The Government's Planning Practice Guidance (PPG) states that 'viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances. However, where a scheme requires phased delivery over the medium and longer term, changes in value of development and changes in costs of delivery may be considered.' This development is currently being built out and the applicant has confirmed within paragraph 2.8 of the supporting statement that this is not a phased development. It is for this reason considered that the use of an overage clause in this instance is not supported by national guidance.

5.5 While the emphasis within the PPG is on using such a review mechanism only for phased developments it is noted that the Inspector when considering appeal reference 2227656 (65-69 Parkhurst Road, London N7 0L), a scheme for 112 residential units in 6 blocks, also considered the size of the scheme, its configuration and the extent of the affordable housing shortfall justified the need for such a clause (paragraph 78 of the attached appeal, Appendix 1). The development at Bath Road, Thatcham is considerably smaller than this appeal scheme totalling 33 units and, while the units are distributed in separate blocks they will not be delivered in distinct phases. The works undertaken on site to date, accompanied by the written confirmation from the applicant, demonstrates that the build period is relatively short. Development commenced in April 2017 and practical completion is expected in July 2018. Furthermore the layout and conditions require for the scheme to be completed

as a whole. As such, in this case, other material considerations are not deemed to justify the retention of the overage clause.

5.6 A number of appeal decisions have been reviewed during the consideration of this application. Within this district appeals at Crookham House, Thatcham (3153625) and Lakeside, Theale (3159722 & 3163215 joined appeals) have explored this specific issue while at a national level there are a significant number of cases. These decisions consistently conclude that the only policy or guidance to this type of provision is the reference within the PPG. The Inspector in respect of appeal 3153625, Crookham House, Thatcham (see Appendix 2), a scheme for 14 dwellings, states in paragraph 17 that 'the absence of policy support is perhaps unsurprising as, given the overall approach of the guidance to unlock stalled developments, the introduction of overage arrangements could undermine the basis of a competitive return as envisaged by the Framework by introducing uncertainty at a late stage in the process.' National guidance requires Local Authorities to be flexible in applying policies where the viability of a scheme is in question and realistic decisions should be made which support growth. With reference to this case, Crookham House, weight was given by the Inspector to the absence of any details from either party as to the method of calculating the overage however fundamentally he concluded that there are no policies in the development plan, national policy or guidance which supports the introduction of an overage clause in this instance and the appeal was dismissed on this basis.

5.7 With respect to the Lakeside decision (Appendix 3) the Inspector explored the mechanics of the overage clause i.e. the method of calculating the overage. This scheme was for up to 325 houses and the applicant had outlined a phased approach to the development of the site. The principles of securing such a clause on a scheme of this scale accord with the advice in the PPG and this was not the subject of debate. The scale and built time for such a scheme is not directly comparable to the case at Bath Road which is now being considered. The Inspector does however, highlight the cautious approach that should be taken when applying an overage clause (paragraph 42), their time consuming and resource intensive nature for both parties (paragraph 41) and how future changes should be factored into the original viability appraisal.

5.8 In addition to the above, Regulation 122 of the Community Infrastructure Levy Regulations 2010, state that a planning obligation can only be imposed if the obligation is:
(a) Necessary to make the development acceptable in planning terms;
(b) Directly related to the development, and
(c) Fairly and reasonably related in scale and kind to the development.

5.9 While the recent appeal (July 2017) at Tower House, The Street, Mortimer (Appendix 4) does not relate specifically to the inclusion of an overage clause it highlights that notwithstanding local need the provision of affordable housing or a contribution towards it must not undermine the viability of a scheme. As part of this appeal the Council sought to defend a condition which sought to secure an affordable housing contribution in accordance with Policy CS6

however in light of the applicants viability case the Inspector concluded that the requirement was not necessary or reasonable. With respect to the development at Bath Road the applicant presented their viability case at outline stage and following extensive negotiations it was agreed that the scheme would be unviable were a contribution to be made. The purpose of this application is not to revisit this aspect of the case.

5.10 In conclusion and following a review of a number of appeal decisions, both within the district and nationally (see appendix 5), the Inspector appears to take a consistent view on the application of overage clauses. There is no support for their use within the West Berkshire Development Plan and the only supporting guidance at a national level is within the PPG, which is limited to phased developments. The Inspectorate is clear that such mechanisms should be used cautiously so as not to place an un-necessary or unreasonable burden on developers or add uncertainty to the development process at a late stage.

5.11 For the reasons set out above, it is considered that the use of an overage clause in this instance is not necessary, nor is it fairly related to the development in scale and kind. In the absence of any supporting policy for the use of such a review mechanism associated with a scheme of this scale or nature there is an absence of any justification to retain such a clause.

<u>The extent to which the provision of affordable housing is under target:</u>

5.12 In accordance with the requirements of Policy CS6 of the Core Strategy an affordable housing contribution is sought at 30%. In relation to this scheme this equates to 9.9 units. A Viability Assessment accompanied application 15/02077/OUTMAJ which sought to demonstrate that the scheme would not be viable in the event that a contribution was made. This issue was thoroughly examined at outline stage and the opinion of a viability assessor was sought. The application was subsequently approved without any affordable housing contribution. As such the shortfall is significant but justified within the scope of the Policy.

5.13 The Inspector when determining appeal reference 2227656, (65-69 Parkhurst Road, London N7 0L), a scheme for 112 residential units in 6 blocks, (Appendix 1) gave weight to the extent of the shortfall of the contribution. This is discussed within paragraph 78 of the attached decision. The shortfall in the contribution in this case is greater than the appeal scheme, however the Inspector's decision to retain the overage clause was also justified on the size and configuration of the scheme, two factors which have been considered in relation to this application in paragraph 5.5 above. While it is acknowledged that there is a greater shortfall in this instance the use of the clause is not warranted based on the other material considerations this Inspector discussed i.e. size and delivery timeframe.

5.14 It is not for this application to re-examine the first viability statement however as a means to determine whether site circumstances have changed to the detriment of the viability of the scheme and the need for such an overage

clause the costs/inputs are a material consideration. The applicant's supporting statement which accompanies the application states that the viability of the scheme was, as determined at outline stage, in a significant deficit which equated to 6% of the Gross Development Value. The applicant has advised that the costs of materials for a timber frame construction, such as celotex insulation has gone up by about 40% and cost of timber has also risen. The cost of labour is also greater than that factored into the viability assessment. As a consequence it is envisaged that the build-rate used for the original appraisal has increased by at least 8.33%. This is still comfortably within the BICS range of prices. Other costs that have impacted on the scheme relate to higher interest rates, finance fees, site holding costs, vacant possession costs and legal fees.

5.15 In conclusion there is an absence of any policy support at a local or national level for the inclusion of an overage clause in this instance. Recent appeal decisions demonstrate that factors such as the size and form of the scheme which impact on the timeframes for delivery and the extent of the shortfall of the contribution are all material considerations. These matters have been discussed in detail above and when looking at these factors cumulatively it is not considered that a clause is justified in this instance and it is therefore recommended that the application be approved and the obligation discharged.

6 Conclusion

6.1 For the reasons set out above it is recommended that the application be approved.

7 Recommendation

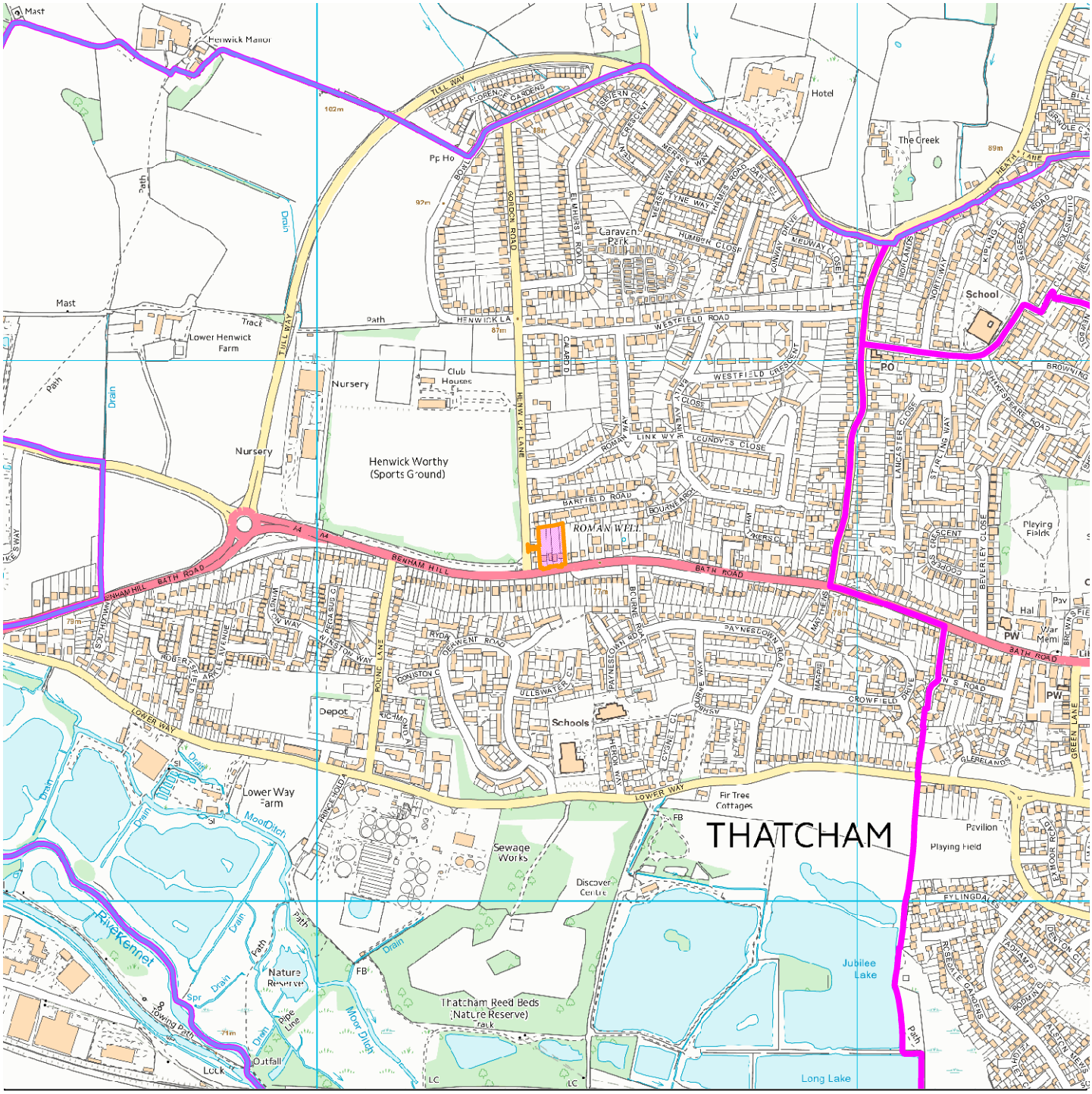
To **DELEGATE** to the Head of Development and Planning to **GRANT PERMISSION** for the obligation as set out in Schedule 3 of the legal agreement dated the 26th September 2016 to be discharged.

8 Appendices

Appendix 1: 65-69 Parkhurst Road, Former Territorial Army Site, London N7 0LP (page numbers 27-46)
Appendix 2: Crookham House, Crookham Common, Thatcham, Berkshire, RG19 8DQ (page numbers 47-50)
Appendix 3: Land known as 'Lakeside', off The Green, Theale, Berkshire (page numbers 51-76)
Appendix 4: Tower House, The Street, Mortimer Common, Reading, RG7 3RD (page numbers 77-86)
Appendix 5: Appeal decisions considered as part of the assessment of 17/02295/MDOPO (page numbers 87-88)

17/02295/MDOPO

129,129a,131,133,137 and Land at 139 and 141 Bath Road, Thatcham



Map Centre Coordinates :

Scale : 1:10614

Scale 1:10615

m 130 260 390 520

Organisation	West Berkshire Council
Department	
Comments	
Date	12 December 2017
SLA Number	0100024151

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The Planning Inspectorate

Appeal Decision

Inquiry held on 14-17, 21 & 22 July 2015
Site visit made on 22 July 2015

by Terry G Phillimore MA MCD MRTPI

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

Decision date: 22 September 2015

Appeal Ref: APP/V5570/A/14/2227656
Former Territorial Army Site, 65-69 Parkhurst Road, London N7 0LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Parkhurst Road Limited against the decision of the Council of the London Borough of Islington.
- The application Ref P2013/4950/FUL, dated 6 December 2013, was refused by notice dated 17 October 2014.
- The development proposed is demolition of existing buildings and erection of buildings of 4, 5 and 6 storeys accommodating 112 residential units (use class C3) together with associated cycle parking, accessible car parking, highways, landscaping and infrastructure works.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application as originally submitted to the Council proposed a total of 150 residential units in buildings of part 4, 5, 6 and 7 storeys. This was amended prior to the Council's decision, and I have considered the appeal on the basis of the agreed revised scheme and description.

3. Draft versions of a unilateral undertaking containing planning obligations pursuant to section 106 of the Act were submitted during the inquiry. Due to continuing negotiations regarding this, I agreed to accept following the close of the inquiry written comments from the Council on the undertaking and the appellant's written response to these, together with the final completed version of the undertaking. The submissions and undertaking were received according to the deadlines that I imposed and have been taken into account.

Main Issues

4. The main issues are:

   a) the effect the development would have on the character and appearance of the surrounding area by reason of its layout, height and massing;

   b) the effect the development would have on the amenity and living conditions of neighbouring properties;

c) whether the proposal complies with policy objectives relating to the provision of affordable housing.

Reasons

Character and appearance

5. The site of some 0.581ha is currently vacant. The buildings of the former Territorial Army centre comprise a main south-east block which fronts Parkhurst Road and projects back into the site, with three further ancillary buildings within the rear part of the site. This widens out on the western side, and the majority of the rear inner area is a hard-surfaced open yard. A recently completed single-storey cadet centre occupies an area of land to the rear of 53-63 Parkhurst Road which previously also formed part of the centre but is outside the appeal site.

6. The site is included in the 'Islington's Local Plan: Site Allocations' document (2013) as site NH5. This identifies that it has potential for intensification for residential accommodation to help meet housing need in the borough, in addition to possible continued Ministry of Defence use on part of the site. No objection is raised by any party to replacement of the existing 1-3 storey buildings, which are of no particular merit.

7. The proposed development would be contained in 6 blocks. Blocks F, E and D would extend back in a linear arrangement from the Parkhurst Road frontage. Blocks A, B and C would form a U-shaped plan around a courtyard within the wide rear part of the site, with the open end facing towards the new cadet centre.

8. The flat-roofed blocks would have a common theme of brick, partly of two shades and with contrasting textured and latticework detailing, plus elements of concrete, glass and metal. The robust, clean lines of the buildings would be in a modern style. The Council raises no objection to the architecture and appearance of the development including the materials, and the proposal can be regarded as of a high quality in terms of detailed design.

9. The south-east elevation of block F would form the street frontage. This would comprise 3 storeys plus a set back metal-clad attic storey. The elevation would be broken down by detailing into 3 vertical elements. Lying adjacent to the site to the south-west is part of the Hillmarton Conservation Area, which includes a row of 19th century villas onto Parkhurst Road, some of which are locally listed. The proposed block F would be an improvement on the appearance of the existing undistinguished frontage building, and its scale and design would be appropriate having regard to the wider streetscape along the road and the various views in which it would be seen. The settings of the Conservation Area and its individual buildings would to a small degree be improved as a result of the development, and this carries significant weight. No harm has been identified to any of the other heritage assets in the vicinity.

10. The Council's concern arises in relation to the combined layout, height and massing of the rear blocks. It describes the site as being of a backland nature, and on this basis argues that the rear development should be subordinate to the surrounding street frontage buildings. At the inquiry it suggested that this should therefore be less than 4 storeys. In contrast to this, much of the proposed development would rise to 6 storeys. The Council relates its concern

to the absence of a proposed direct new route through the site to link Parkhurst Road with Tufnell Park Road. It considers that the provision of such a route could help justify the step up in scale into the site by way of enhanced legibility in accordance with section 2.2.4 of the Islington Urban Design Guide Supplementary Planning Document (2006). As proposed, it is argued that the development would not be in keeping with the character of the local townscape.

11. The absence of a new through route across the site was not a ground for refusal of the application, and is not contended by the Council in itself to be a reason to reject the proposal. The NH5 allocation does not mention such a route. Its provision could benefit the local area by facilitating permeability of the streetblock, with potential to improve natural surveillance, as identified by Greater London Authority officers. There is some local support for it. However, there has apparently been resistance to such a route from adjoining occupiers, and it has been opposed by the Police on grounds that it would put the security of neighbouring occupiers at risk. It would also require a break to be made in the existing wall on the boundary with the neighbouring estate of McCall House, with no apparent prospect of this.

12. The proposal seeks to safeguard the possibility of making such a link in the future by way of a route running between the linear and U-shaped blocks, with a planning obligation to secure this. The route would need to turn south-westwards at the corner of block B before exiting the site. While this would not provide a direct line of vision from the site entrance, pedestrian routes that involve turns can easily become familiar to users, and do not appear to be out of keeping with the pattern in the area. With its series of landscaped spaces adjacent to and between the blocks that could serve a variety of functions, the scheme would provide for a reasonably legible public realm within the development. In this regard it would be satisfactorily absorbed into the surrounding built context even without the immediate provision of an obvious route running through it. With respect to the planning obligation, I regard this as necessary in order to secure the scope for future provision, while also containing reasonable stipulations on the degree of public access in order to protect the interests of occupiers of the development.

13. Buildings in the surrounding area are of a mix of scales and types. As with Parkhurst Road, part of Tufnell Park Road is fronted by 19th century domestic development of 2-4 storeys, with similar development lying towards the west. Immediately adjoining the site to the south-west is a 1990's gated residential development of 1-4 storeys around a cul de sac (Moriatry Close). Adjoining to the north-east are 20th century flat blocks of 4 storeys (Holbrooke Court), and to the north-west are further flat blocks of 5 storeys (McCall House). The latter two estates extend deep from the road frontages with no diminution in height, such that buildings that do not accord with a pattern of decreasing scale towards the centre of the streetblock are already a feature of the area. There is also not a characteristically uniform grain of development in the vicinity.

14. The maximum height of the proposal would be only slightly taller than the pitched roof of McCall House. In some 6-storey sections of the proposed blocks the top floor would be set in, thus reducing the apparent bulk. Block A alongside Moriatry Close would have a stepped form on that side, with a height of 4 storeys. The neighbouring end part of block B would also be stepped. The Willow Children's Centre to the north of the site and the new cadet centre are

recent neighbouring developments that are examples of low buildings away from the road frontages, but these do not set a compelling precedent of a diminishing scale that needs to be followed. The site is of a large scale nature given its extent within the centre of the streetblock. Despite the site's shape and the limited street frontage, it is of sufficient size within its setting for the development appropriately to create its own particular character and grain.

15. However, there is a part of the proposal that pays insufficient regard to its context. Blocks E and D would include elements rising to 6 storeys, with a sharp step up from 4 storeys part way along block E. This would result in a substantial height and mass of building located alongside and very close to the north-east boundary of the site. From the rear this would be viewed in the immediate context of the 4-storey blocks of the Holbrooke Court estate which adjoins the site on this side. This relationship is not effectively shown by the appellant's view 5 illustration, in which a foreground tree at the gated entrance to the Holbrooke Court estate mostly screens the higher part of the proposal. Moving beyond this entrance and into the estate I consider that with the proximity, height and span of the proposed block, it would appear overdominant and obtrusive as seen from the north-east side and in the context of the lower neighbouring buildings. Despite the low quality of the building that would be replaced, and the design merits and articulated residential character of the proposal, the overbearing effect would be seriously harmful to this part of the local townscape.

16. Of relevance to this assessment is an appeal dismissed in 2013 relating to a proposal for a fourth floor on the flat blocks of 14-43 Northview which lie to the north-east of Holbrooke Court (ref APP/V5570/A/13/2195274). The Inspector found that this would have an unacceptably dominant presence over Holbrooke Court. In part the concern related to the contrast of materials and detailing of the proposal, resulting in a visually incongruous and top heavy addition, but the scale of the extension was also cited. The current scheme is clearly of a different nature and design, but a similar effect of dominance in the relationship to Holbrooke Court would arise.

17. According to the Framework, permission should not be refused for buildings which promote high levels of sustainability because of concern about incompatibility with an existing townscape, if those concerns have been mitigated by good design (except where there would be harm to a designated heritage asset, which does not arise in this case). The site is in a sustainable location in terms of public transport. The Council contends that the proposal would involve a reversal of the normal hierarchical pattern of building heights found both generally and in the local area, but I find that its scale would mostly not give rise to townscape harm, including with respect to local legibility. However, there would be an unduly uncomfortable relationship with the surroundings in relation to Holbrooke Court, involving an incompatibility that is not acceptably mitigated.

18. In terms of the development plan, the promotion by Islington's Core Strategy (2011) policy CS 9 of the perimeter block approach and coherent street frontages would be sufficiently achieved by the relationship of the buildings within the development to the proposed public access. The protection and enhancement of Islington's built and historic environment sought by that policy, and the quality of design objectives of policy DM2.1 of Islington's Local Plan: Development Management Policies (2013), would also be satisfied, other

than in relation to the concern identified above which would involve a breach of the policy. In the London Plan (2015), policy 3.4 requires housing output to be optimised for different types of location within the relevant density range. The proposal at 610 habitable rooms per hectare is below the range maximum of 700hrph based on the accessibility of the site. However, policy 3.4 also requires that local context and character should be taken into account. I consider this requirement not to be adequately met in relation to the concern that I have identified, which would amount to serious harm to the character and appearance of the area.

Amenity

19. Most of the site is surrounded by existing residential buildings. Due to its present mainly open condition parts of the accommodation in these buildings currently experience a largely unrestricted aspect towards the site. This contributes to standards of daylight/sunlight, outlook and privacy for the occupiers that are relatively high in the context of an inner London location. Given the acknowledged potential of the site for residential development, it is inevitable that such development would lead to a noticeable erosion of the existing level of neighbouring amenity. This is a factor to be taken into account in considering the degree of impact.

20. The Council appropriately refers to the potential for a cumulative impact on particular properties in terms of the combined effects on the various individual amenity criteria. I also have regard to this, but deal in turn with the three areas of impact that have been raised and assessed. In making my judgments I have had the benefit of visiting a number of properties around the site.

Daylight/sunlight

21. The appellant's numerical assessment of daylight/sunlight impact is based on the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2011). This is cited as guidance in the Development Management Policies (paragraph 2.13), and is an appropriate basis for assessment. It provides criteria for use in assessing existing daylight and the effects of development on existing buildings. Vertical Sky Component (VSC) is a measure of the amount of light at the window wall. Target values of 27% VSC and a reduction of no more than 20% of the existing VSC are given: if these are not met, occupants of the existing building will notice the reduction in the amount of skylight. The impact on daylight distribution can be measured by plotting the No Sky Line for an individual room. The area beyond the No Sky Line will usually look dark and gloomy, and an increase in this by 20% or more will be noticeable to occupants. The BRE guide is not itself policy, and acknowledges that the criteria are to be applied flexibly and to help rather than constrain design.

22. The appellant prepared an updated report using the BRE criteria shortly before the inquiry (dated May 2015), with common ground that this represented the agreed quantitative position. Corrections to this and other additional information, including layout plans of neighbouring properties, continued to be produced during the inquiry itself. This was unsatisfactory in terms of normal procedures on the submission of evidence, but the final calculations were effectively accepted by the Council.

23. The properties around the site identified as being of concern with respect to daylight are as follows.

41-60 Moriatry Close

24. 4 flats in this block (one on each of ground to 3rd floors) have two windows facing the site. Based on the flat I saw, these windows serve a living room and an adjacent dining area. The internal space is linked, but there is a semi-partition in between the two areas, with a kitchen to the rear of the dining area and divided from it by further semi-partitioning. There is an additional window to the living room which faces north-westwards away from the site.

25. On the appellant's figures the average VSC for the 3 windows would in each case remain above 27% except for the ground floor (which has windows facing the boundary wall to the site), but here the average loss would still be less than 20% of the existing VSC. Daylight distribution in each room would remain near to 100%. I apply some caution to the average VSC and daylight distribution figures given the room layouts and presence of partitioning, with the dining areas and kitchens being more dependent than indicated by averaging on the light from the most south-easterly window. This individual window taken alone would fall below the criteria at ground and first floors. However, taking into account the relationship of the affected windows to the boundary in terms of the degree of reliance on receiving light across this, in addition to considering the internal layout, I regard the loss of daylight to these flats as acceptable.

61-62 Moriatry Close

26. This comprises two units at first floor level with a number of roofights serving habitable spaces facing the site. Due to the degree to which these rooflights are angled towards the horizontal, in revised calculations which take into account the full access to skylight and not just that available from across the boundary, the VSC in all cases would remain well above 27%. A recently inserted dormer window at a higher level would fall somewhat below the target values. However, bearing in mind that this new window serves a sleeping platform rather than a fully habitable room, the loss is again acceptable.

Holbrooke Court

27. There would be an effect on daylight to the 3 blocks of 4-storey flats lying to the north-east of the site. Block 41-80 (fronting Parkhurst Road) has rear windows which are perpendicular to the site boundary, with its lower floor at semi-basement level. Blocks 25-40 and 1-24 have rear windows angled towards the site.

28. Some of the nearest lower windows in block 41-80 would fall below 27% VSC but in each case retain near to 80% of their former values. Daylight distribution in the rooms would remain relatively unaffected and at high levels.

29. Flats in blocks 25-40 and 1-24 have both bedroom and living room windows facing at an angle towards the site. The latter windows have overhanging balconies which restrict daylight to them, giving relatively low existing VSCs. As a result, what would be fairly small falls in VSC would give rise to substantial percentage reductions, with a number well above 20%. This does not apply to the windows that are not overhung, which would remain close to or above the target values. In this situation the BRE guide suggests calculating the effect of the proposal without the balconies in place. When this is done, the results either exceed 27% VSC or the reductions are less or not much more

than 20%, suggesting that it is the overhangs that are the main factor in the restriction of VSC. In addition, tested with the overhangs in place the daylight distribution would remain close to 100%. Although I saw that the wide glazing to the living room windows does not extend fully down to the floor level, these results indicate that the daylight effects on these flats would also be acceptable.

McCall House

30. The only daylight losses for these flats to the north-west of the site would be to windows that are agreed to be of a secondary nature. The impact would not be materially harmful.

Sunlight

31. The quantitative analysis indicates that there would no significant losses of sunlight to neighbouring residential properties. There would also generally be little effect on the sunlight received by outdoor amenity areas neighbouring the site, with the exception of the playspace of Holbrooke Court lying to the north. However, the level of sunlight here would fall to only just less than the BRE target value of 50% receiving 2 hours sunlight on 21 March, which is acceptable.

32. Daylight and sunlight to the interior of the Willow Children's Centre to the north of the site would be only marginally affected. There would be a small loss of sunlight to its outdoor playspace, but this would continue to comply with the target. The Council refers to the sensitivity of the Centre given the particular nature of its use, but does not regard the impact as amounting to a ground for resisting the proposal. I agree with this position.

Privacy

33. The following properties are identified as being potentially affected by way of overlooking.

41-60 Moriatry Close

34. The south-west flank wall of proposed block B would lie 6.8m from the north-east wall of the existing flat block, with proposed windows at 1st and 2nd floor levels having a potential oblique view towards the dining area windows of the flats at above ground floor level. The most directly facing proposed windows would be secondary to combined kitchen/living/dining rooms, each of which would also have a north-west facing window. The appellant suggests that, if considered necessary, these secondary proposed windows could be fitted with obscure glass/view control film to prevent overlooking. I regard this as being warranted to safeguard privacy, which would also be reasonable in terms of the effect on outlook for the proposed accommodation given the other clear glazed window that the relevant rooms would also have.

35. At 3rd floor level on the flank of the proposed block there would be a terrace at the same separation distance. As indicated in the appellant's supplementary drawing, a planter structure could be provided at the edge of this to prevent a potential view into the existing facing flats, and similarly screen the view from the set back window at this level; again this would be a necessary measure. Above this at 4th and 5th floor levels the potential downward viewing angles would be such that intrusive overlooking to the windows of 41-60 would be

unlikely to occur due to the relative height differences. In addition, the west edges of the balconies to the north elevation of the proposed building (at distances of 12.1-15.1m) could be satisfactorily screened by the incorporation of louvre details to prevent direct views to the north-east windows of 41-60, again as illustrated by the appellant. With the above necessary measures secured by appropriate conditions, unacceptable overlooking of the existing flats in 41-60 could be avoided.

61-62 Moriatry Close

36. The south-west elevation of proposed block A would have windows at 1st and 2nd floor levels at 7.7m from the rear wall of 61-62, with external access walkways alongside. These would create potential views into the rear 1st floor skylights of 61-62 and a significant intrusion on privacy. The appellant again suggests that, if considered necessary, the windows could be treated with obscure glass/view control film. However, the proposed windows would be the sole ones to bedrooms, and it would not be acceptable to obstruct outward views from the new accommodation in this manner due to the effect on the living conditions of the future occupiers. There would be no significant overlooking from the proposed 3rd floor level terraces and windows due to the green edge planter features. However, the views from the walkways at the lower levels would be only partially screened by the proposed glass balustrades and concrete upstands, again resulting in intrusive overlooking, despite that the use of these would be intermittent. I give little weight to the effect of the proposal on privacy to the dormer window in that this is a recent addition and does not serve a fully habitable space.

37. 61-62 can in some respects be regarded as a 'bad neighbour' development in that it is sited very close to the boundary of the appeal site. Nevertheless, this relationship is mitigated by the low height of the building and the use of rooflights which avoid a directly facing orientation. The proposed block A itself, despite its stepped form and limited overall height, is of an un-neighbourly nature given the combination of its proximity to the boundary and incorporation of extensive glazing and external access in the facing elevation. In this context I consider that there would be a significant loss of privacy to the existing accommodation at 61-62 by way of overlooking which could not reasonably be prevented by way of conditions.

Holbrooke Court

38. The rear of block E would contain numerous windows and external access walkways at multiple levels lying perpendicular to the rear of 41-80 Holbrooke Court. Given the oblique nature of the potential views towards the existing flats, despite the relative proximity, I consider that the relationship would not involve unacceptable overlooking. However, it would be a factor in the effect on outlook from the accommodation in block 41-80, which I deal with below.

63 Parkhurst Road

39. This detached villa abuts the south-west boundary of the front part of the site. The front of proposed block E would lie some 10.2m from the side boundary of its large rear garden. Overlooking of gardens is a common condition within urban areas such as this, and it appears that there would have been such overlooking from the existing building when in use. However, the facing elevation of block E would feature many windows and balconies at up to 6

storeys oriented towards the rear garden. I agree with the Council that the extent of this potential overlooking would be disconcerting and highly intrusive for the occupiers, and exceed what could reasonably be expected in this location.

40. Other properties around the site would be at sufficient distances from the proposal for material overlooking to be avoided.

Outlook

41. The appellant makes a number of points that are relevant to consideration of the effect of the proposal on neighbouring outlook, as follows. Outlook is not a concept susceptible to significant submission or analysis, nor is there much policy advice relating to it. There is no right to the maintenance of a view. The issue of whether the juxtaposition of one building with another constitutes harm will depend on a variety of factors which are almost wholly contextual and judgmental. Key to whether a relationship is truly harmful will be context, distance and multiplicity of views. In the present case the context is inner London where there is a less legitimate expectation of longer distance views, and the existing open nature of the site is not an appropriate one by which to set expectations. I have taken all these points into account in making my assessment.

42. As set out above, windows in the south flank of the nearest McCall House block would face the rear of the proposed 6-storey block B. However, with the intervening distance, the distance by which block B would be separated from the boundary, and on the basis that these windows appear to be secondary and/or the respective rooms are also served by other main windows, the effect on the existing accommodation would not be unduly oppressive.

43. With respect to Moriatry Close, a general concern about an overbearing relationship of the proposal to the cul de sac is raised as an amenity issue by the occupiers. It is asserted that living conditions in the Close would be eroded by way of a constant awareness of the bulk and presence of the development. However, given the height and stepped form of proposed block A and of the end of block B, despite the proximity of these to the shared boundary, and the degree of screening that there would be by existing buildings and boundary features, this is not relationship that would amount to unacceptable harm to living conditions within the public domain of the Close.

44. The Council's concern about outlook impact within Moriatry Close relates to the flat block of 41-60. The flank wall of proposed block B would be within some 6.8m of the north-east facing wall of 41-60, as identified above. However, the building would overlap only with the dining area windows at each level. With the internal partitioning and the kitchen positioned behind the dining area, this window is important to this part of each room notwithstanding the other windows serving the larger space. Nevertheless, given that this would be a corner of the new building and there would remain an open angled view to one side of this, in addition to there being another window on this side and the dual aspect of the relevant rooms, overall the degree of enclosure created would not be unacceptable.

45. Due to the potential for upward views from the rooflights of 61-62 Moriatry Close, there would not be an undue restriction on outlook to the accommodation these serve despite the proximity of the proposed block A.

46. The rear windows of 41-80 Holbrooke Court would be perpendicular to rather than directly facing proposed blocks D and E to its south-west side. However, the line of new building would project a considerable distance rearwards near to the boundary at a height rising to 6 storeys. The angled blank flank wall of block 25-40 already features in the view from many of the rear windows of 41-80. The effect of the addition of the proposed mass of building to one side would be oppressive and unduly curtail outlook, especially from lower windows at the south-west end of 41-80. Although the existing structure on the site is in a similar position, and there are existing sections of wall and bin store restricting outlook at lower levels, the proposed new building would be considerably taller as well as deeper. By comparison it would have an improved appearance, but the presence of numerous windows and walkways on the elevation would add to an oppressive overbearing effect on living spaces in 41-80 by way of a constant reminder of the proximity of extensive living accommodation. In addition to the overbearing visual impact on the public areas of the estate, the overall effect would be a significantly harmful erosion of living conditions in nearby flats at 41-80 by way of restriction on outlook.

Conclusion on amenity

47. The Framework includes as a core planning principle that planning should always seek to secure a high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Part of policy DM2.1 of the Development Management Policies is that proposals should provide a good level of amenity including consideration of, among other matters, overshadowing, overlooking, privacy, direct sunlight and daylight, over-dominance, sense of enclosure and outlook. Paragraph 2.14 indicates a minimum distance of 18m between windows of habitable rooms to protect privacy. London Plan policy 7.6 in part states that buildings should not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing and other matters. Paragraph 2.3.30 of the Mayor's Housing Supplementary Planning Guidance (2012) refers to minimum separation distances as being useful yardsticks but not to be adhered to rigidly.

48. I conclude that in many respects the amenity impacts of the proposal would be limited, but in relation to the privacy of 61-62 Moriatry Close and 63 Parkhurst Road, and the effect on the outlook of flats in 41-80 Holbrooke Court, the impact would be seriously harmful to living conditions and breach the above policies.

Affordable housing

49. There is no dispute that there is a substantial unmet need for affordable housing both in London as a whole and within Islington. Policy 3.11 of the London Plan seeks to maximise affordable housing provision. Part B requires boroughs to set an overall target for the amount of affordable housing provision needed over the plan period in their areas. Part A of policy 3.12 on planning decisions requires that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use schemes. This should have regard to a number of matters, including b. the adopted affordable housing targets and c. the need to encourage rather than restrain residential development. Under part B,

negotiations on sites should take account of their individual circumstances including development viability and other identified matters.

50. The Core Strategy pre-dates the latest version of the London Plan, but is broadly consistent with the above policies. Thus part G of policy CS 12 requires that 50% of additional housing to be built in the borough over the plan period should be affordable. It seeks the maximum reasonable amount of affordable housing, especially social rented housing, from private residential and mixed-use schemes over a 10 unit threshold, taking account of the overall borough wide strategic target. It is expected that many sites will deliver at least 50% of units as affordable, subject to a financial viability assessment, the availability of public subsidy and individual circumstances on the site.

51. The proposal would provide 16 of the units as affordable housing, which equates to 21% of the total by habitable rooms or 14% by units (to be secured by planning obligation). The Council contends that this does not represent the maximum reasonable amount as required by the development plan taking into account viability considerations.

52. The Council has undertaken a borough wide viability appraisal with respect to affordable housing provision. However, there is still a need to assess the viability of individual schemes, as the policy recognises. While 50% is the strategic target, any level below this could be in accordance with the plan providing it is shown to be the maximum reasonable amount.

53. The Framework advises that, to ensure viability, the costs of any requirements likely to be applied to development, such as for affordable housing, standards, infrastructure contributions or others, should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.

54. The national Planning Practice Guidance (PPG) extends this policy to decision-taking. In cases where viability is relevant, realistic decisions must be made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.

55. The PPG notes that there is no standard answer to questions of viability, nor is there a single approach for assessing viability. Underlying principles for understanding viability in planning are: evidence based judgment, informed by the relevant available facts and requiring a realistic understanding of the costs and value of development in the local area and an understanding of the operation of the market; a collaborative approach including transparency of evidence; and a consistent approach.

56. For viability assessment in decision-taking, the guidance is that this should be informed by the particular circumstances of the site and the proposed development in question. A site is viable if the value generated by its development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken.

57. Local planning authorities are advised to be flexible in seeking planning obligations where it is demonstrated that these would cause development to be unviable. This is stated to be particularly relevant for affordable housing

contributions which are often the largest single item sought on housing developments. These contributions should not be sought without regard to individual scheme viability.

58. Advice is given on gross development value and costs. These matters are not in dispute in the present case.

59. The PPG further identifies that the assessment of land or site value is central to the consideration of viability, and will be an important input into the assessment. The most appropriate way to asses land or site value will vary from case to case, but there are common principles which should be reflected. It is stated that, in all cases, land or site value should:

- reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy (CIL) charge;
- provide a competitive return to willing developers and land owners (including equity resulting from those wanting to build their own homes); and
- be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise.

60. On what is a competitive return to willing developers and land owners, the PPG states that this will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options, it is stated, may include the current use value of the land or its value for a realistic alternative use that complies with planning policy.

61. Both the Mayor's Housing SPG and the Council's Planning Obligations Supplementary Planning Document (2013) advocate the use in most circumstances of a conventional residual value based viability assessment, which compares the net development value with an existing use value as the benchmark. This is to determine whether the development would generate sufficient return, including a return to the developer by way of profit, to incentivise the release of the land by exceeding a level above the existing use value as the comparator benchmark. In the present case the existing lawful use of the site as an army centre has a use value, at around £750,000, which is very low due to the restricted nature of this use. There is agreement that this figure does not represent a reasonable basis for establishing the benchmark value; since the site is allocated for residential development in the development plan, and therefore potentially of much higher value, no reasonable landowner would release it for a sum that does not reflect this enhancement.

62. In fact, it is known that the appellant purchased the site as the successful bidder in a competitive bid sale undertaken on behalf of the Ministry of Defence in May 2013. The purchase price was £13.25M. The appellant updates this figure to £13.26M, and argues that this should be an input into the viability calculation as a fixed acquisition cost. Based on the agreed values and other costs, including a total of some £2.67M for planning obligations and Mayor and

Islington CIL contributions, a profit level based on the offered affordable housing contribution is calculated. At some 16.50% on scheme cost and 14.31% on scheme value, this profit is below the normal target values of 20% and 16.67% respectively. While sensitivity testing indicates potential to reach the targets, the appellant argues that the scheme is not capable of providing more affordable housing than is offered, since this would place significant strain on the development's economics and diminish returns, with the result that it could not be delivered.

63. The Council has carried out residual valuation calculations using the same values and costs and target profit level, the latter which is also not in dispute. The calculations use the alternatives of 50%, 40% and 32% affordable housing (as a percentage of floor area, compared with the appeal scheme's 15% on the same basis adjusted to achieve break-even point). The calculations give a residual land value of £4.98M, £7.32M and £9.35M respectively. On this basis it is argued that the price paid for the site was excessive since it did not properly reflect the policy imperative to maximise affordable housing, with an expectation of 50% provision.

64. The Council has put forward no market-based evidence, which the PPG indicates is important, to support its suggested land value figures. Conversely, the appellant relies on several elements of evidence to support the figure of £13.26M, as follows.

65. The first is the purchase price itself. The RICS guidance on Financial Viability in Planning (2012) expresses some caution about reliance on purchase price in arriving at site value for assessment of financial viability, including having regard to the assumptions made by the developer, which might be unreasonable or over-optimistic. In this case the Ministry of Defence was bound by a best consideration requirement, and can be regarded as a rational seller. In addition to the successful bid, certain other information from the bid process is available. The underbid was only 2% lower and was by a Registered Provider. The appellant's argument that such a purchaser can be assumed to have reasonable knowledge of the local market and be unwilling to overpay for land is not contested. There were also what are described as "a number" of bids within 13% of the winning bid, which would therefore have been above around £11M. Full information is not available on these unsuccessful bids, including on the assumptions made by the bidders and on their financial positions. There is also some confusion regarding the extent of confidentiality requirements that apply to the details of these bids. However, the accuracy of the available information is not questioned, and this suggests that the successful bid was not significantly out of kilter with other bids that were made for the site.

66. Secondly, the site has been the subject of a recent (May 2015) unsolicited offer made by one of the previously unsuccessful bidders, a major housebuilder. The offer was at £15.75M for an unconditional purchase.

67. Thirdly, an independent valuation of the site on a Red Book basis has given it a value of £15.5M as at May 2015. This appears to have relied strongly on the evidence of the sale of the site and of a residual appraisal that was undertaken based on 25% affordable housing provision (in a scheme of 125 units). However, other market evidence was also considered, and such a valuation is

bound by the relevant professional responsibility requirements as needing to be a true reflection of the market.

68. Finally, the appellant has carried out an assessment of what are described as comparable transactions. This analysis is of 21 larger residential development land sales in Islington since 2010. It produces a wide range of prices paid pro rata to area, with the equivalent price paid for the appeal site being at the lower end of this range. A further sub-set of 7 sites are examined which are considered by the appellant to be particularly relevant. While not all in Islington, they are relatively nearby and can be regarded as within the same market area. The results generate a comparable range in value for the appeal site of £12.98-16.44M, so that the site value used by the appellant is again towards the lower end of a range. Clearly the details of the comparator sites will vary in terms of location, nature, size, constraints, and the content of proposed schemes. The assumptions made by purchasers are also again unknown. However, the RICS guidance emphasises the importance of comparable evidence, while recognising that in many cases relevant up-to-date evidence may not be available.

69. These individual elements of the appellant's evidence each have limitations. However, taken together they provide a consistent indication that the price paid for the site was not at a level significantly above a market norm. There is no counter evidence to contradict this picture. Having regard to the advice of the PPG, there is no reason to exclude the purchase price as part of the exercise of arriving at a land value for the site.

70. The Council points to the PPG's statement that land or site value should reflect policy requirements as well as planning obligations and CIL. This is consistent with the special assumption approach of the RICS in its definition of site value: that this should equate to the market value but "has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan". In this respect it is argued that the appellant's evidence generally contains no assessment as to whether the comparisons used were policy compliant, in particular with regard to affordable housing and/or the justification for the specific level of provision of this that was made in each case. It is therefore contended that the appellant has not engaged with the need to adjust the market evidence in accordance with the special assumption; and that, conversely, in effect the particular constraints of other sites are imported into the valuation of the appeal site, leading to a benchmark which assumes that a low level of affordable housing will be acceptable.

71. Detailed information was produced by both parties on the levels of affordable housing achieved in recent decisions in the borough. This was not examined at the inquiry, with the parties content to rely on the written material. It indicates that around 25% provision is typical but with a wide range. Nevertheless, as set out above, while compliance with the development plan policy can involve an acceptance of provision down to 0%, as argued by the appellant, this does preclude the need to consider whether the maximum reasonable amount is being secured in a particular case. In the present one, it is fair to characterise the site as appearing to be relatively unencumbered by abnormal costs such as might arise for example from demolition or remediation complexities, notwithstanding the location adjacent to a Conservation Area. This is in addition to the site having a very low existing use value, with

consequent scope for a substantial uplift in value from a potential residential development even on the Council's lowest residual valuation figure.

72. In this context I can understand the wider concern of the Council about the possible effect of inputting purchase prices which are based on a downgrading of the policy expectation for affordable housing on the eventual outcome of a scheme viability appraisal. If such prices are used to justify a lower level of provision, developers could then in effect be recovering the excess paid for a site through a reduced level of affordable housing provision. Such a circularity has been recognised in research for the RICS, and the Council in its SPD and the GLA (in its Development Appraisal Toolkit Guidance Notes of 2014) are alive to this potential outcome of using purchase price as an input in viability assessment. The Council postulates an undesirable scenario of diminishing returns of affordable housing and eradication of the potential to achieve its delivery. It argues that the current appeal is an opportunity to return to a proper approach.

73. However, the PPG clearly distinguishes land value from the viability of a particular scheme. The appellant appropriately contends that different purchasers will have different views on a likely scheme, and residual valuations can be very sensitive to small variables. Moreover, the PPG stresses the need to take account of market signals. The only information on such signals in this case supports the use of the appellant's land value figure. Importantly, the evidence does not suggest that a reasonable landowner would be incentivised to release the land for development at the value suggested by the Council. The options for a rational owner in a rising market include that of holding onto the land rather than selling it below a value indicated by the market.

74. In this respect, an essential aspect of development plan policy on affordable housing is to encourage rather than restrain development. This is consistent with national guidance which seeks to avoid jeopardising viability. The boosting of housing development in general terms assists in the supply of affordable housing. National policy is firmly in favour of realism and flexibility where the viability of a development is in question. In this case, the market evidence supports a higher valuation for the site than that used by the appellant and the scheme is strictly not viable on the current figures.

75. Taking all of the above into account, the appellant's land value figure can be regarded as adequately reflecting policy requirements on affordable housing. Bearing in mind that the development plan policy is to seek the maximum reasonable rather than the maximum possible amount of affordable housing, on the available evidence of the current position I consider that what is being offered in this case would achieve that.

Review mechanism

76. The submitted unilateral undertaking contains a planning obligation relating to an affordable housing review. This includes a clause that the obligation would take effect only if found in this decision to meet the tests of Regulation 122 of the CIL Regulations 2010, one being necessity. The obligation would provide for a review of the affordable housing provision by way of an updated viability assessment if the development is not implemented within 12 months of the date of permission.

77. The PPG advises that viability assessment in decision-taking should be based on current costs and values, and planning applications considered in today's circumstances. However, where a scheme requires phased delivery over the medium and longer term, changes in the value of development and changes in the costs of delivery may be considered. Part B of policy 3.12 of the London Plan refers to negotiations on sites taking account of, among other matters, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'). Such reappraisal mechanisms for large schemes built out in phases are also referred to in the Mayor's Housing SPG, with for schemes with a shorter development term consideration to be given to using short-term permissions or section 106 clauses to trigger a review of viability if a scheme is not substantially complete by a certain date. Such approaches are said to be intended to support effective and equitable implementation of planning policy while also providing flexibility to address viability concerns such as those arising from market uncertainty. The Islington SPD also provides support for review mechanisms.

78. The emphasis of both the development plan and the PPG is on securing such arrangements for phased developments. While the current proposal is not intended to be built out in phases, it is of significant size and comprises relatively discrete parts. In addition, there is no dispute that future rises in values can be expected, which could have a considerable effect on the viability of the development. The level of affordable housing provision being made is well below the target of 50%. Taking all these factors into account, and having regard to the policy context, this is therefore a case that warrants a mechanism to ensure the potential for securing a higher level of provision in the event of material changes affecting viability.

79. The trigger for an additional payment in the obligation of a profit level above 20% and a split of the surplus such that 60% would go towards affordable housing are reasonable clauses in this particular case given the risk profile for the developer and the need to ensure sufficient incentive. Other aspects of the mechanism also appear to be reasonable in the specific circumstances. On this basis I regard the obligation as being both necessary and reasonable.

80. With regard to other appeal cases involving review mechanisms that have been referred to, one relates to a proposal in Buckinghamshire (ref APP/N0410/A/14/2228247) and therefore the development plan context differed from the current one. The other is on a scheme in Islington (ref APP/V5570/A/14/2226258 & APP/V5570/E/14/2226261), but there is no information before me with respect to the details of the viability assessment. Neither case therefore provides a firm precedent on the points relied upon by the parties for the current appeal.

Conclusion on affordable housing

81. I conclude that, with the obligations to secure affordable housing including the review mechanism, the proposal complies with policy objectives on this matter.

Overall Conclusion

82. I have found the proposal to be acceptable in relation to affordable housing. However, it has serious shortcomings on certain aspects with regard to the effect the development would have on local character and appearance and neighbouring amenity, despite the other positive findings on these issues.

83. The scheme would bring important benefits in terms of the delivery of housing and specifically affordable housing and the re-use of a brownfield site, and some improvements to the settings of heritage assets. I have also taken into account the planning obligations and proposed conditions. However, with the environmental harms the proposal would not be fully sustainable development, as well as conflicting with the development plan. These harmful impacts outweigh the benefits, and warrant refusal of planning permission.

84. I have taken into account all other matters raised including the comments of the local Design Review Panel and other appeal decisions that have been referred to. For the reasons given above I conclude that the appeal should be dismissed.

T G Phillimore

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Kolinsky QC	Instructed by London Borough of Islington
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Andrew Jones BSc MRICS	Director, BPS Chartered Surveyors
John Wacher BA MSc MRTPI	S106 and Development Viability Manager, London Borough of Islington

FOR THE APPELLANT:

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Peter Stewart BA DipArch RIBA	Peter Stewart Consultancy
Michael Harper BSc MSc MBA MRICS	Founding Partner, Waldrams Ltd
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Jonathan Murch MA TCP MRTPI	Davies Murch

INTERESTED PERSONS:

Marian O'Gorman	Local resident
Stacey Broughton	Local resident
Jake Beaumont-Nesbitt	Local resident
Marianne Delon	Local resident
Greg Cooper	Partner, Metropolis Planning and Design, for Moriatry Close Management Board
Carolyn Hodkin	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Appellant's opening submissions
2 Council's opening submissions
3 Tesco v Dundee City Council [2012] UKSC 13
4 2 x Holbrooke Court room layout plans
5 Mr Beaumont-Nesbitt's sketch layout plan
6 Savills's Planning Note on Detailed Review of AMR Data
7 Council's response to Savill's Planning Note
8 Mr Cooper's statement

9 Mr Harper's revised calculations for 41-60 Moriatry Close and layout plan for 49 Moriatry Close
10 Mr Harper's revised calculations (VSC) for Holbrooke Court
11 Mr Harper's revised calculations (DD) and plan for Holbrooke Court
12 Appellant's summary schedule on s106 obligations
13 Savill's Note on Council's response to Savill's Planning Note
14 Appeal decision ref APP/V5570/A/11/2160872
15 Appeal decision ref APP/V5570/A/10/2139585
16 Appeal decision ref APP/V5570/A/14/2214889
17 Islington Planning Committee Report on application P2014/1792/FUL
18 CBRE Valuation Report dated 12 June 2015
19 Mr Fourt's summary of purchase price, offers and valuations
20 Council's bundle of correspondence re: bid process
21 Appeal decision ref APP/E3525/S/15/3006060
22 Neighbouring residents' details for site visit
23 Council's response to draft s106 unilateral undertaking
24 Draft s106 unilateral undertaking
25 Statement on behalf of residents of Holbrooke Court
26 Appellant's draft condition 35
27 Appellant's note/plans on overlooking and privacy
28 Appellant's outlook plans
29 Appellant's revised summary schedule on s106 obligations
30 Revised draft s106 unilateral undertaking
31 Council's closing submissions
32 Appellant's closing submissions

DOCUMENTS SUBMITTED AFTER THE INQUIRY

33 Council's response dated 31 July 2015 to draft unilateral undertaking
34 Appellant's final position note dated 5 August 2015 on unilateral undertaking
35 Unilateral undertaking dated 5 August 2015

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The Planning Inspectorate

Appeal Decision

Site visit made on 25 October 2016

by Phillip J G Ware BSc(Hons) DipTP MRTPI

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

Decision date: 25 November 2016

Appeal Ref: APP/W0340/S/16/3153625
Crookham House, Crookham Common, Thatcham, Berkshire RG19 8DQ

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a failure to determine an application proposing that a planning obligation should be modified.
- The appeal is made by Bridgewood plc against West Berkshire Council.
- The development to which the planning obligation relates is the change of use and redevelopment to provide a mixed use scheme.
- The planning obligation, dated 25 March 2015, was made between West Berkshire District Council, Philip Dobree and James Dobree, and Bridgewood plc.
- The application Ref 16/01074 is dated 26 April 2016.
- The application sought to have the planning obligation modified by the removal of the affordable housing requirements.

Decision

1. The appeal is allowed. For a period of three years from the date of this decision the planning obligation, dated 25 March 2015, made between West Berkshire District Council, Philip Dobree and James Dobree, and Bridgewood PLC, shall have effect subject to:

   The deletion of Clause 8 'Affordable Housing Contribution' of the Schedule to the Obligation.

Application for costs

2. An application for costs was made by Bridgewood plc against West Berkshire Council. This application is the subject of a separate Decision.

Procedural matter

3. As set out above, this appeal relates to an obligation dating from March 2015. Subsequently, on 1 August 2016, the parties entered into what is described as a Supplemental Agreement. The appellant initially suggested that I also consider this latter document but, following correspondence with the Planning Inspectorate, the parties have accepted that I am not able to make changes to this document. I have dealt with the appeal on that basis.

Main issue

4. Where an application is made for the modification or discharge of an affordable housing requirement in a planning obligation, section 106BA (3) of the 1990 Act provides that, if the requirement means that the development is not economically viable, the application must be dealt with so that it becomes

viable. In any other case, the affordable housing requirement must continue to have effect without modification or replacement. Section 106BC(6) provides that the same provisions apply in respect of an appeal.

5. It follows from the above, and from the extent of the common ground between the parties (which I discuss below), that the issues in the present appeal are:

   - whether the proposed development is economically viable, if it remains subject to the affordable housing element of the Planning Obligation as it currently exists; and
   - if not, whether the deletion of the affordable housing element in the Obligation and the inclusion of an overage clause would enable development to be made viable.

Reasons

6. There is no dispute between the parties as to the policy background which led the Council to seek an affordable housing contribution from the scheme. In particular Policy CS6 of the West Berkshire Core Strategy (2012) seeks affordable housing provision at a level of 30%. The need for affordable housing, as demonstrated by the Berkshire Strategic Housing Market Assessment (2016), illustrates the level of need for affordable housing.

7. Planning permission was granted for the development in March 2015, subject to the completion of the obligation, which dealt with infrastructure and affordable housing matters. The obligation provided for the payment of an affordable housing contribution (£120,000) to the Council, prior to the commencement of the development.

8. The application which led to this appeal was submitted in April 2016, and sought the removal of the affordable housing element on viability grounds. The appellant produced evidence to demonstrate that the development was not viable with affordable housing or infrastructure contributions. Council officers took independent financial advice and recommended that the affordable housing requirement should be removed. The question of the inclusion of an overage clause was raised by Council officers prior to making the recommendation but the applicant did not agree to this on the basis that it had not been included in the original obligation and could be more onerous. This clause was not recommended by officers.

9. The Council considered the officer's report and decided to remove the affordable housing requirement, but subject to the inclusion of an overage clause. The Council did not set out any mechanism or timetable for this clause.

10. The appellant has stated that the works to restore the original building on the site, which is part of the approved development, are more costly than originally thought. A review of build costs and sales values has demonstrated that the scheme remains unviable. They state that the obligation was only completed by the appellants "under sufferance to obtain a planning permission after years of negotiation with the Council and financial investment into the scheme".

11. In the light of the appellant's evidence the Council accepts that the development is unviable whilst the affordable housing element of the obligation remains. Nothing has been put before me to suggest a different view, and the

issue to be considered is whether the Council's requirement for an overage clause is reasonable or would result in the development remaining unviable.

12. I will deal first with policy and guidance regarding overage clauses. There is no development plan policy or local guidance to support the principle of such a clause.

13. The National Planning Policy Framework provides that matters such as requirements for affordable housing, should provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable.

14. The approach in Planning Policy Guidance (PPG) is that "Viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances. However, where a scheme requires phased delivery over the medium and longer term, changes in value of development and changes in costs of delivery may be considered".

15. The specific national approach to applications under s106B is set out in the DCLG document "Section 106 affordable housing requirements. Review and appeal." (2013). This Guidance does not refer to overage clauses.

16. The only potential policy or guidance to this type of provision is therefore the reference in PPG. However, despite the Council's general reference to phasing, there is nothing before me to suggest that the approved scheme, which is not a large development, would be phased. The appellant's position is that this is not a phased development, but simply one which will follow a clear sequence - there is nothing to contradict that position. I therefore conclude that there is nothing in PPG or any other policy or guidance which supports the Council's approach.

17. This absence of policy support is perhaps unsurprising as, given the overall approach of the Guidance to unlock stalled developments, the introduction of overage arrangements could undermine the basis of a competitive return as envisaged by the Framework by introducing uncertainty at a late stage in the process. This could make funding the scheme difficult.

18. This position is worsened by the uncertainty about the Council's detailed position. Nothing has been set out in the Council's appeal statement to explain the details of the proposed clause, which adds to the element of uncertainty. I fully appreciate that the Council wishes there to be an overage clause, but in the absence of any details, the authority is effectively asking me to sign a 'blank cheque' by dismissing the appeal. If I were to do so, there would inevitably follow a period of negotiation between the parties - which would add to delay and uncertainty.

19. Both parties have made reference in the most general terms to Vacant Building Credit. However these comments do not add to my considerations in this case.

20. The Council has included representations from a local Councillor, which provides some comment on the timing and threshold for the proposed overage clause. However this falls substantially short of a detailed proposal. In any event, it is far from clear if this represents the formal view of the authority – from the correspondence, it appears that this is not the case.

21. There is provision to enable me to impose a different affordable housing level. However there is nothing before me to demonstrate that this would result in the development progressing and providing an affordable housing contribution.

22. It is common ground that the approved development is not viable if the current obligation remains unaltered. Overall, there is no development plan, national policy or guidance which supports the introduction of an overage clause. The absence of any details as to how such a clause would function adds to the uncertainty which it would create, and it is even possible that it would be more onerous than the provisions of the original obligation.

23. For these reasons the appeal is allowed and the Planning Obligation is modified as set out above for a period of three years from the date of this decision.

P. J. G. Ware

Inspector

The Planning Inspectorate

Appeal Decisions

Hearing held on 9 February 2017

Site visits made on 8 and 9 February 2017

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 15th March 2017

APPEAL A: Ref. APP/W0340/W/16/3159722
Land known as 'Lakeside', off The Green, Theale, Berkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Central Corporation Estates Ltd, Central Corporation Securities Ltd, Alliance Security (The Green) Ltd, and Insistmetal2 Ltd, against West Berkshire Council.
- The application Ref 15/02842/OUTMAJ, is dated 12 October 2015.
- The development proposed is: "residential development of up to 325 houses and apartments (including 70 extra-care units), with associated access, parking, amenity space and landscaping".

APPEAL B: Ref. APP/W0340/W/16/3163215
Land known as 'North Lakeside', off The Green, Theale, Berkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Central Corporation Estates Ltd, against West Berkshire Council.
- The application Ref 16/01846/OUTMAJ, is dated 30 June 2016.
- The development proposed is: "residential development comprising the erection of 25 dwellings with associated access, parking, and landscaping works".

Decisions

1. Appeal A is allowed and planning permission is granted for residential development of up to 325 houses and apartments (including 70 extra-care units), with associated access, parking, amenity space and landscaping, on land known as 'Lakeside', off The Green, Theale, Berkshire, in accordance with the terms of the application, Ref 15/02842/OUTMAJ, dated 12 October 2015, subject to the conditions set out in Schedule 1 to this decision.

2. Appeal B is allowed and planning permission is granted for residential development comprising the erection of 25 dwellings with associated access, parking, and landscaping works, on land known as 'North Lakeside', off The Green, Theale, Berkshire, in accordance with the terms of the application, Ref 16/01846/OUTMAJ, dated 30 June 2016, subject to the conditions set out in Schedule 2 to this decision.

Costs applications

3. At the Hearing, applications for costs were made by the appellants, against the Council, in respect of both appeals. These applications will be the subject of a separate Decision.

APPEAL A

Procedural matters

4. The planning application in Appeal A initially sought outline permission with all matters reserved except for access. This was subsequently amended, while the application was still with the Council, so that all matters including access are now reserved.

5. A number of plans have been submitted in support of the application, including 'parameter plans' relating to layout and building heights. Notwithstanding that layout and scale are reserved matters, the parties are agreed that these parameter plans should be incorporated into any permission by way of a condition. The application is also accompanied by indicative plans showing open space, parking, and possible access arrangements, and at the hearing it was agreed that these are purely illustrative.

6. The application originally specified that permission was sought for 325 houses and apartments. The description was subsequently amended to include the words "up to". This change is agreed by both parties.

Planning background

7. The site known as 'Lakeside' comprises about 8.5 ha of former mineral workings. The site has been disused since the 1990s, and the central part is now a lake. It lies on the edge of the village of Theale, a large village with a good range of shops, services, and sustainable transport opportunities, including a railway station. The site has its main frontage to The Green, which was once part of the A4, but has been down-graded since the village was by-passed. The site also has a secondary access from St Ives Close, and a shared boundary with a short private cul-de-sac also known as The Green.

8. The majority of the Lakeside site is covered by three existing planning permissions for residential development, comprising 350 dwellings on the southern part[1], plus 7 dwellings to the rear of St Ives Close[2], and 2 dwellings adjacent to No 41 The Green[3]. It is agreed that all three of these permissions remain extant. Together these permissions cover the whole of the present appeal site except for the area to the north of the lake and west of the private cul-de-sac section of The Green. The whole site also benefits from an earlier permission for a business park, on which a lawful start was made under a reserved matters approval granted in 2002[4].

Relevant policies

9. In the saved policies of the West Berkshire District Local Plan (the WBDLP) adopted in 2002, the appeal site is outside the defined boundary of Theale. WBDLP Policy HSG1 provides that housing development will normally be permitted within settlement boundaries.

10. In the West Berkshire Core Strategy (the WBCS), adopted in 2012, Area Delivery Plan (ADP) Policy 1 states that most development will be within or adjacent to settlements included in the settlement hierarchy. Theale is

[1] Council ref. 04/01219/FULMAJ (appeal ref. APP/W0340/A/06/2030163)
[2] Council ref. 14/02195/OUTD (appeal ref. APP/W0340/W/15/3033307)
[3] Council ref. 06/00236/FULD
[4] Council ref. 01/01266/RESMAT

identified as a Rural Service Centre, the second tier of the hierarchy. ADP Policy 4 states that the Eastern Area will accommodate 1,400 new homes in order to support the growth of Reading and to sustain services in Theale. A 'broad location' for these homes is identified on the Area Diagram, and the appeal site is within this general area. Policy CS1 provides that new homes will be developed primarily on strategic sites and at the identified broad locations.

11. The draft Housing Site Allocations Plan (the HSAP) has passed through a public examination and proposed main modifications were consulted on in December 2016 to January 2017. The modifications propose that the whole of the appeal site be included within the Theale settlement boundary. This proposed change is not subject to any unresolved objections, and therefore carries substantial weight.

Main issues

12. At a meeting of the Eastern Area Planning Committee in January 2017, it was resolved that the Council would support the grant of planning permission, subject to conditions, and subject to various obligations being entered into.

13. The appellants have subsequently entered into two alternative legal undertakings. Both undertakings contain identical provisions for on-site affordable housing, open space and an education contribution, matching the Council's requirements. These main provisions are acceptable to the Council, but the education contribution is disputed by the appellants. The undertakings are subject to a provision that if the education contribution is found to be unjustified, unnecessary or inappropriate, it shall not take effect, and instead the amount of on-site affordable housing shall be increased.

14. The undertakings also make provision for a possible additional contribution towards off-site affordable housing, based on a revised viability assessment, at the stage where the development is 90% complete. The differences between the two undertakings relate to the methodology for calculating 'overage' in this revised assessment. The parties disagree as to which of these respective methodologies should be adopted. The Council has stated that it is willing to allow one or other of the undertakings to be cancelled, depending on the outcome of this appeal.

15. In the light of these respective positions, and all the submissions made, the main issues in the appeal are therefore:

- Whether the education contribution specified in the undertakings meets the relevant legal and policy tests for planning obligations;
- And which of the undertakings is to be preferred, with regard to the alternative methods of calculating the overage.

Reasons for decision

Whether the education contribution meets the tests for planning obligations

Regulation 123

16. The relevant regulations for the purposes of the appeal are those in the Community Infrastructure Levy (CIL) Regulations 2010. Regulation 123(2) states:

> **"(2)** ***A planning obligation may not constitute a reason for granting planning permission…. [where] the obligation provides for the funding or provision of relevant infrastructure*****."**

17. 'Relevant infrastructure' is defined as:

> ***"(a) Where a Charging Authority has published…. a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL, those infrastructure projects or types of infrastructure."***

18. In West Berkshire, the CIL regime was brought into effect locally from April 2015. The Regulation 123 List, which came into effect from the same date, lists the '*Projects or types of infrastructure to be funded from CIL receipts'*, and one of these is *'Education, including: …Primary and Secondary Education'*. In most cases therefore, primary and secondary schools will be 'relevant infrastructure'.

19. In the present case, the contribution sought by the Council, by way of a Section 106 obligation, would be for three additional classrooms at the planned new Theale Primary School. That project clearly falls within the general infrastructure type envisaged under the heading of Primary and Secondary Education. The Regulation 123 List sets out certain specific exclusions, for which funding is to be sought through Section 106 or other statutory provisions, instead of CIL. Three Primary and Secondary Education projects are identified, and these are therefore not 'relevant infrastructure', but Theale Primary School is not amongst these.

20. In addition, the List then specifies certain other exclusions, of a more general nature, and one of these is *'the delivery of facilities or infrastructure required off-site but required solely as a result of any large-scale development'*. I accept that large-scale development could be held to include the Lakeside scheme. But since the List does not contain any definition or size threshold, this is not something that can be said with any certainty. The Council states that the question is to be decided on a case-by-case basis, but this merely confirms that there is some element of doubt.

21. If the appeal scheme were judged not to be large-scale, the Council could, if it chose to, fund the additional classrooms at Theale Primary School out of CIL receipts, including the CIL payment which will be due from the appeal scheme itself. The Council says that it would not do this, because of other priorities, but there is nothing in the Regulation 123 List which prevents the project from being paid for wholly or partly in that way. In any event, given the lack of certainty to the contrary, it is difficult to escape the conclusion that the project for which the S.106 payment is required is one which *'may'* be either wholly or partly funded by CIL'.

22. In addition, it is salient in the present case that although the S.106 contribution is said to be for the 'expansion' of the new school, this is something of a moot point, because at present the new school itself is still only a future project. From the evidence before me, the school has been planned with an overall capacity for 420 places. The contribution sought from the appeal scheme would directly fund 90 of these places, and would indirectly trigger the fitting out of a further 15, but all of these would be part of the 420 which are planned in total. The potential need for the additional space, arising from the Lakeside development, has been known since 2007 when the original

350 dwelling scheme was permitted. The land needed for the new school, including that for the additional classrooms, is apparently all to be acquired in a single tranche, and was all included for the purposes of gaining planning permission. The land acquisition is to be funded by a contribution already made by the Lakeside development, related to the earlier permission. The school may be built in phases, with the three additional classrooms following after the main building programme, but that remains to be seen, as no firm programme appears to have been defined.

23. It is therefore by no means clear on what basis the additional classrooms for which the S.106 payment is now sought would in fact be a separate project. They could equally be seen as part and parcel of a single project for the new school as a whole. Although the Council says that no part of the school will be funded from CIL, it is nevertheless both a project and a type of infrastructure that falls within the scope of the Regulation 123 List. As such, it may be wholly or partly funded by CIL.

24. I conclude that the purpose of the education contribution sought by the Council would be for the provision of 'relevant infrastructure', as defined in Regulation 123. Consequently, given that a CIL charging regime is also in place, any such contribution under a S.106 obligation cannot lawfully be taken into account in granting planning permission, and it follows that such a contribution cannot properly be required. In this case therefore, the education contribution falls foul of Regulation 123.

Regulation 122

25. Regulation 122 of the same Regulations requires that any planning obligation must be necessary to make the development acceptable in planning terms, and directly related to the development, and fairly and reasonably related to it in scale and kind. These same tests are stated as a matter of national policy in paragraph 204 of the National Planning Policy Framework (NPPF).

26. In the present case, the Council argues that the additional 3 classrooms for Theale School would not be needed but for the Lakeside development, but would become necessary because of it. The existing village school is only 1-form entry (1 FE). Without Lakeside, the Council says it would build the new replacement school as a 1.5 FE, whereas with the development they propose to increase it to 2 FE.

27. In forecasting the need for places, the Council has evidently been hampered by what it sees as an unexplained anomaly in the data on future pupil numbers, which particularly affects the Theale Ward. Due to problems with the external supplier of the data, the Council was unable to obtain clarification. As a result of this, the Council has made some assumptions of its own, and has planned for a continuation of past trends. It has also attempted to corroborate these assumptions through local intelligence. In the circumstances, it may be that there was little more that the Council could have done. But nevertheless, it does seem that the forecasting process has been somewhat compromised. If, despite the Council's suspicions, the data were in fact correct, the future numbers would be significantly lower, and there is no concrete evidence that this is not the case. At the hearing it was acknowledged that the numbers in any area will fluctuate over time, and thus past trends are not necessarily a good guide to the future.

28. In addition, it is acknowledged that Theale School draws significant numbers of pupils from other catchment areas, and the Council has based its forecasts on this inward movement continuing at its present level. The Council defends this on the basis of ensuring that parental choice is maintained, and I appreciate how important a factor that may be to local residents. But nonetheless, it seems to me that the decision to plan new capacity on this basis is a policy choice, rather than an essential need, especially when some other nearby schools are forecast to have spare capacity in excess of their requirements. The decision to accommodate so many out-of-catchment children at Theale is a choice that the Council is entitled to make, but in the evidence currently presented, the effects of that choice are not fully transparent.

29. Putting these two factors together, the Council has not demonstrated that the Lakeside development could not be accommodated without expanding the new school beyond 1.5FE. I have no doubt that, from an educational point of view, the additional accommodation that they are seeking to provide is desirable. The extra space would provide additional choice for parents and increased flexibility for the school. But these are matters for the Council. Merely being advantageous is not the same as being necessary. The Council is perfectly entitled to expand Theale School to 2 FE if it considers the benefits worthwhile, but that does not necessarily mean that it is entitled to recoup the whole cost from this particular development, especially if there is a reasonable possibility that it could be accommodated in a less costly way.

30. Furthermore, according to the Council, the appeal scheme would generate 83 primary school mage children. Even if this were correct, this would be less than the number of additional places for which the Council is seeking funding. I appreciate that school places can only be physically provided in classroom-sized increments. But it seems to me that this is precisely why Authorities are encouraged to deal with such matters through the CIL regime, so that developer contributions can be made directly proportionate to the scale of the development. In any event, the payment being sought in the present case is larger than would be needed simply to mitigate the development's own impact.

31. Moreover, the calculation of 83 children ignores the fact that 70 of the new dwellings are proposed to be extra-care units. The argument that the Council could not prevent these from becoming family units strikes me as somewhat disingenuous. Any reserved matters submission which failed to accord with the outline permission would have to be refused. So too is the contention that, even with a condition limiting occupancy to over-55s, there might still be dependent children of primary school age. For all practical purposes, the likelihood of that occurring is small. Taking account of the extra-care element, the pupil yield would only be around 76. This reinforces my concern that the contribution sought by the Council is disproportionate.

32. Finally I turn to the question of double-charging. The Planning Practice Guidance (PPG) makes it clear that requests for obligations should not give rise to what it calls 'double-dipping', either actual or perceived. In the present case, the development would be liable for a CIL charge, which was said to be in excess of £2m. The education contribution now sought by the Council under S.106 is for a further sum of around £1.4m. Irrespective of whether the CIL payment is spent on Theale School, it will be available to spend on primary education in the district. If the development were to make the S.106 payment, then it seems to me that his could justifiably be perceived as a form of double-

charging. The development would not only be paying to mitigate its own educational impact, through S.106, but would also be contributing through CIL to other primary school infrastructure unrelated to the development.

33. I appreciate that the Council's CIL tracking system allows it to ensure that the CIL payment from this development could be directed only to other types of relevant infrastructure rather than education. However, it would still form part of the same 'pot' from which education funding would be drawn. It would thus be contributing twice to the funds available for that purpose.

34. At the hearing, the Council maintained vigorously that double-charging or 'double dipping' can only occur as and when the money collected is actually spent. To my mind this argument is spurious. Self-evidently, double charging is primarily about the cost that falls on the person or company paying the bill. It would therefore occur as soon as money for a particular project or infrastructure type is collected twice from the same development. In the present case this would occur, or be perceived to occur, if the Section 106 contribution were allowed to stand.

35. I have had regard to the Council's supplementary guidance[5], but I find nothing in this to outweigh the matters that I have set out above.

36. For these reasons therefore, I conclude that the proposed education contribution has not been shown to be necessary to make the appeal scheme acceptable; nor to be directly related to the development; nor to be fairly and reasonably related to it in scale and kind. As such, the contribution would be contrary to Regulation 122, and cannot lawfully be required, or taken into account.

Conclusion on the education contribution

37. For the reasons set out above, I conclude that the proposed education contribution fails to meet the relevant legal and policy tests for planning obligations, as contained in the CIL Regulations, under both Regulations 122 and 123, and in NPPF paragraph 204.

38. Having regard to the terms of the submitted undertakings themselves, the above conclusions mean that the education contribution is unjustified, unnecessary and inappropriate. As such, I have given no weight to it in coming to my decision on the appeal. I also note that this finding triggers the alternative provision for an enhanced level of on-site affordable housing.

The 'overage method' issue

39. The two alternative undertakings differ as to the method of calculating the 'overage', on which the amount of the off-site affordable housing contribution, if any, is to be based. The overage is essentially a measure of the additional profitability that the scheme may achieve over the course of development, beyond the level that was assumed for the purposes of the original viability appraisal, on which the level of on-site affordable housing was based.

40. In the version preferred by the appellants, the overage calculation would be based on a reassessment of the original baseline appraisal, taking account of all actual costs and receipts, including actual land acquisition costs. The

[5] Planning Obligations Supplementary Planning Document, adopted December 2014

revised appraisal would also include updating the expectations as to developer's profit margin, in the light of any changes to accepted market norms. The alternative version excludes any changes to the land acquisition costs or developer profit.

41. I appreciate that over the life of a large development such as the Lakeside scheme, economic and market conditions may change, and assumptions made some years ago may become out of date. But by and large, these possible future changes are expected to be factored into the original viability appraisal, and the level of risk should thus be reflected in the assumptions made then as to the likely profit margin. Furthermore, viability appraisals, at any stage of a development, are often time-consuming and resource-intensive in nature, for all parties. For this reason, extending their scope beyond what is necessary is not to be undertaken lightly.

42. In the present case, a full viability appraisal has already been carried out and agreed, after fairly lengthy negotiations. There is a risk that revisiting matters that have already been dealt with, in what appears to have been a reasonable and satisfactory manner, would put a disproportionate burden on the planning system.

43. In any event, there is no evidence that widening the scope of the revised appraisal, in the manner sought by the appellants, is necessary to ensure that the development is able to proceed. Indeed, the revised appraisal would only take place when the scheme is nearly complete.

44. In the absence of any compelling evidence either way, I conclude that preference should be given to the second version of the undertaking[6], which excludes any further review of land costs or developer profit. I understand that both parties have agreed to treat this finding as binding on them, and consequently that the alternative undertaking will be regarded as cancelled.

Other matters

Other matters relating to the undertakings

45. The other obligations contained in the undertakings, relating to on-site open space and affordable housing, are not contested. The affordable housing is less than the level sought by Core Strategy Policy CS6, but this is justified in the light of the previously agreed viability appraisal, and in any event will increase now due to my finding in respect of the education contribution. Based on the evidence before me, I am satisfied that these provisions are fully compliant with all the relevant legal and policy tests for planning obligations, and I have taken them into account accordingly.

46. I note the Council's other concerns with the wording of the undertakings. However, the dispute resolution provisions allow for recourse to the Courts if necessary, and the affordable housing provisions give the Council the right to approve or reject other providers. It is always possible that differences of interpretation could arise over other matters, but the points raised are minor and I see no reason why they cannot be dealt with if and when that occurs.

Matters raised by other interested parties

[6] Reference 1:\041248\004\Docs\Lakeside_N_&_S_Nos_2_ Uni_Undertakingv01.RSS.docx

47. Based on the parameter plans and indicative plans, the proposed development would be quite intensive over most of the site, with buildings of over 14m high in some parts of the site, and fairly closely spaced in others. However, to the north of the lake, the density and the heights would be lower and more in keeping with the existing properties adjacent to this part of the site. The existing TPO trees and woodland could be retained, and some new open space could be created. The taller buildings would be quite prominent in the landscape, but subject to detailed design, that does not make the development unacceptable, even on a site just outside an AONB, as this is. To my mind, the layout and massing have been worked out with considerable care and skill, creating the basis for an attractive and coherent overall scheme. The development would therefore make good use of land which is otherwise effectively derelict. And although the density is relatively high, the viability appraisal shows that something on this kind of scale is likely to be necessary for the site to be developed at all.

48. Visibility for traffic emerging from St Ives Close is sometimes partly obstructed by parked cars. But planning permission already exists for 7 dwellings with access via this route, and based on the parameter plans for the current proposal, this would not need to change. The majority of the site can be most conveniently served from the main access point, further to the west, and I see no reason to doubt that the Council would be able to resist any greater vehicular use of the Close, on grounds of both highway safety and disturbance to neighbours.

49. The possible use of St Ives Close, or the cul-de-sac section of The Green, by pedestrians would not be likely to cause disturbance on the same scale as vehicles, and any such impact would be partly offset by the benefits of providing good permeability and easy access for future residents. But such matters would be for consideration at the detailed stage. So too would any highway works within the Close itself, or any changes relating to access to or through the existing Anglers' Club car park.

50. I appreciate the points raised by some objectors regarding the living conditions of future residents, especially in those parts of the site closest to the A4 dual carriageway, and the aggregates depot beyond. I particularly note the concerns of one industrial occupier with regard to the potential for complaints. But the extent of any harm will depend on the development's detailed design and layout. And any residual issues can be adequately addressed by conditions.

51. I note the concerns about the existing pressures on doctors' surgeries and other local services. But health services are another infrastructure type which is to be covered by CIL.

52. All other impacts, including on the sewerage network and on wildlife, can be dealt with by conditions.

Conclusion on Appeal A

53. Despite being outside the settlement boundary in the ageing WBDLP, the development would accord with the strategy of the WBCS, embodied in ADP Policy1 and Policy CS1, in so far as these policies support development at Rural

Service Centres and in the identified broad locations. The scheme would therefore accord with the development plan as a whole. The development is also supported by the site's inclusion in the revised boundary in the emerging HSAP, which is at an advanced stage and thus carries substantial weight. And in any event, there are existing permissions for housing on the appeal site, covering most parts of the site and totalling 359 dwellings. Those permissions remain extant, and there is no evidence that they are not capable of being a realistic fallback to the present appeal.

54. The development would bring a large area of derelict land back into use, and would provide a significant number of new homes in a sustainable location. Most of the scheme's potential effects can be adequately mitigated by conditions, and no unacceptable residual impacts have been identified. The two alternative undertakings both make proper provision for open space and affordable housing, and in the circumstances, these add some further weight to the scheme's benefits.

55. Consequently, the proposed scheme's accordance with the development plan is not outweighed by any other considerations, and indeed the overall planning balance strongly favours approval. The Council supports the grant of permission, and in the light of the above, I find no reason to disagree.

56. For the reasons set out in this decision, I have found that the contribution to primary education contained in the undertakings, would not accord with the relevant legal and policy tests for planning obligations. However, I am satisfied that as a result of this finding, such a contribution will not be payable.

57. I have also found that, of the two alternative undertakings, the one which is preferable in planning terms is the version containing the more limited provisions as to the scope of the revised appraisal, as identified earlier in this decision. As a result of my finding on this point, it this second version of the undertaking that should therefore take precedence over the other.

58. Having taken account of all the other matters raised, I conclude that outline planning permission should be granted, subject to conditions.

Conditions for Appeal A

59. The conditions that I have imposed on the permission granted in Appeal A are set out in Schedule 1 to this decision.

60. A number of draft conditions were proposed by the Council. Due to the large number, my questions on them, and the parties' comments, were dealt with mainly through written submissions after the close of the hearing. Having regard to these submissions, I agree that the majority of the draft conditions are necessary, and meet the other tests in NPPF paragraph 206, although I have edited some in the interests of brevity and clarity.

61. I have imposed a requirement for a phasing plan, to enable a phased approach to the development, and to the discharge of other conditions. A number of the other suggested conditions have also been adjusted to facilitate this approach.

62. Although all detailed matters are reserved, I agree that those details should be guided by the Parameter Plans in respect of building heights and overall layout, to ensure a high standard of development, and to minimise any adverse visual or physical impacts both within and beyond the site. A condition is therefore

imposed accordingly. However, it is not necessary to include any specific requirement for adherence to the approved location plan, since that plan contains no relevant details.

63. A condition securing the provision of the main site access is imposed for reasons of highway safety. Conditions are also imposed to ensure the provision of internal vehicular areas and footways, and storage for cycle s and refuse. These are necessary to ensure a high quality residential environment for future residents.

64. A Construction Environmental Management Plan (CEMP) is needed, to control impacts during construction. Amongst other things, this condition includes controls on the hours of work, and on activities close to the banks of the lake, and since these matters can be adequately covered in the CEMP, separate conditions for them are unnecessary.

65. A requirement for certain off-site pedestrian and cycle improvements is reasonable, in order to promote sustainable transport choices. The implementation of a Travel Plan is also necessary, for the same reason. However, there is no need for the latter condition to require any further details, as the Plan already submitted is adequate.

66. Conditions relating to contamination are imposed, for reasons of protecting human health, given the site's past use for minerals. In this case, I have substituted the recommended model conditions, for the purposes of clarity and consistency. A separate condition relating to piling is also needed, to prevent contamination of groundwater or water infrastructure.

67. A Landscape and Ecological Management Plan (LEMP) is needed to manage and mitigate the impacts on wildlife both during construction and afterwards. However, there is no need for this condition to specify the required measures in detail, because in this case they are adequately identified in the submitted ecological reports. I have also modified the suggested wording to make the monitoring requirements less prescriptive. In addition, separate conditions are needed to give specific protection to bats, through controls on tree works and lighting. A number of further conditions relating to trees are also imposed, to give the trees protection during construction, for both their visual and ecological value.

68. A condition relating to surface water drainage is necessary, to prevent any risk of flooding, and again I have modified the wording to omit unnecessary detail. A further condition relating to foul water drainage is also imposed for similar reasons, and to ensure a good residential environment. A requirement for fire hydrants is necessary, for reasons of public safety.

69. Conditions relating to noise are imposed, to ensure acceptable living conditions within the new dwellings and private amenity areas. I have modified these to incorporate target noise levels, in the interests of greater precision. A requirement for an archaeological investigation is also reasonable, to ensure that any significant remains are properly recorded.

70. In addition to the draft conditions on the Council's list, discussion took place at the hearing regarding a possible restriction on the occupancy of the proposed extra-care units. For the reasons given elsewhere in this decision, I consider

that such a condition is reasonable, to ensure that those dwellings are occupied by persons over 55. I have imposed the condition accordingly.

71. However, in the light of the submissions made, I consider that the suggested condition relating to water supply infrastructure is unnecessary as such matters are covered by other legislation. I have therefore not imposed this condition.

72. Appeal A is therefore allowed, subject to the conditions referred to above and set out in full at Schedule 1.

APPEAL B

73. Appeal B relates to a 1.56 ha sector of the larger Lakeside site, being that part which lies to the north of the lake, and west of the private cul-de-sac section of The Green. As such, the Appeal B site is wholly within the site of Appeal A.

74. Access is proposed to be from the existing main access point on The Green, as shown on plan no. 5232.002. All other matters are reserved, but the submitted plans include a parameters plan which shows building heights and distances from existing buildings and from the lake. The parties agree that these should be incorporated into any permission by way of a condition. All the other submitted plans are agreed to be illustrative.

75. The planning policies relevant to the site are identical to those applying in Appeal A. The Appeal B site is not covered by any of the previous permissions for housing, but in view of my decision to allow the larger Appeal A scheme, that distinction is now immaterial.

76. Following a resolution of the Area Planning Committee in January 2017, the Council's position is that planning permission should be granted, subject to various conditions and obligations.

77. A legal undertaking has been entered into, separate from those in Appeal A, which provides for 10 of the proposed dwellings to be affordable, and for the provision of on-site open space. These substantive provisions are not contested by either party. For the same reasons as in Appeal A, I am satisfied that these provisions are acceptable, and should be taken into account.

78. The Council raises some minor concerns in relation to the undertaking's detailed wording, but for the most part these are the same as in Appeal A, and I have addressed these above. A single additional point is raised, regarding references to the 22nd residential unit, but the references in question have not been identified, and in any event, the point does not appear to be of such substance as to change my view that the undertaking is acceptable.

79. The issues raised by other interested persons fall within the scope of those already considered in relation to Appeal A. The majority of these relate to matters that will be considered at the reserved matters stage. For the reasons already given, I do not find any of these to justify a refusal of outline permission on the terms sought in this appeal.

80. Having taken account of all the matters raised, I conclude that outline planning permission should be granted, subject to conditions.

81. The conditions that I have imposed in the case of Appeal B are set out in Schedule 2. For the most part, these conditions are similar to those in Appeal A, and in those cases the reasons for imposing them are identical. Since access is not a reserved matter, I have included a condition requiring the access works to accord with the submitted details. In this respect I consider that the details already submitted are sufficient for the scale of development proposed in Appeal B. A further condition is also necessary, to prevent vehicular access to the site via the private cul-de-sac and the angling car park, for reasons of safety and the living conditions of existing residents.

82. Appeal B is therefore allowed, subject to the conditions set out in full at Schedule 2.

John Felgate

INSPECTOR

SCHEDULE 1: CONDITIONS FOR APPEAL A.

The planning permission hereby granted in respect of Appeal A is subject to the following conditions:

1) No development shall take place until a phasing plan, showing how the development is to be divided into phases, has been submitted to the local planning authority and approved in writing. The phasing plan shall also include details of the number of dwellings (including affordable housing units), and the amount of public open space, to be provided within each phase.

2) Details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters"), relating to each phase of the proposed development, shall be submitted to the local planning authority and approved in writing before any development within that phase takes place. The development shall be carried out in accordance with the details thus approved.

3) Application for approval of the reserved matters, for the first phase of the development, shall be made to the local planning authority not later than 3 years from the date of this permission. Application for approval of the reserved matters for all subsequent phases shall be made not later than 5 years from the date of this permission.

4) The development of each phase shall be commenced not later than 2 years from the date of approval of the last of the reserved matters for that phase to be approved.

5) The first reserved matters application shall include details of the primary vehicular access for the site as a whole, which shall be from the existing access point to the west of No 41 The Green. The access shall be laid out and constructed in accordance with these details.

6) The details of scale and layout to be submitted under Condition 2 shall generally accord with the parameters shown in the following submitted plans:
   - Building Heights Parameter Plan 30716 A-02-01 Revision P-01; and
   - Layout Parameter Plan 30716 A-02-02 Revision P-01.

7) No work on any phase of the development shall take place until a Construction Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the Local Planning Authority. Thereafter the CEMP shall be adhered to throughout the construction period. The statement shall provide for:

   - Temporary construction access arrangements to the site, including any temporary hard-standing and wheel washing facilities;
   - Parking arrangements during construction;
   - Loading and unloading arrangements for construction plant and materials;
   - Storage arrangements for construction plant and materials, including measures to prevent any such storage within 10m from the banks of the lake;
   - A signage strategy for a preferred haul route for construction vehicles;
   - A lighting strategy for the construction phase;

- Erection and maintenance of security hoardings including any decorative displays and facilities for public viewing;
- Measures to control the emission of dust and dirt;
- Hours of work for construction operations;
- A scheme of precautionary measures to protect reptiles during site clearance works;
- A scheme of ecological and environmental mitigation during construction.

8) No piling or any other foundation construction using penetrative methods shall take place other than in accordance with a piling method statement, which shall have been submitted to and approved in writing by the Local Planning Authority. Any such method statement shall include:

- details of the depth and type of excavation or penetration, and the method by which this is to be carried out;
- evidence that there would be no resultant unacceptable risk to groundwater, or to any underground water utility infrastructure;
- measures to prevent damage to any subsurface water infrastructure or underlying ground or controlled waters;
- a programme for the necessary works.

9) No more than 100 dwellings in total shall be occupied until a scheme of off-site highways works has been carried out in accordance with details to be submitted to the Local Planning Authority and approved in writing. The scheme shall provide for the following:

- Improvements to the two bus stops on The Green, adjacent to the existing site access, including enclosed bus shelters, high kerbing, relocation of the eastbound bus stop, and widening of the footway to the westbound bus stop to 2 metres in width;
- A new pedestrian and cycle route from the south-eastern corner of the site to Station Road, running parallel and adjacent to the A4;
- A new pedestrian crossing facility at Station Road, in close proximity to the end of the aforementioned pedestrian and cycle route.

10) The 'Framework Travel Plan' dated January 2016, submitted with the application, shall be implemented in full. No dwelling shall be occupied until the date 6 months after a Travel Plan implementation timetable has been submitted to the Local Planning Authority and approved in writing. The implementation timetable shall specify the programme for bringing into effect each of the measures within the Travel Plan, including the appointment of a Travel Plan Co-ordinator, and the arrangements for future monitoring and review. The Travel Plan and implementation timetable shall thereafter be adhered to as agreed.

11) The details of access and layout to be submitted under Condition 2 shall include provision for all necessary estate roads, footways, turning spaces, and vehicle parking. No dwelling shall be occupied until these facilities serving that dwelling have been laid out, surfaced, and brought into use, in accordance with the approved details. The estate roads, footways, turning spaces, and vehicle parking areas shall thereafter be kept available for these purposes at all times.

12) The details of access and layout to be submitted under Condition 2 shall include provision for the parking and storage of cycles. No dwelling shall be occupied until the cycle parking and storage facilities for that dwelling have

been provided in accordance with the approved details. The cycle parking and storage facilities shall thereafter be kept available for this purposes at all times.

13) The details of access and layout to be submitted under Condition 2 shall include provision for the storage of household refuse. No dwelling shall be occupied until the refuse storage facilities for that dwelling have been provided in accordance with the approved details. The refuse storage facilities shall thereafter be kept available for this purposes at all times.

14) No work on any phase of the development shall commence until an assessment of the risks posed by any contamination within that phase shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with *British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice* and the Environment Agency's *Model Procedures for the Management of Land Contamination (CLR 11)* (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

i) a survey of the extent, scale and nature of contamination;

ii) the potential risks to:
- human health;
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
- adjoining land;
- ground waters and surface waters;
- ecological systems; and
- archaeological sites and ancient monuments.

15) No work on any phase of the development shall take place where (following the risk assessment) land affected by contamination is found within that phase which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out, and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority, before the relevant phase of development is occupied.

16) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These

approved schemes shall be carried out before any work on the relevant phase of the development is resumed.

17) No development shall take place until a monitoring and maintenance scheme to demonstrate the effectiveness of the proposed remediation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include a timetable for reporting on each monitoring stage. The approved scheme shall be implemented, and the reports produced as a result, shall be submitted to the local planning authority in accordance with the agreed timetable.

18) No development shall take place until the following have all taken place:

(i) a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority;

(ii) any pre-development requirements within the LEMP have been carried out;

(iii) and a contract has been let for the management, monitoring, reporting and supervision of the LEMP.

Thereafter, the LEMP shall be fully implemented in accordance with the approved details. The LEMP shall cover all of the land within both the red and blue areas shown on Plan No.30716 A-02-000 (Revision P-00), and as a minimum, shall include the following:

- detailed creation and management prescriptions for the meadows, lake edges, and woodland areas, for a period of 25 years;
- provision for implementing the measures and actions recommended in the following reports, submitted with the application: Section 6 of the *Survey of Invertebrate Interest* by David Clements Ecology Ltd and dated September 2015; Sections 4.12 & 4.14 of the *Ecological Appraisal* by Richard Tofts Ecology Ltd and dated September 2015; and Section 4.9 of the *Bat and Reptile Surveys* by Richard Tofts Ecology Ltd and dated October 2015;
- identify the measures to be taken in the event that any reptiles are encountered during site clearance or construction;
- detailed proposals for the eradication of Japanese Knotweed, including a timetable for implementation of such measures;
- procedures for monitoring, reporting and review, at intervals to be agreed.

19) No tree on the site shall be felled until a further bat survey of that specific tree has been carried out, and a report submitted to and approved by the Local Planning Authority in writing. Thereafter, any such felling shall be carried out only in accordance with those approved details, including any necessary mitigation measures.

20) No dwelling shall be occupied until a biodiversity-related lighting strategy for that phase of the development has been submitted to and approved in writing by the Local Planning Authority. The lighting strategy for each phase shall identify those areas that are particularly sensitive for bats, and any measures necessary to minimise and mitigate the impact of lighting on them. All external lighting shall be installed in accordance with the details thus approved, and shall thereafter be maintained in accordance with those

details. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order with or without modification), no other external lighting (except that expressly authorised by this permission) shall be installed, without the written approval of the Local Planning Authority.

21) No work on any phase of the development shall take place until tree protection fencing relating to that phase has been erected in accordance with the details shown on drawing no. 8301/02 and in the arboricultural report by Ian Keen reference AP/8301/AP. Notice of commencement shall be given to the Local Planning Authority at least 2 working days after the erection of the protective fencing, and before any development takes place. The fencing shall be retained for the full duration of the building and engineering works within that phase. Within the areas thus protected, there shall be no excavation, alteration to ground levels, storage of materials, or other construction-related activities of any kind, except with the prior written approval of the local planning authority.

22) No work on any phase of the development shall take place until details of the proposed access, roadways, hard surfacing, drainage and services for that phase have been submitted and approved in writing by the Local Planning Authority. Such details shall show how harm to the tree roots within the protected zones is to be avoided. The development shall be carried out in accordance with these approved details.

23) No work on any phase of the development shall take place until an arboricultural method statement for that phase has been submitted to the Local Planning Authority and approved in writing. The statement shall include details of the implementation, supervision and monitoring of all temporary tree protection and any special construction works within any defined tree protection area. The development shall be carried out in accordance with these approved details.

24) No work on any phase of the development shall take place until an arboricultural watching brief for that phase has been secured, in accordance with a written scheme of site monitoring, which has first been submitted to the Local Planning Authority and approved in writing. Thereafter, site monitoring shall be carried out in accordance with these approved details.

25) No work on any phase of the development shall take place until a surface water drainage scheme has been submitted to the Local Planning Authority and approved in writing. The scheme shall incorporate 'sustainable urban drainage' (SUDS) methods and attenuation measures, to restrict run-off from the site to no more than the equivalent greenfield rate, based on a 1 in 100 year storm plus 30% for possible climate change. The scheme shall also include measures to prevent any contamination from entering the soil or groundwater. It shall also provide a SUDS management and maintenance plan for the lifetime of the development, and a timetable for implementation. The surface water drainage scheme shall thereafter be carried out as approved, and no dwelling shall be occupied until the relevant surface water infrastructure serving that dwelling has been installed and brought into operation. Thereafter, the surface water drainage system shall be retained and maintained in proper working order.

26) No work on any phase of the development shall be commenced until a programme of archaeological work for that phase has been implemented in accordance with a written scheme of investigation that has been approved by the Local Planning Authority in writing.

27) The details to be submitted under Condition 2 shall include any measures necessary to limit externally generated noise to the following maximum levels:

- Rear gardens : L_{AeqT} 55 dB
- Living rooms: L_{AeqT} 35 dB
- Bedrooms: L_{AeqT} 30 dB
  L_{Amax} 45 dB

No dwelling shall be occupied until details showing how these levels will be achieved have been submitted to the Local Planning Authority and approved in writing.

28) Noise from the use of plant, machinery or equipment, attached to or forming part of any building, shall not exceed a level of 5dB(A) below the existing background level (or 10dB(A) below if there is a particular tonal quality), when measured according to British Standard BS4142, at a point one metre external to the nearest noise sensitive premises.

29) No work on any phase of the development shall commence until a detailed scheme of foul water drainage has been submitted to the Local Planning Authority and approved in writing. No dwelling shall be occupied until the foul drainage infrastructure to serve that dwelling has been installed and brought into operation in accordance with the approved details.

30) No dwelling on any phase of the development shall be occupied until fire hydrants to serve that phase have been installed in accordance with details to be submitted to the Local Planning Authority and approved in writing.

31) The proposed 'extra-care' units shall not be occupied other than by persons over the age of 55 years, and by the spouse, partner, or dependants of such a person.

SCHEDULE 2: CONDITIONS FOR APPEAL B

The planning permission hereby granted in respect of Appeal B is subject to the following conditions:

1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced.

2) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission. The development shall thereafter be carried out in accordance with the details thus approved.

3) The development shall be begun before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.

4) The site access shall be laid out and constructed in accordance with the approved plan, Stuart Michael Associates Drawing No. 5232.002 (included within the SMA Transport Statement reference 5458.TS, issue 03, dated May 2016). No dwelling shall be occupied until the access has been provided in accordance with these approved details.

5) The details of scale and layout to be submitted under Condition 1 shall generally accord with the submitted Parameters Plan, no. 31814, A-02-002, Revision P-01.

6) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the CEMP shall be adhered to throughout the construction period. The statement shall provide for:

   - Temporary construction access arrangements to the site, including any temporary hard-standing and wheel washing facilities;
   - Parking arrangements during construction;
   - Loading and unloading arrangements for construction plant and materials;
   - Storage arrangements for construction plant and materials, including measures to prevent any such storage within 10m from the banks of the lake;
   - A signage strategy for a preferred haul route for construction vehicles;
   - A lighting strategy for the construction period;
   - Erection and maintenance of security hoardings including any decorative displays and facilities for public viewing;
   - Measures to control the emission of dust and dirt;
   - Hours of work for construction operations;
   - A scheme of precautionary measures to protect reptiles during site clearance works;
   - A scheme of ecological and environmental mitigation during construction.

7) No piling or any other foundation construction using penetrative methods shall take place other than in accordance with a piling method statement, which shall have been submitted to and approved in writing by the Local Planning Authority. Any such method statement shall include:

- details of the depth and type of excavation or penetration, and the method by which this is to be carried out;
- evidence that there would be no resultant unacceptable risk to groundwater, or to any underground water utility infrastructure;
- measures to prevent damage to any subsurface water infrastructure or underlying ground or controlled waters;
- a programme for the necessary works.

8) There shall be no motorised vehicular access to the site from the existing cul-de-sac road known as The Green, except for access to the to the anglers' car park.

9) The details of layout to be submitted under Condition 1 shall include provision for all necessary estate roads, footways, turning spaces, and vehicle parking. No dwelling shall be occupied until these facilities serving that dwelling have been laid out, surfaced, and brought into use, in accordance with the approved details. The estate roads, footways, turning spaces, and vehicle parking areas shall thereafter be kept available for these purposes at all times.

10) The details of layout to be submitted under Condition 1 shall include provision for the parking and storage of cycles. No dwelling shall be occupied until the cycle parking and storage facilities for that dwelling have been provided in accordance with the approved details. The cycle parking and storage facilities shall thereafter be kept available for this purposes at all times.

11) The details of layout to be submitted under Condition 1 shall include provision for the storage of household refuse. No dwelling shall be occupied until the refuse storage facilities for that dwelling have been provided in accordance with the approved details. The refuse storage facilities shall thereafter be kept available for this purposes at all times.

12) No work on any phase of the development shall commence until an assessment of the risks posed by any contamination within that phase shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with *British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice* and the Environment Agency's *Model Procedures for the Management of Land Contamination (CLR 11)* (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

    i. a survey of the extent, scale and nature of contamination;

    ii. the potential risks to:
        - human health;
        - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
        - adjoining land;
        - ground waters and surface waters;
        - ecological systems; and
        - archaeological sites and ancient monuments.

13) No work on any phase of the development shall take place where (following the risk assessment) land affected by contamination is found within that phase which poses risks identified as unacceptable in the risk assessment,

until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out, and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority, before the relevant phase of development is occupied.

14) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before any work on the relevant phase of the development is resumed.

15) No development shall take place until a monitoring and maintenance scheme to demonstrate the effectiveness of the proposed remediation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include a timetable for reporting on each monitoring stage. The approved scheme shall be implemented, and the reports produced as a result, shall be submitted to the local planning authority in accordance with the agreed timetable.

16) No development shall take place until the following have all taken place:

(i) a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority;
(ii) any pre-development requirements within the LEMP have been carried out;
(iii) and a contract has been let for the management, monitoring, reporting and supervision of the LEMP.

Thereafter, the LEMP shall be fully implemented in accordance with the approved details. The LEMP shall cover all of the land within both the red and blue areas shown on Plan No.30716 A-02-000 (Revision P-00), and as a minimum, shall include the following:

- detailed creation and management prescriptions for the meadows, lake edges, and woodland areas, for a period of 25 years;
- provision for implementing the measures and actions recommended in the following reports, submitted with the application: Section 6 of the *Survey of Invertebrate Interest* by David Clements Ecology Ltd and dated September 2015; Sections 4.12 & 4.14 of the *Ecological Appraisal* by Richard Tofts Ecology Ltd and dated September 2015; and Section 4.9 of the *Bat and Reptile Surveys* by Richard Tofts Ecology Ltd and dated October 2015;

- identify the measures to be taken in the event that any reptiles are encountered during site clearance or construction;
- detailed proposals for the eradication of Japanese Knotweed, including a timetable for implementation of such measures;
- procedures for monitoring, reporting and review, at intervals to be agreed.

17) No tree on the site shall be felled until a further bat survey of that specific tree has been carried out, and a report submitted to and approved by the Local Planning Authority in writing. Thereafter, any such felling shall be carried out only in accordance with those approved details, including any necessary mitigation measures.

18) No dwelling shall be occupied until a biodiversity-related lighting strategy for that phase of the development has been submitted to and approved in writing by the Local Planning Authority. The lighting strategy for each phase shall identify those areas that are particularly sensitive for bats, and any measures necessary to minimise and mitigate the impact of lighting on them. All external lighting shall be installed in accordance with the details thus approved, and shall thereafter be maintained in accordance with those details. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order with or without modification), no other external lighting (except that expressly authorised by this permission) shall be installed, without the written approval of the Local Planning Authority.

19) No work on any phase of the development shall take place until tree protection fencing relating to that phase has been erected in accordance with the details shown on drawing no. 8301/02 and in the arboricultural report by Ian Keen reference AP/8301/AP. Notice of commencement shall be given to the Local Planning Authority at least 2 working days after the erection of the protective fencing, and before any development takes place. The fencing shall be retained for the full duration of the building and engineering works within that phase. Within the areas thus protected, there shall be no excavation, alteration to ground levels, storage of materials, or other construction-related activities of any kind, except with the prior written approval of the local planning authority.

20) No work on any phase of the development shall take place until details of the proposed access, roadways, hard surfacing, drainage and services for that phase have been submitted and approved in writing by the Local Planning Authority. Such details shall show how harm to the tree roots within the protected zones is to be avoided. The development shall be carried out in accordance with these approved details.

21) No work on any phase of the development shall take place until an arboricultural method statement for that phase has been submitted to the Local Planning Authority and approved in writing. The statement shall include details of the implementation, supervision and monitoring of all temporary tree protection and any special construction works within any defined tree protection area. The development shall be carried out in accordance with these approved details.

22) No work on any phase of the development shall take place until an arboricultural watching brief for that phase has been secured, in accordance with a written scheme of site monitoring, which has first been submitted to the Local Planning Authority and approved in writing. Thereafter, site monitoring shall be carried out in accordance with these approved details.

23) No work on any phase of the development shall take place until a surface water drainage scheme has been submitted to the Local Planning Authority and approved in writing. The scheme shall incorporate 'sustainable urban drainage' (SUDS) methods and attenuation measures, to restrict run-off from the site to no more than the equivalent greenfield rate, based on a 1 in 100 year storm plus 30% for possible climate change. The scheme shall also include measures to prevent any contamination from entering the soil or groundwater. It shall also provide a SUDS management and maintenance plan for the lifetime of the development, and a timetable for implementation. The surface water drainage scheme shall thereafter be carried out as approved, and no dwelling shall be occupied until the relevant surface water infrastructure serving that dwelling has been installed and brought into operation. Thereafter, the surface water drainage system shall be retained and maintained in proper working order.

24) No work on any phase of the development shall be commenced until a programme of archaeological work for that phase has been implemented in accordance with a written scheme of investigation that has been approved by the Local Planning Authority in writing.

25) The details to be submitted under Condition 2 shall include any measures necessary to limit externally generated noise to the following maximum levels:

- Rear gardens : LAeqT 55 dB
- Living rooms: LAeqT 35 dB
- Bedrooms: LAeqT 30 dB
  LAmax 45 dB

No dwelling shall be occupied until details showing how these levels will be achieved have been submitted to the Local Planning Authority and approved in writing.

26) Noise from the use of plant, machinery or equipment, attached to or forming part of any building, shall not exceed a level of 5dB(A) below the existing background level (or 10dB(A) below if there is a particular tonal quality), when measured according to British Standard BS4142, at a point one metre external to the nearest noise sensitive premises.

27) No work on any phase of the development shall commence until a detailed scheme of foul water drainage has been submitted to the Local Planning Authority and approved in writing. No dwelling shall be occupied until the foul drainage infrastructure to serve that dwelling has been installed and brought into operation in accordance with the approved details.

28) No dwelling on any phase of the development shall be occupied until fire hydrants to serve that phase have been installed in accordance with details to be submitted to the Local Planning Authority and approved in writing.

APPEARANCES

FOR THE APPELLANT:

Mr Ian Sowerby	Bell Cornwell LLP
Mr Oliver Nicholson	EPDS Consultants
Mr Malcolm McPhail	Central Corporation Estates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Bob Dray	Principal Planning Officer
Mr Bryan Lyttle	Planning & Transport Policy Manager
Ms Fiona Simmonds	Education Place Planning Team Leader

INTERESTED PERSONS:

Mr Norman Tilby	Resident of St Ives Close
Mrs Margaret Tilby	Resident of St Ives Close

DOCUMENTS TABLED AT THE HEARING AND SUBSEQUENTLY

1 Unilateral undertaking – Appeal A undertaking No 1
2 Unilateral undertaking – Appeal A undertaking No 2
3 Unilateral undertaking – Appeal B
4 Costs application – Appeal A
5 Costs application – Appeal B
6 Council's comments on the undertakings, dated 15 February 2017
7 The appellants' further comments on the undertakings, dated 15 February 2017
8 Council's response to the costs applications, dated 17 February 2017
9 Appellants' final comments on costs applications, received 20 February 2017
10 Appellants' response to Inspector's queries re the draft conditions

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The Planning Inspectorate

Appeal Decision

Hearing Held on 11 July 2017

Site visit made on 11 July 2017

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 31 July 2017

Appeal Ref: APP/W0340/W/17/3170877
Tower House, The Street, Mortimer Common, Reading, RG7 3RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by T A Fisher (Mortimer) Ltd against the decision of West Berkshire Council.
- The application Ref 16/02600/FULEXT, dated 13 September 2016, was refused by notice dated 16 December 2016.
- The application sought planning permission for Erection of 17 dwellings following demolition of existing dwelling and clearance of the site, alteration of the existing means of access off The Street, and associated landscape work without complying with a condition attached to planning permission Ref 15/02667/FULEXT, dated 25 August 2016.
- The condition in dispute is No 17 which states that: *"The development shall not begin until a scheme for the provision of five units of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:*

  i) The numbers, type, tenure and location of the site of the affordable housing provision to be made which shall be distributed throughout the development and which shall consist of 30% percentage of the overall development unless otherwise agreed in writing by the Local Planning Authority.
  ii) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing. No more than 80% of the market housing shall be occupied before the affordable housing is completed ready for occupation.
  iii) The arrangements for the transfer of the affordable housing to a n affordable housing provider or the management of the affordable housing (if no registered social landlord is involved).
  iv) The arrangements to ensure that such provision is affordable for both first and all subsequent occupiers of the affordable housing.
  v) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced".
- The reason given for the condition is: *"To ensure the provision of affordable housing in accordance with the provisions of Policy CS6 of the West Berkshire Core Strategy (2006-2026) and Part 6 of the National Planning Policy Framework".*

Decision

1. The appeal is allowed and planning permission is granted for Erection of 17 dwellings following demolition of existing dwelling and clearance of the site, alteration of the existing means of access off The Street, and associated landscape work without complying with a condition attached to planning permission Ref 15/02667/FULEXT, dated 25 August 2016 at Tower House, The Street, Mortimer Common, Reading, RG7 3RD in accordance with the terms of the application, Ref 16/02600/FULEXT, dated 13 September 2016, and the plans submitted with it, subject to the following conditions in Annex A.

Application for costs

2. At the Hearing an application for costs was made by T A Fisher (Mortimer) Ltd against West Berkshire Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The statement of common ground identifies that the reference to Condition 12 within the decision notice is an error. There is no dispute that it should read Condition 17. The appeal is considered on that basis.

4. The Council advised that the since the application was determined the West Berkshire District Council Housing Site Allocations Development Plan Document has been adopted as has the Stratford Mortimer Neighbourhood Development Plan (NDP). It was agreed at the hearing that the NDP requirement for affordable housing mirrors policy CS6 of the West Berkshire Core Strategy (CS). The appeal is considered on this basis.

Main Issue

5. The main issue is whether the disputed condition is necessary and reasonable, having regard to the submitted information on development viability.

Reasons

6. Paragraph 173 of the National Planning Policy Framework (the Framework) advises that to ensure viability, the costs of any requirements likely to be applied to the development, such a requirements for affordable housing should, when taking account of the normal costs of development and mitigation, provide competitive returns to a willing landowner and will developer to enable the development to be deliverable.

7. Policy CS6 of the CS states that '*Subject to the economics of provision…on development sites of 15 dwellings or more…30% provision will be sought on previously developed land and 40% on greenfield land… proposed provision below the levels set out above should be fully justified by the applicant through clear evidence set out in a viability assessment…'.*

8. As the appellants point out the policy is worded to allow flexibility in approach where appropriate. It is also clear that in order to apply that flexibility the applicant should provide evidence. In this case the appellants provided a financial viability assessment when the initial application was made[1]. This was considered by the District Valuer (DVS) as part of the application process and additional information was provided by the appellants to the planning

[1] LPA ref 15/02667/FULEXT

committee. The appellant's have provided a further financial viability report has been provided for the appeal.

9. There is no dispute that there is a need for affordable housing in West Berkshire as the relevant policies identify. Further there was agreement on the matters of CIL contributions and that the Mortimer housing market is buoyant. However, the difference between parties relates to whether the site could in fact make provision for affordable housing and provide a competitive return that would make the development deliverable using a benchmark market value approach.

10. The appellant's approach seeks to determine the market value of the site. In this case an Alternative Use Value (AUV) is advanced. This is based on the fact that the site benefits from two separate planning permissions for a total of 8 detached houses[2]. There is no dispute that these have been implemented and could be built out. Therefore the appellants' position is that the 17 unit scheme should be compared to the extant consents. The Council's advice from the DVS does not challenge this approach in principle. Given that the 8 unit scheme can readily identify a higher value for the site and could be built out I agree that this approach is reasonable in this case to establish a market value for the site.

11. In adopting this approach the appellant's have within the submitted appraisals adopted a profit of 20% on GDV. These appraisals demonstrate that if 20% is adopted as reasonable developers return then the 17 dwelling scheme without affordable housing is slightly less viable than the 8 unit scheme. Nevertheless the appellants have expressed a preference for the 17 unit scheme due to a local demand for smaller units and the ability to sell them. The appellants have also considered the 17 unit scheme with affordable housing and 20% profit as well as a 17 unit scheme with a blended return of 14.52% and a fixed land value equivalent to its market value. The value of both of these developments would be substantially less viable than the benchmark scheme.

12. The DVS used a profit 17.5% in considering the 8 unit scheme as a benchmark which it is suggested is a reasonable level. The report in March 2016 considered the appellants appraisals at that time. It considered both the appellants development value and a second appraisal that produced a higher development value. At that point using the higher land value the scheme produced a profit level below the benchmark. Further at that point the DVS considered the appellants benchmark land value as a point of comparison. That produced a scheme with 18% profit which it again suggests would be unlikely to be able to support the provision of affordable housing. The overall advice from the DVS appears to be that the 17 unit scheme with affordable housing is not viable as it would not provide a reasonable level of return.

13. In a letter dated August 2016 the DVS considers the 20% profit adopted by the appellants. In particular highlighting the changes in the financial and property markets and resultant uncertainty. This is also raised by the appellants in so far as uncertainty increases risk and, consequently, a higher margin is sought to offset this.

14. The site to the rear of the appeal site is allocated for housing in the NDP. The appellants have demonstrated that either scheme could accommodate access

[2] LPA refs 12/00680/FULD and 14/02246/FUL.

to this site. Therefore, it is reasonable to adopt the approach that it would have a neutral impact on viability of the appeal site.

15. The RICS Guidance Financial Viability in Planning is clear that '*…a scheme should be considered viable, as long as the cost implications of planning obligations are not set at a level at which the developer's return (after allowing for site value) falls below that which is acceptable in the market for the risk in undertaking the development scheme. if the cost implications of the obligations erode a developer's return below an acceptable market level for the scheme being assessed, the extent of those obligations will be deemed to make a development unviable as the developer would not proceed on that basis…'*

16. The Framework and PPG[3] set out that '*A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy'*.

17. In this case I am satisfied that the benchmark approach was appropriate. In addition that if the scheme was required to provide affordable housing then the return would be reduced significantly below that of the benchmark scheme. This would erode the developer's return below an acceptable market level such that the developer would not proceed. I therefore conclude that based on the submitted information regarding development viability that the condition is not necessary or reasonable. It would not be in conflict with CS policy CS6 or the Framework.

Other matters

18. The Council has referred me to two appeal decisions[4] that it considers are relevant to the appeal. However, in one of the cases no financial appraisal was provided and the second turned on the effect of sales values on viability, which is not in dispute in this case. I therefore attach very limited weight to these decisions.

Conditions

19. Section 73 allows the decision maker to attach new conditions, to not attach conditions that were previously imposed or to attach modified versions of them. In light of this, it is appropriate to review the conditions in their entirety. This is based on the discussion of a comprehensive list of conditions at the Hearing and conditions that the parties agreed were pre commencement conditions it was suggested that the wording be amended to take account of those previously discharged. In addition section 73 is not a mechanism to extend the time limits and a time limit condition attached accordingly.

Conclusion

20. For the above reasons and having regard to all other matters raised I conclude that the appeal should be allowed.

D J Board

INSPECTOR

[3] 024 Reference ID: 10-024-20140306
[4] APP/W0340/W/16/3165818; APP/W0340/A/14/2222914

Annex A – Conditions

1) The development shall be started before the 25th August 2019.

2) The development hereby approved shall be carried out in accordance with drawing title numbers: 15 – P1117 – LP – Location Plan; 15 – P1117 – 01B – Site Layout; 15 – P1117 – 02A – Plot 1; 15 – P1117 – 03A – Plot 2; 15 – P1117 – 04A – Plot 3; 15 – P1117 – 05A – Plot 4; 15 – P1117 – 06A – Plot 5; 15 – P1117 – 07A – Plot 6; 15 – P1117 – 08B – Plot 7; 15 – P1117 – 09A – Plots 8 – 11; 15 – P1117 – 10A – Plot 12; 15 – P1117 – 11A – Plots 13 – 16; 15 – P1117 – 12A – Plot 17; 15 – P1117 – 13A – Site Sections; 15 – P1117 – 14A – Site Comparison; 15 – P1117 – 15A – Outbuildings

3) No demolition or construction works shall take place outside the following hours:

   - 7:30am to 6:00pm Mondays to Fridays;
   - 8:30am to 1:00pm Saturdays;

   nor at any time on Sundays or Bank Holidays.

4) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref a5/02667/FULEXT no development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall provide for:

   (a) The parking of vehicles of site operatives and visitors;
   (b) Loading and unloading of plant and materials;
   (c) Storage of plant and materials used in constructing the development;
   (d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate;
   (e) Wheel washing facilities;
   (f) Measures to control the emission of dust and dirt during construction;
   (g) A scheme for recycling/disposing of waste resulting from demolition and construction works.

   Thereafter the demolition and construction works shall incorporate and be undertaken in accordance with the approved statement.

5) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place until a schedule of the materials to be used in the construction of the external surfaces of the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The hard surfacing shall incorporate the use of a porous material. This condition shall apply irrespective of any indications as to these matters which have been detailed in the current application. Samples of the materials shall be made available for inspection on request. Thereafter the development shall be carried out in accordance with the approved materials.

6) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place until details of the finished floor levels of the development hereby permitted in relation to existing and proposed ground levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.

7) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no residential unit hereby permitted shall be occupied until the hard landscaping of the site has been completed in accordance with a hard landscaping scheme that has first been submitted to and approved in writing by the Local Planning Authority. The hard landscaping scheme shall include details of any boundary treatments (e.g. walls, fences) and hard surfaced areas (e.g. driveways, paths, patios, decking) to be provided as part of the development.

8) The development shall be completed in accordance with the approved soft landscaping drawing number 669/01 within the first planting season following completion of building operations / first occupation of the new dwelling (whichever occurs first). Any trees, shrubs, plants or hedges planted in accordance with the approved scheme which are removed, die, or become diseased or become seriously damaged within five years of completion of this completion of the approved soft landscaping scheme shall be replaced within the next planting season by trees, shrubs or hedges of a similar size and species to that originally approved.

9) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place until details of sustainable drainage measures to manage surface water within the site have been submitted to and approved in writing by the Local Planning Authority.
These details shall:

a) Incorporate the implementation of Sustainable Drainage methods (SuDS) in accordance with best practice and the proposed national standards;
b) Include and be informed by a ground investigation survey which establishes the soil characteristics, infiltration rate and groundwater levels;
c) Include a drainage strategy for surface water run-off from the site that ensures that no discharge of surface water from the site will be directed into the public system;
d) Include construction drawings, cross-sections and specifications of all proposed SuDS measures within the site;
e) Include run-off calculations, discharge rates, infiltration and storage capacity calculations for the proposed SuDS measures based on a 1 in 100 year storm +30% for climate change;
f) Include pre-treatment methods to prevent any pollution or silt entering SuDS features or causing any contamination to the soil or groundwater;

g) Ensure any permeable paved areas are designed and constructed in accordance with manufacturers guidelines;

h) Include details of how the SuDS measures will be maintained and managed after completion. These details shall be provided as part of a handover pack for subsequent purchasers and owners of the property/premises;

i) Include a management and maintenance plan for the lifetime of the development. This plan shall incorporate arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a residents' management company or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

All sustainable drainage measures shall be implemented in accordance with the approved details before the dwellings hereby permitted are occupied or in accordance with a timetable to be submitted and agreed in writing with the Local Planning Authority as part of the details submitted for this condition. The sustainable drainage measures shall be maintained and managed in accordance with the approved details thereafter.

10) The development shall be carried out strictly in accordance with the 'Method Statement: Herpetofauna' detailed in the AA Environmental Limited Report dated 3rd July 2015.

11) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place, including any site clearance and/or demolition of buildings, until details and locations of 6 built in bat tubes in the houses and 10 woodcrete bird boxes have been supplied to and approved in writing by the Local Planning Authority. The boxes shall be installed and thereafter managed and maintained in accordance with the approved details.

12) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place until details of the provision for the storage of refuse and recycling materials for the dwellings have been submitted to and approved in writing by the Local Planning Authority. Such details will include the type of bin storage. No dwelling shall not brought into use until the refuse and recycling facilities have been provided in accordance with the approved details and shall be retained for this purpose thereafter.

13) The development shall be carried out in accordance with the tree protection measures detailed in Section 4 of the Arboricultural Impact Assessment prepared by SJ Stephens Associates (9th September 2015). The protective fencing shall be erected prior to any development works taking place and at least 2 working days notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities or storage of materials

whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority.

Note: The protective fencing should be as specified at Chapter 6 and detailed in figure 2 of B.S.5837:2012.

14) No dwelling shall be occupied until the visibility splays at the access have been provided in accordance with drawing number 5224.001 Rev A received on 3 December 2015. The land within these visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 0.6 metres above the carriageway level.

15) No dwelling shall be occupied until the vehicle parking and turning spaces have been surfaced, marked out and provided in accordance with the approved plans. The parking and turning spaces shall thereafter be kept available for parking (of private motor cars and/or light goods vehicles) at all times.

16) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place until details of the cycle parking and storage space have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the cycle parking and storage space has been provided in accordance with the approved details and retained for this purpose at all times.

APPEARANCES

FOR THE APPELLANT:

Steven Smallman	Pro Vision Planning & Design
Katherine Miles	Pro Vision Planning & Design
Steven Smith	Haslams Chartered Surveyors
Julian Pacey	T A Fisher

FOR THE LOCAL PLANNING AUTHORITY:

Simon Till	West Berkshire Council
Graham Bridgman	West Berkshire Council

INTERESTED PERSONS:

Janet Duffield	West Berkshire Council

DOCUMENTS SUBMITTED AT THE HEARING

1 Plan 11-P719-SK01 showing amendment to one of the 4 unit schemes to provide access to the land rear of the appeal site.

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Appendix 5

Other appeals considered as part of this assessment:

Appeal 2228247 Former Inn on the Green PH, North Orbital Road, Denham Green, Buckinghamshire

This appeal relates to a development of 37 retirement properties. The Inspector concludes that the overage clause is at odds with the guidance contained within the PPG and would not accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the NPPF.

Appeal 2207771 Meadow Cottage and Longridge, Bangors Road South, Iver, Buckinghamshire

This appeal relates to a development of 39 apartments. The Inspector concludes that there is nothing in national policy or guidance that supports the use of an overage clause for a scheme of this size. Such a clause is also likely to hamper competitive returns as referred to in the NPPF and PPG. It is noted that the applicant has been trying to bring forward this appeal site for development for 10 years and this is given weight in light of the aims of national policy to promote economic growth.

Appeal 3159137 The Thatched House Hotel, 135-139 Cheam Road and 133 Cheam Road

This appeal relates to a development of up to 30 sheltered apartments. The appeal concludes that an overage clause is not necessary to make the development acceptable in planning terms and therefore would not accord with the provisions of Regulation 122 of the Community Infrastructure Levy.

Appeal 3005876 Land to the rear of 14-24 Langley Road, Pool, BH14 9AD

The appeal scheme relates to a development of 15 houses. The Council's Affordable Housing SPD makes provision for overage arrangements however the Inspector concluded that while overage clauses may have a role it is where development is likely to be delivered in a number of discrete and separate phases over a relatively long timeframe. The Inspector determined that an overage clause in this instance would add uncertainty and unreasonably affect the viability of the scheme and is contrary to national guidance.

Appeal 3129438 Land at Dukes Way, Axminster, Devon, EX13 5FN

This appeal related to a partially completed 3 phased development of 122 houses. The East Devon Local Plan contains a policy which supports reassessment and overage however the Inspector concluded that reassessment and overage would not be appropriate as it would be likely to delay the sale of the housing.

Appeal 3167556 Green Close, Drakes Avenue, Sidford EX10 9JU

In this case the Inspector allows the use of an overage clause for a non-phased development of 36 apartments. In this case however the Local Plan, strategy 34 contains specific wording to allow the use of overage provisions. It is also of importance to note that the East Devon Local Plan was adopted after the publication of the NPPF. It was on this basis that the clause was justified.

APPEAL DECISIONS EASTERN AREA-COMMITTEE

Parish and Application No Inspectorate's Ref	Location and Appellant	Proposal	Officer Recommendation	Decision
BASILDON 17/00494/OUTD Pins Ref 3179237	Oak Tree Cottage Aldworth Road Upper Basildon Messrs and Mrs Walters and Clements	Outline planning permission for demolition of Oak Tree Cottage and construction of 3 detached dwellings with detached carports and associated works. Matters to be considered: Access, Layout and Scale.	Delegated Refusal	Dismissed 27.11.17
BRADFIELD 16/02799/FULD Pins Ref 3172986	The Piggery Bishops Road Tutts Clump Anne Fitzwilliams	Change of use of redundant agricultural building to provide 1 no. residential dwelling (use class C3)	Delegated Refusal	Dismissed 8.12.17

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