

**PROOF OF EVIDENCE – VIABILITY IN PLANNING**

**APPENDICES**

**APPELLANT – McCarthy and Stone Retirement Lifestyles Ltd**

**35 Oakfield  
SALE  
M33 6NB**

**PLANNING INSPECTORATE REFERENCE: APP/Q4245/W/23/3325034 LOCAL**

**PLANNING AUTHORITY: TRAFFORD COUNCIL**

**PLANNING REFERENCE: 109745/FUL/22**

**R JAMES MACKAY BSc (HONS) MRICS (RICS REGISTERED VALUER)**

**ALDER KING LLP**

**Appendix 1 - Fisher German Valuation Report (9 October 2023)**



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Our Ref: 118927

Your Ref: 27478

25 October 2023

McCarthy & Stone  
 Unit 1 Edward Court  
 Altrincham  
 WA14 5GL

### 35 Oakfield, Sale

Dear Abby

You have asked me to provide some rationale between the change in valuation approach on the above Property between July 2022 and October 2023.

In July 2022 we provided our valuation advice on an external inspection basis only with limited information on the internal condition, layout and tenancy information. We undertook the valuation on the assumption that the condition of the Property was reasonable and we assumed a sale on a unit by unit basis to either investors or owner occupiers. On this basis our Report was also issued in a Draft format.

Since the date of this original valuation, we have been able to inspect the Property internally and obtain more information about it. In addition to obtaining further physical information about the Property, the wider market has changed, the impact of rising interest rates and wider economic concerns has resulted in a contraction of the market and it was necessary to take account of this. With regards to the Property itself, we were able to obtain internal access to the communal areas and to one flat which was in a state of disrepair. We were also provided with a schedule of the current tenancies for the flats. Whilst it would theoretically be possible to sell the units on a unit by unit basis, in light of the condition of the property, and the small size of the studio units we are of the opinion that if the Property were marketed on the open market an investor would be the most likely purchaser as a single lot.

This is because we consider that individual purchasers would be put off by the fact that there has not been a service charge agreement previously set up where a sinking fund would have accumulated for any one off costs, meaning that should repairs and upgrading works be required to the building fabric, every flat owner would have to agree to make a capital contribution. Whereas an investor who owned the whole block would be able to upgrade the communal areas, external elements etc when they wanted to as and when the flats became available. They would then be able to increase the rent and hence increase the capital value as a result of the work they would undertake. For these reasons we would question whether the flats would be mortgageable on an individual basis.

Taking the above into account we were of the opinion that the investment method of valuation as a single lot would provide the most appropriate existing use value and ignoring any development potential of the site.

I trust this brief summary is satisfactory for your current purposes but please do not hesitate to contact me if you require further detail.

Yours sincerely



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**Regulated by RICS.**





Phil Winckles BSc (Hons) MRICS

For and on behalf of Fisher German LLP



Prepared for:

**McCARTHY STONE**  
*Life, well lived*

# Valuation Report

Property: 35 Oakfield, Sale, Trafford, M33

6NB

9 October 2023

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## EXECUTIVE SUMMARY

**Address** 35 Oakfield, Sale, Trafford, M33 6NB (*hereinafter in this Report to be referred to as 'the Property'*)

**Inspection Date** 4 October 2023

**Reporting Valuer** Richard Moreton BSc (Hons) MRICS  
Registered Valuer No: 1161504

### The Property



#### Type

Residential asset.

#### Location

The Property is located in Sale, a popular town approximately five miles south of Manchester City Centre.

#### Description

The Property comprises a 12 flats within two blocks.

### Tenure

We understand the Property is held Freehold (Title Number MAN370835).

### Tenancies

We understand that 11 of the 12 flats are let on ASTs with a passing rent of £94,740 per annum.

## Factors Affecting Value

### Strengths

- Unbroken block of apartments.
- Popular residential location.
- Potential to increase value by refurbishing some of the apartments as and when they become available.

### Weaknesses

- Some of the apartments are dated internally and would benefit from a refurbishment program.
- Flat D is currently in an uninhabitable condition.
- Increasing interest rates could make borrowing more difficult to obtain and have a downward pressure on values.

## Valuation Approach

We have valued the Property using the income approach.

## Valuations

**Market Value on Special Assumption (Existing Use Value)**  
**£1,500,000 (One Million Five Hundred Thousand Pounds).**

### Market Value

**£1,500,000 (One Million Five Hundred Thousand Pounds).**

## Information Relied Upon

We have relied upon information provided in the Instruction Letter, the relevant Local Authority's planning database and online Council Tax records, as well as information provided by the Managing Agent (including a schedule of rental income), and information provided by various estate agents, including tenancy details and comparable evidence details.

## Occupational and Investor Demand

In our opinion, there would be a reasonably good level of occupational and investor/purchaser demand for the Property, whether made available for letting or sale. The subject location is a well-established residential area.

## Volatility of Capital and Rental Performance

There is an element of market uncertainty being caused by recent economic turmoil, high inflation and interest rate increases which has led to certain levels of volatility in both the capital and the rental markets nationally. Notwithstanding this, general property fundamentals are good, and we estimate the Property would broadly perform in line with other similar properties in the same locality.

## Planning and Other Pertinent Issues

We have assumed that any development works undertaken are in accordance with full planning permission and/or building regulations, whilst also benefiting from warranties to an acceptable standard approved by the Council of Mortgage Lenders.

We have not been provided with environmental or ground condition reports, and have assumed no contamination exists, thus the Property is suitable for occupation and/or development. We have further assumed that there will be no additional as yet unidentified costs incurred due to damage of any of the subject building as at the Valuation Date.

Our valuation is reported on a partial internal inspection basis. As such, this valuation is provided on the basis of restricted information. In formulating our opinions of value, we have relied upon information in the public domain as well as, information and statements from you in relation to internal accommodation, size, condition and specification of the Property. Where no supplemental information/details are available, we have based our opinions of value on the assumption that the repair and condition of the Property is to a reasonable to good standard with no wants of repair or refurbishment requiring material capital expenditure.

McCarthy Stone

35 Oakfield, Sale, Trafford, M33 6NB

## INTRODUCTION

**Report Date** 9 October 2023

**Addressee** McCarthy & Stone  
Unit 1 Edward Court  
Altrincham  
WA14 5GL  
  
FAO: Abby Blakeley

**Our Reference** 118927

**The Property** 35 Oakfield, Sale, Trafford, M33 6NB

**Valuation Date** 4 October 2023

**Valuer Credentials** *Reporting Valuer:*  
  
Richard Moreton BSc (Hons) MRICS  
Registered Valuer No: 1161504

*Counter Signatory:*

Phil Winckles BSc (Hons) MRICS  
Registered Valuer No. 1206251

We are acting as External Valuers.

**Inspection Date** The Property was externally and internally inspected on 4 October 2023 by Richard Moreton BSc (Hons) MRICS. We were able to inspect the communal areas and the vacant Flat D.

**Purpose and Bases of Valuation** To provide our opinion of value for Internal Reporting purposes associated with a proposed purchase and the assessment of viability for planning.

Our Valuation is reported in Pounds Sterling.

The bases of Valuation are as follows, and these are defined the Definitions and Basis of Valuation section of this Report:

- Market Value (Special Assumption of Existing Use Value)
- Market Value (Alternative Use Value)

## Instructions

Acting in accordance with your emailed instructions of 26 May 2022 (Copy at Appendix One), the agreed scope and details of which are set out in our Letter of Engagement of 8 June 2022 (Copy at Appendix Two), we have assessed the Property in order to advise you of our opinion of value of its Freehold interest. You have subsequently asked us to update the valuation at the present date after being able to partially internally inspect the Property.

We confirm that this Valuation is prepared in accordance with the November 2021 edition of the RICS Valuation – Professional Standards (incorporating the International Valuation Standards) – Global and UK edition published by The Royal Institution of Chartered Surveyors, effective from 31 January 2022. We confirm that in this respect we are acting as External Valuers and are qualified as asset Valuers as defined in the Standards.

This Valuation Report is provided for the stated purpose and for the sole use of McCarthy Stone. It is confidential to you and your professional advisors, and we accept no responsibility whatsoever to any third party.

Neither the whole nor any part of this Report may be included in any published document, circular or statement, nor published in any way without the Valuer's written approval of the form and context in which it may appear.

We confirm that we have no current, recent or prospective fee earning involvement with the Property, the client, or any party connected with this transaction.

## Economic Uncertainty

There was significant economic turmoil following the previous Chancellor's mini budget, announced on 23 September 2022. The Bank of England has continued to increase interest rates over recent months as part of its monetary policy, seeking to address inflationary

pressures. Rates are likely to continue on an upward trajectory and there may be a more sustained policy of interest rate rises and other forms of economic stabilisation intervention by the Bank of England. The situation has impacted certain sectors of the property market, and this may continue. Whilst there has been a change of Chancellor, a reversal of most proposals in said mini budget and a new Prime Minister, which appears to have stabilised the market somewhat, there remains a level of uncertainty in the short-to-medium term. As yet, there has been no direction from the RICS regarding Material Valuation Uncertainty declarations; however, we would strongly recommend that, whilst the economic situation remains uncertain, you keep this valuation under constant review.

### Special Assumptions

You have asked us to value on the Special Assumption that any alternative use is disregarded. This basis of valuation could otherwise be considered as analogous to Existing Use Value (EUV) as defined by RICS Guidance Note - Financial Viability in Planning.

Existing Use Value is defined by the National Planning Policy Framework as "The value of land in its existing use, with no expectation of that use changing in the foreseeable future (based on Valuation of development property, RICS guidance note). PPG paragraph 015 advises specifically that the EUV excludes hope value from any assessment of the existing use value. International Valuation Standards 104 paragraph 150.1 defines current/existing use as 'the current way an asset, liability, or group of assets and/or liabilities is used.'" Accordingly, we have adopted this as our Special Assumption under Existing Use Value.

For the purpose of the valuation, we would consider the Special Assumption as a reasonable assumption to adopt for the valuation purpose and can be formulated using market facing information and/or reasoned arguments. For any other valuation purpose, this Special Assumption would require further justification as you should note that if the Special Assumption were not adopted, then our approach to the valuation and subsequent opinion of Market Value would be materially different.

A Special Assumption either assumes facts that differ from the actual facts existing at the Valuation Date or that would not be made by a typical market participant in a transaction on the Valuation Date.

### Limitations of inspections



It is important to highlight and bring to your attention the limitations concerning the lack of full internal inspections of the Property and relying upon information provided to us concerning a property only partially internally inspected. Such a valuation, either in whole or in part on the basis of restricted information must be taken into account when reviewing our Report. We must be notified should any of the assumptions made in relation to the property that have not been internally inspected, or indeed, the Property generally, be incorrect, as this may have an impact on our reported values. We reserve the right to make any changes to our reported opinion in such an event.

# PROPERTY REPORT

## 1.0 Location

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Sale is a predominately residential suburb within the Borough of Trafford, lying some seven miles to the south west of Manchester city centre, approached from the same via the main A56 arterial route.

Sale is served by a vibrant retail and commercial centre, and is strategically well located for proximity to the national motorway network via Junction 7 of Manchester's M60 Orbital Motorway, which lies approximately one mile to the north east of the town centre. The A56, Washway Road, comprises the main arterial road, running through Sale town centre, linking Altrincham to Manchester city centre and comprises a busy arterial A road.

Sale is a popular and prestigious suburb within the Greater Manchester conurbation. It lies on the Metrolink route from Manchester City Centre to Altrincham.

The Property is situated in a residential location fronting Oakfield approximately 0.5 miles south west of the main retail centre of Sale. Sale tram stop is approximately 0.7 miles to the north west of the Property. Oakfield is accessed off the A56 providing easy vehicular access to both Altrincham and Manchester city centre. Flats, semi-detached and detached houses provide the predominant house type in the area. Forest Park Preparatory School is located to the south of the Property.

The approximate location of the Property is indicated in red on the attached Land Registry Plan and map extract for identification purposes only (Copies at Appendices Three and Four).

## 2.0 Description

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The Property comprises a three-storey plus basement, detached building with painted and rendered brick elevations set beneath a pitched tiled roof together with a separate two-storey annex building of brick construction set beneath a pitched tiled roof.

Internally the Property provides 12 flats with six studios, seven one-bedroom flats and a two bedroom flat. The main building provides two one-bedroom flats and a studio on the ground and first-floors and a large one bedroom flat on the second-floor. The annex provides three studio flats on the ground floor and a studio and two-bedroom flat on the first floor.

The flats each have an open plan kitchen/living room (and bedroom if a studio), bathroom and one or two bedrooms. We understand that the specification is reasonable but slightly dated in some of the flats (Suites 1, 2 and 3 and Flat C) with fitted kitchen units, carpet or laminate covered floors, a mix of timber framed single glazed and uPVC double glazed windows, painted plaster walls and ceilings, pendant lighting and wall mounted radiators.

Flat D is in an uninhabitable condition at present.

Externally there is a single storey garage with side extension providing storage space. There is shared parking and communal gardens which are laid to grass.

### Site

The Property occupies a site that is broadly rectangular in shape, and according to the Ordnance Survey, extends to approximately 0.12 hectares (0.296 acres).

### Services

Whilst we have neither undertaken specific tests nor a full or partial survey of the services, we assume that the Property is/the completed development will be fully, connected to all mains services including electricity, gas, water and foul and surface water drainage.

### Photographs

Please refer to our inspection photographs (Copy at Appendix Five).

## 3.0 Accommodation

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We have utilised accommodation and internal area information from the EPC certificates in place of physically having measured the Property which is assumed to be correct for our desktop assessment purposes and assumed to be in accordance with the RICS Property Measurement Professional Statement Second Edition (January 2018), incorporating the International Property

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Measurement Standards (IPMS), in line with current UK market practice. We report an approximate internal floor area (IPMS 3B - Residential) of 658 sq m (7,083 sq ft).

Floor / Unit	Type	sq m	sq ft
Flat A – Ground	One-bedroom flat	56	603
Flat B – Ground	One-bedroom flat	47	506
Flat C – Ground	Studio	35	377
Flat D – First	Studio	31	334
Flat E – First	One-bedroom flat	48	517
Flat F – First	One-bedroom flat	55	592
Flat G – Second	One-bedroom flat	131	1,410
Suite 1 – Ground	Studio	26	280
Suite 2 – Ground	Studio	27	291
Suite 3 – Ground	Studio	27	291
Suite 4 – First	Studio	26	280
Suite 5 – First	Two-bedroom flat	58	624
<b>Total =</b>		<b>658 sq m</b>	<b>7,083 sq ft</b>

## 4.0 Condition

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We would specifically refer you to our Letter of Engagement, where it has been agreed that we would not carry out a structural survey. However, during the course of our inspection, we noted that the Property generally appeared to be in reasonable condition however it would benefit from some modernisation. The exception to this being Flat D which is in an uninhabitable condition which requires immediate capital expenditure on it.

Our opinion of value is based on the assumption that no further major expenditure would be required to rectify any wants of repair, and we reserve the right to revise our figures should this prove to not be the case.

## 5.0 Tenure

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Whilst we have not been provided with a Report on Title, we understand from online Land Registry information that the Property is owned Freehold (Title Number MAN370835), and we have assumed for the purposes of this Valuation that the Title is unencumbered and free from any onerous or restrictive covenants.

We recommend the above information is checked, and we are informed should there be any discrepancies, as this may affect our opinion of values reported.

## 6.0 Tenancies

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We have been provided with a schedule of tenancies by the managing agent on the Property. This is detailed in the table below. We understand that the flats are all let on six month AST's, in which the tenants have no security of tenure beyond expiry of the respective lease terms. We have not been provided with any tenancy dates.

Unit/Type	Rent Per Month	Rent Per Annum
Suite 1 / Studio	£600	£7,200
Suite 2 / Studio	£775	£9,300
Suite 3 / Studio	£625	£7,500
Suite 4 / Studio	£625	£7,500
Suite 5 / 2 bed	£910	£10,920
Flat A / 1 bed	£750	£9,000
Flat B / 1 bed	£775	£9,300
Flat C / Studio	£550	£6,600
Flat D / Studio	Vacant	Vacant
Flat E / 1 bed	£740	£8,880
Flat F / 1 bed	£795	£9,540
Flat G / 1 bed	£750	£9,000
<b>Total</b>	<b>£7,895</b>	<b>£94,740</b>

We recommend the above information is checked, and we are informed should there be any discrepancies, as this may affect our opinion of values reported.

## 7.0 Statutory Enquiries

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### Planning

The Property is located in Greater Manchester.

Local planning policy is governed by Trafford Borough Council.

Trafford's Core Strategy was adopted in 2012. The Core Strategy is a key document in Trafford's Local Development Framework, and covers the period up to 2026.

We have made online enquiries of the planning department, which discloses no recent planning applications registered against the Property.

We have assumed for the purposes of our Report that the Property falls within Use Class C3 (Residential Dwellinghouses).

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We have also assumed for the purpose of our Report that any conversion and/or development works that have been undertaken in relation with the Property, comply with all planning consents, conditions and/or building regulations.

The Property is in not in a Conservation Area and is not Listed.

### Registration / Licenses

The current use of the Property does not require any specific registrations or licences.

### Variable Outgoings

We are not aware of any unusual outgoings that would adversely affect our valuation of the Property and value assuming there are none.

We have not been provided with any information on liability for Chancel repairs. Chancel repair liability affects land within a Church of England parish with a medieval or pre-medieval church and there have been cases where Property owners with such liabilities have faced substantial repair liabilities. We have assumed that no such liability exists with the Property but reserve the right to amend our valuation, should further information on this matter be made available.

### Highways

The official position regarding Highways can only be obtained by submission of a formal search via the relevant Highways Authority. This search would advise if the road serving the Property is adopted and whether there are any proposals to alter highways in the vicinity of a particular Property. A fee is payable for this service and there is likely to be a delay in receiving any response. As such, we have not carried out an official search for the purposes of this report and have assumed for the purpose of this valuation that Oakfield is an adopted highway, maintained at the public's expense and no onerous costs of maintenance will be placed upon the Tenant/s or Freeholder, to and from which it is assumed the Property has, and all units in the proposed development when completed are to have, full unencumbered access. We are not aware of any highway proposals in the immediate vicinity that are likely to have a material effect on the value of the Property, nor of the proposed development when completed.

## 8.0 Environmental Matters

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### Contamination

We have not been provided with an environmental report in respect of the Property, nor have we carried out any physical tests or investigations to determine the presence or otherwise of pollution or contamination in the Property or any neighbouring land or property (including ground water).

Our inspection did not reveal any visible signs of contamination affecting the Property or neighbouring property which would affect our Valuation. In view of the location of the Property

within a predominantly residential location, we consider that the risk of contamination is low. However, should it be established subsequently that contamination exists at the Property, or on any neighbouring land, or that the premises have been or are being put to any contaminative use, this might reduce the values now reported.

## Flooding

Our enquiries of the Environment Agency website in this regard reveal that the Property is situated outside the zone of extreme flood, in Flood Zone 1 for planning and development purposes. This means there is less than a 0.1 per cent (1 in 1000) chance of flooding by a river or sea occurring each year. The majority of England falls within this area. It should, however, be noted that reference to the Environmental Agency website for the purposes of establishing the likelihood that the Property may or may not suffer from flooding is indicative only. Fisher German LLP has not carried out any detailed investigations with regards to past or potential flooding issues which may affect the Property or the surrounding area.

## Energy Performance Certificates & Sustainability

Property owners are required to produce an Energy Performance Certificate (EPC) when properties are either sold or let. EPCs give information on a building's energy efficiency on a sliding scale from 'A' (very efficient) to 'G' (least efficient), as well as making recommendations as to how to improve these ratings.

The Energy Act 2011 stipulates that, as of 1 April 2018, a property with an Energy Efficiency Rating below Band E (Bands F and G), will not be able to be let until improvements have been carried out to improve the Energy Efficiency Rating at or above band E, unless they are exempt.

The online Non-Domestic EPC Register states that the Property has the following ratings:

Unit	EPC Rating	Expiry Date
Flat A	D	October 2030
Flat B	E	October 2030
Flat C	E	October 2030
Flat D	F	October 2030
Flat E	E	October 2030
Flat F	D	October 2030
Flat G	D	October 2030

## Proposed Changes to EPC Regulations

Notwithstanding, the current EPC assessment of the Property under the prevailing legislation, the government have proposed various changes to domestic and non-domestic EPC requirements. The changes being proposed are part of the Minimum Energy Performance of Buildings Bill, which is

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currently making its way through parliament and is not yet enshrined in law. The Bill will be debated in the House of Commons and House of Lords over the coming months, during which time its contents could be altered. At the end of this process, the final bill will go to a vote which will decide whether it becomes law.

Our understanding of the current proposals is that, after a consultation in December 2020, the government has announced changes to the Minimum Energy Efficiency Standards for England and Wales.

The government has proposed that all rental properties will need an EPC rating of 'C' or above by 2025. Similar to the previous changes, the new regulations will be introduced for new tenancies first, followed by all tenancies from 2028.

The regulation changes hoping to make homes more energy-efficient and reduce carbon emissions as part of the government target to be net-zero by 2050.

The penalty for not having a valid EPC will also be raised from £5,000 to £30,000 from 2025.

Notwithstanding the foregoing, for properties within the A to E bands, the methods of assessment have evolved over the period since energy performance standards were introduced. Accordingly, rating may have changed since their certificates were issued. For such properties, it is therefore advisable to obtain the opinion of an expert as to whether the building would still comply with the minimum standard if they were re-certified under the current methodology.

Accordingly, we have not only considered the current EPC assessment of the Property in arriving at our opinions of value, we have also considered the potential impact on marketability driven by the proposed changes in the legislation.

### **Invasive Plants**

We have not undertaken any detailed inspection of the Property for the presence of Japanese Knotweed or any other invasive plant species. Japanese Knotweed is more easily identifiable during the spring/summer periods and is less identifiable during the autumn/winter due to die back. It can typically be found near a railway embankment or sloping ground, close to a water source or other source or pathway. Whilst invasive plant species were not immediately visible to us during our inspection, we cannot confirm that none exist, either at, above or beneath ground level. We cannot give a guarantee as to the presence of invasive plant species on the subject or any neighbouring land.

### **Mining**

The Property is not located in an historic coal mining location.



## Radon

The Property is not situated in an area that could be affected by radon gas.

## Deleterious Materials

Due to the age of the Property, it is possible that asbestos and/or other deleterious materials such as high alumina cement concrete, woodwool shuttering or calcium chloride, may be present within the fabric of the building, whether incorporated in its original construction and/or subsequent alteration. We recommend that, if any asbestos is present, this is removed under controlled conditions if it were to become damaged, or works are carried out in its vicinity.

## 9.0 Equality Act 2010

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The Equality Act 2010 came into effect on 1 October 2010 and replaces previous legislation concerning discrimination, much of which was contained within the Disability Discrimination Act. Under the new Act the duty falls on service providers and property owners not to discriminate against a disabled person by not providing a service on the same terms as which it is provided to others or subject a person to any other detriment.

Reasonable steps must be taken to avoid discrimination and may include changing physical characteristics of a building, such as adding access ramps or handrails on stairways, if alternative service provisions are still believed to disadvantage the disabled person.

Due to the many issues facing disabled individuals, we are not able to comment fully on all matters relating to the Equality Act 2010. In order to properly assess what steps if any need to be taken to ensure that the property is compliant with the Act, we recommend that an Access Audit is undertaken so that any deficiencies are correctly identified. Once completed we would be happy to comment on the likely effect, if any, on the property's value. In the absence of a suitable report, we have assumed that there are no issues that negatively affect the value of the property reported here.

## 10.0 Asbestos at Work Regulations

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Obligations encompassed within the Control of Asbestos Regulations 2012, require that owners and occupiers of buildings manage asbestos within their buildings. This may involve having an asbestos survey undertaken and maintaining a register of any asbestos containing materials.

We have not been informed of whether or not a full survey or register has yet been prepared and recommend that confirmation should be sought from the conveyance that an asbestos inspection report has been obtained and that any required management plan has been implemented.

## 11.0 Factors Affecting Value

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### Location

Located within the popular residential suburb of Sale.

Well located for the retail/leisure amenity within Sale and for accessing the Metrolink Station.

### Property

The Property provides a range of different sized apartments.

We understand that some of the apartments would benefit from a programme of refurbishment and modernisation.

There is shared parking and a communal garden.

We are of the opinion that the Property is likely to appeal to investors rather than owner occupiers in its current condition.

### Existing Tenancies

We understand that 11 of the 12 flats are let on ASTs with a passing rent of £94,740 per annum.

## 12.0 Current Market Commentary

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### General Commentary

Whilst the UK Economy emerged from the travails of the Covid pandemic in surprisingly good shape, with initially strong growth indicators across most sectors of the economy, and businesses and consumers hastened to catch up with both the business and the pleasures foregone over two years of lockdowns and interruptions to normal life, recent (and ongoing) events such as the war in Ukraine, the cost of living crisis, a now incredibly weak pound sterling and rampant inflation are contributing to a dismal economic forecast; albeit the UK economy technically avoided a recession given the official GDP figures in the final quarter of 2022.

The side effects of the pandemic, including the interruption to global supply chains, and the loss of much of the cheaper end of the labour market as European visa workers returned home, continue to affect the economy. Labour shortages, partly a result of the pandemic, and partly the result of Brexit, are often cited as a cause of shortages of raw materials in all manufacturing, grocery and

construction sectors, and vital parts for the high-tech world of the automotive and computing industries.

The aforementioned war in Ukraine, and the risk and ever-present risk of nuclear warfare, is an unwelcome additional factor, causing massive international interruption to the Oil and Gas markets, and contributing to an unstoppable spike in inflation, causing central Banks around the world to raise interest rates (despite the rise in the cost of living already effectively doing the job of taking money out of the economy).

The trend for general economic growth in the preceding three years has been modest, and many analysts predict this, together with roughly flat pay growth, will lead to GDP only just recovering to its 2019 peak by 2026, albeit a grim forecast the Bank of England predicts may well last for the remainder of the 2020s. Several industries in the public sectors have been striking over pay, and this is set to continue in the short term at least, with the knock-on disruptions to everyday life for the wider population being another challenge to wider growth.

In early February 2022, the Bank of England increased the interest rate to 0.5%, the first back-to-back rate rise since June 2004, and on 17 March 2022, it voted to raise the interest rate again, to 0.75%, before further successive rises, to 1% in May 2022, 1.25% in June 2022, 1.75% in August 2022, 2.25% in September 2022, 3% in November 2022 (the largest rate rise in over 30 years), 3.5% in December 2022, and more recently (and where it is currently), 4% as of 2 February 2023, all in response to rapidly increasing inflation in the UK.

There are concerns about how everyone will continue to operate and navigate themselves through the current financial situation in the short-term. No doubt consumer spending will be depressed, especially in the hospitality sector, one of the sectors worst hit by the pandemic and energy crisis, as households are forced to manage their budgets more carefully. Whilst it is to be expected that, in due course, much of the increased cost of raw materials will filter out of the economy, the longer the paralysis in world trade lasts, the worse will be the hangover.

The Spring 2022 Budget, aimed at curbing the effects of ever-growing inflation and so-called 'cost of living crisis', set out plans to increase the National Insurance threshold by £3,000, to £12,570 (and that threshold to be equalised with that for Income Tax), reduce the basic rate of income tax to 19% from April 2024, and reduce fuel duty by 5p per litre for 12 months.

The emergency "mini budget" by the former Truss government in September 2022 to tackle inflation - and in particular the effect of rising energy prices - included an annual cap of £2,500 on energy prices (previously due to rise to £3,500 per year from October 2022), the cut of the basic rate of income tax to 19% from April 2023, the reversal of the previously announced decision to raise National Insurance by 1.25% (from 6 November 2022), the reversal of the previously announced decision to raise corporation tax from April 2023 from 19% to 25% and the scrapping of the cap on bankers' bonuses. The changes most pertinent to the property sector were the raising in the Stamp Duty initial payment threshold to £250,000 - and that threshold raised to £425,000 for first time buyers - all with then immediate effect; and the relaxation of planning laws and scrapping of EU planning regulations.

The above-mentioned “mini budget” was set against the backdrop of the death of Queen Elizabeth II, on 8 September 2022. With the closing of an undoubtedly significant chapter in British history, what followed was a 10-day mourning period. The UK’s stock markets, banks and other services closed intermittently. Together with bank holidays, funeral costs, coronation costs, changes to currency, passports, stamps and other institutional changes, this is said to have and will cost the UK economy somewhere in the region of £2.3bn.

The negative market reaction to this raft of measures led to the sacking of then Chancellor Kwasi Kwarteng on 14 October 2022 and replacement with Jeremy Hunt, ahead of a mini-budget U-turn (most of all the aforementioned changes being reversed, other than Stamp Duty change and National Insurance reduction), and perhaps more notably, the downfall of Liz Truss as Prime Minister. The installation of her replacement, Rishi Sunak, saw the Pound gain strength. That said, the short-term future of the UK economy is still very much seen as fragile and there is a perception of a return to 2010 austerity.

On 17 November 2022, Chancellor Jeremy Hunt set out his ‘Autumn Statement’, in which the energy price cap is to be extended to April 2024 though at a higher level of £3,000 instead of £2,500, the Windfall tax on profits of oil and gas firms is to be increased from 25% to 35% and extended until March 2028, the thresholds for National Insurance, Inheritance Tax, the Income Tax personal allowance and higher rate thresholds are also to be frozen for a further two years, until April 2028, and the 45% additional rate of income tax will be paid on earnings over £125,140 instead of £150,000.

## Residential

### General Residential Market – Recent Background

Since early 2020 and up until 2022, the residential market has been dominated by the Covid-19 Pandemic and subsequent Government interventions and restrictions.

The market effectively came to a halt in March 2020 with the announcement of the first lockdown, which effectively ordered everyone to stay at home. This state of lockdown remained until May 2020, when a conditional plan for lifting this lockdown was announced, allowing people who could not work from home to return to their workplaces.

The summer saw the gradual easing of restrictions and in July that year, then Chancellor Rishi Sunak announced a £30bn Spending Package in an attempt to stimulate the economy. This included a temporary amendment to the Stamp Duty Land Tax (SDLT) threshold bands, applying to residential properties purchased between July 2020 to March 2021 (subsequently extended to June 2021, before being phased out, ending by October 2021).

Over the period July 2020 to September 2020, it was reported that the UK Economy experienced 15.5% growth, pulling the country out of the recession that occurred as a result of the first lockdown, although the Office for National Statistics was still reporting that GDP was sitting below pre-Covid levels.

Following the summer of lowered restrictions and incentives, case rates were again rising. A new Covid Tier System was announced in October 2020, followed swiftly by the announcement of a second lockdown due to commence in early November (a notable difference to the first lockdown, however, is that the property industry was able to remain active throughout this, and future lockdowns). New 'rules' were being announced and changed frequently in the lead up to December 2020, and the festive period. On 21 December 2020, an announcement was made that London (and South East England) would be put into Tier 4 (highest level of restriction), with more areas of England moving into this Tier on 26 December. This culminated in England's third lockdown, on 6 January 2021.

Immediately prior to that, at the end of 2020, the completion of the transition period of the UK exiting the EU took place, and the securing of a free trade agreement brought some comfort to buyers at that time.

Into the New Year, 2021, though the third lockdown prevailed, there was cautious optimism with case numbers reducing and the commencement of the phased Covid-19 vaccine roll out.

In January 2021, the then Secretary of State Robert Jenrick published a brief statement regarding Leasehold Reform. This statement confirmed the Government's intention to bring in legislation that limited the ground rent payable on a newly granted lease to a peppercorn (nil). It also contained some more controversial intentions, such as abolishing marriage value and introducing an online calculator to determine lease extension premiums. As this announcement did not contain a specific timeline, the Leasehold Enfranchisement industry became a very uncertain landscape.

Towards the end of February 2021, a roadmap was published outlining the lifting of the lockdown, which commenced in early March that year and was phased out over the following months, with the aim that most core restrictions will have been lifted by July 2021.

The factors significantly impacting the market were condition and specification. Though that is and has always been the case, those fundamentals were especially important at that time. Towards the end of the year, build costs were seeing record highs, exacerbated by supply chain issues and labour shortages. The Building Cost Information Service (BCIS) reported an Index increase of 2.3% in Q4 of 2021 (compared to the preceding quarter), and an increase of 10.7% compared to the same time a year earlier. The Royal Institution of Chartered Surveyors mirrored this, reporting in November 2021 that the cost of construction materials was at a 40-year high. This in turn has a negative impact on any properties requiring refurbishment (and/or redevelopment) as the cost to undertake these works, and the risks involved increase.

In early 2022, economic issues such as headline inflation and the emergence of the Cost of Living Crisis began to unfold. Further uncertainty was created by the announcement of the War in Ukraine in February 2022, and the potential geo-political fallout, which continues.

The Leasehold Reform (Ground Rent) Act 2022 came into effect in June 2022, which set out that newly granted leases can only charge a maximum ground rent of a peppercorn (nil). This legislation has overall been viewed as a positive step towards creating a 'fairer' leasehold ownership system, however, it will impact on how flats with original / existing Leasehold interests with ground rents are treated in the market. Onerous ground rents generally already commanded a discount to the

value of a Leasehold asset prior to this legislation coming into effect and there has now been a further push in the market to address (and potentially discount) when a ground rent in general is payable. At present, there has been no further information on the timeline or exact scope of the other elements proposed as part of the Leasehold Reform.

In 2021 and the first half of 2022, there was an unprecedented demand for properties and a relative shortage in supply nationally, having the effect of pushing prices up and creating in some cases a fiercely competitive marketplace, with properties being fully booked for viewings on 'launch days', and a 'best and final' sealed bid submission request. This, more often than not, resulted in agreed sales at or in some cases notably above asking prices. In this period, the 'hybrid' work model of partly working from home, partly working in the office – certainly in the major city commuter belt locations and beyond in particular – put further pressure on demand and upward momentum on house prices.

A mini budget was announced by former Prime Minister Liz Truss and former Chancellor Kwasi Kwarteng in September 2022, setting out a series of tax cuts planned to be funded by an estimated £50bn in borrowing. This announcement triggered economic and political chaos.

Within a month there was a new Chancellor and Prime Minister, and many of the elements announced had been reversed. With direct connection to the Property industry, one of the main changes was that the nil rate band for SDLT was increased from £125,000 to £250,000. Also, in an attempt to engage the lower end of the market, first time buyers will benefit from not having to pay SDLT on the first £425,000 of the purchase price.

Interest rates had continually been rising throughout 2022 in an attempt to address the rising rate of inflation. For context, the Bank of England Official Base Rate started that year at 0.5% and by the end of the year had increased to 3.5%.

### **General Residential Market – Current Context**

Into 2023, the mortgage environment remains one of the most significant challenges. Fewer mortgage products are available overall and the Bank of England indicated that mortgage approval levels have fallen to levels seen in the early stages of the Pandemic. As of 2 February 2023, the Bank of England increased the Official Base Rate a further 0.5% (from 3.5%, now standing at 4%). Headline inflation is forecast by the Bank of England to peak by the end of 2023, and with that could come some relief on interest rate levels.

According to Land Registry, over the 12 months to February 2023 (the latest published data), house prices in England overall rose by approximately 6.07%.

The March 2023 Halifax House Price Index reported an average house price of £287,880, with a monthly price change of +0.8% and latest quarter change of -0.4%. On an annual assessment, house prices in March 2023 were 1.6% higher than the same month a year earlier.

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The Nationwide House Price Index for March 2023 reported an annual house price growth of (-)3.1%, with a month-on-month change of (-)0.8%, after taking account of seasonal factors, and an average house price standing at £257,122.

Continually rising energy prices coupled with steeply rising inflation in general is cause for many to be concerned at the current time. The financial squeeze on households, if it continues, in conjunction with effective wage compression, will likely affect the ability to move home in the short-to-medium term, meaning it is possible that a 'correction' in market pricing – that has already been witnessed in areas - by way of lower bids on properties for sale.

### Local Residential Market Conditions

Sale is a popular residential location providing a range of housing types

Land Registry data (up to July 2023) for the Trafford Local Authority area shows a monthly increase of 0.40% in house prices and an annual increase of 0.30%. This takes the average price of a property in the area to £362,348 with flats having an average price of £217,634.

For the M33 Post Code area which the Property sits within, the average price for houses for 2023 (up to July 2023) was £388,302. Average prices in the M33 Post code area are detailed below:

House Type	Average Price (For 2023 up to July)	Number of Sales
Detached	£619,829	37
Semi-detached	£438,414	128
Terraced	£315,769	78
Flats	£189,938	47

## 13.0 Marketability

We consider that the most appropriate method of sale for the Property would be by Private Treaty with the benefit of the occupational leases. We are of the opinion that the Property would appeal mainly to investors who would retain the income from the Property and look to refurbish/upgrade the units as and when they became vacant to maximise the rental potential of the Property.

Given current market conditions, we are of the opinion that a marketing period of around six to nine months would be required to sell the Property at our stated opinion of Market Value. If market conditions and demand were to weaken from current levels, extended marketing periods may be required.

The Property would need to be fully exposed to the market, utilising various marketing initiatives, including production of particulars, and circulation of details to local agents in the market and targeted investors.



## 14.0 Valuation Approach

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We have been instructed to prepare our valuation on the basis of Market Value (Alternative Use Value) and also adopt the Special Assumption of Existing Use Value (EUV).

Given the Property comprises a completed block of apartments on this occasion we are of the opinion that the Existing Use Value is the highest value and the valuation subject to the Special Assumption of Alternative Use Value would be lower. In such circumstances the value of the Property is underpinned by its existing use. Accordingly, we have adopted the same value under each assumption.

The Property is currently held on a single title, although we understand that each flat is individually metered. It would be possible to split the flats and sell to owner occupiers on a unit by unit basis on a long leasehold interest, whilst setting up a management company to look after the communal areas and services to the Property. Whilst there is not a particularly strong market for studio flats from an owner occupier perspective, investors would potentially purchase them on a unit by unit basis, however, given the fact that some capital expenditure may be required to freshen up the external appearance of the Property, and to refurbish the more dated flats we are of the opinion that at present an investor/developer would be the most likely purchaser who would want to purchase the whole block in one transaction. We are of the opinion that owner occupiers are likely to be deterred by purchasing a flat and then having to contribute immediately to the management company to cover the costs of any upgrading works.

We have arrived at our opinion of Market Value utilising the income approach (Investment Method of Valuation), this being the standard method of appraisal for properties of this nature for sale or letting. We have had regard to the comparables set out below, which we have adjusted for differences in size, accommodation, condition, specification, location and transaction date.

## 15.0 Comparable Evidence & Opinion of Value

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*Disclaimer: Where possible we have taken reasonable steps to corroborate comparable transaction evidence. Where we have no direct involvement with the transaction, we are unable to guarantee the accuracy of the information provided and we reserve the right to amend our Valuation, if it is established that any information on which we have relied is subsequently established to be materially inaccurate.*

### Residential Rental Comparables

In arriving at our opinion of Market Value we have had regard to the following apartment rentals within a 0.5 miles radius of the Property.

Address	Type	Size	Rent Per Month	Comment
166b Washway Road, Sale	1-bedroom flat	516 sq ft	£750	Let in March 2023 in a reasonable condition. Located above a shop which is less desirable. We are of the opinion



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Address	Type	Size	Rent Per Month	Comment
Flat 19 Beech Court, Salee	1-bedroom flat	559 sq ft	£950	that the one bedroom flats would achieve a similar rate. Let in September 2023 in a newly refurbished condition, superior to that of the subject flats. We are of the opinion that the one bedroom flats would achieve a lower rent.
38 Trident Apartments, Sale	1-bedroom flat	473 sq ft	£825	Let in August in a recently converted condition, superior to that of the subject flats. We are of the opinion that the one bedroom flats would achieve a lower rent.
Flat 7 Oakfield Mews, Sale	2- bedroom flat	775 sq ft	£1,000	Let in May 2023 in a reasonable condition, similar to the subject flats. We are of the opinion that the two bedroom flat would achieve a lower rent to reflect the smaller size.
Flat 3 Rusland Court, Oakfield, Sale	2-bedroom flat	699 sq ft	£950	Let in May 2023 in a reasonable condition, similar to the subject flats. We are of the opinion that the two bedroom flat would achieve a lower rent to reflect the smaller size.
Flat 2, 111 Washway Road, Sale	Studio flat	300 sq ft	£700	Let in August 2023 in a reasonable condition, similar to that of the subject flats. This comparable does not benefit from off road parking. We are of the opinion that the subject flats would achieve a slightly higher rent to reflect the off road parking.
2 Kirklands, Sale	Studio flat	300 sq ft	£675	Let in August 2023 in a reasonable condition, similar to that of the subject flats. This comparable does not benefit from off road parking. We are of the opinion that the subject flats would achieve a slightly

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Address	Type	Size	Rent Per Month	Comment
8 Dovestone Road, Sale	Studio flat	302 sq ft	£850	higher rent to reflect the off road parking. Let in August 2023 in a newly refurbished condition, superior to that of the subject flats. This comparable does not benefit from off road parking. We are of the opinion that the subject flats would achieve a lower rent to reflect the inferior specification.

### Comment

From the above transactions we can see that studio flats are achieving between £700 per month and £850 per month, one bedroom flats are achieving between £750 and £950 per month and two bedroom flats are achieving between £950 and £1,000 per month. The passing rents at the Property reflect between £550 and £775 per month for studio flats, £740 to £795 per month for one-bedroom flats and £910 per month for the two bedroom flat. Where the rents achieved are below the range quoted we have assumed that these units are of a more dated specification. We are of the opinion that the passing rents at the Property are reflective of the Market Rent which is £94,740 per annum. We have not attributed a Market Rent to Flat D to reflect the uninhabitable condition.

### Residential Sales Comparables

In arriving at our opinion of Market Value we have had regard to the following apartment sales within a 0.5 miles radius of the Property

Address	Type	Size	Price/ Price Per Sq ft	Comment
6 Rusland Court, Oakfield, Sale	2-bedroom flat	705 sq ft	£222,000 £315 psf	A two bedroom flat sold with vacant possession in a basic specification, inferior to many of the flats at the Property. This flat does benefit from a garage though.
Flat 15, Beech Court, Sale	1-bedroom flat	517 sq ft	£140,000 £271 psf	A one bedroom flat sold with vacant possession in a similar specification to the majority of the flats at the Property. Off road parking was included. December 2021

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Address	Type	Size	Price/ Price Per Sq ft	Comment
Flat 18 Sandimoss Court, Moss Lane, Sale3	1-bedroom flat	459 sq ft	£150,000 £326	Currently sold subject to contract. The flat is in a slightly superior condition to the subject flats and also benefits from a garage.
Grosvenor Square, Sale	1-bedroom flat	575 sq ft	£169,950 £295	A one bedroom flat in a superior, recently refurbished condition is currently being marketed for sale with vacant possession. This comparable also includes a garage.
Flat 9 Rylatt Court, Ashton Lane, Sale	2-bedroom flat	691 sq ft	£189,500 £274	A two bedroom flat sold in January 2023 with vacant possession in a similar specification to the majority of the flats at the Property although this comparable benefits from a single garage.
Flat 3 Harboro Grove, Sale	2-bedroom flat	700 sq ft	£179,950 £	A two bedroom flat sold in November 2022 with vacant possession in a similar specification to the majority of the flats at the Property.

## Residential Investment Sales Comparables

### *Flat 5, 608 Roebuck Lane,, Sale*

*Currently being marketed at £145,000 (£319 per sq ft / Gross Yield 5.8%)*

A one bedroom flat in similarly aged, converted building. The flat extends to 454 sq ft and is in a superior condition to the subject Property. We are of the opinion that the flats at the subject Property would achieve a lower rate per sq ft and a higher yield to reflect the inferior condition of the subject Property.

### *Langdale Mews, Langdale Avenue, Levenshulme*

*Sold in August 2023 for £1,700,000 (Gross Yield 6.13%)*

A block of 16 flats in a purpose built apartment block sold at auction. It was let at a rent of £104,340 per annum. The flats were of a similar specification internally to the subject Property but externally it appeared to be in a superior condition. The location of the subject Property would be deemed to be superior to Levenshulme though. On balance we are of the opinion that the subject Property

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35 Oakfield, Sale, Trafford, M33 6NB

would achieve a slightly higher yield to reflect that an element of capital expenditure may be required in the short term but having regard to the superior location.

***40 Hartington Road, Toxteth, Liverpool******Sold in May 2023 for £377,000 (Gross Yield 7.08%)***

A block of five flats in a converted block sold at auction. It was let at a rent of £26,700 per annum. The flats were of a slightly inferior condition to the majority of the flats at the subject Property and Sale would be considered to be a superior location. We are therefore of the opinion that the Property would achieve a lower yield.

**Comment**

The comparable transactions detailed above show one-bedroom flat prices achieving between £140,000 to £169,000 with sales rates reflecting between £271 per sq ft to £326 per sq ft and two-bedroom flats achieving between £179,950 to £189,950,000 with sales rates of between £257 and £274 per sq ft.

Investment sales show residential apartment blocks are currently achieving between 6.13% to 7.08%. We are also aware that the subject Property sold back in 2020 to New Living Developments for £1.8m as an investment in a single transaction. Unfortunately, we do not know the tenancy details from that time but since 2020 rental and capital values have significantly increased, even taking into account the current cooling of the market. However, applying the current rent of the property and making an allowance for a rent to Flat D, assuming it was in a lettable condition at the time, this would give a gross yield of 5.6%.

We are of the opinion that the subject Property would achieve a yield towards the lower end of the reported range to reflect the popular Sale location, the strong letting history at the Property and the potential to add rental value by refurbishing the flats.

In arriving at our opinion of Market Value we have capitalised the current income at a gross yield of 6.3% which gives a rounded Market Value of £1,500,000. As detailed above we have not attributed a value to Flat D due to its current uninhabitable condition. If we do not include the floor area of Flat D our opinion of Market Value reflects an overall rate of £237 per sq ft.

Whilst this value is significantly below the purchase price of 2020, which would appear to be odd considering the market has improved, it is based on current evidence.

## 16.0 Valuations

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### Market Value on the Special Assumption of Existing Use Value

In our opinion, the Existing Use Value of the freehold interest in the Property, on the Special Assumption that any alternative use is disregarded, subject to the comments and assumptions in this Report, as at the Valuation Date is **£1,500,000 (One Million Five Hundred Thousand Pounds)**.

### Market Value

In our opinion, the Market Value of the freehold interest in the Property, subject to the comments and assumptions in this Report, as at the Valuation Date, is **£1,500,000 (One Million Five Hundred Thousand Pounds)**.

## 17.0 Strengths & Weaknesses

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### Strengths

- Unbroken block of apartments.
- Popular residential location.
- Potential to increase value by refurbishing some of the apartments as and when they become available.

### Weaknesses

- Some of the apartments are dated internally and would benefit from a refurbishment program.
- Flat D is currently in an uninhabitable condition.
- Increasing interest rates could make borrowing more difficult to obtain and have a downward pressure on values.

## 18.0 Verification

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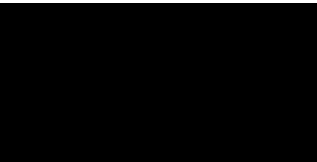
This Report has been based, to some extent, on information provided verbally which should be checked. In particular, this applies to tenure and planning. Where we provide an opinion in respect of any legal issues, this should not be taken as legal advice and must be verified by your legal advisers before the Valuation can be relied upon. Such checks may also reveal whether any historical use of the Property is likely to have resulted in contamination.

We reserve the right to amend our Valuation following any information that is provided which differs from that stated in this Report and/or is not in line with the assumptions we have made.

## 19.0 Signatories

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Whilst we trust that this Report is satisfactory for your immediate purposes, should you have any queries or points which require further clarification we shall be pleased to hear from you.




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 9 October 2023

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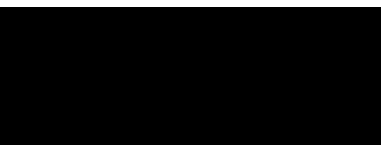
 Signatory:

Richard Moreton BSc (Hons) MRICS

Registered Valuer No: 1161504

For and on behalf of Fisher German LLP

Dated




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 9 October 2023

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 Counter Signatory:

Phil Winckles BSc (Hons) MRICS

Registered Valuer No. 1206251



For and on behalf of Fisher German LLP

Dated



## Appendix One

Instruction



## Appendix Two

### Engagement





Centurion House  
129 Deansgate  
Manchester M3 3WR

t 0161 839 5515  
f 0161 839 5590

w [matthews-goodman.co.uk](http://matthews-goodman.co.uk)

Our Ref: 118927

McCarthy & Stone  
Unit 3, Edward Court  
Altrincham  
Cheshire  
WA14 5GL

F.A.O Abby Blakeley

8 June 2022

Dear Abby

**Property: 35 Oakfield, Sale, Trafford, M33 6BN (Residential)**

We acknowledge receipt of your instructions dated 6 June 2022 to carry out a valuation in respect of the below property to assist with your ongoing viability assessment of the property.

We write in accordance with the 2021 edition of the RICS Valuation – Professional Standards (incorporating the International Valuation Standards) – Global and UK edition published by The Royal Institution of Chartered Surveyors, effective from 31 January 2022) to set out our Terms of Engagement, and to confirm that the scope and the details of the service provided will be in accordance with your letter of instruction and the requirements of the RICS. Compliance with the Valuation Standards may be subject to monitoring under the Institution’s compliance and disciplinary regulations. The nature of our advice and reporting will be provided in accordance with these standards.

Our Terms of Engagement include the specific items contained in this letter, together with our standard Terms & Conditions of Engagement for Valuations, which are attached hereto, and will be attached to our report.

Please sign and return the attached copy of this letter by way of acceptance.

**1. Our Client**

McCarthy & Stone

The report will be addressed to you and is for your use only. We particularly draw your attention to the comment in our Standard Terms about our liability to third parties and publication.

**2. Property Address**

35 Oakfield, Sale, Trafford, M33 6BN

**3. Interest to be valued**

Freehold

**4. Property Type and Use**

Residential

**5. Purpose of Valuation**

The valuations are required for Viability Purposes.

**6. Bases of Valuation**

The bases of valuation will be Existing Use Value and Alternative Use Value.

Existing Use Value is defined by the National Planning Policy Framework as “The value of land in its existing use, with no expectation of that use changing in the foreseeable future (based on Valuation of development property, RICS guidance note). PPG paragraph 015 advises specifically that the EUV excludes hope value from any assessment of the existing use value. International Valuation Standards 104 paragraph 150.1 defines current/existing use as ‘the current way an asset, liability, or group of assets and/or liabilities is used.’” Accordingly, we have adopted this as our Special Assumption under Existing Use Value.

Alternative Use Value is defined by the National Planning Policy Framework as “The value of land for uses other than its existing use’. The alternative use is limited to those uses that would fully comply with up-to-date development plan policies, including for example any policy requirements for [REDACTED] towards affordable housing at the relevant levels set out in the plan.” For the purpose of this valuation, this accords to Market Value as defined in the Valuation Standards.

[REDACTED] The valuation shall be expressed in Pounds Sterling.

**7. Valuation Date**

Will be as at the Date of our inspection.

**8. Special Assumptions**

A Special Assumption either assumes facts that differ from the actual facts existing at the valuation date or that would not be made by a typical market participant in a transaction on the valuation date.

There are no Special Assumptions requested in your instruction letter.

[REDACTED] We confirm that we have no current, recent or prospective fee earning involvement with the property, the client, or any party connected with this transaction.

**10. Name and Status of Valuer and Counter-Signatory**

The valuation will be undertaken by Richard Moreton BSc (Hons) MRICS who is a Registered Valuer, with relevant knowledge, skills and experience in the valuation of this type of asset. We will be acting as External Valuers. The work will be countersigned by a Valuation Partner in the firm, who is also suitably qualified and experienced in the valuation of this type of asset.

**11. Extent of Inspection**

Unless prevented from doing so, we will inspect the Property both internally and externally as appropriate to the Purpose of Valuation via site visit.

**12. Fees**

We have agreed a fee of **£2,850 + VAT** (including disbursements) and our fee account will accompany our report.





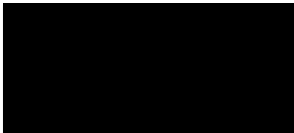
**13. Other Matters**

This letter should be read in conjunction with the accompanying Standard Terms and Conditions of Engagement since they contain important conditions, caveats and assumptions pertinent to our engagement.

A copy of Matthews & Goodman’s procedure for complaints handling is available on request. Matthews & Goodman follows the RICS’s arrangements for complaints or redress under the Designated Professional Body Scheme.

If any of the details set out above are incorrect, please let us know – we will assume they are correct unless you advise us to the contrary.

Yours sincerely,

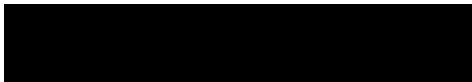


**Richard Moreton BSc (Hons) MSc MRICS**  
For and on behalf of  
Matthews & Goodman LLP



**Acceptance of Terms of Engagement**

*I/We agree to the definitions, terms and conditions of engagement included in this letter and the accompanying standard terms of engagement and understand that they will form part of our report.*



..... For and on behalf of..... McCarthy and Stone Retirement Lifestyles Limited T/A McCarthy Stone

Dated 08/06/2022.....



## TERMS OF ENGAGEMENT FOR THE PROVISION OF VALUATION SERVICES

### 1 Compliance, Confidentiality and Publication

11 The report will be prepared in accordance with the 2021 edition of the RICS Valuation – Professional Standards (incorporating the International Valuation Standards) – Global and UK Edition, published by the Royal Institution of Chartered Surveyors, effective from 31 January 2022. We will be acting as independent External Valuers.

12 The report will be confidential to you and your professional advisors. Whilst we can accept no responsibility to third parties, it is accepted that a copy of the report may be forwarded to the borrower (or other named party in the report) on a non-reliance basis.

13 Neither the whole nor any part of the report may be included in any published document, circular or statement, nor published in any way without our written approval of the form and context in which it may appear.

### 2 Sources of Information

21 We will rely on information provided by you, the vendor, the selling agents, other professional advisors and the local authority. Where possible we will take reasonable steps to verify this information, however it is assumed as being correct unless otherwise stated and no responsibility is accepted for any inaccurate information provided.

### 3 Client's Warranty and Indemnity

31 The client represents and undertakes to the valuer that all information provided is complete and correct, that there are no other material facts known relating to the property which may be relevant to the valuer in carrying out its instructions. The client agrees to indemnify and keep the valuer indemnified against all losses, damages costs and expenses (including legal fees on an indemnity basis), arising out of or by virtue of the client's instructions to the valuer other than any losses, damages, costs and expenses arising by virtue of the default or negligence of the valuer.

### 4 Valuer's Warranties, Liability and Indemnities

41 We do not provide, nor do we hold ourselves out as providing legal advice of any kind. It shall be the client's responsibility to obtain professional advice from an appropriately qualified solicitor as to the law relating to the ownership of real property in the jurisdiction within which any property is located; and comply with all such laws.

42 The valuer shall have no liability whatever for any loss or damage resulting from any failure to comply with such laws.

43 Neither party shall be liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.

44 The client shall indemnify and hold harmless the valuer from and against all Claims and Losses arising from loss, damage, liability, injury to the valuer, its employees and third parties, by reason of or arising out of any act, omission, delay or representation made by the client or on the client's behalf, or in relation to any false or erroneous information provided by the client to the valuer. 'Claims' shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of an nature whatsoever. The provisions of this paragraph shall not apply to the paragraph immediately below.

45 Our maximum aggregate liability to you in relation to this instruction (in contract, tort, negligence or otherwise) in whatever form it arises shall in no circumstances be in excess of the lower of:

1. Total value reported up to a value of £1,500,000 (One Million Five Hundred Thousand Pounds);
2. £1,500,000 (One Million Five Hundred Thousand Pounds) plus 25% of the value reported value above £1,500,000; or
3. £20,000,000 (Twenty Million Pounds).

46 Value reported in this instruction constitutes either the value on the basis agreed in this instruction of the single property or if multiple properties (portfolio) the aggregate value reported.

47 Each of the parties acknowledges that, in entering into these Terms of Engagement, it does not do so in reliance on any representation, warranty or other provision, except as expressly provided in this Agreement. Any conditions, warranties or other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law. Nothing in the Agreement excludes liability for fraud.

48 For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of these Terms of Engagement, these Terms of Engagement are not intended to, and do not, give any person who is not a party to them any right to enforce any of their provisions.

### 5 Professional Indemnity Insurance

51 Matthews & Goodman LLP hold RICS Compliant PI Insurance cover in the sum of £20m, for each and every claim subject to the following exclusions:

#### 52 Fire Combustibility Exclusion

M&G is not covered for any claim or claim circumstance arising directly or indirectly out of, or in any way connected with:

- a) any actual or alleged failure of any product, material or system used in the construction, alteration, repair, treatment or refurbishment of any building or structure to comply with applicable regulations in respect of the performance of combustibility, fire resistance or fire protection.

## TERMS OF ENGAGEMENT FOR THE PROVISION OF VALUATION SERVICES

b) any Survey or Valuation where such claim or claim circumstance relates in whole or in part to any actual or alleged failure of any product, material or system used in the construction, alteration, repair, treatment or refurbishment of any building or structure to comply with applicable regulations in respect of the performance of combustibility, fire resistance or fire protection.

- 53 Aggregate limit, defence costs in addition, excess not applied to defence costs, with round-the-clock reinstatements. The most Insurers will pay in total for all loss resulting from all claims in any one period of insurance is the limit of indemnity. Insurers will pay defence costs in addition to the loss. If the amount of loss for any claim is greater than the limit of indemnity, the most that will be paid for defence costs for that claim will be an amount in the same proportion that the limit of indemnity has to the loss.
- 54 When the limit of indemnity under the policy and all excess layer policies are exhausted the limit of indemnity will be reinstated but only in respect of any future claim which does not come from:
- a) the same act, error or omission or series of acts, errors or omissions as a result of or arising directly or indirectly from the same source or original cause as any previous claim.
- b) the same dishonest or fraudulent acts or omissions of one person or persons acting together or in which such person(s) is/are concerned or implicated, as is the subject of any previous claim.
- 55 The number of times that the limit of indemnity is reinstated is unlimited, but is subject to the exhaustion of all excess layer policies prior to each reinstatement.
- 56 Where for whatever reason the excess layer insurer(s) do(es) not pay in respect of a claim and/or defence costs, this will not count towards the exhaustion of the excess layer limit of indemnity with regards to when the limit of indemnity is reinstated under the policy.
- 57 In any event, reinstatement of the limit of indemnity will only occur if the excess layer professional indemnity insurance has been effected and maintained for the entire period of insurance.

### 6 Assignment

- 61 Neither party may assign any of its respective rights or obligations under this engagement to any third party without the prior written consent of the other party. The client agrees that the valuer may transfer all its rights under this engagement to any successor partnership or body corporate which succeeds to the business of the valuer and that such partnership or body corporate may assume all of the valuer's obligations under this engagement in its place.

### 7 Law

- 71 The validity, construction and performance of these Terms of Engagement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties irrevocably submit.

### 8 Fees

- 81 Our fees are due and payable upon receipt of the invoice.
- 82 The instruction is accepted on the basis that should the instructing party advise that a third party is responsible for settling the account, but it remains outstanding beyond our terms, the instructing party will accept strict liability for settlement of our invoice.
- 83 If we are instructed to seek payment directly from a third party our agreed fee is to be paid in full prior to our inspection.
- 84 In the event that payment is not received in accordance with our terms, interest may be added in accordance with the Late Payment of Commercial Debts (Amendment) Regulations 2018.
- 85 In cases where we are required to invoice for and receive payment prior to completion of the valuation you acknowledge that monies paid are not protected by the RICS client money protection scheme.
- 86 In the event that we are instructed not to submit our final report a fee of 75% of the total fee will be payable.

### 9 General Data Protection Regulation (GDPR)

- 91 The GDPR is in force from 25 May 2018. As a result of Matthews & Goodman's relationship with the Client, Matthews & Goodman may hold personal data about individuals within the Client's business. Matthews & Goodman will process that information only in connection with providing the services set out in this document, and for the purpose of contacting the Client about other services Matthews & Goodman may offer. Should the Client not wish to receive any contact from Matthews & Goodman relating to these other services it should advise Matthews & Goodman accordingly in writing or by email or by opting out of communications from Matthews & Goodman.

### 10 Money Laundering Regulations

- 101 **The Money Laundering, Terrorist Financing and Transfer of Funds (information of the Payer) Regulations 2017 (MLR 2017) came into force on 26 June 2017.** Estate Agency services fall within MLR 2017. Matthews & Goodman may be required to carry out certain checks of client identity including the identity of purchasers and vendors of property, including Members, principal shareholders and any beneficiaries. Checks will be undertaken using data held electronically by credit reference agencies, and in some cases the Client will be required to provide documentary evidence. The Client agrees to provide such information as Matthews & Goodman may request for verifying the Client's identification.
- 102 In certain circumstances, Estate Agents are required by statute to make a disclosure to the National Crime Agency where they know or suspect that a transaction may involve a crime including money laundering, drug trafficking or terrorist financing. If we make a disclosure in relation to your matter, we may not be able to tell you that a disclosure



## TERMS OF ENGAGEMENT FOR THE PROVISION OF VALUATION SERVICES

has been made. We may have to stop working on your matter for a period of time and we may not be able to tell you why.

### 11 Complaints Handling Procedure

111 Matthews & Goodman LLP operates a Quality Management System developed to meet the requirements of ISO 9001:2015.

112 Our Complaints Procedure has been developed in accordance with the RICS Rules of Conduct. A written copy of our Complaints Procedure is available upon request by writing to Juliet Sturridge at 21 Ironmonger Lane, London, EC2V 8EY.



## GENERAL PRINCIPLES AND ASSUMPTIONS FOR THE PROVISION OF VALUATION SERVICES

### 12 Introduction

121 Our report and valuation(s) have been carried out in accordance with the Valuation Practice Statements and Practice Guidance contained in the Valuation – Professional Standards, incorporating the International Valuation Standards as published from time to time by the Royal Institution of Chartered Surveyors (“the RICS RedBook”).

### 13 Valuation Bases

131 **MARKET VALUE** is defined in IVS 104 paragraph 30.1 as: ‘The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion’.

132 **RENTAL VALUES** will be adopted as appropriate for formulating capital values and will be referred to in our report as Estimated Rental Value (ERV).

133 **MARKET RENT** is defined in IVS 104 paragraph 40.1 : ‘The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion’.

134 **INVESTMENT VALUE (WORTH)** is IVS 104 paragraph 60.1 as: ‘The value of an asset to the owner or a prospective owner for individual investment or operational objectives’.

135 **FAIR VALUE** is defined within International Financial Reporting Standard 13 (IFRS 13) is defined as: ‘The price that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants at the measurement date’.

136 **FAIR VALUE WITHIN FINANCIAL REPORTING STANDARD 102 (FRS 102)** is defined as: ‘The amount for which an asset could be exchanged, a liability settled, or an equity instrument granted could be exchanged, between knowledgeable, willing parties in an arm’s length transaction’.

### 14 Alternative Use Potential

141 Unless we are preparing a residual appraisal our valuation is of the property in its existing use in accordance with its current planning consent. It may be that the property may have a higher alternative use value; however, any change of use would be subject to securing planning consent (unless it may be done under permitted development rights) and the impact on value would depend on the details of the proposed use. Without such detail we are unable to explicitly comment on the potential effect on value for an alternative use save for considering the likely impact on the marketability of the property.

### 15 Reinstatement Cost

151 Where you have requested our opinion of the insurance reinstatement cost of the building it should be acknowledged that our reinstatement cost assessment is indicative only, as it has not been prepared by a suitably qualified building surveyor as such we accept no liability whatsoever for its accuracy. The figure provided will be for guidance purposes only and we recommend that a formal assessment is obtained from a specialist insurance valuer if insurance cover is to be effected. The assessment is made without liability, and any decisions taken on the basis of it are entirely at the user’s risk.

152 Our informal estimate makes allowance for the expense of demolition and site clearance and then rebuilding it to its existing design in modern materials, using modern techniques, to a standard equal to the existing property and in accordance with current Building Regulations and other statutory requirements. Where applicable it also includes VAT on professional fees. Where a building is listed, it is highly likely that average building cost rates will underestimate the actual cost of reinstatement, as listed buildings are required to be reinstated using traditional materials and techniques which can be significantly more expensive to procure and undertake.

153 It should be acknowledged that were a property forms part of a larger building, the reinstatement cost estimate reflects only the rebuilding cost of the interest under consideration. It is assumed that the whole block will be insured under a single policy and the reinstatement premium recoverable through the service charge.

### 16 Inspection

161 We will undertake a visual inspection of so much of the exterior and interior of the property which is safely accessible without undue difficulty. The inspection will be carried out from within the boundaries of the site and any adjacent, easily accessible, public / communal areas as we consider necessary.

162 We will not carry out a building or structural survey, nor will we test for damp, inspect woodwork or other parts of the property, which are covered, unexposed or inaccessible, and such parts will be assumed to be in good repair and condition and furthermore, we are under no duty to move anything.

163 The report will not purport to express an opinion or to advise upon the condition of uninspected parts and should not be taken as making any implied representation or statement about such parts.

164 We will not carry out investigations to ascertain whether or not the property has been constructed using any potentially deleterious materials or whether such materials have subsequently been incorporated into the construction of the property and we will therefore be unable to report that the property is free from risk in this respect. Similarly, we will not be undertaking an environmental audit of the property to determine whether contamination existing on or nearby to the property.





## GENERAL PRINCIPLES AND ASSUMPTIONS FOR THE PROVISION OF VALUATION SERVICES

165 If, as a result of our inspection, we consider it appropriate that further investigation is necessary, we will recommend the appointment of appropriate consultants. We may reserve the right to delay the issue of our report until such advice is available.

### 17 Condition

17.1 Whilst we do have regard to the general condition of the property, taking into account its age and use, we will not undertake a building or structural survey and it is assumed that the property is free of any structural defects except those specifically noted.

17.2 Where the property has recently been constructed there is a risk of inherent or latent defects, which may not have manifested themselves, arising from the building design or construction techniques adopted. Our valuation assumes that there is sufficient inherent defects insurance in place which runs with the property or is transferable to a new occupier as appropriate.

### 18 Building and Property Services

18.1 We will not test the building services and unless otherwise stated it is assumed that the Building Services including but not limited to lifts, electrical, gas, plumbing, heating, drainage, air conditioning installations and security systems and the Property Services including but not limited to incoming mains, waste, drains, utility supplies are in good working order without defects whatsoever and in a condition consistent with the age and use of the property, and where appropriate meets necessary legislation.

18.2 Where we are reporting on a development site, we assume that there would not be any abnormal costs associated with connecting to mains service connections.

### 19 Measurements

19.1 Where we have been explicitly instructed to undertake property measurements, measurements and dimensions are calculated in accordance with the prevailing RICS Property Measurements Professional Statement or the prevailing RICS Code of Measuring Practice, depending upon the basis of measurement appropriate to the property type. The basis of measurement adopted is specified in our report. Where property measurements are provided, we will make every endeavour to undertake check measurements and/or refer to Valuation Office Agency assessments to cross-check for accuracy, notwithstanding, we assume the measurements provided are in accordance with the standards as stated above.

### 20 Planning and Other Statutory Enquiries

20.1 We will make verbal enquires and / or undertake a review of the available online planning history of the property to attempt to confirm the statutorily permitted planning use. However, in the absence of a copy of the original planning permission relating to development of the property or a clear planning history identifying the permitted use, we will assume that the property has been developed and is being used in accordance with its permitted use unless we have stated otherwise.

20.2 Furthermore, we will assume that the property is constructed and used in accordance with valid Permits, Licences and Building Regulation Approval and that there are no outstanding statutory notices and/or no abnormal costs of putting the property into a compliant state to adhere with the latest standards which may adversely affect the value of the property.

### 21 Warranties

21.1 It is assumed that for all new build and / or property conversions adequate warranties are available from the professional team and the contractor(s), or Structural Guarantee Insurance from Insurers, who are deemed to be of sufficient financial standing to satisfy any warranty claim.

21.2 For residential property it is assumed adequate building warranties are available from such body as the NHBC to satisfy mortgage lender's requirements under CML rules.

21.3 It is also assumed all warranties run with the property or are transferable to a new occupier as appropriate.

### 22 Energy Performance Certificates

22.1 The Energy Act 2011 provides that, from April 2018, it will be unlawful to rent out or sell residential or business premises which do not reach a minimum energy efficiency standard. The lowest acceptable energy rating is E. The Minimum Energy Efficiency Standard (MEES) was introduced in March 2015 by the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015. The MEES Regulations originate from the Energy Act 2011.

22.2 Unless indicated otherwise, our valuation assumes that the property has a minimum rating of E. If a rating is not available our recommendation is to have a report commissioned, as there may be potential cost implications of improving the property to achieve a rating of E or above.

22.3 Where the property has a rating of F or G, and in the absence of a costed energy efficiency building report, we have assumed that costs of improving the rating to a minimum rating of E are immaterial. However, we reserve the right to amend our valuation, if it is subsequently established that these costs are significant.

### 23 Service Charges

23.1 Where the property is subject to a service charge (an estate or a property service charge) it is assumed, unless stated otherwise, that there is an accrued reserve fund sufficient to meet the costs of periodic major works, and that no excess charge will be levied for the foreseeable future.





## GENERAL PRINCIPLES AND ASSUMPTIONS FOR THE PROVISION OF VALUATION SERVICES

232 Where the ownership of the property under consideration is, or may become separated, it is assumed that there are, or will be, suitable arrangements for management and maintenance between the respective parties.

### 24 Environmental Matters

24.1 We have not carried out an environmental audit, or any physical tests or investigations to determine the presence or otherwise of any contamination, but nothing contained in our report should be construed as a statement of fact regarding the existence or otherwise of contamination at the property. However, within our report we will pass comment on any potential sources of contamination or pollution at or in the area of the property based on the limitations of our inspection of the property as defined above.

24.2 If we have been provided with or been asked to commission an environmental audit or other environmental investigation report for the property we will consider the contents. However, unless otherwise stated, we have assumed that the property and any adjoining or nearby areas are not contaminated, or that the cost of any decontamination work would be immaterial to the overall property value, and that there would be no limitations, in respect of any environmental matters, concerning the future use and / or development of the property.

24.3 We would emphasise that we are not qualified to give assurances concerning the presence or otherwise of contamination, which should only be undertaken by an appropriately qualified Environmental Audit Assessor. If such an audit were undertaken and it was established that the property is contaminated it is likely that our valuation will be affected, unless we have already specifically accounted for the cost of remediation, and we reserve the right to amend our valuation advice.

### 25 Site/Ground Conditions

25.1 We will not carry out on site investigations to determine extant ground conditions and services, nor do will we undertake any technical investigations of an environmental, archaeological or geotechnical nature. Accordingly, we will assume that the site is not impacted by any adverse ground conditions, historic mining or mineral extraction activity, gas contamination such as radon, methane gas etc and/or any other noxious substances.

25.2 Similarly, unless stated otherwise in our report, we have assumed that the property or any adjacent property is free from any invasive or alien plant species, such as Japanese Knotweed or Giant Hogweed.

25.3 With regard to sites/properties with redevelopment potential, unless stated otherwise, we will assume that the load-bearing potential for any likely development would not require specialist foundations and/or drainage infrastructure nor would any assumed demolition/removal of existing buildings/structures require a specialist or unique approach.

### 26 Deleterious and Hazardous Materials

26.1 We have not carried out investigations to ascertain whether or not the property has been constructed using any deleterious or hazardous materials or whether such materials have subsequently been incorporated into the construction of the property.

26.2 For the purpose of our valuation we will assume that no such deleterious or hazardous materials or techniques have been used in the construction or since incorporated into the property, although we are unable to report that the property is free from risk in this respect.

### 27 Asbestos Regulations

27.1 The Control of Asbestos Regulations 2012 came into force on 6 April 2012, updating previous asbestos regulations and applies to all non-domestic property.

27.2 The Regulations prohibit the new use of asbestos, whilst existing asbestos containing materials may be left in place, provided that their condition is monitored and managed to ensure that they are not disturbed.

27.3 The responsibility to monitor and manage falls on the 'Duty Holder' who is the person or organisation with a clear responsibility for the maintenance of repair and may be a business owner, landlord or tenant. It should be noted that the Duty Holder is not responsible to survey or remove.

27.4 The Duty Holder must take reasonable steps to identify the existence of asbestos containing materials, record their amount, location and condition and provide these details to anyone who is liable to work or disturb it.

27.5 We assume an up-to-date survey or register is in place and the regulations have been complied with although this should be confirmed by solicitors.

### 28 Fire Safety

28.1 The Regulatory Reform (Fire Safety) Order 2005 replaced previous fire safety legislation and applies to virtually all non-domestic property. The Order became law in October 2006 at which point Fire Certificates ceased to have any effect.

28.2 The essence of the present legislation is to designate a 'responsible person' who has a degree of control over the premises or area of the premises, who will then become responsible for undertaking a Fire Risk Assessment. This assessment considers various matters to protect employees and anyone else who may lawfully be on or near the premises. Thus, both proportionate and appropriate remedial "fire safety" works may be necessary to discharge the "responsible persons" legal duty, to control or reduce the risk to life from fire in a building.

28.3 It is assumed that the property is compliant in regard to The Regulatory Reform (Fire Safety) Order 2005.

### 29 Accessibility

29.1 The Equality Act 2010 came into force on 1 October 2010 and replaces previous legislation concerning discrimination, much of which was contained within the Disability Discrimination Act. Under the Act the duty falls on service



## GENERAL PRINCIPLES AND ASSUMPTIONS FOR THE PROVISION OF VALUATION SERVICES

providers and property owners not to discriminate against a disabled person by not providing a service on the same terms as which it is provided to others, or subject a person to any other detriment.

292 Reasonable steps must be taken to avoid discrimination and may include changing physical characteristics of a building, such as adding access ramps or handrails on stairways, if alternative service provisions are still believed to disadvantage the disabled person.

293 Due to the many issues facing disabled individuals we are not able to comment fully on all matters relating to the Equality Act 2010. In order to properly assess what steps if any need to be taken to ensure that the property is compliant with the Act, we recommend that an Access Audit is undertaken so that any deficiencies are correctly identified.

294 In the absence of a suitable report we have assumed that there are no issues that negatively affect the value of the property reported.

### 30 Title Tenancies and Other Legal Documents

301 We will not carry out formal searches on Title and it is assumed that the property possesses a good and marketable title free of any restrictive covenants, easements and other encumbrances which may affect the value. You should rely on your solicitor in these matters and we reserve the right to amend our valuation should any restrictive covenants, easements or other encumbrances be shown to materially affect the value of the property reported herein.

302 If there is an occupational agreement in place or third party legal reports available we will ask to see a copy of these documents and provide our interpretation. However, no responsibility or liability will be accepted for the true interpretation of any legal documents, and you should rely on a solicitor in this regard.

### 31 Tenant Covenant Status

31.1 Unless stated otherwise we have assumed that any occupational tenant is capable of meeting their financial liabilities under the terms of their lease, and that there are no arrears of rent or undisclosed breaches of covenant. Furthermore, unless specifically stated, we have not undertaken detailed enquiries of any tenant's financial accounts. Instead we have considered a tenant's financial strength with reference to their recent financial highlights (e.g. turnover, pre-tax profit and tangible net worth), where the information is available, and on a more general market perception basis.

### 32 Taxation, Grants and Capital Allowances

32.1 Our valuation is provided exclusive of any Value Added Tax liability which may become payable. Furthermore, no allowance is made for any other potential or existing tax liability such as Capital Gains Tax or Corporation Tax.

32.2 Similarly, unless stated otherwise, no adjustment is made for any unclaimed Capital Allowances or Government grants which may be available.

32.3 It should be noted that as from 1 April 2014 in order to protect the ability to claim historic Capital Allowances a claim must be made before completion of a purchase. We assume such an election will be made where relevant.

### 33 Plant, Machinery, Fixture and Fittings

33.1 Our valuation includes items usually regarded as forming part of the building and comprising landlord's fixtures, such as boilers, heating and cooling equipment, fixed demountable partitions, suspended ceilings, carpets, water systems, lighting, sprinklers, ventilations, lifts and other permanent structures forming an integral part of the building. However, it generally excludes operational plant and machinery, and fixtures and fittings normally considered to be the property of the tenant.

33.2 If we have valued the property as an operational entity (e.g. a petrol filling station, hotel etc) all items of equipment normally associated with such a property are included within the valuation unless otherwise stated. It is also assumed that these are not subject to any hire purchase or lease agreements or any other claim on title.

### 34 Operational Real Estate

34.1 Where the property is valued as an operational entity, we will have regard to RICS Valuation Practice Guidance Application 4 (VPGA 4). Accordingly, reference has been made to the trading history or trading potential of the property, reliance has been placed on information provided to us in this regard. Should this information subsequently prove to be inaccurate or unreliable, the valuation reported could be adversely affected and we reserve the right to amend the valuation accordingly.

### 35 Special Purchaser Value

35.1 Unless otherwise stated, our Valuations do not reflect any element of marriage value or special purchaser value which could possibly be realised by a merger of interests or by a sale to an owner or occupier of an adjoining property, other than in so far as this would be reflected in offers made in the open market by prospective purchasers apart from the purchaser with a special interest.

### 36 Aggregation

36.1 In the Valuation of portfolios, each property is valued separately and not as part of the portfolio. Accordingly, no allowance, either positive or negative, is made in the aggregate value reported to reflect the possibility of the whole or part of the property being put on the market at any one time. In the event that a valuation is required for the portfolio as a single entity it should be expressly requested.



## GENERAL PRINCIPLES AND ASSUMPTIONS FOR THE PROVISION OF VALUATION SERVICES

### 37 Fire Regulations

37.1 We are not able to advise in relation to matters and obligations regarding fire combustibility, resistance or protection. We do not and will not provide any assurances regarding current or future fire regulatory requirements in respect of the property and that may impact upon future occupation, safety or maintenance and associated costs. Further, we are not responsible for the investigation or consideration of the performance, suitability or risk of failure of any product, material or system used in the construction, alteration, repair, treatment or refurbishment of any building or structure and its compliance with applicable regulations in respect of the performance of combustibility, fire resistance or fire protection. Responsibility for implementation and compliance with regulations falls to the building owners as stated in the Government Guidelines.

### 38 Professional Indemnity Insurance

38.1 Matthews & Goodman LLP hold RICS Compliant PI Insurance subject to the following exclusions:-

#### Fire Combustibility Exclusion

M&G is not covered for any claim or claim circumstance arising directly or indirectly out of, or in any way connected with:-

- a) any actual or alleged failure of any product, material or system used in the construction, alteration, repair, treatment or refurbishment of any building or structure to comply with applicable regulations in respect of the performance of combustibility, fire resistance or fire protection.
- b) any Survey or Valuation where such claim or claim circumstance relates in whole or in part to any actual or alleged failure of any product, material or system used in the construction, alteration, repair, treatment or refurbishment of any building or structure to comply with applicable regulations in respect of the performance of combustibility, fire resistance or fire protection.

38.2 Aggregate limit, defence costs in addition, excess not applied to defence costs, with round-the-clock reinstatements. The most Insurers will pay in total for all loss resulting from all claims in any one period of insurance is the limit of indemnity. Insurers will pay defence costs in addition to the loss. If the amount of loss for any claim is greater than the limit of indemnity, the most that will be paid for defence costs for that claim will be an amount in the same proportion that the limit of indemnity has to the loss.

38.3 When the limit of indemnity under the policy and all excess layer policies are exhausted the limit of indemnity will be reinstated but only in respect of any future claim which does not come from:-

- a) the same act, error or omission or series of acts, errors or omissions as a result of or arising directly or indirectly from the same source or original cause as any previous claim.
- b) the same dishonest or fraudulent acts or omissions of one person or persons acting together or in which such person(s) is/are concerned or implicated, as is the subject of any previous claim.

38.4 The number of times that the limit of indemnity is reinstated is unlimited, but is subject to the exhaustion of all excess layer policies prior to each reinstatement.

38.5 Where for whatever reason the excess layer insurer(s) do(es) not pay in respect of a claim and/or defence costs, this will not count towards the exhaustion of the excess layer limit of indemnity with regards to when the limit of indemnity is reinstated under the policy.

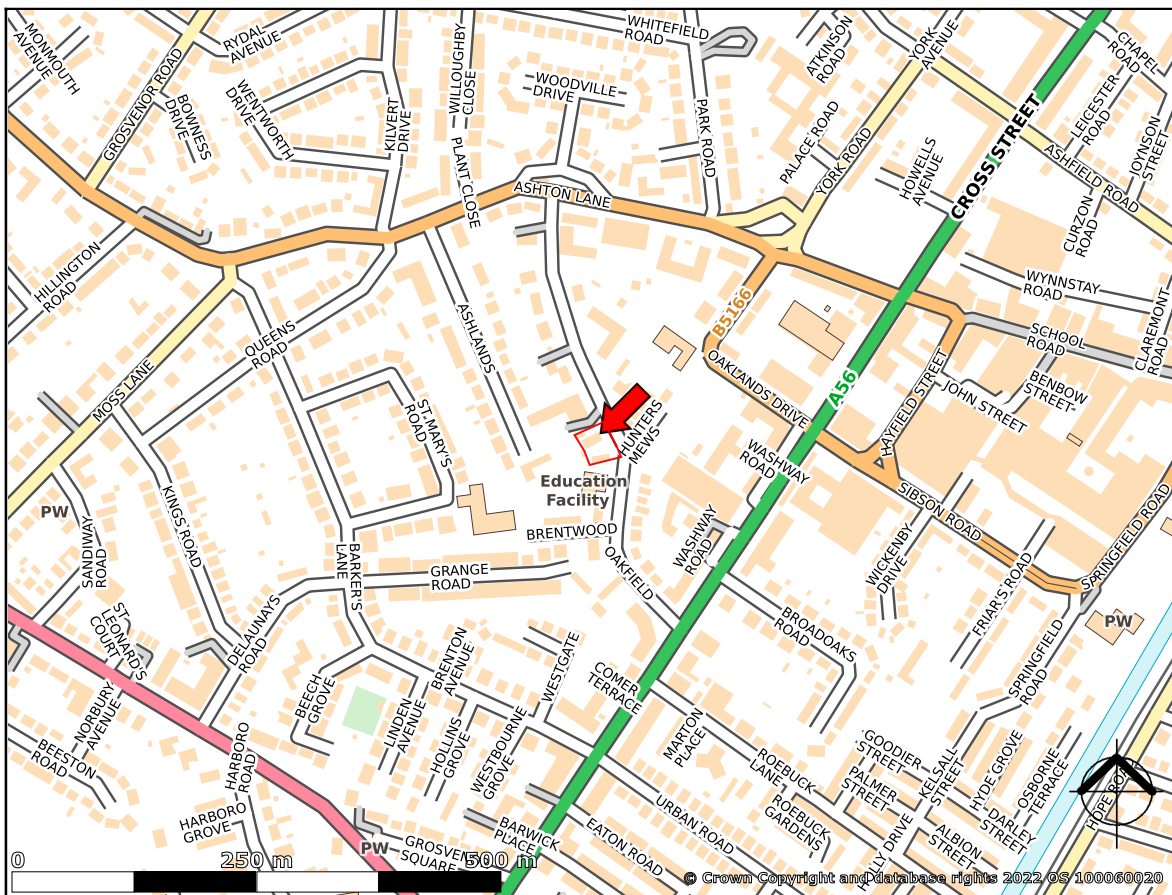
38.6 In any event, reinstatement of the limit of indemnity will only occur if the excess layer professional indemnity insurance has been effected and maintained for the entire period of insurance.



## Appendix Three

### Location Plan

35 Oakfield, Sale, M33 6NB



created on **edozo**

Plotted Scale - 1:7,500

NOTE: Matthews & Goodman is a Limited Liability Partnership (LLP) which is owned by Equity Members of Matthews & Goodman LLP. A list of Members is available on application to the LLP Secretary at our registered office at 33 Robert Adam Street, London W1U 3HR. It is registered in England and Wales with registered number OC312368. The term 'partner' is used to refer to a member of the partnership, or to an employee of equivalent standing and qualifications. Matthews & Goodman LLP provides its services subject to its Terms of Business, a copy of which is available on request.

## Appendix Four

Title Plan Extract







# Appendix Five

## Photographs





External elevations



External elevations





**External elevations**



**Flat D**



Communal areas



Communal areas





**Appendix 2 - Appeal Decision (APP/P5870/W/16/3159137)**

## Appeal Decision

Hearing held on 21 March 2017

Site visit made on 21 March 2017

**by Richard S Jones BA (Hons) BTP MRTPI**

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

**Decision date: 12 May 2017**

**Appeal Ref: APP/P5870/W/16/3159137**

**The Thatched House Hotel, 135-139 Cheam Road, & 133 Cheam Road, Cheam, Sutton SM1 2BN**

- 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 Churchill Retirement Living against the decision of the Council of the London Borough of Sutton.
- The application Ref B2016/73749/FUL, dated 15 February 2016, was refused by notice dated 19 August 2016.
- The development proposed is the demolition of existing buildings and redevelopment to form up to 30 one and two bed sheltered apartments for the elderly including communal facilities (Category II type accommodation), access, car parking and landscaping.

### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and redevelopment to form up to 30 one and two bed sheltered apartments for the elderly including communal facilities (Category II type accommodation), access, car parking and landscaping at The Thatched House Hotel, 135-139 Cheam Road and 133 Cheam Road, Cheam, Sutton SM1 2BN, in accordance with the terms of the application Ref B2016/73749/FUL, dated 15 February 2016, subject to the conditions as set out in the attached schedule.

### Preliminary matters

2. It was confirmed at the hearing that the list of plans to be considered in the determination of the appeal, as set out in the Statement of Common Ground (SoCG), should be amended to reflect that drawing numbers 20062CH PO2 and 20062CH P10 are superseded by drawing numbers 20062CH PO2 Rev A and 20062CH P10 Rev A, and that drawing number 20062CH P12 should be added to the list. These were submitted at application stage in response to queries from the Council relating to trees. No party is therefore prejudiced by this amendment.
3. It was also confirmed by the main parties that the documents labelled as confidential should not be treated as such, thereby allowing me to take them into account in my determination of the appeal.
4. For reasons of precision, I have amended the first part of the address of the appeal site from that which is provided on the application form, to reflect that **set out in the Council's decision notice.**

5. At the hearing, the appellant provided two copies of the Unilateral Undertaking, with the signatories split over the two documents. To avoid any potential legal complications I subsequently requested, on a non-prejudicial basis, a single version signed by all parties. This was received 2 May 2017.
6. The appellant submitted further evidence after the close of the hearing in the form of a letter dated 20 March 2017 from Gavin Barwell MP, Minister of State for Housing and Planning and Minister for London. I sought the views of the Council on whether I should accept it and its content. The Council has not therefore been prejudiced by my acceptance and consideration of it. Given the date of the letter I am also satisfied that it would not have been possible to provide it within the timetable for the hearing procedure.

### **Application for costs**

7. At the Hearing applications for costs were made by Churchill Retirement Living Limited against the Council of the London Borough of Sutton and by the London Borough of Sutton against Churchill Retirement Living Limited. Both applications are the subject of separate Decisions.

### **Main Issues**

8. The main issue is whether the proposal makes adequate provision for affordable housing.

### **Reasons**

9. The appeal relates to a proposal for 30 sheltered apartments for the elderly at Nos 133-141 Cheam Road, Sutton. The site is currently occupied by a detached house and a hotel, both of which would be demolished.
10. It is agreed between the parties that an off-site affordable housing contribution is acceptable in this case. The issue in dispute is the amount of contribution which should be provided. The SoCG clarifies that the differences which underpin the respective figures relate to profit, threshold land value and the provision of a review mechanism and overage.

### **Profit**

11. The appellant has adopted a developer profit of 20% of the Gross Development Value (GDV) to their viability assessment of the level of affordable housing contribution which should be applied. The Council consider this should be 17.5%.
12. 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 development, such as requirements for affordable housing, 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. **The level of developer's profit that would ensure a competitive return is not defined.** The Planning Practice Guidance<sup>1</sup> (PPG) explains that this will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. It is stated that a rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.

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<sup>1</sup> Paragraph: 015 Reference ID: 10-015-20140306

13. I have noted the evidence that there is a significant forecast for growth for sheltered accommodation and that there is a significant level of unmet demand for the same. This corresponds with the reference in the **Council's** evidence to its Strategic Housing Market Assessment (May 2015) which highlights that Sutton is expected to see a notable increase in the older person population over the next 18 years. A demand for sheltered housing is also reflected in that the appellant is seeking to build a second sheltered housing scheme in the Borough within a short space of time.
14. Nevertheless, there are a number of inherent sector specific risks with this form of development which materially differ to that of general needs housing. The 30 apartments would be provided in a single block thereby preventing a phased approach which would assist in cash-flow and allow for risk reappraisal. In this regard, the Council agreed at the hearing that there were more risks associated with flatted development than houses. However, it was also explained that sheltered housing schemes require a much greater degree of completion before sales can be achieved than a conventional market led flatted development **as older people are less inclined to buy 'off plan' without seeing** the dwelling and its communal facilities, common areas and support infrastructure. This provides a slower return on investment and a longer period of uncertainty and cost exposure.
15. The appellant has explained that although factors such as sales rates are included elsewhere in the appraisal, this will relate to increased finance costs rather than risk. These **are two separate matters and I'm not therefore** convinced that this would amount to double counting as suggested by the Council. A restricted occupancy also limits the marketability of such housing in comparison to general needs development.
16. Against this, there are aspects of the sector where risks are reduced, including the likelihood of cash buyers without mortgage and the benefits associated with the appellant being a specialist in the provision of this type of accommodation. However, it is necessary to consider the whole sector specific risk profile in the context of policy and guidance on this matter. Indeed, the PPG<sup>2</sup> recognizes **that for older people's housing, the specific scheme format and projected sales** rates may be a factor in assessing viability.
17. I have noted the evidence provided by the Council of schemes where developers have been prepared to accept a lower return. However, these all appear to relate to general market flats rather than sheltered housing where there are likely to be restrictive occupancy conditions attached to any planning permission. Therefore, whilst accepting that both are Class C3 uses, there are material distinctions between them such that they do not serve as direct precedents to the appeal proposal.
18. The appellant has also provided an extensive list of Churchill Retirement Living and McCarthy and Stone schemes where a 20% profit on GDV has been accepted at other locations. Although I accept that dates, locations, scheme size and local market dynamics will vary, there is, nevertheless, a clear common denominator in that a 20% profit was applied in all cases.

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<sup>2</sup> Paragraph: 018 Reference ID: 10-018-20150326

19. Moreover, a 20% profit was also considered acceptable by the Council at the Carshalton College site in Sutton which is currently being implemented by the appellant. I accept that the prevailing market conditions and the sizes of the schemes differ, nevertheless, this further **weighs in favour of the appellant's** position on this matter.
20. The appellant has also provided a number of appeal decisions<sup>3</sup> where the Inspector has accepted a 20% profit. Whilst I am unconvinced that the nature of the schemes at Cornwater Fields and Flaxley Road are sufficiently analogous to assist me in this case, the Inspectors' decisions for the Former Royal Hotel and 2-2A Crystal Palace Road do again add weight to the reasonableness of a 20% profit to provide a competitive return. Despite the assertion of the Council, the latter does apply to a London site.
21. Although the letter received from HSBC Bank is not specifically aimed at this development, it does nonetheless provide further evidence of a likely funding requirement of 20% for such schemes. I also agree that the constrained nature of the site will pose a number of difficulties to its development. Whilst the Council say that contingencies of 5% would be at the upper end of the scale for such matters, I have no evidence to demonstrate that this is excessive in this case.
22. I therefore find that in the circumstances of this case, a profit of 20% is not unreasonable or excessive and, in accordance with the Framework, would represent a competitive return to attract a willing developer. Accordingly, it can be used in an assessment on viability in this case.

### ***Threshold land value***

23. The PPG<sup>4</sup> advises that central to the consideration of viability is the assessment of land or site value. It says that the most appropriate way to assess land or site value will vary from case to case but in all cases, land or site value should provide a competitive return to willing developers and land owners and be informed by comparable, market-based evidence wherever possible.
24. The parties are in agreement in relation to the Existing Use Value (EUV) of £1,850,000 for the site derived from £1,200,000 for the hotel and £650,000 for the house at No 133 Cheam Road. The parties also agree on a EUV plus a premium for the hotel of 20%, as an incentive for the land owner to sell. It is not agreed that the same should be applied to the dwelling at No 133.
25. The PPG<sup>5</sup> explains 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."***
26. In this regard, £650,000 represents a competitive return to the owner of No 133, if that person was looking to sell. However, the dwelling is in use and externally appeared to be in a reasonable state of repair. An option available

<sup>3</sup> Appeal References: APP/N3020/S/16/3154302; APP/N1215/A/09/2117195; APP/A5840/S/15/3121484; and APP/N2739/S/16/3149425

<sup>4</sup> Paragraph: 023 Reference ID: 10-023-20140306

<sup>5</sup> Paragraph: 024 Reference ID: 10-024-20140306



to the landowner is therefore to continue living at the property. If this is the case and there is no intention to sell, the EUV would provide no incentive to do otherwise.

27. In support of its position, the Council has made reference to an appeal decision<sup>6</sup> relating to No 1 Coombehurst Close. In consideration of that case the **Inspector states that "by definition, a property will not be offered to market unless the market price includes an incentive to sell."** It is also stated that an **"incentive over and above that value is only necessary where it is desired to suppress an existing use and where the current use value or its value for a realistic alternative is greater than the market value."**
28. In consideration of the above decision, I have had regard to the glossary of terms provided within the **RICS guidance note for 'Financial viability in planning' (the RICS guidance note)**. This defines current use value (CUV) as the market value for continuing the existing use of the site or property assuming all hope value is excluded, including value arising from any planning permission or alternative use. EUV is similarly defined. Market value (MV) is defined as the **"estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."** MV does not therefore exclude other factors, such as hope value or the value arising from any planning permission or alternative use. Accordingly, CUV cannot be greater than the MV; it can only be less than it or the same. Notwithstanding the Coombehurst Close decision, this conclusion was common ground between the parties at the Hearing.
29. In the Coombehurst Close decision, the Inspector goes on to state that **"the current use value is its use as housing; there is no incentive needed to change its use. Any premium paid is above the market norm for housing use and, according to Guidance 023, should be discounted."** In this regard, it is the **Council's position that a premium reflects an incentive to change the use and that in this case no incentive is required to come forward for an alternative use as the residential use of the site has already been crystalized.** This approach would imply that in order to justify any premium, there must be a material change in the use of the land.
30. Although I do not have the full details of the Coombehurst Close case, it is evident from the decision that it relates to the redevelopment of land occupied by a single dwelling house. This materially differs from the scheme currently before me, which relates to two sites combined together to allow for a larger development scheme that generates additional value.
31. Therefore, for the purpose of assessing viability, the use of a site for a low density, single dwelling is not the same as a more intensive use for sheltered apartments, despite it being agreed that both fall within the same Use Class. This would be equally recognized by both the owner of No 133 and the hotel in their expectation of the sale price for their properties as reflecting a realistic alternative use and the associated hope value. A landowner of a house and a landowner of a commercial property would not be motivated any differently in this regard. I do not therefore consider the appeal proposal to be that envisaged within the Mayor London Draft Affordable Housing and Viability

<sup>6</sup> Appeal Ref: APP/Q5300/A/14/2224634

Supplementary Planning Guidance 2016 (the Draft SPG), which states that where an existing use and its value to a landowner is due to be retained in a development, a lower benchmark would be expected.

32. Similarly, I have noted the above comments from the Inspector for the Coombehurst Close case and advice of the PPG, that where transacted bids are significantly above the market norm, they should not be used as part of this exercise. However, in my view, this advice relates to transactions that have already occurred where the purchaser has overpaid for the land and in doing so this should not be at the expense of providing, for example, an appropriate level of affordable housing, rather the EUV plus a premium being applied to the appeal proposal to incentivise the landowner to become a willing seller.
33. In terms of the amount, the Draft SPG provides a general support for the use of EUV plus and highlights that the premium could be 20% to 30%, but this will reflect site specific circumstances and may be considerably lower. The definition of EUV plus a premium in the RICS guidance note refers to 10% to 40% as an incentive for the landowner to sell. Therefore, in the circumstances of this case, a 20% premium to the landowner of No 133 represents a reasonable and justified point on this spectrum. The Inspector for the above referenced appeal at Crystal Palace Road also arrives at the same conclusion regarding this level of premium, which moreover is that agreed for the hotel.
34. I do not therefore agree that the Coombehurst Close appeal decision supports **the Council's position in the particular circumstances of this case**. In my view there has to be a premium above the EUV to provide a competitive return to incentivise the landowner of No 133 to become a willing participant in the release of the site. Accordingly, I find no reason to disagree with the **appellant's** benchmark land value figure of £2,220,000, for both sites, which can be used in an assessment on viability in this case.

### ***Review mechanism/overage***

35. The PPG<sup>7</sup> is clear in that viability assessment in decision-taking should be based on current costs and values and that planning applications should be **considered in today's circumstances**. However, it is stated that where a scheme requires phased delivery over the medium and longer term, changes in the value of development and changes in costs of delivery may be considered.
36. Policy 3.12 of the London Plan states that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential schemes, having regard, amongst other matters, to the need to encourage rather than restrain residential development and the need to promote mixed and balanced communities. It is stated that negotiations on sites should take account of their individual circumstances including development viability, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation (**'contingent obligations'**), and **other scheme requirements**. Contingent obligations are defined as the use of S106 agreements to enable and define mechanisms for the re-appraisal of viability prior to the implementation of schemes in whole or in part which are likely to take many years to implement.

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<sup>7</sup> Paragraph: 017 Reference ID: 10-017-20140306

37. Therefore, although the London Plan supports re-appraisal of viability, this relates to schemes which are likely to take many years to implement. This is reinforced in paragraph 4.3.3 of the Mayor of London Housing Supplementary Planning Guidance March 2016 (the Housing SPG). It is also consistent with the PPG, and the RICS guidance note **and with the Council's Planning Obligations Supplementary Planning Document (SPD)**. In the case of the latter, two circumstances are highlighted where the Council will require a new viability appraisal, neither of which are applicable to the appeal proposal. Whilst the RICS guidance note does not amount to statutory planning guidance, the parties agreed at the hearing that great weight should be afforded to it as it provides professional guidance on such matters.
38. The appeal scheme however, would be developed in a single phase and it was agreed at the hearing that this would not amount to a long build out time. The PPG and the London Plan does not therefore advocate the use of such mechanisms in the case of the appeal proposal.
39. The Housing SPG (paragraph 4.3.2) explains that review mechanisms should be based on the most robust data available, this generally will be the price paid for the completed unit. **This would support the Council's position** for a review mechanism to allow a post completion assessment on actual sales values. However, notwithstanding the above, the Housing SPG clarifies that this will depend on the timing and specifics of the review. In this regard, Policy 3.12 refers to re-appraising the viability of schemes prior to implementation when it is not possible to use actual sales values. Such a stage of review is also **supported by the Council's Planning Obligations SPD**. Moreover, the PPG is clear in that viability assessment in decision-taking should be based on current costs and values and these have been agreed in the SoCG. This approach provides a greater certainty to the decision as to whether or not to proceed with the development, thereby encouraging rather than restraining residential development.
40. The Draft SPG does **introduce a 'threshold approach', whereby schemes** which do not meet 35% affordable housing without public subsidy are required to submit viability information. It sets out the reviews which should apply to such schemes to ensure that any future uplift in values contributes to the delivery of the maximum reasonable amount of affordable housing. The first being an early review where an agreed level of progress on implementing the permission is not made within two years of the permission being granted. The UU provided by the appellant would make provision for such an approach by **triggering a 'Revised Viability Appraisal' in the event that the development has not reached 'Shell and Core Finish' within 24 months from the date of the planning permission**. However, the support for this approach is derived from a Draft SPG, for which it was agreed at the hearing, should be given only limited weight.
41. The UU does not, in any case, **make provision for 'a near end of development review' as set out in the Draft SPG**. However, whilst this approach may indicate a **'direction of travel'** for the London Plan, it is presently inconsistent with the PPG, and the adopted London Plan and the Housing SPG. This therefore further diminishes the weight I have afforded to this particular aspect of it and any concern that such provision has not been made in this case.

42. Moreover, the Government is seeking to boost significantly the supply of housing and a post completion assessment as suggested by the Council would effectively require an overage payment that would likely act as a disincentive to the implementation of the proposal. This approach to a single phase scheme would also be inconsistent with the PPG.
43. Whilst the Council state that such measures are becoming more commonplace **and that this hasn't deterred other schemes coming forward, I have not been** provided with any such examples, and this reduces the weight I am able to give to such assertions. I accept the appellant has not provided examples of where development has been deterred by such clauses, however, examples of appeal decisions<sup>8</sup> have been provided where the Inspector has found that an overage type clause brings a significant element of uncertainty.
44. I therefore find that the review mechanism provided within the UU and an overage style payment as suggested by the Council, are not necessary to make the development acceptable in planning terms. As such, they 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 Framework. I have not therefore taken the review mechanism contained within the UU into account in reaching my decision.

### Other issues

45. The appeal site is situated adjacent to the Landseer Road Conservation Area. The milestone on the appeal site frontage is also a Scheduled Monument. For such matters, paragraph 132 of the Framework makes clear that great weight should be given to the conservation of designated heritage assets, and to their setting.
46. **I note that the Council's Officer report concludes that the** proposals would present a high quality design that would complement the character and appearance of the adjacent Landseer Road Conservation Area and does not have a harmful impact on the setting of the scheduled monument. I find no reason to disagree with these conclusions and find that the proposal would at least preserve the character and appearance of the Conservation Area. I also note that Scheduled Monument Consent<sup>9</sup> has been granted by Historic England to remove the existing wall adjacent to the milestone and the construction of a new dwarf wall and railings.
47. I have considered third party comments in respect of access and parking. However, as noted by the Highway Authority, the proposal will meet the required minimum visibility splays and that the level of parking is sufficient for the use. Therefore, subject to the imposition of conditions, no objections are raised by the Highway Authority and I find no reason to take a contrary position.
48. Given the separation, the proposal would not result in unacceptable loss of privacy or light to occupants of Wrighton Court and subject to the imposition of conditions, the proposal would not result in unacceptable harm to the living conditions of other neighbouring residents in Cheam Road, Roseberry Road or Derby Road. I am also satisfied that matters relating to refuse, cycle storage and landscaping can be resolved by way of condition.

<sup>8</sup> Appeal References: APP/Q1255/S/15/3005876 and APP/N0410/13/2207771

<sup>9</sup> Reference: S00140300

**Conditions**

49. The conditions contained within the SoCG were used as a basis for discussion at the hearing. In addition to the standard condition that limits the lifespan of the planning permission, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. As agreed at the hearing, I also attach a condition restricting the age of future occupiers to ensure compliance with sheltered housing requirements.
50. Conditions relating to external finishes and landscaping are necessary to ensure a satisfactory appearance to the development. Tree protection conditions are necessary to ensure their retention and contribution to visual amenity. A condition relating to boundary treatments is necessary in the interests of the character and appearance of the area, privacy and security. This condition and the landscaping condition are also necessary to ensure the setting of the Ancient Monument.
51. Conditions relating to plant noise and obscure glazing for specified windows are necessary to protect the living conditions of existing and future residents. A condition requiring a Construction Logistics Plan is necessary to minimise inconvenience and disturbance to nearby residents, and in the interests of highway safety. Conditions relating visibility splays and parking are also required in the interests of highway safety and a condition requiring secure cycle/buggy parking is necessary to encourage access by non-car modes.
52. Conditions relating to lighting and to secure the recommendations of the bat survey are necessary to minimise potential disturbance to bats and to enhance the conservation status of the same. Conditions are necessary to deal with any unforeseen contamination and to protect unacceptable risks to underlying groundwaters through piling. A condition relating to refuse storage facilities is necessary to serve the needs to development.
53. A condition relating to designing out crime is necessary to reduce the opportunities for criminal behaviour and contribute to a sense of security. This is distinct from the technical security standards covered by Part Q of the Building Regulations. As agreed at the hearing, it is necessary to set a trigger for the agreement of such matters prior to superstructure stage so as to enable approved measures to be built into the scheme.
54. To ensure compliance with Policies DM6 and DM9 of the Site Development Policies DPD, conditions relating to energy and water efficiency are necessary. Conditions are also required to ensure satisfactory methods of surface water drainage and to reduce the risk of pollution.
55. The PPG advises that care should be taken when using pre-commencement conditions. However, in the interests of proper planning and to avoid any potentially abortive works, it is appropriate that the conditions relating to a Construction Logistics Plan, tree protection, energy and water efficiency should be approved prior to the commencement of any works within the main body of the site. As discussed at the hearing, the condition relating to external materials does not need to be agreed prior to commencement and I have amended the trigger accordingly.
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56. As agreed at the hearing, for a number of the conditions I have amended the wording to ensure compliance with the provisions of paragraph 206 of the Framework.

### **Conclusions**

57. The proposal would not achieve the overall borough-wide target of Core Planning Strategy Core Policy BP2, that 50% of all new housing from all sources is affordable. However, in accordance with Policies 3.11 and 3.12 of the London Plan and Policy DM25 of the Site Development Policies DPD, it has been **demonstrated that the sum of £314,085 contained within the appellant's UU** represents the maximum reasonable amount of affordable housing contribution arising from the appeal proposal. In doing so, the proposal would also accord with Policy 8 of the emerging Sutton Local Plan, which, although agreed by the parties as having limited weight due to its stage of preparation, is nonetheless consistent with the London Plan and is a material consideration.
58. As the significant need for affordable housing in the Borough is not in dispute, the contribution would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework. The Council has confirmed that it is satisfied regarding the UU (other than the review mechanism) and I find no reason to disagree.
59. Moreover, the Council recognise the need to provide housing for older people as part of achieving a good mix of housing. In this respect, the London Plan sets out a figure of 70 units as an indicative annualised strategic benchmark to inform local targets and performance indicators for specialist housing for older people between 2015 – 2025 in Sutton. Therefore, the affordable housing and specialist sheltered accommodation arising from the appeal proposal would contribute towards this target and the objectives of Policy 3.9 of the London Plan and paragraph 50 of the Framework, which seek to promote mixed and balanced communities. In doing so, the proposal would meet the social dimension of sustainable development.
60. The associated benefit of freeing up larger, under occupied dwellings within the borough and elsewhere also weighs moderately in favour of the proposal. This benefit would not be materially diminished even if some of the houses were purchased by people who do not currently live in the Borough.
61. The affordable housing contribution of £618,928 required by the Council would render the scheme economically unviable and on this basis it is likely that neither identified benefit would be realised. This would be contrary to paragraph 173 of the Framework, which seeks to provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
62. For these reasons, and having considered all written representation and all matters raised at the hearing, I conclude the appeal should be allowed.

*Richard S Jones*

INSPECTOR



**SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Ground floor survey; First floor survey; 20062CH P01; 20062CH P02 Rev A; 20062CH P03; 20062CH P04; 20062CH P05; 20062CH P06; 20062CH P07; 20062CH P08; 20062CH P09; 20062CH P10 Rev A; 20062CH P12; and 171 LS 001.
3. The occupation of the apartments (excluding any on-site staff) shall be restricted at all times to people of 60 years old and above or those over that age with a spouse or partner of at least 55 years old.
4. Prior to the commencement of superstructure works, full details including samples and a schedule of materials to be used within the external elevations of the buildings, including windows, doors and porches, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials.
5. Prior to the occupation of any of the apartments, details of all boundary treatments and means of enclosure shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
6. Notwithstanding any details shown on any approved plan, prior to the occupation of the apartments, full details of all hard and soft landscaping and replacement tree planting shall be submitted to and approved in writing by the local planning authority, including the detailed design layout for the public realm and landscape design around the milestone. All landscaping and replacement tree planting shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a timetable agreed with the local planning authority. Any trees or plants that (within a period of five years after planting) are removed, die, or are (in the opinion of the local planning authority) damaged or defective, shall be replaced in the first available planting season with others of a similar size/species/number as originally approved, unless the local planning authority gives its consent to any variation.
7. The position of all new underground services shall be located outside the root protection area of retained trees. Should any services fall within the root protection area of retained trees then all ground works shall abide by the recommendations in Volume 4; National Joint Utilities Group Guidelines for the Planning, Installation, and Maintenance of Utility Apparatus in Proximity to Trees (issue 2). Trenches, if required, will be dug by hand or through boring techniques only. Evidence of compliance with these guidelines shall be submitted to the local planning authority as any such instance arises.
8. Prior to the commencement of development, a revised and site specific arboricultural method statement shall be submitted to and approved in writing by the local planning authority. The revised submissions shall detail:
  - a) specific no-dig ground protection measures;

- b) the position of site access, storage, and contractor facilities; and
- c) foundation design and construction where any foundations fall within or adjacent to the root protection area of retained trees.

Fencing and ground protection measures shall, once installed and prior to the commencement of works on site, be inspected and approved by the local planning authority or signed off as fit for purpose by the retained arboricultural consultant. The development shall be carried out in accordance with the approved method statement.

9. Notwithstanding any details shown on the approved plans, the upper floor windows on the flank elevations of the building serving units 12a, 14, 21 and 26 shall be fixed shut, non-opening and obscure glazed to a height of 1.7 metres above the finished floor level and shall be retained as such thereafter.
10. Prior to the occupation of the apartments, details of the external lighting within the site shall be submitted to and approved in writing by the local planning authority. The development shall be carried in accordance with the approved details prior to the occupation of the apartments.
11. No development shall take place until a Construction Logistics Plan which sets out details of how the construction of the development hereby permitted will be managed, has been submitted to and approved in writing by the local planning authority. The statement should include details of:
  - a) parking for vehicles of site personnel, operatives and visitors;
  - b) loading and unloading of plant and materials;
  - c) storage of plant and materials;
  - d) a programme of works (including measures for traffic management);
  - e) provision of boundary hoarding, behind any visibility zones;
  - f) construction traffic routing;
  - g) means to minimise dust pollution, air pollution and suppress noise and vibration in order to protect surrounding residential properties from any disturbance;
  - h) means to prevent deposition of mud on the highway;
  - i) means to manage and control construction traffic;
  - j) signing system for works traffic; and
  - k) **compliance with Sutton Council's Code of Practice for the Control of Pollution and noise from Demolition and Construction Sites, May 2008.**

Construction works shall take place solely in accordance with the approved details.

12. The apartments shall not be occupied until pedestrian/vehicle visibility splays of 2m by 2m have been provided on each side of the access, the depth measured from the back of the footway (or verge) and the widths outwards from the edges of the access. The visibility splays shall be retained and maintained thereafter and no fence, wall or other obstruction to visibility exceeding 0.6m in height above the surface of the adjoining highway shall be erected within the area of such splays.
13. The apartments shall not be occupied until space has been laid out within the site in accordance with the approved plans for 13 cars to be parked. The



parking area shall be used and permanently retained exclusively for its designated purpose.

14. The apartments shall not be occupied until space has been laid out within the site in accordance with the approved plans for secure cycle/buggy parking. The cycle/buggy parking area shall be used and permanently retained exclusively for its designated purpose.
15. The apartments shall not be occupied until refuse storage facilities have been provided in accordance the approved plans. The storage provision shall be used and permanently retained exclusively for its designated purpose.
16. Prior to the commencement of superstructure works, full details for 'Designing Out Crime' shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.
17. 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 the development is resumed or continued.
18. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
19. Prior to the commencement of development, an Energy Statement shall be submitted to and approved in writing by the local planning authority. A communal heating system incorporating combined heat and power (CHP) should be considered as the preferred option to provide heating and hot water for the development. If a communal CHP network is not proposed, the Energy Statement should clearly identify why this would not be feasible and/or commercially viable. Prior to the occupation of the apartments, details demonstrating that the development has been carried out in accordance with the approved Energy Statement shall be submitted to and approved in writing by the local planning authority. If the development is unable to meet the agreed reduction in CO<sub>2</sub> emissions through the approved Energy Strategy, then any shortfall should be made up through the application of further sustainability measures, unless otherwise approved by the local planning authority in writing.
20. Prior to the commencement of development, a scheme for the management of surface water run-off shall be submitted to and approved in writing by the local planning authority. The scheme shall identify appropriate site drainage and flood risk management measures, including SuDS, in order to manage surface water run-off as close to its source as possible in accordance with the **Mayor's drainage hierarchy**. The proposed scheme should ensure that the peak run-off rate for the 1 in 100 year 6-hour rainfall event (plus climate

change) will be as close as reasonably practicable to and no more than 3 times the calculated greenfield run-off rate for the same event, and ensure a minimum discharge rate of 5 litres per second per outfall.

21. Prior to the occupation of the apartments, written confirmation that the approved site drainage and flood risk management measures, including SuDS, have been implemented as part of the development as built shall be submitted to and approved in writing by the local planning authority. Where different from the approved details, further evidence must be provided to show that the peak run-off rate for the 1 in 100 year 6-hour rainfall event (plus climate change) will be as close as reasonably practicable to and no more than 3 times the calculated greenfield run-off rate for the same event, and ensure a minimum discharge rate of 5 litres per second per outfall. All the measures implemented shall be retained for as long as the development is in existence.
22. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to Controlled Waters.
23. Prior to occupations of the apartments, a completed Water Efficiency Calculator for New Dwellings shall be submitted to and approved in writing by the local planning authority to show that internal potable water consumption will be limited to 110 litres per person per day (l/p/d) based on the **Government's national calculation method for water efficiency** for the purpose of Part G of the Building Regulations. The Water Efficiency Calculator should be accompanied by details of the location and type of all appliances or fittings that use water, the capacity or flow rate of any equipment and any rainwater or greywater collection systems incorporated as part of the development.
24. All plant required by the use shall be installed, together with any associated ancillary equipment, so as to prevent the transmission of noise and vibration into adjacent flats. The rated noise level from all plant and ancillary equipment shall be at least 10 dB below the measured background noise level when measured at the nearest noise sensitive receptor and shall be maintained and retained as such. The method of assessment should be carried in accordance with BS4142:2014 Methods for rating and assessing industrial and commercial sound.
25. The development shall be carried out in accordance with the recommendations set out in the Phase 2 Bat Survey, dated May 2016 and prepared by Ecological Survey and Assessment Limited.

**Appearances**

## FOR THE APPELLANT:

Mr Neil Cameron, QC	Landmark Chambers
Mr Andrew Burgess	Churchill Retirement Living Limited
Mr Nigel Jones	Chesters Commercial
Mr Damien Lynch	Planning Issues
Mr Alex King	Planning Issues
Mr Ben Hatt	Planning Issues

## FOR THE LOCAL PLANNING AUTHORITY

Ms Karen McDonnell	Senior Planning Officer
Mr Jody Williams	Deputy Planning Manger
Mr Stuart Cook	Aspinall Verdi

## INTERESTED PERSONS:

Mr Ralph Sargeant	Interested party
Mr Paresh Patel	Interested party

**DOCUMENTS SUBMITTED AT THE HEARING**

1. List entry summary for the milestone scheduled monument outside No 135 Cheam Road, Cheam.
2. Development Appraisal, Churchill Retirement Living, 20 March 2017 – 133 – 139 Cheam Road, Aspinall Verdi Changes for Hearing.
3. Policy 8 of the Draft Sutton Local Plan.
4. Aspinall Verdi Development Appraisal, The Thatched House Hotel, Hearing Statement Appraisal 23.3% (7 units), Report Date: 21 March 2017.
5. Scheduled Ancient Monument Consent Ref: S00140300 dated 30 June 2016.
6. Signed Unilateral Undertaking with signatures spread over two documents.
7. London Borough of Sutton Local Development Framework Planning Obligations Supplementary Planning Document April 2014.
8. London Borough of Sutton Local Development Framework Site Development Policies DPD Policies DM5, DM6 and DM9.

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**DOCUMENTS RECEIVED FOLLOWING THE CLOSE OF THE HEARING**

1. Letter dated 20 March 2017 from Gavin Barwell MP, Minister of State for Housing and Planning and Minister for London.
2. Consolidated signed and dated Unilateral Undertaking (10 May 2017).

**Appendix 3 – Appeal Decision (APP/Q4245/W/19/3243720)**



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## Appeal Decision

Inquiry Held on 19-23 October, 2-6 November, 9-13 November 2020

Site visits made on 17 and 31 October 2020

**by Christina Downes BSc DipTP MRTPI**

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

**Decision date: 25<sup>th</sup> January 2021**

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**Appeal Ref: APP/Q4245/W/19/3243720**

**Land at Warburton Lane, Trafford**

- 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 Redrow Homes Limited against Trafford Borough Council.
  - The application, Ref 98031/OUT/19, is dated 31 May 2019.
  - The proposals are for a residential development of up to 400 dwellings, including the creation of new points of access, provision of formal and informal open space, ancillary landscaping, car parking and highway and drainage works.
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### DECISION

1. For the reasons given below, the appeal is dismissed.

### APPLICATION FOR COSTS

2. At the inquiry an application for costs was made by Trafford Borough Council against Redrow Homes Limited. This application is the subject of a separate Decision.

### PROCEDURAL MATTERS

3. Due to time constraints, it was agreed that the costs application could be made in writing. A timetable was drawn up accordingly. Furthermore, there were a number of points relating to the Planning Obligation by Unilateral Undertaking (the UU) that required further consideration by the main parties. I therefore agreed to an extension of 21 days for the Deed to be completed and I allowed each main party to submit any final comments within that timescale. The inquiry was closed in writing on 10 December 2020.
4. The proposals are **for "up to"** 400 dwellings and thus give the potential for a lesser number. However, that cannot be assumed at this stage and no evidence was provided by the Appellant to support any specific reduction in quantum. In the circumstances, my consideration will be on the basis of a development of 400 houses.
5. There were 10 putative reasons for refusal. It was agreed that the provision of primary school places could be addressed in the UU and that the mitigation of adverse highway impacts could be controlled through planning conditions. Remaining objections include the adverse effect on heritage assets and archaeology; the failure to integrate with the adjoining settlement and provide for sustainable growth; the inaccessibility of the site and dependency on the

private car; the failure to provide affordable housing; and the harm to landscape character.

## PRELIMINARY POINTS

6. The appeal site comprises about 25 hectares of land that lies immediately to the north of the Green Belt and to the south of the Red Brook and settlement of Partington. It is crossed by Warburton Lane, with site 1 on the eastern side and site 2 on the western side. The sites are roughly equal in area and site 1 is bordered on its southern side by Moss Lane.

## THE PARAMETERS PLAN

7. The application was submitted in outline form with all matters reserved, save for access. Drawings were submitted to show the details of two new accesses onto Warburton Lane. The application was also accompanied by a Parameters Plan (drawing no: A16942.010). Amongst other things this shows other access points, termed "emergency/ localised access" denoted by arrows and the main vehicular routes through sites 1 and 2, which are stated to be indicative. *The Town and Country Planning (Development Management Procedure) (England) Order 2015* makes clear that access for the purpose of reserved matters means the accessibility to and within the site in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network. Warburton Parish Council (WPC), who was granted Rule 6 status, considered that the Parameters Plan did not provide the necessary detail to allow the matter of access to be determined.
8. It would not be reasonable to expect a Parameters Plan to include all internal roads and footways where layout remains a reserved matter. The Order defines this as how "buildings, routes and open spaces are provided, situated and orientated to each other and to buildings and spaces outside the development". It seems to me that there is some degree of overlap between the two and that it is a matter of judgement as to whether what is shown is sufficient to make an informed decision. There is no requirement for a detailed design or specification at this stage as that will be firmed up when layout is determined. The matter is further complicated by the desire of the Council not to prejudice the provision of the Southern Relief Road (SRR), which would provide a potential link road through site 1 in the policy GM Allocation 41 of Greater Manchester's emerging *Plan for Homes, Jobs and the Environment* (the GMSF). Purely in terms of serving the site itself, I consider that the detail shown on the Parameters Plan is sufficient.
9. There are 3 emergency/ localised access points into site 1 from Moss Lane. These do not appear to link up to the main internal circulation routes. However, it would seem from other information that the intention would be to serve small courtyards of houses close to that road frontage. This would obviously be a matter closely linked to the layout. To allay any remaining concerns, a condition could be imposed that these access points have not been approved at this stage. I do not consider that this would be prejudicial or alter the nature of the application.
10. The Council's **putative reasons for refusal** include the contention that the supporting information is not sufficient to assess the acceptability of the outline proposals. In particular the Parameters Plan is considered too flexible and unspecific. This is a different point to the one raised by WPC and relates



to whether sufficient supporting information has been provided to be able to decide whether 400 dwellings could be accommodated on the site along with all necessary mitigation. In particular, this relates to **the Council's concerns** about the effects on Green Belt boundaries, the landscape, heritage assets and archaeology as well as the SRR referred to above. I consider these matters under the relevant main issues below. However, the Council did have the power to request further details that it considered necessary to enable it to determine the application<sup>1</sup>. It declined to make such a request, which may have been because at this time there were also 2 full planning applications under consideration, but these were subsequently withdrawn.

## REVISIONS TO THE PROPOSALS

11. WPC was concerned about whether various amendments made to the proposals were lawful applying the *Wheatcroft*<sup>2</sup> principles. An updated Parameters Plan was provided to the Council prior to lodging the appeal. The changes included pulling back the development area from adjacent listed buildings and the public right of way crossing site 1; provision of a vista towards Warburton Toll Bridge from site 2; extension of the development area in site 1 towards Moss Lane; introduction of an additional green corridor on site 2; introduction of a pedestrian/ cycle crossing point to Red Brook on each site<sup>3</sup>; and a controlled crossing to Warburton Lane.
12. I have considered all of the proposed changes and do not consider that they materially alter the nature of this outline application. Furthermore, they are addressed in the Environmental Statement Addendum (March 2020), which has been subject to full public consultation. In such circumstances I am satisfied that the Wheatcroft principles would not be offended and that no-one would be prejudiced by taking the proposed amendments into account. Furthermore, it was the revised Parameters Plan that was the focus of consideration at the public inquiry.

## ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

13. There is no dispute that this would be EIA development. An Environmental Statement was submitted with the planning application. As a result of the aforementioned revisions the Addendum was produced to address impacts arising from the proposed changes. In addition, a number of additional updated technical reports were produced to address issues arising from consultation responses, including revised mitigation proposals to the Flixton crossroads and a Geophysical Survey as part of the archaeological assessment. The Environmental Statement and its Addendum are in accordance with the relevant Regulations. No concerns have been expressed that the EIA is other than procedurally or legally correct, and I have no reason to determine otherwise.

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<sup>1</sup> See Part 3 of the *Town and Country Planning (Development Management Procedure) (England) Order 2015*

<sup>2</sup> *Bernard Wheatcroft Ltd. v Secretary of State for the Environment and Another* (1982) 43 P. & C.R. 233

<sup>3</sup> The pedestrian bridges are not being pursued although the Parameters Plan still indicates a potential connection point from each site.

## INSPECTOR'S REASONS

### PLANNING POLICY CONTEXT AND APPROACH TO DECISION MAKING

14. The development plan includes the saved policies in the *Revised Trafford Unitary Development Plan* (UDP), adopted in 2006 and the *Trafford Local Plan Core Strategy* (CS), adopted in 2012.
15. The National Planning Policy Framework (the Framework) states that where strategic housing policies are more than 5 years old and have not been reviewed, as is the case here, the local housing need should be determined through the **Government's standard methodology**. This has given rise to a requirement for 1,369 homes a year, which is a considerable increase over the figures in policy L1 of the CS. On this basis it is agreed that there is a supply of just 2.4 years. The Housing Delivery Test results for 2019 show that just 58% of this requirement was achieved, which is significantly below the expectation in the Framework<sup>4</sup>. The presumption in favour of sustainable development in paragraph 11d of the Framework is thus engaged. Whether subsection i) or ii) applies will depend on my conclusions with regards to the effect on heritage assets.
16. The appeal site is within open countryside to the south of the settlement of Partington and immediately to the north of the Green Belt. Under saved policy C8 it is included in a wider area that is designated as Protected Open Land. The purpose of this is to avoid the need to review Green Belt boundaries in the event that more land is needed for housing in the longer term, following a review of the UDP. This designation was carried forward in policy R4 of the CS where it is termed Other Protected Open Land. The policy itself only permits future use for limited purposes, which do not include a residential development such as is being proposed here. The supporting text explains that the land is not identified for development within the plan period but may be required to meet future housing needs following a strategic review of the Green Belt. No such review has been undertaken.
17. The Proposals Map also shows the appeal sites and land to the east and west as falling within the Priority Regeneration Area of Partington. This is clearly a drafting error as the UDP Inspector indicated that this designation was inconsistent with that of Protected Open Land and therefore the swathe of countryside between the Green Belt and Partington should be excluded. The accompanying proposed modification was accepted by the Council on adoption of the UDP but for some reason has not been removed from the map. Policy L3 in the CS relating to Priority Regeneration Areas is not relevant to the appeal sites.
18. The appeal proposals would conflict with saved policy C8 and policy R4. On the other hand, at the present time the Council is unable to provide sufficient deliverable sites to meet its housing requirement. I heard a great deal of evidence as to why this might be, and the Council emphasised that it was not because insufficient planning permissions were being granted. The evidence indicates that the Council is being pro-active in this regard. Nonetheless it remains the case that the Borough has a serious deficit and in such

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<sup>4</sup> The 2020 Housing Delivery Test results were published on 19 January 2021. They show a result for Trafford of 61%, which remains significantly below Framework expectations.

circumstances the conflict of the appeal development with the two policies mentioned above, which restrict housing supply, is a matter to which I afford limited weight.

19. The GMSF is a spatial framework covering the city region's 10 local planning authorities over the period 2020 to 2037. It is currently at Regulation 19 consultation stage with the examination anticipated mid-2021. Draft policy GM Allocation 41 is a large allocation to the north, east and south of Partington for a mixed use regeneration known as New Carrington. It includes the appeal site and land to the east and west, which is shown as an area for residential use for approximately 420 units at an average density of 25 dwellings per hectare.
20. The associated New Carrington Masterplan also shows a SRR running around Partington and through site 1 to connect to Warburton Lane. At the inquiry there was a great deal of discussion about this draft allocation and the way that the proposed development would respond to it, especially in terms of the SRR. However, the fact remains that this is part of an emerging plan that is **not by any definition at an "advanced stage"**. Furthermore, as I understand it there are a large number of unresolved representations. I therefore afford the GMSF and its Masterplan limited weight and conclude that prematurity is not an issue in this case. Furthermore, for similar reasons, how the potential route of the SRR would engage with the appeal site is not a determinative matter in this case.
21. For completeness, I note that the Council is preparing a new Local Plan, which will eventually replace the saved UDP policies and the CS. This is intended to sit below the strategic level GMSF. It is at present at a very early stage and is not relied on by any party as a material consideration in this appeal.

**WHETHER THIS WOULD BE AN ACCEPTABLE LOCATION FOR HOUSING DEVELOPMENT, HAVING REGARDS TO THE SPATIAL STRATEGY IN THE DEVELOPMENT PLAN AND THE LOCATION OF THE SITE RELATIVE TO NEARBY SETTLEMENTS.**

22. The CS sets out a number of strategic objectives. These include meeting housing needs within the most sustainable locations; reducing the need to travel by improving accessibility in less sustainable locations; and regeneration to **reduce inequalities and improve prosperity in the Borough's** most disadvantaged communities.
23. Warburton is a small rural community to the south of the appeal sites, which dates back to Medieval times. To its north is a large tract of agricultural land forming Warburton Park. As was noted by WPC and other local residents who spoke at the inquiry, a development of 400 houses would be substantially larger than the existing village. Whilst the future design of the new dwellings may reflect the style of houses within this historic settlement, I do not consider that the two would be affiliated either visually, physically or functionally.
24. Partington is a settlement that expanded significantly to provide overspill council housing following the slum clearances in Manchester after the second World War. It has relatively poor transport links and connections to surrounding town centres, resulting in isolated and poorly integrated communities. There is a single main road (the A6144) in and out of

Partington, which becomes very congested at peak times. There is a relatively narrow range of housing types and tenures with a high proportion of social rented housing. Parts of the settlement have high levels of social and economic deprivation and it is designated as one of three Priority Regeneration Areas.

25. Policy L1 in the CS sets out how and when land will be released for housing to meet identified needs. A sequential approach is favoured, giving priority to the development of previously developed land. Indeed, the plan indicates that 80% of its housing provision will be on brownfield sites. Five strategic sites have been identified, which account for about 40% of the overall supply. Policy SL5 identifies Carrington as one of the strategic sites. This is to the north of Partington and the CS envisages an opportunity to reduce the isolation of both Carrington and Partington and integrate them into a sustainable mixed-use community.
26. Policy L1 envisages the release of greenfield land to accommodate supply shortfalls provided the development will be capable of creating sustainable communities and contribute to CS objectives. Whilst the appeal sites are relatively close to Partington in terms of distance, the presence of the Red Brook and its wooded corridor provide a clear physical and perceptual barrier between the settlement and the countryside to the south. Unlike the western boundary of site 2 where there is no physical delineation, the Red Brook provides a strong defensible boundary to the settlement. This sense of separation is increased by the presence of the flood plain and the new development area would stand well back from the northern site boundary on higher ground.
27. Notwithstanding the safeguarding of land to the south of Partington for potential future development needs, the UDP Inspector in his 2003 Report had serious concerns with regards to its suitability for housing. He opined that this land was poorly integrated with existing housing and community facilities in Partington. He saw the Red Brook, its wildlife corridor and its floodplain as severely inhibiting such integration. It is the case that he was considering a much more extensive tract of land and many more houses. It is also to be noted that since 2003 there has been a new local shopping centre in Partington and improvements to its school and community provision. Nevertheless, insofar as the **Inspector's comments** related to the locational relationship of this land with the adjoining settlement, his comments still resonate.
28. Policy L1 is out of date in terms of housing numbers. However, it does not preclude greenfield development if there are supply shortfalls. Indeed, the objective of creating sustainable communities is a strategic objective that is entirely consistent with national policy and not a principle that is rendered out-of-date in the face of the issue of housing land supply.
29. The proposals would not guarantee any new crossing points of the Red Brook. The likelihood of Partington residents using the new open spaces and riverside walks therefore seems relatively small. In the circumstances, the creation of sustainable communities through the integration of the appeal development and the existing settlement would be limited in this case. That situation may change if the site is developed as envisaged in the emerging GMSF but that is not a matter for this appeal. For all of the above reasons I do not consider

that the appeal proposals would accord with the spatial strategy in the development plan and the conflict with policy L1 is a matter to which I afford moderate weight in this case.

**WHETHER AN APPROPRIATE DESIGN COULD BE ACHIEVED WITHIN THE CONTEXT OF THE SUBMITTED PARAMETERS PLAN WITHOUT UNACCEPTABLE HARM TO THE LANDSCAPE CHARACTER OF THE AREA.**

30. A preliminary point relates to the long-term future of this land and the landscape implications. As I have already mentioned it has been designated as Other Protected Open Land in the CS and it is allocated for development in the emerging GMSF. However, these policy provisions are matters to be considered through the future plan making process. At the present time the development plan provides no certainty about when, how or even if the land to the south of Partington will be developed. Although the sites adjoin the boundary of the Green Belt, this is a spatial rather than a landscape designation and no adverse effects were identified by the Council in this respect.
31. **The Council's** *Landscape Strategy* (2004) has been adopted as supplementary planning guidance. This provides an assessment to support saved policy ENV17 in the UDP, which seeks to protect, promote and enhance all of the open land on the Proposals Map. This includes the area south of Partington, which is placed in the the Settled Sandlands landscape type. The gently rolling topography allows extensive views of medium to large sized fields defined by hedgerows and prominent hedgerow trees. There are small isolated blocks of woodland, watercourses and ponds. Farm buildings of traditional materials are identified as a distinguishing visual feature. The site is within the subdivision of Warburton Park Farm/ Mossland Fringe. Here particular mention is made of the linear woodland along Red Brook, which is said to provide a visual boundary between the built-up and rural areas. Historic and cultural influences include the former manorial estate and its deer park and the subsequent changes in the 18<sup>th</sup> and 19<sup>th</sup> century with the enclosure of the moss and farmland to satisfy demand for food by the expanding urban areas.
32. The *Greater Manchester Landscape Character and Sensitivity Assessment* (2018) was produced on behalf of the 10 Greater Manchester Authorities as part of the evidence base to the emerging GMSF. The Mosslands and Lowland Farmland landscape character type includes several different character areas and the land to the south of Partington is classified as being within the Warburton and Carrington Mosses. The assessment itself identifies key attributes of the landscape character type overall. Whilst it includes similar characteristics to those identified above it is a higher-level assessment and it seems to me that the 2004 Borough-wide document is more useful for present purposes.
33. The appeal sites are currently open arable farmland on the southern side of the Red Brook valley. The southern boundary of site 1 adjoins Moss Lane with an intermittent hedge running along the roadside edge. Its eastern boundary has no physical delineation at present. Site 2 adjoins open countryside to the south and this boundary is delineated by a hedge and a small woodland adjacent to the south-west corner. The western boundary runs along an arbitrary line that crosses the field. I consider that these sites share many of the key characteristics pertaining to the Settled Sandlands landscape type.

## Whether the site is within a valued landscape

34. Paragraph 170 of the Framework indicates that valued landscapes should be protected and enhanced in a manner commensurate with their statutory status or identified quality in the development plan. In this case the landscape in question includes the village of Warburton and its former deer park. This is within an Area of Landscape Protection under saved policy ENV17. However, this designation applies to all of the landscape types that make up the open areas of the Borough. It does not indicate that the landscape around Warburton has a special quality or is anything other than of local value.
35. There is no specific definition of what a valued landscape is, but case law and past appeal decisions have indicated that to qualify it should be more than ordinary countryside with physical attributes beyond popularity. The site itself need not possess such qualities, what is important is that they should be present in the landscape of which it forms a part. WPC considers that the former medieval landscape around Warburton, including site 2, is of regional value.
36. There is no doubt that Warburton and its surrounding landscape are highly valued by the local community. There has been much research over a long period of time about this ancient village and its environs. Dr Nevell, who is acknowledged as the foremost expert in its archaeology and history, gave evidence to the inquiry. The deer park was considered to be of central importance to this landscape in medieval times and it is referred to by WPC as a “**designed**” landscape.
37. The 2004 Landscape Strategy mentions the historic background of the former Warburton deer park and the later change to dispersed and centralised farm holdings. The 2018 Landscape Character and Sensitivity Assessment refers to Warburton Park as an example of a post medieval field pattern. **Box 5.1 of the Landscape Institute’s *Guidelines for Landscape and Visual Impact Assessment* (2013) (GLVIA)** provides 8 factors that are helpful when considering value. These were considered in the Landscape and Visual Impact Assessment undertaken as part of the Environmental Statement and WPC carried out its own Box 5.1 assessment.
38. I have considered carefully all of the evidence on this matter and I also rely on my own observations from an extensive site visit. In my opinion, the landscape has substantially evolved over the last 300 years and there are relatively few visual clues that link it to its earlier history. As recorded in both the 2004 and 2018 landscape documents, it is largely the product of post medieval changes that occurred during the time of the enclosures. That is not to say that there are not some vestiges of the past that can still be seen. These include the mound that is now believed to have been constructed as a rabbit warren; the scattered woodland copses and small ponds; and the curved hedgelines indicating the possible line of the former deer park boundary. However, these features would not indicate to the observer without local knowledge that what is being seen or experienced is a medieval parkland landscape.
39. Undoubtedly this is an attractive area of countryside that it is generally representative of the Settled Sandlands landscape type. Local people clearly hold it in high regard. However, I cannot agree that it is sufficiently intact or



visually apparent to be of regional importance. I do not consider that it is a valued landscape within the terms of paragraph 170 of the Framework.

### **Effect on the landscape**

40. When observed from the countryside to the south, the existing settlement edge is relatively well screened by the intervening wooded corridor of the Red Brook, especially when the trees are in leaf. The terraced housing on the southern side of Oak Road is elevated above the valley floor, and towards the eastern end of site 2 it is more visible due to breaks in the vegetation. From Moss Lane, the upper parts of houses in Brook Farm Close and the buildings associated with Broadoak School, The Fuse community centre and Partington Sports Village are also seen in places, especially through gaps in the trees. Top Park Close is a small outlier of houses, built on a site previously occupied by farm buildings. However, it is, in my opinion, a visual anomaly in that it is perceived neither as part of the settlement nor part of the countryside. Notwithstanding this, I consider that the settlement is relatively well contained behind a defensible boundary and is not unduly assertive on the adjoining landscape. In this case there is no urban fringe transition, which so often occurs close to the settlement edge.
41. I have no doubt that the appeal development would be built to a high quality and that the large areas of green infrastructure would result in an attractive place in which to live. Nevertheless, this would essentially be a relatively large suburban housing estate, which is not a feature associated with the landscape of the Settled Sandlands. One of the issues is that the Red Brook floodplain and the position of the high-pressure gas main has meant that much of the greenspace would be located on the northern side of the sites. Whilst this would be an asset in terms of amenity and wildlife, it would be a disadvantage by pushing new built development onto the higher land and further into the rural area. For these reasons it is difficult to envisage how a development of this size and in this location could be accommodated without harm to the receiving landscape. The degree of harm would largely depend on the quality of the new settlement edge and the strength of the embedded mitigation.
42. Whilst there is a Design and Access Statement and illustrative Masterplan these provide an indication of how the site could be developed. The only reliable indication of what would materialise if permission were to be granted is the Parameters Plan. This shows landscaped buffers of between 10-15m wide along Moss Lane and 10-12m wide along the southern and western boundaries of site 2. On the eastern side of site 1, the northern section would have a set-back of only about 5m. Whilst I would support an outward facing development with boundary planting that would soften but not hide the new houses, my concern is with the adequacy of the proposed set-backs.
43. I appreciate that there would be greater width in places, most notably in the south east corners of both sites. However, the purpose is mainly to provide a better relationship with the adjacent listed buildings rather than to improve the juxtaposition with the countryside. Overall, bearing in mind the landscape characteristics of the Settled Sandlands and the elevated topography, especially on the southern side of site 2, I do not consider that the proposed buffers would be sufficient.
44. Site 1 in particular has a relatively narrow development area with a long boundary with Moss Lane, which runs along the northern edge of the former



mossland. This road is narrow and rural in character with no footways or street lighting. It is fronted by occasional dwellings and farms, including Pear Tree Cottage and Birch Cottage. The illustrative Masterplan suggests small housing clusters and detached houses with front gardens within this part of the site. Whilst there may be potential for such an arrangement to provide more informality and visual interest it remains the case that there would be an insufficient buffer beyond which built development would stand. The development would result in a suburbanisation that would have a marked and harmful effect on the character of this country lane and the countryside to the south.

45. It is appreciated that layout and landscaping are reserved matters. However, that to some extent is the problem because the only definitive plan, the Parameters Plan, does not give me confidence that there could be a successful transition between the new built-up area and the countryside. It indicates a likelihood that the development would fail to successfully integrate with its rural surroundings. Overall, I agree with the Council and Appellant that this landscape has medium sensitivity and medium susceptibility to change. The landscape type is not particularly extensive, and there would be a medium magnitude of effect. Overall, the landscape effect would be of moderate adverse significance. Over time, landscaping would mature but I do not consider that the effect of built form and the harm to the countryside would be reduced to any significant degree.

### **Visual effect**

46. The appeal sites can be seen relatively extensively from many public viewpoints. During my site visit I visited most of these and walked the nearby footpaths and along the trails beside the Red Brook river corridor. The Statement of Common Ground on landscape matters was agreed by all 3 main parties and there was no dispute that from a number of viewpoints the visual effect would be of minor or negligible significance. My consideration therefore concentrates on the disputed viewpoints, which mainly relate to the magnitude of effect and the effectiveness of mitigation in the longer term.
47. WPC considered that the sensitivity of people using the public rights of way should be high rather than medium. GLVIA advises that people engaged in outdoor recreation are amongst the groups most susceptible to change. It is also important though to consider the value attached to the views. In this case I have concluded that the surrounding landscape, including Warburton Park, is of local and not regional value. This is not to diminish its attractive qualities but I consider the medium sensitivity attributed to footpath users by both the Council and the Appellant is in this case correct. People using the footpaths will be enjoying a kinetic experience, which will continually change as they move through the countryside.
48. On the whole the Appellant seems to me to have understated the magnitude of effect and been overly optimistic about the effectiveness of the embedded mitigation. I have not specifically considered the effects during construction but have concentrated on the permanent effects following completion at year 1 and the residual effects at year 15.
49. The Parameters Plan shows that the footpath crossing site 1 would run through a green corridor. Nevertheless, bearing in mind the slope of the land, it is difficult to see how the embedded mitigation or tree planting within front

gardens or along roads would provide screening that would be sufficient for the adverse effects from viewpoint 1 to be other than major adverse even in the long term. From the short footpath that crosses the corner of site 1 between Moss Lane and Warburton Lane, Top Park Close is on one side and a large swathe of open space crossed by the new spine road on the other. Walking east the new development would be seen at a distance and in the other direction the view would be mainly of the open space along the Red Brook corridor with an oblique view of the houses fronting Warburton Lane. In year 15 the landscaping in the open spaces would have matured to filter views. For this reason, I consider that the significance of effect from viewpoint 2 would be minor/ moderate<sup>5</sup> adverse.

50. From the eastern end of the public right of way to the south of site 2 the new development would be seen in an elevated position behind the boundary hedge and buffer. For all of the reasons I have given previously, the visual effect of the new development from this part of Warburton Park would not diminish significantly as a result of the proposed landscaping over time. There would be the benefit of distance and the effects would be experienced over a relatively short section of the footpath. From viewpoint 3 there would be a moderate adverse significance of effect.
51. From Moss Lane the view into site 1 would substantially change from open countryside to a suburban estate. From viewpoint 6 all parties agree that the significance of effect would be major adverse. Whilst the green buffer planting has the potential to provide some mitigation, I am not as confident as the Appellant as to its long term effectiveness. In my judgement at year 15 this would only reduce slightly to a major/ moderate significance of effect.
52. Approaching site 2 from Warburton Lane, the new development would be seen above the roadside hedgerows. Top Park Close is a fairly prominent existing feature in the view and the built area would be extended westwards. The Parameters Plan shows the new houses close to the road but built form would be seen at depth, especially through the access and its associated bellmouth. Sections of the existing hedge along the site frontage would be removed. Bearing all of this in mind I consider that the significance of effect from viewpoint 5 would be moderate adverse both in the long and short term.
53. From Broadoak Meadow Walk, which runs along the Red Brook corridor on the northern side of the river, viewpoint 10 is through a large gap in the trees. It seems to me a significant point in the walk as a bench allows the walker to stop and admire the rural view across the central part of site 1. In the foreground the Parameters Plan shows a considerable depth of open space occupying the floodplain, although there would be new housing behind it. It should be borne in mind that this would be a short part of a walk that is very well screened by trees and greenery. I therefore consider that the significance of effect would be moderate adverse in year 1 but would reduce to minor adverse in year 15 when landscaping has matured.
54. On the western side of Warburton Lane the Red Brook Wildlife Trail follows the northern side of the river close to the valley floor. Views into site 2 vary depending on the strength of the intervening tree cover. This is more patchy

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<sup>5</sup> The scale I have used puts the main value first. So in this case minor/ moderate would be higher than minor but lower than moderate.

at the eastern end of site 2 where there is an area of gently rising land outside the site boundary. The development area would be well set back at this point. Further to the west the trees provide a thicker screen. Overall, I consider that the significance of effect from this trail would be minor adverse both in the short and long term.

## Conclusions

55. For the reasons I have given, I do not consider that the appeal site sits within a valued landscape in terms of paragraph 170 of the Framework. To my mind it is an area of countryside that is of local value. Nevertheless, I do not consider that it has been satisfactorily demonstrated that an appropriate design could be achieved within the context of the submitted Parameters Plan without significant harm to the landscape character and visual amenity of the area. There would thus be conflict with policy R2 in the CS.

## THE EFFECT OF THE PROPOSED DEVELOPMENT ON HERITAGE ASSETS.

56. The parties agree that the relevant designated heritage assets are 4 Grade II listed buildings, that the effect on significance would derive from changes to their setting and that any harm would be less than substantial in nature. Paragraph 196 of the Framework would be engaged whereby harm is to be weighed against public benefits. There are also non-designated heritage assets in the vicinity but the number that would be affected is not agreed. In the case of non-designated heritage assets, paragraph 197 of the Framework makes clear that a balanced judgement should be made, having regard to the scale of any harm and the significance of the asset. With regards to archaeological assets, the dispute concerns whether the matter should be addressed pre-determination or through a planning condition. This depends on the value of the buried assets, which is not agreed.
57. The Framework defines "*significance*" as the value of the asset because of its heritage interest. This interest may be archaeological, architectural, artistic or historic. The setting is defined as the surroundings in which the asset is experienced, which may change as the asset and its surroundings evolve. In this case most of the affected built heritage assets are associated with the area's agricultural past. The farmland of the appeal sites has different degrees of importance in terms of how the buildings are experienced and their history is understood.
58. **It is the Council's role to** identify non-designated assets but for the decision-maker to determine the effect of proposals on their significance. WPC asserted that similar reasoning can be applied to paragraph 189 of the Framework and that the Council is the only arbiter of what information must be submitted to understand the significance of a heritage asset. WPC relate this particularly to the archaeological trial trenching, which the Council said was necessary pre-determination. I do not agree with WPC on this point. The Framework does not make such a specification and I am entitled, as decision maker, to make up my own mind on the matter based on the evidence.

## The listed buildings

*Heathlands Farmhouse and Heathlands Barn*

59. These are separately listed. The farmhouse dates to the late 18<sup>th</sup> century but the adjacent barn has late medieval origins and may have formed the original

farmhouse. It includes significant elements from that period and the listing description notes that it is a rare example of a multifunctional cowhouse and hayloft in the north Cheshire plain. It was restructured in the 18<sup>th</sup> century in association with Heathlands Farmhouse which was built on the edge of the mossland at the time of agricultural reclamation. This is an attractive two-storey house with a symmetrical front façade. The buildings have individual significance and group value as a good example of an 18<sup>th</sup> century farmstead.

60. The Heathlands group were built facing onto Warburton Lane within a rural setting of open agricultural fields. Site 1 forms part of this overall setting although the agricultural fields to the east and south would remain unaffected. There is also agricultural land to the north but its value in providing a setting has been diminished by Top Park Close, which is a small but prominent development of modern houses.
61. The Parameters Plan includes a green space in the south eastern corner of the site, which it was confirmed at the inquiry would not contain built development. This would help provide an open aspect in the immediate foreground, but the new houses would be apparent behind. Overall, I consider that there would be a moderate degree of harm to the significance of these assets both individually and as a group.

*Barn to south-east of Birch Farmhouse and curtilage listed farmhouse and barns*

62. The listed barn is dated as 18<sup>th</sup> century although it incorporates cruck frames that have earlier origins similar to Heathlands Barn. These would have been associated with a late medieval landscape. The open bay at ground level was probably a hay barn and there is a two-storey front wing which included a hayloft. The barn is now a dwelling in separate ownership but it can still be appreciated as part of the group of buildings that include two other barns and a farmhouse. The farmhouse and one of the barns also incorporate cruck frames and probably date from the 18<sup>th</sup> century. Due to their association they are curtilage listed. As a group they provide a good example of a large farmstead that was built on the edge of the mossland during the period when this was being reclaimed for agricultural use. Their value is though compromised to some extent by the large modern agricultural buildings sited in close proximity to the north and east.
63. The barn and the farmstead face towards Moss Lane within a setting of open agricultural land, which undoubtedly contributes to its historical context. Site 1 is shown on the 1757 Warburton Estate Plan to have formed part of its landholding. It thus provides the agricultural setting to the west. The Parameters Plan includes a green space in the south eastern corner of site, which it was confirmed at the inquiry would not contain built development. This would help maintain an open aspect in the immediate foreground, but the new houses would be apparent behind. Overall, I consider that there would be a moderate degree of harm to the significance of these assets.

*Farm building at Warburton Park Farmyard and curtilage listed farmhouse and farm buildings*

64. The 17<sup>th</sup> century listed timber box framed farm building stands at the southern end of the Park Farm farmyard. There are a number of 18<sup>th</sup> and 19<sup>th</sup> century brick-built farm buildings around the edge of the large open farmyard. The farmhouse stands to one side at the end of Park Road. It is believed to

occupy the site of a former moated medieval manor. These buildings are all curtilage listed and contribute to the group value of this historic farmstead. There are several modern farm buildings to the immediate north and west, which detract from the integrity of the group.

65. The wider setting comprises an extensive tract of land that originally formed the medieval deer park associated with the manorial estate. This was subsequently abandoned, and the land was enclosed for agriculture. Site 2 is within the land associated with Park Farm and the former manorial estate, which provide an extensive setting through which the heritage assets are experienced. The development would permanently remove a relatively small section of land at the north-eastern corner. This would result in a minor effect on the significance of the listed building and the farmyard group.

### **The non-designated heritage assets**

#### *Brook House*

66. This building dates back to the late 18th/ early 19th century and may have had origins as part of an earlier farmstead. It fronts onto Warburton Lane and stands within a treed environment behind a front boundary hedge. This is an attractive well proportioned small house that was built in an isolated rural location. However, its sense of isolation has been considerably diminished by the large houses at Top Park Close, immediately to the south. Its cream coloured elevations enhance its visibility and it is therefore quite prominent in short and long distance views. However, this seem unlikely to have been an intentional consequence of its location.
67. The development of site 2 would remove the open outlook that currently pertains to the west and provides part of the countryside setting. The Parameters Plan shows development close to the Warburton Lane boundary. Furthermore, it seems likely that parts of the hedge along the eastern edge of the appeal site would be removed to provide sight lines to the new access. To the north the land on site 1 would remain undeveloped, other than the new access. In the circumstances there would be a further erosion of the rural setting of Brook House. However, bearing in mind the existing situation, the effect on significance would be minor adverse.

#### *Birch Cottage (originally part of Mosslane Cottages)*

68. This 18<sup>th</sup> century cottage was originally one of three, probably built to house farm workers from Birch Farm. It is a modest sized dwelling in a relatively isolated rural location on the northern side of Moss Lane. It stands on the southern side of its hedged garden plot and the surrounding farmland provides a wider setting. Even though the rural area to the south would remain unchanged, the cottage is orientated east-west with its main elevations facing away from the road. The development of site 1 would result in the loss of farmland to the north, west and east. Mitigation would include a 5 metre buffer around the north, east and west site boundaries. These would go some way to protect the immediate setting and the effect on significance would be minor adverse.

#### *Pear Tree Cottage*

69. This cottage was probably built in the late 18<sup>th</sup> or early 19<sup>th</sup> century as an **agricultural worker's dwelling**. It has a similar orientation and relationship to

Moss Lane as Birch Cottage. The surrounding agricultural land contributes to the significance of the dwelling in a similar way and similar mitigation is proposed. The effect on significance would be minor adverse.

#### *Moss Lane Farm*

70. As with the other buildings along this stretch of Moss Lane, this 17<sup>th</sup> century farmhouse is orientated at right angles to the road. However, unlike the above 2 cottages, it is on the southern side and stands well back behind gardens and a tall holly hedge along the road frontage. The evidence suggests that this farmstead originated from the early post-medieval enclosure of the mosslands. The farmland to the south, east and west provides its wider setting and this would remain unaffected by the appeal proposals. The development of site 1 would be seen in the background in northward facing views, but overall I consider that the effect on significance would be negligible.

#### *Old Warburton Lane and Bridge*

71. The present alignment of Warburton Lane and the bridge **date to the 1960's**. This has left a short section of the original lane adjacent to the western boundary of site 1. This remnant section is at a lower level to the existing road and can be used by pedestrians and cyclists although it is in poor condition and partly overgrown with vegetation. The date of the old stone bridge is unknown.

72. The appeal development would not impact on the bridge but the new access to site 1 would cut across the lane requiring regrading in order to meet the higher level of the existing road. The intention is to maintain it for use by pedestrians and cyclists. The bridge and lane are not recorded in the Historic Environment Record but it is agreed that they are heritage assets. I consider them to be of relatively low historic value. The changes in levels would cause some detriment of a minor nature.

#### *Warburton Toll Bridge*

73. This is a striking high-level late 19<sup>th</sup> century cantilever bridge that crosses the Manchester Ship Canal. Due to its height it can be seen from a considerable distance and in this respect it is something of a local landmark. However, the significance of the bridge relates to its value in terms of its industrial history and architecture. To my mind the appeal development would have no effect on this whatsoever, notwithstanding that it would be visible from the bridge in the far distance. Conversely, it is proposed to retain a view of the bridge from across the south eastern part of site 2, and this is to be welcomed.

#### *Warburton Park*

74. I have already concluded that there is little now to indicate the former medieval deer park or designed parkland in terms of the physical landscape due to the considerable degree of agricultural change that has taken place from the mid-17<sup>th</sup> century when it was presumed to have been disimparked. During this later period it provided the farmland associated with Park Farm and its farmstead and I have considered the part it played in that respect already. With regards to its earlier history, there is no dispute that a medieval deer park formerly existed in this vicinity, probably associated with a moated manor on a similar site to Park Farm. Site 2 is likely to have been within its



boundaries. Its significance as a non designated heritage asset relates principally to its historic interest.

75. The *Greater Manchester Historic Environment Record* maps a number of visible features, including earthworks associated with the park pale<sup>6</sup>. This can be seen most clearly along a section of the south-eastern boundary. The curving nature of Warburton Lane is also indicative of the former perimeter. More contentious is the boundary along the edge of the Red Brook, where an earthen bank can be seen. The evidence indicates that along the northern site boundary the hedgerow has been removed and the area ploughed. In addition, a high pressure gas pipeline was installed across the northern part of the site, which would have caused substantial ground disturbance. Another feature is what is now thought to be a pillow mound<sup>7</sup> within the adjoining fields. There are also several pools in the copse adjacent to the south-eastern site boundary, which are considered by the Greater Manchester Advisory Service to be remnant medieval fish ponds.
76. On the basis of what I have seen and the evidence I have heard, it seems to me that Warburton Park is a non designated asset of local value. The proposed development would result in the permanent loss of a relatively small section of the former deer park and manorial estate and would isolate part of the park pale from other features such as the fish ponds and pillow mound. On the other hand, the development would not result in the destruction of any visible physical feature. Overall, I consider that the adverse effect on significance would be of a minor nature. However, WPC and the Council believe that there is much greater archaeological potential that is as yet unknown but could increase the significance of this asset considerably. I consider this next.

## Archaeology

77. On sites where there is potential for archaeological interest, paragraph 189 of the Framework requires the submission of a desk based assessment and field evaluation where necessary. In this case a desk based assessment has been submitted, although it was agreed that this has shortcomings. Field evaluation can include a geophysical survey, which has been undertaken.
78. The Council and WPC consider that footnote 63 of the Framework is engaged because the archaeological resources in question have the potential to be of national importance and equivalent significance to a scheduled monument. The Appellant disagrees and considers that the evidence indicates assets with the potential for no more than local importance. Whilst it is not disputed that trial trenching is necessary, the Council and WPC say it should be carried out pre-determination to reflect the significance of the asset. Their concern is that if archaeology of national importance is discovered as a result of the trial trenching and in situ preservation is proven necessary, this could mean that the development would not be capable of being built out in accordance with the Parameters Plan without harm to irreplaceable buried assets.

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<sup>6</sup> This was the boundary of the deer park and usually comprised a fenced or hedged bank often several metres in height sometimes with an internal ditch. It often had a curved alignment so that animals did not get trapped in the corners.

<sup>7</sup> This was an artificial mound with burrows for rabbit breeding.



79. The importance of what lies below the ground cannot at this stage be known with certainty from the investigation that has been carried out so far. However, the geophysical survey provides important information in the assessment of potential even though a lack of magnetic abnormality in itself does not guarantee an absence of significant archaeology. There was no dispute about the methodology employed, the issue is with the interpretation of the results. There is **insufficient evidence to substantiate the Council's** assertion that geophysical investigations are particularly problematic in the North Western region. The reliability of the outcome is more likely to depend on the soil conditions and subsurface environment of the site. The appeal sites do not seem to present particular difficulties in this regard. I turn next to consider the archaeological potential of the appeal sites.

#### Site 1: Romano-British settlement

80. An assessment was undertaken by Salford University in connection with the draft policy GM Allocation 41 in the emerging GMSF. The higher land of the southern part of site 1 is considered to have high potential for early settlement. There are cottages and farmsteads adjacent to Moss Lane, which was clearly a historic route around the mosslands. The geophysical survey shows various features, including the probable line of an old lane, field boundaries, possible evidence of ridge and furrow and drainage features. There is also an area of burnt material suggesting the site of a post-medieval clamp kiln. The Council agreed at the inquiry that these were features at most of regional significance. The survey also showed various anomalies. Whilst these could be indicative of past settlement activity, the **Appellant's** expert interpretation<sup>8</sup> was that they were ephemeral features most likely to have arisen from naturally occurring soil variation.
81. It is acknowledged that there have been other finds within locations between the moss areas and the rivers. The Romano-British defended farmstead site at Great Woolden Hall is about 3.5 km away, between the River Glazebrook and Chat Moss. Port Salford is about 7 km away on dry ground also adjoining Chat Moss. Here, Iron Age and Roman artefacts have been found and Romano-British period ditches and enclosures. These have proved to be of great significance but it does not mean that similar finds are present on site 1. Indeed, the differential in height between the southern part of site 1 and the adjoining former mossland is relatively small. Whether or not this area flooded before the Manchester Ship Canal was constructed is unclear. However, there have been finds on the ridge of higher land at Moss Brow about 1 km to the south and this seems a more likely location for early settlement.

#### Site 2: Warburton medieval deer park

82. Salford University also assessed the area to the west of Warburton Lane, which was part of the medieval deer park. It considered that there is good potential for the survival of buried archaeological remains, including a former watermill, salters<sup>9</sup> and the moated manor site, although their extent and condition is at present unknown. It considers the greatest potential for surviving remains on the draft policy GM Allocation 41 site, which includes site 2 but extends

<sup>8</sup> By Dr Kayt Armstrong who undertook the geophysical survey and is also an archaeologist.

<sup>9</sup> These were used to encourage deer to enter but not leave the park. They involved modifying the park pale and so were sited around the boundary.

further to the west, is likely to relate to the park pale bank and ditch. Salford University conclude that the best preserved elements of the deer park could achieve Scheduled Monument status following further detailed assessment.

83. The Historic England *Scheduling Selection Guide: Agriculture* indicates that good examples of features such as medieval mill sites, pillow mounds, fishponds and park pales may be schedulable. *The Scheduling Selection Guide: Settlement Sites to 1500* mentions moated sites in this regard. The *Scheduling Selection Guide: Gardens* indicates that deer parks are generally too extensive for scheduling. Specific features such as the park pale may be eligible, but short lengths divorced from other associated features are unlikely to qualify.
84. The appeal land has been subject to at least 300 years of agricultural use. Deep ploughing over the last 70 years is likely to have had an adverse effect on below ground remains. The geophysical survey shows two parallel lines on the eastern side of site 2. The expert interpretation<sup>7</sup> is that these are most likely to have been created by modern tractor movements at the edge of the field. However, it is agreed that they could represent a previous field boundary, a former road or a boundary to the former deer park. The Council pointed out that this could be clarified by trenching and that its significance would depend on how well preserved it was and how it related to other features in the former deer park. The Council also refers to a curved feature on the northern side of site 2. The expert interpretation<sup>7</sup> is that it is likely to derive from variations in the soil resulting from fluvial action. However, Salford University considers it could be a potential Bronze Age ditch.

### Conclusion

85. There is no dispute that there is the potential for archaeological assets to be found below ground, but the experts did not agree on what their significance was likely to be. The uncertainty of what lies below the ground would have been greatly reduced if trial trenching had been undertaken in advance of the inquiry. Indeed, the indications are that this was the intention but for some reason the Appellant decided not to proceed. However, it is necessary for me to consider what is reasonable and proportionate, based on the available **evidence. In this case I find the Appellant's expert evidence**<sup>10</sup> more persuasive and give it considerable weight. I have no doubt that the witnesses for the Council and WPC have considerable expertise and experience. Nevertheless, I did not find their belief that the archaeology is likely to be of national importance supported by their evidence. On the balance of probabilities and even taking a precautionary standpoint, I consider that in this case the archaeology is likely to be of local and at most regional significance.
86. The Parameters Plan indicates that the areas shown for development and access overlay some of the features and anomalies shown by the geophysical survey although others would be in the open spaces. Further investigation would be necessary, including trial trenching. However, I consider that it could be post-determination and satisfactorily controlled through a planning condition in this case.
87. I have considered the appeal decisions submitted by the Council but in each

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<sup>10</sup> By Dr Armstrong and Ms Kelly.

case there were different circumstances that led the Inspector to conclude that pre-determination evaluation was required. This will largely relate to individual site circumstances and so general comparisons are not particularly helpful.

## **Conclusions**

88. For all the reasons I have given there would be harm to the significance of both designated and non designated heritage assets on account of development within their setting. This would be less than substantial harm on the scale of moderate to minor depending on the asset. The proposals would therefore be contrary to policy R1 in the CS. I return to consider the proposals in respect of paragraphs 196 and 197 of the Framework later in my decision.
89. The significance of the archaeological assets cannot be known at the present time. However, for the reasons I have given, I consider that the probability is that these are of local or at most regional value. Footnote 63 of the Framework would not apply in this case. A planning condition could be applied to require a scheme of written investigation, analysis, recording, deposition and commemoration and this would, in my opinion, mitigate the potential harm that could arise from the appeal development in this respect.

## **THE EFFECT OF THE PROPOSED DEVELOPMENT ON CONGESTION AND HIGHWAY SAFETY.**

90. Amongst other things, policy L4 in the CS includes a provision that permission will not be granted for new development likely to have a significant adverse impact on the safe operation of the highway network unless appropriate infrastructure improvements and/ or traffic mitigation measures are secured. The Framework indicates that development should only be refused on highway grounds if the residual cumulative impacts on the road network would be severe, which is a more stringent requirement. The traffic generated by the proposed development and its likely distribution is not disputed. The A6144 provides the main route through Partington and Carrington and becomes extremely congested at peak times.
91. It is agreed that to accommodate the additional flows, improvements would be necessary to 3 junctions along the A6144 and that these could be addressed through planning conditions. In terms of when these works would be carried out, there is no dispute that the improvements to the Warburton Road/ Central Road roundabout and the Moss Lane/ Manchester Road roundabout should be carried out before occupation of 101 dwellings. Furthermore, that the latter improvement would only be necessary if it had not already been undertaken in conjunction with development at Lock Lane, Partington. The capacity provided by the junction improvement would be sufficient to accommodate the traffic generated by both developments and this is reflected in the suggested condition.
92. Flixton Crossroads is some 5km to the north of the site but is a particularly congested junction during peak periods. There have been incremental improvements to create the capacity for various developments that would impact the junction and the appeal scheme proposes a further improvement that would do likewise. The Council agrees that such works would be necessary to mitigate the impact but it considers that congestion is so bad that no new dwelling should be occupied until the capacity improvement is in

place. The Appellant pointed out that even with 100 dwellings there would be less than one vehicle through the junction per minute in the critical morning peak. It seems to me that this is likely to result in an imperceptible change. I therefore concur with the Appellant that the works would not be necessary until this trigger point had been reached.

93. In the circumstances I conclude that the proposed development would not have an adverse effect on congestion and highway safety. In this respect it would comply with policy L4 in the CS and the provisions of the Framework.

**WHETHER THE LOCATION IS SUFFICIENTLY ACCESSIBLE TO ALLOW OCCUPIERS OF THE PROPOSED DEVELOPMENT REAL CHOICES TO TRAVEL BY MODES OTHER THAN THE PRIVATE CAR.**

94. The CS specifies that improving accessibility is essential to building sustainable communities and that it is influenced by where development is located and the quality and choice of available transport links. Policy L7 includes a provision that development should be fully accessible to all sections of the community, Policy L4, amongst other things, indicates that the location of development in those areas most accessible to a choice of transport modes is a priority. It includes provisions to secure improvements to the pedestrian, cycling and bus network and elicit developer contributions towards the provision of highway schemes in accordance with the CS Strategic and Place Objectives.
95. Section 9 of the Framework promotes sustainable transport and opportunities to improve walking, cycling and public transport. It also points out that sustainable travel solutions will vary between urban and rural areas. In this case the appeal site is within the countryside for planning policy purposes. However, it is not within an isolated rural area and it is reasonable to bear this in mind when considering what opportunities are available to maximise sustainable travel solutions.

**Walking**

96. *Manual for Streets* indicates that walking offers the greatest potential to replace short car journeys, particularly those under 2 km. Whilst not an upper limit, walkable neighbourhoods are typically those where there are a range of facilities within a 10 minute (800m) walk from home. The main route in and out of Partington is along Warburton Lane. There are footways along each side of the road, although on the western side it stops at the Red Brook bridge. The proposal therefore includes a footway along the frontage of site 2, which connects to a signal controlled crossing so that pedestrians can safely cross onto the eastern footway. Whilst the existing footway does have some narrower points, on the whole I consider that it provides an acceptable walking environment for most people.
97. Those living on site 1 would have the option of walking into Partington via Chapel Lane over the footbridge that crosses the Red Brook. However the section of footpath that links to Chapel Lane crosses the western side of a field and is neither surfaced nor lit. It would therefore not be a safe option after dark, practical in inclement weather or suitable for those with pushchairs or mobility impairments. Whilst this field is also part of the draft policy GM Allocation 41, at the present time there is no proposal that it would be other than a recreational footpath. In addition, the section of Chapel Lane south of

the entrance to Partington Sports Village has no footways or street lights. Whilst some may use this route it should not be relied on as a satisfactory walking route into Partington, the school or the sports centre.

98. Broadoak secondary school, Little Oaks nursery school, The Fuse community facility and Partington Sports Village are all within 1 km of the centre of each site using the main access points and Warburton Lane. The primary schools are between 1.4 km and 1.6 km away. It seems to me that these facilities, whilst beyond the ideal 800m walking distance could reasonably be considered accessible on foot. Partington local centre has shops and facilities to meet day to day needs and includes a post office, pharmacy, supermarket and convenience stores. It is 1.5 km from the centre of site 2 and 1.7 km from the centre of site 1. Again, walking would be an option although the relatively short car journey would be an attractive alternative, especially outside peak times and bearing in mind that there is a large car park adjacent to the shops.

### **Cycling**

99. All of the above facilities would be easily reached by cycle. There are on-street cycle lanes on both sides of Warburton Lane, north of the Red Brook bridge, into the centre of Partington. The proposal also includes a new on-street section of cycleway along the frontage of site 2. It is proposed that the old lane adjacent to the frontage of site 1 would be a dedicated cycle and pedestrian route. With the Pelican crossing in place there would therefore be a link from each site to the on-street cycleways. Chapel Lane is also relatively quiet and would provide a pleasant route for cycling although the link between the site and the road would have to be negotiated and would be an impediment for the reasons given above.

### **Buses**

100. The 247 bus service runs at 30 minute intervals (60 minute intervals in the evenings and on Sundays) between the Trafford Centre and Altringham via Partington. The Cat 5A service runs between Warrington and Altringham via Lymm and Partington. The nearest existing bus stop northbound is on Warburton Lane just north of the Oak Road junction and southbound north of the junction with Moss Lane. The proposals include improvements to these two stops as well as providing new bus stops on either side of Moss Lane. The existing and new bus stops would be provided with raised kerbs to provide easy access and good waiting facilities. With the improvements there would be a bus stop within 100m of the centre of site 1 and within 400m of the centre of site 2 so they would be easily accessible on foot.
101. I was told that the future of the subsidised CAT 5A service is uncertain. The proposals would provide a financial contribution for an additional half hour service. This would be for a 5 year period by which time it should be self-supporting. This would mean that there would either be 2 buses an hour or that the Appellant would be funding the only one, depending on whether the subsidised service continues. These various improvements would benefit those living on the new development but also existing residents living along this section of the route. A bus journey **to reach the Borough's main town** centre of Altringham, for example, would typically take under half an hour and a visit to the picturesque village of Lymm with its local shops, food and drink establishments and various amenities would take about 10 minutes.

102. There are also additional bus services that terminate at Oak Road. A new resident wishing to travel to central Manchester for example, could do so by catching the 253/ 255 service from Oak Road or taking a bus to the Trafford Centre and then catching the tram. However, a journey in this direction would result in additional journey times during peak periods due to network congestion along the A6144.

### **The Carrington Relief Road (CRR)**

103. The CRR is a longstanding infrastructure project required as part of the delivery of the Carrington strategic site under policy SL5 of the CS. The evidence indicates that the cost of the CRR has escalated and that there is currently a large funding gap. Whilst this could potentially be addressed through the Community Infrastructure Levy, a significant shortfall would remain to be met through developer contributions. The Council has therefore devised a formula based on the vehicle trips what would be generated by the various commercial and residential developments within the allocated area.

104. Whilst the Council is satisfied that the improvements to the Flixton junction would provide satisfactory mitigation in terms of highway safety and congestion, it would prefer a contribution to the CRR. The Appellant does not object to this and the UU includes a contribution similar to the cost of the Flixton junction improvement, which would not be needed if the CRR goes ahead. However, the Council require a larger contribution based on applying the aforementioned formula. The rationale for including the appeal sites, notwithstanding that they are outside the policy SL5 allocation, relates to sustainability and integration. Nevertheless, in view of the uncertainties surrounding delivery, the Council would accept the Flixton improvements in the event that it cannot confirm that the CRR is going ahead. As I understand it the Council, by means of a suitably worded planning condition, is proposing to take the delivery risk on itself in order to avoid what it considers to be unsustainable development at the appeal sites.

105. Policy L4 in the CS includes a provision that appropriate developer contributions may be sought towards highway schemes in order to make less sustainable locations accessible by improving transport links. In terms of sustainability, I am not satisfied that there is sufficient evidence to demonstrate that the accessibility or integration of the appeal site with Partington as envisaged in the CS would be significantly improved by the CRR. The situation could be very different if the wider policy GM Allocation 41 is realised. However, that relates to a different and emerging plan with a high degree of uncertainty at the present time. In such circumstances I am doubtful that the contribution could be deemed necessary.

106. Furthermore, assuming that the formula may be legitimately applied to the appeal sites, the contribution sought by the Council is based on the 182 dwellings envisaged for the appeal site in the draft Masterplan for the policy GM 41 Allocation. It bears no relationship to the trips generated by the appeal development. It may result in a lower payment, but nonetheless this would not be related in scale and kind to the 400 dwellings being proposed.



## Conclusion

107. The appeal site has relatively good connectivity to the pedestrian, cycling and public transport network. The proposals offer various improvements to widen modal choice. I consider that new residents would have the opportunity to make a reasonable number of their daily journeys by travel modes other than the private car. A Travel Plan would provide further incentive through the introduction of measures to reduce car journeys over a 10 year period.
108. Accessibility is hampered by the **sites' location at the southern end of** the existing road network. With an absence of dedicated lanes, northbound buses would be caught in the same traffic queues in peak periods as happens at the present time. On the other hand, people would be likely to adjust their travel behaviour to make their journeys outside of the most congested periods. Whilst I can understand that the delivery of the CRR is a priority for the Council, this is mainly to deliver the Carrington strategic site and there is little evidence that a contribution over and above the cost of the Flixton junction improvements would be justified in terms of highway safety or improvement to the sustainability of the appeal site. Overall, I am satisfied that in this regard the proposals would not conflict with policies L4 and L7 in the CS.

## **WHETHER THE PROPOSED DEVELOPMENT WOULD MEET LOCAL HOUSING NEEDS AND WHETHER THE LACK OF AFFORDABLE HOUSING PROVISION WOULD BE ACCEPTABLE.**

### **Affordable housing need**

109. **There is no dispute that the appeal site is within a "hot" market location** where in normal market conditions policy L2 in the CS expects 40% affordable housing, subject to viability. **This is in contrast to Partington, which is a "cold" market location** where 5% is required, subject to viability. Whether the boundary between different market locations is justified should be considered through the local plan process and is not a matter for this inquiry. The Council has indicated that **market conditions changed from "normal" to "good" in November 2018**. In such circumstances the Supplementary Planning Document: *Planning Obligations* indicates that the affordable housing requirement will rise to 45% and 10% in the respective market locations.
110. There is a considerable need for affordable housing within the Borough as a whole. The 2019 *Housing Needs Assessment* identifies a Borough-wide annual net affordable housing need of 545 homes. It is appreciated that this recorded a net annual need of only 22 homes in Partington and Carrington but the Rural Communities, within which the site falls, recorded a higher figure of 39 homes. Partington has a relatively high proportion of social housing due to its growth as an overspill settlement. There is no dispute that more market homes and family sized houses would help improve the housing mix and contribute to a more balanced community. However, this does not mean that there is no need for affordable housing in the mix. There is no evidence to satisfy me that it should not be provided, if it is viable to do so.
111. The Appellant does not consider that the appeal proposals could viably support any affordable housing at all. The Council believes that it could viably support the full policy provision, along with all other contributions and infrastructure improvements.



## Accountability

112. Both the Council and the Appellant had points to make about the credibility and integrity of the expert witnesses. This seemed to me to be part of a wider agenda relating to land transactions, viability assessment and affordable housing provision more generally across the Borough. I do not consider that it is necessary for me to look at the wider picture in order to reach a reasoned conclusion on this appeal. As far as I could tell the viability and costs witnesses drew from their experience and expertise as practitioners. I am satisfied that they conducted themselves in a suitably professional manner and gave their considered and honest evidence. I find nothing to support the assertion that any of the 3 members of RICS failed to meet the requirements of their professional body.
113. The Planning Practice Guidance indicates that a viability assessment should be prepared by a suitably qualified practitioner. It does not stipulate that being a RICS member is mandatory in this respect but in any event in this case the viability assessments were prepared by such a person. The disagreements on costs and values resulted mainly from differences in professional judgement and, in such circumstances, there are no right or wrong answers. The judgements of the non RICS expert witness in this case seemed to me to be credible and based on an acceptable level of experience.

## Benchmark Land Value (BLV)

114. This comprises the Existing Use Value (EUV) enhanced by a premium (EUV+). In this case the existing use is agricultural and there are no policy compliant alternatives. The Appellant considers that agricultural land value is £10,000 per acre and the Council £8,000 per acre. In this respect I prefer the **Council's** approach, which uses farmland indices devoid of the effects of buildings and any anticipated future higher value use (hope value). On this basis the EUV would be £493,600.
115. The Planning Practice Guidance makes clear that the premium should provide a reasonable incentive for a landowner to bring forward land for development whilst allowing a sufficient contribution to fully comply with policy requirements. However, it also indicates that this should reflect a minimum return to a reasonable landowner. The price paid for the land is not relevant justification for failing to meet policy commitments. Previously BLV was guided by market comparables but these were driven by historic land values inflated by non policy compliant developments. The Planning Practice Guidance extolls an approach whereby policy commitments are central to establishing a reasonable price.
116. The Planning Practice Guidance also indicates that BLV should reflect the costs of development, including those specific to the site. In other words, a landowner should not expect to receive the same price for a site where the development costs are high to one where they are much lower. That is not to say that all site-specific costs should necessarily be deducted. It may be that a negative value would ensue, in which case there would be no incentive at all for the landowner to sell the land.
117. The Appellant originally considered that a premium of 20 times EUV was

appropriate but reduced it to 15 times EUV to reflect an appeal decision for a residential development at Poulton-le-Fylde<sup>11</sup>. The Inspector said that she **considered the Council's** viability assessment to be consistent with the Planning Practice Guidance. However, in this case there does not appear to have been any suggestion otherwise, and therefore no dispute on the matter. My colleague indicated that typically 15-25 times EUV is applied to greenfield sites, but where this conclusion comes from is not made clear. It is noted in passing, that the agricultural land value in this case was £8,000 per acre.

118. The Planning Practice Guidance gives no indication as to what the uplift should be and the reason for that is because it will vary according to site specific and policy circumstances. There is no evidence that I have seen that says the premium should be any particular value. The important point is that it should be sufficient to incentivise the landowner to sell the land and should also be the minimum incentive for such a sale to take place.

119. **The Appellant's** assessment is on the basis of an uplift of 15 whereas the Council prefers an uplift of 10<sup>12</sup>. It is relevant to note in this case that one of the two landowners has agreed in the option agreement to sell the land for whatever is left after a standard residual assessment. On the basis of the **Appellant's** assessment with no affordable housing the RLV is £2.8m. However, if costs or values change this would of course be a different figure. For example, **on the Appellant's assessment with 45% affordable housing** the residual becomes negative. In such circumstances the landowner obviously would not sell. I consider that an uplift of 10 would not be unreasonable here and this would result in a BLV of about £2.9m<sup>13</sup>. Whilst this is below the sum advocated by the Appellant of some £5.3m it reflects the development costs as well as the fact that the developable area comprises only about half of the site. It was not satisfactorily explained why, in this case, it would not offer a reasonable premium or reflect the approach advocated by the Planning Practice Guidance.

120. **The Appellant's case is that** the residual land value (RLV) with no affordable housing would be some £2.8m, falling to about £-1.5m if 45% affordable housing were to be provided. **It seems to me that on the Appellant's evidence** £2.8m, which is marginally below BLV, would be all that the scheme could afford to pay for the land.

## **The financial viability assessment (FVA)**

### *Preliminary Comments*

121. There was little agreement on most of the inputs in the FVA, but on the **Appellant's case**, if costs were reduced or values were increased by approximately £4.4m, there would be sufficient to fund 45% affordable housing. Even if there was a lower differential, it would be possible to provide some affordable housing. Whilst I have carefully considered all of the evidence

<sup>11</sup> This appeal sought the removal of a planning condition for affordable housing in respect of a proposal for up to 130 dwellings on land off Hoult's Lane, Poulton-le-Fylde. The appeal was allowed (ref: APP/U2370/W/19/3241233).

<sup>12</sup> It should be noted though that this was only on the basis of net developable area.

<sup>13</sup> Net developable site area of 33.75 acres x £80,000 = £2.7m. Remainder of 27.95 acres x £8,000 = 223,600. Total BLV = £2.9m (approx.).

it therefore seems to me unnecessary to reach a conclusion on all of the disputed inputs.

122. The FVA is a snapshot in time with costs and values corrected accordingly. The relevant time period in this case is the fourth quarter of 2020 to accord with the time of the inquiry.

#### *Costs*

123. The Viability Statement of Common Ground agrees a housing mix and floorspace figure for the purposes of the assessment. Overall, the evidence suggests to me that the Appellant has taken a rather conservative approach to costs. This is mainly due to the fact that there is relatively little information as to how this outline scheme would eventually be built out. The FVA appears to have placed considerable reliance on the illustrative Masterplan. However, it was made clear in answer to my specific question at the second Case Management Conference that this was illustrative. It is not to be treated as an application plan and therefore cannot be relied upon to show details of the layout. **The Appellant's costs expert** did his best but, in my opinion, he has been overly cautious in his assessment. Little consideration has been given to the not unreasonable assumption that the volume housebuilder who would be constructing this development would seek to reduce costs through value engineering wherever possible. I give two examples where I consider that significant cost savings could be made.

#### The garages

124. The FVA has assumed that all 3 and 4 bedroom houses would have a single detached garage at a cost of about £11,300 each. On the basis of the agreed mix this would apply to about 67% of the dwellings and result in an additional cost of over £3m. However, there is no evidence that the developer would recoup that cost in the sales value. It is therefore difficult to understand why such a significant additional expense would be incurred by a prudent housebuilder when an integral garage would be significantly cheaper. The only indication of the cost of an integral garage is found in the May 2019 FVA where it is indicated to be £4,725. Whilst cost inflation means that exact comparisons cannot therefore be made, it is reasonable to conclude that there would be significant cost savings to be made.
125. In reality the situation is likely to be more nuanced and it is not unreasonable to surmise that a developer would wish to offer a range of options with some detached garages, some integral garages and some driveway or on-street parking. The Council has suggested a blended allowance of £7,000 per dwelling for the units in question, which would allow roughly one third to have detached garages. **This would obviate the Council's concern about a** development dominated by houses with integral garages. Such an alternative option would result in a cost saving of around £1.13m.

#### The abnormal costs

126. These costs amount to about £16.4m or about £486,500 per net developable acre. This seems to me a very large sum for a greenfield site with no obvious impediments and I remain unconvinced about the complexities that the Appellant asserts present such a challenge. Indeed, **the Appellant's own** evidence cites 9 housing developments of 251-550 units on greenfield sites in

the North West of England, where in all but 2 the abnormal costs were under £350,000 per acre, with an overall average of about £338,000. Whilst it is acknowledged that abnormal costs are, by their very nature site specific, this information does not allay my concern that a conservative position has been adopted.

127. The Ground Investigation Report indicates that based on existing ground levels, strip/ trench foundations may be suitable across most of the site. Whilst it indicates that special foundations could be required where groundwater is very shallow, the built development would be on higher ground away from the Red Brook and its floodplain. Ground levels may need raising in places, but there is insufficient evidence to support the assertion that 50% of the houses and 25% of the garages would need to have non-standard foundations. Whilst some special foundations may be required, it is highly probable that the developer would seek to keep these to a minimum to reduce the cost. This has been estimated at approximately £1.4m.
128. Enabling works are required to get the sites ready for development. Two items that stand out are the £2.2m required for topsoil and subsoil removal. The Ground Investigation Report indicates a variation in topsoil depth, which averages 391mm across the site. It has been assumed that on the area to be developed there would be 150mm thickness of topsoil on the gardens, which are assumed to comprise 25% of the development area. The remainder would be carried away off site and either sold or taken to landfill at a cost of £25 per m<sup>3</sup> or approximately £1.2m. With regards to subsoil, it is assumed that 300mm would be cut from both sites within the development areas and that this would be removed from the site at a cost of around £1m.
129. Unless the soil can be sold for more than the cost of disposing of it, I consider it reasonable to expect the developer to use as much as possible on-site. An obvious location would be increased depth on the gardens, which would benefit plant growth. It could also be directed to the open spaces, green corridors and buffers outside the floodplain. Whilst some removal may be necessary, the assumption as to the extent seems to me excessive.
130. Although it is important to bear in mind that any planning permission runs with the land, Redrow has stated in terms that it will be developing the site. No approach was made for information about its approach to value engineering or economies of scale. In the absence of information to the contrary it is a reasonable assumption that it would behave in a similar way to any other volume housebuilder. Even if only half of the above costs were saved, there would be a potential costs saving of over £2m.

### *Values*

131. The Planning Practice Guidance indicates that for site-specific assessments, market evidence should be used and that this should be adjusted to take account of variations such as form, scale and location. The difference in overall sales values between the Appellant and the Council is about £5.8m. Within a **"hot" market location** values are assumed to be high and this is reflected in the amount of Community Infrastructure Levy that has to be paid. **The Appellant's** argument is that in this case the values are not high but the Levy payment cannot be avoided as a significant cost.

132. It seems to me that one of the main differences between the parties relates to the likely influence of Partington. I have no doubt that a prospective purchaser would be fully aware that immediately north of the Red Brook is a large estate of social housing and that this includes areas with high levels of social and economic deprivation. However, for the reasons I have already given, I consider that the Red Brook and its wooded corridor provide a substantial physical and perceptual barrier. Furthermore, this sense of separation would be enhanced by the swathe of landscaped open space on the northern side of each site.
133. From site 1 the estates of social housing are not readily apparent. The main view northwards is of playing fields, although the upper parts of the school, sports and community buildings and the two cul-de-sacs of private detached homes are evident, especially in the winter months. From the eastern end of site 2, there is a more open view of the terraced social housing on the southern side of Oak Road but from the centre and western end this is largely screened by vegetation. The proposals include a large amount of open space with several green corridors running through each site. About half of the total land area would remain undeveloped. Bearing all of this in mind, I have no doubt that the marketing of these houses would emphasise the proximity to the countryside, the green credentials of the site and the closeness to the historic village of Warburton as well as other attractive settlements such as Lymm and Altringham. Of course, prospective purchasers would be well aware of the presence of Partington but I would expect any competent marketing exercise to emphasise its positive attributes such as the relative proximity of schools, shops, sports and leisure facilities.
134. The most relevant new build comparator is agreed to be Glazebrook Meadows. This is a relatively small development of 27 houses and 9 apartments on the western side of the Manchester Ship Canal. From my visit I observed that this is in a countryside location just outside the village of Glazebrook. One of its great advantages is its proximity to the railway station with services between Liverpool and Manchester. I also noted that there did not appear to be any social housing in the vicinity, including at Glazebrook Meadows itself<sup>14</sup>. On the other hand the northern site boundary adjoins the railway line and there are few convenient shops, schools or other facilities nearby.
135. The proposed 2 bedroom dwellings are quite similar in size to the 3 bedroom houses at Glazebrook Meadows. The average 2019 sales price was £250 per ft<sup>2</sup>, which would result in a unit price of £187,500<sup>15</sup> if applied to the 2 bedroom houses at the appeal sites. I am not convinced that Glazebrook is a superior location or that there are grounds to apply a consequent discount to the price of the 2 bedroom appeal dwellings. On the other hand, there is evidence that the housing market is performing strongly in the North West and in the Greater Manchester area in particular resulting in house price increases. In the circumstances, I prefer the **Council's** assessment to that of the Appellant.

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<sup>14</sup> It is understood that a commuted sum was paid to provide affordable housing off-site.

<sup>15</sup> This is derived from multiplying the square footage of the proposed 2 bed dwellings (750 ft<sup>2</sup>) by £250.

136. The 3 and 4 bedroom houses in the appeal scheme are significantly larger than the houses in Glazebrook Meadows and there is very little other nearby new build comparative evidence to assist. The Appellant has referenced the second-hand market and applied an uplift to reflect that new-build homes generally command a premium price. However, the uplift to be applied will be a matter of judgement. For the reasons I have given Partington, although it is the closest market area, is of a very different nature and character. The two marketing reports<sup>16</sup> commissioned by Redrow placed too much emphasis on the negative influence of Partington, in my opinion. I note that the more recent report by Property Perspective, which concludes similar values for the new houses as the Appellant, was a desk top analysis without the benefit of a site visit. Furthermore, these reports relied on second-hand sales data mainly from 2018 and 2019 and it is unclear whether any allowance was made for house price inflation.
137. Between July 2019 and April 2020 the average sale price for houses in Partington overall was £155,630 (£178 per ft<sup>2</sup>) and £137,000 (£143 per ft<sup>2</sup>) for the southern part of the settlement closest to the site. **On the Appellant's** assessment the average sales price across the appeal sites would be £236 per ft<sup>2</sup>. (32% above Partington overall). **The Council's equivalent figure** would be about £249 per ft<sup>2</sup> (39% above Partington overall). For all the reasons I have given **I prefer the Council's figure in this case**. However, even if it is overly optimistic as the Appellant claims, on the available evidence I consider that the appeal development has been significantly undervalued in the FVA.

#### *The Unilateral Undertaking*

138. There is a covenant in the UU that requires a revised FVA to be submitted along with the reserved matters. This was inserted into the draft Deed at the very end of the inquiry. However, I have serious doubts about the suggested covenant in the UU for various reasons.
139. Whilst I am sure the intention is that the revised FVA would be based on the reserved matters there is no requirement that it should do so. Even on the assumption that this were to be the case, any form of dispute resolution requires both parties to have an input into the proceedings. This would not be the case here as the Council would not be permitted to question the inputs or judgements on which the revised FVA was based. It was clear from the length and detail of the evidence on viability to the inquiry that there is considerable scope for expert disagreement. I have no reason to believe that the professional costs witnesses<sup>17</sup> did not act other than in full accordance with their professional code of conduct. Yet there was so little agreement between them that they were not even able to sign a statement of common ground.
140. In addition, the dwelling mix was agreed by the viability experts. I do not therefore consider that there is any justification for a review on values. As far as I can see, the covenant would effectively transfer the decision on affordable housing provision to a third party who has no legitimacy as a decision maker in the public interest. The Council would be by-passed in this respect and bound by the terms of a covenant to which it is not a signatory and does not agree. In the circumstances, I do not consider that the

<sup>16</sup> By Property Perspective (September 2020) and Bellhouse Surveyors (March 2020).

<sup>17</sup> Ms K Sandford BA(Hons) MRICS and Mr G Bushell FRICS MAE QDR APAEWE.



suggested planning obligation would be an acceptable means by which to address the affordable housing issue in this case.

### Overall conclusions

141. For all of the above reasons, I consider that **the costs in the Appellant's FVA** are likely to be too high and the values too low. This means that effectively the risk to the developer is reduced at the expense of the public purse. I have not assessed all of the inputs but have done sufficient to conclude that there is the reasonable probability that significant costs savings and value increases could be made. Of course this would have an implication for various contingencies and fees. However, any adjustment would not alter my headline conclusion that, on the available evidence, there would appear to be sufficient residual value to fund 45% affordable housing or at the very least a significant proportion to help address local and Borough-wide affordable housing needs.

### OVERALL CONCLUSIONS AND PLANNING BALANCE

142. The proposed development would be contrary to the spatial strategy in the development plan, including saved policy C8 in the UDP and policies R4 and L1 in the CS. It would also cause harm to landscape character in conflict with saved policy ENV17 in the UDP and policy R2 in the CS. There would be harm to heritage assets, contrary to policy R1 in the CS. The failure to provide affordable housing would conflict with policy L2 in the CS. Whilst it would not offend policies relating to accessibility and highway safety, overall I consider that the appeal scheme would be contrary to the development plan when taken as a whole. I now turn to consider whether there are material considerations that would determine that my decision should be made otherwise than in accordance with the development plan.
143. The Council can only demonstrate a deliverable supply of land to meet about 2.4 years **of the Borough's** housing requirement. This is a very serious **shortfall and does not comply with the Government's objective of boosting the the supply of homes to meet peoples' housing needs**. Furthermore, the Housing Delivery Test indicates delivery is well below the Framework requirement over the last 3 years. Whatever the reason for these failures, they are a matter of considerable concern.
144. Paragraph 11 of the Framework indicates that in such circumstances the presumption in favour of sustainable development is engaged. In this case however I have found there is applicable policy in the Framework that protects assets of particular importance and provides a clear reason for refusing development. The assets in question here are several Grade II listed buildings and the applicable policy is paragraph 196. Before I consider this matter I turn to the benefits of the scheme.

### Benefits

145. The evidence indicates that the site could yield 150 dwellings within the next 5 years and this would make a significant contribution to reducing the deficit. There would also be provision over the longer term. In addition, the provision of market homes and family housing would help improve the housing mix and balance within a part of the Borough with a relatively high proportion of social housing. These are matters to which I attribute substantial weight as a



planning benefit, especially at a time when the construction of housing will be an important driver in economic recovery after the COVID-19 pandemic.

146. The development would generate employment during the construction period over several years. Furthermore, there would be a reliance on associated goods and services that would help support local businesses and tradespeople. The new population would generate additional income that would increase spending in the local economy and support local shops and services. These are economic advantages of moderate weight.
147. The scheme would deliver a number of accessibility benefits. The new bus stops in Moss Lane, the improvements to the two bus stops in Warburton Lane and the additional CAT 5A bus service would provide additional facilities to encourage the use of public transport by existing as well as new residents. Indeed the CAT 5A contribution may provide the only service to Warrington in the future, if the current subsidy is withdrawn. These are benefits of moderate weight.
148. The site would include a large amount of open space and green infrastructure in excess of the policy requirement. As I have indicated this would be available for Partington residents if they wished to use it. It would add to the recreational facilities provided by the walking trails beside the Red Brook, although outsiders would have to reach it via the main accesses in the absence of additional pedestrian bridges. There is also scope to enhance biodiversity, although this would be expected in accordance with Framework objectives. The green corridors through the site could provide scope for links to the surrounding countryside, although much of the surrounding land is in private ownership. These are benefits of limited weight.
149. The improvements to the Manchester Road/ Moss Lane roundabout junction would provide capacity over and above what is required to accommodate the development traffic. On the other hand, it may be provided by the Lock Lane developer rather than the Appellant. In the circumstances this is attributed minimal weight as a benefit.
150. The Appellant mentions a number of other things that are considered as benefits. However, these are generally required to address development specific impacts. The Cross Lane Playing Fields improvement is a case in point. Reference has been made to various generic payments. The New Homes Bonus is intended to incentivise housing growth but as far as I am aware this would not be ring fenced by the Council for projects that might benefit the local area. Council Tax and the Community Infrastructure Levy may generate significant revenue but they are necessary to deliver local services and infrastructure to support the new development. I therefore attribute negligible weight to these factors as benefits of the scheme.

### **The heritage balance**

151. The harm to the significance of designated assets would be less than substantial in nature. In the case of Heathlands Farmhouse, Heathlands Barn, the barn to the south-east of Birch Farmhouse and the curtilage listed buildings, the harm would be at a moderate level within that spectrum. In the case of the farm building at Warburton Park Farmyard and the curtilage listed buildings it would be at a minor level within that spectrum.

152. Nevertheless, in my judgement the benefits that I have outlined above would be of sufficient importance to outweigh the harm that would arise to the significance of the designated heritage assets, both individually and in terms of group value where relevant. In reaching this conclusion I have applied the balancing exercise so as to give great weight and importance to the conservation of the heritage assets, understanding that they are an irreplaceable resource.

### **The “tilted” balance**

153. In view of my conclusions on heritage matters, the relevant approach in the Framework is to consider the balance in accordance with paragraph 11d)ii).

154. The proposal would be on greenfield land outside the settlement of Partington and in this respect it would not accord with the spatial strategy in the development plan. However, bearing in mind the housing land supply position, the policy conflict in this respect would be a matter to which I give limited weight. Nevertheless and notwithstanding its relatively good accessibility credentials, the development would not be well integrated with Partington or contribute to improving the sustainability of that settlement. This is an important strategic objective of the development plan and the conflict with it is of a matter of very significant weight.

155. The failure to provide affordable housing is a matter to which I give very substantial weight in this case. The policy context is up to date and the need is clear. The viability evidence indicates that even if 45% could not be achieved, a significant amount of affordable housing could be provided.

156. Although the landscape is of local value there would be significant harm arising both to the countryside and to visual amenity. The relevant development plan policies are consistent with the Framework and are not otherwise out-of-date. I have addressed the harm to the significance of designated heritage assets above. There would also be harm to the significance of non designated assets, although the scale of harm would be relatively small in this case.

157. There is no doubt that the appeal scheme would offer substantial benefits as I have outlined above. However, there would also be very substantial harm. My judgement is that the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against Framework policy as a whole. In the circumstances of this case there are no material considerations to indicate that this decision should be made otherwise than in accordance with the development plan.

158. I have taken account of all other matters that have been raised, but have found nothing to alter my conclusion that the appeal should not succeed.

*Christina Downes*

INSPECTOR

**APPEARANCES****FOR THE LOCAL PLANNING AUTHORITY:**

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Borough Council\*Mrs S Lowes BA(Hons)  
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Major Planning Projects Manager

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**FOR THE APPELLANT:**

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**FOR THE RULE 6 PARTY:**

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<i>He called:</i>	
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Mr P Beckmann CMLI	Environmental Advisor to Warburton Parish Council and Member of the Parish Council
Mr Priestner	Member of Warburton Parish Council

**INTERESTED PERSONS:**

Mrs C Grace	Local resident and member of Warburton Parish Council
Dr T Fairbairn	Local resident
Mr B Jones	Local resident and member of Warburton Parish Council
Mr R Nicholls	Local resident and Chair of Warburton Parish Council
Dr J Chillala	Local resident and Senior Consultant at Trafford Hospital

## DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 *CEG Land Promotions Limited v Secretary of State for housing, Communities and Local Government v Aylesbury Vale District Council* [2018] EWHC 1799 (Admin), 2018 WL 03440406, submitted by Mr Garvey
- 2 **Inspector's question on prematurity: Council's response**
- 3 Written representation of the Jukanti family (21 October 2020)
- 4 Email from Mr Gary Hall, Chief Executive Officer of Chorley Council and Interim CEO of South Ribble Council regarding Mr **Lloyd's involvement on the Leyland Test Track viability case (22 October 2020)**
- 5 Viability Supplementary Note prepared by Mr Nesbitt regarding evidence of Mr Lloyd relating to the Leyland Rest Track viability case
- 6 Additional information provided by the Council relating to the viability evidence
- 7 Plan showing the 3 main junction locations, submitted by Mr Forsdick
- 8 **Outstanding points arising from Ms Sandford's cross-examination**, submitted by Mr Forsdick
- 9 Information on Mouseprice, submitted by Mr Forsdick
- 10 **Comparison between Council and Appellant's abnormal costs and base build costs**, submitted by Mr Forsdick
- 11/A Note on drainage to the existing ponds to the south-west of the appeal site by Betts Hydro, submitted by Mr Manley
- 11/B Response from Mr Beckmann on behalf of Warburton Parish Council
- 12/A Letter from Ms S Todd, Chief Executive of Trafford Council to Peel **Land and Property Group concerning Ms R Coley's evidence to the inquiry**, submitted by Mr Forsdick
- 12/B Letter to Ms Todd from Mr J Whittaker, Peel L&P in response, submitted by Mr Forsdick
- 12/C Trafford City – Economic Impact
- 12/D Note by the Council regarding Documents 12/B and 12/C
- 13 **Inspector's question on prematurity: Appellant's response**
- 14 Court of appeal documents in relation to an application to appeal against the refusal of the High Court to grant Peel Investments (North) Limited permission to apply for judicial review (11 January 2018), submitted by Mr Forsdick
- 15 Housing Delivery Test Action Plan (August 2020), submitted by Mr Forsdick
- 16 The **Council's written response to the design evidence of Mr Haralambous**
- 17 New Carrington GMSF Masterplan (September 2020)
- 18 Extracts from Regulation 19 draft Greater Manchester Spatial Framework, including Policy GM-STRAT 11 and Policy GM Allocation 41
- 19 Technical Note on Old Warburton Lane by SCP (29 October 2020), submitted by Mr Manley
- 20/A Note from Keppie Massie on its experience of viability assessment, submitted by Mr Manley
- 20/B Addendum Advice Note by Keppie Massie for South Ribble

- 20/C Borough Council (September 2019), submitted by Mr Manley  
Email from Mr Ged Massie regarding a request from the Council that a representative from Keppie Massie attend the inquiry (4 November 2020), submitted by Mr Manley
- 20/D Letter from South Ribble Borough Council regarding Document 20/B, submitted by Mr Forsdick
- 21 Additional information from the Council on appeals in Trafford over recent years
- 22 **Letter from Redrow in answer to Inspector's** questions regarding build out periods and implementation of development (3 November 2020), submitted by Mr Manley
- 23 Additional information from the Council on various points raised by the Inspector with Mrs Brown
- 24 **Warburton Parish Council's written** response to the design evidence of Mr Haralambous
- 25 Carrington Relief Road: Outline Business Case – Executive Summary (December 2019), submitted by Mr Forsdick
- 26/A Extract from WYAS Archaeological Services Report: Plots E1 and E2 at Carrington – Archaeological trial trenching and excavation (September 2019), submitted by Mr Forsdick
- 26/B Emails from Mr P Owen (RPS) to Mr N Redhead regarding the geophysical survey and trial trenching at the appeal site, submitted by Mr Forsdick
- 26/C Historic England: Agriculture – Scheduling selection guide, submitted by Mr Forsdick
- 26/D Historic England: Settlement sites to 1500 – Scheduling selection guide
- 27/A Report to the Planning and Development Management Committee on developer contributions towards the Carrington Relief Road (15 October 2020), submitted by Mr Forsdick
- 27/B Addendum to the above document
- 27/C The **Council's note regarding the application of contributions** to the Carrington Relief Road from sites outside of the policy SL5 area, submitted by Mr Forsdick
- 27/D List of schemes making up the anticipated developments in Table 2 of the Committee Report, submitted by Mr Forsdick
- 28 Leyland Test Track: Response by Cushman & Wakefield to the Trebbi viability synopsis (July 2019), submitted by Mr Forsdick
- 29 **Council's** response to the Document 19 Technical Note relating to Old Warburton Lane
- 30 Outline Business Case for the Carrington Relief Road (1 May 2018), submitted by Mr Forsdick
- 31 Addendum to the above Outline Business Case, including Appendices A-G, submitted by Mr Forsdick
- 32 Carrington Relief Road – Forecast cost profile, submitted by Mr Forsdick
- 33 **The Appellant's response to the written representations by the Council and Warburton Parish Council on Mr Haralambous's** evidence on design matters (Documents 16 and 24)
- 34/A Letter from the Appellant regarding an updated viability appraisal and identification of the potential for affordable housing provision following the submission of reserved matters (6 November 2020)
- 34/B **The Council's response** to Document 34/A (7 November 2020)

- 35 Supplementary Note by Mr Bushell concerning the expenditure profile of the abnormal drainage infrastructure
- 36/A **Appellant's Supplementary Planning Note on the Council's** approach to viability and benefit weight on other schemes
- 36/B Planning Committee Report on Land at Heath Farm Lane, Partington (12 November 2020), submitted by Mr Manley
- 36/C **Planning Committee Report on the former Kellogg's site, Talbot Road, Stretford**, submitted by Mr Manley
- 37 **Appellant's CIL compliance rebuttal note**
- 38 Carrington Relief Road contributions calculation, submitted by Mr Manley
- 39 Technical Note on the Carrington Relief Road and public transport contributions by Mr Roberts
- 40 Appeal decision relating to land east of the former shellfish packing station, South Fambridge (APP/B1550/W/15/3130774), submitted by Mr Garvey
- 41 Junction capacity at the Flixton Crossroads in the AM peak for scenarios including the development with and without mitigation, submitted by Mr Forsdick
- 42 **Appellant's further response to the Council's response to Document 19 relating to Old Warburton Lane**
- 43/A Covering email regarding instruction of The Property Perspective and Bellhouse Surveyors, submitted by Mr Manley
- 43/B CV and Terms of Engagement for the author of the Report by The Property Perspective **referred to in Mr Nesbitt's evidence**, submitted by Mr Manley
- 43/C CV and Terms of Engagement for the author of the Report by Bellhouse Surveyors **referred to in Mr Nesbitt's evidence**, submitted by Mr Manley
- 44 **The Council's response to the WSP note on other planning applications, particularly Heath Farm Lane (Document 36A)**
- 45/A Schedule of draft conditions agreed between the Council and Appellant
- 45/B Schedule of draft conditions not agreed by the Council and Appellant
- 45/C **Council's suggested amended noise condition**
- 46 Written representation by Altrincham and Bowdon Civic Society (11 November 2020)
- 47 Chronology of events regarding RPS involvement in the archaeology evidence to the appeal and related emails (see Document 26B), submitted by Mr Manley
- 48/A Planning Obligation by Unilateral Undertaking dated 2 December 2020, submitted by Mr Manley
- 48/B **Appellant's covering letter to the Planning Obligation**
- 48/B **Council's final comments on the Planning Obligation**
- 49/A Costs application by the Council
- 49/B Costs reply by the Appellant
- 49/C Final costs response by the Council
- 50 **Inspector's letter closing the inquiry in writing (10 December 2020)**



**Appendix 4 - Knight Frank – Senior Housing Development Update 2022**



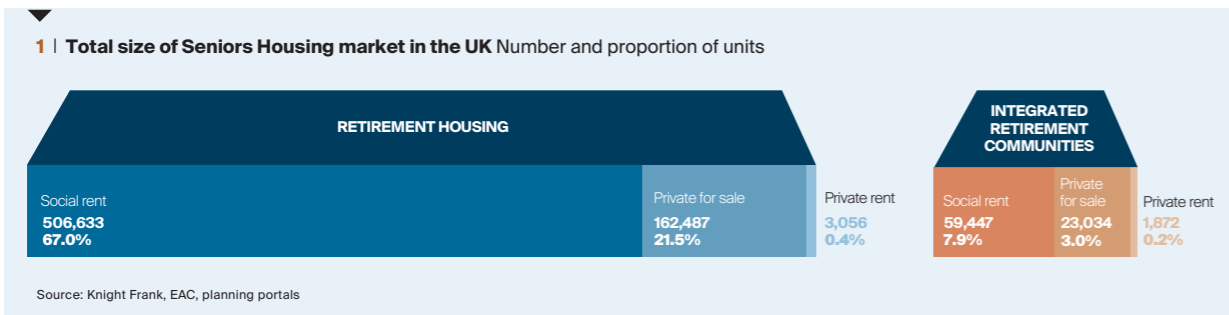
# Seniors Housing Development Update 2022

[knightfrank.com/research](https://knightfrank.com/research)



# INTRODUCTION

Rising investment continues to fuel development of seniors housing.



The UK has an ageing population and people are living longer; within the next five years, the number of people aged over-65 is projected to total over 14 million, a 10% increase on current totals. By 2037, it is forecast that one in four of us will be over-65.

At the same time, increasing wealth and income among this age cohort is resulting in more informed housing and lifestyle choices. The seniors cohort is the wealthiest in the UK in terms of property assets, with an estimated £1.5 trillion of equity.

Yet delivery of age-appropriate housing for seniors continues to lag potential need. More than 7,500 new seniors housing units were built in 2021 across more than 100 schemes, a 12% increase on the previous year's delivery. Rising delivery comes despite a more challenging development environment, with inflationary pressures putting pressure on construction costs and operating costs.

Longer term, over the last 10 years, nearly 80,000 new seniors housing units have been delivered, at an average of nearly 7,700 per annum. It takes the total number of complete and operational seniors housing units across the UK to 756,529.

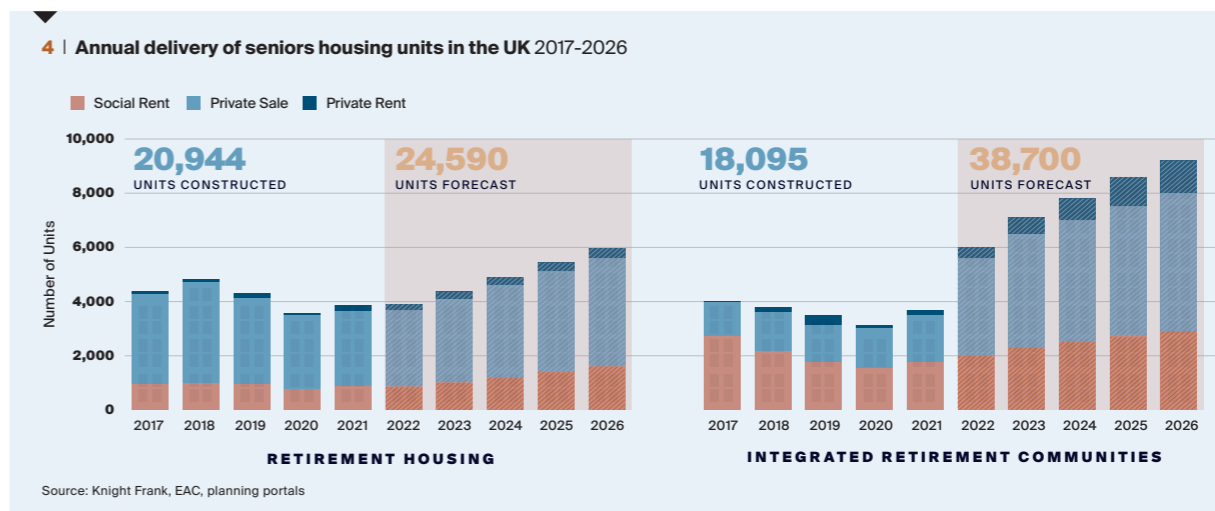
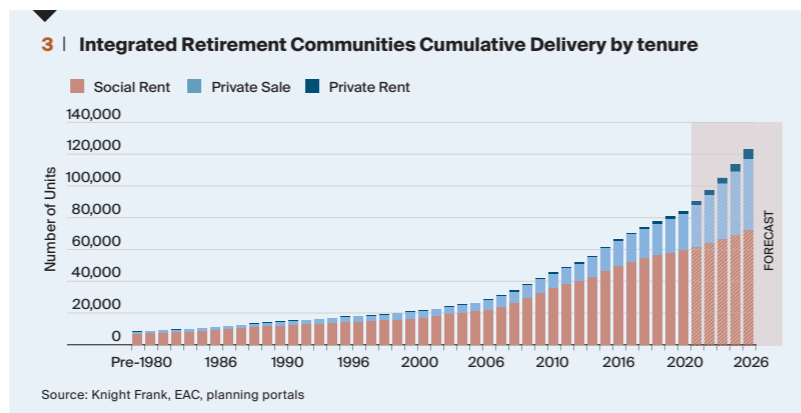
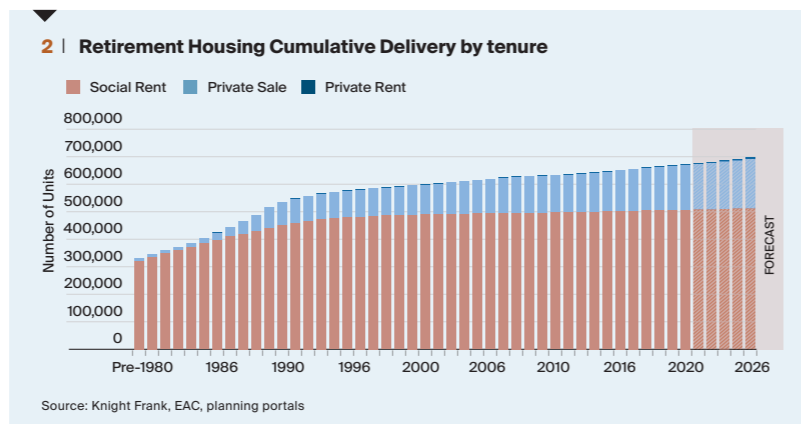
New delivery over this time has been underpinned by an increase in the number of units located within Integrated Retirement Community (IRC) schemes (also known as Housing with Care), which provide higher levels of services and support as an integral part

of their proposition. IRC completions accounted for 51% of new seniors housing units built between 2011 and 2021, up from 36% over the previous 10-year period, with the remainder age-restricted retirement housing.

With a significant and growing volume of private capital entering the market, largely targeting the IRC sector, we expect the next five years will see delivery

accelerate further. Analysis of the planning pipeline has identified nearly 120 seniors housing schemes which received planning permission last year and an additional 215 new applications which were submitted. Together, they alone account for a potential 20,000 additional new units.

Consequently, we forecast that the total number of specialist seniors housing units



in the UK will grow by 8% over the next five years, taking the total size of the sector to just short of 820,000 units.

The composition of the market will also shift over this time, reflecting a need to provide more choice for residents including through mixed-tenure and rental-only options, affordable housing provision and more schemes with varying levels of facilities and services.

As a result, we anticipate that the IRC segment of the market will continue to be the dominant form of delivery, driven by even greater institutional backing. IRC supply is forecast to increase by 46% (or 38,700 units) over the next five years. This compares with 4% (or 24,590 units) growth in age-restricted retirement housing stock.

Even with this forecast expansion, the rate of delivery will still be overshadowed

by the UK's ageing population, deepening the existing mismatch between supply and demand. In real terms, the number of seniors housing units per 1,000 individuals aged 75+ is expected to drop to 120 by 2025, down from 137 in 2010 and 128 currently, underscoring the headroom in the market today, which will only grow with population growth.

## RIISING INSTITUTIONAL INVESTMENT KEY TO DRIVING DELIVERY

Last year, a record £1.4 billion was invested in the UK seniors housing market, with a particular focus on the IRC sector. Momentum has continued into 2021, with more than £662 million invested in the first half of the year, up 47% on H1 2021 levels.

Rising investment volumes come amid a wider pivot from institutional investors towards residential assets across all age groups, with investors recognising the quality

of income streams on offer and strong demographic fundamentals.

Sustainability will dictate investment strategies going forward. There has been commitment from some operators to net zero carbon platforms and we expect others will follow to future proof assets and reduce the risk of future obsolescence.

The social benefits of seniors housing are also recognised by investors. Housing people

in age-appropriate homes can hugely reduce instances of trips and falls and other injuries within the home, while housing people in safe communities where residents can interact and live active and social lives is better for people's mental health and wellbeing, and again reduces the reliance on social services to deal with issues of loneliness and isolation.



### DEMOGRAPHIC SHIFT

The number of people aged over 65 in the UK is projected to total over 14 million within the next five years, a 10% increase on current totals. An ageing population means increasing demand for age-appropriate housing allowing seniors to 'age-in-place', with the option of care services.



### UNDER SUPPLIED MARKET

Even with this forecast expansion, the rate of delivery will still be overshadowed by the UK's ageing population, deepening the existing mismatch between supply and demand. In real terms, the number of seniors housing units per 1,000 individuals aged 75+ is expected to drop to 120 by 2025, down from 137 in 2010 and 128 currently.



### SECURE INCOME

Demand, occupancy and income have been resilient across seniors housing schemes over the course of the last two years.



### SOCIAL IMPACT

The influence of impact or ESG investing in real estate is growing at a faster pace than ever. A range of investors are now focusing on social infrastructure investments, and seniors housing is part of this.

A range of investors are now focusing on social infrastructure investments, and healthcare is part of this.



# A MORE DIVERSE MIX LEADS TO MORE CHOICE FOR SENIORS

More supply and more choice will help fuel awareness and exposure to the benefits of specialist seniors housing.

The sector is evolving, with a rapidly growing mix of for sale and rental options. Last year some 25% of the £1.4 billion invested in the market was for rental product. Two thirds of private operators currently offer rental as a tenure option, either through flexible tenure options on new and existing schemes, or through fully BTR platforms. For tenants, the benefits are clear. Targeted at independent seniors, it offers the flexibility of rental accommodation in a community setting. The nature of rental accommodation also gives customers a chance to move quickly, without necessarily selling a family home first.

Given the significant imbalance of supply and existing demand, on top of the ageing population, and a requirement for flexibility and choice from this demographic, we expect delivery of rental product will increase further in the coming years. From an investor perspective, mixed tenure schemes can help accelerate absorption rates, as well as widening the accessible market. It is a view supported by our research. Some 67% of respondents to our survey of leading investors across residential investment sectors (encompassing student housing, co-living, multifamily and single-family rental and seniors housing) said they expect to be invested in the seniors housing

rental market within the next five years, up from 31% who said they were currently investing. This supports our view that the number of private seniors rental properties in the UK will increase by 114% over the next five years, from almost 5,000 currently to more than 10,500. Even accounting for such rapid growth, senior housing rental stock will only account for just 1.3% of the total number of specialist senior housing options. In the more mature US market, seniors rental housing is well established, accounting for 90% of total stock, with 80% of tenants selling a former family home before moving and becoming a tenant. The

From an investor perspective, mixed tenure schemes can help accelerate absorption rates, as well as widening the accessible market.

homes provided are often part of larger 'Continuing Care Retirement Communities' (CCRCs) that allow residents to move into more specialised accommodation as their needs change over time.

### Urban shift

With increasing institutional investment accessing long term income profiles from rental and event fee income as well as services, we are also seeing operators' schemes growing in size, and there is increasing development activity in peri-urban, suburban and urban locations.

Highlighting this shift, some 30% of seniors housing IRC schemes built in the last two years have been delivered in the most urban settlements, up from 9% for schemes built before 1980s.

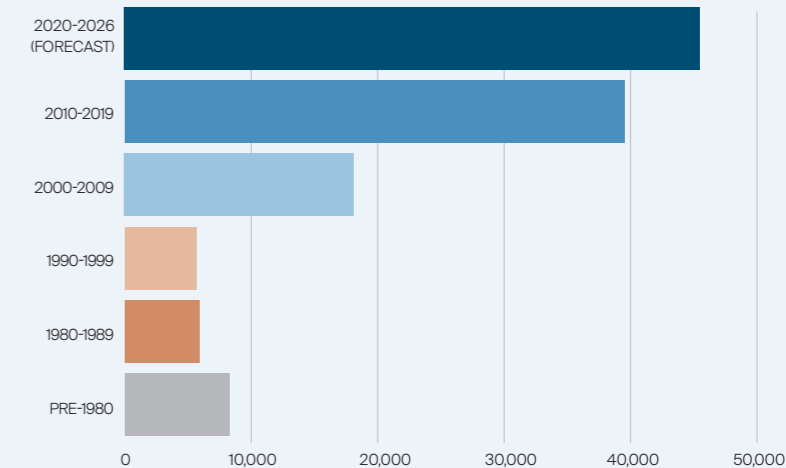
The size of developments has also risen steadily, with an increasing number of developments of 100 to 150 units and 150+ units being delivered. The planning pipeline suggests this trend is set to continue – there are 34 schemes with 150+ units in the planning pipeline, compared to 91 currently operational schemes. That is partly a reflection of a desire for scale and brand-building from new entrants to the sector as they look to create management platforms with operational efficiencies at pace. For these schemes, phasing is important to manage sales rates.

## 5 | MARKET SEGMENTATION

RETIREMENT HOUSING	INTEGRATED RETIREMENT COMMUNITIES	CARE HOMES
Also known as sheltered housing, retirement flats or communities	Also known as extra care, retirement villages, housing with-care, assisted living or independent living	Also known as Nursing Homes, Residential Homes, Old People's Home
Offers self contained homes for sale, shared-ownership or rent.	Offers self contained homes for sale, shared-ownership or rent.	Communal residential living with residents occupying individual rooms, often with an en-suite bathroom.
Part-time warden and emergency call systems. Typically no meals provided.	24h onsite staff. Optional care or domiciliary services available. Restaurants/Café available for meals.	24-hour care and support. Meals included.
<b>TYPICAL FACILITIES AVAILABLE:</b>	<b>TYPICAL FACILITIES AVAILABLE:</b>	<b>TYPICAL FACILITIES AVAILABLE:</b>
<ul style="list-style-type: none"> <li>Communal lounge</li> <li>Gardens</li> <li>Laundry facilities</li> <li>Guest room</li> </ul>	<ul style="list-style-type: none"> <li>Restaurant and Café</li> <li>Leisure Club including: gym, swimming pool, exercise class programme</li> <li>Communal lounge and/or library</li> <li>Hairdressers</li> <li>Gardens</li> <li>Guest room</li> <li>Activity (Hobby) rooms</li> <li>Social event programme</li> </ul>	<ul style="list-style-type: none"> <li>Dining room</li> <li>Communal lounges</li> <li>Activities</li> <li>Gardens</li> </ul>
TYPICALLY 40-60 HOMES	TYPICALLY 60-250 HOMES	SIZES VARY CONSIDERABLY

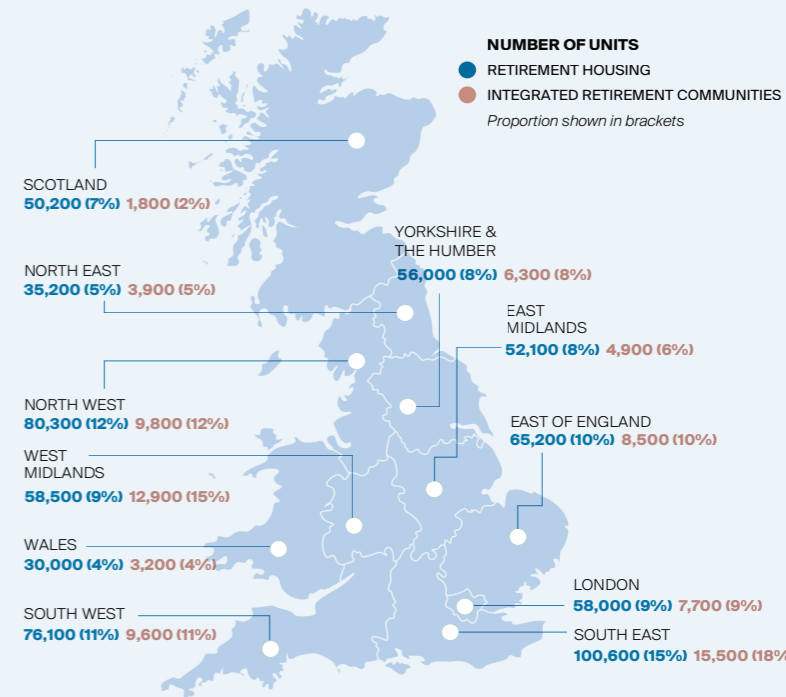
Source: ARCO

## 6 | Integrated Retirement Communities delivery



Source: Knight Frank, EAC, planning portals

## 7 | UK Seniors Housing units by region Proportion and total units (existing stock)



Source: Knight Frank, EAC, planning portals

TABLE 1 | UK Seniors Housing Forecasts 2021-2026

	RETIREMENT HOUSING	INTEGRATED RETIREMENT COMMUNITIES	TOTAL SENIORS HOUSING MARKET
2021	672,176	84,353	756,529
2025 (f)	696,766	123,053	819,819
Forecast new units	24,590	38,700	63,290
Forecast growth (%)	4%	46%	8%

Source: Knight Frank, EAC, planning portals

# OPPORTUNITY, BUT A CHALLENGING BACKDROP

*While there is clearly a strong appetite from investors for seniors housing, the sector isn't without challenges.*

Several new fully-funder operators have entered the market in the last 12 months, but there remains a shortfall of specialised operators active in the market. New fire safety regulations have also presented a challenge. As in the wider development market, rising operational and build costs have also put pressure on viability.

Housebuilder costs have risen by 15% in the year to Q1 2022, according to the

BCIS Private Housing Construction Price Index, driven by limited availability of materials. To an extent, strong house price growth of nearly 20% across the UK over the last two years has helped offset rising costs, but rising interest and mortgage rates and the prospect of the end of Help to Buy later this year are expected to cool buyer appetite and pricing.

New land supply is also limited, a factor which has driven competition for sites and kept land values buoyant. Greenfield land prices have risen an average 22.8% over the year to Q1, according to the Knight Frank Residential Development Land Index.

Nutrient and water neutrality issues, insufficient local government resources and local plan failures have added another layer of complexity.

## Planning

Planning remains the other big hurdle. While the Queen's speech placed heavy emphasis on levelling up, social housing and a wider reform of the regulation in the rental market, there were notable absences when it came to planning.

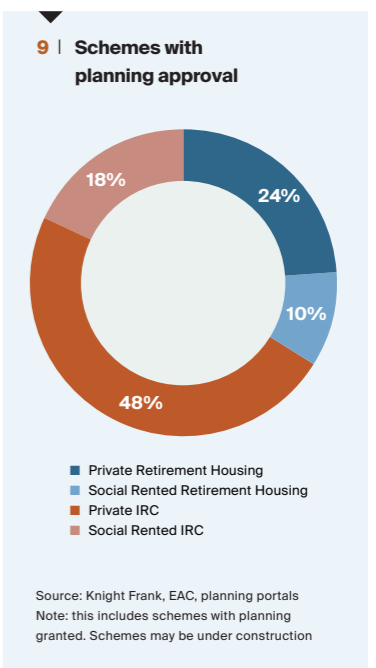
Over a third of the UK's local authorities still do not have clear policies in place to support housing for seniors. Whilst this represents an improvement, it still suggests significant shortcomings in the level of planning for seniors housing, particularly given the UK's ageing population.

There are signs the tide is turning, however. The UK government has recently announced a cross-departmental task force on housing for older people, championing the need for sector-specific legislation, clarity in the planning

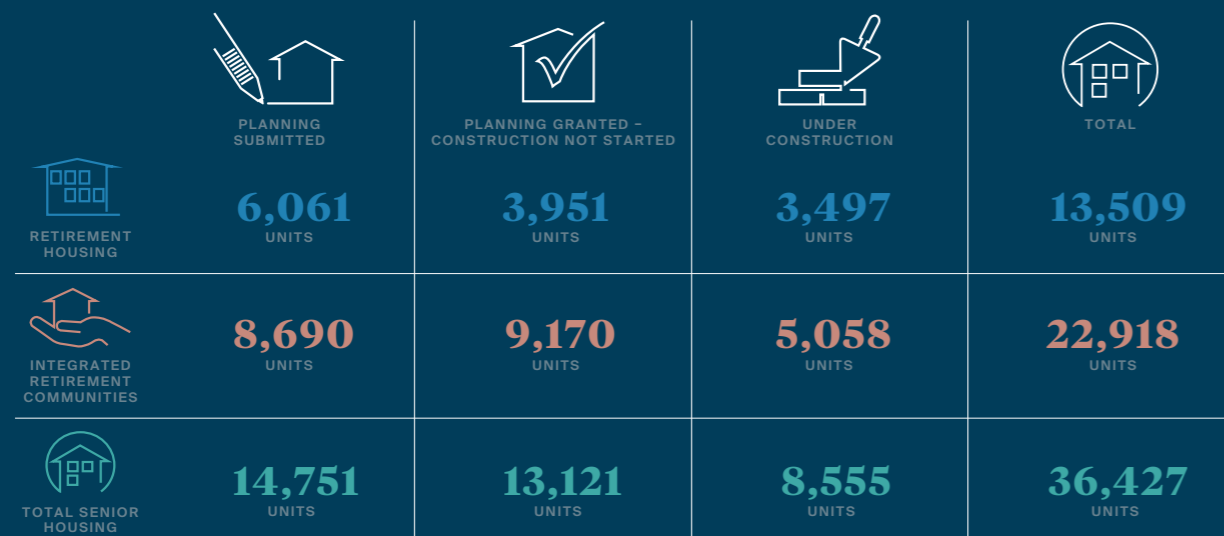
system, and funding for affordable housing. The National Planning Policy Framework and National Planning Policy Guidance also acknowledge seniors housing and say there is a need to increase this in local plan requirements, but it is not prescriptive.

The results of an ARCO-commissioned review into seniors housing need, due to be released later this year, should also help in setting a clear framework to measure housing need at a local level. Stamp duty savings for downsizers have also recently reared their political head.

More supply, more propositions and more choice will help fuel awareness and exposure to the benefits of specialist seniors housing, but a supportive policy environment will be key if the sector is to meet its near-term potential and build on existing delivery levels.



## 8 | DEVELOPMENT PIPELINE



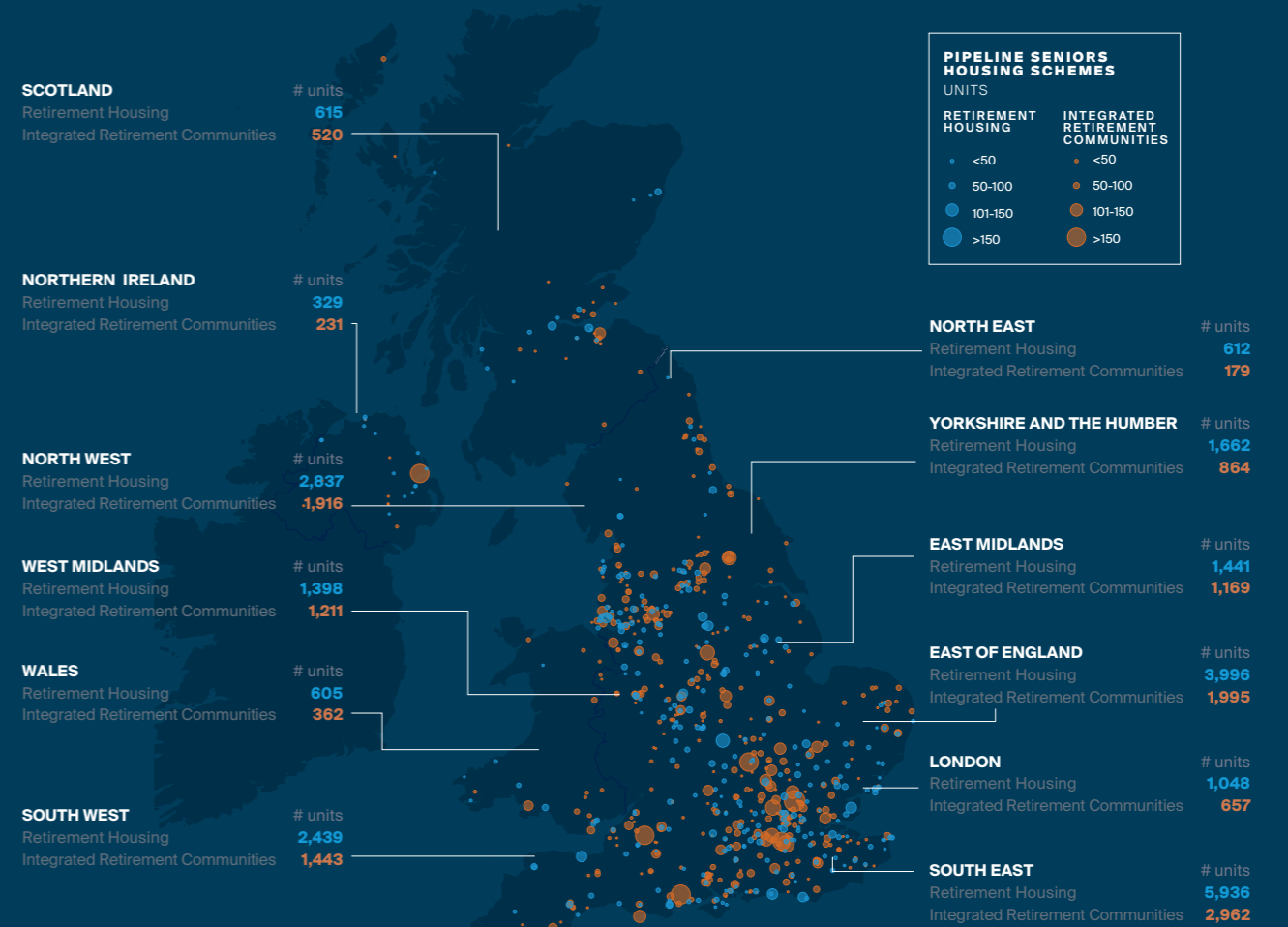
Knight Frank, EAC, Planning portals Note: pipeline data includes all applications logged in the planning since January 2019

## PIPELINE SENIORS HOUSING SCHEMES

	PRIVATE		SOCIAL		TOTAL SENIORS HOUSING
	RETIREMENT HOUSING	INTEGRATED RETIREMENT COMMUNITIES	RETIREMENT HOUSING	INTEGRATED RETIREMENT COMMUNITIES	
Planning Submitted	106	96	30	25	257
Planning Granted - Construction not started	85	94	28	38	245
Under Construction	53	49	22	22	146
<b>Total</b>	<b>244</b>	<b>239</b>	<b>80</b>	<b>85</b>	<b>648</b>

Knight Frank, EAC, Planning portals

## 10 | SENIORS HOUSING DEVELOPMENT PIPELINE



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Front cover: Riverstone Kensington

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**Appendix 5 - Appeal Decision (APP/Q4245/W/20/3258552)**



# Appeal Decision

Inquiry (In-Person and Virtual) Held on 11 – 14 January, 1 – 4 February and 8 – 11 February 2022

Site Visit made on 7 February 2022

**by Andrew McGlone BSc MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 May 2022**

## **Appeal Ref: APP/Q4245/W/20/3258552**

### **Former B&Q, Great Stone Road, Old Trafford, M32 0YP**

- 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 Accrue (Forum) 1 LLP against Trafford Metropolitan Borough Council.
- The application Ref 100400/OUT/20, is dated 19 March 2020.
- The development proposed is the demolition of existing retail unit and associated structures; erection of buildings for a mix of use including: 332 apartments (use class C3) and communal spaces ancillary to the residential use; flexible space for use classes A1, A3, D1 and/or D2; undercroft car parking; new public realm; and associated engineering works and infrastructure.

## **Decision**

1. The appeal is dismissed and planning permission is refused for the demolition of existing retail unit and associated structures; erection of buildings for a mix of use including: 332 apartments (use class C3) and communal spaces ancillary to the residential use; flexible space for use classes A1, A3, D1 and/or D2; undercroft car parking; new public realm; and associated engineering works and infrastructure.

## **Applications for costs**

2. An application for costs was made by Accrue (Forum) 1 LLP (the appellant) against Trafford Metropolitan Borough Council (the Council) and in the alternative Lancashire County Cricket Club (LCCC). This application is the subject of a separate decision.

## **Preliminary Matters**

3. The application submitted to the Council was in outline, with landscaping the only one of the matters reserved for future consideration.
4. The Council did not determine the planning application, which has resulted in this appeal being lodged by the appellant. Had the Council reached a decision on the planning application it confirmed that it would have refused planning permission for several putative reasons.
5. During the appeal, it became clear that one of the apartments had been double counted and that the submitted plans show 332 apartments not 333 apartments. There have been no changes to the submitted plans and, having regard to the main parties' comments on the matter, I am satisfied that no

prejudice would be caused if I determined the appeal based on the lower number of apartments.

6. I outlined the provisional main issues at the Case Management Conference (CMC)<sup>1</sup> **having regard to the Council's putative reasons for refusal**. The reasons were then revised following the submission of further evidence<sup>2</sup>. This meant that the Council no longer pursued a case in relation to main issues 6 and 7, set out below, and the living conditions of existing residential properties on Great Stone Road and Trent Bridge Road, with regards to daylight and sunlight. The Council did, however, add a further putative reason for refusal relating to noise from concerts at LCCC and whether this give rise to inappropriate living conditions for any future occupants. In setting out the main issues at the start of the Inquiry I had regard to the **Council's updated position** and the body of evidence before me.
7. For reasons explained later, the Council withdrew its reason for refusal in **relation to the proposal's** effect on the fine turf training facility (FTTF) at LCCC. It also made no case about the non-turf training facility (NTTF). LCCC, a Rule 6 party, decided not to call its own evidence on this issue and instead relied on the **Council's evidence**. Even so, **despite the Council's new position**, LCCC still considered an adverse effect on the FTTF would be caused by the proposal. I consider the merits of this later.
8. LCCC, who were granted Rule 6 status at this Inquiry, raised concerns relating to highway matters through its written evidence but did not call a witness at the Inquiry on this topic. As the Council did not raise issue with the scheme in this respect, I sought written responses from the **appellant's highway witness** to my questions<sup>3</sup>. I have had regard to all the comments made in respect of highways in reaching my conclusion on this matter.
9. A signed and dated Unilateral Undertaking (UU) was submitted after the Inquiry closed. It provides for a Traffic Regulation Order (TRO) review, a design certifier and a contribution for sports facilities. The UU also provides for affordable housing and/or a primary school contribution, having regard to my findings on viability. I consider the obligations and the UU later in my decision.

## Main Issues

10. The main issues in this case are:
  - 1) the effect of the proposed development on the character and appearance of the area;
  - 2) whether the effect of noise from activities at Emirates Old Trafford (EOT) would result in acceptable living conditions for future occupants of the proposed development, and whether, as a consequence, unreasonable restrictions may be placed on **LCCC's** operations;
  - 3) whether future occupants of the proposed development would have acceptable living conditions, with regards to amenity space provision, outlook, sunlight and daylight;
  - 4) whether the proposed development would have an overbearing effect on

<sup>1</sup> CD-F29

<sup>2</sup> Inquiry Document 6

<sup>3</sup> Inquiry Document 19

the living conditions of the occupants of residential properties on Great Stone Road, Trent Bridge Walk, Gorse Avenue and Gorse Crescent, having regard to its height, massing, scale and layout;

- 5) whether or not the proposed development would make adequate provision in terms of affordable housing and education, having regard to viability;
- 6) the effect of the proposed development on the character or appearance of Longford Park Conservation Area and on the setting of nearby listed buildings;
- 7) the effect of the proposed development on EOT, a non-designated heritage asset and an internationally significant visitor attraction, cultural and tourism venue;
- 8) the effect of the proposed development on the fine turf and non-turf training facility at EOT; and
- 9) the effect of the proposed development on the safety of vehicular and pedestrian users of the access to the site, EOT and Great Stone Road.

## Reasons

### *Approach to decision-making*

11. The Council is currently unable to demonstrate a five-year supply of deliverable housing sites. Disagreement between the Council and the appellant exists on the extent of that supply. I shall consider this dispute later in my decision, but the Council and the appellant agree that the policies which are most important for determining the application are out-of-date and paragraph 11 d) of the National Planning Policy Framework (the Framework) is engaged.
12. While the most important policies in this case may be out-of-date this does not mean that they carry no weight. Were relevant, I consider the degree of weight that should be given to them, having regard to the **parties'** views<sup>4</sup>, according to their degree of consistency with the Framework. However, the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making.

### *Character and appearance*

13. The appeal site lies within the Lancashire County Cricket Club Quarter. It is one of five strategic locations identified for change in The Trafford Local Plan: Core Strategy (CS). Each location offers an opportunity for major economic and residential development to enable the growth of the Borough.
14. CS Policy SL3 specifically relates to the LCCC Quarter. It sets out that a major mixed-use development will be delivered in this location to provide a high-quality experience for visitors, balanced with a new, high quality residential neighbourhood centred around an improved stadium at LCCC. The policy goes on to say that this location can deliver 400 residential units comprised predominately of accommodation suitable for families. It sets out a number of development requirements that need to be met in order for development to be considered acceptable.

<sup>4</sup> Paragraph 5.1.22, Statement of Common Ground, October 2021

15. The site itself is located off Great Stone Road and is roughly 1ha in size. The site is broadly rectangular and contains the former single-storey B&Q store building and a large area of hardstanding once used for car parking and associated structures. The store ceased operating in January 2016 and the building has been vacant ever since. Vehicular access into the site is taken from Great Stone Road, just as the road starts to rise over the Metrolink line. **This extends alongside the site's** tree lined south-eastern boundary. The site is generally flat but its southern and eastern parts are lower than the road.
16. **The cricket ground and its stands are a prominent feature within the site's** immediate context but also the wider area. The height of the stands around the field of play at EOT ranges between around 15 metres to just over 20 metres. The stands that include the pavilion, hospitality or media facilities, alongside spectator seating, tend to be of a bulkier scale and mass compared to the open-air terraces, which consist of banks of spectator seating. During the summer months, and for certain cricket matches, a temporary stand is erected between the south-west terrace and The Point. The height of this stand is around 22.6 metres, roughly equivalent to seven storeys. The stand does, however, need to be removed when concerts take place at EOT as the location is also where the stage is erected.
17. To the north is Lancastrian House which is a large office building comprising of a mixture of two and six-storey blocks with surface car parking between it and the appeal site.
18. The appeal site is not a landmark site, but it marks a transition between suburban two-storey inter-war residential development and mixed-use and mixed-scale development to the north and east between the Metrolink line and the A56. Development on the appeal site and the western part of EOT is of a low scale, which provides a soft urban transition to the cricket ground stadium, Lancastrian House and the much more varied scale, type and form of development beyond.
19. The appeal site is viewed in conjunction with existing development in the distance to the north and east. However, EOT provides a strong physical and spatial break to this area of development and its scale, height and massing<sup>5</sup>. The area to the east of EOT at the **former Kellogg's site is earmarked for** further considerable change and is subject to a masterplan and a maximum height parameter plan. If realised, the height of development would rise up from the southern corner of this site to the north and west opposite Oakland House. Notwithstanding this, **I consider the site's immediate context** to comprise of the site, the adjacent residential development, EOT, Lancastrian House and the Metrolink. This is the primary consideration here so that the design of any development proposal appropriately recognises it as a transitional site and responds accordingly.
20. The Council considers that there should be a six-storey limitation on development at the appeal site due to the **site's proximity to suburban housing. The evidence base for the Council's approach is** part of the soon to be examined Civic Quarter Area Action Plan (AAP) **which is the Council's** vision for the site and the LCCC Quarter which has been developed over several years. The merits of the AAP are for the Examination in Public (EiP) especially as there are unresolved objections to it. Setting aside the six-storey limitation, it is

<sup>5</sup> Debra Harrison Proof of Evidence, Appendix H3

ultimately about achieving a suitably designed scheme for the site. This may or may not involve a development that is above six storeys, but the key is that it responds to the site and its context.

21. As the appeal site is generally unconstrained it could be developed in any number of ways to address the southwestern corner of the LCCC Quarter and provide general improvement to the urban area. The appeal scheme comprises of two blocks. The first would be next to the surface car park at EOT, the other next to the Metrolink line.
22. There would be a clear break inserted between the two blocks at the rear and upper and lower cuts added at the rear of the first block<sup>6</sup>. The changes strive to artificially make the development read as three separate buildings. This would be the case for the front part of the development next to Great Stone Road which would consist of three distinct blocks separated by around 14 metres of space. Conversely, the rear part of the development would not be read in the same manner. The first block would be read as a single entity enclosing the northern courtyard. The upper and lower cuts to the rear would not avoid this block being read as a high solid mass of built form enveloping the rear boundary of the courtyard from Great Stone Road<sup>7</sup> or the gap between the **'block'** next to the road. Once inside the courtyard, **users' experience and** understanding that this is a single block would only be compounded<sup>8</sup>.
23. The full height gap to the rear between the two blocks would mean that they would be distinct from one another. Yet, the benefit of this would be diluted by the proposed layout, which would serve to narrow the gap next to the southern courtyard and in turn only offer glimpsed views through and beyond the two blocks when one stands at Great Stone Road looking inwards<sup>9</sup>. As a result of the design approach to the rear of the site, the appeal scheme would read as two large blocks of development.
24. That said, each block would actively address Great Stone Road and have a varied and stepped increase in its scale, height and massing towards either the rear of the site and/or the Metrolink line. The principle of this approach to developing the site is an **appropriate response to the site's context**. However, the middle to rear sections of the development rise to a scale that exceeds the permanent stands at EOT along the entire length of the north-eastern boundary.
25. Comparisons made between **the AOD's for the proposed development** and EOT are relevant, but there are also obvious differences in the scale, height and massing of each body of development. For example, the massing of the southwestern terrace at EOT is distinct from that proposed along with the north-eastern façade<sup>10</sup>. The media building at EOT is bulkier, but again it is not directly comparable in terms of its overall scale, height and massing. Even the scale, height and massing of Lancastrian House is different due to the regular pattern and scale of development here that breaks the taller parts up physically and visually.
26. The appeal scheme would not be sympathetic to the surrounding built

<sup>6</sup> CD-K5, point e

<sup>7</sup> Mr O'Connell's Proof, Figure 72

<sup>8</sup> Mr O'Connell's Proof, Figures 73, 90 and 92

<sup>9</sup> Mr O'Connell's Proof, Figures 75, 76 and 95

<sup>10</sup> 103m length with 11m gap, cuts and 5-9 storeys



environment despite its stepped approach, with the north-western and south-eastern facades both 65 metres plus in length and either five to seven or seven to nine storeys high. The articulation and step up in both facades would fragment the roofline and create architectural interest. However, when the entirety of the scheme is considered, it would read as a large block of development of a considerable scale and mass that does not achieve an appropriate transition between the lower scale residential development and EOT. The more appropriate design response to Great Stone Road does not alter my view on this.

27. Concerns are cited by the Council about the **proposed development's proximity to the site's boundaries**. This is directly influenced by the proposed layout. There is a trade-off between making effective use of brownfield land, ensuring **a viable development, and responding to the site's context**. The proposal pushes the former two in favour of the latter. That said, the site coverage **would broadly correspond with the scheme at the former Kellogg's site**<sup>11</sup>, so I agree with the appellant on this point.
28. Nonetheless, the proposed plans and photomontages showing the north-western boundary next to the LCCC car park show several trees and a hedge. A verified view<sup>12</sup> indicates a stretch of grass, but that does not tally with the proposed site plan<sup>13</sup>, which shows a footpath leading to the rear of the site. The access road, footpath and layout of the development would be fixed and not reserved matters. The footpath is the minimum width necessary, and a retaining structure is required for the ramp down into the undercroft car park. This would leave insufficient space to accommodate trees along the north-western boundary up until the north-east corner, either between the footpath and the boundary or within the footpath itself as this would restrict its usable width. Hence, the softening effect that the illustrated trees are shown to offer could not be realised. This is a matter that weighs against the proposal.
29. A density of development of around 332dph would be in stark contrast with the lower density residential dwellings to the south and west. However, to realise **the Council's vision for the site and the Framework's objective to avoid homes** being built at low densities, there would be a contrast of some sort. In the absence of a definitive figure to guide density, the key question is whether the proposal simply optimises the site, or not.
30. A numeric approach to developing a site is not a design or context led approach<sup>14</sup>. I recognise that the two cannot be treated in isolation, but the appropriate density will result from the context, accessibility, the proposed building types, form and character of the development<sup>15</sup>. A high density of development on the appeal site may not in itself be harmful, but in this case, the brief for the site creates direct tension between the **proposal's resultant scale, height, massing and layout on one hand and the site's transitional context on the other**. The outcome would be a development that would be of a density that would clearly and harmfully jar with that of **the site's context and the lower density of development nearby**.
31. I note the **appellant's Townscape Visual Impact Assessment (TVIA) and the**

<sup>11</sup> Appellant Closing, Paragraph 64

<sup>12</sup> CD-K48 CAM-03

<sup>13</sup> CD-K49 P5

<sup>14</sup> Mr O'Connell confirmed he understood his brief was to design a scheme for the site for around 300 units

<sup>15</sup> National Design Guide, Paragraph 66

TVIA prepared by Randall Thorpe in relation to the emerging AAP. Part of the **appellant's assessment draws on the proposal** being broadly similar and coherent in scale to EOT and nearby office developments off Talbot Road. But, as noted above, a tighter sphere of reference is needed for this site to ensure development appropriately transitions between developments of different scale and use. Furthermore, comparisons drawn by the appellant on the conclusions reached by the Randall Thorpe TVIA are not directly comparable due to the differences in scale, height and massing of the two to four storey building assessed on the site.

32. I consider that the proposed development would lead to a medium magnitude of change to this urban landscape. The scale, height and massing proposed would introduce development that is likely to be perceived as negative. It would be discordant in its context. Whilst there are beneficial elements to the scheme, and development of the site could yield beneficial change as an end product, the proposal in overall terms would likely amount to an adverse effect **locally to the townscape's character**.
33. The overall harmful effect of the scheme would be principally experienced from Great Stone Road to the north of the site and in front of it, along Trent Bridge Walk and from EOT for years to come. A planning condition would ensure the level of detailing shown on the submitted details would be delivered on site, but it would not overcome the harm identified. Landscaping may help soften the built form at certain points, but it would need to be substantial to mitigate its harmful visual impact in this urban landscape even some years down the line. I do not consider suitable mitigation could be achieved with this scheme.
34. Beneficial changes were made by the appellant following the Places Matter panel, some of which include the amount of car parking, the space along the north-eastern boundary and the private amenity spaces along here and the potential connection to Old Trafford Metrolink stop. However, they do not alter or outweigh my concerns.
35. Drawing these matters together, I conclude in respect of this issue, that the proposed development would harm the character and appearance of the area, and conflict with CS Policies SL3 and L7. These jointly seek a new, mixed-use, high-quality residential neighbourhood appropriate to its context, which addresses appropriately scale, density, height, massing and layout.
36. For these reasons, the proposal would conflict with Framework paragraphs 126 and 130 and the National Design Guide as the development would not create a high quality, beautiful place that would function well, be visually attractive, sympathetic to local character, and add to the overall quality of the area over **the development's lifetime**. Given the importance placed by Government and the Framework on creating high quality buildings and places and the opportunity presented here, I attach substantial weight to this harm.

*Noise from Lancashire County Cricket Club activities*

37. EOT, **home to LCCC, is adjacent to the site's north-east** and north-west boundaries. It has been home to LCCC since 1864, with the original pavilion built in 1895. EOT has been developed and enhanced in recent years, with the ground consisting of the pavilion and the new stands, with a hotel, hospitality and events facilities.
38. EOT is one of the leading cricket venues in the world and it is an internationally

significant sporting/visitor attraction. It is the most significant cricket venue in the northwest of England. It hosts international cricket (including five-day test matches, one day limited overs or balls matches such as the T20 and The Hundred) and county cricket/first-class cricket (in various formats). EOT also hosts music concerts. Hence, there are two noise generating activities that take place at EOT.

#### Noise surveys

39. The appellant and LCCC carried out noise assessments during a concert in September 2021. The Council has not carried out its own survey but relies on **LCCC's assessment**.
40. The modelled noise levels at the closest façade of the appeal scheme to the concert stage reached by each noise assessment differ in relation to what was **agreed to be the loudest part of the concert. LCCC's survey was taken as close to the location of the proposal's nearest façade** as possible. It covered the full extent of the concert including several warmup acts and the main act. During this time the survey location was regularly checked to ensure that there were no localised effects that could influence the results. The survey also took into account the sound system configuration at EOT and it was modelled to the measured noise levels at the mixing desk to ensure consistency<sup>16</sup>, and to ensure there were no localised noise events impacting the survey. The appellant did not, when pressed, dispute the LCCC survey methodology or the witness's **extensive concert noise experience**.
41. Conversely, **the appellant's** survey is based on measurements taken from two locations, for limited periods of time, **during the main act's performance**. The first location, covering two 15-minute periods, is screened from the stage by the cricket school at EOT. Recorded noise levels also cover a period when the act took an interval in the middle of their set. Noise levels dropped considerably in this time, even with recorded music playing instead of live music. **The appellant's witness** was unaware of the interval or the change in noise level.
42. Location 2 was directly behind the PA and stage noise sources. There was a line of sight to the stage right side hang but not the other components of the main PA or the delay stacks sited within the audience area. The proposed development would have a line of sight to the stage right side hang also but would also be at a different angle to the other elements of the main PA and stage. Location 2 was further away than the proposed nearest façade. On this basis, there is likely to be a substantial difference in noise perception when comparing location 2 with the proposed development. Measurements at location 2 covered an eight-minute period due to localised noise issues relating to people leaving the concert early. Hence, it did not cover the end of the concert.
43. Locations 1 and 2 were used due to accessibility issues around EOT, but this should have been expected at a ticketed concert and no effort was made to arrange access with LCCC before or during the concert. In short, locations 1 and 2 are not as robust or reliable as the location used in the LCCC survey.
44. The appellant modelled noise from a fixed calibration point (location 2) using a

<sup>16</sup> Mr Fiumicelli's Rebuttal, Figure 1, Page 8

point source propagation method towards the noise source. This method is said to represent a worst-case scenario with a higher noise level at the façade of the proposed development. However, crucially, modelling is simply that and is reliant on the correct data to yield a reliable outcome. It was unclear what figures had put into this model based on the written evidence, but the average sound levels<sup>17</sup> for locations 1 and 2 seem to have been relied on. The model is also based on a speaker set up not used at EOT<sup>18</sup>. There is no substantive evidence to support a view that this would make a negligible difference or to show that the modelling had been adjusted accordingly.

45. **The appellant's survey does not analyse the 32 Hz octave band which covers the very low 'sub-bass' thump of most modern music. I have no reason to disagree with LCCC that without this analysis there would be an underestimation of the potential impact.**
46. In the round, I consider **LCCC's** survey to be more robust and reliable and I therefore give this significant weight. It shows that future occupants would be subject to considerably higher noise levels at the closest façade than is currently experienced at the façade of properties on Trent Bridge Walk. **LCCC's** assessment places levels at 87dB<sub>LAeq 15 mins</sub>. **whereas the appellant's survey** produces levels up to 78dB<sub>LAeq 15 mins</sub>. A difference of 9dB. Once a 3dB effect for the façade is accounted for, even when the assessed concert operated a few dB below what it could under the premises licence, this means the noise level at the façade would be 90dB<sub>LAeq 15 mins</sub>. Notwithstanding their survey results, the appellant accepted this figure for projected noise levels based on **LCCC's** survey.

#### Concerts

47. Based on the premises licence, concerts can take place at EOT up to seven times per year with up to 55,000 people at each one. Each would have soundchecks on preceding days, which takes the maximum number of affected days within the year to 14. Concerts could take place at any time during the year but, due to the open-air nature of EOT, they are typically held between May and September. They are scheduled to avoid cricket matches and/or when the temporary stand is erected as the latter needs to be removed for the stage to be erected. The licence also means that no more than four concerts with a capacity of over 5,000 people can be held in a four-week period unless the Council provides its written consent.
48. LCCC has not historically held the maximum number of concerts set by the licence, but this may not always be the case and LCCC are holding at least five concerts in 2022. Further dates are potentially planned to help the club recover economically from the effects of the pandemic. However, it is a moot point whether or not the full seven concerts (and preceding soundchecks) actually take place as my assessment having regard to the agent of change principle needs to be against what can take place courtesy of the current licence<sup>19</sup>.
49. The license permits an upper noise limit of 80dB LA<sub>eq 15 mins</sub> at the facades of 23 – 37 Trent Bridge Walk, 30 Great Stone Road and 19 Barlow Road. This limit was specifically set by the Magistrates Court in 2003 to allow concerts to take place at EOT. It is the highest noise limit set in the UK for an open-air venue

<sup>17</sup> Mr Patterson's Appendix, Table 1

<sup>18</sup> Mr Fiumicelli's Rebuttal, Figure 2

<sup>19</sup> CD-G3, Paragraph 009 Reference ID: 30-009-20190722

notwithstanding limits set elsewhere for one-off events<sup>20</sup>. To achieve this, the position of the stage and sound system has been refined over time to achieve a dual aim of creating a high noise level for the performer and audience but at the same time falling within the noise limit set by the licence. Noise levels are monitored during concerts for licence compliance purposes and there are measures in place to ensure that these levels are not breached.

50. Previous concerts at EOT have generally attracted a low number of noise complaints, save for two concerts in 2016 which resulted in significantly higher numbers of complaints. It was explained that atmospheric conditions at the time meant that noise from these concerts could be heard 8 to 10 miles away from EOT. This led to the number of complaints received. That said, regardless **of the number of complaints received it has not led to LCCC's licence being reviewed**. In this context, the three noise experts agreed that there is no current nuisance caused by holding concerts at EOT.

#### The effect and consequences

51. Each noise expert considered a different benchmark should be applied to assess concert noise against based on their own professional judgment.
52. The BS points to the **Noise Council's Code of Practice on Environmental Noise Control at Concerts (1995) ('COP95')**<sup>21</sup>. This is the primary resource for this type of noise<sup>22</sup> and it outlines the music noise levels that should not be exceeded. This is 15dB above background noise level which, in this case, is 73dB. While COP95 is around 25 years old, and the appellant does not place reliance on COP95 or any other standard for internal or external noise for concerts, it is the only guidance specifically applicable to concerts and the BS points directly towards it. Using the LCCC survey results, future occupants would experience concert noise 17dB above COP95.
53. Opinion is expressed that COP95 has been unduly restrictive and there have been instances when licence limits exceed levels which COP95 set. However, single exceptions are accounted for in COP95 where circumstances dictate it is possible to **have a higher noise level without causing 'unacceptable levels of disturbance'**. **This is not**, and would not be, the case at EOT under the terms of the premises licence.
54. The noise level in the premises licence was set by applying COP95 and taking a pragmatic view based on the site-specific circumstances. The closest existing noise sensitive receptors are around 200 metres from the main stage array on Trent Bridge Walk. These properties face away from the Metrolink line, EOT and thus the source of concert noise. Added to this, there is the south-west terrace and car park at EOT between the array and those properties. Consequently, they experience lower noise levels at their front facades compared to their rear elevations. Conversely, the nearest parts of the north-western and north-eastern elevations of the appeal scheme to the stage and arrays would be just under 50 metres away. All the upper floor habitable rooms would have a clear line of sight between the two and those units would have a single aspect.
55. Using the noise level set by the licence would not be appropriate as it is based on circumstances which would not be the same as the appeal scheme. It also

<sup>20</sup> Council Closing, Paragraph 71

<sup>21</sup> CD-N9

<sup>22</sup> Mr Patterson's Proof, Paragraph 6.7

relates to the licencing regime which controls activities affecting existing development and not planning, which considers the effect on new development. As COP95 concerns itself with concerts, it is a relevant benchmark, though it is based on music noise levels at 1 metre from the façade of any noise sensitive premise. However, it is of note that future occupants would experience concert noise 10dB higher than the highest licence condition in England. It is a very high noise level that would be extremely apparent to future occupants of the units closest to EOT.

56. The BS typically applies to continual and steady noise sources and not noise from concerts. However, the Council considers the internal ambient noise levels within the BS are appropriate to apply in the absence of any other standard. As concerts finish at 22:30, the noise levels between 07:00 and 23:00 would be relevant<sup>23</sup>, though a 5dB leeway can be applied. The maximum number of **concerts and soundchecks at EOT would not in my view be 'occasional events'** in the same way as those cited in Note 3 to this table are. The BS is the only standard before me in respect of internal noise levels, though the Planning Practice Guidance<sup>24</sup> (the Guidance) explains that the numerical values in here are not to be regarded as fixed thresholds and as outcomes that have to be achieved in every circumstance. Hence, the crucial factor in this case is the living conditions for future residents when concerts take place. This requires judgement.
57. Due to the open-air nature of, and the dual use of EOT the frequency of concerts is concentrated to certain times in the summer months. Future occupants would be far closer to the source of concert noise than any existing residential receptor and subject to noise levels externally that exceed COP95 and the levels set within the licence, potentially for the duration of any concert and any soundcheck. The noise source would also include a **very low 'sub-bass'** thump. The effect of concert noise would not just be a disturbance and would last for considerable periods on the affected days.
58. **No mitigation is proposed to residents' private gardens or balconies. These** are an intrinsic part of the proposed design and could not be enjoyed as intended unless future occupants wished to enjoy the concerts. Otherwise, residents would be likely to avoid using these spaces during concerts. Other alternative amenity spaces would be available, but the loudest part of concerts at EOT are in the evening when people would typically wish to be in their own home.
59. Acoustic glazing would mean future occupants would experience internal noise levels of around 46dB when concert noise is at its loudest<sup>25</sup>. This may well compare to the noise level of a fridge or a library, and offer a better internal noise level than that experienced at existing properties, but factually, it would be 11dB above the BS or 6dB above the BS with a 5dB allowance factored in. Music is also more disturbing because of its varied character which is quite different to the steady tone produced by a fridge.
60. The standard of glazing is far higher than that used at existing residential receptors, but the mitigation proposed is reliant on residents keeping their doors and windows closed. This is simply not realistic, reasonable or controllable during the months when concerts typically take place and

<sup>23</sup> Table 4 of British Standard BS8233:2014

<sup>24</sup> CD-G3, Paragraph: 015 Reference ID: 30-015-20190722

<sup>25</sup> The caveat to this is that it **doesn't consider the low frequency noise**



completely undermines the effectiveness of the mitigation. Keeping windows and doors closed would also be to the detriment of future residents' wellbeing as, due to the lack of alternative means of ventilation, they would have no option but to open them in warm weather to combat internal heat levels. In this situation, future occupants would likely experience similar noise levels inside their single aspect units as those outside. Thus, concert noise would cause a significant adverse effect at certain times across the summer as future occupants would be likely to change their behaviour during concerts to avoid certain activities when they are scheduled and/or keep their windows/doors closed as there are no alternative means of ventilation proposed.

61. Properties on Trent Bridge Walk are already said to experience 46dB during concerts. These properties have very different internal layouts to the appeal proposal. Hence, what is experienced at the Trent Bridge Walk façade facing EOT is not necessarily the same experience on the other side of the property which contains the habitable rooms. The units proposed in the development closest to the concert noise source would all be single aspect, so **notwithstanding the appellant's arguments, the comparative effect would not be the same.**
62. Future occupants may choose to live in the proposed development in the knowledge that concerts take place at EOT, but what cannot be guaranteed is that they would know or appreciate the level of noise that they generate.
63. Alternative forms of mitigation are not considered necessary by the appellant. A Deed of Easement to provide protection to LCCC and its operations was discussed at length during the Inquiry, but as it is not part of the UU I have not had regard to it.
64. **The 'agent of change' principle is set out in Framework paragraph 187. This** explains that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant should be required to provide suitable mitigation before the development has been completed.
65. For LCCC, there are potential consequences if the development is built out and future occupants experience a very high noise level from concerts. There are two possible scenarios. Both relate to potential consequences for the premises licence.
66. The first scenario would mean that the premises licence remains as it is and is fixed with reference to properties on Trent Bridge Walk. However, the proposed development could not possibly breach the premises licence as it would not be one of the specific properties listed. This would not, however, mean that future occupants would not experience the significant adverse effect at certain times across the summer. Noise levels at the closest façade would be far higher than those stated in the licence and subjectively double that experienced at Trent Bridge Walk at the same time that these properties would still meet the terms of the premises licence. As such, the premises licence would not address the adverse noise impact outlined.
67. As the proposed mitigation cannot be said to be fully effective, a significant adverse effect could be caused by concerts at EOT on future occupants of the

**proposed development. The key word here is 'could'.** Local authorities have a duty to take such steps as are reasonably practicable to investigate a statutory nuisance complaint. It is for the Council to decide if a statutory nuisance exists. However, if they decide one does exist, they must serve an abatement notice. The existence of any noise complaint may not be sufficient to trigger a review of the licence, but they could equally be. It is about substance.

68. Ultimately, whether the licence is reviewed, or the Council takes further formal action to remedy a statutory nuisance is a matter for them, but there is a strong likelihood that both could be based on the noise environment that future occupants would experience during concerts. A statutory nuisance can include noise affecting balconies and gardens<sup>26</sup>.
69. The second scenario is that the premises licence is updated to refer to the closest façade of the proposed development. If the licence was reviewed and updated to refer to the closest façade of the proposed development, it would be significantly breached from concert noise or there would need to be a reduction in concert noise to ensure that the closest façade could meet the 80dB limit. There is also a risk of civil nuisance action by future occupants. Either could undermine the very reason behind the licence noise level which was set to make holding concerts at EOT possible. The upshot could be to curtail concerts **at EOT, and thus LCCC's activities resulting in direct financial** consequences for LCCC<sup>27</sup>.

#### Noise from cricket activity

70. It was agreed that noise from cricket activities at EOT is not always the same, whether this be measured in noise levels or its character. It does happen with some regularity during the cricket season, albeit the actual days in the year and duration of play may not always be fixed, whether planned or for performance reasons.
71. A range of cricket formats take place on a single day or over multiple days. Most of these matches are not typically well attended. Those that are can see the ground at capacity or at least with a considerable body of spectators. EOT has a capacity of around 20,000. The worst-case scenario is likely to be a one-day international, typically attended by 15,000 to 20,000 people, at which there are regular music bursts and PA announcements. In this scenario, the facades of the proposed development that would face EOT are predicted to experience noise of 66 dB<sub>L<sub>Aeq,T</sub></sub>.
72. **British Standard BS8233:2014 ('the BS')** does not explicitly provide a noise level to assess sporting noise against, but it does advise that specialist advice might be required.
73. The three noise experts all consider that by using up rated glazing and trickle vents, high and low frequency noise arising from cricket matches could be mitigated against so that future occupants would experience internal noise levels in line with the BS. Hence, it was suggested, they would have acceptable internal living conditions when cricket matches are played, even accounting for day/night matches. However, this would only work when windows and doors are closed, and it would not mitigate the impacts of noise on residents' private amenity spaces.

<sup>26</sup> CD-G3, Paragraph: 017 Reference ID: 30-017-20190722

<sup>27</sup> Mr Fiumicelli's Proof, Appendix 2

74. It would be unrealistic and unreasonable to expect residents to have to keep their windows and doors shut every time there is a cricket match, especially during the summer months (when matches are typically played), to overcome adverse noise impacts.
75. In any case, due to the location of the proposal, noise from certain cricket matches, whether that be the crowd, the PA or music played at particular points in the match, such as in response to a wicket, would be audible to future occupants on their balconies on the north-west and north-east elevations at levels above the BS standard.
76. The Guidance<sup>28</sup> outlines that noise impacts may be partially offset if residents have access to other areas. These include a relatively quiet, protected nearby external amenity space for sole use by a limited group of residents and/or a publicly accessible amenity space nearby.
77. The proposed courtyards would be relatively quiet, protected and near to residents. Additionally, there are local parks at Seymour Park, Longford Park and Gorse Hill Park, all of which are a short walk away. Together they would provide a range of amenity spaces for future occupants to use should they be affected by cricket related noise.
78. In terms of the effects and consequences of cricket noise, whilst future occupants may make small changes to their behaviour, I find that, subject to the imposition of a planning condition, they would have satisfactory living conditions. On this basis, the proposed development would not affect the ability for LCCC to hold cricket matches of any form and so in this regard the proposed development would comply with the aforementioned policies and guidance. This matter carries neutral weight as the proposal would mitigate the effect to a satisfactory level.

#### Conclusion on this main issue

79. Noise from concerts at EOT would result in a time-limited but significant adverse effect on future occupants of the proposed development. The proposed mitigation to address the internal noise environment would be ineffective if residents opened their windows and doors, which would not be unrealistic, unreasonable or controllable during the months when concerts typically take place, especially in the absence of any alternative means of ventilation to prevent overheating. There is no mitigation for the private amenity spaces to address the significant adverse effect and these spaces are an intrinsic part of the proposed design. The consequence of this for LCCC could be the review the premises licence, further formal action to remedy a statutory nuisance or for a civil nuisance action to be taken by future occupants. There is a real risk, therefore, that concerts could be curtailed at EOT and for LCCC to suffer direct financial consequences as a result.
80. On this basis, I conclude, in respect of this issue, that the proposed development would not accord with CS Policies SL3, L5.13 and L7.3. These policies do not permit development that has the potential to cause adverse noise and prejudice the amenity of future occupiers unless it can be demonstrated that adequate mitigation measures can be put in place. The proposal would also be contrary to Framework paragraphs 185 and 187 and the

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<sup>28</sup> CD-G3, Paragraph 011 Reference ID: 30-011-20190722

Guidance as the significant adverse effect of concerts on future occupants would not be mitigated and reduced to a minimum potential adverse impact, **thereby avoiding unreasonable restrictions being placed on LCCC's activities.** I attach substantial weight to this harm.

*Future occupants' living conditions – amenity spaces, outlook and sunlight and daylight*

Amenity spaces

81. A mix of amenity spaces are proposed, consisting of two large central courtyards, multiple rooftop spaces and private spaces in the form of gardens or balconies for units across the development. The rooftop spaces would be accessible to all future occupants of the development, whilst the two courtyards would be accessible and open to use by future occupants and the public.
82. A total of around 3,579m<sup>2</sup> of amenity space is proposed across the development. The quantum of this is not at issue. Nor is the 100% sunlight that the proposed rooftop spaces would receive or their ability to provide functional amenity spaces for future occupants to use during the year.
83. **A central part of the proposal's design is the two courtyards. The northern courtyard** would be around 1,085m<sup>2</sup> in size whilst the southern courtyard would be roughly 1,164m<sup>2</sup>. Jointly, they amount to just under two thirds of the total amenity space proposed. The courtyards would offer multifunctional spaces for people to meet, relax, play, access or traverse. They are most likely to be used by residents on the lower floors, due to proximity, but, equally, they may be used by every resident due to their size and central position. This could facilitate community interaction.
84. The BRE Guidance is not mandatory nor is it an instrument of planning policy, but it outlines the value of good site layout planning for daylight and sunlight and that this should not limit itself to providing good natural lighting inside buildings<sup>29</sup>. As such, it is a valuable resource as sunlight in spaces between buildings has an important impact on the overall appearance and ambience of a development and is valuable for a number of reasons, such as making outdoor activities like sitting out and **children's** play more pleasant. BRE Guidance goes on to say that special care needs to be taken in the design of courtyards as often they can turn out to be sunless and unappealing. As a check, BRE Guidance recommends that at least half of all the amenity areas should receive at least two hours of sunlight on 21 March.
85. Against this check, the **appellant's courtyard shading analysis**<sup>30</sup> shows that 52% of the northern courtyard and 11% of the southern courtyard would receive two hours of sunlight on 21 March. Therefore, the southern courtyard would be significantly affected by shade at this point in the year, with the northern courtyard less affected and just passing the BRE Guidance check.
86. However, the **appellant's analysis only covers the central parts of those** courtyards and not the full functional areas of each. Looking at the 22 March on the OEA transient sun study<sup>31</sup>, whilst a day later than the BRE Guidance, the full extent of both courtyards would be shaded for the best part of the day.

<sup>29</sup> CD-Q3 Paragraphs 3.3.1, 3.3.2, 3.3.3 and 3.3.7

<sup>30</sup> Mr Hann's Proof, Appendix E

<sup>31</sup> Ms Harrison Proof, Appendix F

87. On this unconstrained site, the cause of the courtyard shading during the year would be **the proposal's height, scale, massing and layout. Effectively, both** courtyards would be enclosed by tall built form despite the gap and break proposed. Given their central role, the high degree of shading that would affect both courtyards for large parts of the year would significantly affect their appeal and usability as amenity spaces. Not everyone wishes to be in direct sunlight for all or part of the time but, given the mix of housing proposed, some of which would be occupied by families, the quality of external amenity spaces is important<sup>32</sup>. The courtyards would not provide suitable outdoor spaces for future occupants as they would not function as they ought to or could do. Thus, future residents would not be provided with appropriate living conditions even if each courtyard contained high quality hard and soft landscaping with plant species that can respond to direct or partial sunlight.
88. Balanced against this are the multiple rooftop spaces that would be accessible, sunlit and landscaped to provide functional and flexible spaces for every resident to enjoy throughout the year. When these spaces are included, around 61% of the total amenity spaces proposed would meet the BRE Guidance. Furthermore, both courtyards would be safe spaces and subject of quality hard and soft landscaping.
89. However, given that the courtyards collectively equate to around two thirds of the total amenity space provision and this is an unconstrained site, I consider that the proposal overall would not deliver a high standard of amenity for future users due to the appeal and usability of both courtyards as amenity **spaces. Hence, the proposal would not promote future occupants' health and wellbeing** in this respect, and they would not be provided with acceptable living conditions even if each courtyard would contain high quality hard and soft landscaping and would be safe spaces. This outweighs any overall compliance against BRE Guidance.

#### Outlook

90. **The first of the Council's concerns relates to the units proposed on levels 0, 1, 2 and 3** of the south-east elevation, facing the belt of trees next to the tram line. Excluding the units at either end of this elevation, each unit would be single aspect and have habitable room windows facing the belt of tall **established trees along the site's boundary with the** tram line. The trees provide a screen to the tram line and buffer the noise from it, but future occupants of these units would have a harmful outlook not because it is onto a bank of trees *per se*, but because of the proximity of such a tall bank of trees, which will form a dense visual barrier when they are in leaf. The effect would be less harmful for the units on level 3, as they are likely to have views over the canopy with those views increasing when the trees are not in leaf.
91. The proposal is further away from the tram line boundary than the outline **scheme at the former Kellogg's site**, which the Council have resolved to approve, subject to the s106 being resolved. Work is also underway preparing the reserved matters scheme<sup>33</sup> and the indicative masterplan shows a block of four storey high development next to the Metrolink boundary. However, this has yet to be granted planning permission. There are also no details of the internal layout of the blocks next to the Metrolink to know whether they might

<sup>32</sup> National Design Guide, Paragraph 126

<sup>33</sup> Housing Land Supply Addenda, 27 January 2022, Appendix 13a(i)

be single aspect or not. As such, **the current position on the Kellogg's site does not justify the outlook proposed for the units on levels 0, 1 and 2 on the south-east elevation, which I consider to present a harm to the living conditions of future residents.**

92. The second area of concern relates to the 18 single aspect units proposed on levels 0 and 1, in the north-east façade, facing the indoor training facility at EOT. There would be around 12.5 metres between them, which would exceed the distance advised in Supplementary Planning Document 4 (SPD4), which is a useful barometer. The proposed layout would allow for a potential future pedestrian connection between Great Stone Road and Old Trafford Tram Station between the indoor training facility at EOT and the north-east façade. Each of the 18 units would either open out directly onto their own private landscaped garden or towards the path, which is earmarked to be supplemented by landscaping. Elevated gardens would mean that the soft landscaping and the indoor training facility would appear lower to future occupants. There is also sufficient room to accommodate landscaping to screen the indoor training facility at EOT and soften the outlook for future occupants. I consider an attractive outlook would be created for the 18 units highlighted despite the inconsistency between the proposed plans and the photomontage, as this could be resolved at reserved matters stage.

93. A third area of concern relates to the outlook from certain flats facing into the courtyards. Yes, they would generally be enclosed or offer glimpsed or oblique views of the surrounding area, but generally the inward facing units would benefit from a good outlook across each of the courtyards due to the stepped nature of development, gaps to the Great Stone Road frontage or distance.

#### Sunlight and daylight

94. BRE Guidance sets out standards in relation to the levels of sunlight and daylight reasonably expected within new development, but these standards are advisory and should be interpreted flexibly<sup>34</sup> and in relation to site specific circumstances.

95. The BRE Average Daylight Factor (ADF) criteria are the most appropriate measures of light within the rooms proposed in the development as it considers light reaching a window, the size of the window and internal surface reflectance. Against the ADF criteria, 88% of all the rooms within the proposed development would meet the relevant threshold, 8.5% are a negligible or minor amount below it and the remainder falling below the target ADF value. Of the remaining number around half are bedrooms.

96. This outcome **is based on the application of BRE's upper target value of 2% for mixed-use rooms.** When a 1.5% value is used, as has found to be a reasonable approach in other schemes with mixed-use rooms<sup>35</sup>, 93% of the rooms fully satisfy the ADF criteria, 5% are a negligible or minor amount below the ADF criteria. However, of the rooms below that (2%), all but one are bedrooms. The BRE Guidance confirms that bedrooms do not need as much daylight.

97. When the appeal scheme is compared against other local schemes that have been granted planning permission by the Council at Sale Square, MKM

<sup>34</sup> CD-Q3, Paragraph 1.6

<sup>35</sup> APP/E5900/W/17/3171437, Paragraph 128, Mr Radcliffe's Proof, Appendix D



House/Warwick Road and Wharf Road, it would perform more favourably than these in sunlight and daylight terms.

98. The BRE Guidance is not concerned with windows that are not within 90 degrees of due south as they would never see the sun. However, it remains a sensible aim to minimise the number of dwellings that face a degree of north. In this case, it is said that 151 units would do so. However, as the proposal is a large, flatted development **and due to the site's location, shape, orientation and physical parameters**, to an extent this scenario is unavoidable. Of the assessed windows, all pass the Annual Probable Sunlight Hours test save for two windows in the summer and 12 in the winter.
99. A flexible approach should also be taken so that the site is used efficiently according to Framework paragraph 125c). I consider, when the proposal is looked at in the round in sunlight and daylight terms, that a minor level of harm would be caused to a number of units, but overall, the appeal scheme would provide adequate living conditions to future occupants insofar as sunlight and daylight. This does not change my view about **the proposal's effect on character and appearance of the area** as Framework paragraph 125 outlines that they are to be created in parallel.

Conclusion on this main issue

100. I conclude that the proposed development would result in a poor level of amenity for future occupants of the proposal in relation to the two courtyards and the outlook from the units on levels 0, 1 and 2 on the south-east elevation. I have also concluded that a minor level of harm would arise in respect of the living conditions of some future residents in respect of sunlight and daylight. As such, the proposal would not accord with CS Policies L7.3 and SL3.1 which, among other things, seek development not to prejudice the amenity of future occupants by creating a high-quality neighbourhood. The wording of the policies do not replicate the wording used in the Framework, but they are consistent with its aims to achieve high-quality buildings and places which create better places to live and work and provide a high standard of amenity for existing residents. I attach full weight to these policies on this issue. Conflict would also arise with Framework paragraph 130f) which requires places with a high standard of amenity for future users.

*Living conditions of nearby residential occupants - overbearing*

101. SPD4 is not strictly applicable to the appeal scheme as it concerns itself with house extensions and alterations. The appeal scheme would meet and exceed the figures in SPD4 for properties on Great Stone Road and Trent Bridge Walk. The nearest properties on Trent Bridge Walk would be around 41 metres from the proposal whereas 34 metres away on Great Stone Road with those on Gorse Avenue and Gorse Crescent varying according to their location.
102. Planning is not, however, just a mathematical exercise. Judgement is needed to assess whether something is overbearing or not based on factors such as a **development's** height, width and depth, orientation, the existing relationship, the character of the area and the presence of habitable room windows.
103. Development on the appeal site would be of a greater scale and mass than the nearby residential properties. There is also a need to make best use of brownfield land, deliver new homes and help regenerate the area. By developing the site, it would result in a changed view and relationship for any

of the residential properties on the roads referred to, **even if the Council's** vision for the site at a lower scale and mass is realised. This does not automatically equate to harm. Nor does the fact that something might be visible. Built form on the site does not also necessarily need to replicate the lower scale of development to the south and west of the site, but it does need to respond to it and **the site's** context.

#### Trent Bridge Walk

104. Properties on Trent Bridge Walk have front and rear window openings, but their habitable rooms tend to be positioned towards Headingley Drive.
105. The proposed development would be a similar distance away from properties on Trent Bridge Walk as is the media building at EOT. However, the proposal would be taller and wider and would be square onto properties on Trent Bridge Walk. The full extent of the north-eastern elevation would also present itself as an elongated façade when viewed from Trent Bridge Walk.
106. The highest part of the development would also be opposite properties on Trent Bridge Walk. The effect would be felt from first floor bedroom windows of properties between 8 Trent Bridge Walk and CAM-06<sup>36</sup>. The remainder of EOT collectively covers a considerable area and is of some scale and mass. However, the greatest collection of this is at the north end of the ground, furthest away from Trent Bridge Walk. The stands to the south and either side of the media building are angled open air seated terraces. They are not a vast mass individually or collectively, so they do not have an overbearing effect.
107. Despite the articulation, the full height and partial gaps in the north-east elevation would fail to break up the development sufficiently to avoid the proposal being read as a substantial block of tall development. The proposed intervening distance would exceed SPD4 requirements, and there are trees and shrubs on either side of the Metrolink line. Although the trees and shrubs would help screen the development to varying degrees across the year, they are not universal along the path to Trent Bridge Walk. Furthermore, the proposed lower scaled elements would not be a feature in views from Trent Bridge Walk. Based on these various factors, I consider the proposal would be overbearing on the outlook from dwellings on this part of Trent Bridge Walk.

#### Great Stone Road

108. Currently, there is a significant distance between the residential receptors along Great Stone Road between Lancastrian House and the Metrolink line and the scale and mass of the cricket stadium and the training facilities. The relationship does vary between receptors along this stretch.
109. Lancastrian House is a six-storey block opposite dwellings at the junction of Great Stone Road and Talbot Road. However, the length of this block is significantly less than the full extent of the appeal scheme and the alignment of subsequent blocks of Lancastrian House are fairly tight to Talbot Road and are largely screened by the initial block when stood directly opposite it.
110. Whilst there would be a visual change to the outlook from properties on Great Stone Road close to Lancastrian House, an overbearing effect would not arise due to the long intervening distance between them and the proposed

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<sup>36</sup> Mr O'Connell's Proof, Page 28

development, the presence of the surface level car park and the relationship presented by Lancastrian House to the receptors.

111. From those properties directly opposite the site or immediately next to it, the proposed development would appear considerably closer, longer and taller than the stadia/training facilities or the former B&Q building. Closest to the road and the properties, the proposed design would break the development up somewhat, and the rising road level of Great Stone Road and the roadside hedge would play a varying role in the relationship between residents and the appeal scheme. Nonetheless, the proposed development would still be dominant and overbearing to residents due to its scale and massing, which would extend not just in front of the current properties but also increase as the proposal steps away from Great Stone Road. This would create a harmful effect.

#### Gorse Avenue and Gorse Crescent

112. The closest properties on Gorse Avenue (between Great Stone Road and Gorse Crescent) are generally side on to the appeal site. Therefore, even with front and rear facing rooms, the proposed development would always be at an oblique angle regardless of its proximity. The stepped form of development, allied with more obvious breaks along the Great Stone Road frontage and the backdrop afforded by the cricket ground beyond, leads me to consider that the proposal would not create an overbearing effect upon occupiers of the relevant properties.
113. Properties in Gorse Crescent are arranged into terraced blocks. The proposal would rise above the neighbouring dwellings and its stepped design would be visible from midway round the crescent<sup>37</sup>. Despite the visual change for occupiers, the proposal would not have an overbearing effect on their living conditions due to the form of development, intervening distance and/or orientation of the properties.

#### Conclusion on this main issue

115. The proposal would not have an overbearing effect on outlook from properties on Gorse Avenue and Gorse Crescent. Even so, this does not alter or outweigh my conclusion that the proposed development would have an overbearing effect on the outlook from residential properties on Great Stone Road and Trent Bridge Walk, due to its height, massing, scale and layout. The proposal would not accord with CS Policies SL3, L3 and L7 as the development would not be compatible with the surrounding area as it would prejudice the amenity of occupants of adjacent properties by reason of it being overbearing. It follows that, in accordance with Framework paragraph 130f), the proposal would not deliver a high standard of amenity.

#### *Affordable housing and education*

116. CS Policy L8.3 states that contributions will be sought for all new development and the nature and level of contributions will be established on a site-by-site basis, relating to the type and size of the development proposal. CS Policy SL3.4 confirms that provision of affordable housing should be made in accordance with Policy L2. This requires appropriate provision to be made to meet the identified need for affordable housing. There is no dispute that there

<sup>37</sup> Mr O'Connell Proof, Page 31

is a clear need for affordable housing in the Borough and for an appropriate housing mix to achieve a balanced offer, especially for families.

117. Policy L2.9 identifies three broad market locations to take viability issues into account in the Borough. The site lies within a cold market location where no more than a 5% affordable housing target will be applied under normal market **conditions, with a flexibility to raise this to a 10% requirement under "good" conditions**<sup>38</sup>. The parties agree that the higher figure applies given current market conditions. These figures are subject to viability.
118. However, bullet point 4 of CS Policy L2.12 explains that for developments that, in viability terms, perform differently to generic developments within a specified market location, the affordable housing contribution will be determined through a site-specific viability study and will not normally exceed 40%.
119. The Council and the appellant disagree on whether the proposal would perform in viability terms differently to generic development in Old Trafford, having regard to the typologies that were tested prior to the CS being adopted.
120. The density of the appeal scheme would be more than double the density of the highest density development tested in Old Trafford for the CS. The site is also in a distinct location next to the internationally renowned EOT and near to facilities and services such as an easily accessible tram stop. Furthermore, the scale and nature of the proposal differs from the generic development tested to underpin the CS.
121. The high-density scheme at The Botanic Gardens at Talbot Road was deemed to be generic by the Council. However, there is no explanation to support the view taken<sup>39</sup>. I also understand that a 22% affordable housing contribution was secured with a non-policy compliant change in tenure. That said, the location of The Botanic Garden site is further away from EOT and the tram stop. Aside from the different quantity of apartments that both schemes would deliver, the development at The Botanic Gardens includes office space whereas the appeal scheme includes flexible spaces within use classes A1, A3, D1 and/or D2. Taking matters in the round, I consider that the appeal scheme could perform differently to the generic development in Old Trafford.
122. The appellant has submitted a Financial Viability Assessment (FVA), which is what CS Policy L2.12(4) seeks to determine the affordable housing contribution based on. On the **appellant's case this is 6.3%** with homes either as Affordable Rented Units or Shared Ownership Units split proportionately across each phase and as per the mix found in CS Policy L2. This equates to 21 units.

#### FVA

123. The credentials of the witnesses who provided evidence on this main issue should not dictate an outcome in and of themselves. Despite the criticisms about qualifications, memberships and experience, all the inputs into the FVA were agreed. The upshot of this is a gross improvement in viability of £14m. The sole difference between the parties now relates to construction costs, which directly influence viability and the affordable housing contribution.

<sup>38</sup> CD-H4, Paragraph 3.13

<sup>39</sup> Mr Hann's Proof, Appendix 6, Paragraph 28.

124. The Guidance is clear that an assessment of costs should be based on evidence, which is reflective of local market conditions. Build costs should also be based on appropriate data (that provided, for example, by the Building Cost Information Service (BCIS)). The Guidance also says that for a viability assessment of a specific site or development, market evidence (rather than average figures) from the actual site or from existing developments can be used.
125. The Rev G elemental unit cost assessment has been prepared by an experienced costs professional. It comprises of lots of separate elements, which are individually quantified and costed. Some of the elements in the assessment rely on BCIS rates, some do not.
126. Those elements in Rev G that rely on BCIS rates moved in line with the agreed construction costs inflation figure of 6.58% compared to Rev D. Eight, non-BCIS rated elements, however, rely on professional judgement. These elements include costings for external walls, windows and doors, internal **doors, wall finishes and floor finishes. The increase in each between Rev's D and G ranges between 46% and 97%. The rate of the eight elements in Rev D were agreed by the Council after reviewing them against BCIS elements and other FVA's.**
127. Despite Rev G, Rev D does provide important context. Both are the **appellant's** own considered assessments, and the **proposal's** design has not changed between Revs D and G. The increase in these eight elements is said to be due to the **appellant's delivery model**. I have no reason, given that it is not before me, to dispute the **appellant's position that Rev A was based on a** standard design and build model. Rev D moved to a developer model with the appellant using their in-house expertise as they were in a JV with the property investor PGIM. It was expected that this model would secure an economy of scale and cost savings compared to a design and build contractor. PGIM are now no longer on the scene and Rev G has reverted to the standard design and build model, but it incorporates the design changes accounted for in Rev D.
128. Using a standard model ought to enable design and build contractors to achieve the economies of scale and cost savings as they are working on multiple large projects and have the resources, skills, delivery experience and buying power to do so. A design and build contractor who tried to charge 45% more than an owner/developer could secure in house would be unable to compete. Without an explanation by the appellant, I cannot comprehend why there would be such a stark difference in non-BCIS rated elements based solely on the delivery model alone, especially when there was no suggestion that the rates adopted in **Rev D were 'exceptionally low' or specific to a delivery model.**
129. The same point applies to external costs. Preliminaries in Rev G are set at 15% based on a mean unit rate from BCIS prelims study for projects over a certain amount. Using 15% would be wholly appropriate based on BCIS data<sup>40</sup> if the mean were to be relied upon, but it is affected by all the rates in the sample and can be unduly influenced by one or two extreme values when the same size is small. Thus, the median is more reliable as it is less affected by anomalies. Moreover, the sample size for Q1 2021 is low compared to previous quarters which typically show a lower preliminary figure whether the mean or median is used, save for the Q1 2019 sample which seems to be affected by a

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<sup>40</sup> Mr Latham Rebuttal Proof, Page 12

wider range of preliminaries. I therefore disagree that there is robust evidence to support the 15% for preliminaries when BCIS puts this at around 12% which broadly compares with other apartment schemes in Old Trafford<sup>41</sup>.

130. For the reasons set out above, there are unanswered questions around the costs in the Rev G assessment that mean it cannot be seen as a fair and reasonable assessment. Nor can it be looked at independently from previous revisions as the purported changes relate to the delivery model not the actual development itself. On face value, the changes to the eight elements, external costs and preliminaries have seen the costs on a comparative basis increase by 28% which is over 20% more than the agreed construction cost inflation figure in the FVA of 6.58% despite them being the same build elements, in the same location and to the same specification.

### Benchmarking

131. The appellant arrives at global figure for the scheme of £1,787m<sup>2</sup> having divided the total costs by the total Gross Internal Area. This is inclusive of the undercroft car parking and commercial development. This figure was said to lie between the median and mean, but closer to the median when assessed against the BCIS for six-storey + flats as of 23 October 2021. However, given the date of the Inquiry, the most up to date and correct figure for the median is £1,723<sup>42</sup>. The appellant is some £64 above this median rate. Either rate is below the mean as of 23 October 2021 and at the end of Q4 2021.
132. However, BCIS reports basement parking, six-storey flats and commercial spaces as separate entities. Commercial space and parking are usually cheaper to build. As a result, when compared to the cost of a flatted development only, it would inflate the costs of these elements and deflate the costs of the flats. This is borne out by the **appellant's costing for the undercroft car parking** at £135m<sup>2</sup> which is some £1,652m<sup>2</sup> shy of the **appellant's global figure**. The flats would therefore need to be costed accordingly to arrive at the **appellant's** figure. As such, I disagree with the appellant that these spaces would be accounted for as part of a six-storey flatted development as not every development would include these elements or may indeed include others not proposed in the appeal scheme. Hence, the **appellant's benchmarking** exercise is not like-for-like.
133. While the **appellant's assessment is site** specific, I do not find it to be reliable. Given this situation, it is appropriate to use a blended rate from BCIS to arrive at a like for like comparison. This approach is supported by the Guidance as an appropriate data set. Whether or not the blended rate of £1,609m<sup>2</sup> set out by the Council sits between the mean and the median for the six-storey + flat is irrelevant as that would not be a like-for-like comparison. The **appellant's** global figure is considerably higher than that and would therefore depress the amount of money available towards an affordable housing contribution. The same point would apply even if a comparison was drawn based on the more reliable Q4 2021 median which the **appellant's** global figure is some £64 above.
134. The Council asserts that the proposal can deliver 39% of the proposed apartments as affordable homes alongside all the other contributions inclusive of the primary school contribution. This is based on a blended BCIS rate from

<sup>41</sup> Mr Lloyd Proof, Paragraph 6.4.7

<sup>42</sup> Inquiry Document 18



Q4 2021, Rev D costs, 12% preliminaries and the agreed costs inflation figure of 6.58%. This equates to a build cost of £156.44ft<sup>2</sup>.

135. Compared to recent schemes<sup>43</sup> granted planning permission in Old Trafford for various quantities of units, the average affordable housing contribution secured is around 7%. This would be out of kilter with the delivery of 39% affordable **housing here on the Council's case.**
136. However, Guidance in respect of viability was changed extensively in 2018. RICS Guidance has more recently been updated to reflect the central change to avoid land value expectations pricing out affordable housing. The Council also changed its approach in 2017 by challenging the industry narrative on viability. This seems to have taken time to have effect given that all bar one of the schemes that make up the 7% comparison were granted planning permission after the Council changed its approach. However, most of them were prior to the Warburton Lane decision which was the first scheme tested on appeal since the change in approach. It was accepted by the **appellant's witness that the appellant's** approach to viability in that case was rejected. In that decision, the Inspector found that there were sufficient funds for 45% affordable housing.
137. Notwithstanding these schemes, the fundamental premise of an FVA is that it is an objective exercise, and in this case, based on the proposed development. The outcome of the FVA should determine the affordable housing contribution and not be based on what may have been the norm or accepted elsewhere.

#### The level of contribution

138. **The appellant's position of a 6.3% contribution is not, for the reasons set out,** supported by a reliable FVA assessment. As I consider the appeal scheme could support a higher affordable housing contribution, it follows that a contribution at 6.3% would not be fairly and reasonably related in scale and kind to the development and would, therefore, conflict with Core Strategy Policy L2.12.
139. **The Council's assessment of a 39% contribution is underpinned by** inputting either agreed, factual or what I determine to be suitable figures. This, however, also accounts for the primary school contribution, which could mean that the affordable housing contribution could be higher still. I shall consider the merits of the primary school contribution, but solely in relation to affordable housing, **the Council's level of contribution is what the evidence indicates that the appeal scheme can at least support.**

#### Education

140. The Education SoCG<sup>44</sup> narrowed the dispute between the Council and the appellant considerably and now only a primary school contribution is sought. To determine whether this is warranted, the dispute focuses on the methodology used for the '**demand**' (pupil yield) and '**supply**' (shortfall in primary school places). All the figures involved have been agreed.
141. There is no mechanism before me that could state when the proposed development is to be built by, just a planning condition stating when it must start. This cannot specify a timetable for building out or at all. Hence, relying on any timetable for buildout must also come with a health warning that it

<sup>43</sup> Mr Lloyd Proof, Paragraph 7.4

<sup>44</sup> Inquiry Document 8

could change. Nevertheless, according to the appellant, phase 1 of the appeal scheme is anticipated to be complete in Autumn 2024 (20-month build out period), with full completion by summer 2026 (23-month build out period). Both would follow a six-month lead in period.

142. The **appellant's methodology in respect of 'the supply' is based on the Council's school capacity planning ('SCAP') forecasts**. These are prepared by each local education authority to help determine how many school places must be provided in the future and to inform resourcing decisions. They rely upon all new developments which have been granted planning permission. SCAP is carried out in May/June each year wholly based on GP registration data provided in the preceding April. This data seeks to capture all the children who will be starting primary school five years after they are born. Births between April and September are then factored in before models are used to extrapolate that population forward over the coming five-year period to account for annual changes in migration and survival.
143. The Council prepares its SCAP forecasts as per the SCAP guidance<sup>45</sup>, which confirms that robust forecasts are important for agreeing investment from other services and for housing developers for infrastructure improvements. Guidance on Securing Developer Contributions<sup>46</sup> states that it does not replace or override any aspects of other Department for Education publications such as the SCAP guidance, which clearly envisages SCAP forecasts to be used for this purpose.
144. Based on the completion dates for phases 1 and 2, the appellant considers the appropriate SCAP forecasts are for the years 2024/2025 and 2025/2026. However, even if the Council did not challenge them<sup>47</sup>, the **appellant's** version of suggested planning condition 1 would mean later completion dates and a knock-on effect for the appropriate SCAP forecast years. I note the **appellant's** rationale for their version of condition 1, but the logic around the judicial review period is incorrect<sup>48</sup>.
145. In practice, the **appellant's** anticipated timeframes may be correct and/or the reserved matters could be submitted, or the development built out sooner, but if their version of condition 1 was fully utilised, the effect would be that phase 1 may not be built out until mid-May 2025 at the earliest with phase 2 being completed by mid-April 2027. Therefore, 216 of the 332 units proposed would not be completed and would not start generating pupils until after the last year of the SCAP forecasts before me. In this scenario, there is no forecasting evidence before me as the children are yet to be born. This highlights an issue with using SCAP forecasts for developments that would generate pupils further into the future, which is a conceivable possibility on the appellant's own case.
146. **However, the Council's version of condition 1 would** result in an earlier start on site and, if the appellant is correct on their initial timeframe for phases 1 and 2, then completions would arise in the years of 2024/2025 and 2025/2026.
147. There are downsides to relying on SCAP forecasts, such as that their reliability reduces the further ahead you look due to there being a greater chance of change. They are also not based on actual recorded births between April and

<sup>45</sup> Education SoCG, Paragraph 2.8

<sup>46</sup> CD-M1, Page 4

<sup>47</sup> Appellant Closing, Paragraph 197

<sup>48</sup> Section 91 (3B) automatically gives the time extension in this scenario.

September. Furthermore, there can be a difference between expected and actual pupils turning up at reception; a point demonstrated with a higher number on roll in October 2021<sup>49</sup> than expected. This increase will only travel with the cohort as they progress through primary school.

148. Two further criticisms are levelled at SCAP forecasts by the Council. The first relates to delays in GP registrations or children starting school due to the pandemic. However, the effect of this is unknown either way and is time limited in any event. The other criticism is the effect on inward migration. Trafford has recently seen an uptick in migration from Hong Kong. That said, **Trafford's** most recent SCAP forecast have already accounted for this as the inward migration rate was amended so that this is carried forward in future years. Any further immigration from Hong Kong or anywhere else would not be picked up in the SCAP forecasts figures before me, but I need to consider this case based on current circumstances and there is no evidence, either way, to indicate whether there has been additional inward migration.
149. Although the SCAP guidance clearly envisages SCAP forecasts are to be used for this purpose, that is not to say that they are the only methodology. There can be great value in detailed local methodologies and guidance for the collection of developer contributions for education in that area<sup>50</sup>. **Trafford's 'snapshot'** methodology is local and does not require any forecasting. It is based on current numbers on roll against published admission numbers of relevant schools, and to add in any child yield from previously committed development to see whether any level of surplus places remain. It is the **Council's extant policy on education contributions, following Member's** discussion at Scrutiny Committee, though the methodology is not part of a Supplementary Planning Document.
150. However, when either of the timeframes set out are applied it would mean that a significant proportion of the pupils currently accounted for will not be at the school when the proposal starts generating pupils for primary school education. It is an agreed matter that a shortfall cannot be caused by the appeal scheme unless it arises after the proposal starts generating pupils<sup>51</sup>. Thus, even if birth rates are predicted to be steady, it would not be correct to consider whether there would be a shortfall in primary school places on the October 2021 figures, as any shortfall noted at this point would not be due to the proposal. Therefore, in this case, notwithstanding the successful application of the **Council's local methodology to other schemes**, an education contribution using **the Council's methodology would not be directly related to the development or necessary to make it acceptable in planning terms.**
151. Forecasting and modelling the future is not a perfect science and there will always be some inherent uncertainty and the potential for different outcomes. Out of the two methods before me, I prefer the **appellant's methodology** in respect of the supply as it looks at the period after the proposal starts generating pupils subject to **the Council's version of suggested condition 1**. As such, as a consequence, and as set out in the Education SoCG, I conclude that no primary contribution from the proposed development is necessary regardless of the pupil yield. The effects of the proposal on education provision, specifically primary schools, would be acceptable without the need for any

<sup>49</sup> 15 pupils higher for the reception year

<sup>50</sup> CD-M1, Bottom of Page 4

<sup>51</sup> Appellant Closing, Paragraph 197, Footnote 199

contribution. I have therefore not gone on to consider the merits of the pupil yield cases. As such, the proposal would accord with CS Policies L2.2, SL3.2, SL3.4 and L8.4.

Conclusion on this main issue

152. I have found that a primary education contribution is not necessary to mitigate the effects of the appeal scheme. The tests set out in CIL Regulation 122 and Framework paragraph 57 are not therefore met and I give this contribution no weight in reaching my decision.
153. An affordable housing contribution is necessary to make the development acceptable in planning terms. A 39% affordable housing contribution was with a primary school contribution. As the latter is not necessary, this money could go towards affordable housing and take that contribution to more than the **Council's conclusion of 39%. However, in the absence of** evidence, I cannot conclude that the site could deliver more than 40%. Notwithstanding the **appellant's case**, the UU has been drafted to allow for such other number of dwellings as set out in this decision. On this basis it seems to me that the UU would be directly related to the development and fairly and reasonably related in scale and kind to it. The UU in respect of the affordable housing contribution would satisfy the tests in CIL Regulation 122 and Framework paragraph 57. Affordable housing provision carries considerable weight in favour of the appeal scheme given the identified need and the mix that the UU would provide for.

*Longford Park Conservation Area and the setting of nearby listed buildings*

154. Trafford Town Hall, a Grade II listed building, is to the north of EOT and Talbot Road. The Town Hall is set within formal gardens and has been extended to the north with a contemporary addition. The Conservation Area is broadly to the south of the site.
155. Despite the Council's **position**, I have a statutory duty under Sections 66(1) and 71(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended).
156. The **Conservation Area's** significance derives from the site of the former Longford Hall and its association with John Rylands. The estate was designated as a public park in the 20th century, and its key aesthetic value relates to its green spaces, mature trees, planting and openness. It is a highly valued recreation space. **The park's layout reflects the historic estate** use with the central and southern parts of the Conservation Area defined by the estate buildings, formal gardens and tree-lined paths, with the northern end displaying a more open character, with wide expanses of fields bounded by fencing, hedges and mature trees. These afford views of land to the north of the Conservation Area in the direction of the appeal site with a largely uninterrupted skyline. Tall, mature trees encircle the Conservation Area and screen the two-storey houses to the south and east of the appeal site.
157. The appellant's verified view of the proposed development, looking northwards from within Longford Park, together with my own observations, indicates that the proposed development would not be a prominent feature or interrupt the skyline, as the mature trees would partially obscure the proposal even during winter months. The appeal scheme would, therefore, have a neutral effect on the significance of the Conservation Area and would hence preserve it.

158. Trafford Town Hall lies beyond EOT to the north-east of the appeal site. The Town Hall is a local landmark building and its southern elevation facing Talbot Road holds the most architectural significance, with several neo-classical features with hints of Art Deco motif at various points. The proportions of the building's elements, materials and architectural details all contribute to the **Town Hall's** overall significance. The landscaped grounds and sunken memorial garden to the west also contribute positively to the significance of the Town Hall. The clock tower rises above the remainder of the building and there are glimpsed views of it across the appeal site from the footway, to Great Stone Road, and from Gorse Avenue near to its junction with Great Stone Road. This allows for a limited appreciation of the heritage asset.
159. The clock tower and the proposed development could be viewed together from Gorse Avenue, but the latter would not alter how the former is experienced as it is a narrowed, focused view between EOT and Lancastrian House. The proposal would not, therefore, cause any harm. It would, however, affect the view of the clock tower across the appeal site from Great Stone Road as the road rises up in response to the Metrolink line. Given the intervening development, I consider this would result in a negligible degree of harm, which **lies at the lowest end of a spectrum of 'less than substantial harm'**. Great weight, however, **does need to be given to the asset's conservation and the public benefits of the appeal scheme** need to be weighed against this harm. I will return to this later in my decision.
160. There is a cluster of other grade II listed buildings at the entrance to Gorse Hill Park<sup>52</sup>. Having regard to the setting and significance of them, no harm would arise due to their scale, lack of visual relationship and the type, form and design of nearby development and that proposed.
161. CS Policies SL3 and R1 are not wholly consistent with the Framework in terms of how they approach the consideration of designated heritage assets, and as such, carry moderate weight. However, there would be no harm arising from the proposed development in respect of the Conservation Area or the grade II listed buildings at the entrance to Gorse Hill Park. In this respect, I conclude that the proposal would accord with CS Policies R1 and SL3. Nonetheless, due to the less than substantial harm identified in respect of Trafford Town Hall, the proposed development would be contrary to CS Policies R1 and SL3. I will return to weigh this harm against any public benefits of the proposal.

*Fine turf and non-turf training facility at LCCC*

162. EOT is one of a handful of stadia in the UK to conform to the ECB facility **standards for High Profile Match Venues (including Men's Test and International Cricket) and the International Cricket Council's (ICC) facility standards for international cricket venues**. To qualify as a High-Profile Venue the ECB and ICC requires a high-quality FTTF for elite level teams involved in competitions at EOT. The FTTF also serves a significant number of professional users and talented individuals on the elite player pathway, including but not limited to England teams, visiting international teams, LCCC, Manchester Originals, **Women's Regional Academy and Lancashire age groups**. The FTTF and NTTF are split into two blocks of nets comprising of multiple wickets with a central run up area serving a set of wickets to the north and south.

<sup>52</sup> The Great Stone at the entrance to Gorse Hill Park; Gorse Hill Park Entrance Portal and Lodges; and Stretford War Memorial.

163. The concerns raised in respect of this issue relate to the effect of overshadowing from the proposal, which could affect light and temperature levels. In turn, this was said to necessitate the purchase and use of growth lights for the FTTF. I concur with the parties agreed position that the proposal would not lead to an effect on the northern bank of nets of the FTTF. Insofar as the NTTF is concerned, as there is no grass grown here no harm would be caused by the proposal. Thus, the focus is the effect of the proposal on the **wickets in the southern bank of nets with the batter's end located at the southernmost part of the FTTF nearest to the appeal site.**
164. The cricket season usually ends in September with the FTTF used right up until then. Between October and the end of March the FTTF is not used for practice, but between these months renovation, restoration and grass growth take place. A hard-wearing Perennial Ryegrass, adapted to close mowing, is used. The crucial months for this are October and February. October is seen as a critical period for grass establishment by the ECB. In November, December and January active grass growth does not typically occur, with grass usually remaining dormant unless there is a spike in sunlight and/or temperature. However, in February, grass growth accelerates in readiness for the FTTF being readied for use at the end of March.
165. The Council contended that a lighting rig may **mitigate the proposal's** alleged effect in terms of sunlight, overshadowing and temperature. The appellant disputed this, but photographs<sup>53</sup> submitted during the Inquiry show LCCC have, and already are using, a lighting rig on the FTTF. This led to the Council confirming that it wished to withdraw its case on this main issue.
166. However, LCCC clarified the existing use of lighting rigs at EOT and whether **these could provide suitable mitigation against the proposal's effect on the FTTF**<sup>54</sup>. Before doing so, **I shall first consider the proposal's potential effect.**
167. The **appellant's** evidence places the FTTF below the lower-level limit range for active growth of Perennial Ryegrass whether or not the appeal scheme is built. This technical analysis shows that there would be a slight reduction in solar radiation and temperature during the months of October, December, January, February and March on the southern part of the FTTF with the appeal scheme in place. There would be no change in November.
168. Accounting for the clearness index for Manchester, which ranges between 27 and 30% during the winter months<sup>55</sup>, the upshot is that sunlight during these months will be diffuse and there can be no overshadowing as a result. I do not disagree with the **appellant's assessment** that any reduction in temperature caused by the proposal would be minimal and would not alter significantly the existing conditions for turf management or renovation of the FTTF during the winter months.
169. Notably, without development on the appeal site, growth lighting would theoretically be needed to provide suitable lighting conditions for active grass growth in the winter. However, setting this aside, if I were to consider that harm would be caused to the FTTF, it is **LCCC's** position that further growth lights are required as mitigation to address that harm.

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<sup>53</sup> Inquiry Document 5

<sup>54</sup> Inquiry Document 7

<sup>55</sup> Mr Collier's Proof, Paragraph 2.2.5



170. LCCC say that the small lighting rig currently used on the FTTF is not fit for purpose as it can only cover three of the 25 nets at any one time and is, therefore, of limited benefit. It has, however, been used to combat a frost and provide light to the FTTF. LCCC also explain that their existing larger lighting rigs would be too large for the FTTF and that a minimum of three further small lighting rigs would be required to cover 12 pitches with the ability to move them around.
171. However, **LCCC's position is not supported by substantive technical evidence** and the case for mitigation has not been made out in relation to the nature or impact of the development. A condition cannot be imposed to remedy an existing problem or issue not created by the proposal.
172. Thus, I conclude on this issue that the proposal would accord with CS Strategic Objective OTO11 and Policies SL3 and R6, which seek, among other things, to encourage, support and maximise the potential of LCCC as a visitor attraction and its potential to lead major regeneration in the area.

*Lancashire County Cricket Club - a non-designated heritage asset and an internationally significant visitor attraction, cultural and tourism venue*

173. Improvements made to EOT in recent years underpin its role as an international sporting venue and one of the leading cricket venues in the world. The pavilion was designed by Thomas Muirhead, a Manchester architect, who later designed the pavilion for Surrey County Cricket Club at the Oval. It has been extended and altered several times, most recently in 2012. The front part of the pavilion has been retained and still faces the field of play, which provides an historic architectural focal point for the ground. However, it has been substantially altered internally and externally, with contemporary additions behind. Modern buildings are either side of the pavilion, but its red brick front façade and original features can be experienced from within the ground and at an angle from the appeal site. It is a building which offers architectural and historic value due to its age and use over time, especially as the remaining parts of the ground have been extensively re-developed in recent years.
174. The pavilion holds communal value in terms of its cricketing history and cultural characteristics. While the principle of experiencing cricket at EOT from various places around the playing surface has not changed much over time despite the changes to the game and the range of formats, the redevelopment of EOT has seen the ground become a contemporary first-class cricketing venue alongside other corporate and event offers. I therefore consider the extent of the non-designated heritage asset (NDHA) to be the pavilion.
175. Despite the separation and the presence of other components of the ground between the appeal site and the pavilion, it nonetheless forms part of its setting, albeit it currently contributes little to the significance of the asset. The development proposed on the site would abut **LCCC's** indoor training facility, the surface level car park next to the FTTF, and rise above the southwest terrace. It would be clearly visible during the spring, autumn and winter months, between the gap where the temporary stand is erected for the summer months. This would not be the case when the temporary stand is in place and less so when the stage is in situ for concerts at EOT.
176. **The proposal's** scale, height and massing would alter the relationship between the site and EOT and how EOT is experienced both from within the ground and

from Great Stone Road, Gorse Avenue and Gorse Crescent. But it would not be dominating, in this regard, and reflective only of the glimpsed views currently available at certain times. However, **due to the wider area's** context, including other elements of EOT, I consider that the proposed development would result in negligible harm to the significance of the pavilion.

177. For the reasons outlined earlier, CS Policies SL3 and R1 carry moderate weight insofar as they relate to heritage matters. Although there would be no conflict with CS Policy R6, on the basis that it encourages and supports the **Borough's** culture and tourism offer in key areas such as at EOT, due to the negligible harm identified to the NDHA, I conclude that the proposal would not accord with CS Policies R1 and SL3 which seek to protect, preserve and enhance locally significant historic buildings. As such, a balanced judgement is therefore required as set out in Framework paragraph 203, which is a significant material consideration, having regard to the scale of the harm identified to the NDHA and its significance. I turn to this later.

#### *Highway safety*

178. The proposed vehicular and pedestrian access into the appeal site would use the existing access point from Great Stone Road, which is next to a vehicular access into EOT. This access is used occasionally by service vehicles and more intensively when events take place. The pedestrian footpath extends along the road either side of the LCCC/site access. The back of the footway marks the extent of the adopted highway. The access road within the site would not be adopted with it being owned and maintained by the developer.
179. No highway related concerns have been raised by the Council and there is no putative reason for refusal on this matter, but **in response to LCCC's concerns**, the appellant confirmed through a revised drawing that there will not be any raised kerbs that would hinder vehicle movements in or out of the LCCC access. The footway and accesses will be resurfaced and designed to the current footpath level. Tactile paving would be installed at either end of the pedestrian footway. Hence, the proposal would not result in any change to **LCCC's ability to use its access in a safe manner**.
180. Flush kerbs are proposed within the adopted highway to define the two accesses. They could be driven over but would act as a visual cue for pedestrians. This is not intended as a protected zone for pedestrians and the existing access arrangements require pedestrians to cross not only the LCCC access but an in/out arrangement for the appeal site connected with its former use. There is no evidence to suggest that this arrangement has caused accidents or highway safety issues. There is also good visibility at the access point for all highway users. This would remain the case if boundary treatments were kept low or set back from the back of the footway through a planning condition. The proposal would not therefore cause a significant change in the use of the access.
181. There is no national or local policy requirement to complete a road safety audit before the appeal is determined. The proposed access arrangements are also not likely to change fundamentally road user behaviour as they accord with Manual for Streets and could operate in a safe and efficient manner. The proposed works would be subject of a Section 278 agreement with the Local Highway Authority (LHA) and at this point would be subject to a road safety audit, giving independent recommendations on safety matters in design. These

could be accepted or rejected by the designer who would have a chance to respond with the LHA determining the appropriateness of the design.

182. I conclude that the proposed development would not harm the safety of vehicular and pedestrian users of the access to the site, EOT and Great Stone Road. Hence, the proposal would accord with CS Policy L4, even though it carries less weight due to its inconsistency with the Framework<sup>56</sup>, and CS Policy L7.2 and Framework paragraphs 110 and 111. Jointly, they seek safe and suitable access for all and to only refuse planning permission if new development is likely to have a significant adverse impact on highway safety.

## Housing Land Supply

183. The Council produces an annual housing land supply position in March each year, but for the purposes of the Inquiry, the parties engaged to provide an up-to-date assessment as of 23 November 2021. Following discussions prior to and during the Inquiry<sup>57</sup> the appellant considers there to be a supply of 3.30 years. The Council considers the supply to be 4.24 years.
184. Of the now disputed sites, the disagreement largely rests with the differing approaches of the parties to whether the sites accord with the term 'deliverable' as set out in the Framework and the Guidance which supports this. The disputed sites fall into three broad categories.

### Outline planning applications

185. The former Kellogg's site is a Joint Venture (JV) between the Council and a developer, Glenbrook. Outline planning permission has been granted subject to a s106 which is said to be imminent. A reserved matters application was due by 31 March 2022 and detailed discussions have taken place to front load the process. A range of tenures would be delivered through four different sales outlets. The site is suitable and available for development and due to the JV nature of the development, there is clear evidence that housing completions will begin on site within five years **in line with Glenbrook's letter<sup>58</sup> and based on the Council's assessment.**
186. The Council expect 600 of the 800 residential units proposed in the hybrid planning application at Stretford Mall, submitted in November 2021, to be delivered by November 2026. The residential development is split into 3 phases on this Council owned site. I consider that 150 units at the Lacy Street site will be completed in this time. The planning application is due for consideration by **the Council's Planning Committee. While a s106 is required, the principles of this are agreed.** The site is a JV between the Council and Bruntwood and the site is **central to the Council's own investment programme.** This, alongside the £17m of Future High Streets Funding and a development team, shows that there is a clear intention to bring the development forward and a strategy<sup>59</sup> to do so. However, beyond the 150 units, there are limited details about how units in the other phases on the site will be started and the rate at which they will be built out. Without this, I consider that there is insufficient certainty to include more than 150 units in the forward supply.

<sup>56</sup> Paragraph 5.1.22, Statement of Common Ground, October 2021

<sup>57</sup> Council conceded that the sites at Bakemark, 94b Talbot Road, Stretford Memorial, Claremont Centre and at Higher Road Depot should no longer form part of the supply

<sup>58</sup> Inquiry Document 10, Page 34

<sup>59</sup> Ms Coley's Proof, Paragraphs 4.7 to 4.10

187. Setting aside the appeal scheme, it is unclear whether a new scheme will come forward on the appeal site in order for housing completions to begin by November 2026. The Council estimate 163 units will be delivered on the site, but this is based on the emerging AAP which is yet to be examined and not a specific scheme. Hence, the site should not be included in the forward supply.

#### Full planning applications

188. Planning applications are being considered for the sites at the Greatstone Hotel, The Pelican and the Robin Hood Hotel. However, it is unclear whether permission will be granted for these sites as they either lack officer support or have received objections and need to go before Planning Committee. In any event, there is insufficient evidence that housing completions will begin on these sites within five years. There is little evidence about the developers' intentions, with regard to an anticipated start date or build-out rate to support their inclusion at present. There is also not enough clear evidence that an alternative scheme for each site will materialise let alone how the relied upon completions will transpire before November 2026.

189. An application at Land at/adjacent Katherine Lowe House was recently refused by the Council on design grounds. The Council is optimistic that a revised design will come forward, but there is no clear evidence from the applicant that this will be the case. Moreover, there is no word from the applicant about potential delivery on any quantum of homes on this site. It should therefore be discounted from the overall total.

190. Warwick Road South **is on the Council's brownfield** register. The applicant has completed the land assembly exercise, a contractor has been identified and it is their intention to start on site in Spring 2022. Completion would be by the end of 2023. While this timetable may remain accurate, or it may have slipped depending on the **application's** outcome at the Planning Committee meeting in March 2022, **there is clear evidence of the developer's intentions** and an aspiration to address concerns raised in local objections. For these reasons, I consider there is a strong likelihood of housing completions beginning on this site by November 2026.

191. The dispute over the Sale West Estate site relates to whether 13 extra units **should be included in the Council's supply or not**. These homes have outline planning permission, but the site is complex and split into phases. Even so, I consider the programme provides sufficient clear evidence that the 13 units would be completed by November 2026.

#### Pre-application stage

192. All the disputed sites, save for the Council owned site at land East of Partington Shopping Centre are on the brownfield register. However, the East of Partington Shopping Centre **site is on the Council's development and investment** programme and discussions have been held with Registered Providers in relation to its development. **The evidence doesn't fully** explain the stated start and completion dates and a single-phase construction, given the steps being taken by the Council, but I consider that there is a fair chance that housing completions may be completed on this site by November 2026.

193. There is also **enough clear evidence to support the Council's view** on the Curzon Cinema site. While the site **will only become 'available' once planning** permission is granted, the reason for this is clear and the termination notices

have been served. Significant pre-application discussions mean that officers are likely to support the scheme. The site would be brought forward with Southway, a Registered Provider.

194. Of the other sites, some or all of them may come forward and yield housing completions before November 2026 as the Council suggest. I do not discount **the Council's local knowledge and experience**. But, based on current evidence, despite the ongoing discussions and likely planning applications, there is not enough clear evidence<sup>60</sup> in terms of **the developer's delivery intentions**, anticipated start and build-out rates (even if the Council say that the developer has a strong track record of delivery and in the case of 94a Talbot Road wishes to enter into a PPA) to support their inclusion in the housing land supply total. There are also unknown technical reports to progress for the Christie Road site **before the developer's hopeful timeframes can be realised**. There are also several steps and potential delays to the Globe Trading Estate site as the timeframes set out have already slipped and the public consultation had not started at the time of the Inquiry. Ongoing legal discussions with the landowners are taking place and the site is occupied by an existing business. For these reasons, there is not enough clear evidence that housing completion will begin by November 2026.

Conclusion on the extent of the supply

195. Whilst a snapshot in time, **it seems to me that Trafford's current supply of deliverable housing sites lies somewhere between the two figures presented to me but far closer to the appellant's figure than the Council's**.

The narrative to the five-year supply position

196. The Council suggests that the current benchmark for assessing housing supply based on the CS is artificially inflated. However, this is the basis on which to consider this case. Figures from and reliance placed upon the Greater Manchester Spatial Framework are irrelevant as this plan was withdrawn and not examined. Places for Everyone is proposing a lower figure, but it needs to be examined and could be subject to change due to unresolved objections.
197. The 2021 Housing Delivery Test (HDT) published on 14 January 2022 indicates that the delivery of housing in Trafford has been below the housing requirement over the previous three years. As a result, the HDT identifies that **a 'buffer' applies in Trafford. However, there has been an upward trajectory of new homes being delivered in Trafford in recent years with the Council no longer falling into the 'presumption' category compared to the 2020 HDT. This is due to the action that the Council has taken and continues to take to address the shortfall through its Action Plan. It appears to be doing everything it can in this regard. The Council is granting more permissions than the housing requirement and taking other proactive steps. Added to this, even on the appellant's case, the extent of the Council's five-year supply has improved since the Warburton Lane appeal<sup>61</sup> of just over a year ago.**
198. The Council is confident that the trajectory will only get better and that it will be able to demonstrate a five-year supply of deliverable housing sites. They may be right, but there are simply too many unknowns and given the bumpy **nature of Trafford's supply in recent years, caution needs to be exercised**. Yet,

<sup>60</sup> 94a Talbot Road, Christie Road, Sale Masonic Hall/Sale Police Station, the Bowden Hotel and the Cresta Hotel

<sup>61</sup> CD-L1, Paragraph 15, five-year housing supply 2.4 years



there remains a substantial shortfall which must be set against the context of significantly boosting the supply of new homes.

## Planning Balance

### The Development Plan

199. The proposed development would be contrary to the development plan due to its design, namely as a result of its scale, massing, density, layout and height. As such, the proposal would conflict with CS Policies SL3 and L7.
200. The proposed design would also fail to mitigate the time limited, significant adverse effect on future occupants arising from the noise generated by **concerts at EOT. This could, in addition, lead to a review of LCCC's licence, formal action being taken to remedy a statutory nuisance or a civil nuisance action by future occupants. This presents a real and significant risk to LCCC's current activities at EOT specifically in relation to concerts and the financial benefits that they would not realise as a result.** Thus, the proposal would conflict with CS Policies SL3, L5.13 and L7.3.
201. There are also resulting **effects of the proposal's design** in terms of the usability of the two courtyards, the outlook from several units on the south-east elevation and a certain number of units in terms of sunlight and daylight. In combination that would fail to provide appropriate living conditions for future occupants and conflict with CS Policies SL3 and L7.
202. **The proposal's design would also cause an** overbearing effect upon the outlook from properties on Great Stone Road and Trent Bridge Walk. On this basis, the proposal would not accord with CS Policies SL3, L3 and L7.
203. Harm that would be caused to the designated heritage asset at Trafford Town Hall and the NDHA at EOT, would be contrary to CS Policies R1 and SL3. No harm would arise to the significance of the Conservation Area.
204. There would be no conflict with CS Strategic Objective OTO11 and Policies SL3 and R6 in respect of the FTF and the NTF. Moreover, there would no conflict with CS Policy R6 as the proposal would not cause a dominating adverse impact on EOT or affect its cultural or tourism offer. Cricket and transport noise could also be adequately mitigated so that the appeal scheme would accord with CS Policies SL3, L5.13 and L7.3.
205. The proposal would not harm the living conditions of occupants in properties on Trent Bridge Walk and Great Stone Road in terms of sunlight and daylight. The proposal would not be contrary to CS Policies SL3 and L7 in this respect.
206. The safety of vehicular and pedestrian users of the access to the site, LCCC and Great Stone Road would be ensured, which means that the proposal would accord with CS Policies L4.7 and L7.2.
207. A primary school education contribution is not necessary so there would be no conflict with CS policies L2.2, SL3.2, SL3.4 and L8.4 in respect of this issue. The proposal would, based on viability, provide a policy compliant level of affordable housing and accord with CS Policies SL3.4 and L2.
208. The UU includes local open space and sports facilities contributions that would improve various provisions at Longford Park and a 3G pitch within one of two sites in Trafford. The UU also includes provisions for a highway improvement,



TRO review, design certifier. As these would all mitigate the effect of the development, they would do not weigh in favour or against the proposal. However, as the appeal is to be dismissed on other substantive issues, I have not looked at these provisions in detail, given that the proposal is unacceptable for other reasons.

209. Considering these issues in the round, I find that the appeal scheme would be contrary to the development plan when taken as a whole. This is a matter of very substantial weight. I will now consider whether there are material considerations that would indicate that my decision should be made otherwise than in accordance with the development plan.

#### The benefits of the appeal scheme

210. The proposed 332 apartments would make a significant contribution to **addressing the Council's** housing shortfall and provide an appropriate mix of market and affordable homes that would widen the housing choice within Trafford. The proposal would also make a sizeable contribution to addressing the significant and ongoing need for affordable homes in Trafford. I give these matters considerable weight in favour of the appeal scheme.
211. Undoubtedly the appeal scheme would make effective use of a vacant and derelict brownfield site within the urban area close to a range of facilities and services and in a highly accessible location. This is encouraged by national and local policies and so the principle of doing so here carries significant positive weight. The proposal would also actively address Great Stone Road and include a variety of uses. I give these matters moderate positive weight.
212. There would be multiple economic benefits associated with the appeal scheme. These are a £11.4 million Gross Value Added to the local economy, around £8.5 million additional household expenditure per year, 186.6 person years of temporary construction jobs. These matters carry considerable positive weight.
213. A high amount of cycle parking would help encourage people to travel by sustainable transport modes and the proposal would increase green infrastructure and biodiversity on the site. Both carry limited positive weight in my view. The fact that both courtyards would be publicly accessible is a benefit of the appeal scheme, but one that carries very modest weight due to the harm identified and the consequential effect on the usability of these spaces. The proposal would safeguard a connection through the site to allow a potential future connection between Great Stone Road and Old Trafford Metrolink stop. This carries modest positive weight.
214. As I understand it, the New Homes Bonus is not ring fenced by the Council for projects that might help the local area. Council Tax receipts are needed to help the Council deliver local services and infrastructure. It is a form of mitigation given the proposed development would place extra demands on both. These matters therefore carry neutral weight.

#### **The heritage balance**

215. The harm to the significance of Trafford Town Hall would be less than substantial, with the harm at a low level within that spectrum. I afford great weight and importance to its conservation as it is an irreplaceable resource. However, having regard to the benefits set out above, I consider that they would collectively outweigh the harm that would be caused to it.

216. Due to the loss of glimpsed views, the proposal would cause negligible harm to the pavilion, a NDHA at EOT. This is a low degree of harm, though the setting of the pavilion would remain unchanged. Against this there are numerous benefits associated with the scheme which I have outlined above. In my judgement when I consider the scale of harm identified against these, the balance is firmly in favour of the appeal scheme.
217. As a consequence of my heritage balance conclusion, and having regard to the lack of a five-year housing land supply, it is correct for me to apply the tilted balance as set out in Framework paragraph 11d)ii).

## Conclusion

218. The proposal would bring a vacant derelict site back into use within the urban area and within an area of transformational change. The principle of developing the site accords with the development plan. The development would make use **of the site's accessible location and deliver a** quantity and mix of houses in the context of the current housing land supply position alongside various uses that would collectively provide economic and social benefits. The proposal in all these regards responds to national and local policy. The proposal would also make a sizeable affordable housing contribution and help address the clear need in Trafford. These matters all carry considerable weight. There are further social, economic and environmental benefits set out above that weigh in favour of the appeal scheme. I have also stated my view on the significance of Trafford Town Hall and the scale of the harm to EOT above.
219. However, the proposal would not deliver a high-quality, well-designed building and place. Substantial harm would be caused to local character and appearance in this regard, and there would be consequential effects for existing and future occupants' living conditions in terms of the amenity spaces and overbearing outlook owing to the design. These carry, significant, limited, and moderate weight respectively. Furthermore, despite the mitigation proposed to address concert noise at EOT, I have concluded that there would be direct harm arising to **future occupant's** private amenity spaces. It would also not be realistic, reasonable or controllable to expect future occupants to keep their windows and doors closed during concerts to achieve acceptable internal living conditions. As a result, there would be a material risk of complaints, statutory nuisance or an unfavourable review of the premises licence conditions. Hence, there is the potential risk of serious and direct financial consequences for LCCC if concerts are curtailed at EOT. This is a matter of substantial weight. The proposal would also harm the living conditions of some of the future occupiers in respect of sunlight and daylight. I give this harm moderate weight. The most important development plan policies relating to these matters are consistent with the Framework. I attach very substantial **weight to the appeal scheme's** conflict with the development plan when taken as a whole.
220. The proposal would result in benefits, but it would also cause harm. Weighing the two up is not a mathematical outcome; it is an overall judgement. Many of the benefits could theoretically be delivered through a similar scheme on the site with a satisfactory design. High-quality, well-designed buildings and places are a key aspect of sustainable development and design is paramount to achieving this. In this case, due to the harms **that the proposal's design would** cause, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

221. There are therefore no material considerations to indicate that this decision should be made otherwise than in accordance with the development plan. Accordingly, for the reasons given above, I conclude that the appeal should be dismissed, and planning permission refused.

*Andrew McGlone*

INSPECTOR

**APPEARANCES**

## FOR THE APPELLANT:

Alexander Booth  
assisted by Daisy Nobble, of Counsel,

Of Queens Counsel, instructed by WSP

He called

Lee Collier BA (Hons) FACTS

Principal Technical Consultant, STRI

James Patterson BEng MSc MIOA

Director of Holtz Acoustics

Gareth Davies BSc MSc MCIHT CMILT

Director of Vectos (North) Transport  
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Matthew Hard BA (Hons) MUP MRTPI

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Carl Taylor BA (Hons) CMLI

Director of TPM Landscape

**Paul O'Connell** BA (Hons) DipArch

**Co-Director, O'Connell East Architects**

David Radcliffe MRICS

Director, AA Projects Ltd

John Powell LLB (Hons)

Operations Director, Alfredson York  
Associates

Ken Latham MRICS

Director, Edmond Shipway LLP

Stephen Miles BA (Hons) MRTPI MRICS

Partner, Cushman and Wakefield

Dr Stuart Batho BA (Hons) MLE PhD  
AssocMRTPI

Associate, WSP

Doug Hann BA (Hons) MTPL MSC MRTPI

Director and Head of Planning  
Consultancy, WSP

Matthew Evans\*

Counsel, Forsters

\* Participated in the Planning Obligation session only.

## FOR THE LOCAL PLANNING AUTHORITY:

David Forsdick

**Of Queen's Counsel**, instructed by the  
Borough Solicitor of Trafford Metropolitan  
Borough Council

He called

Daniel Musson BA (Hons)

Head of Facilities Planning, ECB

Dr Matthew Robinson PhD CEng MICA

Noise, Sandy Brown

Debra Harrison MPlan

Major Planning Projects Officer

Rebecca Coley BA (Hons) MA MRTPI

Head of Planning and Development

Murray Lloyd BA (Hons)

Viability, Continuum

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Sarah Butters BA (Hons)	Head of Service: Early Years, School Places and Access
Elisabeth Lewis BA (Hons) DipTp MRTPI	Heritage Development Officer
David Pearson*	Major Projects Team Leader

\* Participated in the Housing Land Supply, Planning Conditions and Planning Obligation sessions.

FOR LANCASHIRE COUNTY CRICKET CLUB:

Killian Garvey	Of Counsel, instructed by Grant Anderson, Partner of Hill Dickinson LLP
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He called

Dani Fuimicelli	Technical Director, Vanguardia Limited
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PERSONS OBSERVING:

Jack Wiseman	Trafford Metropolitan Borough Council
Victoria Ward	Trafford Metropolitan Borough Council
Noah Billing	Trafford Metropolitan Borough Council
Claire Kefford	Trafford Metropolitan Borough Council
Richard Gore	Trafford Metropolitan Borough Council
Rosalind Gralton	Trafford Metropolitan Borough Council
Joanne Egeli	Trafford Metropolitan Borough Council
Sarah Lowes	Trafford Metropolitan Borough Council
Gerard Lennox	Trafford Metropolitan Borough Council
Russell Crocker	Trafford Metropolitan Borough Council
Victoria Welch	Senior Planner, WSP
Grant Anderson	Partner, Hill Dickinson LLP

**Appendix 6 - Appeal Decision (APP/Q4245/W/21/3287401)**





# Appeal Decision

Site visit made on 26 July 2022

**by G Rollings BA(Hons) MAUD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 January 2023**

**Appeal Ref: APP/Q4245/W/21/3287401**

**Former MKM House, Warwick Road, Stretford, Manchester, M16 0QQ**

- 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 Jumani Holdings Limited against the decision of Trafford Metropolitan Borough Council.
- The application Ref 101651/FUL/20, dated 14 August 2020, was refused by notice dated 21 May 2021.
- The development proposed is the redevelopment of the site for residential development (use class C3) with associated infrastructure and landscaping.

**This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 23 August 2022.**

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The site is within the area of the Council's draft *Civic Quarter Area Action Plan* (the draft AAP) which has been examined by an Inspector but not yet adopted. In July 2022 the Council started the consultation process for main modifications following the examination, however the Inspector has not yet issued his report. Nonetheless, I have consulted the main parties on this development and given the advanced stage of the document, it has moderate weight in my Decision.
3. An extant permission<sup>1</sup> exists for the site, and the main parties agree that this has been implemented. This is hereafter referred to as the implemented scheme, and was approved by the Council in 2016. It is described as the erection of a 12-storey building with basement car parking (44 spaces), comprising a total of 89 residential apartments (Class C3) plus cycle parking facilities, associated landscaping, means of enclosure, with vehicular access from Warwick Road. Although I refer to this implemented scheme throughout this Decision, I will consider it in greater detail in the Planning Balance section after my consideration of the main issues.
4. Both main parties agree that the Council cannot demonstrate a five-year housing land supply. I will also consider the implications of this within the Planning Balance section.

<sup>1</sup> Council ref: 88279/FUL/16

**Main Issues**

5. The main issues are:
- The effect of the proposed development on the character and appearance of the area, including whether it preserves the particular characteristics of nearby listed buildings;
  - The effect of the proposed development on highway safety and the living conditions of surrounding residents, with reference to parking provision;
  - Whether the proposed development would provide acceptable living conditions for future occupiers, with particular reference to the provision of outdoor space; and
  - Whether the proposed level of affordable housing is appropriate, with reference to the scheme's financial viability.

**Reasons**

6. The proposed scheme (hereafter referred to as the appeal scheme) is a 13-storey building with 88 flats, comprising 26 one-bedroom and 62 two-bedroom units, 6 car, 3 motorcycle and 104 cycle parking spaces. Notable changes to the appeal scheme, compared with the implemented scheme, are the addition of an extra storey with reduction of two flats, an increased setback to Warwick Road, other changes to its design including siting, appearance and massing, and changes to the amount of parking spaces.

*Character and appearance*

7. The appeal site is a vacant plot of land on Warwick Road – a street between the area's two large stadiums and close to the borough's civic centre. Warwickgate House is an 11-storey building is on a neighbouring site, with a predominantly glass front façade set back from Warwick Road with car parking in the intermediate space. Other buildings of around 6 storeys are also on the road. Two-storey homes are directly opposite, with similar dwellings lining the streets leading away from the site.
8. Brick would comprise much of the front elevation of the appeal building, relieved by glazed opening and balcony balustrades, and metal highlights. There would a strong vertical emphasis in the arrangement of the materials. The building would sit forward of Warwickgate House, and consideration of the side elevations is also relevant: these would be predominantly brick with smaller window openings. Upper floors would be staggered inward from the front elevation.
9. Council policies informing design quality include *Trafford Local Plan: Core Strategy* (2012) Policy L7, and draft AAP Policies CQ1, CQ6 and CQ6.1. Amongst other considerations, these require development to make the best use of opportunities to improve the character and quality of an area, be appropriate in its context, complement and integrate with its surroundings, and that tall buildings achieve design excellence. Furthermore, all development within the AAP area should be architecturally innovative whilst raising design standards in the area. These are generally consistent with the advice given in para of the *National Planning Policy Framework* (2021) (the Framework), which states at paragraph 134 that development that is not well

designed should be refused especially where it fails to reflect local design policies, and the *National Design Guide* (2021) (NDG).

10. The policy position sets a very high benchmark for design quality with a requirement for a distinctive architecture relating to the area. The changes to the appeal scheme over the implemented scheme mean that a taller building filling a greater proportion of the site is proposed. Although forward of Warwickgate House, with a similar height, it would have a greater front setback than previously proposed but would have only small setbacks to the side and rear boundaries.
11. Nonetheless, the building's height and siting mean that it would be highly visible along both Warwick Road approaches and also visible from other nearby streets. Although the front of the building would have a reasonable amount of articulation, the side elevations and side returns of the front elevation would have large areas of dark brickwork, which would be visible in the aforementioned views. The solidity of these areas accentuates the building's significant massing, which would only be slightly relieved by the receding upper storeys, and the overall effect would result in a building that appears 'heavy'. Viewed in context, particularly alongside its close neighbour at Warwickgate House and that building's visually lighter façade, the building would appear obtrusive and inappropriately bulky.
12. The sizable area of hard landscaping to the front of the building and minimal areas for soft landscaping would add to the building's unsuitable appearance. I appreciate that the scheme has undergone design changes since its initial consideration by the Council, and these have improved its aspect, but do not consider that it represents an improvement in appearance compared with the implemented scheme, which has different proportions and treatment that do not result in a greater scale of harm to the street scene. For these reasons, the proposal is unacceptable.
13. The proposed building is within visibility of and the setting of several listed buildings and structures, being Trafford Town Hall and the former White City Greyhound Track's entrance and lodge. Their significance lies in the area's importance as a centre of civic activity and a place of gathering formerly important within the community. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, its significance, or any features of special architectural or historic interest.
14. Although the site's suitability for a tall building and impact on the listed buildings has been previously assessed as part of the draft AAP adoption process, any proposals must be sympathetic to these considerations. Given my findings on the design of the scheme, the appeal building would result a small amount of harm to the setting of the listed buildings, being distantly visible in background views of the assets. Paragraph 202 of the Framework requires the decision-maker to undertake a balancing exercise between any less than substantial harm to a heritage asset, and any public benefits resulting from development. There would be moderate public benefits of affordable housing provision and strengthening the local housing supply and in my view, this would outweigh the less than substantial harm.

15. However, the design issues that I have identified would have implications on the immediate area and for this reason I conclude that the proposed development would harm the character and appearance of the area, and would conflict with Core Strategy Policy L7, draft AAP Policies CQ1, CQ6 and CQ6.1, the Framework and the NDG, failing to achieve the required design standard set out within these documents. I also conclude that although there would be some less than substantial harm on the particular characteristics and setting of listed buildings, this harm would be outweighed by the public benefit of affordable housing provision.

### *Highway safety*

16. Six off-street car parking spaces would be provided, compared with 44 in the implemented scheme that also includes provision for the use of an additional 30 on-street spaces. The parties recognise that the Council's maximum provision standard of 150 spaces is based on out-of-date policies, and draft AAP Policy CQ10 would require provision of 0.2 spaces per dwelling, resulting in an appeal scheme requirement of 18 spaces. Policy CQ2 also has a requirement to preserve the living conditions of existing occupiers of surrounding properties.
17. The appeal site is in an area of high public transport accessibility but within streets of highly restricted parking availability owing to the proximity of the stadia. The controlled parking zone limits on-street availability to residents with permits, however, evening and weekend parking in some surrounding streets is unrestricted. The proposed rate of provision assumes that only 7% of households within the appeal scheme would own a car, compared with census data indicating a local ownership rate of 25% for residents of flats.
18. Although these arrangements are likely to deter some prospective residents from car ownership, the existence of some on-street availability, no matter how light, may encourage others. The planning obligation's proposed measures (which include Traffic Regulation Orders) may reduce some of this demand, but if any TROs were to be undertaken to increase local on-street provisions then these would not come into force until partway through occupation of the development and would in any case need to take existing residents' views into consideration.
19. The 'direction of travel' indicated by the draft AAP's parking provision figure suggests that although the requirement for parking provision within the area has decreased in recent times, there remains a demand for on-site parking. This would be partly met by the proposed development, and other local schemes with low levels of on-site parking have been brought to my attention. However, this must be balanced against the requirement to preserve existing residents' living conditions. Taking all these conditions into account, I consider that the demand for parking from residents of the appeal scheme is likely to exceed supply of parking spaces, and that this is likely to lead to demand for the existing restricted on-street parking that could not be wholly mitigated through travel planning, cycle parking provision or public transport accessibility. This would lead to a reduction in living conditions for existing residents of the area. Moreover, additional on-street parking demand and competition for bays can lead to on-street parking congestion, leading to conditions harmful to highway safety.

20. Three of the proposed car parking spaces would be reserved for accessible use. The Council considers this figure to be inappropriately low but has not provided standards or guidance for what should be provided. The examples provided for nearby development indicate higher and lower provision on a proportion-per-resident basis, and accordingly I have insufficient evidence to suggest that the intended provision is unsuitable.
21. Nonetheless, for the reasons given above I conclude that the proposal would have a harmful effect on highway safety and the living conditions of surrounding residents, with reference to parking provision. This would conflict with Core Strategy Policies L4 and L7 to the extent that they are not out-of-date, and draft AAP Policies CQ2, CQ6 and CQ10, which together promote sustainable transport and highway safety, amongst other considerations. I have also had regard to the Council's adopted *SPD3: Parking Standards and Design* Supplementary Planning Document (2012), the Framework and the NPG.

### *Living conditions*

22. The Council's approach to outdoor space provision is set out in its *Planning Guidelines: New Residential Development* Supplementary Planning Document (2004) (PG1) which was adopted by the Council although I am not aware of whether this document was subject to local consultation. As such, I give it moderate weight in my decision. This states that most new dwellings should provide private outdoor space and that for flats, 18sqm of screened communal area per flat would be acceptable (with balcony areas counting towards the overall provision). Furthermore, draft AAP Policies CQ2 and CQ6 which require usable private amenity space provided to all homes as gardens, balconies or terraces.
23. Proposed outdoor (or amenity) space provision comprises a 98 square metres (sqm) communal space on the ground between the building and the street and a 12<sup>th</sup> floor communal terrace of 42sqm, with a total communal area of 140sqm. Private outdoor space terraces would be provided for two ground-floor flats and balconies to six flats. No other flats would have private outdoor space, and the total amount of combined communal and private space would be 288sqm, as opposed to the 1,584sqm suggested through the application of the PG1 guideline.
24. The Council suggests that the building would accommodate around 145 residents and I agree that with this level of occupation, the space that would be provided would often be fully utilised. The appellant would contribute a sum through the planning obligation towards the improvement of local open space and children's play facilities. However, given that the proposal falls substantially short of the current on-site requirement, and the dearth of suitable identified nearby spaces for improvement, I conclude that the proposed development would not provide acceptable living conditions for future occupiers, with particular reference to the provision of outdoor space. This would conflict with Core Strategy Policy L7 draft AAP Policies CQ2 and CQ6, and PG1, requiring appropriate provision of open space, amongst other considerations. These are consistent with the Framework and the NDG.

***Affordable housing provision***

25. Core Strategy Policies L2 and L8 and *Revised Supplementary Planning Document 1 (SPD1) – Planning Obligations* (2014) seek contributions for all new development, splitting the borough into three zones for the purpose of affordable housing provision. As a 'cold' market location, developments within the area of the appeal scheme under current conditions would normally attract a 10% contribution, but a clause within Policy L2 states recognises that there would be sites that would outperform these generic expectations. In such cases, the Council would assess the viability of the site to provide an affordable housing contribution of up to 40%.
26. An example of a scheme on a non-generic site was recently decided by appeal<sup>2</sup> and is relevant as shares characteristics with and is close to the appeal scheme site. The Inspector found that the proposed density substantially exceeded that of the highest tested in the Core Strategy's evidence base, and furthermore that its distinct and internationally renowned location, public transport accessibility, and scale and nature, all contributed to his decision. All of these characteristics apply also to the appeal scheme before me. Additionally, the Council contends that the existence of an implemented scheme of similar scale with an alternative use value greater than the residual land use value justifies its approach.
27. The appellant has questioned the clarity of the analysis used to inform the density argument but since this was recently subject to cross-examination in the aforementioned appeal, I will not revisit this here. Regardless, the remaining characteristics as set out above strongly lead to a non-generic outcome. While it is the case that the Council would have been aware of the likely scale of development that would be built on the appeal site at the time of the Core Strategy's adoption, the draft AAP's advancement confirms the strategic nature of the site. All of this evidence convincingly suggests that a development on this site of the nature proposed would perform differently to a generic site and I therefore consider this site to be of the non-generic nature that triggers the 40% consideration.
28. Since the appeal was started, the appellant has revised the affordable housing provision from an initial zero to the current 10% offering, and viability assessments and rebuttals have been submitted by both main parties. The main areas of disagreement are build costs and sales values. The Council's build costs assessment found that the appellant's estimates were high when compared with similar development in this area, with any reasoning for a higher specification expected to be met by higher sales values. Other costs derive from design considerations and uncertainty within the supply chain. I acknowledge the appellant's position that the detailed design of the scheme allows for accurate costing and consider that relying on value engineering to reduce these carries risks that may affect other aspects of the development, such as design. Taking into account the 'city centre' characteristics of the proposal, I accept the costs presented within the appellant's viability information and am satisfied that the viability review mechanism within the planning obligation could allow for a suitable review in the future.
29. The fact remains that the 10% affordable housing provision falls short of the (up to) 40% provision set out in policy. The viability assessment has not been

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<sup>2</sup> Appeal ref: App/Q4245/W/20/3258552; decision date 6 May 2022.



produced to include the 40% figure and I cannot be fully certain that it reflects the best possible outcome for affordable housing provision. I therefore conclude that the proposed level of affordable housing is not appropriate, with reference to the scheme's financial viability, and conflicts with Core Strategy Policy L2 for the reasons set out above.

### **Other Matters**

30. A completed Section 106 Planning Obligation has been submitted. Given that an obligation may constitute a reason for granting planning permission only if it meets the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 and paragraph 57 of the Framework, it falls to me to reach a finding on its acceptability.
31. The 10% affordable housing provision (nine flats) would be wholly of shared ownership tenure, but would not comply with the Core Strategy Policy L2 preferred split of 50:50 intermediate and social rented affordable units. I acknowledge that partnership and management issues have informed the proposed tenure but consider that the lack of a viability assessment to confirm that this is the most effective provision to be a concern. Nonetheless the provision would assist in meeting the demand for housing within the borough and is accepted, and the suggested viability review conditions are appropriate.
32. The intended contributions for provision of off-site education, open space, outdoor sports, tree planting and processional route works address needs set out in SPD1 and are appropriate. The various sums sought by the Council are justified and I am satisfied that the Council could rely on the document to secure the contributions. Other obligations relating to traffic and parking and management are appropriate for the reasons set out above. I am content that the obligations meet the requirements of the statutory and acceptability tests.

### **Planning Balance**

33. Both parties agree that the Council is not able to demonstrate a five-year housing land supply. Despite the Council's improving supply position and delivery, the development plan policies that are the most important for determination are out of date, and therefore paragraph 11(d) of the Framework is engaged.
34. Within the evidence, the appellant relies on the implemented scheme within each main issue on a comparison with the appeal scheme, highlighting the benefits of the latter over the former. The implemented scheme's permission is now several years old, with no visible works on what is presently a vacant site. The likelihood of the implemented scheme progressing decreases with time and for this reason I am not wholly convinced that its progression represents a realistic fallback position. While there are preferable aspects of the implemented scheme compared with the appeal scheme and vice-versa, I can at best allocate only moderate weight to the implemented scheme as a fallback position.
35. The appeal scheme would provide some other benefits. The provision of a small number of affordable housing units would be beneficial to the housing supply, as would the provision of a larger number of market homes. However, given that the latter would also be provided in the fallback scheme, the addition of the affordable homes means that these benefits have only

moderate weight. The reuse of a brownfield site is sustainable and whilst the improvement of the unsightly land would be beneficial towards the delivery of the draft AAP, these improvements would also be delivered with the fallback scheme, and thus the beneficial weight of these is also moderate. The various contributions set out in the planning obligation mostly mitigate the demand for infrastructure and other services expected to be generated by the appeal scheme, and as such I have attributed only minimal weight to these.

36. The harm that would be caused by the proposal in each of the main issues set out above would vary in scale and impact but in totality would result in substantial harm. Although there would be several benefits of the proposal, none of these would be substantial and are collectively moderate at best. This harm significantly and demonstratively outweighs the benefits when assessed against the policies in the Framework as a whole.

### **Conclusion**

37. There are no considerations to indicate that this decision should be made otherwise than in accordance with the development plan. For the reasons given above, I conclude that the appeal should be dismissed.

*G Rollings*

INSPECTOR

**Appendix 7 - Appeal Decision (APP/J1915/W/23/3318094)**

**VIABILITY STATEMENT OF COMMON GROUND**

**RAILWAY STREET, HERTFORD SG14 1BA**

**PLANNING INSPECTORATE REFERENCE: APP/J1915/W/23/3318094**

**LOCAL PLANNING AUTHORITY REFERENCE: 3/22/2346/FUL**

**16 JUNE 2023**

## 1.0 BACKGROUND AND CHRONOLOGY

1.1 This Statement relates to an appeal made under Section 78 of the Town and Country Planning Act 1990 for the refusal of planning application 3/22/2346?FUL for the Redevelopment of the site to provide 34no. Retirement for older persons, with associated communal facilities, parking and landscaping.

1.2 This viability Statement of common Ground relates to reason for refusal 4, as set out in the Planning Officer's Appeal Statement:

*The proposed development fails to make adequate provision for affordable housing in accordance with Policy HOU3 and HOU1 of the East Herts District Plan 2018 and the adopted affordable housing SPD, resulting in a development which does not provide a mixed and balanced community, does not provide a sustainable form of development and does not meet identified housing need.*

1.3 The Appellants case was set out in the Financial Viability Assessment dated 31 October 2022 and updated to reflect the change in unit numbers to 34 retirement apartments, dated 20 January 2023.

1.5 BPS Chartered Surveyors (BPS) were appointed to review the Appellants FVA and reported on the 6 April 2023 confirming that, in their opinion, the scheme was viable and could contribute a total amount of £2,876,568 towards the provision of Affordable Housing Units. It is noted that this assessment considered the previous 36 unit scheme and not the revised Appeal scheme of 34 units.

1.6 Following the publication of the BPS report the parties have narrowed the areas of disagreement between them for this Inquiry.

1.7 The table below outlines the current position of the parties and identifies the key areas of dispute.

## VIABILITY STATEMENT OF COMMON GROUND

**2.0 Summary Position**

<b>Input</b>	<b>Appellant</b>	<b>LPA</b>
Proposed Scheme:	34 RL Apartments Commercial Unit	34 RL Apartments Commercial Unit
Floor Areas:	NIA (Apartments): 2,229.60 m <sup>2</sup> GIA (Apartments): 2,937.93 m <sup>2</sup> Retail (GIA): 198.45 m <sup>2</sup> Total GIA: 3,136.39 m <sup>2</sup>	NIA (Apartments): 2,229.60 m <sup>2</sup> GIA (Apartments): 2,937.93 m <sup>2</sup> Retail (GIA): 198.45 m <sup>2</sup> Total GIA: 3,136.39 m <sup>2</sup>
GDV	Apartments: £13,850,000 Retail: £585,770 (Costs): (£27,332) <b>GDV: £14,408,438</b>	Apartments: £13,850,000 Retail: £585,770 (Costs): (£27,332) <b>GDV: £14,408,438</b>
BCIS Rate	Retail - £961 per m <sup>2</sup> Residential - £1,855 per m <sup>2</sup>	Retail - £961 per m <sup>2</sup> Residential - £1,855 per m <sup>2</sup>
Base Build Cost	£5,640,583	£5,640,583
Abnormal Costs	£389,800	£389,800
External Costs	£282,029	£282,029
Contingency	5% - £315,621	5% - £315,621
Professional Fees	8% - £504,993	8% - £504,993
Disposal/Marketing	5% of sales values £692,500	5% of sales values £692,500
Sales Legal Fee	£21,600	£21,600
EPCs	£102,298	£102,298
Finance Costs	7% Debit £939,421	7% Debit £934,262
Sales Curve	Pre-Construction: 6 Months Construction: 15 Months Sales Period 24 Months	Pre-Construction: 6 Months Construction: 15 Months Sales Period 24 Months
Profit	20% on GDV – Residential 15% on GDV – Retail £2,856,839	20% on GDV – Residential 15% on GDV – Retail £2,857,865



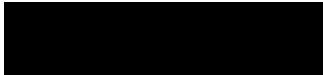
VIABILITY STATEMENT OF COMMON GROUND

<b>RLV</b>	<b>£2,502,579</b>	<b>£ 2,501,807</b>

Areas of disagreement

<b>BLV</b>	<b>£1,935,000</b>	<b>£1,160,000</b>
<b>Scheme Surplus/Sec.106 Cost</b>	<b>£567,579</b>	<b>£145,378</b>  <b>£1,133,000</b>
<b>Scheme Surplus/ Deficit (No PIL)</b>		<b>£1,594,085</b>
<b>Scheme Surplus (PIL)</b>		<b>£359,132</b>

Signed:



R James Mackay  
 Alder King LLP (On Behalf of the Appellant)

Signed:

Andrew Jones  
 BPS Surveyors- (On Behalf of the LPA)



# Appeal Decision

Inquiry held 4 – 7 July 2023

Site visit made unaccompanied on 5 July 2023

**by Jonathan Price BA(Hons) DipTP MRTPI DMS**

**an Inspector appointed by the Secretary of State**

**Decision date: 18<sup>th</sup> August 2023**

**Appeal Ref: APP/J1915/W/23/3318094**

**41 Railway Street, Hertford, Hertfordshire SG14 1BA**

- 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 planning permission.
- The appeal is made by Churchill Retirement Living Ltd (CRL) against East Hertfordshire District Council (EHDC).
- The application Ref 3/22/2346/FUL, is dated 4 November 2022.
- The development proposed is redevelopment to form 34 retirement living apartments for older persons including associated communal facilities, access, parking and landscaping and 3 retail units (Use Class E).

## Decision

1. The appeal is allowed and planning permission is granted for redevelopment to form 34 retirement living apartments for older persons including associated communal facilities, access, parking and landscaping and 3 retail units (Use Class E) at 41 Railway Street, Hertford, Hertfordshire SG14 1BA in accordance with the terms of the application, Ref 3/22/2346/FUL, dated 4 November 2022, subject to the conditions set out in the schedule attached to this decision.

## Preliminary Matters

2. The appellant submitted to the Inquiry a draft unilateral undertaking (UU), made to EHDC and Hertfordshire County Council (HCC) under section 106 of the Town and Country Planning Act 1990. A copy of a completed version dated 4 August 2023 was subsequently provided. The UU secures a developer contribution of £490,612 towards off-site affordable housing. Various non-affordable housing contributions are also provided for. The amounts sought by EHDC<sup>1</sup> are secured. The contributions fall somewhat short of those towards the funding of libraries and waste recycling/transfer required by HCC. The UU contains a 'blue pencil' clause allowing a reallocation towards off-site affordable housing of any other contributions found to fail the tests in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010. I set out my findings over the UU later on in this decision.

## Background and Main Issues

3. The appeal relates to a cleared site, originally intended for an 86-bed hotel. This formed part of a wider mixed-use redevelopment in this part of Hertford

<sup>1</sup> These include financial contributions towards bowls, sports hall, swimming pool, fitness gym, studio space, village and community centres, and parks, gardens and amenity green space.

town centre that is otherwise nearing completion. The planning application was made originally for 36 retirement living apartments with three retail units. Following meetings with the Council the design was amended, reducing the number of residential units to the 34 under consideration in this appeal.

4. A main statement of common ground (SoCG) sets out the issues agreed between the parties. The proposed land use is found acceptable in principle and to comply with policies HERT1 and RTC4 of the East Herts District Plan of October 2018 (DP).
5. It is common ground that the Council can currently demonstrate only a 4.41-year supply of deliverable housing land, less than the five-year amount specified in paragraph 74 of the National Planning Policy Framework (the Framework). It is agreed that there is an identified unmet need for specialist older persons' housing in East Herts. The SoCG confirmed there to be no highway safety objections to the proposal and that drainage and flood risk could be satisfactorily addressed by conditions.
6. CRL have a business model to provide schemes of all market accommodation for older people. On this basis, the Council has agreed to affordable housing requirements being met by a financial contribution towards off-site provision, as allowed for under DP policy HOU3. The amount the scheme can viably contribute towards off-site affordable housing remains a central matter of dispute between the parties.
7. The appeal is over non-determination and so the Council provided four putative reasons why permission would have been refused had it been in a position to make a decision. The main issues in the appeal reflect these in summary form. They are whether the proposal would:
  - make appropriate contributions towards affordable housing provision and other infrastructure;
  - be of a contextually satisfactory design, including in respect of designated heritage assets; and
  - provide acceptable living conditions for future occupiers, with particular regard to outlook, ventilation and communal outside space.

## Reasons

*Whether adequate contributions are made towards affordable housing provision and other infrastructure.*

8. The UU secures the non-affordable housing contributions sought by EHDC. There is a relatively small shortfall in meeting the contributions sought by HCC and this weighs in the overall balance. Much the largest financial contribution from the scheme, both sought and offered, is towards affordable housing. Therefore, in respect of this main issue, the focus of the Inquiry concerned what the scheme could viably contribute towards this.
9. Policy HOU3 of the DP requires 40% affordable housing for residential developments of more than 15 gross additional dwellings, such as in this case. As set out in its affordable housing supplementary planning document<sup>2</sup>, the Council will seek to secure financial contributions broadly equivalent to the cost

<sup>2</sup> East Herts Affordable Housing SPD May 2020.

of providing the affordable housing on-site. In its viability evidence, the Council shows the residual value of the appeal scheme provides a net surplus of £1,133,000 over a scheme with 13 affordable units provided on-site. This figure was not challenged and I have taken it to be approximately the *in lieu* requirement for 40% affordable housing.

10. Policy HOU3 may permit a lower affordable housing contribution if it is demonstrated that the 40% cannot be achieved due to viability reasons. In accordance with this policy, the appellant had provided a financial viability assessment (FVA) to justify the level of contribution towards affordable housing and other requirements. The Council had provided an independent review of this. Paragraph 58 of the Framework states that the weight given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. The Planning Practice Guidance (PPG) sets out the key principles in understanding viability in decision taking<sup>3</sup>.
11. The parties had reached agreement over the Gross Development Value (GDV) of the appeal proposal and found little difference over its Residual Land Value (RLV). Where the parties were significantly apart was over the Benchmark Land Value (BLV) attributed to the site. This is critical since any excess in RLV over the BLV is generally accepted to represent the amount a scheme can viably contribute to financial obligations, in this instance off-site affordable housing and other infrastructure.
12. The site has been cleared in advance of redevelopment. As such it provides no reasonable basis for deriving a BLV based upon an existing use; the approach generally advocated by the PPG<sup>4</sup>. Instead, the appellant has relied on an assessment of alternative use value (AUV), related to the extant 86-bed hotel consent. The PPG<sup>5</sup> acknowledges that AUV may be informative in establishing a BLV. This is where the use is policy-compliant and capable of implementation, as the recent hotel planning permission would suggest.
13. The hotel had originally been intended as a Premier Inn, but owners Whitbread had stepped back in September 2020 on account of the Covid pandemic. This situation thus made way for the later CRL proposal. The unprecedented effects of Covid provide a reasonable explanation, required by PPG paragraph 017, why that alternative use had not been pursued.
14. There is no dispute that AUV is an appropriate methodology for establishing BLV in this case. However, PPG paragraph 017 requires AUV to reflect a demonstrable market demand. The viability of the appeal scheme should be assessed against the alternative use providing the greatest BLV. The parties differ widely over a BLV based on the permitted hotel use. The appellant's hotel BLV is one of around £2m. This is compared to **the Council's** calculation of about £0.25m.
15. As an alternative to the hotel, the Council has tested a conventional flatted residential scheme on the appeal site, with a policy-compliant 40% on-site affordable housing, and found this to generate a residual value of £1.16m. Using this residential figure in an AUV, and deducting it from the RLV for the CRL proposal, the Council shows the appeal scheme to generate a surplus

<sup>3</sup> Viability - GOV.UK (www.gov.uk)

<sup>4</sup> Paragraph: 013 Reference ID: 10-013-20190509

<sup>5</sup> Paragraph: 017 Reference ID: 10-017-20190509

sufficient to fully meet the in lieu 40% off-site affordable housing payment, as well as the other infrastructure contributions.

16. Therefore, the determinative matter becomes whether a BLV based on the permitted hotel exceeds that of a policy compliant market housing scheme and comprises a reasonable AUV for assessing a viable appeal scheme contribution. The fact that the parties are so far apart over the hotel BLV reveals valuation to be a highly inexact discipline. It is evident that relatively small variations in assumptions and inputs can generate widely differing BLV outputs.
17. The AUV is a theoretical exercise to assess the viable level of contributions from the CRL scheme. If it is to be based on a hotel, this should reflect a continuing market demand. Covid stalled the Hertford Premier Inn scheme, which was then overtaken by events with CRL stepping in with its retirement housing proposal. Whitbread has confirmed an ongoing interest in the site for a Premier Inn<sup>6</sup>, although is clearly not in a position to pursue this with the current involvement of CRL. I note also that Hertford/Ware features on the expansion list targeted by Travelodge; the other main budget hotel operator.
18. The data illustrates that market performance among branded budget hotels in the area has returned strongly post-pandemic. However, this is not conclusive evidence that a hotel would offer the highest BLV for the site, in the context of a high demand for housing in this area. Premier Inn already has a successful local presence with its Ware operation. A generally strong market demand might indicate a hotel BLV higher than estimated by the Council. However, this would not necessarily suggest to me this exceeds that generated by a general residential scheme.
19. Although giving rise to similar figures, much was made of **the appellant's** original August 2022 hotel valuation<sup>7</sup> being based on a profits method and being revised shortly before the Inquiry by one applying an investment approach<sup>8</sup>. **The Council's** substantially lower site hotel value was a profits-based assessment. The RICS Valuation Practice Guidance, advisory and not mandatory, states that certain trade related properties, including hotels, are valued using the profits method guidance. However, there might be some justification for the amended investment-based approach. This is because the majority of budget hotels are held as investments<sup>9</sup>, and transactions take place **on this basis. The appellant's adopted hotel valuation reflects the advisory RICS iSurv Material on Hotels.** This advises that the valuer must adopt the prevalent methodology of the active buyers in the local hotel market, which is mainly investment based.
20. **The Council finds the appellant's investment approach valuation too high.** Contributory factors include too great an anticipated market rent, based on comparison with higher value, metropolitan locations, such as central Manchester. I acknowledge, however, that the comparators used reflect the **appellant's valuer's** particular experience in the hotel market.
21. The appellant applies its profits approach to cross check the investment **valuation. I find the Council's criticisms** on this quite persuasive. I agree that

<sup>6</sup> letter from Whitbread dated 20 June 2023.

<sup>7</sup> Valuation Report Proposed Hotel Development, Railway Street, Hertford SG14 1BA by Christie and Co dated 5 August 2022.

<sup>8</sup> Christie and Co letter of 14 June 2023.

<sup>9</sup> 47% Premier Inn, 100% Travelodge

food and beverage income is unlikely to experience a 22% annual increase factored into the calculation, in a location with a high level of existing competition. Even with ongoing lean hotel management processes, a general shortage of labour puts into question the anticipated reduced wage bill. Current high energy costs also place a question mark over the reduced overheads **factored in by the appellant. Overall, the Council's financial estimates over revenues, costs and net operating profit provide a sound challenge to those put forward by the appellant.**

22. The Council also considers the appellant is over-estimating Average Daily Rate (ADR) for a hotel here. The relatively high ADR shown by the Ware Premier Inn would likely be less with competition from a second facility located close by in **Hertford. The Council's lower ADR figure is substantiated by the widely used STR evidence and is reasonable in my view.**
23. For developer profit the PPG indicates 15%-20% of GDV in relation to establishing the viability of plan policies. However, I accept that for a custom-built budget hotel there is a lower risk profile and 6% might be an acceptable **contractor's profit in the AUV calculation.**
24. Considering the evidence in the round, and accepting valuation is not an exact discipline, a hotel BLV could fall somewhere within a wide range. Such a margin provides reasonable scope for judging that, on the balance of probabilities, a policy compliant market housing scheme provides the appropriate basis for AUV. The agreed RLV of the appeal scheme would most likely provide a surplus over a residential BLV sufficient to meet 40% off-site affordable housing and other contributions.
25. The **appellant's** FVA does not adequately substantiate the lower than 40% equivalent payment offered towards off-site affordable housing, in conflict with DP Policy HOU3. The harm from this policy conflict is of a substantial magnitude, since the UU proposes only in the order of 43% of the affordable housing contribution that this scheme might viably make. However, there is a realistic fallback situation, with implementation of the extant hotel consent resulting in no affordable housing contributions whatsoever. Giving weight to this fallback, the overall harm arising from the inadequate affordable housing contribution then reduces significantly.
26. The shortfall in the scheme contributions towards libraries, waste recycling and waste transfer is not contested and leads to the proposal conflicting with DP policies CFLR7 and DEL2. The harm from these policy conflicts is quite small in degree, related to the scale of deficit.

*Whether a contextually satisfactory design, including in respect of designated heritage assets.*

27. The vacant appeal site forms a corner segment of an area previously occupied by the twentieth century Bircherley Green shopping centre. Adjacent parts have been replaced by the now well-advanced re-development, which fronts onto the River Lea to the north. This part of Hertford town centre has more recent development, of a comparatively larger scale. In addition to the Bircherley Green re-development, this includes the adjacent multi-storey car park and four storey Bircherley Court apartment complex opposite to this. To its west and south, Bircherley Green gives way to a finer grain of development in the more historic parts of the town centre.



28. The appeal scheme would be broadly comparable to the approved hotel in scale, height, position and footprint. Fronting closely onto Bircherley Street and Railway Street, it would reflect a historic built pattern. To one side the scheme would face the contemporary four-storey Bircherley Court development. The other side is adjacent to and across from the smaller scale of historic development running along Railway Street. To the other sides, the scheme abuts existing development, including the adjacent multi-storey car park. The visually more accessible views of the proposal are from Bircherley and Railway Streets. The corner aspect of the scheme, at the junction of these streets, would be a prominent feature in views into the town centre from a main eastern entrance.
29. The revision to the scheme, from 36 to 34 apartments, allowed for a reduction in overall height, scale and massing. The lowered ridge and eaves heights adjoining the existing two-storey building at 31-33 Railway Street better manage the transition in scale to the smaller historic buildings adjacent and opposite.
30. The original Bircherley Green development had overridden the historic plot pattern in this part of Hertford town centre, which otherwise remains largely undisturbed. These historic plots are generally quite long and narrow, leading to a varied and vertical rhythm of street frontages. In the appeal scheme, the southern elevation onto Railway Street includes a projecting central section, of a contrasting white brick to the buff sections either side, that rises to a triangular parapet. The rectangular bay, with the recessed sections to either side, articulates the prevailing plot widths and would help restore a historic built rhythm along Railway Street.
31. The corresponding eastern elevation repeats this articulation, providing the scheme a balanced appearance. The mixture of buff and white brickwork reflects the facing materials used in the contemporary Bircherley Court development opposite. It is the design of the prominent corner section, between these southern and western elevations, to which **the Council's** objections relate. As the tallest element of the scheme, this creates an appropriate landmark feature, announcing a main entry point to the historic core of Hertford. This full four-storey corner element rises to a triangular parapet, repeating those to both sides and concealing the pyramidal roof structure behind.
32. Like the triangular parapets, the repetitive nature of the fenestration provides balance and coherence to the scheme overall. The larger windows and tall brick piers, along with the tall central parapet, provide strong emphasis to the focal point of the scheme. The building heights and window sizes then moderate at each side, blending in appropriately with their surroundings. Whilst the arches above the windows might be decorative rather than structural, this is not a fatal flaw in a scheme that possesses a satisfactory appearance overall.
33. The scheme provides no access to public realm, such that part III of DP Policy DES4 regarding maximising legibility must apply. Whilst the entrance is to the rear, rather than more obviously at the corner, the scheme nonetheless possesses architectural legibility. It clearly reads as a landmark feature, responding to a visually significant location and emphasising, in distinct design terms, the junction between contemporary redevelopment and a more preserved historic core. The proposal satisfies the relevant part I of DES4, by

providing a high standard of design and layout to reflect and promote local distinctiveness. It satisfies part I (a) by respecting and improving the character of the site and surroundings in terms of scale, height, mass and design features.

34. DP Policy HERT7 expects proposals to take account of, and contribute positively to, the Hertford Town Centre Urban Design Strategy (HTCUDS). This strategy promoted the Bircherley Green re-development. The appeal scheme would be an appropriate alternative to the approved hotel. It would equally mark the eastern entrance to a main connecting spine that the HTCUDS identifies as linking key places within the town centre, thus satisfying Policy HERT7.
35. The appeal site is within the Hertford Conservation Area<sup>10</sup> (CA) and there are several listed buildings within its vicinity. I have duties under Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. These are to have special regard to the desirability of preserving the settings of any listed buildings affected and to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
36. The CA is quite large and covers the historic part of Hertford. This proposal is located on the eastern side of the Central Historic Core, as defined in the CA Appraisal<sup>11</sup>. It is significant for its high concentration of listed buildings and historic street pattern and development frontages. Of the nearby listed buildings, the Grade 1 listed Friends' Meeting House, and its neighbouring Grade 2 listed Priory Rooms, lie further to the east on Railway Street, set apart by intervening modern development. The retrusive settings of these historic buildings would not be adversely affected by the proposal, and their significance would be preserved.
37. The Grade 2 listed buildings<sup>12</sup> fronting Railway Street relate more closely to the CRL proposal. As listed buildings these are also all of national significance, related to their architectural and historic interest as well as their group value. The empty gap in the street currently detracts from their settings. The appeal scheme would restore development with a series of shop fronts that reflect the plot rhythm and street appearance. The views of these listed buildings would not be significantly reduced and appreciation of their settings would be improved by a sympathetically designed sequence of new shop fronts. Therefore, the proposal would preserve the settings of all affected listed buildings and comply with DP Policy HA7.
38. The proposal would respect the established built pattern, be of an appropriate scale, height and form for its location and suitable traditional materials might be conditional. I have addressed **the Council's detailed design concerns above**, which relate only to the corner elevation. I consider this taller element, with its triangular parapet, pyramidal roof and larger openings, to provide a suitable landmark feature. The design of this keystone section fits in suitably with an overall scheme which would preserve the character and appearance of the CA, in full accordance with Policy HA4.
39. As I find that it would not cause harm to the significance of the designated heritage assets discussed, this proposal satisfies DP Policy HA1. Concluding on

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<sup>10</sup> As designated in 1967, revised in 1981 and further amended in 1996.

<sup>11</sup> Hertford Conservation Area Appraisal and Management Plan - adopted March 2017

<sup>12</sup> Nos. 28-30, 32, 34 and 36 opposite the scheme and 23 - 25 and 27 - 29 beyond to the west.

this main issue, the proposal would be of a contextually satisfactory design, including in respect of designated heritage assets, in conformity with development plan policy.

*Living conditions provided for future occupiers, with particular regard to aspect, ventilation and outside space.*

40. As part of achieving well-designed places, paragraph 130 of the Framework seeks that developments promote health and well-being, with a high standard of amenity for existing and future users. The issue of whether this scheme would provide acceptable living conditions for its future occupiers is a proper matter in the overall consideration of design. This is regardless of relevant DP Policy DES4 referring only to the amenity of neighbouring occupiers. I agree with the Council that market forces should not be the sole arbiter of what amounts to acceptable living conditions.
41. In this context, it is necessary to consider the particular living requirements of a likely older occupier and the trade-offs made in choosing to live in a town centre. I have no reason to doubt the CRL evidence that a purchaser might typically be of an advanced age and seeking single person accommodation for independent living, but within a communal environment with a degree of on-site assistance available. Further motivations would be to downsize to a smaller, more manageable home which is close to shops and services and where there would not be a dependence on private car use, once that option needs to be relinquished.
42. The appeal site offers proximity to public transport and a good range of town centre facilities. Being on an urban site, and to fit in with its surroundings, the scheme provides the relatively high density of accommodation typical of a town centre apartment development. There are no private balconies or roof terraces, which might have offered better living conditions. Nevertheless, the single aspect nature of most of the apartments, and the lack of private amenity space, is not unusual for town centre flats and would provide satisfactory living conditions.
43. In this case the occupiers would instead have the benefit of the communal lounge, with the small external sitting out area leading from this to use in suitable weather. Clearly, larger external grounds, with sunnier spots, would have provided improved living conditions. However, the external area fails no set standards and is not of an inadequate size given its more passive function. The site circumstances, whereby a compatible scheme must front onto the adjacent streets, dictate the location of the communal open space. There will be the expected background noise resulting from the town centre location and a degree of vehicular activity to the outer sides of the external amenity space. Whilst not reducing this noise, the fencing and planting around the perimeter would provide the sitting out area a secluded and pleasant feel, as the scheme illustrations show. The area would enjoy some direct sunlight in summer months and, overall, provide occupiers with a pleasant outside space to enjoy at appropriate times.
44. The general high level of activity, including an evening economy, means that a town centre location cannot guarantee the same lower noise environment provided by a suburban site. In this case, the Council notes in particular the live music hosted on the opposite side of Railway Street, at the Hertford Bell public house. However, satisfactory internal noise levels within the apartments

would be provided by closed windows, with mechanical ventilation providing fresh air and cooling when required. This would be an arrangement common to numerous town centre apartment schemes, allowing effective use of urban sites to provide housing. DP Policy EQ4, **quoted in the Council's putative refusal** reason is not relevant, since this relates to the effect of development on air quality. Otherwise, the proposal would provide acceptable living conditions for future occupiers, including in respect of the outlook and ventilation to all apartments and the quality of the communal outside space.

### Planning obligation

45. The UU secures the financial contributions in the areas sought by HCC; towards waste recycling, waste transfer, libraries, fire and rescue and monitoring fees. Although the amounts offered by the appellant fall somewhat short of those required by HCC, the principle of these obligations is supported by the statement provided. The UU does not reflect the wording that HCC would have recommended in a trilateral agreement. This includes not providing the project flexibility, occupier liability and payment triggers in the way HCC would have sought. Nonetheless, I consider the obligations made remain adequately deliverable and enforceable in the manner set out.
46. The other non-affordable housing obligations are the financial contributions sought by EHDC and the amounts have been agreed. Including that towards off-site affordable housing, the policy justification for requiring these obligations is set out in **the Council's CIL compliance statement**.
47. On the basis of the evidence and policy justification put to me, I am satisfied that all the obligations made in the UU meet the three tests in Regulation 122(2) of the CIL Regulations 2010, as repeated in Framework paragraph 57. I consider each obligation in the UU to be 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.

### Planning Balance

48. The proposal brings forward a number of benefits and weight is ascribed to these, having regard to the conclusions of Inspectors in the two appeal decisions<sup>13</sup> drawn to my attention, relating to CRL schemes allowed elsewhere.
49. The 34 residential units will meet DP housing supply policies DPS1 and 3 and help redress the five year undersupply identified in paragraph 6 (above). This benefit attracts substantial weight. That the units will be specialised accommodation for older people will meet an unmet need and principally satisfies DP policies HOU 1 and 6. The PPG<sup>14</sup> refers to a critical need generally to provide housing for older people, and I give this benefit significant weight. This weighting factors in wider social benefits, both in terms of the improved health and well-being of older residents and the freeing up of larger family homes.

<sup>13</sup> Appeal Ref: APP/N1730/W/20/3261194 Former Fleet Police Station, 13 Crookham Road, Fleet GU51 5QQ – 31 retirement apartments allowed 14 May 2021 and Appeal Ref: APP/H1705/W/20/3248204 Former Basingstoke Police Station, London Road, Basingstoke RG21 4AD – 56 retirement apartments allowed 24 June 2021.

<sup>14</sup> Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

50. The UU makes non-affordable housing contributions that carry small positive weight. This is despite the small shortfall in the amounts sought for libraries and waste recycling/transfer. The benefit of the affordable housing contribution of £490,612 helps meet a critical need and, although not policy compliant, still attracts moderate weight.
51. Substantial weight is given to the benefit of using suitable brownfield land within Hertford town centre for homes, in accordance with Framework paragraph 120 c). This helps deliver sustainable development in accordance with the strategy of DP Policy DPS2. This substantial weight reflects the proposal being in a highly sustainable location, where future residents would enjoy good accessibility to a wide range of services, in compliance with DP Policy DPS2 and paragraph 8 of the Framework. This positive weighting also factors in the scheme making efficient use of land and satisfying DP Policy HOU2 and paragraphs 119, 124 and 125 of the Framework.
52. In accordance with paragraph 81 of the Framework, I attach significant weight **to the proposal's** economic benefits, including the construction works, new Class E units and increased consumer spend within the town centre. The overall environmental benefits of the scheme attract more modest weight overall, although the swift bricks are particularly beneficial to a declining bird species dependant on nesting opportunities in buildings.
53. Considerable importance and weight is attributed to the satisfaction of the S66(1) and 72(1) duties, and with the proposal addressing a harmful gap within the CA through the provision of an acceptable scheme.
54. On the basis of the planning benefits discussed above, it is clear that the proposal complies with a large number of development plan policies. Nevertheless, the provision of sufficient affordable housing, as specified in Policy HOU3, is an important aim of the DP. This consideration is sufficient for me to conclude that the proposal would conflict with the development plan when considered as a whole. Therefore it is necessary to decide whether material considerations would indicate approval despite this conflict. Of these, the Framework carries considerable weight in policy terms.
55. The Council cannot currently demonstrate a five year supply of deliverable housing sites. Therefore, the DP policies most important for determining this appeal are deemed to be out-of-date by Framework paragraph 11 d), the terms of which must be given considerable weight. Under paragraph 11 d) i), the application of Framework policies protecting designated heritage assets does not provide a clear reason for refusal in this case. The tilted balance under 11 d) ii) therefore applies. There is an adverse impact stemming from an affordable housing contribution substantially lower than required by DP Policy HOU3. However, this harm would not be of a magnitude to significantly and demonstrably outweigh the many benefits that would flow from this proposal, when assessed against Framework policies taken as a whole. Material considerations would therefore indicate this appeal should be allowed.

### Conditions and conclusion

56. The conditions suggested by the Council, along with the appellant's comments, were discussed at the Inquiry. I have amended, reordered and in some case combined those that meet the tests in paragraph 55 of the Framework, seeking to avoid repetition and to provide clarity and conciseness. Condition 1 applies

the standard three-year period for commencement. For certainty, condition 2 sets out the plans approved.

57. For the proposal to be acceptable, certain matters have to be agreed before the development can proceed. Such pre-commencement conditions have the **appellant's prior written agreement**. Condition 3 ensures the finished floor and ridge heights are as shown on the approved plans, in the interests of character and appearance. Conditions 4 and 5 respectively ensure adequate surface water drainage and flood risk measures are put in place. In the interests of highway safety and neighbouring living conditions, condition 6 requires adherence to an agreed Construction Method Statement (CMS).
58. At stages following commencement, a number of conditions are necessary. Condition 7 addresses any previously unidentified site contamination. Condition 8 ensures adequate parking and servicing arrangements, in the interest of highway safety. To reduce carbon emissions, condition 9 requires agreed energy efficiency measures be put in place. Condition 10 requires swift bricks be provided to provide nesting sites for this declining species of bird. In the interest of the satisfactory appearance of the completed development, condition 11 requires detailed approval of all external materials and features. Condition 12 requires agreement to piling methods, including to safeguard nearby underground utilities.
59. A number of conditions need to be satisfied before the approved development can be occupied. Condition 13 is necessary to ensure that the surface water drainage infrastructure is operated, managed and maintained throughout the life of the development. Condition 14 ensures that the shared surface area, parking spaces and access are adequately drained and surfaced. To promote sustainable travel modes, condition 15 is necessary to secure application of an agreed Travel Plan. In the interests of residential living conditions, condition 16 is needed to apply the noise management measures proposed. Condition 17 requires the implementation of external landscaping measures, principally necessary to ensure the quality of the residents' outside sitting area. Condition 18 is necessary to ensure adequate water efficiency standards. Finally, condition 19 is necessary to ensure occupation by the older age groups the scheme has been designed for, and upon which basis the benefits of the proposal have been assessed.
60. Specific conditions governing construction waste management and dust emissions are unnecessary, given these matters are covered by the CMS. Also unnecessary is a condition requiring the access arrangements to be the subject of a Stage 1 Road Safety Audit, as these are as previously approved for a hotel on this site and are found equally acceptable for this proposal. The permission is for three Class E retail units and there are no reasonable grounds for a condition requiring further approval for uses a), b) and c) within that category. Nor is there any necessity for a condition removing permitted development rights for additional storeys, as these do not apply to buildings built after 5 March 2018.
61. Subject to these conditions, I conclude the appeal should succeed.

*Jonathan Price*

INSPECTOR



## APPEARANCES

## FOR THE APPELLANT:

Neil Cameron of King's Counsel, instructed by Matthew Shellum of Planning Issues Limited

He called:

Matthew Shellum BA(Hons) DipTP MRTPI Planning Director and Head of Appeals, Planning Issues Limited.

Gideon Lemberg BArch RIBA ARB - Eastern Design Director of Planning Issues Ltd

William Bedford BA MCIfA Director of Landgage Heritage Ltd

R James Mackay BSc(Hons) MRICS (RICS Registered Valuer)  
Alder King LLP

Karl Hines BSc(Hons) MRICS, Director Christie and Co.

## FOR THE LOCAL PLANNING AUTHORITY:

Annabel Graham Paul of Counsel, instructed by Victoria Wilders, Legal Services Manager, EHDC

She called:

Amit Patel BSc (Hons) MSc DipEc - Principal Planning Officer, EHDC

Richard Freeman - Interim Development Management Team Leader, EHDC

Leena Shah BArch MLA CMLI - Conservation and Urban Design Officer, EHDC

Emma Keller Bsc (Hons) - Conservation and Urban Design Officer, EHDC

Andrew Jones BSc MRICS - Director, BPS Chartered Surveyors

Melvin J Gold, FIH - Hotel Industry Consultant of Melvin Gold Consulting

## INQUIRY DOCUMENTS (ID)

ID 1 Opening statement on behalf of the appellant by Neil Cameron KC.

ID 2 Opening statement on behalf of the Council by Annabel Graham Paul of Counsel.

ID 3 Copy of **appellants'** draft UU.

ID 4 **HCC's supplementary statement concerning** the UU of 6 July 2023

ID 5 **Appellant's written agreement** to the terms of the pre-commencement conditions suggested pursuant of sections 100ZA(4-6) of the TCPA

ID 6 Closing statement on behalf of the Council by Annabel Graham Paul of Counsel.

ID 7 Closing statement on behalf of the appellant by Neil Cameron KC.

## SCHEDULE OF CONDITIONS

### *Time period for commencement*

1. The development hereby permitted shall begin not later than three years from the date of this decision.

### *The details and drawings subject to which the planning permission is granted*

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan 40043HT-PL01A, site plan 40043HT-PL02A, ground floor plan 40043HT-PL03A, first floor plan 40043HT-PL04A, second floor plan 40043HT-PL05A, third floor plan 40043HT-PL06A, roof plan 40043HT-PL07A, elevations 1 40043HT-PL08A, elevations 2 40043HT-PL09A and elevations 3 40043HT-PL10A.

### *Pre-commencement conditions*

3. Prior to the commencement of development hereby approved, detailed plans showing the existing and proposed ground levels of the site relative to adjoining land, together with the slab levels and ridge heights of the proposed buildings, shall be submitted to and approved in writing by the local planning authority and the completed development shall accord with these approved plans.
4. Prior to the commencement of the development hereby permitted, construction drawings of the surface water drainage network, associated sustainable drainage components, flow control mechanisms and a sustainable drainage scheme (SuDS) construction method statement shall have been submitted to and approved in writing by the local planning authority. The scheme shall then be constructed in accordance with these approved details.
5. Prior to the commencement of the development hereby permitted, full details of all required flood resilient and resistant technical measures shall be submitted to and approved in writing by the local planning authority. The scheme shall then be constructed in accordance with these approved details.
6. Prior to the commencement of the development, a Construction Method Statement (CMS) shall be submitted to and approved in writing by the local planning authority. The CMS shall include:
  - the construction programme;
  - methods for accessing the site, including traffic management measures and wider construction vehicle routing;
  - numbers of daily construction vehicles including details of their sizes;
  - hours of operation and construction vehicle movements;
  - any works to the public highway to facilitate construction;
  - parking, turning and loading/unloading arrangements for operatives and visitors;
  - the erection and maintenance of security hoardings and signage;
  - safety measures for existing public highway users;
  - wheel washing facilities;
  - measures to control the emission of dust and dirt during construction;

- consultation arrangements with neighbouring occupiers;
- a scheme for the recycling/disposing of waste resulting from the construction works.

The approved CMS shall be adhered to throughout the construction period of the development.

*Pre-commencement above slab level and other construction stage conditions*

7. 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 the development is resumed or continued.
8. No development shall commence above slab level until a management and operation plan for vehicle and cycle parking, servicing, deliveries, refuse collection and emergency vehicle access associated with the development shall have been submitted to and approved in writing by the local planning authority. The plan approved shall thereafter be adhered to.
9. No development shall commence above slab level until details of the design and construction of the development demonstrating how it would minimise overheating in summer and reduce the need for heating in the winter have been submitted to, and approved in writing by, the local planning authority. The development shall thereafter be implemented in accordance with the approved details.
10. No development shall commence above slab level until details of the design and position of swift bricks shall be submitted to and approved in writing by the local planning authority. The development shall then be implemented with swift bricks in accordance with these approved details.
11. No development shall commence above slab level or on the respective part of the development until details or samples of the following have been submitted to and agreed by the local planning authority:
  - facing bricks and roof tiles;
  - all external lighting;
  - rainwater goods, including profiles, positioning, materials, colour and fixings;
  - Juliet balconies, including depth, soffits, railings and attachments;
  - dormers, roof soffits (finishing and fixings) and windows (including materials and colour, a section of the glazing bars and frame moulding, position of the window frame in relation to the face of the wall, depth of reveal, jambs, soffits and sill detail);
  - commercial frontages, including canopies and details of fascia signage zones.

Development shall be carried out in accordance with the approved details.

12.No piling shall take place until a piling method statement (detailing the programme for the works, the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including noise emissions and measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure) has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

*Pre-occupancy conditions*

13.The development hereby approved shall not be first occupied until details of the operation, maintenance and management of the surface water drainage that shall have been provided in accordance with condition 4 have been submitted to and approved in writing by the local planning authority. The details of the scheme to be submitted for approval shall include:

- a detailed verification report demonstrating the approved construction details and specifications have been implemented in accordance with the surface water drainage scheme,
- a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

The approved details shall thereafter be adhered to.

14.The building shall not be occupied until the shared service area, accesses and car parking spaces shown in drawing number 40043HT-PL02 rev.A have been drained and surfaced in accordance with details that shall have had the prior written agreement of the local planning authority. These areas shall thereafter be kept available at all times for access, parking and servicing.

15.The building shall not be occupied until a Residential Travel Plan (RTP) to promote sustainable travel measures has been submitted to and approved in writing by the local planning authority. The RTP shall thereafter be implemented as approved.

16.The building shall not be occupied until noise management measures based on 24Acoustics report ref. R9594-1 Rev 1 have been submitted to and approved in writing by the local planning authority. These details shall ensure noise levels in external amenity areas meet the lower limit for noise **specified in BS8233:2014 'Guidance on sound insulation and noise reduction for buildings'**. **Noise levels from building services, including MVHR systems** operating at maximum capacity, shall not exceed NR 20 in bedrooms (2300 to 0700 hours) and NR 25 in all habitable rooms (0700 to 2300 hours). The noise management measures shall thereafter be maintained as approved.

17.The building shall not be occupied until hard and soft landscaping based on the submitted Landscape Strategy Masterplan ( ref: JBA 22/232 - SK02) has been implemented in accordance with details that shall have had the prior written approval of the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or

diseased shall be replaced in the next planting season with others of similar size and species.

18. Prior to the first occupation of any dwelling or other unit, measures shall be incorporated to provide a water efficiency standard of 110 litres (or less) per person per day in accordance with details that shall have had the prior written approval of the local planning authority.

*Conditions relating to post occupancy monitoring and management*

19. Each dwelling hereby permitted shall be occupied only by; (i) a person aged 60 years or over; (ii) a person aged 55 years or older living as part of a single household with the above person in (i); or (iii) a person aged 55 years or older who were living as part of a single household with the person identified in (i) who has since died.

- End -

**Appendix 8 - Appeal Decision (APP/H2265/W/22/3294498)**



VIABILITY STATEMENT OF COMMON GROUND

Appeal Ref: 3294498  
Site: Rear of 78-80 High Street, Tonbridge

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**VIABILITY STATEMENT OF COMMON GROUND**

**Rear of 78 to 80 High Street, Tonbridge, Kent TN8 5AD**

**PLANNING INSPECTORATE REFERENCE: APP/H2265/W/22/3294498**

**LOCAL PLANNING AUTHORITY REFERENCE: TM/21/01542/FL**

**30 May 2022**

## 1.0 BACKGROUND AND CHRONOLOGY

- 1.1 This Statement relates to an appeal made under Section 78 of the Town and Country Planning Act 1990 for the refusal of planning application TM/21/01542/FL for the Redevelopment of the site to provide 36no. Retirement for older persons, with associated communal facilities, parking and landscaping.
- 1.2 This viability Statement of common Ground relates to reason for refusal 3:  
*'The application as submitted fails to make any provision for affordable housing in direct conflict with policy CP17 of the Tonbridge and Malling Core Strategy.'*
- 1.3 The LPA have subsequently confirmed that they are prepared to accept the in principle point that the affordable housing should, in the context of this appeal, be provided by way of a commuted sum. The LPA does not therefore require the Appellant to show that "exceptional circumstances" exist as required by CP17.
- 1.4 The Appellants case was set out in the Financial Viability Assessment published on 16 March 2022 confirming the scheme was unable to support any planning obligations and remain viable.
- 1.5 Bruton Knowles (BK) were appointed to review the Appellants FVA and reported on the 23 May 2022 confirming that, in their opinion, the scheme was viable and could contribute a total amount of £1,515,000 towards the provision of Affordable Housing Units.
- 1.6 Following the publication of the BK report the parties have narrowed the areas of disagreement between them for this Inquiry.
- 1.7 The table below outlines the current position of the parties and identifies the key areas of dispute. The areas highlighted blue are the areas that are disputed. The areas highlighted orange confirm agreement on the input but disagreement on the output (due to application of inputs to differing elements within the viability appraisal).

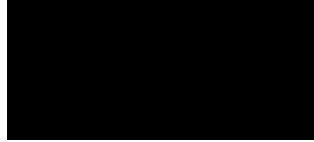
## 2.0 Summary Position

Input	Appellants Case	LPA Case	
BLV	£1,549,000	£1,549,000	Agreed
<b>GDV</b>	<b>£13,580,000</b>	<b>£15,120,000</b>	<b>Disputed</b>
Base Build Cost	£5,801,285	£5,801,285	Agreed
Undercroft Cost	£476,016	£476,016	Agreed
Abnormal Costs	£170,825	£170,825	Agreed
External Costs	£290,064	£290,064	Agreed
Contingency	3% - £202,146	3% - £202,146.	Agreed
Professional Fees	8% - £539,025	8% - £539,025	Agreed
Disposal/Marketing	5% of sales values £679,000	5% of sales value £743,209	% Agreed. Different figure due to dispute on GDV.
Sales Legal Fee	£21,600	£21,600	
EPCs	£98,866	£98,866	Agreed
Finance Costs	6.5% Debit £597,035	6.5% Debit £687,285	Debit Rate Agreed. Difference due to higher costs and slight variation on timings.
Sales Curve	Pre-Construction: 6 Months Construction: 12 Months Sales Period 21 Months - 35% Sold at PC - 40% Months 2-11 - 25% Months 13-21	Pre-Construction: 7 Months Construction: 12 Months Sales Period 18 Months - 35% sold at PC - 40% Months 2-11 - 25% Months 13-21	Agreed
Profit	20% on GDV	20% on GDV	Agreed
<b>RLV</b> <b>Disposal Costs</b>	<b>£1,548,999</b> <b>(£94,832) 6.12%</b>	<b>£1,548,949</b> <b>(£94,828) 6.12%</b>	<b>Agreed Fees.</b> <b>Variation due to different RLV.</b>
<b>Sec.106 Cost</b>	<b>£357,965</b>	<b>£1,389,000</b>	

Signed:



**R James Mackay MRICS**  
**Partner**  
**Alder King LLP**



**Fraser Castle MRICS**  
**Partner**  
**Bruton Knowles LLP**

## Appeal Decision

Inquiry (In-Person and Virtual) held on 12 – 14 July

Site visit made on 13 July 2022

**by Andrew McGlone BSc MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 August 2022**

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### **Appeal Ref: APP/H2265/W/22/3294498** **Rear of 78 High Street, Tonbridge TN9 1EE**

- 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 McCarthy and Stone Retirement Lifestyles Ltd against the decision of Tonbridge and Malling Borough Council.
  - The application Ref TM/21/01542/FL, dated 27 May 2021, was refused by notice dated 20 September 2021.
  - The development proposed is the redevelopment of the site to provide 36 retirement living apartments for older persons, with associated communal facilities, parking and landscaping.
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for the redevelopment of the site to provide 36 retirement living apartments for older persons, with associated communal facilities, parking and landscaping at the rear of 78 High Street, Tonbridge TN9 1EE in accordance with the terms of the application, Ref TM/21/01542/FL, dated 27 May 2021, subject to the conditions in the attached schedule.

### **Application for costs**

2. An application for costs was made by McCarthy and Stone Retirement Lifestyles Ltd against Tonbridge and Malling Borough Council. This application is the subject of a separate decision.

### **Procedural Matters**

3. Following discussions between the appellant and the Highway Authority during the appeal, the Council withdrew its reason for refusal in relation to the **proposal's effect on** access for future occupants prior to the Inquiry opening.
4. At the end of cross-examination **of the Council's witness dealing with** flood risk the Council withdrew its reason for refusal. This position was subject to the imposition of several agreed planning conditions. I have not, therefore, considered this matter any further.
5. A signed and complete s106 planning agreement (s106 agreement) was submitted by the appellant shortly after the Inquiry closed. The s106 agreement includes contributions towards affordable housing, open space, parks and gardens, sports facilities, community learning, library bookstock, social care and waste. I will consider the s106 agreement later in my decision.

**Main Issues**

6. In their Closing statement, the Council confirmed that they no longer had any outstanding objections to the proposal. However, I still have statutory responsibilities in relation to relevant contributions and to heritage matters.
7. As a result, the main issues in this case are:
  - whether the proposal would make adequate provision for affordable housing, having regard to viability; and
  - whether the proposal would make adequate provision in respect of open space, parks and gardens, sports facilities, community learning, library bookstock, social care and waste.

**Reasons***Viability and affordable housing*

8. Paragraphs 60 and 62 of the National Planning Policy Framework (the Framework) outline the need to address various groups with specific housing requirements. The Planning Practice Guidance (the Guidance)<sup>1</sup> also recognises that there is a critical need for the proposed type of housing. There is a pressing need for the proposed type of housing in the borough, and that need is only likely to continue to grow. Added to this, there is a significant unmet need for affordable homes in the borough. The provision of both carries equal importance, but it was accepted by both main parties that, in this case, an affordable housing contribution is necessary to make the development acceptable in planning terms.
9. To help address the unmet need, Policy CP17 of the Core Strategy (CS) outlines that affordable housing provision will be sought on all sites of 15 dwellings or above at a level of 40% of the number of dwellings in any scheme. Framework paragraph 65 expects at least 10% of the total number of homes to be available for affordable home ownership unless this would significantly prejudice the ability to meet the identified affordable housing needs of specific groups.
10. CS Policy CP17 goes onto to say that in exceptional circumstances, it may be agreed that affordable housing may be provided on another site or by means of a commuted sum. The Framework in paragraph 63 expects affordable housing to be provided on-site unless an appropriate financial contribution in lieu can be robustly justified. Having regard to both, the main parties agree that, in this case, the affordable housing contribution should be provided by way of a commuted sum. I do not disagree based on the type and nature of the accommodation proposed.
11. The appellant has prepared a Financial Viability Assessment (FVA) to support the commuted sum that it says that the scheme can viably deliver having applied the residual approach set out in the Guidance. The Viability SoCG<sup>2</sup> confirms that all the inputs into the FVA were agreed between the parties, save for Gross Development Value (GDV), but the dispute on GDV has a direct influence on disposal/marketing and finance costs (albeit the percentage points are agreed) which in turn affects the monies potentially available for the affordable housing contribution.

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<sup>1</sup> Planning Practice Guidance Paragraph: 001 Reference ID: 63-001-20190626

<sup>2</sup> Core Document CD 6.5.10



12. **The divergence in the parties' assessment on GDV is** due to their respective assessments on sales values for the proposed apartments<sup>3</sup>. It is the appellant's case that the scheme can viability deliver £357,965 towards all the contributions sought by the Council. This would mean that £273,479 would be the affordable housing contribution. Conversely, the Council state that the scheme can deliver £1,389,000 towards the contributions. In short, the **appellant says that the Council's assessment**, which takes into account RICS Best Practice and the Guidance, is excessive, and its stance should be adopted. The appellant's assessment is based on the local market, the Retirement Housing Group methodology, achieved sales values at St Giles Lodge and Southborough Court, achieved sales values for market apartments along with a premium for retirement accommodation, and viability evidence from a retirement living scheme near to the appeal site.
13. The Council contends that **the appellant's** stance on GDV is too pessimistic. However, both parties have exercised judgments on valuations and the relevance of and interpretation of comparable evidence based on their knowledge and experience.
14. Despite this, the parties agree that a total contribution in line with the appellant's case should be payable through the s106 agreement<sup>4</sup>. This would be the affordable housing contribution that the scheme could viably afford on **the appellant's case**. However, given their difference on GDV, the parties agree in this case to the inclusion of a late-stage viability review mechanism in the s106 agreement<sup>5</sup>. This would allow GDV to be revisited if sales values exceed those expected by the appellant so that the maximum affordable housing contribution possible from this single-phase development is achieved. Review mechanisms are a tool to strengthen local authorities' **ability to seek** compliance with relevant policies over the lifetime of the project<sup>6</sup>. No more than 70% (25 no.) of the units could be disposed of until the review takes place, and the maximum contribution would be capped at 50% to ensure there remains an incentive to sell the units at a higher value to those anticipated by the appellant.
15. Whether there will be any additional affordable housing contribution from the development is unclear and cannot be guaranteed, but the review mechanism in the s106 agreement does **strengthen the Council's ability to seek** a higher order of contribution approaching the aspiration of 40% set out in CS Policy CP17 over the lifetime of the project. This would help address the unmet need for affordable homes in the borough.
16. On this basis, I consider that the affordable housing contribution would be directly related to the development and fairly and reasonably related in scale and kind to it. I conclude that the s106 agreement in respect of the affordable housing contribution would satisfy the tests in CIL Regulation 122 and Framework paragraph 57, hence, it is material in this case. While CS Policy CP17 sets out an expectation of 40% of the number of dwellings being delivered as affordable, the accompanying text is clear that this is the aim and a starting point for negotiations on a site by site basis alongside matters such as the viability of the development. On this basis, I am satisfied that the appeal scheme complies with CS Policy CP17.

<sup>3</sup> LPA 1 Bed £360,000 2 Bed £495,000; Appellant 1 Bed £335,000 2 Bed £430,000

<sup>4</sup> Inquiry Document 5, Paragraph 1

<sup>5</sup> Inquiry Document 5, Paragraph 3

<sup>6</sup> Planning Practice Guidance, Paragraph: 009 Reference ID: 10-009-20180724

### *Other contributions*

17. The s106 agreement also contains several other provisions. The social care, community learning, waste and library bookstock contributions would mitigate the effects of the proposed development and the additional demand it would place on local services. The monies would be put towards additional equipment, accommodation, facilities and/or resources. The need for the open space, and parks and gardens, and sport facilities contributions arise from the additional demand that future occupants of the proposed development would place on existing sports and recreation facilities near to the appeal site. The contributions would be put towards new facilities along with improvements and their future maintenance.
18. All the above contributions would accord with Core Strategy Policy CP25 and Policy OS3 of the Managing Development and the Environment Development Plan Document (DPD). These policies seek to ensure service, transport and community infrastructure necessary to serve the development is either available or will be made available by the time it is needed; and financial contributions for off-site open space facilities are provided on all residential development of 5 units or above. The contributions that would be secured through the s106 agreement would meet the statutory tests in Regulation 122 of the CIL Regulations. As such, they are material considerations in this appeal.

### **Other Matters**

19. Tonbridge Castle, a Grade I listed building and Scheduled Ancient Monument, is to the north of the appeal site. The medieval Castle is situated on elevated ground next to, and above, the River Medway and the market town of Tonbridge. It has a moat and motte leading up to a stone keep and gatehouse that are significant and positive contributors to the character of the area. The appeal scheme would lie within the setting of The Castle, but that also applies to most of the development either side of the river. However, the proposed development would not compete with or dominate views of The Castle nor affect its setting. As the proposal would have a neutral effect on The Castle, its significance would be preserved.
20. Tonbridge Conservation Area (the CA) is next to the appeal site. It extends from the south and west of the site to the north of the river. This includes The Castle and the historic high street, which has a tight-knit urban grain containing a variety of building types and uses that contribute to a vibrant place which has evolved over time. This has resulted in buildings of various forms, styles and appearances along with public spaces next to the river. Whilst the appeal scheme would be next to the CA, having regard to its significance and the proposed development, I consider the appeal scheme would have a neutral effect on the CA.

### **Conditions**

21. I have imposed a plans condition in the interests of certainty. I have imposed several pre-commencement conditions. In the interests of highway safety and the living conditions of nearby residents, a construction management condition is necessary. So that the development is safe for its lifetime, I have imposed conditions to secure flood resistance and resilience measures and to ensure utilities are positioned above the design flood level. To secure satisfactory arrangements for the disposal of surface water and to prevent on/off site flood risk, I have imposed a condition for a drainage scheme.

22. In the interests of the character and appearance of the area, a condition to secure details of the external materials and boundary treatment is necessary. For the same reason, I have imposed a condition so that the approved landscaping scheme is delivered. To secure the delivery of high-quality digital infrastructure, a condition is necessary to secure the installation of fixed telecommunication infrastructure and high-speed fibre optic broadband. I have imposed conditions so that the development in respect of adequate car parking, electric vehicle charge points and a travel plan in the interests of highway safety and to encourage the use of sustainable transport modes.
23. Conditions are necessary in the interests of future occupants' living conditions, public safety and human health to secure verification reports relating to the surface water drainage system and the approved remediation strategy. To ensure that future occupants have satisfactory living conditions from noise, I have imposed a condition to achieve specific noise levels in certain areas of the development and to secure any mitigation or attenuation measures. So that safe access, escape routes and operational procedures are secured, I have imposed a condition in respect of a flood warning evacuation plan. Due to the specific nature of the appeal scheme, and the need for this type of accommodation in the borough, I have imposed a condition limiting the occupation of the development to people of a certain age.

### **Conclusion**

24. The proposed development would accord with the development plan in respect of affordable housing as it would, based on viability and the late review mechanism, provide a policy compliant level of affordable housing and accord with CS Policy CP17. The contributions found within the s106 agreement would all mitigate the effect of the development, so they do not weigh in favour or against the proposal. Even so, the s106 agreement would ensure that the proposal is compliant with CS Policy CP25 and DPD Policy OS3.
25. Aside to this, the proposal would result in several benefits. These include the provision of a specific type of housing to address an identified need; freeing up existing housing stock; and a contribution to the overall number of houses in the borough at a time when the Council is unable to demonstrate a five-year supply of deliverable housing sites. Furthermore, the proposal would make effective use of brownfield land in an accessible location in the town centre close to facilities and services. Economically, there would be jobs created and spending in the local economy during the **development's** construction and by future occupants. Socially, the proposal would help maintain future **occupants'** independence, remain within an inclusive community, and reduce pressure on health care facilities. These benefits only weigh in favour of the proposal.
26. The proposed development would accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this.
27. For the reasons given above, I conclude that the appeal should be allowed.

*Andrew McGlone*

INSPECTOR

**APPEARANCES**

## FOR THE APPELLANT:

Sarah Reid Of Queens Counsel, instructed by Carla Fulgoni, Planning Manager, Planning Bureau Ltd

She called

James Mackay BSc (Hons), MRICS Partner of Alder King Property Consultants

Paul Jenkin BEng (Hons), MSc CEng, C.WEM, FCIWEM Director of Flood Risk Management at Abley Letchford Partnership Ltd

Ian Hann MA Principal Planning Associate of the Planning Bureau Ltd

## FOR THE LOCAL PLANNING AUTHORITY:

John Fitzsimons Of Counsel, instructed by the Borough Solicitor of Tonbridge and Malling Borough Council

He called

Peter Waring BSc (Hons), MSc, CGeol Senior Flood Risk Advisor, Environment Agency

Fraser Castle MSc, MRICS, RICS Development Partner, Bruton Knowles

Adem Mehmet BA (Hons), PGDip MA, MRTPI Planning Consultant acting for Tonbridge and Malling Borough Council

## INQUIRY DOCUMENTS

- 1 Appellant Opening Statement
- 2 Council Opening Statement
- 3 Additional Suggested Planning Conditions
- 4 Heads of Terms – Viability Review
- 5 Viability SoCG II
- 6 Amendments to Additional Suggested Planning Conditions
- 7 **Appellant’s Costs** Application
- 8 **Council’s Response to the Costs Application**
- 9 **Council’s Closing Statement**
- 10 **Appellant’s Closing Statement**

## CORE DOCUMENTS

CD-1	Core Drawings Document
1.1	Site Location Plan - SE-2739-03-AC-101 B
1.2	Existing and indicative Demolition Plan - SE-2739-03-AC-112 A
1.3	Proposed Site Plan - SE-2739-03-AC-102 C
1.4	Proposed Ground Floor Plan - SE-2739-03-AC-103 D
1.5	Proposed First Floor Plan - SE-2739-03-AC-104 B
1.6	Proposed Second Floor Plan - SE-2739-03-AC-105 B
1.7	Proposed Third Floor Plan - SE-2739-03-AC-106 B
1.8	Proposed Roof Plan - SE-2739-03-AC-107 B
1.9	Proposed Elevations 1 North and West - SE-2739-03-AC-108 C
1.10	Proposed Elevations 2 South and East - SE-2739-03-AC-109 C
1.11	Proposed Views SE-2739-03-AC-110 A
1.12	<b>CGI's</b>
1.13	Landscaping Proposals - MCS23278 09
CD-2	Documents Submitted During Course of Application
2.1	Planning Statement (with Appendices)
2.2	Design and Access Statement - SE-2739-03-AC-DASv1
2.3	Transport Statement - 047.0078/TS/1
2.4	Older Persons Housing Need Report
2.5	Drainage Strategy Report - IDL/1070/DS/001
2.6	Flood Risk Assessment AMA823
2.7	Affordable Housing / Viability Statement - AJC/95927
CD-3	Additional Documents Submitted with Second Application
3.1	Planning Statement (with Appendices)
3.2	Flood Risk Assessment - 332510921 Rev: C
3.3	Affordable Housing / Viability Statement - RJM / 95927
3.4	Affordable Housing / Viability Statement Review - Bruton Knowles Review
3.5	Affordable Housing / Viability Statement Review 21/03375/FL - Bruton Knowles Review 21/03375/FL

CD-4	Relevant Development Plan Policies
4.1	Managing Development and the Environment Development Plan Document (April 2010) – CC1, OS3
4.1.1	Local Development Framework Core Strategy (September 2007) – CP1, CP10, CP17, CP25
4.2	National Planning Policy Framework (July 2021) – Paragraphs 2, 4, 5, 6, 8, 11 and 14
4.3	National Planning Guidance - Viability, Achieving healthy and inclusive communities, Housing needs of different groups, Housing for older and disabled people, and Planning obligations
4.4	Housing Land Supply Position as at 31 March 2021
4.5	Housing Delivery Test Action Plan, July 2021
4.6	Officers Report to Planning and Transportation Advisory Board - updates to <b>Members on the Government’s Housing Delivery Test measurement for 2021</b>
4.7	Tonbridge Central Area Action Plan (TCAAP)
CD-6	Appellants Appeal Documents
6.1	Appellants Statement of Case
6.2	Statement of Common Ground
6.3	Draft Unilateral Undertaking
6.5.4	EA Objection
6.5.5	EA Statement of Case
6.5.6	LPA Statement of Case
6.5.7	DEFRA FD2320
6.5.8	Flood Risk and Drainage SoCG
6.5.9	Reservoir Breach Map
6.5.10	Viability Statement of Common Ground

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## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: SE-2739-03-AC-101 B; MCS23278 09; SE-2739-03-AC-102 C; SE-2739-03-AC-103 D; Site Plan SE-2739-03-AC-104 B; Site Plan SE-2739-03-AC-105 B; Site Plan SE-2739-03-AC-106 B; Site Plan SE-2739-03-AC-107 B; SE-2739-03-AC-108 C; SE-2739-03-AC-109 C; SE-2739-03-AC-110 A; Site Plan SE-2739-03-AC-112 A; Archaeological Assessment; Drainage Statement; Flood Risk Assessment; Desk Study Assessment; Site Investigation; Air Quality Assessment; Air Quality update; Energy Statement; Noise Assessment; Statement of community involvement; and Transport Statement.

### *Pre-commencement*

- 3) Prior to the commencement of the development hereby permitted, arrangements for the management of all demolition and construction works shall be submitted to and approved by the local planning authority. The management arrangements to be submitted shall include (but not necessarily be limited to) the following:
  - The days of the week and hours of the day when the demolition and construction works will be limited to and measures to ensure these are adhered to;
  - Procedures for managing all traffic movements associated with the demolition and construction works including (but not limited to) the delivery of building materials to the site (including the times of the day when those deliveries will be permitted to take place and how/where materials will be offloaded into the site) and for the management of all other construction related traffic and measures to ensure these are adhered to; and
  - **The specific arrangements for the parking of contractor's vehicles within or around the site during construction and any external storage of materials or plant throughout the construction phase.**

The development shall be undertaken in compliance with the approved details.

- 4) Prior to the commencement of the development hereby permitted details setting out the position of utilities for water, heat and power at a suitable level above the design flood level shall be submitted to and approved in writing by the local planning authority. Development should then be carried out in accordance with the approved details.
- 5) Development shall not begin (except for demolition and ground works) until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the Drainage Report as prepared by Infrastructure Design Ltd dated 12/05/21 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):



- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented and maintained in accordance with the approved details.

*Before above ground works*

- 6) Prior to the commencement of above ground works of the development, hereby permitted, details of property flood resistance and resilience measures, in accordance with the Defra/Environment Agency document "Improving the Flood Performance of New Buildings – **Flood Resilient Construction**," (or any subsequent revision or amendment), shall be submitted to and approved in writing by the local planning authority. Details shall include a maintenance and deployment plan of such measures, which shall be implemented as approved and retained thereafter.
- 7) No above ground works shall take place until details of all materials to be used on the external faces of the building and any boundary treatments have been submitted to and approved by the local planning authority, and the development shall be carried out in accordance with the approved details.
- 8) Prior to the commencement of above ground works of the development, hereby permitted, details shall be submitted for the installation of fixed telecommunication infrastructure and High-Speed Fibre Optic Broadband (minimal internal speed of 1000mb) connections to multi point destinations and all buildings including residential, commercial and community. The infrastructure installed in accordance with the approved details during the construction of the development, capable of connection to commercial broadband providers and maintained in accordance with approved details.

*Before first occupation*

- 9) The development hereby permitted shall not be occupied until the areas shown on the submitted layout for vehicle parking has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved parking spaces.
- 10) Before the development hereby permitted is occupied details of the installation of electric vehicle car charging points shall be submitted to approved in writing by the local planning authority. A minimum of two car parking spaces shall be provided with an Electric Vehicle (EV) charging point. The remainder of car parking spaces shall be provided with underground ducting suitable to allow for easy implementation of EV charging points at a future time. All Electric Vehicle chargers provided must be provided to Mode 3 standard (providing up to 7kw)

and SMART (enabling Wifi connection) before first occupation of the development.

- 11) No occupation of the development hereby permitted shall occur until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the local planning authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.
- 12) Following completion of the approved remediation strategy, as found in the Site Investigation Report, dated February 2021, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted for the information of the local planning authority. The report shall be undertaken in accordance with DEFRA **and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'**. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the local planning authority for written approval and shall be fully implemented as approved. Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.
- 13) Before the development hereby permitted is occupied a noise report shall be submitted to and approved in writing by the local planning authority. The report should consider the levels cited in BS8233:2014 and how these will be achieved, namely:
- for gardens and other outdoor spaces, in particular those in para 7.7.3.2 which states a desirable limit of 50dB LAeq,16-hour, and a maximum upper limit of 55dB LAeq,16-hour; and
  - to at least secure internal noise levels no greater than 30dB LAeq, 8-hr (night) and 35dB LAeq, 16-hr (day) in bedrooms, 35dB LAeq, 16-hr (day) in living rooms and 40dB LAeq, 16-hr (day) in dining rooms/areas. Particular attention is drawn to the notes accompanying Table 4 in para 7.7.2 and that these levels need to be achieved with windows at least partially open unless satisfactory alternative means of ventilation is to be provided.
- The report should also detail any mitigation/attenuation measure needed to attain the abovementioned levels. It is important that the noise report includes specific data and details of any necessary noise insulation/attenuation requirements (e.g. acoustic glazing, acoustically screened mechanical ventilation). The approved measures must be installed prior to occupation of any unit and retained thereafter.
- 14) Prior to the occupation of the building hereby permitted a Flood Warning Evacuation Plan, shall be submitted to and approved in writing by the local

planning authority. This plan should be in general accordance with revision E of the Flood Warning Evacuation Plan [332510921/100 dated June 2022] and include the following information:

- Details of the procedure for the relocation of onsite vehicles and mobility scooters when flood warnings are issued; and
- Details of the supply and storage of emergency medical supplies on site

The approved Flood Warning Evacuation Plan shall be reviewed every year and shall be strictly adhered to for the lifetime of the development.

- 15) Prior to the occupation of the development permitted, a Travel Plan shall be submitted and approved by the local planning authority. The Travel Plan must include details of: (a) a comprehensive survey of all users of the development; (b) details of local resident involvement in the adoption and implementation of the Travel Plan; (c) targets set in the Plan to reduce car journeys to the development; (d) details of how the Travel Plan will be regularly monitored and amended, if necessary, if targets identified in the Plan are not being met over a period of 5 years from the date the development is occupied. At the end of the first and third years of the life of the Travel Plan, you must apply to the local planning authority for approval of reports monitoring the effectiveness of the Travel Plan and setting out any changes you propose to make to the Plan to overcome any identified problems. Any changes should be implemented in accordance with the approved details.

*Post occupation and management*

- 16) All planting, seeding and turfing comprised in the approved scheme of landscaping on plan Ref: MCS2327809 shall be implemented during the first planting season following first occupation of the buildings or the completion of the development, whichever is sooner. Any trees or shrubs removed, dying, being seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species.
- 17) No unit of accommodation shall be occupied at any time other than by a person aged 60 or older together with their spouse, partner or companion as appropriate, except that where a person aged at least 55 years is predeceased having resided within the development as a spouse, partner or companion, that person may continue to reside within the development.

END OF SCHEDULE

**Appendix 9 - Appeal Decision (APP/Q1825/W/17/3166677)**



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## Appeal Decision

Inquiry held on 17 and 18 October 2017

Site visit made on 18 October 2017

**by G P Jones BSc (Hons) MA MRTPI**

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

**Decision date: 18 December 2017**

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### **Appeal Ref: APP/Q1825/W/17/3166677 Johnsons Cars Ltd, Clive Road, Redditch B97 4BT**

- 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 McCarthy & Stone Retirement Lifestyles Ltd against the decision of Redditch Borough Council.
  - The application Ref 2016/109/FUL, dated 21 April 2016, was refused by notice dated 11 November 2016.
  - The development is described as proposed demolition of existing buildings and development of 45 Retirement Living apartments including communal facilities, landscaping and car parking.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the proposed demolition of existing buildings and development of 45 Retirement Living apartments including communal facilities, landscaping and car parking at Johnsons Cars Ltd, Clive Road, Redditch B97 4BT in accordance with the terms of the application, Ref 2016/109/FUL, dated 21 April 2016, subject to the conditions set out in the attached schedule.

### **Main issue**

2. As set out in the Statement of Common Ground (SoCG) it is not in dispute between the parties that the principle of the re-development of the site and the design and massing are all considered acceptable. The requirement for an off-site affordable housing contribution rather than the provision of on-site affordable housing is also agreed in the SoCG.
3. Consequently, taking into account all that I have read, seen and heard I consider that the main issue is whether or not the proposal makes sufficient provision for affordable housing in terms of an appropriate off-site financial contribution.

### **Reasons**

#### *Background*

4. Paragraph 173 of the National Planning Policy Framework (the Framework) indicates that to ensure viability the costs of any requirements likely to be applied to development 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. The

Planning Practice Guidance<sup>1</sup> (PPG) advises that to incentivise the bringing back into use of brownfield sites, local planning authorities should take a flexible approach in seeking levels of planning obligations and other contributions to ensure that the combined total impact does not make a site unviable.

5. Policy 6 of the Borough of Redditch Local Plan No. 4, adopted January 2017, (LP) relates to affordable housing and states that on sites of 11 or more dwellings a 30% contribution towards the provision of affordable housing will be expected. Paragraph 6.9 of LP Policy 6 states that in exceptional circumstances where the economic viability of affordable housing is questionable and this can be fully demonstrated then the Council may negotiate a more appropriate level of affordable housing provision or deferred payment scheme where appropriate.
6. The proposal would provide for a lower quantum of financial contributions towards affordable housing than the Council has calculated. In this regard the Council considers the proposal to be unacceptable in economic terms. The PPG<sup>2</sup> states that where safeguards are necessary to make a development acceptable in planning terms, and these safeguards cannot be secured, planning permission should not be granted for unacceptable development.
7. CBRE, acting on behalf of the appellant, submitted a Financial Viability Assessment (FVA) dated June 2016, and an Addendum to this, dated November 2016, was also submitted by CBRE. In addition, CBRE were in negotiations with Lambert Smith Hampton (LSH) who were acting on behalf of the Council during the examination of a duplicate application. A number of matters that are now contested by Blackswan Property Ltd (BPL), acting on behalf of the Council for the application that is the subject of this appeal, had been agreed with LSH in regard to the duplicate application, and I shall return to these later.
8. The assessment of viability is an iterative process and costs will change as the project develops. Since the appeal was originally submitted a number of issues, such as the cost of the retaining wall and the substation upgrade, have now been agreed between the two parties. Following the completion of the **Inquiry an 'Updated Comparator Schedule CBRE & Blackswan 25.10.17' (UCS)** was submitted and this represents the final agreed position between the two parties. The UCS sets out the remaining differences between the two parties in regard to financial considerations, and it is these that I intend to focus on

#### ***Final position on financial contributions***

9. The final position, as indicated in the UCS, is that the Council requires the payment of a total contribution of £900,000 in order to make the development acceptable, whilst the appellant is offering a total financial contribution of £127,711. This sum is set out in the signed Unilateral Undertaking (UU), dated 24 October 2017, and this includes an affordable housing contribution of £27,500.

#### ***Contract modifier***

10. The Building Cost Information Service (BCIS) (Core) Construction costs are agreed between the parties except in regard to the application of a contract

<sup>1</sup> PPG Paragraph: 026 Reference ID: 10-026-20140306

<sup>2</sup> Paragraph: 019 Reference ID: 10-019-20140306

modifier. Mr Hawley of BPL contends that due to the scale of the project and the nature of McCarthy and Stone as a significant and established developer in the retirement housing sector, there would be certain economies of scale arising, for example through the ability to bulk buy goods and negotiate discounts with suppliers. In Appendix L of **Mr Hawley's** Rebuttal Proof an e-mail from Lindsay Pullen, a Senior Construction Data Analyst at BCIS, has been provided which considers that a 3% contract modifier can be applied. As documented in the UCS the application of this would give rise to a reduction in construction costs of £127,986.

11. However, apart from this e-mail I do not have any other details of the correspondence between BPL and Lindsay Pullen, who was not called to give evidence at this Inquiry. Also, I have not been provided with any other substantive evidence that applying a contract modifier is acceptable for a project at this stage of development.
12. Mr Willet of CBRE and Mr Barefoot of Alder King, both acting on behalf of the appellant, contend that a contract modifier should not be applied for projects at this stage as it is a matter associated with Tender Price Studies in BCIS not Average Prices. **Appendix L of Mr Hawley's Rebuttal Proof depicts a 'screen shot' of a table relating to contract size adjustment factors.** However, the tab at the top of this table is labelled 'Tender price studies –results'. **BPL has not provided a similar table in relation to average prices.** In addition, Annex M of **Mr Hawley's Rebuttal Proof comprises a 'Using BCIS Online' tutorial that shows a distinction between Average Price and Tender Price Studies in Examples 3 and 7 respectively.**
13. The FVA that is before me relates to the Average Price data set where the modifiers used are locational factors and/or storey height. Therefore I concur with the appellant that a contract modifier should not be used, and thus I agree **with the appellant's BCIS (Core) Construction Costs figure of £4,266,176.**

### *Contingency*

14. Another area of dispute is over the issue of a contingency, which CBRE considers should be 5% of BCIS construction costs. BPL considers the contingency should be 3.25% **of its BCIS costs calculation plus the 'Other Construction' costs listed in the UCS.** The appellant considers that a 5% contingency represents the industry standard for projects of this nature and at this stage of development, and argues that this relates to risks for the whole project and not just construction cost risks.
15. BPL contends that McCarthy & Stone have a known development model comprising a number of tried and tested design templates with standard finishes and thus the risks, particularly in terms of design, are thereby reduced. **Also, it is BPL's view that as certain costs become known and specifically accounted for, such as the retaining wall, then the contingency should be reduced accordingly.**
16. **BPL's view is based, at least in part, on an e-mail from Mr Martin Rowe<sup>3</sup>, Director at PMP Consultants Ltd, in which he considers a 3.25% contingency figure to be correct.** However, apart from the e-mail Mr Rowe did not provide any additional evidence and was not called to the Inquiry. I am uncertain as to

<sup>3</sup> Annex N of Mr Hawley's Rebuttal Proof



how much detail about the case Mr Rowe was presented with that enabled him to reach this conclusion.

17. I have been presented with other appeal decisions for Cheam and Ravenshead<sup>4</sup> where a contingency of 5% of construction costs was considered acceptable in both cases. Whilst I do not have the full details of these other appeal cases, they were both recent. The Cheam appeal was for 30 units on a previously developed site and the appellant was Churchill Retirement Living, a competitor company within the retirement living sector. As such I consider that, based on the limited evidence I have before me, there is a good degree of comparability between the Cheam scheme and this proposal, and therefore I accord a significant degree of weight to this. The Ravenshead appeal was for a housing development and therefore is less directly comparable. However, I note that a 5% contingency was considered acceptable for this site which comprised agricultural land.
18. Even if tenders have now been provided for certain build elements this is nevertheless an early stage project on a constrained brownfield site, and I heard evidence from CBRE that a standard design could not be applied readily. The appellant contends that, unlike standard housing developments, build projects of this type cannot be phased as all the facilities need to be provided at the outset and therefore carry a higher degree of risk. I concur with this view.
19. Also, this would be a new market area for retirement living accommodation as neither McCarthy & Stone nor other retirement living providers such as Pegasus or Churchill have undertaken any similar development in Redditch or its surrounds in recent years. Furthermore, I note that in the discussions between **CBRE and the Council's** other consultants, LSH, the contingency percentage had been agreed for the duplicate application. For these reasons I consider that the application of a 5% contingency would be acceptable in this instance, **and thus I favour the appellant's proposed contingency figure of £213,309.**

### *Professional fees*

20. In terms of professional fees both parties agree to a figure of 9%. However, due to the difference in **construction costs, arising through BPL's use of a 3%** contract modifier, there is a difference between the parties of £11,519 in regard to professional fees. As I have previously stated, I consider that a contract modifier should not be applied and consequently I consider that the relevant sum for professional fees should be that favoured by CBRE; ie £383,956.

### *Marketing and disposal fees*

21. Another matter of contention is the amount considered acceptable in regard to marketing and disposal fees. The Council considers that this should be 2.85% whilst the appellant considers that this should be 5.35%, which results in a difference of £214,025. The reason for these different percentage figures is because BPL considers that regional and national marketing costs should not be included. However, it is unrealistic to assume that national and regional marketing has no effect on the uptake of individual developments. Therefore I consider it reasonable that a proportion of national and regional marketing

<sup>4</sup> Appeal references APP/P5870/W/16/3159137 and APP/N3020/S/16/3154302 respectively

costs can be attributed as these will help to build brand awareness and also may attract future residents to this particular development that would not necessarily be reached by only a local marketing campaign.

22. In any event, even if national and regional marketing costs were not included, I **am not persuaded that this would support the Council's figures.** Much discussion at the Inquiry centred around the calculations by Mr Barefoot, dated **August 2014, that were contained in Appendix D of Mr Hawley's Proof of Evidence.** This sets out the total marketing costs for four McCarthy & Stone developments, three of which had marketing campaigns that commenced in 2011. The average of these four schemes indicated that marketing as a percentage of total revenue was 7.22%, although there was quite a degree of variation between the developments.
23. BPL contends that the regional and national marketing costs, which in Appendix D average out to be broadly 40% of the total marketing costs, should be removed. Although BPL considers that marketing costs should be 2.85%, based on the research in Appendix D, if an average percentage across the four developments of all national and regional marketing costs were removed from the overall average of 7.22% then this would equate to development-specific marketing costs in the region of 4.3%. This figure alone, without the inclusion of any national or regional marketing costs, would be closer to the percentage applied by the appellant.
24. BPL also contends that most of these marketing campaigns were undertaken in 2011 when the overall financial climate was more difficult than at present. This was contested by both Mr Willet and Mr Barefoot. I find that BPL has not demonstrated that the overall economic climate would be significantly better when this development is to be marketed than it was in 2011 or 2014 when marketing commenced for these other four sites. Furthermore, there is considerable uncertainty in such economic forecasting.
25. In both the Clacton-on-Sea appeal<sup>5</sup> and the Hunstanton appeal<sup>6</sup> marketing costs of 6% were considered by the respective Inspectors to be reasonable. Although both of these appeals took place a few years ago, in 2012 and 2014 respectively, nevertheless the appellant in both cases was McCarthy & Stone Retirement Lifestyles Ltd. There is thus a degree of similarity between these cases and the proposal that is before me, and the estimated marketing costs at 5.35% are lower than those that were accepted previously. Furthermore, both of these other cases relate to seaside locations, which tend to be popular retirement areas that are likely to provide less of a challenge in terms of marketing.
26. Taking all of this into account, I therefore consider that the marketing and disposal costs percentage apportioned by BPL is unduly low, and instead I am minded to accept the marketing figure as proposed by CBRE. The fact that this was broadly agreed by LSH, who considered marketing costs to be 5% for the duplicate application, lends further credence to my view on this.

### ***Finance costs***

27. In terms of finance costs, CBRE considers that there should be a 1% bank arrangement fee included, which BPL disagrees with. Also, CBRE contend that

<sup>5</sup> Appeal reference APP/P1560/A/11/2161214

<sup>6</sup> Appeal reference APP/V2635/A/14/2217840

the rate of finance should be 6.5%, with a 2.5% 'credit' applied, whilst BPL considers this currently should be 1.9%. This leads to a difference between the parties of £60,000 for the bank arrangement fee and £208,481 in terms of finance.

28. **BPL's position of applying** this finance rate with no bank arrangement fee is based on a Revolving Finance Credit (RFC) facility that accrues to McCarthy & Stone plc and **which is referenced in the company's mid-year statement of April 2017<sup>7</sup>**. This is a facility with an interest rate of Libor plus 1.6%, which currently would equate to 1.9%. However, this RFC relates to the parent company and the appellant contends that there would be a surcharge to the McCarthy & Stone Retirement Lifestyles Ltd; the appellant in this case.
29. Due to the overall quantum of the RFC and the amount drawn from it as of February 2017, it is likely that at least some funding capacity from the RFC would be available for this project. However, I have not been presented with any evidence as to what the actual rate charged to the appellant company by the parent company would be. At the Inquiry I heard evidence that a RFC would in all likelihood also be available for other volume housebuilding companies, including competitors within the retirement housing sector such as Pegasus or Churchill. I have not been presented with any evidence to cast doubt on this.
30. The letter from Katie Jackson, the Head of Tax and Treasury at McCarthy & Stone plc, indicates the average cost to the group of funding raised by both debt and equity to be 7%. This is close to the 6.5% finance rate that CBRE considers applicable. I also give weight to the fact that the credit rate was a matter that had been agreed with CBRE and LSH for the duplicate application.
31. Having considered all the evidence available to me, I have reached the view that **the Council has not demonstrated that the appellant's figures regarding finance costs are incorrect**. Therefore I consider that a more generic approach to assessing finance costs should be applied. Taking all of this into account it is my view that the finance figure of £287,422 and a bank arrangement fee of £60,000, as proposed by CBRE in the UCS, represents a realistic figure.

### *Empty property costs*

32. As regards empty property costs BPL considers that these would amount to £55,388 whilst the appellant considers these would amount to £82,901; a difference of £27,513. Again, I note that these costs had been agreed between CBRE and LSH for the duplicate application, although they are contested by BPL.
33. BPL considers that 40 apartments would be sold within the first 12 months of practical completion. Based on the evidence from Mr Barefoot<sup>8</sup>, and taking into account the acknowledged error contained in the table reproduced in Appendix G of Mr Hawley's Rebuttal Proof, this seems to be a high rate of sales when compared with other retirement living schemes. Whilst I accept that there may be an element of suppressed existing demand due to the lack of similar schemes, this would be counterbalanced by the fact that this is an untested area for this type of development. Consequently, I find the sales rate as

<sup>7</sup> Appendix J of Mr Hawley's Rebuttal Proof

<sup>8</sup> Appendix 9 of Mr Willet's Proof of Evidence

proposed by the appellant would be more realistic for a scheme of this nature and in this location.

34. However, the Council has indicated that it only charges 50% of the relevant Council tax charge for the first three months after completion but before a dwelling is occupied. Having regard to the **appellant's** estimated sales rate this would relate to 30 out of the 45 proposed apartments. I have not been presented with any evidence that the appellant has taken this discount on council tax into account.
35. As such, the proposed empty property costs would be likely to be marginally lower than the appellant has calculated. However, this would only be by a relatively small amount and taking this into account the estimated sales costs would, in my view, still be much closer to those calculated by the appellant than those proposed by BPL. Therefore, even though I accept that it might be a slight overestimate, I am nevertheless minded to favour the empty property costs figure of £82,901 as provided by the appellant. In reaching this view I have particular regard to the guidance in the PPG advising the need for a flexible approach for brownfield sites and the fact that these empty property costs had been agreed with LSH for the duplicate application.

### *Profit and overage*

36. Finally, although the percentage of profit is not a matter of particular dispute **and a 20% figure was referred to in Mr Hawley's Proof of Evidence**, the UCS indicates a profit of 20% according to the appellant but only 19.27% according to BPL. There is also a dispute regarding the use of Gross Development Value (GDV) or a net of this with the Freehold Ground Rent Investment omitted. The Argus software used in this case and which, according to Mr Willet, is the market leading development software system does not provide for a net of GDV, and according to Mr Barefoot neither do the main competitor software toolkits to Argus.
37. The Cheam appeal decision<sup>9</sup> is fairly recent and the appeal was made by Churchill Retirement Living which operates within the same sector of the housing market as the appellant. This appeal decision considered a 20% profit on GDV to be acceptable and it also cited a number of other cases where this percentage had been accepted, although the Inspector in the Cheam case only considered that two of these were sufficiently analogous to the case before him.
38. Although I do not know the full details of the Cheam case or the other cases cited therein, nevertheless a commonality is that 20% profit on GDV was considered acceptable. I consider that the Cheam case is sufficiently comparable to the one that is before me to lend a degree of credence to the use of the same profit figure and methodology. Therefore, based on other appeal decisions and having regard to the guidance in both the PPG and the Framework I consider that a profit of 20% on GDV would be reasonable, and I have not been presented with a compelling reason to apply a lower profit percentage or different profit methodology than that advocated by the appellant.

<sup>9</sup> Appeal reference APP/P5870/W/16/3159137

39. Paragraph 4.5.3 of Mr Hawley's Proof of Evidence refers to the potential for an overage to be applied to items of contention, although he did not pursue this argument during the Inquiry. The evidence before me does not demonstrate that it is necessary for an overage to be applied.

## Other Matters

### *Other financial contributions*

40. In addition to the affordable housing contribution the submitted signed UU, dated 24 October 2017, also contains other financial contributions. There is a sustainable highways and transport contribution of £52,295 based on an estimated daily total of 360 trips and in order to accord with the Worcestershire County Council Local Transport Plan 3 Development Control (Transport) Policy. In addition, an off-site public open space contribution of £17,516 is required which is supported by LP Policy 12 and has been calculated based on the number of future occupants in accordance with the methodology detailed in the Open Space Provision Supplementary Planning Document, adopted September 2007. A town centre contribution of £24,700 is required and this is supported by LP Policy 31. Finally, a waste and recycling facilities contribution of £5,700 is required based on Policy WCS17 of the Worcestershire County Council Waste Core Strategy, adopted November 2012.
41. The Council has provided a Statement of Compliance with CIL Regulations that sets out why, in its view, these contributions meet the tests as set out in the Community Infrastructure Levy (CIL) Regulations 2010. This is not a matter **that the appellant contests. Having regard to the Council's** CIL Compliance Statement and the aforementioned relevant policies I consider that all these contributions are necessary, relevant to the development and reasonable. Furthermore, I heard evidence at the Inquiry that these contributions would comply with the requirement in regard to the pooling of contributions. Therefore I consider that these other financial contributions are acceptable and would meet the tests contained in Regulations 122 and 123 of the CIL Regulations.

### *Other considerations*

42. In terms of its benefits the proposal would provide 45 residential units. Although there is no dispute that the Council can demonstrate a five-year supply of deliverable housing sites, I consider that this would be a significant benefit of the proposal in its own right. This benefit of increasing the supply of housing would be further strengthened by the fact that these would be retirement living apartments and no similar schemes have been undertaken in the Borough in recent years, and this would accord with the first bullet point of paragraph 50 of the Framework. Also, there would be an off-site affordable housing contribution, even if this would be significantly less than the Council considers appropriate.
43. The proposal would represent development in a sustainable, urban location within close proximity to a range of shops, services and facilities. This would provide additional patronage from future occupants for the shops in Redditch as well as some economic benefits in terms of employment during the construction phase. The appeal site comprised a car dealership with the now vacant building being of no particular architectural merit and the proposal would entail the re-use of previously developed land. Taking all this into

account, the proposal would give rise to significant benefits, that are not disputed by the Council, and to which I afford considerable weight.

### **Planning balance and conclusions**

44. In terms of harm arising, the proposal would provide for significantly less financial contribution than the Council has calculated, and thus would give rise to social and economic disbenefits.
45. In effect this appeal boils down to a disagreement between two sets of professional consultants in regard to the calculation and application of a number of costs. For the reasons I have already given I am minded to prefer the approach to assessing financial viability adopted by CBRE on behalf of the appellant. I have found that the appellant has adequately justified its approach to calculating all the outstanding areas of disagreement in regard to financial matters. Therefore it is my view that the appellant has fully demonstrated that the quantum of contributions proposed would be acceptable based on the assessed viability of this particular scheme. Consequently, I conclude that the proposal would accord with LP Policy 6.
46. Paragraph 14 of the Framework guides that development that accords with the development plan should be approved without delay, and this is the case for the proposal that is before me. Furthermore, and having specific regard to paragraph 14 and the first sentence of paragraph 49 of the Framework, I conclude that there would be clear and significant benefits of the proposal, particularly in regard to increasing the supply of retirement living accommodation in a sustainable location and bringing back into use a redundant brownfield site. The proposal may therefore be considered sustainable development, for which the Framework, at paragraph 14, presumes in favour.

### **Conditions**

47. It was confirmed at the Inquiry that the conditions proposed by the Council had been agreed by the appellant. I have considered these in the light of the advice contained within the PPG. In allowing the appeal I shall impose conditions accordingly, improving precision where necessary in accordance with the advice in the PPG, and in some instances amending the trigger point for when some of the conditions take effect. Some pre-commencement conditions are necessary because it is essential for them to take effect before the commencement of development in order to fulfil their purpose.
48. In addition to the standard condition which limits the lifespan of the planning permission, a condition to list and direct that the development accords with the approved plans is required for the avoidance of any doubt. A condition requiring details of external materials is necessary in the interests of protecting the character and appearance of the area.
49. In the interests of ensuring the development accords with the character and appearance of the area a condition requiring details of hard and soft landscaping is required. A condition concerning the management of soft landscaping is necessary in order to ensure the planting becomes properly established.
50. A condition stipulating the minimum age of future residents is necessary in order to ensure the development would be undertaken and maintained as



proposed and because otherwise increased financial contributions may have been sought.

51. A condition regarding contaminated land and a remediation methodology for dealing with any contamination encountered is required in the interests of protecting the environment. Requirements for details of the construction method of the new turning area and parking facilities and their retention as such are necessary in the interests of highway safety. Furthermore, the submission of details for the access is required for highway safety reasons.
52. Details of a foul and surface water drainage scheme are required in order to prevent the increased risk of flooding and to prevent any risk to controlled waters. In order to provide biodiversity enhancements a condition to require the provision of bat roost and bird nesting opportunities is necessary.
53. In order to encourage more sustainable means of transport, conditions requiring an electric vehicle charging point and details of cycle parking are necessary. The submission of lighting details is necessary to ensure that the living conditions of the occupiers of neighbouring properties are not adversely affected. A condition requiring refuse storage details is necessary in order to ensure that adequate capacity is provided and refuse generated by future occupiers can be collected satisfactorily.

### **Overall conclusion**

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

*GP Jones*

INSPECTOR



**APPEARANCES****FOR THE LOCAL PLANNING AUTHORITY:**

Ms C Bell Instructed by Redditch Borough Council

She called:

Mr M Hawley Managing Director, Blackswan Property Ltd  
BA, MSc, MRICS

Mr S Edden and Mr A Hussain participated in the discussion on conditions and other financial contributions.

**FOR THE APPELLANT**

Mr J Barrett Instructed by Mr P Graham, The Planning Bureau Ltd

He called:

Mr A Willet Senior Director, CBRE Ltd  
BS(Hons), FRICS, FCIH

Mr P Barefoot Partner, Alder King LLP  
FRICS

Miss L Matthewson Principal Planning Associate, The Planning Bureau Ltd  
MTCP, MRTPI

**INTERESTED PERSONS:**

Mrs B Cope

Mr M Cope

**DOCUMENTS (Submitted at the Inquiry)**

- 1 E-mails including from Steve Edden to PINS dated 15 September 2017
- 2 Letter from Katie Jackson, McCarthy & Stone dated 17 October 2017
- 3 Letter from David Bridges, McCarthy & Stone dated 16 October 2017
- 4 Updated Comparator Schedule 16.10.17
- 5 **Appellant's opening submissions**
- 6 **Council's opening submissions**
7. Statement of compliance with CIL Regulations
8. **Council's closing submissions**
- 9 Appellant's closing submissions

**DOCUMENTS (Submitted after the close of the Inquiry)**

1. updated Unilateral Undertaking
2. Updated Comparator Schedule 25.10.17

## Schedule of conditions

1. The development hereby permitted shall begin not later than the expiration of three years from the date of this decision.
2. Prior to their first installation, details of the form, colour and finish of all the materials to be used on the external elevations of the building, including windows and doors, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
3. Before any above ground building works commence full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include proposed boundary treatment and other means of enclosure, hard surfacing materials, new planting, trees and shrubs to be retained, together with measures to be taken for their protection while building works are in progress.
4. All hard and soft landscaping works shall be carried out in accordance with the approved details and prior to the occupation of any part of the development hereby permitted, or in accordance with a programme agreed in writing by the Local Planning Authority
5. Unless otherwise agreed in writing by the Local Planning Authority, the development hereby permitted shall be carried out in accordance with the following approved plans:

Site location Plan	WM_2271_01_03_AC
Site layout Plan	WM_2271_01_03_AC004
Streetscenes	WM_2271_01_03_AC005
Front elevations East, North	WM_2271_01_03_AC006
Elevations/sections – west	WM_2271_01_03_AC007
Elevations/sections – south	WM_2271_01_03_AC008
Floor plans	WM_2271_01_03_AC009
Site sections	WM_2271_01_03_AC010
Brickworks details	WM_2271_01_03_AC011
Courtyard views	WM_2271_01_03_AC_13
Courtyard views	WM_2271_01_03_AC_14
Hard landscape plan	WM_2271_01_03_AC_D111
Planting plan	WM_2271_01_03_AC_D112
Levels Strategy	MI_2193_04_DE_001_B
Drainage Strategy	MI_2193_04_DE_002_B
2D Land & Underground Services	23761A-1
View from 122 Birmingham Road	Verified Visual Montage 1/Figure 3
View from 120 Birmingham Road	Verified Visual Montage 2/Figure 5
View from 84 Clive Road	Verified Visual Montage 4/Figure 9

6. Prior to the commencement of development, full details of a scheme for foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to first use or occupation of the development.
7. Prior to the first occupation of the development hereby permitted, details of cycle parking provision shall be submitted to and agreed in writing by the Local

Planning Authority. The details agreed shall thereafter be implemented prior to the occupation of the building unless otherwise agreed in writing by the Local Planning Authority.

8. Unless otherwise agreed by the Local Planning Authority, no development other than that required to be carried out as part of an approved scheme of remediation shall commence until sections I to VII have been complied with:

I. A preliminary risk assessment must be carried out. This shall take the form of a Phase I desk study and site walkover and shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. The preliminary risk assessment report shall contain a diagrammatical representation (conceptual model) based on the information above and shall include all potential contaminants, sources and receptors to determine whether a site investigation is required and this shall be detailed in a report supplied to the Local Planning Authority. The risk assessment must be approved in writing by the Local Planning Authority before any development takes place.

II. Where an unacceptable risk is identified a scheme for detailed site investigation must be submitted to and approved in writing by the Local Planning Authority prior to being undertaken. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The investigation and risk assessment scheme must be compiled by competent persons and must be designed in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Contaminated Land, CLR11" or any subsequent amendment to these Procedures.

III. Detailed site investigation and risk assessment must be undertaken and a written report of the findings produced. This report must be approved by the Local Planning Authority prior to any development taking place. The investigation and risk assessment must be undertaken by competent persons and must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Contaminated Land, CLR11" or any subsequent amendment to these Procedures.

IV. Where identified as necessary a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be prepared and is subject to the approval of the Local Planning Authority in advance of undertaking. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

V. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority.

VI. Following the completion of the measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of

the remediation carried out must be produced, and is subject to the approval of the Local Planning Authority prior to the occupation of any buildings.

VII. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be prepared, this will be subject to the approval of the Local Planning Authority. Following the completion of any measures identified in the approved remediation scheme a validation report must be prepared, which is subject to the approval in writing of the Local Planning Authority prior to the occupation of any buildings.

9. The development hereby permitted shall not be occupied until the turning area and parking facilities shown on the approved plan have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and these areas shall thereafter be retained and kept available for users of this development at all times.
10. Prior to the first occupation of the development hereby permitted, the construction of the vehicular access shall be carried out in accordance with a specification to be agreed in writing with the Local Planning Authority, and it shall be retained as such thereafter.
11. The development hereby permitted shall not be brought into use until one of the parking places has been equipped with an electric vehicle rapid charging point and once provided it shall be retained and maintained as such at all times, unless otherwise agreed by the Local Planning Authority.
12. Prior to the commencement of development, a scheme for the provision of bat roost and bird nesting opportunities within the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented by suitably qualified personnel and approved by the Local Planning Authority prior to first use of the development hereby permitted.
13. Occupation of the apartments (excluding any on-site staff) shall be restricted at all times to people of 60 years of age and above, or those of at least 55 years of age and living with a spouse or partner of 60 years or above.
14. Prior to first occupation of the apartments, details of any external lighting within the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details prior to the occupation of any of the apartments.
15. Prior to the occupation of any of the apartments, full details of refuse storage facilities shall be submitted to and approved in writing by the Local Planning Authority. The details as approved shall be fully implemented prior to first use or occupation and retained as such thereafter unless otherwise agreed by the Local Planning Authority.

(end of Schedule)

**Appendix 10 - Appeal Decision (APP/P1560/A/11/2161214)**

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## Appeal Decision

Inquiry held on 14 -16 February 2012

Site visit made on 16 February 2012

**by P N Jarratt BA (Hons) DipTP MRTPI**

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

**Decision date: 14 March 2012**

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**Appeal Ref: APP/P1560/A/11/2161214**

**8-12 Carnarvon Road, Clacton-on-Sea, CO15 6PH**

- 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 planning permission.
  - The appeal is made by McCarthy & Stone Retirement Lifestyles Ltd against Tendring District Council.
  - The application Ref 11/00571/FUL, is dated 17 May 2011.
  - The development proposed is the redevelopment of the site with the erection of 32 retirement housing apartments with vehicular access from Carnarvon Road, associated parking area and landscaping.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of the site with the erection of 32 retirement housing apartments with vehicular access from Carnarvon Road, associated parking area and landscaping, at 8-12 Carnarvon Road, Clacton-on-Sea, CO15 6PH in accordance with the terms of the application, Ref 11/00571/FUL, dated 17 May 2011, subject to the conditions set out in the schedule attached to this decision.

### Preliminary matters

2. The deemed reasons for refusal relate to design and affordable housing. Firstly, and in summary, the Council consider that the proposed development, through its appearance, detailing, form, positioning, scale and proportion would be harmful to the appearance of the site and to the character of the street scene. Secondly, it is considered that the appellant has not satisfactorily demonstrated that the development cannot sustain a financial contribution towards the off-site provision of affordable housing.
3. There is no relevant planning history other than a duplicate application to this appeal which was refused on 8 February 2012 (Document 4) on design grounds only. As the appellant had made a without prejudice offer of £230,000 as a contribution towards off-site affordable housing, the Council did not refuse the application on affordable housing grounds.
4. Both parties make reference to the Draft National Planning Policy Framework (NPPF) but as this has been the subject of consultation, aspects of it may change when it is published in its final form. I therefore attach limited weight



to it. Notwithstanding this, many aspects of the NPPF are reflected in existing Planning Policy Statements which remain in place until cancelled.

## **Main Issues**

5. The main issues in this appeal are, firstly, the effects of the proposed development on the character and appearance of the area and, secondly, whether the proposal satisfies national and local policies for affordable housing taking into account the financial viability of the scheme.

## **Reasons**

### *Character and Appearance*

6. The appeal site is situated in Carnarvon Road, close to the junction with the High Street and to the edge of the town centre shopping area. The site is currently occupied by three detached buildings in residential use. Nos 8 and 10 are large three storey Edwardian villas with reasonably sized rear gardens. No 12 dates from around 1890 and is smaller in scale and has a smaller garden than Nos 8 and 10 although it is comparable in scale and design to the adjoining property at No 14. The buildings have some interesting detailing, such as porches, windows and bays, which contribute considerably to their character.
7. Carnarvon Road is a main route leading from the station to the seafront along which are various building types, some of which reveal their Victorian or Edwardian origins. It is an area of mixed uses with commercial, civic and residential uses predominating. The west side of the road to the north of the High Street reflects more recent development offering little in terms of any distinctive character. To the south of the High Street, Carnarvon Road has a more cohesive and attractive residential character but it is not particularly distinguished. There are a number of villas, including those on the appeal site, and some more recent developments such as the four storey apartment block of Landseer Court and the dwellings opposite the appeal site. Landseer Court and the Christ Church United Reform Church are significant in scale although the former contributes little to the townscape qualities of the area. The setting of many of the buildings is diminished through the presence of forecourt parking, either open to the footway or behind boundary walls. There is a fairly consistent building line on both sides of the road and street trees soften the built form.
8. Adjacent to the site at the rear is a vacant plot and some recently built but architecturally undistinguished flats at 46 and 48 High Street. The distinctive Colvin Memorial Masonic Temple is close to the rear of the site. Our Lady of Light and St. Osyth RC Church on Holland Road is a listed building located relatively close to the site but its setting is unaffected by the proposed development.
9. The wider area is also mixed in terms of its building styles. Substantial seaside buildings front the nearby Marine Parade and there is a wide range of residential, commercial and other buildings in nearby streets.
10. Mr Claiborne, the Council's design witness, was Chairman of the Essex Design Initiative, Design Review Panel when the Council consulted the Panel on the application. In reflecting the Panel's views he considers that the existing buildings have a powerful presence in the street, being of quality architecture

and having fine detailing which contributes to the character of the townscape, albeit that he considered the proposal in the context of the immediate area. Notwithstanding this, it is common ground that there is no objection to the principle of the development of the site for retirement apartments or to the demolition of the three buildings, subject to an appropriately designed replacement building. The parties also agreed that the height of the proposed building is acceptable in principle and that a development comprising a single built form and in a contemporary architectural style were not areas of disagreement.

11. The Council consider the existing buildings to be of heritage asset status in the context of PPS5<sup>1</sup> and that their qualities should be reflected in any replacement building although they acknowledge that Nos 8 and 10 were atypical of the area. The buildings are not listed and the site is not within a Conservation Area or in any other area of defined spatial character or importance. No evidence was submitted at the inquiry to indicate that the Council are pursuing any such protective designation or local listing. Nor has the Council referred to PPS5 reasons in their deemed grounds of refusal. Mr Beardmore, for the appellant, carried out a PPS5 assessment of the site and concluded that the existing buildings were not of such quality that they should be regarded as heritage assets and I agree with that conclusion. Since the Council accept the principle of demolition it follows that they consider the existing buildings not to be worthy of retention. The key test is whether the replacement building is contextually appropriate.
12. PPS1 at paragraph 38 (and paragraph 117 of the draft NPPF) indicates that unnecessary prescription or detail should be avoided. It is the overall scale, density, massing, height, landscape, layout and access of the new development in relation to neighbouring buildings and the local area more generally that is more relevant to the design of the proposed building.
13. Good design practice is set out in various CABI publications<sup>2</sup> and both parties make reference to recommended approaches although the witnesses reach different conclusions on certain aspects of the proposed development, many of which are matters of judgement.
14. In considering the design of the proposed building I find that it would reflect the rhythm of the street and plot widths through the articulation of the front elevation into three elements and through the choice of materials which would also reduce the visual impact of the mass of the building. It would be flat roofed reinforced with a deep cornice but with variation in overall height stepping up from No 12 to Landseer Court such that its scale would respect its neighbours. The relationship between the flat roof of the proposal and the roof of No 12 would be acceptable in the context of the street scene and the elevation facing Landseer Court, as amended with the rendered panels following comments from the Design Review Panel, would be appropriate. At the site inspection I viewed the site from Holland Road and from the High Street and although the proposed development would change some skyline views these would not create any degree of harm to the character or appearance of the area.

<sup>1</sup> Planning Policy Statement 5: Planning for the Historic Environment

<sup>2</sup> Including the Commission for Architecture and Built Environment's publications 'By Design – Urban Design in the Planning System: Towards better practice' and 'Design and Access Statements; How to write, read and use them'.

15. The building line is a significant feature in defining the character of the area as it is relatively consistent along Carnarvon Road. The proposed contemporary full-height bays would extend forward of the general building line by about 1.8m and forward of the existing bays at No 14 by a lesser amount. I have considered the proposals from a number of positions on Carnarvon Road and the bay projections would not be prominent from most of the positions where the viewpoint would be at an angle to the front elevation. The bays would appear more prominent when the angle of view is at a minimum but the opportunities for this would be limited and any visual impact would diminish with distance from the site and through the presence of the street trees. On balance, I do not consider that the impact of bringing the full height bays forward of the building line would be harmful to the street scene.
16. There would be paired windows on the front elevations of the projecting bays with low cill heights. One of the windows would be for a kitchen but it would have obscure lower panel glazing to prevent views into the kitchen, thereby overcoming the Council's concern in this respect.
17. Access to the rear parking court would be through a flat arched opening in the right hand bay. Although the Council consider this to be a weak design feature, the opening would not harm the street scene. However as the opening would not be gated, the internal walls of the covered access way would be visible from the street. I can impose a condition requiring the approval of facing materials within the access way to control their appearance. Although the palette of materials for the proposed development is generally acceptable the use of wire-cut smooth brick would appear harsh and a brick of a softer appearance would be more appropriate. I can also attach a condition controlling proposed external materials.
18. The Council have also criticised the opening for the mobility scooter bay but as this would be partially obscured by the garage block of Landseer Court, it would not appear incongruous.
19. I find that the enclosure of the front garden and its landscaping would positively enhance the character and appearance of the street as it would not be lost to car parking as occurs elsewhere. However as there is some ambiguity over the heights of the brick piers and concern over the appropriateness of horizontal railings, these matters can also be dealt with by condition.
20. The front entrance has been criticised as being 'timid' but as it would be of double door width and have a canopy I do not consider that it would be necessary for it to have any greater visual impact or to be more prominent. There has also been criticism of the internal arrangements but such concerns are not relevant to urban design issues where the impact on the public realm is concerned.
21. There are no issues in respect of unacceptable effects on the living conditions of occupiers of the neighbouring properties or the amount of amenity space or parking bays proposed.
22. I therefore conclude on this issue that the proposed development would result in a contemporary building design with appropriate detailing that would respect its neighbours and reinforce the distinctiveness of the area which forms part of an important route linking to the seafront. Its materials, balconies and flatted character would be typical of the wider area and represent seaside vernacular.

It would complement the character and appearance of the area and accord with Policy QL9 of the Tendering District Local Plan, Part A of Policy DP1 of the submitted Core Strategy and PPS1, all of which relate to the standards of design for new development.

### *Affordable Housing*

23. The proposed development meets the threshold set out in Policy H4 of the local plan for the provision of affordable housing. The parties agree that any affordable housing requirement should be in the form of off-site contributions in line with the advice in PPS3<sup>3</sup>. However, the parties disagree over the level of off-site contributions.
24. The appellant's original viability appraisal submitted with the application was based on the Homes and Communities Agency Economic Appraisal Toolkit (HCA EAT) which showed that the difference between the site value and existing use value was minus £28,000. However Mr Solomon of the District Valuer Service (DVS), on behalf of the Council, appraised the assessment and concluded that allowing for corrections but otherwise adopting the appellant's inputs, a commuted sum payment of £35,000 could be viable. He also assessed the target level of commuted sum payment would be £870,000 but that this would render the scheme unviable.
25. However the appellant's original appraisal has been superceded by one carried out Mr Barefoot. Both Mr Barefoot and Mr Solomon carried out appraisals using the Argus software model to assess a viable level of contribution. This model is more complex and allows for sales and interest rates. Mr Solomon assessed the difference between the residual value and the benchmark value to be £470,000 and Mr Barefoot at a deficit of £112,153.
26. The differences in the assessments by the parties was summarised in a comparative spreadsheet (Document 8) in which there are number of differences between the parties largely arising from the professional judgements made, some of which have a significant effect on the outcome. These are discussed below.
27. *Sales Curve:* Mr Barefoot has considered data relating to the east of England and McCarthy & Stone for schemes of fewer than 40 units which is of a size that represents a step-change in the nature of sheltered housing. They were also schemes selling when the economic slowdown was seriously affecting the market. His view, compared to that of Mr Solomon, was that the pattern of sales would be lower in the first year and extend to a fourth year. In reality, the sales curve could be different to both of those forecast, but I favour that of Mr Barefoot who has had the advantage of having had access to the appellant's detailed sales rate data and his approach perhaps better reflects economic conditions. The longer sales curve would have consequential effects on empty property costs and the date of ground rent payments.
28. *Gross Development Value:* the expected sales revenues were initially assessed by the appellant but they were not modified when the DVS suggested lower figures might be appropriate. Mr Barefoot's figures are lower because the appellant's figures were expressed as 'asking prices' rather than sales values and were expressly acknowledged to be optimistic by Mr Bendinelli of The Planning Bureau Ltd, in response to the DVS draft report of September 2011 on

<sup>3</sup> Planning Policy Statement 3: Housing; paragraphs 27-30

development viability. Mr Barefoot has tested his estimated values against actual sales figures in Colchester and Woodbridge although the Council considers this to be an illogical approach due to the wide variations in values, and also, the need for valuations to be site specific. However Mr Barefoot has also considered values against the larger Imperial Court development by McCarthy and Stone in Clacton-on-Sea and allowed for current market conditions. His values are £170,000 for a one bed apartment and £231,000 for a two bed apartment compared to Mr Solomon's at about £187,000 and £251,000. Valuations are extremely difficult to forecast in the current uncertain housing market and I am persuaded that a cautious approach to sales revenue from the development would be appropriate.

29. *Finance:* I am satisfied that Mr Barefoot's finance rates, which are supported by evidence from HSBC, provide adequate inputs to the viability appraisal.
30. *Other costs:* Mr Barefoot has used a figure of 6% for marketing and sales costs which is supported by advice in the HCA EAT User Manual. He has considered this against four recently completed McCarthy & Stone projects and as these exceed the 6% figure, I consider Mr Barefoot's approach to be acceptable. Mr Solomon thought that professional fees could be priced keenly, which I would expect to be quite possible in the current climate, but the effect of modifying this or other less significant inputs would not be likely to have any major effect on the overall outputs.
31. Whilst there has been some criticism of the fact that many of the values used in the appellant's original viability appraisal have been revised and superceded by Mr Barefoot's evidence, on the basis of his background and experience he has been able to bring forward a greater depth of analysis as a result. Against this is Mr Solomon's evidence which is also based on considerable experience and also an effort on his part to agree figures wherever possible. Both witnesses have relied on their professional judgements in their assessments with conviction. Neither witness is wholly right or wholly wrong in their judgements but my conclusion is based on the strength of Mr Barefoot's evidence and in the light of the uncertainties that prevail in the housing market and economy in general. Even if a number of the lesser inputs were to be adjusted in the Council's favour, these would not, in my view be sufficient to overcome the deficit identified by Mr Barefoot. If a 15% or 20% site assembly uplift were to be taken into account, this deficit would be even greater.
32. The Council argue that because the appellant is willing to build the scheme out, that a wrong figure may have been inputted into the analysis, either through lower profit figures, lower land acquisition costs or lower profit levels. However, I am satisfied with the robust nature of the appellant's evidence which has been subject to cross examination
33. Turning to the without prejudice offer of £230,000 in relation to the duplicate application, this was made on the basis of a judgement of commercial expediency by the applicant to protect the company's build programme. It was also made against the advice of its professional consultants. The offer did not indicate that there was money arising from the viability assessment but that it would have to be found from a cross-subsidy from other schemes or from the appellant reducing the profit level on the scheme. As this is a matter separate to the viability assessment, which is the agreed method of the parties to establish the appropriate level of contribution, I attach little weight to it.

34. I conclude on this issue that whilst national and local planning policies require the provision of affordable housing contributions, these should not be required where such contributions would make the scheme unviable, which is the situation that would prevail in the proposed development.

#### *Other Matters*

35. The appellant considers that there is a need for sheltered housing in Clacton and the appeal scheme would go some way to meeting this need. The Council's Strategic Housing Land Availability Assessment Consultation Draft does not identify a specific need for private apartments for the frail elderly although it recognises Clacton's attraction to people wishing to retire. Whilst the appellants may have identified a demand for sheltered housing it does not mean that such a demand could not be provided on other sites in Clacton or that it would necessarily free up family housing given the town's attractiveness to people from elsewhere. Notwithstanding this, I attach some weight to the contribution that the site could make to meeting housing requirements.

36. The Written Ministerial Statement: Planning for Growth (23 March 2011) emphasises the role that planning decisions play in supporting enterprise and in facilitating housing, economic and other forms of sustainable development and I attach significant weight to this.

37. The proposed development is supported by a number of local residents and the owners of the houses on the appeal site have indicated some of the difficulties of maintaining such large dwellings. Two residents of Landseer Court, the proprietor of a nearby guest house and the owner of the beauty salon adjacent to the site have raised objections. At the inquiry Mr Welton, who lives opposite the site, also expressed concerns. Their objections relate to the capacity of the water supply network, drainage, parking and highway safety. However Anglian Water and the highway authority have not raised objections to the proposed development. Concern has also been expressed about disruption during construction and I can attach a condition controlling operating hours during the construction period which would help to protect the amenities of the occupants of nearby properties.

#### *Conditions*

38. I have considered the conditions suggested by the parties having regard to Circular 11/95 – The Use of Conditions in Planning Permissions. Where necessary I have adapted the conditions in the interests of enforceability and precision.

39. I have made reference earlier in this decision to the need for conditions relating to the materials in the access way and type of external brick to be used (Conditions 6 and 7), and also to conditions relating to the brick piers and railings (Condition 10) and to hours of operation during construction (Condition 3).

40. So far as the other conditions are concerned, the approved plans are listed in Condition 2 in the interests of proper planning. Because the development would only be acceptable in view of the age of the intended occupants, Condition 4 is necessary to define a minimum age for the occupants. Condition 5 is necessary to ensure that adequate car parking is retained in the interests of highway safety.



41. In respect of Condition 8, the appellant would prefer the submission of the landscaping scheme to be before the occupation of the development rather than prior to development taking place as they consider that this could lead to a delay in commencing the development. As the wording of the condition follows the standard wording, I am not convinced of the need to alter it. Conditions 3 and 6 also require details to be submitted and agreed before development takes place and I have no reason to believe that the Council would not deal with such matters expeditiously.
42. Condition 9 is necessary in the interests of the visual amenity of the area to ensure that any planting that may fail is replaced.

**Conclusions**

43. I conclude that having carefully weighed up the evidence, the proposed development would complement the character and appearance of the area and that the scheme would not be sufficiently viable for a contribution to be made to off-site affordable housing. For the reasons given above and having taken account of all relevant matters raised I conclude that the appeal should be allowed.

*P N Jarratt*

Inspector



**APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY: D Whipps, Solicitor, Holmes & Hill.

He called

P Hill BA Hons, DipTP, MRTPI          Senior Planner, Tendring District Council

Mr A Claiborne Dipl Arch Hons,      Plaiter/Claiborne Architecture + Design  
MaPS FFB RIBA

Mr C Solomon MRICS                      Head of Development Viability, DVS

FOR THE APPELLANT: Mr R Warren of Counsel instructed by The Planning Bureau Ltd.

He called

Mr Gian Bendinelli MRTPI              Principal Planning Associate, The Planning  
Bureau Ltd.

Mr J P Osborne HNC                      Design Team Leader, The Planning Bureau Ltd

Mr K Brown MRTPI BSc Hons, MA      Managing Director, Townscape Solutions.

Mr P G J Barefoot FRICS,              Alder King, Property Consultants.

**INTERESTED PERSONS:**

Mr R Dittman,                      Owner of 8 Carnarvon Road (part of appeal site)  
Mrs J Duggan                      Owner of 12 Carnarvon Road (part of appeal site)  
Mr R Welton                      Local resident

**DOCUMENTS**

- 1 Appellant's opening points
- 2 Opening statement by the LPA
- 3 Copy email from A & C Hopgood, owners of 10 Carnarvon Road submitted by Mr R Dittman
- 4 Minutes of Development Team meeting 15 July 2010 (LPA)
- 5 Draft Planning Committee minutes 8 February 2012 (LPA)
- 6 Core Strategy Extract - Policy DP17 (LPA)
- 7 Core Strategy Extract - Policy DP20 (LPA)
- 8 Comparative analysis sheet D (LPA/Appellant)
- 9 Drawing 10-1762-103 B showing outline of No 16 (Appellant)
- 10 Drawing 10-1762-111 showing building line.

**Schedule of Conditions (10)**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 10-1762-101-1A; 10-1762-100B; 10-1762-101B; 10-1762-102B; 10-1762-103A; 10-1762-105B; 10-1762-106; 10-1762-107; 10-1762-108.
- 3) No demolition or construction work relating to this permission shall be carried out nor machinery operated on, nor materials be delivered to the site at any time on any Sunday or Public or Bank Holiday nor at any time, except between the hours of 0700 and 1800 on Mondays to Fridays and between the hours of 0800 and 1300 on Saturdays.
- 4) No persons under the age of 60 years or a partner under 55 years of age shall occupy the flats with the exception of guests and a warden.
- 5) Before any part of the development is occupied the car parking spaces shown on the approved plans shall be provided and those spaces shall not thereafter be used for any other purpose except for the parking of vehicles.
- 6) No development shall take place until details of the materials to be used on the internal elevations of the vehicular access way of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) No development shall take place until precise details, types and colours of the external facing and roofing materials to be used in the construction of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping works for the external areas and the scheme shall indicate any proposed changes in ground level. The scheme shall be carried out in accordance with the approved details.
- 9) All hard landscaping, planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 10) No development shall take place until there has been submitted to and approved in writing by the local planning authority details of the boundary treatment proposed for the Carnarvon Road boundary and the return boundaries adjacent to 14 Carnarvon Road and Landseer Court. The boundary treatment shall be carried out in accordance with the approved details and completed prior to the occupation of the development.

**Appendix 11 - Appeal Decision (APP/V2635/A/14/2217840)**

## Appeal Decision

Hearing opened on 9 September 2014

Site visit made on 10 September 2014

**by Joanna Reid BA(Hons) BArch(Hons) RIBA**

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

**Decision date: 8 October 2014**

**Appeal Ref: APP/V2635/A/14/2217840**

**The Old Garage, St Edmund's Terrace, Hunstanton, Norfolk PE36 5EH**

- 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 planning permission.
- The appeal is made by McCarthy & Stone Retirement Lifestyles Ltd against the Borough Council of King's Lynn and West Norfolk.
- The application Ref 13/00850/FM is dated 10 June 2013.
- The development proposed is "Erection of Later Living retirement housing for the elderly (category II accommodation), including communal facilities, landscaping and car parking".
- The hearing sat for 2 days on 9 and 10 September 2014.

### Decision

1. The appeal is allowed and planning permission is granted for "Erection of Later Living retirement housing for the elderly (category II accommodation), including communal facilities, landscaping and car parking" at The Old Garage, St Edmund's Terrace, Hunstanton, Norfolk, PE36 5EH, in accordance with the terms of the application Ref 13/00850/FM, dated 10 June 2013, subject to the conditions set out in Schedule A at the end of this Decision.

### Procedural matters

2. The Council's putative reasons for refusal are, in summary, firstly, that the development of the appeal site for a solely residential scheme would not support the position of Hunstanton as a service hub. Secondly, that the height, massing and design of the scheme would neither preserve nor enhance the character of the Hunstanton Conservation Area. Thirdly, that the proposed contribution towards off-site affordable housing would not be acceptable.
3. The Council declined to validate a subsequent planning application, which was submitted in April 2014, for a further revised scheme which sought to address the Council's Conservation Area concerns. The Council's decision to not validate that application is not within my jurisdiction in this appeal. The key changes in that scheme were illustrated in the appellant's rebuttal statement, and the Core Documents included those plans. At the hearing it was requested that they be taken into account in this appeal.
4. The appellant had mainly consulted people who had expressed an interest during the application and appeal processes. However, the Council had consulted a greater number of people in the 2 previous public consultation

exercises during the application process. Also, whilst the appellant's letter of 27 August 2014 referred to the appellant's rebuttal statement, it was not clear from that letter that the rebuttal statement included details of the further revised scheme. As other people's interests may have been prejudiced, I shall not take the further revised scheme into account.

5. The appellant put in a draft planning obligation for a financial contribution towards off-site affordable housing at the hearing. It had not been executed because a party to the obligation no longer had an interest in the land, but the registered title did not reflect this. The Council's witness confirmed that whilst the amount of the financial contribution was in dispute, it did not object to the form of the unilateral undertaking. In these exceptional circumstances an extension of time was given, up to and including 24 September 2014, for the appellant to submit an executed obligation to the Council and for a certified copy to be submitted to The Planning Inspectorate.

### **Main issues**

6. From what I have said above, from my inspection of the site and its surroundings, and from the representations made at the hearing and in writing, I consider that the main issues in this appeal are:
  - whether the proposed development would preserve or enhance the character or appearance of the Conservation Area,
  - its effect on the vitality and viability Hunstanton town centre, and
  - whether the proposal would make an appropriate financial contribution towards the provision of off-site affordable housing.

### **Reasons**

#### *Conservation Area*

7. The almost rectangular appeal site has a frontage to St Edmund's Terrace. The surrounding topography mainly slopes down from roughly east to west, but the site is generally level. It formerly included a commercial garage, but the buildings have been demolished and the site has been enclosed by fencing. It is bordered by the bus station to the south, a public car park at a lower level to the west, and the access to the car park with the Princess Theatre beyond to roughly north. On the opposite side of the street is a terrace which includes a mixture of commercial and residential uses to the north east, and The Spinney, which is a well-treed broadly triangular open space, to the east.
8. The Conservation Area includes the historic core of Hunstanton, which was developed as a seaside resort during the Victorian era. Its character as a planned historic resort contributes positively to its significance as a heritage asset. The historic core is mainly characterised by Victorian and later development set in an informal street layout with green spaces, which today make up for the many paved former front gardens. The sloping topography and the seafront, with their westerly views across the Wash, and the locally distinctive Carstone walling contribute positively to the sense of place. The *Hunstanton Conservation Area Character Statement* (CAA) identifies many important unlisted buildings, including the buildings opposite the site at 2 to 10 St Edmund's Terrace. The CAA describes the combined effect of the derelict site, the poorly designed bus station, and the dominance of the side of the Princess Theatre on the west side of St Edmund's Terrace as a visual disaster.

9. The site was said to have once been part of an orchard and part of the former Westgate Gardens, but there was almost nothing to suggest that the view over the site from The Spinney was part of a planned historic vista. Instead, the site is presently an unsightly gap in the townscape, which has a negative effect on the character and the appearance of the Conservation Area.
10. The proposed 5-storey sheltered housing scheme would take up most of the previously-developed site. The building would be similar in length to the terrace at 2 to 10 St Edmund's Terrace, and there would be ample room for a fitting soft landscaped setting. Due to its simple form and efficient layout, the scheme would make effective use of its town centre site. It would offer active frontages to its surroundings, including The Spinney and St Edmund's Terrace, and well planned homes for its occupiers.
11. Most of the ground floor, including the office, laundry, guest suite, and parking, would be cut into the ground. So, the future occupiers' homes would be sited on the upper floors, where they could appreciate their surroundings. The top floor would be mainly within the pitched roof space, with only 2 modest roof lights in the front roof slope. The roof terrace at the back and the roof top residents' sun lounge within the pitched roof space would enable residents, regardless of their choice of flat, to take the airs and enjoy the seaward views.
12. As a consequence, the height of the building would harmonise with the nearby mainly 3-storey plus lower ground floor terrace at 2 to 10 St Edmund's Terrace, and the nearby mostly 3-storey development in Westgate. It would also be similar in height to the Princess Theatre. The scheme would frame part of the seaward side of The Spinney, and the space on each side would allow longer views from both The Spinney and St Edmund's Terrace.
13. The building would be deeper than many others nearby, but each gabled end would be divided into 2 parallel pitched-roofed ranges, which would respect the traditional scale of most nearby buildings. The range at the front would be taller than the range at the back, so its form would reflect the sloping topography. This, and its inset form at the back near the theatre, would respect the more dominant character of the frontage development close by. The site has only one street frontage, so there would be no reason for the front elevation to turn the corner to face Westgate, or to end the views down the sinuous Sandringham Road. So, the height, form and massing of the scheme would respect the form and character of the area, and the scheme would enhance the empty site.
14. The varied roofing materials, and the pattern and vertical emphasis of the tall front bays, would harmonise with the linear pitched roofed forms and rhythm in the terraced buildings opposite. The use of some Carstone in the walls, and pantiles and slates on the roofs, would reinforce local distinctiveness. The scale, proportions, alignment and hierarchy in the fenestration would be sympathetic to that in the nearby historic buildings. The more contemporary appearance of the fenestration and balconies at the back would make the best of the seaward views, so the horizontal emphasis in the middle section would be in keeping with the seaside character of the town. The modest gables over the larger windows at the back would provide some secondary vertical emphasis to reflect the character of the bays at the front.
15. The scheme would not imitate its surroundings, but reinterpret the existing historic forms, use of materials, and detailed design in a building which would

meet modern needs. So, the form of the front and rear gables, the lack of chimneys, and the access to the parking would be acceptable. Moreover, because the height, form and design of the proposal would be readily integrated into the historic seaside townscape, which is important to the character and to the appearance of the Conservation Area as a whole, it would sustain the significance of the heritage asset.

16. There are relatively few listed buildings in the Conservation Area, but the Grade II listed Town Hall, the Cross, and the Golden Lion Hotel, are fairly close by, and all 3 are important for their contribution to the historic development of the planned Victorian seaside resort. Due to its scale, height and siting parts of the proposal would be seen from The Green which is important to their immediate settings. As the scheme would be sympathetic to the form and layout of the town in their wider settings, their settings would be preserved. Also, because the proposal would have a positive effect which would at least outweigh the negative effect of the vacant site on the Conservation Area, the significance of the nearby important unlisted buildings would not be harmed.
17. For all of these reasons I consider that the proposal would preserve the character and the appearance of the Conservation Area. It would satisfy Policy CS05 of the *King's Lynn & West Norfolk Borough Council Local Development Framework-Core Strategy* (CS) which aims to enhance the local character of the town, to promote high quality design, and for new development to meet modern requirements whilst respecting the historic environment in the Conservation Area. It would satisfy the *National Planning Policy Framework* (Framework) which aims to always seek to secure high quality design, and to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. The proposal would also satisfy CS Policy CS08 which also seeks high quality design, CS Policy CS12 which seeks, amongst other things, to protect and enhance the historic environment, and saved Policy 4/21 of the *King's Lynn and West Norfolk Local Plan* which aims for development to harmonise with the building characteristics of the locality.

#### *Vitality and viability*

18. The CS was adopted in July 2011, so it predates national policy in the Framework. CS Policy CS01 aims for Hunstanton to develop its position as a successful service hub for the area, providing retail, cultural and social facilities while strengthening its role as a year round tourist destination. CS Policy CS02 identifies Hunstanton as one of 2 Main Towns in the Borough. CS Policy CS05 maintains the thrust these Policies. It also aims to promote opportunities for residential development within the town centre. CS Policy CS09 says that new dwellings in Hunstanton will require the identification of new allocations within the town, and that, where possible, they should support the objectives in the Hunstanton regeneration plan and involve the redevelopment of previously developed land in the centre of the town. It also seeks appropriate provision for all sectors of the community, including the needs of elderly people.
19. Whilst their policy wording differs, CS Policies CS01 and CS05 seek to support the implementation of the *Hunstanton Town Centre and Southern Seafront Masterplan* (MP). The Council confirmed that, although the MP was subject to some public consultation in about 2007 and it was intended to be a background document to inform the contents and preparation of the Local Development



Framework (LDF), the MP was not adopted as a planning document in the LDF. Therefore, it attracts little weight.

20. Even so, the MP identifies a number of Opportunity Sites (OS) and the appeal site is within OS B. Amongst other things, the MP proposes that the Old Garage and bus station, which is shown on MP figure 2.4 as including the public car park and the library also, should be redeveloped in their entirety. It recognises that due to the multiple land ownerships this may not be achieved. Paragraph B3 aims to redevelop the site for larger retail units with housing above, and it suggests underground parking. Paragraph B6 proposes public realm improvements for The Spinney area which are underway.
21. The Council confirmed at the hearing that its concerns about the position of the Hunstanton as a service hub related only to the lack of retail floor space in the proposed development. Although the appellant considered design options to redevelop the wider site including the bus station, agreement could not be reached with the relevant landowners. The Council also confirmed that it has not received other proposals for the appeal site or for the rest of the OS B site.
22. A floor of shops at the site could help to link the frontages in the southern seafront with those in the High Street and Westgate, but so too could a part retail redevelopment of the rest of the OS B site, with or without the possible relocation of the bus station suggested in the MP. Although the proposal would not include the larger retail units sought, it would otherwise be consistent with the MP which says that housing could be provided on the upper floors, and its design would not prevent the redevelopment of the adjoining sites. The mass and scale of the building would be less than that shown in the MP, and natural surveillance from the flats would enhance the existing pedestrian link through the adjoining public car park between the town centre and the seafront.
23. The appellant's evidence shows that only one larger retail unit, or a number of smaller retail units, could be provided at ground floor level in mixed use schemes at the appeal site, because it is only part of the OS B site. This or these retail units would not have a significant effect on Hunstanton's role as a main town and service hub. As the schemes which would broadly fit within the height limits of the present scheme would include 9 to 10 less flats, those schemes would not be viable for the appellant. A retail floor could be included in similar schemes around one storey taller, but the appellant's view was that their increased height would not be acceptable on design and heritage grounds.
24. Furthermore, at the hearing the appellant's witness explained that due to changes in shopping patterns, including the growth of internet shopping, few retailers were actively seeking new premises. The exception to this was national chain convenience food stores. However, despite the appellant's displays at the site, no retailers had made enquiries about the potential for a mixed use development.
25. The nearby town centre includes a mixture of retail, entertainment, food and drink, and residential uses, but there are a number of empty shops in and around the High Street. There are also several charity shops in the town centre and, whilst these are a positive component of the present retail offer, the appellant's surveyor's undisputed evidence is that these are typically associated with very low rents. So there would seem to be little demand for smaller retail units. The appellant's evidence also shows that the larger retail units sought in OS B in the MP, or smaller retail units, would not be viable as a

part the sheltered housing scheme. By contrast, the proposal would help to meet the need for housing for the elderly which is identified in local policy, and the critical need for older persons' housing which is recognised in the Planning Practice Guidance (PPG).

26. Moreover, the appellant's witnesses have explained that the future occupiers of the scheme would be likely to shop frequently very close to home and that they would use other local services. This would support the existing mainly independent local retailers, as well as other services in the centre, throughout the year. Thus, the proposal would enhance the viability of the town centre and the future occupiers would make a positive contribution to its vibrancy.
27. Therefore, I consider that the proposal would not harm the vitality and viability of Hunstanton town centre. It would satisfy the thrust of CS Policy CS05, and the Framework which aims to promote the vitality of our main urban areas, and which recognises that residential development can play an important role in ensuring the vitality of centres.

#### *Affordable housing*

28. CS Policy CS09 aims, amongst other things, to maximise the delivery of affordable housing to respond to identified housing need throughout the Borough. It also aims for a flexible approach to be taken to ensure scheme viability and balance housing need, negotiated scheme by scheme, subject to an open book approach by developers.
29. As the proposal is for more than 10 dwellings, CS Policy CS09 seeks 20% on-site affordable housing. Due to the appellant's business model, which usually aims for on-site affordable housing to only be provided in separate blocks on larger schemes, for reasons including the affordability of service charges, the Council confirmed that it would not be appropriate to seek on-site affordable housing. Instead, it seeks a planning obligation for a commuted sum of £360,000 to provide 6 off-site affordable homes.
30. The appellant's surveyor's initial view was that a contribution would not be possible, for reasons including the relatively small scale of the scheme and the site constraints. Following adjustments to its initial financial viability appraisal, including the sales rate, the appellant has offered an obligation in the sum of £30,663. The basis of appellant's current financial viability appraisal (FVA) is in line with the PPG, which says that 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. Even so, the Council has raised concerns about the sensitivity of some of the assumptions made in the FVA. These are considered in turn below.
31. The Council considered that the reduced level dig and cart away costs could be lower because the excavated materials may have some value. However, materials of significant value were not identified in the site investigation. The appellant's surveyor considered that whilst there may be some value in the materials to be excavated, that value is unknown, unlikely to be significant and is outweighed by the risk of additional costs that would be required to measure, segregate and sort the material. Also, the recent advice from a potential demolition contractor is that the figure in the FVA is reasonable, but that the cost could be higher to reflect current haulage costs. Attention was drawn to a scheme in King's Lynn where recycling had proved viable, but due

to its larger scale and phasing, it differs from this single phase town centre scheme. So, the reduced level dig and cart away costs would be likely to be similar or greater than the amount included in the FVA.

32. The Council's housing witness considered that the marketing costs could be reduced due to the popularity of the locality for retirement and the significant proportion of elderly people in the town. However, in appeal decision ref APP/P1560/A/11/2161214, and supporting evidence provided to that Inquiry, my colleague found that marketing costs at 6% of gross development value was acceptable for a similar scheme which was also in a seaside resort. Although Clacton-on-Sea is not in the local area, customers would expect the same quality of marketing regionally and nationally, so that would not be a good reason to use a lower figure.
33. From the details of other schemes by the appellant in the same region as the site the average percentage marketing cost is more than one per cent higher than the 6% in the FVA. Whilst the marketing costs were less than one percent lower for the appellant's Thorpe St Andrew scheme, its closeness to the city of Norwich and its very much larger catchment area differ from the proposal. As the values for the flats were also considered by the appellant's surveyor to be optimistic, if the sales rate was to slow down for whatever reason, the marketing costs would increase. So, 6% for marketing costs is reasonable.
34. The appellant's monitoring of sales rates for new build sheltered housing schemes across the south of the country over the last 4 to 5 years shows that sales rates have generally averaged at about one sale per month. Despite this, taking into account a number of the appellant's recent schemes in the region, including Thorpe St Andrew, the sales rate has been increased to 1.3 sales per month in the FVA. Whilst the Council considers that the sales rate for the proposal should reflect the significantly higher sales rate achieved at Thorpe St Andrew, insufficient evidence was put to me to support its view.
35. As sales rates and marketing rates are related to one another, the appellant's surveyor has tested the sensitivity of these variable inputs together. Even if the marketing costs were to be reduced by one percent and the sales rate was to be increased to a similarly high rate to that achieved at Thorpe St Andrew, the increased contribution would still be well under half of the £360,000 sought by the Council. This shows that the total contribution would put the viability of the scheme at risk, and, thus, the scheme might not be implemented.
36. The Council also proposed that the obligation should be subject to a clause to allow the review of the affordable housing contribution on completion of the scheme or, say, after half of the flats have been sold. However, this would be contrary to the advice in the *RICS Professional Guidance GN 94/2012 Financial viability in planning* (GN). GN paragraph 3.6.4.1 explains that such re-appraisals are generally suited to phased schemes over the longer term, rather than a single phase scheme to be implemented immediately, which requires certainty. The PPG also advises that viability assessment in decision-taking should be based on current costs and values. Whilst the PPG includes a proviso concerning phased delivery in the medium and longer term, it says that planning applications should be considered in today's circumstances.
37. Moreover, in his appeal decision ref APP/N0410/A/13/2207771, regarding another relatively small single phase housing scheme, my colleague explained

that developers operate in a high risk environment and that an overage clause would create post-completion uncertainty, which would be likely to act as a serious disincentive to the implementation of the proposal. I agree. So, whilst the Council explained that, with the contribution capped at £360,000, a post completion review could result in a zero contribution, in the light of national policy and guidance such a review would not be necessary or reasonable.

38. Turning to the obligation which was put in after the hearing, Regulation 122 of *The Community Infrastructure Levy Regulations (CIL)* sets out 3 tests, all of which must be met. In the light of the appellant's FVA the financial contribution of £30,663 would be fairly and reasonably related in scale and kind to the development. Because the financial contribution towards off-site affordable housing would help to meet identified housing need in the Borough, it would be necessary to make the development acceptable in planning terms. Moreover, the contribution has been calculated in accordance with the appellant's FVA for this specific scheme, so it would be directly related to the development. Therefore, I consider that the proposal would make an appropriate financial contribution towards the provision of off-site affordable housing. It would satisfy CS Policy CS09. As the obligation would meet all 3 statutory tests in CIL Regulation 122, I shall take it into account.

#### *Other matters*

39. The Council has not raised concerns about the building overshadowing the local area including The Spinney. Shadows would be expected to occur at times where none occur at present, and having regard to appellant's shadow analysis, I see no reason to disagree. Regarding the vibrant nature of the locality, especially in the evenings, future occupiers would reasonably expect this when choosing to live in a town centre. The highway authority has not objected to the scheme, subject to the imposition of planning conditions. In the light of the highway authority's representations, and those of the appellant's traffic and transportation consultant, I agree. Whilst it is not labelled as such, plan 1895-1-05B shows a refuse store next to the foyer and the cycle store.
40. All of the representations of interested parties have been taken into account. However, none of the points raised against the scheme are sufficient, individually or cumulatively, to outweigh the planning considerations that have led to my conclusion. Therefore, planning permission should be granted subject to the imposition of conditions.

#### *Conditions*

41. The main parties' suggested conditions including those agreed at the hearing have been considered in the light of the advice in the Framework, the PPG, and the model conditions in Appendix A to Circular 11/95 *The use of conditions in planning permissions*. The condition identifying the plans is reasonable and necessary for the avoidance of doubt and in the interests of proper planning. The conditions to deal with potential contamination at the site, due to its previous use as a repair garage and filling station, and for foul and surface water drainage details, are necessary in the interests of public health, including preventing the pollution of controlled waters. The condition for a Construction Method Statement is necessary in the interests of highway safety and to protect the living conditions of nearby occupiers during construction.

42. Conditions to control external materials, external doors, windows, rainwater goods, and for a Carstone sample panel are necessary to preserve the character of the Conservation Area. The condition for acoustic attenuation measures is necessary to protect the living conditions of the future occupiers from noise breakout from, and associated with, the Princess Theatre. The condition for hard and soft landscaping is reasonable to protect the character and appearance of the area, but the period for replacement of trees and shrubs has been reduced to 5 years as agreed by the main parties at the hearing. The tailpiece in the landscaping condition is reasonable in the event that specific plants are unsuited to the site conditions. The condition to control the access, parking and turning areas is necessary in the interests of highway safety. The condition to control external lighting is reasonable to protect the character and appearance of the area and the living conditions of nearby occupiers.

### **Conclusion**

43. For the reasons given above and having regard to all other matters raised, the appeal succeeds.

*Joanna Reid*

INSPECTOR

### **Schedule A**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1895-1-01, 1895-1-02A, 1895-1-03A, 1895-1-04A, and 1895-1-05B.
- 3) No development hereby permitted shall take place until a scheme which includes the following components to deal with the risks associated with contamination of the site has each been submitted to and approved in writing by the local planning authority:
  - a) A preliminary risk assessment which has identified:
    - all previous uses
    - potential contaminants associated with those uses
    - a conceptual model of the site indicating sources, pathways and receptors
    - potentially unacceptable risks arising from contamination at the site
  - b) A site investigation scheme based on a) to provide information for a detailed assessment of the risk, including gas, to all receptors that may be affected.
  - c) The results of the site investigation and detailed gas risk assessment and quantitative risk assessment referred to in b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation

strategy in c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority, and the scheme shall be implemented as approved.

- 4) Following completion of the remediation works in the timescale set by the remediation scheme approved under Condition 3 a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
- 5) If during development contamination not previously identified is found to be present at the site then no further development (unless otherwise approved in writing by the local planning authority) shall be carried out until a remediation strategy has been submitted to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
- 6) No development shall take place until details of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. No part of the development shall be occupied until the foul and surface water drainage has been carried out in accordance with the approved details.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in constructing the development
  - iv) the erection and maintenance of security hoarding
  - v) measures to control the emission of dust and dirt during construction
- 8) Notwithstanding the details shown on the approved plans, no development shall take place until samples and details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples and details.
- 9) Notwithstanding the details shown on the approved plans, no development shall take place until samples and details of all external



- doors, windows, and rainwater goods have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples and details.
- 10) No above ground level development shall take place until a sample panel of Carstone walling of dimensions and siting approved in writing by the local planning authority has been erected at the site, and the sample panel has been approved in writing by the local planning authority. Development shall be carried out in accordance with the approved sample panel, and the approved sample panel shall remain in place until the local planning authority gives its written approval to its removal.
  - 11) No development shall take place until a scheme of acoustic attenuation measures in accordance with 24Acoustics Report reference R5336-1 Rev 0 dated 4 September 2014 has been submitted to and approved in writing by the local planning authority; all works which form part of the approved scheme shall be completed before any part of the development is occupied and retained as approved thereafter.
  - 12) No development shall take place until details of both hard and soft landscaping has been submitted to and approved writing by the local planning authority. No part of the development shall be occupied until the hard landscaping has been carried out in accordance with the approved details. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner, and any trees or shrubs which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of the same size and species unless the local planning authority gives written approval to any variation.
  - 13) No part of the development shall be occupied until the access, car parking spaces and turning areas shown on plan number 1895-01-05B and drainage to prevent surface water from discharging from or onto the public highway have been surfaced and drained in accordance with details which have been submitted to and approved in writing by the local planning authority, and the access, car parking spaces and turning areas shall be kept available at all times thereafter for the access, parking and manoeuvring of vehicles.
  - 14) No development shall take place until a scheme of external lighting has been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved external lighting has been installed, and the external lighting shall be retained as approved thereafter.

End of Schedule A



**APPEARANCES**

## FOR THE APPELLANT:

Giles Cannock	of Counsel, instructed by Peter Graham, Director, The Planning Bureau Limited
Peter Graham	Director, The Planning Bureau Limited
Lisa Matthewson	Principal planning associate, The Planning Bureau Limited
Martin Mence RIBA	Director, FB Architecture Ltd
David Beardmore	Urban designer and heritage consultant, Beardmore Urban
Stephen Gosling	Noise consultant, 24Acoustics
Peter Barefoot FRICS	Chartered surveyor, Alder King
Andrew Cullen MRICS	Chartered surveyor, Alder King

## FOR THE LOCAL PLANNING AUTHORITY:

David Parkin	Principal planning officer, Borough Council of King's Lynn and West Norfolk
Pamela Lynn	Conservation officer, Borough Council of King's Lynn and West Norfolk
Nikki Patton	Housing strategy officer, Borough Council of King's Lynn and West Norfolk
Kate Lawty	Senior planner and case officer, Borough Council of King's Lynn and West Norfolk

## INTERESTED PERSON:

Daniel Parton	Hunstanton Town Councillor, and representing Andrew Murray, Chairman of Hunstanton Civic Society
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**DOCUMENTS PUT IN AT THE HEARING**

- 1 Hunstanton List of Consultees, put in by the appellant.
- 2 Hearing Core Document Drawings, put in by the appellant.
- 3 Letter of 27 August 2014 from Ms Matthewson regarding the appellant's rebuttal statement to the persons on the Hunstanton List of Consultees.
- 4 Extracts from the *King's Lynn & West Norfolk Borough Council Local Development Framework-Core Strategy*, put in by the Council.
- 5 Updated draft planning obligation with plan, put in by the appellant.
- 6 *Hunstanton Conservation Area Character Statement*, put in by the Council.
- 7 Extracts from the *Hunstanton Town Centre and Southern Seafront Masterplan*, put in by the Council.
- 8 24Acoustics noise assessment, put in by the appellant.
- 9 Plans numbered 1895-2-01, 1895-2-02, 1895-2-03, 1895-2-04, 1895-2-05, and 1895-2-06, put in by the appellant.
- 10 Suggested noise condition, put in by the appellant.
- 11 Appeal decision ref APP/N0410/A/13/2207771, put in by the appellant.

**DOCUMENT PUT IN AFTER THE HEARING**

- 12 Planning obligation dated 23 September 2014, put in by the appellant.

**Appendix 12 - Retirement Profit Levels – Third Party Assessments**

## RETIREMENT LIVING DEVELOPMENTS - LIST OF RECENT PLANNING APPLICATION WHERE VIABILITY WAS AN ISSUE

	SITE LOCATION	DEVELOPER	LOCAL AUTHORITY	PROFIT % AGREED	Planning Approval Date	COUNCIL'S CONSULTANT	No. of Apartments		Comments
1	Market Harborough	Churchill	Harborough	20%	Mar-18	Aspinall Verdi	38	Planning granted Total contributions agreed at £160,300	AV Report: The applicant's appraisal shows that the scheme achieves 20% profit on GDV which equates to £1,997,600. Residential developers normally expect to secure a profit on GDV between 15% and 20% depending on the nature of the proposed scheme. We consider the proposed target of 20% of GDV to be acceptable and for the purpose of our own appraisal have also applied this target profit on GDV.
2	Cockermouth	McCarthy & Stone	Allerdale	20%	Mar-18	Keppie Massie	40	Nil contribution for affordable housing agreed.	Keppie Massie report: In undertaking residential developments developers historically sought profit returns (inclusive of overheads) in the region of 15 to 20% of GDV. In this particular instance the Viability appraisal contains a profit (inclusive of overheads) at 20% of GDV. This is considered a reasonable level of return in this case given the characteristics of the development proposals, and in particular the fact that it is not possible to phase development to match sales rates.
3	Ashbourne	Churchill	Derbyshire Dales	20%	Apr-18	DVS	38	Planning granted total contributions of £144,955	DVS report: For moderate to large sized residential developments it is not uncommon for developers to state a profit figure as a certain percentage based on scheme costs or value. ... Churchill Retirement Living shows a profit on costs of 24.85% on profit on GDV of 20% (sic). ... I have chosen this profit level of 20% on GDV which equates too (sic) £1,489,599 developers profit. To demonstrate viability therefore I am looking for the residual figure for profit of a planning compliant scheme to show a profit level in excess of the rates detailed above.
4	Hythe	McCarthy & Stone	New Forest	20%	Apr-18	DVS	35	Agreed contribution of £46,283 for Affordable housing and £106 to be paid plus a 'top up' of £220,067 if ground rents can be charged on completion	DVS report: For private flatted schemes we would normally adopt a profit level of between 17.5% and 20%. We believe that a profit level of 20% on GDV for this scheme is reasonable taking into account the risk of this retirement living flatted scheme, which needs to be built before units can be sold with an extensive sales period, and has been adopted on other retirement schemes in the region. AK have also adopted 20%.
5	Hitchin	Churchill	North Herts	20%	May-18	Dixon Searle	53	Planning granted with contribution of £462,079	Profit level of 20% accepted by DSP
6	Reigate	Churchill	Reigate and Banstead	20%	May-18	In-house Council	31	Planning granted with AH contribution of £240,000	Profit level of 20% accepted by Reigate and Banstead
7	Yate	Churchill	South Gloucestershire	20%	May-18	DVS	62	Planning granted with AH contribution of £322,671	DVS report: In modelling the development viability appraisal, I have however also included a developers return of 20% against GDV on market housing in the particular circumstances of this case, including the additional perception of risks arising from the brownfield nature of the site and the indicated abnormal site costs. ... I am of the view that in the light of evidence available, and our own experience of development appraisals this level of developer's return represents a 'competitive return' in this case, as described in paragraph 173 of the NPPF.
8	Bridgnorth	Churchill	Shropshire	20%	May-18	DVS	52	Agreed following refused planning application. Nil contribution for affordable housing.	DVS report : An allowance for developer's profit based on 20% of the gross development value has been adopted by the planning applicant's agent. In my opinion, this is not unreasonable, but does sit at the upper end of an acceptable range for a development scheme of this nature.
9	Staines	Churchill	Runnymede	20%	Jun-18	Dixon Searle	29	Planning granted with affordable housing of £439,686	Profit level of 20% accepted by DSP.
10	Great Tattenhams	Churchill	Reigate and Banstead	20%	Jun-18	In-house Council	34	Planning granted with affordable housing contribution of £470,000	Reigate and Banstead accepted profit level of 20% of GDV
11	Royston	Churchill	North Herts	20%	Jun-18	Dixon Searle	41	Viability agreed at £315,000 for affordable housing	Profit level of 20% accepted by DSP.
12	Abergavenny	McCarthy & Stone	Monmouthshire	20%	Jul-18	DVS	47	Viability agreed at £231,000 for affordable housing	Profit level of 20% accepted by DVS.
13	Stalham	McCarthy & Stone	North Norfolk	20%	Jul-18	Stuart Bizley	30 (Plus 12 Bungalows)	Viability agreed at £Nil for affordable housing	No specific commentary provided on profit, but 20% not disputed by Stuart Bizley
14	Bingley	McCarthy & Stone	Bradford	20%	Aug-18	Cushman & Wakefield	45	Affordable Housing contribution of £245,091 agreed	C&W undertakes a significant number of bank funding valuations for developments to be undertaken by housebuilders and can confirm that a development which generates a profit of GDV of less than 20% is highly unlikely to be able to secure development funding. In the absence of bank funding, some housebuilders have sought funding through alternative sources, notably high net worth individuals and property investment companies. In our experience, such individuals are also unwilling to support developments which generate a profit of less than 20% of GDV. The Applicant has identified an appropriate profit level as being 20% of GDV, which we consider appropriate. We have therefore assumed a profit of 20% of GDV is required to make the scheme viable."
15	Barnsley	McCarthy & Stone	Barnsley	20%	Aug-18	DVS	54	Nil contribution for affordable housing agreed.	

16	Cambourne	McCarthy & Stone	South Cambridgeshire	20%	Aug 2018 and June 2019	Bespoke	49 revised to 54	Affordable Housing contribution of £160,264 agreed	The Applicant has identified an appropriate profit level as being 20% of GDV, which we consider appropriate. We have therefore assumed a profit of 20% of GDV is required to make the scheme viable."
17	Knowle	Churchill	Solihull	20%	Sep-18	Cushman & Wakefield	30	Planning granted AH contribution of £184,870	CW report: PI have allowed for a 20% return on GDV for the open market dwellings, which Cushman and Wakefield views as consistent with lender expectations concerning profit margins.
18	Filey	McCarthy & Stone	Scarborough	20%	Sep-18	In-house Council	39 (Plus 20 Bungalows)	Total S106 contribution of £300,000 agreed.	Profit level of 20% accepted.
19	Waltham Abbey	McCarthy & Stone	Epping Forest	20%	Sep-18	Kift Consulting	52	Viability Agreed off-site contribution £437,749.	Profit level of 20% accepted. Kift Consulting report stated: Current profit levels for private residential / commercial components of a scheme are likely to fall within a range of 15-20% on Gross Development Value (GDV) or 20-25% on Cost, depending on the circumstances of the proposal. Further, it is widely acknowledged following a number of Appeal decisions, which have highlighted the perception of higher risk due, in part, to the longer sales periods experienced in the retirement market to that of the general needs market that a profit margin of 20% is appropriate for this type of product
20	Abingdon	Churchill	Vale of White Horse	20%	Oct-18	BNP Paribas	36	Planning granted with affordable housing contribution of £442,309.	BNP report: We have adopted a profit rate of 20% on GDV for the market housing units to reflect the level of risk that we consider to be present in the current market.
21	Shipston on Stour	Churchill	Stratford on Avon	20%	Oct-18	Lambert Smith Hampton	33	Total S106 contribution of £265,000 agreed.	LSH Report: The overall target return has been fixed at 20% on Gross Development Value.  Due to the nature of retirement housing the schemes are delivered in flatted, usually single phase projects, with inefficient net to gross floor space ratios. Usually, the entire development has to be completed and ready for occupation prior to the first sale. In addition, there is also a restricted buyers market given than age of the purchasers. The adopted developer's profit is considered reasonable.
22	Burnham	Churchill	South Bucks	20%	Nov-18	DVS	48	Viability agreed prior to appeal (allowed) with affordable housing at £325,997	20% Profit on GDV accepted by DVS
23	Nuneaton	McCarthy & Stone	Nuneaton & Bedworth	20%	Nov-18	In-house Council	50	Nil contribution for affordable housing agreed.	Viability inputs accepted including 20% profit on GDV.
24	Chippenham	Churchill	Wiltshire	20%	Jan-19	Cushman Wakefield	46	Planning granted with affordable housing at £107,000	Alder King (on behalf of Churchill Retirement Living); The profit amount is fixed at £2,324,000 representing in performance measures, 20% profit on GDV. This level of profit is the current accepted norm of the marketplace for flatted Sheltered Housing (Developers would typically seek a minimum profit level of 20% on open market GDV for a large flatted development of this nature).
25	Purley (Woodcote Road)	McCarthy & Stone	Croydon	20%	Mar-19	BNP Paribas	26	Viability agreed prior to appeal (allowed) at £39,515.	BNP: The Applicant has adopted a profit on value of 20%. We have adopted a profit rate of 20% on GDV for the market housing units to reflect the level of risk that we consider to be present in the current market. We recently experienced a range of 17% to 20% on GDV when considering developments in the London area. However, due to the uncertainty that is now apparent after the EU Referendum in the United Kingdom and potential risks associated with leaving the European Union, we consider a profit allowance of 20% on GDV to be reflective of the current market.
26	Rainham	Churchill	Medway	20%	Apr-19	Pathfinder	54	Planning granted with affordable housing contribution of £225,000.	Pathfinder: It is currently deemed likely that any private residential development proposals predicting an overhead and profit return of less than between 15% and 20% of gross development value would not be considered viable. We note the contents of the recently revised NPPF in this regard, and separately the minimum of most funders. We have therefore adopted an overhead and profit rate of 20% of gross development value for the scheme ... taking into account the levels of working capital employed before sales occur (sic) and the lengthy sales periods for such projects.
27	Orpington	Churchill	Bromley	20%	Apr-19	Adams Integra	27	Viability agreed prior to appeal (allowed) with affordable housing of £87,615	Profit level of 20% accepted by Adams Integra.
28	Taunton	Churchill	Taunton Deane	20%	May-19	In-house Council	72	Planning granted with agreed contribution of £167,430	Viability inputs accepted including 20% profit on GDV. (see notes to Oxted (19) below.
29	Bitterne	Churchill	Southampton	20%	May-19	DVS	34	Viability agreed prior to appeal (allowed) at £104,741	DVS report: In the current market a range of 15% to 20% of GDV for private residential, 6% of GDV for affordable is considered reasonable. The applicant has used a profit rate of 20% on GDV for this scheme which, whilst at the high end of the range we would expect to see, is deemed acceptable for this flatted development of retirement flats taking account of the inherent associated risks involved with this type of scheme.

30	Tadley	McCarthy & Stone	Basingstoke & Deane	20%	May-19	Adams Integra	42	Planning awaiting determination but AH contribution of £202,326 agreed	Adams Integra Report: Our experience over the last 5 years is that a typical allowance would currently be between 15% and 20% on GDV.  The Alder King report says the following: "As such, it is the current accepted norm of the marketplace that the appropriate developer profit level for specialist retirement housing represents a minimum of 20% Profit on GDV. Recent Appeal Decisions concerning retirement housing including at Cheam and Redditch have confirmed this position.  In respect of the separate retail/open market apartment block, we have applied a lower profit level of 18.5% on GDV to reflect the lower risk associated with a non-retirement development."  In this case, it is our opinion this is a fair and reasonable assumption.
31	Oxted	Churchill	Tandridge	20%	Jun-19	Adams Integra	34	Negotiations continuing but 20% profit target agreed with Adams Integra.	Adams Integra: We are satisfied that a profit level of 20% of GDV for the open market units is a fair and reasonable assumption.
32	Melton Mowbray	McCarthy & Stone	Melton	20%	Jun-19	DVS	46 (Plus 10 Bungalows)	Planning awaiting determination but AH contribution of £210,000 agreed	DVS report: This is regarded to be a popular location and DVS view that the scheme will be well received, however I have examined appeal decisions on retirement schemes and agreements on this issue and recognise 20% is frequently adopted.  An allowance for developer's profit based on 20% of the gross development value has been accepted.
33	Hinckley	McCarthy & Stone	Hinckley and Bosworth	20%	Jun-19	Lambert Smith Hampton	57 Extra Care (Plus 16 Retirement Living Bungalows)	Total S106 contribution of £219,000 agreed.	Profit level of 20% accepted by LSH.
34	Kendal	Churchill	South Lakeland	20%	Jan-20	Adams Integra	64 Retirement Living	AH agreed by Adams Integra at NIL	Profit at 20% GDV is in line with similar requirements elsewhere on brownfield land.
35	Shirley	Churchill	Solihull	20%	Feb-20	Cushman & Wakefield	48 Retirement Living	AH agreed at £462k	20% on GDV in line with lender expectations
36	Ruddington	Churchill	Rushcliffe	20%	Feb-20	Cushman & Wakefield	43 Retirement Living	AH agreed at £226k	20% on GDV in line with lender expectations
37	Handforth	Churchill	Cheshire East	20%	Jun-20	Keppie Massie	45 Retirement Living Apartments, reduced to 39 units.	AH agreed at £292,000. Reduced scheme of 39 units agreed at NIL in May 2022	Profit agreed at 20% acceptable for this type of proposal.
38	Fleet	Churchill	Hart District Council	20%	Jan-21	Avison Young	31 Retirement Living Apartments	Agreed in advance of appeal.	Agreed in advance of appeal including wider planning issues in recognition of typology proposed.
39	Bicester	Churchill	Cherwell	20%	Nov-21	Bidwells	40 Retirement Living Apartments	Agreed during determination locally.	In our view, the sales risk presented by a flatted scheme, where revenue cannot be received until completion of construction, supports the inclusion of a return of 20% GDV in the current market.
40	Lymington	Churchill	New Forest DC	20%	Nov-21	Bruton Knowles	32 Retirement Living Apartments	Agreed during determination locally.	20% accepted in final position.
41	Wells	Churchill	Mendip	20%	Jun-21	Steve Blake	47 Retirement Living Apartments	Agreed during determination locally.	Although this is at the top end of the acceptable range referred to in the NPPG, it is acknowledged that this appears to be an acceptable rate taking into account the risks associated with retirement housing.
42	Basingstoke	Churchill	Basingstoke & Deane	20%	Mar-21	Aspinall Verdi	56 Retirement Living Apartments	Agreed during determination locally.	Agreed at 20% on GDV.
43	Seaford	Churchill	Lewes	20%	Jun-21	Bespoke	37 Retirement Living Apartments	Agreed during determination locally.	20% return on GDV accepted for this typology.
44	Tenterden	Churchill	Ashford	20%	May-20	Bespoke	54 Retirement Living Apartments	Agreed during determination locally.	20% return on GDV is the appropriate allowance for this development in the current market.
45	Swanley	Churchill	Sevenoaks	20%	May-21	Adams Integra	34 Retirement Living Apartments	Agreed during determination locally.	We are satisfied that a 20% profit (on GDV) is a fair and reasonable assumption.
46	Kings Heath	Churchill	Birmingham	20%	Apr-21	LSH	38 Retirement Living Apartments	Agreed during determination locally.	We are of the opinion that a profit of 20% on GDC is appropriate for a retirement scheme of this nature.
47	Kings Norton	Churchill	Birmingham	20%	Jul-21	LSH	52 Retirement Living Apartments	Agreed during determination locally.	We are of the opinion that a profit of 20% on GDC is appropriate for a retirement scheme of this nature.
48	Evesham	Churchill	Wychavon	20%	Jun-22	DVS	49 Retirement Living Apartments plus 7 Retirement Cottages	Profit issue agreed as part of local level discussions. Wider appeal regarding build costs	20% on GDV deemed appropriate for the typology.
49	Kendal	Churchill	South Lakeland National Park	20%	Mar-21	Aspinall Verdi	64 Retirement Living Apartments	Agreed during determination locally.	20% on GDV accepted following engagement and acceptance of risk and precedence presented.
50	Brackley	Churchill	South Northampton	20%	Aug-21	In House	54 Retirement Living Apartments	Agreed during determination locally.	Agreed 20% on GDV reasonable for a proposal including retirement living.
51	Diss	Churchill	South Norfolk	20%	Dec-21	NPS	58 Retirement Living Apartments Plus 15 Retirement Cottages	Agreed during determination locally but issues relating to build cost and other minor issues discussed at appeal.	Profit agreed at 20% acceptable for this type of proposal.
52	Didcot	Churchill	South Oxfordshire	20%	TBC	Adams Integra	29 Retirement Living Apartments	A payment of £132,000 deemed available for all S106 on this 29 unit scheme.	In this case, it is our opinion that a profit level of 20% on GDV is a fair and reasonable assumption.
53	Staplehurst	Churchill	Maidstone	20%	TBC	Dixon Searle	27 Retirement Living Apartments Plus 2 Retirement Cottages	Agreed viability locally at £147k for all contributions. Other planning issues at appeal.	20% on GDV accepted in recognition of longer sales periods and risk exposure in comparison with non age restricted comparable schemes.

54	Great Shelford	Churchill	South Cambridgeshire	20%	TBC	BNP Paribas	39 Retirement Living Apartments	Agreed viability. Other planning issues at appeal.	20% on GDV accepted for typology.
55	Exeter	Churchill	Exeter	20%	TBC	Andrew Burrows	84 Retirement Living Apartments	Agreed profit but build cost in dispute	20% on GDV accepted.
56	West Kirby	Churchill	Wirral	20%	TBC	CP Viability	38 Retirement Living Apartments	Agreed position on profit and expedient agreement of £200,000 for all contributions.	20% agreed with consultants in line with plan wide viability study.
57	Newport Pagnell	Churchill	Milton Keynes	20%	Nov-22	Affordable106	47 Retirement Living Apartments plus 3 cottages	Agreed position on profit	20% agreed with consultants in line with plan wide viability study.
58	Clacton	Churchill	Tendring	20%	Aug-22	BNP Paribas	61 Retirement Living Apartments	Agreed position overall - unviable for any payments.	20% agreed in line with typology risk due to age restriction.
59	Aldridge	Churchill	Walsall	20%	Sep-22	LSH	49 Retirement Living Apartments plus 7 Retirement Cottages	Agreed position overall - pot of £370,000 for all contributions.	20% agreed in line with typology risk and sales profile
60	Drayton	Churchill	Portsmouth	20%	Jan-22	DSP	54 Retirement Living Apartments	Agreed position overall - unviable for any payments.	20% agreed in line with typology risk "as elsewhere"
61	Southwater	Churchill	Horsham	20%	May-22	Bespoke	36 Retirement Living Apartments plus 6 Cottages	Agreed position overall	20% agreed in line with typology risk due to age restriction.
62	Gravesend	Churchill	Gravesend Council	20%	Jun-22	Pathfinder	78 Retirement Living Apartments	Agreed position - unviable for any payments.	20% agreed in line with typology risk and scale.
63	Tonbridge	McCarthy & Stone	Tonbridge & Malling	20%	May-22	BK	36 Retirement Living Apts	Agreed Position at Appeal	20% agreed as the appropriate profit level for Retirement Development
64	Dunton Green	McCarthy & Stone	Sevenoakes District Council	20%	Jan-22	DSP	37 Retirement Living Apartments	Agreed position with a sum of £237,870 for S106	20% Agreed
65	Maghull	McCarthy & Stone	Sefton Council	20%	Apr-22	CP Viability	44 Retirement Apartments	Agreed position with a sum of £80,000 for S106	20% Agreed.
66	Southampton	McCarthy & Stone	Southampton Council	20%	Dec-21	DVS	66 Retirement Apartments	Agreed Position on Profit	20% Agreed - The latest NPPF guidance suggests a profit level of 15-20% and on this basis I have adopted 20% of GDV based upon our expectations for a scheme of this nature in respect of the private units and agreed on similar types of scheme in the area. This is higher than the rate normally adopted for non-retirement schemes but this is due to the smaller number of purchasers due to the age restrictions and the longer sale timescale and the risks associated.
67	Faringdon	McCarthy & Stone	Vale of White Horse	20%	TBC	Adams Integra	48 Retirement Living	Agreed Position - Scheme not viable	20% Agreed - In this case, it is our opinion that a profit level of 20% on GDV is a fair and reasonable assumption.
68	Seaford	McCarthy & Stone	Lewes District Council	20%	TBC	Bespoke	40 Retirement Living Apartments	Agreed Position on Profit	20% Agreed - Profit – the applicant has adopted a figure of 20% of GDV for the return for risk and profit. The competitive land market that now exists is pushing this margin down to 17% for less complicated/smaller and 'oven ready' developments. For this development we consider 20% is appropriate in the current market

**Appendix 13 - Appeal Decision (APP/P3040/W/19/3229421)**





# Appeal Decision

Hearing Held on 3 December 2019

Site visit made on 3 December 2019

**by Andrew McGlone BSc MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 January 2020**

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**Appeal Ref: APP/P3040/W/19/3229412**  
**Former Sandcliffe Motors, Loughborough Road, West Bridgford,**  
**Nottingham NG2 7LJ**

- 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 Churchill Retirement Living against the decision of Rushcliffe Borough Council.
  - The application Ref 18/02521/FUL, dated 21 September 2018, was refused by notice dated 8 May 2019.
  - The development proposed is redevelopment to form 54 retirement living apartments, together with access, communal facilities, car parking and landscaping.
- 

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 16 December 2019.

## Decision

1. The appeal is allowed and planning permission is granted for redevelopment to form 54 retirement living apartments, together with access, communal facilities, car parking and landscaping at the former Sandcliffe Motors, Loughborough Road, West Bridgford, Nottingham NG2 7LJ in accordance with the terms of the application, Ref 18/02521/FUL, dated 21 September 2018, subject to the conditions in the attached schedule.

## Procedural Matters

2. Since the Council refused planning permission, the Rushcliffe Local Plan Part 2: Land and Planning Policies (LP2) has been adopted. As such, policies within the LP2 now carry full weight and they supersede the saved policies from the Rushcliffe Borough Non-Statutory Replacement Local Plan (Local Plan). Thus, saved Local Plan Policy GP3 which was referred to in the reason for refusing planning permission is no longer relevant. The main parties agree that the development plan now comprises of the Rushcliffe Local Plan Part 1: Core Strategy (Core Strategy) and LP2, with the relevant policies to the case being Core Strategy policies 8 and 19. The Council add that LP2 Policy 1 effectively replaces Local Plan Policy GP3.
3. At the Hearing, a signed and dated Unilateral Undertaking (UU) was submitted by the appellant company. The UU provides for affordable housing and/or healthcare infrastructure contributions. I shall turn to the UU in due course.

4. Prior to the Hearing, the appellant company submitted a Financial Viability Assessment (FVA) relating to a development proposal being considered by the Council at Manor Park, Ruddington. In written correspondence prior to the Hearing the Council stated that the consideration of the FVA would prejudice their case. Consequently, I invited the appellant company to explain at the Hearing the relevance of the FVA, why it was not submitted in accordance with the usual timeframes and to highlight the relevant part of the FVA that they sought to rely on. I understand that it is a fairly recent document and the appellant company's point that the Council had appeared to have accepted 20% developer profit on the Manor Park scheme.
5. In response, the Council put forward a view that if they were to adopt a 20% developer profit then it was only right to consider the appeal scheme and the Manor Park scheme based on the same variables. I heard oral evidence about what the outcome might be for the appeal scheme in terms of its viability if this approach was adopted. To demonstrate their point, a viability appraisal based on 20% developer profit (VA20) was submitted by the Council at the Hearing.
6. As a result of the VA20, the appellant company queried whether the Council were regaling from the matters agreed around viability in the Statement of Common Ground (SoCG). The Council said that it was not and was only responding to the evidence submitted after the SoCG was signed. In my view, the Council have done exactly this, but in doing so there was some doubt as to whether the matters agreed in the SoCG relating to the proposal's viability would have or could have remained in agreement.
7. Through evidence given at the Hearing, it was evident that the appellant company's position in respect of developer profit did not solely hinge on the FVA, albeit it was one strand of this evidence. Therefore, and given the content of VA20, in the interests of fairness and natural justice, I advised the main parties that an adjournment to a later date would have been necessary to allow both parties to consider the respective evidence. However, before doing so, in the interests of making good use of Hearing time, I asked both parties to discuss their respective positions during an adjournment and to clarify which evidence that they wished me to consider the appeal scheme on.
8. The appellant company subsequently confirmed that they wished to withdraw the FVA from the body of evidence before me. Despite their initial reservations to the FVA, the Council indicated that they wished to rely on the FVA. However, as this document was no longer before me, I advised the Council that they would need submit the FVA for it to be considered. The Council chose not to do so and subsequently withdrew VA20 from the body of evidence before me. Therefore, in reaching my decision I have not considered the FVA or the VA20.

### **Main Issue**

9. The main issue is whether or not the proposed development would make adequate contributions towards affordable housing and healthcare infrastructure provision, having regard to development viability.

### **Reasons**

10. The appeal site, which is around 0.27 hectares in size, relates to a former car dealership located on the corner of Loughborough Road (A60) and Bridgford Road. The site is covered by hard standing and is currently used for car

parking. Access to the site is from the dual carriageway of Loughborough Road to the west and Bridgford Road to the north. Residential properties and small shops with residential properties above are to the east of the site. Victorian terraced residential properties are to the south while apartment blocks front Rushworth Avenue. Immediately to the north-east is Trent Bridge Cricket Ground. City Hall, a large public building constructed in a Neo-classical style is on the opposite side of Loughborough Road.

### Affordable housing

11. Core Strategy Policy 8 explains that residential development should maintain, provide and contribute to a mix of housing tenures, types and sizes in order to create mixed and balanced communities. The main parties agree that of the 3,380 new homes identified through the LP2 site allocations, none are specifically allocated for older persons accommodation. That said, any scheme coming forward, just like the appeal scheme, would need to address Core Strategy Policy 8 (2) in considering the needs and demands of the elderly as part of the overall housing mix, in particular in areas where there is a significant degree of under occupation and an aging population. This policy, however, does not rule out schemes which only address the ageing population.
12. There is no dispute between the main parties that there is a clear need to plan for homes within the Borough that meet the needs of a number of sections, including those for older people. By way of context, paragraphs 3.141 and 3.142 of the LP2 identify that the older population (aged 65 years and over) is projected to increase by around 53% by 2034, with the number of people over the age of 80 projected to double over the same period. The proportion of people making up the older population category is projected to increase at a faster rate than the overall population of the Borough, which has an older age profile compared to that of England. Since 2011, 36 older persons units at Century Court have been granted planning permission<sup>1</sup>. Other older persons accommodation has also been granted planning permission<sup>2</sup>, but with care also, and as such fall into a C2 Use Class.
13. **As part of the Council's overall housing strategy**, Core Strategy Policy 8 (4) states that new residential developments should provide for a proportion of affordable housing on sites of 5 dwellings or more or 0.2 hectares or more. **Given the site's location within West Bridgford the appeal scheme is required to provide 30% affordable housing.** At the Hearing, the Council informed me that there is a dire need for affordable housing provision in the Borough and that the need is more acute than the threshold set out in Core Strategy Policy 8 (4), but that this threshold was **adopted on the basis of site's being viable**. The appeal scheme based on Core Strategy Policy 8(4) should provide 16.2 affordable units or a commuted sum of £750,000 towards affordable housing.
14. However, the main parties agree that an on-site provision of affordable housing in this case would be impractical and that an offsite contribution would be acceptable through a commuted sum. I have no reason to form a different view based on the evidence before me.
15. Paragraph 57 of the National Planning Policy Framework (the Framework) explains that where up-to-date policies have set out the contributions expected

<sup>1</sup> Council Ref: 14/01637/FUL

<sup>2</sup> Ref: Specialist Accommodation for Older Persons in Rushcliffe Borough since 2011

from development, planning applications that comply with them should be assumed to be viable. The Planning Practice Guidance (the Guidance) also adds that the role for viability assessment is primarily at the plan making stage. However, Core Strategy Policy 8 (5) recognises that a number of factors will determine the overall proportion and mix of affordable housing. These include, among other things, the ability to deliver affordable housing alongside other requirements, taking into account broad assessments of viability. Core Strategy Policy 8 (5) goes on to explain that a financial appraisal of the proposal will be expected in order to determine an appropriate level of affordable housing.

16. The dispute in this case focusses on the viability of the proposed development and the consequential amount of planning obligations that the appeal scheme can bear. The SoCG confirms that the areas in dispute are: developer profit; empty property costs (EPC); and disposal rate. The dispute on EPC is linked to the disposal rate. As a result, the appellant company contends that the proposal can viably provide £187,168 for all contributions, whereas the Council consider that the scheme can viably provide £511,000 for all contributions. Given the dispute, **I attach significant weight to the parties' respective financial appraisals** of the appeal scheme and associated evidence. It is of note, however, that **the appellant company's figure has been revised upwards** from £127,698 since the Council refused planning permission. This revised position takes into account their more recent Affordable Housing and Viability Revisions (AHVR) assessment which considers disposal rate.

#### Disposal rate

17. Based on evidence submitted before the AHVR, the Council estimated a sales rate of 2.08 apartments per month whereas the appellant **company's estimate** was 1.29 apartments per month. These respective figures led to EPC's of £154,913 and £254,574, a monetary difference of £99,661.
18. The AHVR seeks to address points raised by the Council by: comparing sites from the Midlands region, looking at more recent sales rates from 2016 to date, and omitting outlier figures. The AHVR also takes into account sales rates from the Century Court development. As a result, the estimated revised sales rate is 1.55 apartments per month, which results in an EPC of £203,155. Thus, the monetary difference between the parties' in terms of EPC's is now £48,305.
19. While the **sales rates from the site's in the AHVR** do not reflect the typical geographic extent of the Midlands region, as they are based on the appellant **company's operational Midlands region**, they do omit sites from the south of England, which was a concern raised by the Council, as part of the analysis of disposal rates. The AHVR focusses on sales **rates from site's developed or** currently being sold by the appellant company since 2016. This provides the most up-to-date picture of sales rates, given that some sites detailed in earlier iterations of sales rates evidence across the Midlands region date from 2011 to 2015 could have potentially been affected by the last financial crises. As I do not have any other evidence about sales rates during the same period of time before me, the AHVR is a fair body of evidence to draw comparisons from.
20. Notably, the AHVR includes a number of the same sites previously analysed. Three further sites have been added: Cheltenham, Cowbridge and Ashbourne. The latter two have only been selling for around six months. The former for around a year. Even comparing these three sales in isolation, it is apparent that sales rates can fluctuate considerably. However, it is noticeable sites

compared throughout the body of evidence before me that there has been a decline in their average sales rates between July 2019 and November 2019. Given the number of units now sold on the schemes at Formby, Shirley, Quinton, Ludlow and Aldridge, there appears to be a correlation between the expected slower rate of sale after the initial few months of sales and the current sales rate. The current higher sales rates at Cowbridge and Ashbourne **broadly reflect the appellant company's experience of early demand, before** a typically lower rate of sale takes hold as time progresses. The appellant company expects the appeal scheme to reflect their experience elsewhere as prospective purchasers typically visit a development several times and seek input from family members before committing to a purchase. I also understand that prospective purchasers like to see the communal facilities, given that the purchase often involves an important change to their lives.

21. I consider that the Cowbridge and Ashbourne schemes should be discounted as their sales rates could, based on schemes elsewhere, fall after the initial sales period. The Cheltenham scheme should also be discounted as it is not generally reflective of the sales rates elsewhere. The Council referred to a McCarthy and Stone development in Derbyshire which is said to have a similar disposal rate as that adopted by the Council. However, I do not have any details of this scheme before me and at the Hearing, the Council accepted that their estimated sales rate is on reflection too high. I agree.
22. Nevertheless, the Council contend that a sales rate of 1.55 apartments per month is too low, with a figure between the two broadly acceptable. The Council pointed to the overall average sales rate at Century Court where each of the 36 no. units have been sold or transferred for rent, with an overall average sales rate of 1.80 apartments per month. This is a higher rate of sale that **may reflect the 'pent up' demand** for this type of accommodation in the Borough which both parties expect there is. Even so, this scheme included 9 no. units for rent, which I understand to be an unusual arrangement for older persons housebuilders, and that this scheme was part of a trial. The proposal does not include any rental units. Hence, the two schemes are not overall directly comparable. There is also uncertainty about whether the Century Court sales rate would be realised at the appeal site, given that it is not unrealistic for sales rates to vary between sites due to the respective scales.
23. Land Registry records indicate that each the flats in the Century Court sold on 28 February 2017. While, the main parties agreed that this was an attractive sought-after location and even if the proposed units were to sell for a higher price than the units in the Century Court scheme, it is unrealistic that all of the units would have sold on a single day, given the evidence before me.
24. The **site's location** in West Bridgford with good access to a range of facilities and services does, in my view, lend itself to having the potential for this sales rate to realised or even exceeded. Yet, there are no guarantees. **The Council's** stance is a judgement based on their experience. In time, this judgment may prove to be correct, and a shorter overall sales period of around 30 months realised, but there is not a sufficient body of substantive evidence before me that supports this sales rate to counter the actual sales rate from other sites. In this context, it is reasonable to adopt a sales rate of 1.55 apartments per month and thus, **I consider the appellant company's estimate of EPCs,** estimated at £203,155, to be more robust.

Developer profit

25. The Guidance<sup>3</sup> says for the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. Plan makers may choose to apply alternative figures where there is evidence to support this according to the type, scale and risk profile of planned development. A lower figure may be more appropriate in consideration of delivery of affordable housing in circumstances where this guarantees an end sale at a known value and reduces risk. Alternative figures may also be appropriate for different development types.
26. The appellant company made the valid point at the Hearing that the 15-20% return of GDV set out in the Guidance applies to plan making only as it is not specific to decision making. I agree, but it is still a useful benchmark for what may be considered to be a suitable return on the measure of risk associated with this type of development. The Guidance does say that alternative figures may be appropriate for different development types.
27. **In the Council's judgement, they say that** a reasonable return would be 18.5% of GDV. The appellant company says this should be 20% of GDV due to the specific type of development that is being proposed. Compared to flats to meet general needs housing, the proposed flats would need to complete before any of the units are sold due to the provision of communal facilities. The flats are also targeted towards a specific element of the community, and to this end a planning condition is suggested by both parties to control future occupation of the proposed development. Added to this, many occupants of older persons accommodation do not move until they need to. Thus, it can take a good period of time for all the units to be occupied. This would apply to whichever of sales rates put to me, as both equate to a period of 30 months or over.
28. Pulling these factors together, there is considerable uncertainty linked with older persons accommodation as they do tend to provide a much slower return on investment compared to general needs housing which can be phased. The Guidance<sup>4</sup> recognises that such schemes can vary from standard models of development for sale. In my view, they have the potential to be riskier. Yet, this does not mean that a blanket 20% return should always be an appropriate level of return on the risk.
29. Various schemes<sup>5</sup> have been brought to my attention by the main parties where their suggested approach to developer profit has been adopted. Discussion at the Hearing focussed on the Roundhay scheme in Leeds<sup>6</sup>. The Inspector in this case considered that a 20% return on GDV was not justified and that a 18.5% return was reasonable. Even if the appeal site is located in a buoyant local market for older persons housing in the same manner as the Roundhay scheme, the **Inspector's decision took into account the appellant's** offers based on a 18.5% profit. No such offer is before me.
30. The Council refer to schemes said to have applied a 15% and 16% return of GDV. However, I do not know which specific schemes that these returns relate

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<sup>3</sup> Planning Practice Guidance, Paragraph: 018 Reference ID: 10-018-20190509

<sup>4</sup> Planning Practice Guidance, Paragraph: 007 Reference ID: 10-007-20190509

<sup>5</sup> Appeal Decision Refs: APP/Q1825/W/17/3166677; APP/P5870/W/16/3159137; and APP/X2220/W/16/3161979

<sup>6</sup> Appeal Decision Ref: APP/N4720/A/14/2227584



to, and the full circumstances that led to them, but of the schemes listed they are of a different scale to that proposed. Equally there are other schemes<sup>7</sup> which have all generally considered a 20% return of GDV to be acceptable that I do not have the full details of either. As such, each site needs to be considered on its own merits.

31. Paragraph 4.30 of the Rushcliffe Borough Council Whole Plan and Community Infrastructure Levy Viability Assessment outlines that **"in current market conditions, and based on the assumed lending conditions of the financial institutions, a 20% return on GDV is used in the residential viability appraisals to reflect speculative risk on the housing market units."**
32. The appellant company has submitted several letters from the HSBC Bank. These are not specific to the proposed development, but they do indicate that the lender would be highly unlikely to provide funding on an individual site with less than 20% developer profit (net profit) based on the risks associated with the more limited market associated with this type of development. The bank also explains that they do not see 20% developer profit as a ceiling and that this type of development poses additional risk compared to general mortgage funded new build sales as there is no assistance from Help to Buy. This factor of risk is in addition to those that I set out earlier. Collectively, these lend **weight to the appellant company's** contention that this type of development tends to have a higher level of risk.
33. The HSBC Bank indicate that a pre-sales dimension may provide mitigation to this. The Council suggested that 10 units (18.5% of the total proposed) would be a large pre-sales dimension. However, the appellant company confirmed that the 10 no. units anticipated for sale upon completion of the development are not actually pre-sales as prospective purchasers do not have an obligation to buy these units having parted with a £1,000 refundable deposit. While, prospective purchasers who have paid a deposit may go on to buy a flat, contracts would only be exchanged and the full price paid once the unit and the whole development have been practically completed. Thus, the proposal would not involve a large pre-sales dimension as prospective purchasers could back out and the level of risk would not diminish until the development, and thus the sale is completed.
34. My attention was also drawn by the appellant company to schemes at Bingley and Knowle<sup>8</sup>. One of the schemes relates to the appellant company, the other a competitor. The **Council's viability consultant** in both cases cited a 20% return on GDV as consistent with lender expectations and that anything less than that would be highly unlikely to secure development funding from the banks. Although alternative funding sources have been used, in their experience, they also seek a 20% return.
35. Overall, there is a clear steer that, in conjunction with other factors relating to this case that a 20% return on GDV is not unreasonable or excessive and, in accordance with the Framework, would represent a competitive return to attract a willing developer. Hence, this figure can be used to assess the **proposed development's** viability.

### Unilateral Undertaking

<sup>7</sup> Appendix 7 of Affordable Housing and Viability Hearing Statement, July 2019

<sup>8</sup> Lines 14 and 17 of Appendix 7 of Affordable Housing and Viability Hearing Statement, July 2019



36. A two-fold approach is suggested in the UU, dated 3 December 2019, based on a total sum of £187,168 for all contributions. The first approach would be to make payments in respect of affordable housing and healthcare infrastructure, with contributions of £148,498 and £39,120 respectively. The second approach, **which is the Council's preference**, would solely direct all the monies towards affordable housing. Either way, the proposed contribution would reflect **the proposal's** ability to deliver affordable housing alongside other requirements, taking into account broad assessments of viability.
37. Based on the evidence before me, even though the total sum is less than that sought by the Council, I consider that both contributions arising from the development would satisfy the three tests of Regulation 122(2) of the Community Infrastructure (CIL) Regulations 2010 and Framework paragraph 56. **I recognise that the second approach is the Council's preference given the need for affordable housing in the Borough, but to comply with Core Strategy policies 8 and 19 and LP2 Policy 43, the proposal should address affordable housing and healthcare infrastructure.**

#### Conclusion on the main issue

38. There is no dispute that the Council can now, following the adoption of LP2, demonstrate a five-year supply of deliverable housing sites, and that as a result **the Framework's tilted balance is not engaged**. It is also clear that the proposal would not achieve the 30% affordable housing provision target set out in Core Strategy Policy 8. However, the proposal would make contributions that would reflect its ability to deliver affordable housing alongside other requirements, taking into account viability. While, the Council may be making progress in terms of the provision of accommodation for older people in recent years, the proposal would add to the overall mix of housing in the Borough and specifically address the delivery of accommodation for older people who do not need care. In turn, this would free up existing houses within the Borough. During these matters together, I consider that the proposal would achieve the **Framework's objective** of creating mixed and balanced communities.
39. I therefore conclude that the proposed development would make adequate contributions towards affordable housing and healthcare infrastructure provision, having regard to development viability. As such, the proposal would accord with Core Strategy policies 8 and 19 and LP2 Policies 1 and 43.

#### *Other matters*

40. It appears to me that the proposed development is within the setting of the Old Trent Bridge, a Scheduled Monument and the Grade II listed War Memorial. The Old Trent Bridge comprises of segmental arches of dressed stone and brick with chamfered hood moulds while the War Memorial is an octagonal plinth and base with moulded top edge, foliate bosses, bronze plaques and inscription set within landscaped gardens. However, having regard to the **proposal's scale and design**, together with the variety of building styles and finishes found locally, I consider that the proposed development would preserve the setting of the designated heritage assets.
41. I agree with the **Council's assessment** that there would be no issue, subject to the imposition of planning conditions, with the quality of accommodation proposed, the amount of amenity space, landscaping, flood risk, drainage, car parking provision, ecology and archaeology.

42. The appellant company submits that there would be various benefits associated with the appeal scheme. These include: future residents spending in the local economy; savings to the NHS and social care expenditure; effective use of a brownfield site in a highly accessible location; and social benefits linked to the formation of a community who can live independently and securely in older age. I agree with the Council that they would collectively deliver benefits, but given my finding on the main issue, they only lend weight to the view that planning permission should be granted.

### **Conditions**

43. I have had regard to the agreed list of suggested planning conditions found in the SoCG, the parties comments provided at the Hearing and their subsequent submissions made in respect of suggested conditions 15 and 16 as set out in the SoCG.

44. I have imposed a plans condition in the interests of certainty. Conditions are necessary before development commences in respect of: the disposal of surface water and foul sewage; an air quality assessment; a phase II risk assessment; a construction management plan; and for an overheating study. These conditions are necessary in the interests of ensuring a satisfactory means of drainage; to reduce the risk of creating or exacerbating a flooding problem; to minimise the risk of pollution; and to protect future occupiers living conditions respectively. Given the findings of the ground investigation report, I have imposed a pre-commencement planning condition so that a report quantifying risk from unexploded ordnance is produced. This is necessary in the interests of public health and safety.

45. **Noting the main parties' agreement to a revised trigger** which was discussed at the Hearing, I have imposed planning conditions for a hard and soft landscape scheme; external lighting and an ecological enhancement scheme. These are necessary in the interests of the character and appearance of the area and to secure net gains in biodiversity.

46. I have amalgamated numerous conditions relating to the access, parking areas and surfacing without changing their requirements which are all needed in the interests of highway safety. I have therefore imposed a combined condition which was discussed at the Hearing. Given the submitted flood risk assessment, I have imposed planning conditions so that the development is resilient to flood risk and so that any future occupants know about the flood excavation plan in the event of any flood events.

47. In the interests of future residents living conditions, I have imposed conditions to secure details of any plant, with respect to noise, and so that the glazing and ventilation scheme identified in the noise impact assessment are implemented. In the interests of visual amenity, I have imposed a condition for a management plan in respect of refuse collections. A condition specifying who can occupy the appeal scheme is necessary given the need for older persons accommodation and due to the intrinsic link between the planning contributions and this specific form of development.

### **Conclusion**

48. For the reasons set out above, I conclude that the appeal should be allowed.

*Andrew McGlone*

INSPECTOR

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## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 30040WB/P101; 30040WB/P202; 30040WB/P203; 30040WB/P204; 30040WB/P205A; 30040WB/P206A; 30040WB/P207A; 30040WB/P108; 30040WB/P110); 30040WB/P111; 30040WB/P212A; 30040WB/P014; 30040WB/P015; and 30040WB/P016.

### *Pre-commencement*

- 3) The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 4) Prior to the commencement of the development hereby approved, an air quality assessment, including calculation of pollution damage costs, shall be carried out to determine the air quality impact in the vicinity of the proposed development. The methodology for the assessment and damage cost calculation shall be agreed in writing with the Local Planning Authority prior to the commencement of the assessment. Where necessary a scheme for protecting future residential occupiers of the development from the effects of nitrogen dioxide/ airborne particulate matter (PM10) arising from road traffic and mitigation measures to alleviate the impact of the scheme equivalent to the calculated damage costs shall be submitted to and approved in writing by the Local Planning Authority. All works which form part of the approved scheme shall be completed prior to the first occupation of the building hereby approved, and thereafter maintained for the lifetime of the development.
- 5) Prior to the commencement of the development hereby approved, a Phase II Investigation Report shall be submitted to and approved in writing by the Local Planning Authority. If this report confirms that "contamination" exists, a remediation report and validation statement will also be required to be submitted prior to any occupation of the development. The development shall be carried out in accordance with the approved details.
- 6) Prior to commencement of earthworks on site, a report quantifying risk from unexploded ordnance shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with any agreed details.
- 7) Prior to the commencement of development, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The CMP shall provide details of, but not limited to, the following:
  - Details of noise, dust and vibration suppression
  - Details of any compound and welfare areas
  - Details of onsite materials storage areas
  - Details on site construction parking and manoeuvring areas
  - Hours of working for all activities

The development shall then be carried in accordance with the approved details for its entire construction phase.

- 8) Prior to the commencement of the development hereby approved, an Overheating Study shall be submitted to and approved in writing by the Local Planning Authority. If this study indicates a high risk of significant overheating having taken account of the required noise mitigation measures, mitigation measures may be required (including mechanical ventilation / cooling) so that occupants retain the option to keep windows closed and retain reasonable thermal comfort. The development shall be carried out in accordance with the approved details.

*Beyond foundation level*

- 9) Prior to construction of the development beyond foundation level, an ecological enhancement scheme demonstrating that the development will achieve a net gain for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.
- 10) Prior to construction of the development beyond foundation level, a detailed hard and soft landscaping scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include: details of plant species and sizes; proposed numbers, densities and locations; the design, finish and colour of boundary treatments and retaining structures; and details of any pedestrian access and circulation areas. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting season following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 11) Prior to construction of the development beyond foundation level, details of an external lighting scheme, including a lux plot of the estimated illuminance, shall be submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be designed and operated to ensure that light intrusion into neighbouring residential windows shall not exceed 25 Ev (lux) measured as vertical luminance. The development shall be carried out in accordance with the approved lighting scheme.

*Before first occupation*

- 12) The development hereby permitted shall be carried out in accordance with the mitigation measures set out in the Noise Impact Assessment (Ref - Report AS10761.180904. RA, Stage 1: dated 19th September 2018 and Report CAS10761.180409. ADS, Stage 2 dated 20th September 2018) including the installation of a glazing and ventilation scheme throughout the development (as per Figure AS10761/GP1 dated 19th September 2018). The glazing and ventilation scheme supplied in Figure AS10761/GP1 shall be implemented prior to the first occupation of the development and permanently retained thereafter.
- 13) No part of the development hereby permitted shall be brought into use until the pedestrian and vehicular access, parking, turning and servicing areas are provided and marked out in accordance with plan Ref: 30040WB/P202 and have been surfaced in a bound material (not loose gravel). The parking, turning and servicing areas shall not be used for any purpose other than parking, turning, loading and unloading of vehicles, and shall thereafter be retained for the life of the development.

- 14) The development shall be carried out in accordance with the submitted flood risk assessment (Ref: 30481/4069 PDA - Flood Risk Assessment SEP 18) and the following mitigation measures it details:
- 1) **SECTION 6.1.5 "The residual flood risk associated with excess surface water runoff in an extreme rainfall event will be mitigated by ensuring ground floor levels set a suitable freeboard above surrounding ground (minimum 150mm). Similarly, exterior ground levels across the site should also be appropriately contoured to direct surface water away from the building in such a scenario."**
  - 2) **SECTION 7.1.2 "The proposed ground floor level of 25.40m AOD is a minimum of 650mm above the most conservative (Upper End) modelled 1 in 100 (1%) annual probability 50% allowance for climate change flood level (24.75 m AOD), and a similar freeboard above the most severe modelled breach scenario (considering 30% climate change allowance)."**
- 15) Prior to the first occupation of the apartments hereby approved, a flood evacuation plan, including mitigation measures to ensure that all the future occupants of the building are notified of any flood events and mitigation measures to be put in place, with the knowledge that flooding is possible, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all future owners and occupants of the dwellings hereby approved shall be provided with details of the flood evacuation plan including the details of the safe exit route (in accordance with the approved flood evacuation plan) upon their first occupation of the dwellings. The flood evacuation plan must not adversely affect the flood regime and the safe exit route must be in place before any occupancy of the buildings.
- 16) The noise levels for any externally mounted plant or equipment, together with any internally mounted equipment which vents externally, that is to be installed, along with details of the intended positioning of such in relation to the development, shall be submitted to and approved by the Local Planning Authority before any such plant or equipment is first installed. The development shall then be carried out in accordance with the approved details.
- 17) Prior to the first occupation of the apartments hereby approved, a management plan confirming who is responsible for presenting the bins for collection at the designated collection point and subsequently returning them to the storage area and the timings for doing so shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the bins shall be presented and collected in accordance with the details in the approved management plan.
- 18) Each unit of the development hereby permitted shall be occupied only by:
- a) any persons over the age of 60 years;
  - b) persons living as part of a single household with such a person or persons;
  - c) persons who were living in the unit as part of a single household with such a person or persons who have since died.

END OF SCHEDULE

**APPEARANCES**

FOR THE APPELLANT:

Neil Cameron QC  
James  
Matthew Shellum  
Carl Tunnicliffe

Landmark Chambers  
Alder King  
Planning Issues Ltd  
Churchill Retirement Living

FOR THE LOCAL PLANNING AUTHORITY:

Nick Cox  
Kate Thompson  
John King  
David Newham

Rushcliffe Borough Council  
Rushcliffe Borough Council  
Rushcliffe Borough Council  
CP Viability

INTERESTED PERSONS:

Anthony Thomas

B and K Thomas (Holdings) Ltd

DOCUMENTS

**Documents submitted at the Hearing**

- 1 Plan Ref: 30040WB/P016
- 2 Unilateral Undertaking, dated 3 December 2019



**Appendix 14 - RICS – UK Residential Market Survey (September 2023)**

ECONOMICS



# UK Residential Market Survey

September 2023





## ECONOMICS

## Conditions remain challenging across the sales market

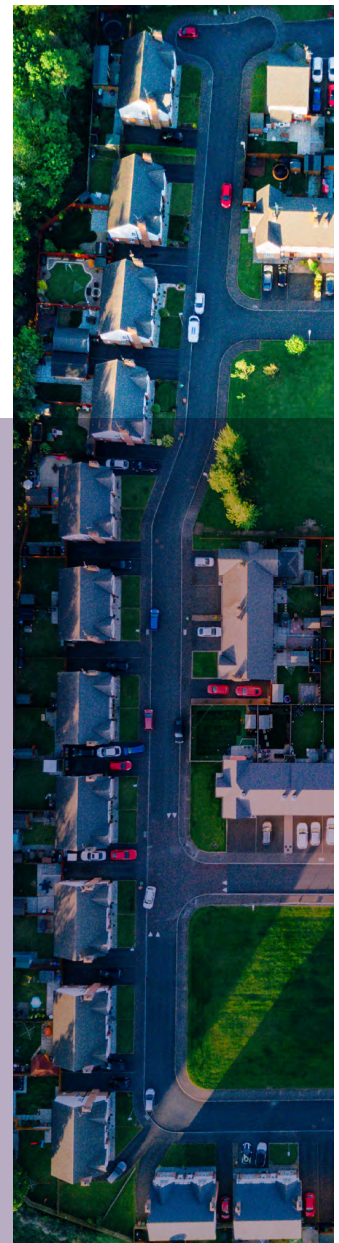
- Indicators on demand, sales, instructions and prices all remain in negative territory
- Near-term outlook still downbeat although twelve-month sales expectations are now stable
- Mismatch between rising tenant demand and falling supply continues to drive rents higher

The September 2023 RICS UK Residential Survey results continue to depict a challenging market backdrop, with stretched mortgage affordability still the dominant factor weighing on buyer demand. While the near-term outlook remains relatively downbeat, twelve-month sales expectations have at least stabilised of late. Perhaps linked to this, anecdotal comments left by contributors suggest that the Bank of England's decision to pause monetary policy tightening last month has provided a little bit of support to market sentiment.

In terms of buyer demand, the latest headline net balance for the new buyer enquiries series came in at -39% during September. Although still consistent with a weak demand picture, the latest reading is marginally less negative than the figure of -46% seen in the previous iteration of the survey. Nevertheless, most parts of the UK continue to return firmly negative readings for the new buyer enquiries indicator at this stage.

Looking at agreed sales, the September results remain mired in negative territory, producing a national net balance of -37%. That said, this is again slightly less downcast than readings of -46% and -45% seen in August and July respectively. For the coming three months, respondents continue to envisage a decline in sales volumes, even if the latest net balance moved to -24% from a more negative reading of -36% beforehand. Looking further ahead, the twelve-month sales expectations series returned a net balance of +3% (up from -5% last time) which is signalling a much more stable trend in sales volumes emerging over the year ahead.

Alongside the continued softness in buyer demand, respondents also note that the volume of new listings coming onto the sales market is in decline (evidenced



by a net balance reading of -17% in September). As such, new instructions have now reportedly fallen in each of the last three months, resulting in average stock levels on estate agents books holding broadly steady at 38 properties since July. Moreover, with respondent's feedback continuing to suggest that the number of market appraisals undertaken of late is below that of last year, any immediate changes in supply levels available across the market seem unlikely.

Meanwhile, house prices remain on a downward trajectory at the national level. Indeed, the September net balance of -69% is virtually unchanged from last month (-68%), signalling the pace at which house prices are falling has been consistent over the past couple of months. When disaggregated, while almost all parts of the UK are seeing house prices retreat at present, the downward pressure appears most significant across the West Midlands and the South East of England (posting respective net balances of -94% and -91%).

Going forward, near-term expectations point to a further pull-back in prices over the coming three months, although the latest net balance of -48% is not quite as negative as the reading of -65% returned last time around. At the twelve-month time horizon, a national net balance of -33% of contributors foresee prices continuing to fall, albeit the September reading represents a slightly less downcast view compared to readings of closer to -50% returned through June to August of this year.

In the lettings market, a net balance of +43% of survey participants saw an increase in tenant demand in September (part of the non-seasonally adjusted monthly lettings dataset). At the same time, the feedback around landlord instructions continues to highlight a scarcity of listings becoming available on the rental market (net balance -24%). Given this backdrop, rents are expected to be squeezed higher, with respondents pencilling in close to 5% growth in rental prices across the UK (on average) over the next twelve months.



## Methodology

### About:

The RICS Residential Market Survey is a monthly sentiment survey of Chartered Surveyors who operate in the residential sales and lettings markets.

### Regions:

The 'headline' national readings cover England and Wales.

Specifically the 10 regions that make up the national readings are: 1) North 2) Yorkshire and Humberside 3) North West 4) East Midlands 5) West Midlands 6) East Anglia 7) South East 8) South West 9) Wales 10) London.

The national data is regionally weighted.

Data for Scotland and Northern Ireland is also collected, but does not feed into the 'headline' readings.

### Questions asked:

1. How have average prices changed over the last 3 months? (down/ same/ up)
  2. How have new buyer enquiries changed over the last month? (down/ same/ up)
  3. How have new vendor instructions changed over the last month? (down/ same/ up)
  4. How have agreed sales changed over the last month? (down/ same/ up)
  5. How do you expect prices to change over the next 3 months? (down/ same/ up)
  6. How do you expect prices to change over the next 12 months? (% band, range options)
  7. How do you expect prices to change over the next 5 years? (% band, range options)
  8. How do you expect sales to change over the next 3 months? (down/ same/ up)
  9. How do you expect sales to change over the next 12 months? (down/ same/ up)
  10. Total sales over last 3 months i.e. post contract exchange (level)?
  11. Total number of unsold houses on books (level)?
  12. Total number of sales branches questions 1 & 2 relate to (level)?
  13. How long does the average sales take from listing to completion (weeks)?
  14. How has tenant demand changed over the last 3 months? (down/ same/ up)
  15. How have landlords instructions changed over the last 3 months? (down/ same/ up)
  16. How do you expect rents to change over the next 3 months? (down/ same/ up)
  17. How do you expect average rents, in your area, to change over the next 12 months? (% band, range options)
  18. What do you expect the average annual growth rate in rents will be over the next 5 years in your area? (% band, range options)
- Questions 6, 7, 17 and 18 are broken down by bedroom number viz. 1-bed, 2-bed, 3-bed, 4-bed or more. Headline readings weighted according to CLG English Housing Survey.

### Net balance data:

- Net balance = Proportion of respondents reporting a rise in prices minus those reporting a fall (if 30% reported a rise and 5% reported a fall, the net balance will be 25%).
- The net balance measures breadth (how widespread e.g. price falls or rises are on balance), rather than depth (the magnitude of e.g. price falls or rises).
- Net balance data is opinion based; it does not quantify actual changes in an underlying variable.
- Net balance data can range from -100 to +100.
- A positive net balance implies that more respondents are seeing increases than decreases (in the underlying variable), a negative net balance implies that more respondents are seeing decreases than increases and a zero net balance implies an equal number of respondents are seeing increases and decreases.
- Therefore, a -100 reading implies that no respondents are seeing increases (or no change), and a +100 reading implies that no respondents are seeing decreases (or no change).
- In the case of the RICS price balance, a reading of +10 should not be interpreted as RICS saying that house prices are going up by 10%, but that 10% more surveyors reported increases rather than decreases in prices (over the last three months).
- A change from +30 to +60 does not mean that the variable grew by 30% in one period and by 60% in the next period, but it does indicate that twice as many surveyors reported an increase compared to a decrease than in the previous period.
- Likewise, if we get a reading dropping from +90 to +5, this still means that more respondents are reporting increases than decreases overall, but the breadth of those reporting increases has fallen dramatically; meanwhile, a shift in the reading from -90 to -5 still means that more respondents are reporting decreases than increases overall, but the breadth of those reporting decreases has fallen dramatically.

### Seasonal adjustments:

The RICS Residential Market Survey data is seasonally adjusted using X-12.

### Next embargo date:

October Survey: 9 November  
November Survey: 14 December

### Number of responses to this month's survey:

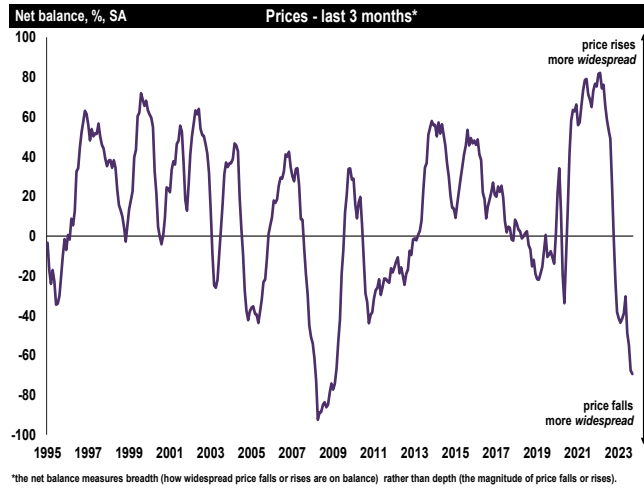
This survey sample covers 476 branches coming from 256 responses.

### Disclaimer

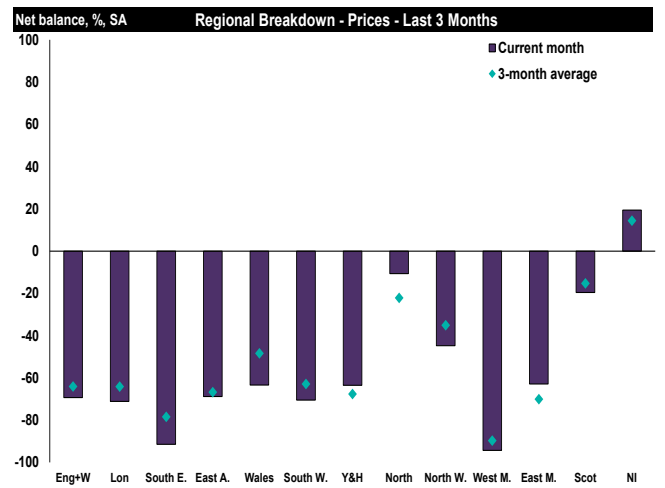
This document is intended as a means for debate and discussion and should not be relied on as legal or professional advice. Whilst every reasonable effort has been made to ensure the accuracy of the contents, no warranty is made with regard to that content. Data, information or any other material may not be accurate and there may be other more recent material elsewhere. RICS will have no responsibility for any errors or omissions. RICS recommends you seek professional, legal or technical advice where necessary. RICS cannot accept any liability for any loss or damage suffered by any person as a result of the editorial content, or by any person acting or refraining to act as a result of the material included.

# Sales market charts

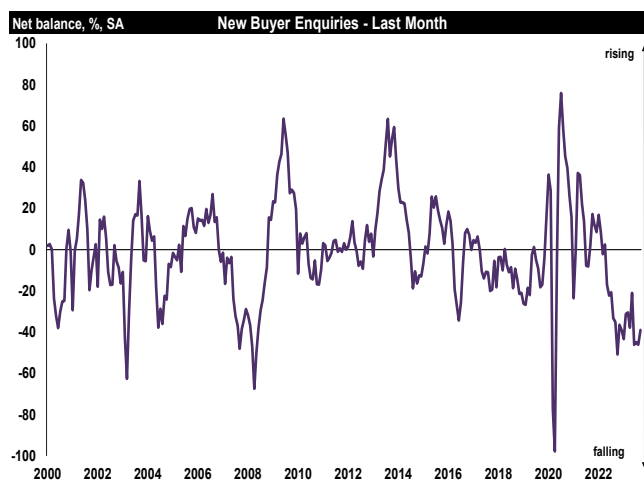
National Prices - Past three months



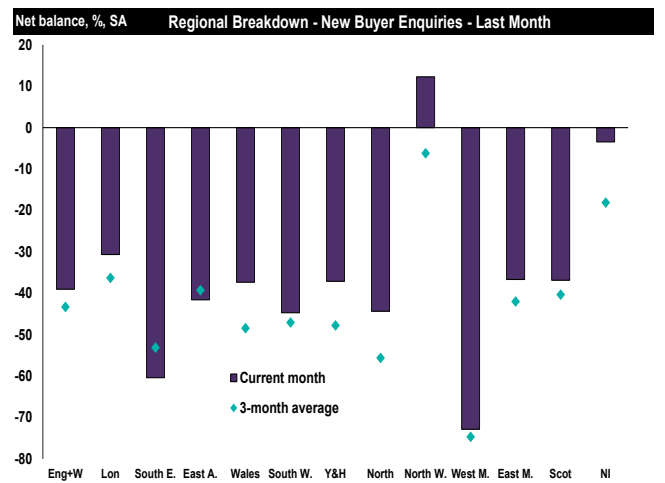
Regional Prices - Past three months



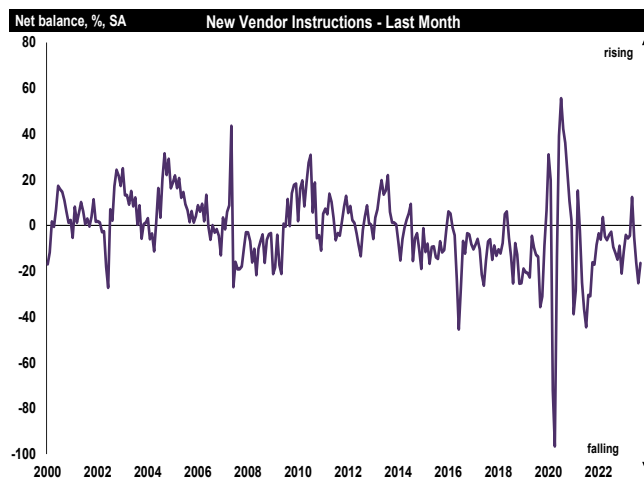
National Enquiries - Past month



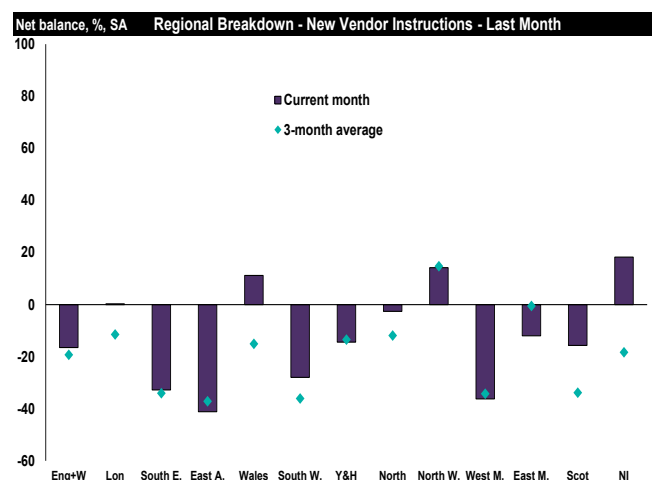
Regional New Buyer Enquiries - Past month



National New Vendor Instructions - Past month

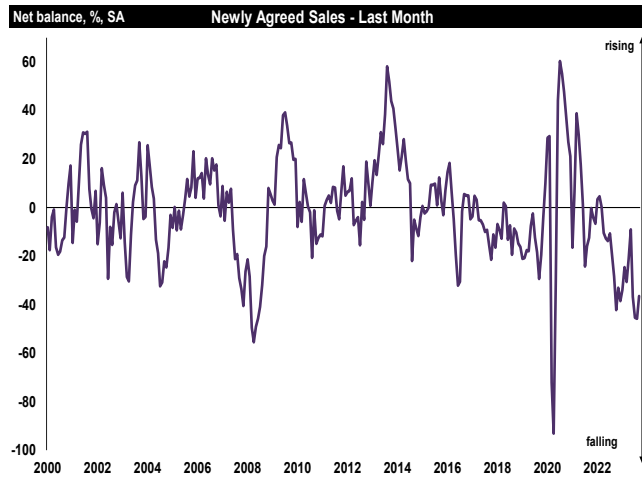


Regional New Vendor Instructions - Past month

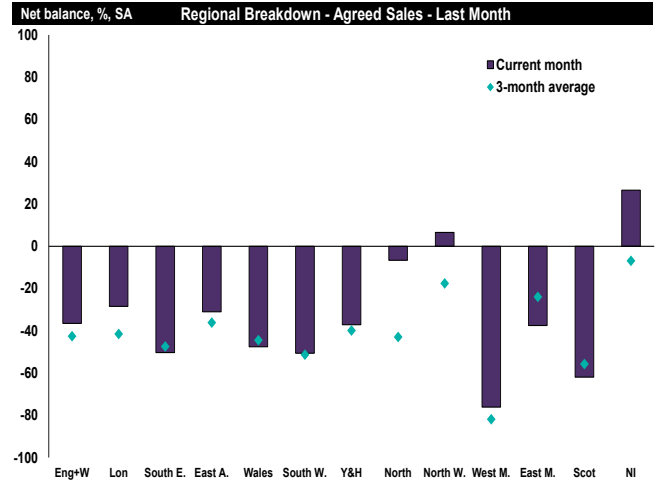


# Sales market charts

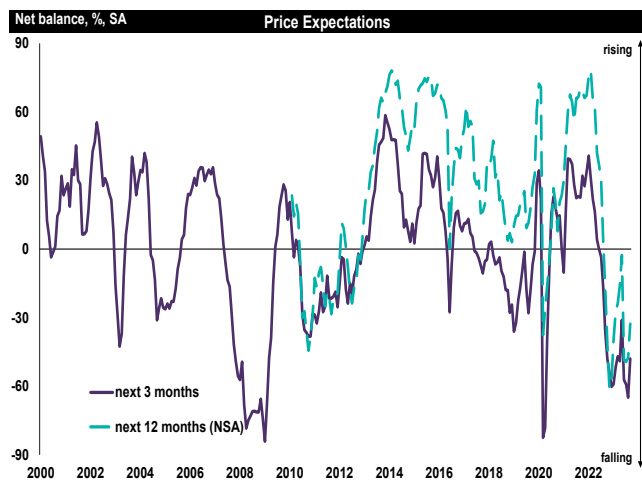
National Newly Agreed Sales - Past month



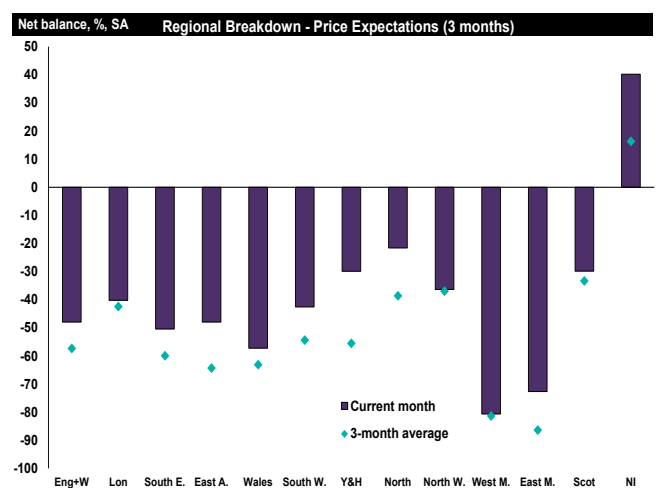
Regional Newly Agreed Sales - Past month



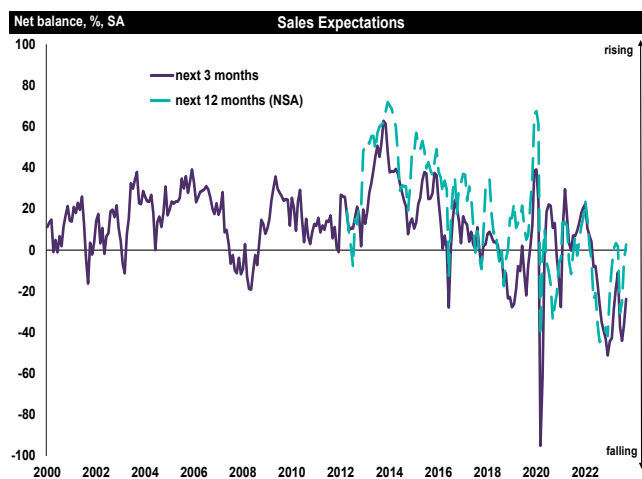
National Price Expectations - Three and twelve month expectations



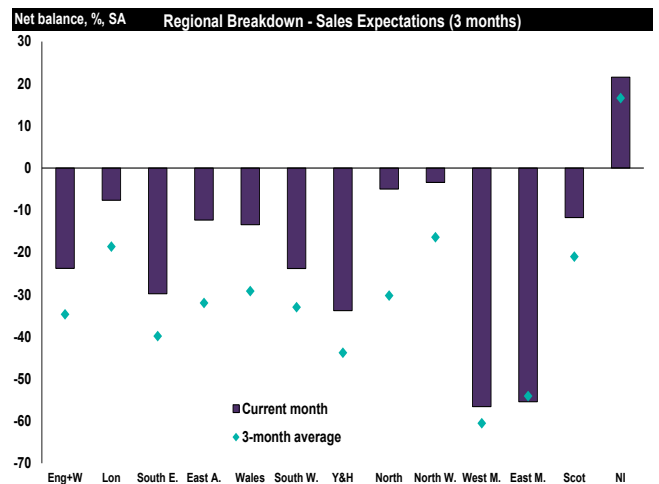
Regional Price Expectations - Next three months



National Sales Expectations - Three and twelve month expectations



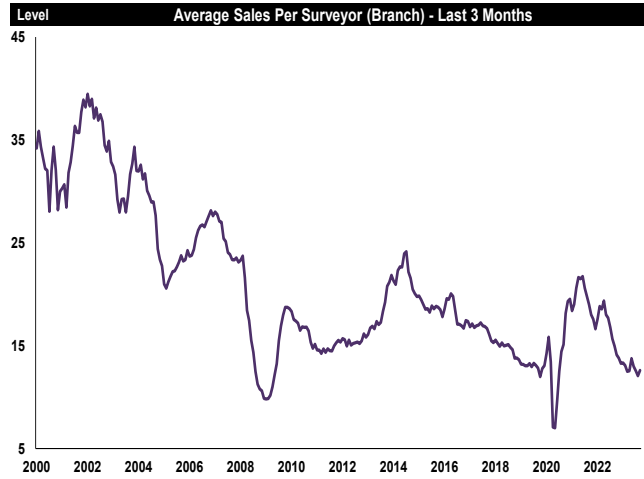
Regional Sales Expectations - Next three months



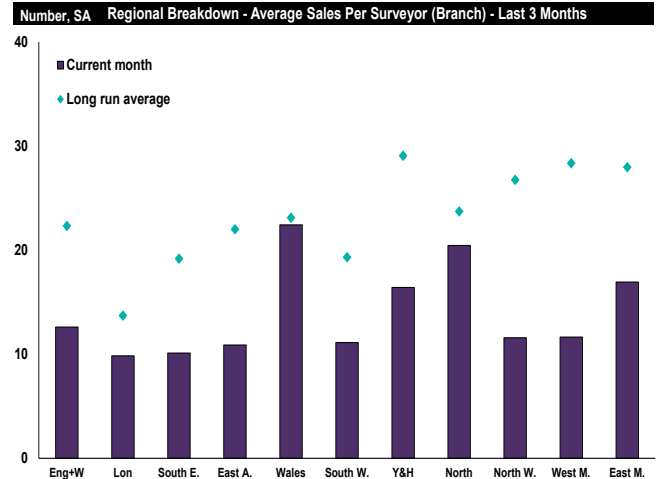


# Sales market charts

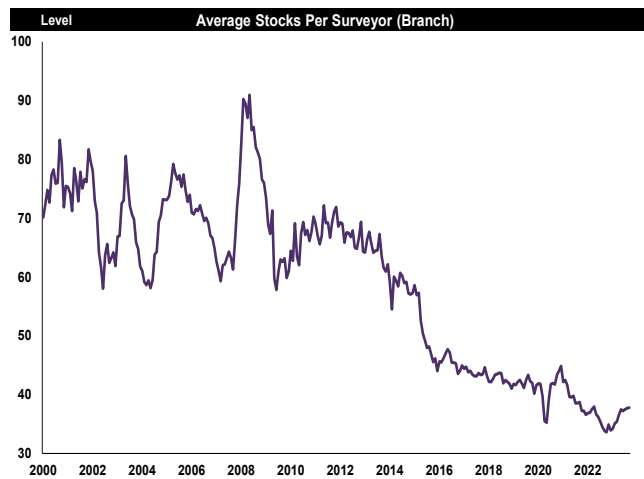
National Average Sales Per Surveyor - Past three months



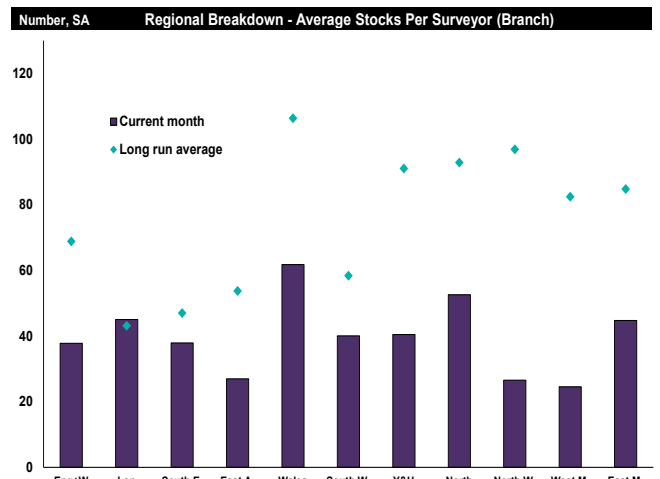
Regional Average Sales Per Surveyor - Past three months



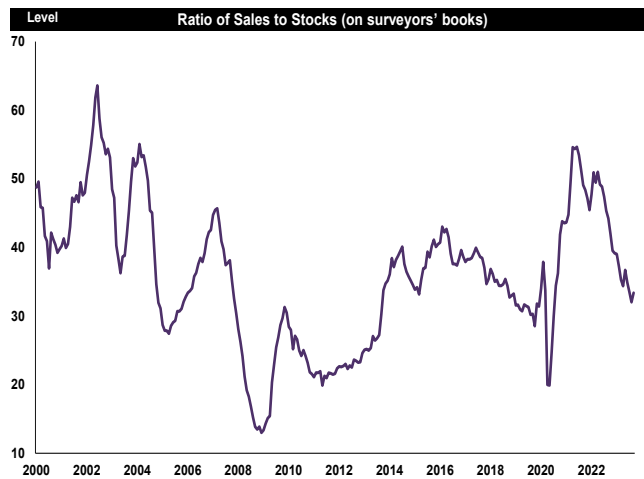
National Average Stocks Per Surveyor



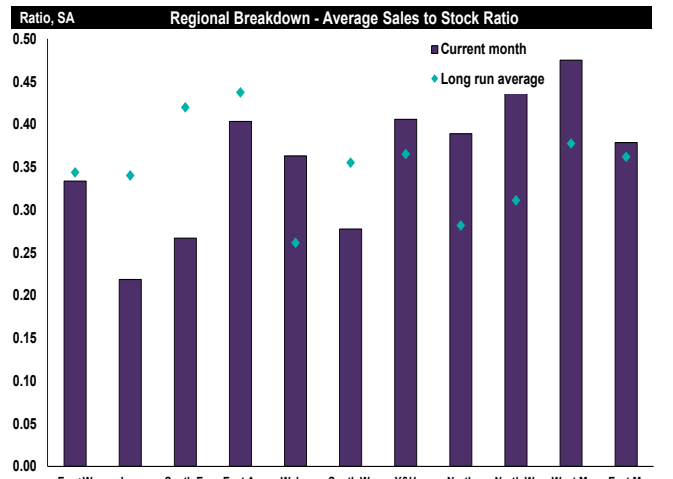
Regional Average Stock Per Surveyor



National Sales to Stock Ratio

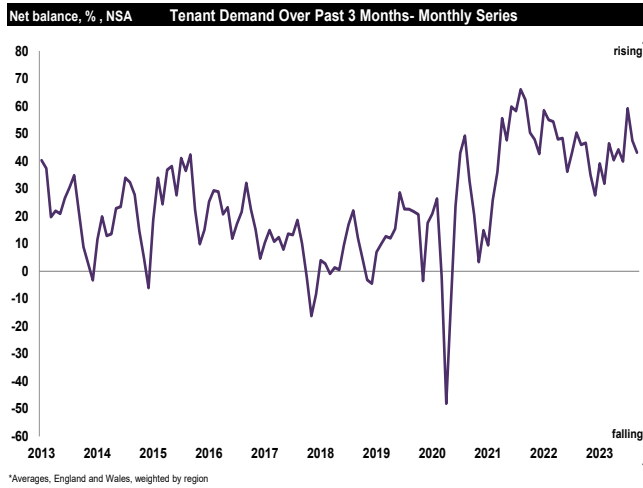


Regional Sales to Stock Ratio

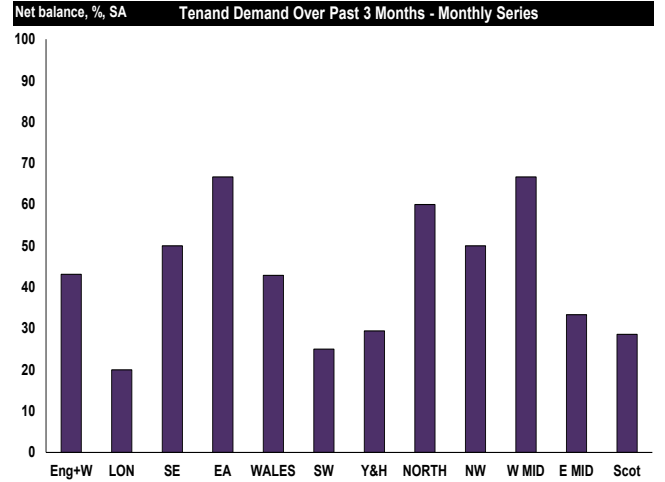


# Lettings market charts

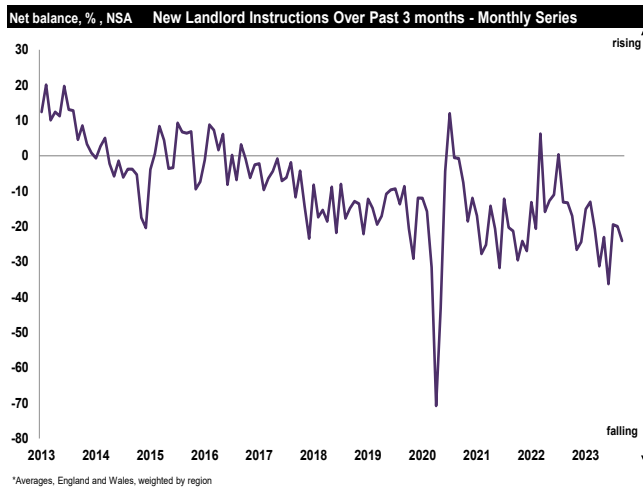
National Tenant Demand - Past three months



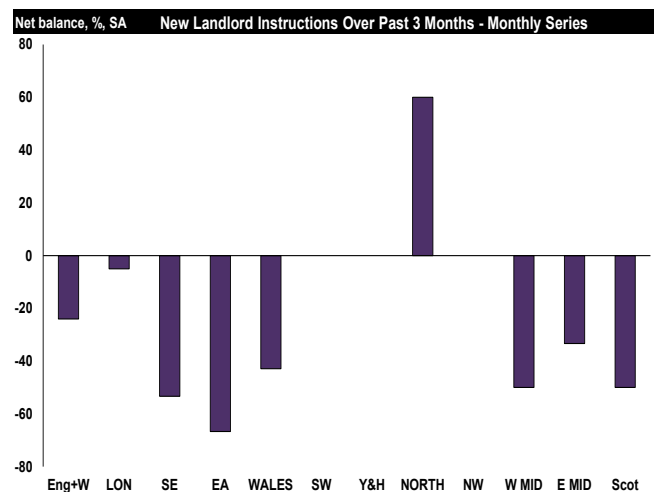
Regional Tenant Demand - Past three months



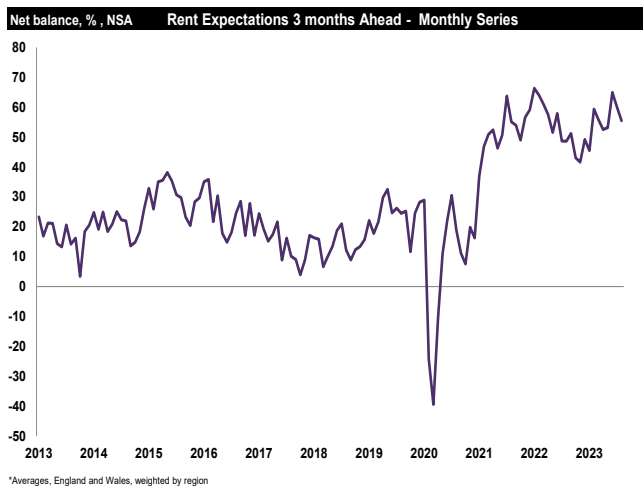
National New Landlord Instructions - Past three months



Regional New Landlord Instructions - Past three months



National Rent Expectations - Next three months

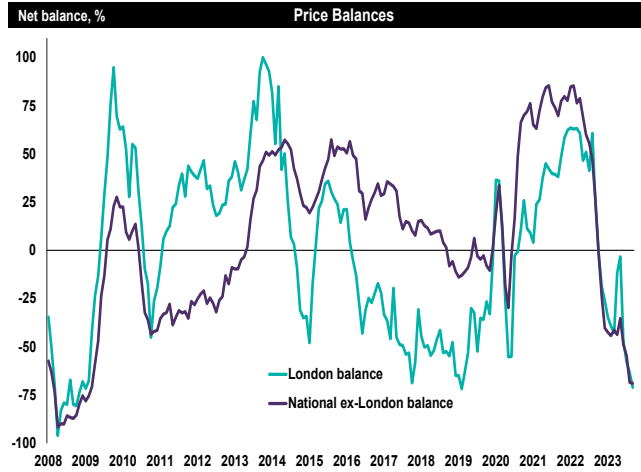


Regional Rent Expectations - Next three months

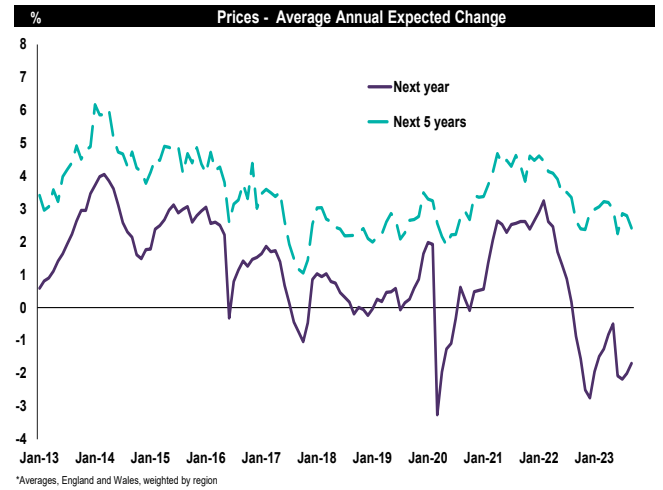


# Expectations and other data

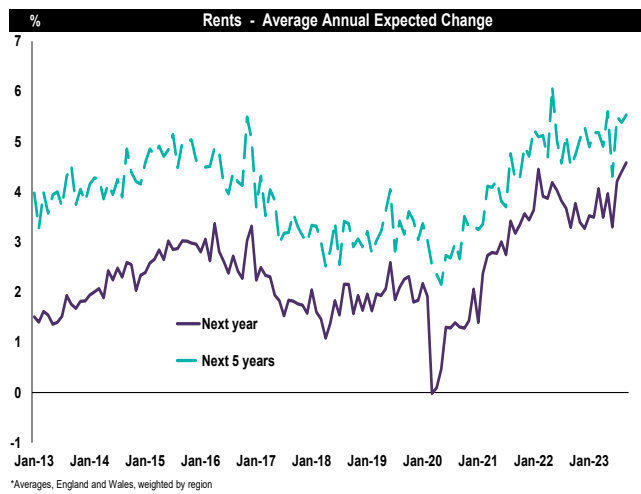
National Price Balance (excluding London) and London Price Balance - Past three months



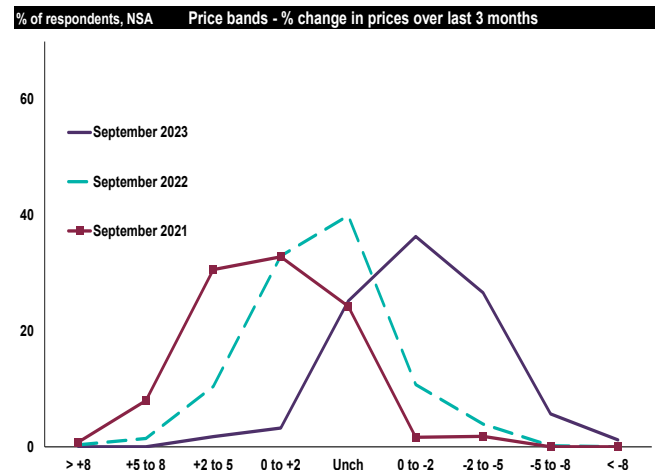
National Average Annual Expected Price Change (point estimate) - Next one and five years



National Average Annual Expected Change in Rents (point estimate) - Next one and five years



Price Bands - Past three months



## Surveyor comments - Sales

### North

Keith Pattinson FRICS, Newcastle-Upon-Tyne, keith.pattinson Ltd, keith.pattinson@pattinson.co.uk - Crazy idea repeating another increase in min wage to £11 will result in inflation, reduction in employment, and business failures, instead of no interference/ market forces. Allowing second homes/park homes/caravans to be used year round will create more houses, sorting planning, stopping right to buy

Neil Foster MRICS, Hexham, Hadrian Property Partners, neil@hadrianproperty.co.uk - Clear signs that winter is nestling in early and likely to chill the sales market for a prolonged and significant spell. There remains an air of unacceptance that the upward trajectory for prices and demand has lost the battle to interest rates and economic uncertainty.

Paul McSkimmings BSc(Hons)MRICS, Newcastle upon Tyne, Edward Watson Associates, paul@edwardwatson-assoc.com - Busy month despite current financial difficulties. The reduction in interest rates by some lenders may help the market in the short term.

Shaun Brannen AssocRICS, Whitley Bay, Brannen & Partners, shaun.brannen@brannen-partners.co.uk - 15% up on sales in this quarter compared to same period in 2022.

### Yorkshire & the Humber

Alex Mcneil MRICS, Huddersfield, Bramleys, alex.mcneil@bramleys1.co.uk - Looking back 12 months amid the economic shock and the economy and the housing market in particular has been relatively resilient. This may be the market norm for a while.

Ben Hudson MRICS, York, Hudson Moody, benhudson@hudson-moody.com - Serious buyers and sellers continue to do deals but at sensible pricing.

Bruce Collinson FRICS, Otley, Adair Paxton, bruce.collinson@me.com - Although, disappointingly, asking prices are unchanged, offers are typically a bit (5%) lower and transaction levels are good. The middle and upper markets are resilient locally and mortgage rates seem to have peaked, with competition edging them down (NatWest 30 points off 20th Sept).

James Brown MRICS, Richmond, Norman F Brown, james@normanfbrown.co.uk - The buyers market remains very much in force.

M J Hunter MRICS, Doncaster, Grice and Hunter, griceandhunter@btconnect.com - A modest increase in activity but realistic pricing remains paramount.

Michael Darwin MRICS, Northallerton, M W Darwin & Sons, info@darwin-homes.co.uk - Sellers still wanting top and sometimes unrealistic prices for property although demand has weakened in the last 6 months, some are now waiting until the New Year.

### North West

David Champion MRICS & Registered Valuer, Blackpool, Wyre, Fylde, Lancashire, Champsurv, championdavid@ymail.com - Market uncertainty, some sales falling though due to first time buyers failing mortgage requirements.

John Williams FRICS, MEWI, Wirral, Brennan Ayre O'Neill LLP, john@b-a-o.com - The pause in interest rate rises and reducing inflation have resulted in a slight improvement in market sentiment with the hope (if not expectation) that the worst could be over.

Simon Wall FRICS, Formby & Southport, Stephanie Macnab Estate Agents, simon@simonwall.com - The market remains a little subdued, with constant negative media attention driving down buyer confidence.

### East Midlands

Tom Wilson MRICS, Stamford, King West, twilson@kingwest.co.uk - What a difference a month makes... Whilst Buyers are curious they certainly aren't aggressive now and sellers are having to be pragmatic and realistic if sales are to be agreed. Supply is increasing steadily.

### West Midlands

Alex Smith & Company FRICS, Birmingham, Alex Smith & Company, alex@alex-smith.co.uk - Still obtaining plenty of viewings but buyers being more cautious.

Andrew Oulsnam MRICS, Birmingham, Oulsnam, andrew@oulznam.net - Following a dreadful August when sales instructions and confidence was on the floor, there has been a slight improvement in September helped by the Bank holding interest rates.

Colin Townsend MRICS, Malvern, John Goodwin, colin@johngoodwin.co.uk - Surprisingly the market has held up well. Still plenty of buyers looking to move and offers being received. Holding chains together is proving challenging though.

John Andrews FRICS, Kidderminster, Doolittle & Dalley Holdings Ltd, johndrews@doolittle-dalley.co.uk - A slow market with less for sale and buyers in short supply except for lower price ranges. Buyer confidence lacking hence lower sales volume compared with 2022.

John Andrews FRICS, Bridgnorth, Doolittle & Dalley Holdings Ltd, johndrews@doolittle-dalley.co.uk - Market slowing with less property for sale and completed sales numbers reduced compared with last year.

John Shepherd, Solihull, ShepherdVine, john@shepman.co.uk - Cost of borrowing and lack of confidence.

Mark Killeen AssocRICS, Coventry, k11l33n44@hotmail.com - Interest rate rises are affecting consumers affordability, asking prices are not being reached and lower sold prices are happening, landlords are feeling the pinch between tax thresholds, lack of stability and interest rate increases, this is pushing rents into higher brackets due to lack of rental stock.

Richard Franklin MRICS, Tenbury, Franklin Gallimore Ltd., richard@franklingallimore.co.uk - Market stalled until the interest rate environment is more certain. Further rate rise is factored in. Lending environment is tough.

### East Anglia

Jeffrey Hazel FRICS, King's Lynn, Geoffrey Collings & Co, jhazel@geoffreycollings.co.uk - Still a steady demand to buy.

Kevin Burt-Gray MRICS, Cambridge, Pocock & Shaw, kevin@pocock.co.uk - Market remains subdued. No real traction with viewing levels and instructions low.

Rob Swiney MRICS, Bury St Edmunds, Lacy Scott and Knight, rswiney@lsc.co.uk - Slightly more activity than a few weeks ago fingers crossed this will continue for a few more weeks.

### South East

Andrew Burnett D365, Mayfield, Burnett's Estate Agents, andrew@burnetts-ea.com - It has picked up. High Street banks mortgage rate wars creating confidence.

Christopher Clark FRICS, Eastleigh, Ely Langley Greig, chrisclark@elgsurveyors.co.uk - Market remains difficult.

David Parish FRICS, Upminster, Gates, Parish & Co, professional@gates-parish.co.uk - There has been an increase in sales during the last month. The signs are that interest rates may have stabilised and this will improve buyer confidence. More expensive properties over £1,000,000 have attracted considerable interest but mid-range properties are difficult to sell.

Edward Rook MRICS, Sevenoaks, Knight Frank, edward.rook@knightfrank.com - Reduced affordability putting downwards pressure on values.

James Farrance MNAEA, FARLA, Maidenhead, WD Braxton Limited, jfarrance@braxtons.co.uk - Sales market is ticking over steadily, pricing needs to be accurate, the over value low fee 'corporate' estate agents in town are struggling.

Martin Allen MRICS, Wingham, Canterbury, Elgars, m.allen@elgars.uk.com - There still seems to be a considerable gap between what buyers want to pay and what sellers will accept. Adjustments in asking prices continue downwards but the level to tempt more activity still seems a long way off.

Michael Brooker Fellow, Crowborough, Michael Brooker Estate Agents, michael@michaelbrooker.co.uk - Realistic pricing required. People fully aware prices dropped but not for their property. General lack of confidence and concerns over interest rates.

Norman Armitage FRICS, Ascot, Armitage Taylor, norman@armitagetaylor.co.uk - The market has diminished in tempo since the end of the summer holiday period and will remain quiet for the foreseeable future.

Paul Lynch AssocRICS, Guildford, Romans, plynch@romans.co.uk - Buyers still very hesitant, some sales arranged on property which has been reduced or competitively priced.

Tim Green MRICS, Wantage, Green & Co.(Oxford) Ltd, tim.green@greenand.co.uk - September did not see any upturn in buyer activity but the quarter remained fairly consistent. It remains to be seen if the absence of a further base rate increase (albeit closely fought) at the last meeting of the BoE could be a false dawn or a real glimmer of relief to house movers.

#### South West

David Hickman , Devon, onetrip100@outlook.com - Although rates didn't rise yesterday, the market is in recession together with rising unemployment and bad indicators from ONS, OBR BoE PMI etc. The question is will it be short and soft or hard and long and suspect the latter as repossessions are dragging the market down now. Winter approaches too!

David Robinson AssocRICS, Cornwall & West Devon, David J Robinson Estate Agents & Auctioneers, david@djrestateagents.co.uk - Definite improvement in sales in August & September, as correctly priced properties are being snapped up by buyers who have been struggling to sell in other parts of the UK. Hopefully stability in wider economy will help.

Howard Davis , Bristol, Howard Homes, howard@howard-homes.co.uk - Vendors are realising this is a buyer's market now and the more genuine seller is prepared to listen to offers and as a result they are able to move on.

Ian Perry FRICS, Cheltenham Cirencester Nailsworth Tetbury Stroud, Perry Bishop, ianperry@perrybishop.co.uk - Prices are drifting down but only slowly. There is still good interest for quality property.

James Wilson MRICS, Shaftesbury, Jackson-Stops, james.wilson@jackson-stops.co.uk - A subdued market with little confidence - both buyers and sellers in short supply.

Jeff Cole MRICS, Wadebridge, Cole Rayment & White, jeff.cole@crw.co.uk - The market has been better in September but sales remain fragile as confidence is still low. The key as always is sensible initial pricing.

John Corben FRICS FCABE, Swanage, Corbens, john@corbens.co.uk - There has been a downturn in applicants who are in a position to proceed. This trend I think will continue throughout the winter and as a consequence property values are likely to fall.

Julian David Lawrence Bunkall FRICS, Sherborne/ Bridport/ Dorchester, Jackson-Stops, julian.bunkall@jackson-stops.co.uk - There is no doubt that the market has softened during September and the rise in interest rates is affecting the market particularly at the lower end. All offices in our region are reporting a quieter market with much less activity than last year.

Robert Cooney Chartered Surveyors & Estate Agents FRICS, Taunton, Robert Cooney, robert.cooney@robertcooney.co.uk - No investors/more stock equals greater choice/buyers seek greater reductions/too many sellers still have high expectations/average 48 days to go under offer last 3 months/buyers renegotiating down just prior to exchange.

Roger Punch FRICS, South Devon, Marchand Petit, roger.punch@marchandpetit.co.uk - Stock levels remain relatively high, and despite reasonable sales volumes, achievable price levels are still dropping in most locations. The hold on further Bank Rate rises for the moment certainly helped confidence.

Sam Trounson MRICS, Cirencester, , sam.trounson@struttandparker.com - 2023 has been an odd market but is waking up now.

Simon Milledge MRICS, Blandford Forum, Jackson-Stops Blandford Forum, simon.milledge@jackson-stops.co.uk - Due to the economy or the time of year, the market has definitely slowed down. And, competition between sellers to attract the few buyers left in the market is causing price to continue to fall quite quickly.

#### Wales

Anthony Filice FRICS, Cardiff, Kelvin Francis Ltd., tony@kelvinfrancis.com - The usual surge in activity in September hasn't occurred. Steady flow of valuations and new instructions. Lower levels of viewings, but high percentage of serious buyers who are making offers. Many vendors haven't adjusted to the changed market, holding out for higher prices, only to regret it later.

David James FRICS, Brecon, James Dean, david@jamesdean.co.uk - The market remains stronger than many people predicted.

Melfyn N Williams MRICS PPNAEA, Anglesey, Williams and Goodwin The Property People Ltd, mel@tppuk.com - Steady as she goes in September. Good levels of enquiries & sales agreed. On the whole, movers are generally getting on with it - but with caution and some sellers now becoming more realistic with pricing.

Paul Lucas FRICS, Haverfordwest, R.K.Lucas & Son, paul@rklucas.co.uk - The sales market continues to slow. Buyers are reluctant to enter the mortgage market in the current economic climate of uncertainty.

Sam Burston , Monmouth, David James, sam.burston@david-james.co.uk - Market conditions are surprisingly resilient. When vendors react to the market and take their agents advice in adjusting price or considering offers, they are successful. Those vendors who are holding out for top prices do so at their detriment, ultimately having to reduce prices more aggressively.

Tim P Goodwin AssocRICS, Gwynedd, Williams & Goodwin The Property People, tim@tppuk.com - Instruction levels and viewings remain at similar levels as people have got used to higher interest rates and purchasers are beginning to make initial enquires as they believe that a peak has been reached with rate levels costs lower moving into 2024.

### London

Allan Henry Fuller FRICS, London, Allan Fuller Estate Agents, allan@allanfuller.co.uk - We have not seen the usual September increase in demand, sales have slowed but sensibly priced property is attracting interest, still too many agents suggesting high prices to get instructions.

Christopher Ames MRICS, London, Ames Belgravia Ltd, ca@amesbelgravia.co.uk - There are still many focused sellers wishing to move by year's end and many tenants wishing to buy instead which should create a natural market.

Francisco Javier Lauret-Aguirregabiria MRICS, Central London, Hurford Salvi Carr, javier.lauret@h-s-c.co.uk - Higher end of the market driven by cash buyers is more active, while 1 bed flat sales are stalling.

James Perris MRICS, London, De Villiers, james.perris@devilliers-surveyors.co.uk - Holding interest rates will help the market although the BoE will need to begin reducing rates to restart the housing market. Whilst in much lower volumes due to borrowing costs, the buyers are still out there and September generally showed some reasonable level of activity.

Jeremy Leaf FRICS, Finchley, Jeremy Leaf & Co, jeremy@jeremyleaf.co.uk - The rising cost of living, especially for mortgages, is stretching affordability. However, expectations for base rates and inflation may be near their peak and strong employment is helping to bring cash as well as equity-rich buyers back to the market. Prices continue to be supported by shortage of stock.

John King FRICS, Wimbledon, Andrew Scott Robertson, jking@as-r.co.uk - A quieter month than expected but finished on a high. With no increase in Bank rate and school holidays ending bringing about a substantial increase in viewings and offers. Most offers were between 3-5% below the guide price but with a number above, due mainly to the nature of the property.

John King FRICS, L.B.Merton, Andrew Scott Robertson, jking@as-r.co.uk - While late in the month, a sudden movement of activity occurred due largely to lower than expected mortgage rate announcements and no movement on the bank rate. Viewing numbers have trebled and offers have increased. Whether this is short lived remains to be seen.

John Righiniotis MRICS, London, Sampas Surveyors Limited, john@sampassurveyors.co.uk - Flat prices will drop overall in the coming months. The only factor to affect this is are mortgage rates.

Marcus Goodwille MRICS, Prime London, Savills UK Ltd, marcus.goodwille@savills.com - Prices in London have remained steady with central London seeing softer falls compared to outer London. There is still demand but only at the right price.

Richard Going MRICS, Royal Borough Of Kensington & Chelsea, Farrar, richard.going@farrar.co.uk - With inflation down to 6.7% and five year mortgages now available under 5%, this seems to have given buyers more confidence to start making decisions again. Viewing numbers have started to increase as have new deals agreed.

Richard Laurence Brudenell FRICS, London, richard brudenell ltd, richard@richardbrudenell.com - In the prime sector there is a shortage of stock.

Robert Green MRICS, Chelsea, John D Wood & Co., rgreen@johndwood.co.uk - We have seen more new buyers registering throughout September, whilst new instructions remain limited. Quality is still selling for good prices, but there is no urgency in the market so patience is key.

William Delaney AssocRICS, Central London/West End, Coopers of London Limited, william@coopersoflondon.co.uk - Despite the Bank of England holding base rates, it did little to assuage buyer concerns. Pessimistic forecasts dominate the news, and vendors are often having to consider significant discounts to agree a sale. Offers based on similar reductions would have been dismissed out of hand 12 months ago.

### Scotland

Alan Kennedy MRICS, Fraserburgh, Shepherd Chartered Surveyors, Alan.Kennedy@shepherd.co.uk - The local market has slowed in recent times though buyer demand in some sectors remains strong and realistically priced properties are still selling at or around Home Report values. Local estate agents are showing a lot of price reductions, indicative of difficult market conditions.

Craig Henderson MRICS, Ayrshire, Graham & Sibbald LLP, craig.henderson@g-s.co.uk - The market still remains positive, but we are starting to see a little slowdown in some local markets, perhaps not surprisingly, as we move into the autumn months.

Grant Robertson FRICS, Glasgow, Allied Surveyors Scotland Plc, grant.robertson@alliedsurveyorsscotland.com - The sales market has remained robust in "above the clouds" locations of strong household income and healthy equity. In areas of more fixed income, softening of the market is evident and prices starting to slip. Had interest rates not been frozen, a more significant shift would have been seen.

Greg Davidson MRICS, Perth, Graham + Sibbald, gdavidson@g-s.co.uk - Continued negative coverage of the national market is having some negative impact in local markets but, now that competitive mortgage rates are coming back, hopefully a more balanced coverage will help the markets function normally.

Ian J Fergusson Bsc FRICS, Scotland, Shepherd Chartered Surveyors, ian.fergusson@shepherd.co.uk - Scottish market showing resilience in the face of economic indicators. The home report process has benefitted the market by realistically pricing stock for sale. Historic house price growth has been slow and steady and therefore the market in Scotland remains positive.

Ian Morton MRICS, St Andrews, Bradburne & Co, info@bradburne.co.uk - The slowdown in activity is marked and offers below the asking price are becoming more common. It is turning to a buyers market as values lower.

Marion Currie AssocRICS, RICS Registered Valuer, Castle Douglas, Galbraith, marion.currie@galbraithgroup.com - Buyer caution is now evident. Viewing numbers are down year on year, particularly in the £600,000+ range. Closing dates are still happening, albeit with fewer offers on the day, and lower premiums than in the past 2-3 years. Sensible pricing is now key to successful sales.

Thomas Baird MRICS, Glasgow, Select Surveyors, thomas.baird@selectsurveyors.co.uk - Extension of Scottish government rental and eviction restrictions on landlords has seen an increase in the number of smaller dwellings for sale and subsequently surveys. However, its at the long term cost to tenants seeking lets with little available and rent cost increases.

### Northern Ireland

Daniel Mc Leron FRICS, Omagh, D A Mc Leron Ltd., damcleron@gmail.com - Lower end of the market still steady with increased interest. Higher end - slow/static.

Kirby O'Connor AssocRICS, Belfast, GOC Estate Agents, kirby@gocestateagents.com - The sales market has been very strong especially for new developments. We have found most buyers are now getting a home buyers as well as bank survey which seems to delay the process.

Nicola Kirkpatrick FRICS, Belfast, Simon Brien Residential, ntann@simonbrien.com - Interest rates remaining unchanged for the next month will demonstrate some stability for those clients waiting in the wings.

Samuel Dickey MRICS, Belfast, Simon Brien Residential, sdickey@simonbrien.com - The sales market is staying strong despite interest rate rises.



## Surveyor comments - lettings

### North

Keith Pattinson FRICS, Newcastle-Upon-Tyne, keith.pattinson@pattinson.co.uk - Stop beating up landlords and stop right to buy to retain affordable local authority/private rentals. Talk of affordable housing when telling employers to pay £11 results in inflation. Need consistent ministers.

Neil Foster MRICS, Hexham, Hadrian Property Partners, neil@hadrianproperty.co.uk - The rental market is structurally fractured and highly unlikely to recover any sort of equilibrium without incentivisation to private landlords to invigorate housing stock.

Shaun Brannen AssocRICS, Whitley Bay, Brannen & Partners, shaun.brannen@brannen-partners.co.uk - There is still a very strong demand for properties across the board, whilst being coupled against an ever decreasing supply.

### Yorkshire & the Humber

Alex Mcneil MRICS, Huddersfield, Bramleys, alex.mcneil@bramleys1.co.uk - Rental growth has continued this year as there is still a shortage of housing available to rent. Some landlords will be given renewed enthusiasm with recent MEES compliance announcement.

Ben Hudson MRICS, York, Hudson Moody, benhudson@hudson-moody.com - Continued shortage of rental properties driving up rents.

Bruce Collinson FRICS, Otley, Adair Paxton, bruce.collinson@me.com - Demand seems unstoppable whilst supply continues to shrink. Government's inability to reverse Natural England's vendetta against housebuilders for nutrient runoff has meant tens of thousands of plots stuck in planning, a third of which would be affordable and the public sector builds hardly any.

David Martindale MRICS, Wakefield, FSL ESTATE AGENTS, david.martindale@fslresidential.com - The lettings market continues to be very strong with high demand.

Michael Darwin MRICS, Northallerton, M W Darwin & Sons, info@darwin-homes.co.uk - Demand in the private rented sector exceeding supply, as some landlords have sold up while the housing market was good and before new legislation has been introduced, so rents continue to increase.

### North West

Amin Mohammed, Greater Manchester, Le Baron Haussmann, aminm7@gmail.com - There is a crisis now for basic housing with long queues for viewings, excessive rents and BTL bailing out. The elastic limit has been reached.

Jonathan Clayton FRICS, Lytham, JPA, jonathan@jpasurveyors.co.uk - On Average, there are 6 tenant applications for each property. Strong demand for 3 bedroom houses.

### East Midlands

John Chappell BSc.(Hons), MRICS, Skegness, Chappell & Co Surveyors Ltd, john@chappellandcosurveyors.co.uk - The PM's announcement yesterday on EPC ratings will ease the minds of small Landlord investors trying to make the sums work but rising interest rates are providing a reasonable return on capital for no risk, so still expect properties on our books to decline for a while yet.

Paul Reece Assoc RICS, Nottingham, Pavilion, paulreece600@btopenworld.com - Market is buoyant.

### West Midlands

Andrew Oulsnam MRICS, Birmingham, Oulsnam, andrew@oulznam.net - The lettings market continues to soar with high tenant demand and insufficient supply with landlords continuing to sell and leave in droves, at least the news on EPC's will stop it getting worse.

Colin Townsend MRICS, Malvern, John Goodwin, colin@johngoodwin.co.uk - Still the same issues dominate. A shortage of supply of new rental property and surplus demand. Rents will continue to rise at a significant rate.

John Andrews FRICS, Kidderminster, Doolittle & Dalley Holdings Ltd, johndrews@doolittle-dalley.co.uk - Reduction in new instructions from landlords fearful of pending Rent Reform act. Applicants seeking rented property are increasing, resulting in rents still going up as demand exceeds supply.

John Andrews FRICS, Bridgnorth, Doolittle & Dalley Holdings Ltd, johndrews@doolittle-dalley.co.uk - Very high enquiry levels for all types of rented property and stock levels need to increase to satisfy demand. Landlords wary of pending legislation.

John Shepherd, Solihull, ShepherdVine, john@shepman.co.uk - Demand remains strong.

Richard Franklin MRICS, Tenbury, Franklin Gallimore Ltd., richard@franklingallimore.co.uk - Very strong demand for certain rental properties -35 applications not unheard of. Rent levels still rising.

### East Anglia

Jeffrey Hazel FRICS, King's Lynn, Geoffrey Collings & Co, jhazel@geoffreycollings.co.uk - Steady demand and limited supply.

Kevin Burt-Gray MRICS, Cambridge, Pocock & Shaw, kevin@pocock.co.uk - Lettings activity has slowed a bit as compared to earlier in the year but generally still a very active market with a shortage of stock prevailing.

### South East

David Parish FRICS, Upminster, Gates, Parish & Co, professional@gates-parish.co.uk - Demand for all types of property remains high. There is a lack of new instructions which is inhibiting the market.

David Porter MRICS, Hertford, Knight Property Management, david@knightpm.co.uk - Government's anti-landlord policies are continuing to reduce the supply of decent rental properties coming to market.

Eoin Christopher Hill MRICS, Newbury, SDLSurveying, eoin.hill@sdlurveying.co.uk - Diluting the Green agenda is big error of judgement and will have consequences.

James Duffy AssocRICS, Hove, Callaways LTD, jamesduffy81@googlemail.com - Government policy around PRS and taxation is driving landlords out of the market and stopping them expanding. We need to turn on supply to help stabilise rent levels. Is anyone in government listening?

James Farrance MNAEA, FARLA, Maidenhead, WD Braxton Limited, jfarrance@braxtons.co.uk - Huge mistakes by Government intervening in the PRS are sadly costing tenants thousands of pounds a year in soaring rents. Landlords are selling due to the Renters Reform Act causing more upwards pressure on rents as stock dwindles.

Martin Allen MRICS, Wingham, Canterbury, Elgars, m.allen@elgars.uk.com - Market still strong and new lets to good prospects possible without marketing.

Michael Brooker Fellow, Crowborough, Michael Brooker Estate Agents, michael@michaelbrooker.co.uk - Lack of supply has forced rental levels up. Still demand from investors.

### South West

David Hickman , Devon , onetrip100@outlook.com - Demand is steady but, because supply is shrinking, this is edging rentals up to more than some tenants can afford.

David Robinson AssocRICS, Cornwall & West Devon, David J Robinson Estate Agents & Auctioneers, david@djrestateagents.co.uk -

Howard Davis , Bristol, Howard Homes, howard@howard-homes.co.uk - Still demand outstrips supply in Bristol keeping rent prices at an all time high. Still continue to see landlords exiting the market.

Marcus Arundell MRICS, Bath, HomeLets, marcus@homeletsbath.co.uk - A busy summer season is coming to an end, but supply and demand issues remain including rents at peak. Government U-turn on EPC C and gas boilers is a concern, along with mutterings of landlords struggling to re-gear assets with the current rents/inflation and interest rate environment.

### Wales

Anthony Filice FRICS, Cardiff, Kelvin Francis Ltd., tony@kelvin-francis.com - Reducing numbers of properties to rent, through Landlords exiting the market, causing upward inflation of rents. Demand high and full rental figures transpiring as a result.

Paul Lucas FRICS, Haverfordwest, R.K.Lucas & Son, paul@rklucas.co.uk - Government intervention continues to affect the supply of residential letting properties which, in turn, pushes up rents on available properties.

Tim P Goodwin AssocRICS, Gwynedd, Williams & Goodwin The Property People, tim@tppuk.com - Demand continues to considerably outstrip supply and if anything is getting worse. Many landlords are either selling or moving to the holiday lets with less legislative controls. The dramatic fall in supply and continuing rise in demand is resulting in dramatic increases in rent levels for new lets.

### London

Allan Henry Fuller FRICS, London, Allan Fuller Estate Agents, allan@allanfuller.co.uk - Demand has slowed and we are beginning to see signs of rents slowing.

Jeremy Leaf FRICS, Finchley, Jeremy Leaf & Co, jeremy@jere-myleaf.co.uk - There is no doubt record rents are helping to support house prices as well as persuade some aspiring first-time buyers to pay their mortgage rather than the landlord's. Tenants may be reaching an affordability ceiling as enquiries are reducing and many are refusing to keep paying more.

Jilly Bland , Wimbledon London, Robert Holmes & Co, jilly@robertholmes.co.uk - No family market this Summer/Autumn and yet more and more stock in this bracket coming onto the market almost daily - strange times.

John King FRICS, Wimbledon, Andrew Scott Robertson, jking@as-r.co.uk - A very consistent year continues in the same vein. A great deal of interest in too few properties.

John King FRICS, L.B.Merton, Andrew Scott Robertson, jking@as-r.co.uk - The lack of stock has begun to ease, as more landlords reconsider their investment returns when compared to other markets.

Marcus Goodwille MRICS, Prime London, Savills UK Ltd, marcus.goodwille@savills.com - Rental growth across Prime London has been driven mainly by smaller and lower value properties. Constrained supply is still a key issue, but it is becoming more varied by location and property type.

Mark Wilson MRICS, London, Globe Apartments, mark@globeapt.com - The high level of renewals continues to limit supply, so we always are in need of stock. Demand much the same and we must be careful not to read anything into a busier or quieter week or weeks. Student activity however is not as strong as pre covid years.

Will Barnes Yallowley Assoc RICS, Kensington, Tate Residential, will@lhresidential.co.uk - The ongoing shortage of rental property means that asking prices and offers keep going up.

William Delaney AssocRICS, Central London/West End, Coopers of London Limited, william@coopersonlondon.co.uk - Landlords are a "soft target" for government and their flight from the PRS can only get worse. Affordability issues have failed to significantly temper rent increases and the pressure on incomes could result in substantial numbers of defaults with no affordable alternatives available.

### Scotland

Carolyn Davies MRICS, Dumfries, Savills, cmadavies@savills.com - Extension of the CoLA until 31st March 2024 continues to significantly impact on the lettings sector with limited ability to review rents and no evictions. New consultation for the private sector will only hinder this even more, and continue the trend for landlords to move out of the PRS.

Craig Henderson MRICS, Ayrshire, Graham & Sibbald LLP, craig.henderson@g-s.co.uk - We continue to see landlords opting to sell investment property due to the inability to increase rents to match their increasing costs. The Scottish Governments restriction on rental increases is causing landlords to depart the rental market, and will result in less availability and higher rents.

Grant Robertson FRICS, Glasgow, Allied Surveyors Scotland Plc, grant.robertson@alliedsurveyorsscotland.com - New rents continue to be strong driven by the policies from the Scot Gov to restrain supply. A tenant vacating a property is a god send to stretched landlords who will either return the property to the rent market or more likely exit the market and sell.

Ian Morton MRICS, St Andrews, Bradburne & Co, info@bradburne.co.uk - Tenant demand continues to drive up rental values on new tenancies. Emergency legislation on tenanted properties will end in March 2024. Landlords are awaiting any changes to the statute proposed after this date to make longer term commitments.

### Northern Ireland

Kirby O'Connor AssocRICS, Belfast, GOC Estate Agents, kirby@gocestateagents.com - Rentals are very strong and we have good quality applicants.

Samuel Dickey MRICS, Belfast, Simon Brien Residential, sdickey@simonbrien.com - Rental demand continues to grow at a pace.

## Contacts

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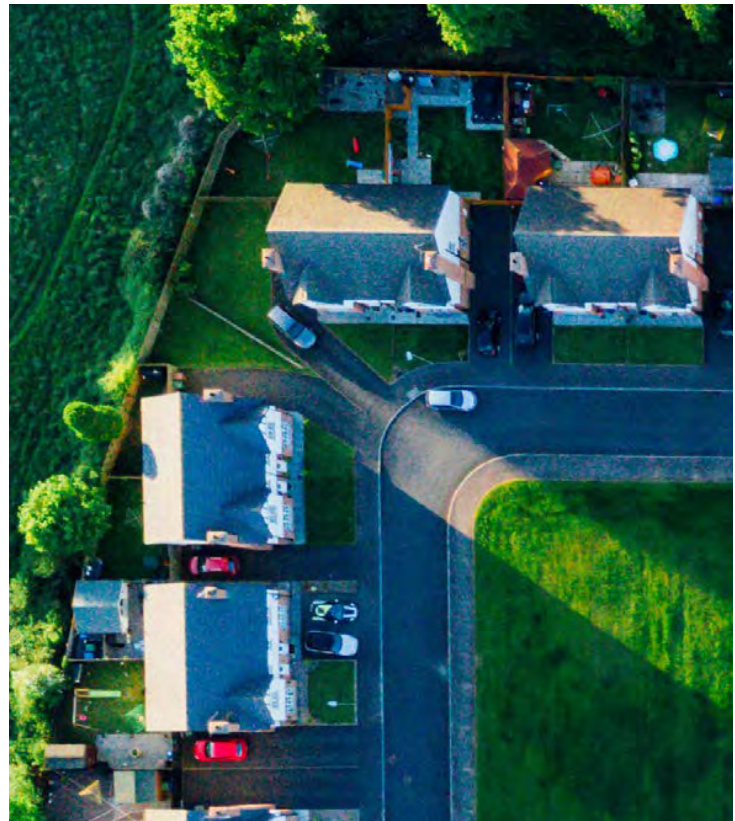
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**Appendix 15 - Appeal Decision (APP/Y3615/W/22/3298341)**



## Appeal Decisions

Inquiry Held on 20-23 & 27-30 September and 4, 5 & 7 October 2022

Sites visit made on 3 October 2022

**by G D Jones BSc(Hons) DipTP DMS MRTPI**

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

**Decision date: 28 November 2022**

### **Appeal A - Ref: APP/Y3615/W/22/3298341**

#### **North Lodge Farm, Lower Road, Effingham, Leatherhead KT24 5JP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant hybrid planning permission.
- The appeal is made by Berkeley Homes (Southern) Ltd against the decision of Guildford Borough Council.
- The application Ref 21/P/01306, dated 7 May 2021, was refused by notice dated 4 April 2022.
- The development proposed is described as hybrid planning application for outline planning permission (only access to be considered) for the erection of 4 self-build dwellings on land at 408-410 Lower Road, Effingham following demolition of all existing buildings; and full planning permission for the erection of 110 dwellings, with access, parking, community assets, landscaping, and associated works on land at Effingham Lodge Farm, Lower Road, Effingham.

### **Appeal B - Ref: APP/Y3615/W/22/3298390**

#### **Howard of Effingham School, Lower Road, Effingham KT24 5JR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by conditions of a planning permission.
- The appeal is made by Berkeley Homes (Southern) Ltd against the decision of Guildford Borough Council.
- The application Ref 21/P/00428, dated 16 February 2021, sought approval of details pursuant to Condition Nos 2 & 3 of planning permission Ref 14/P/02109, granted on 21 March 2018.
- The application was refused by notice dated 23 March 2022.
- The development proposed is described as reserved matters application pursuant to outline permission 14/P/02109 approved on 21/03/2018, to consider appearance, landscaping, layout and scale in respect of the erection of 99 dwellings on Howard of Effingham School.
- The details for which approval is sought are: appearance, landscaping, layout and scale.

## Decisions

1. **Appeal A is allowed** and planning permission is granted in outline (only access to be considered) for the erection of 4 self-build dwellings on land at 408-410 Lower Road, Effingham following demolition of all existing buildings; and in full for the erection of 110 dwellings, with access, parking, community assets, landscaping, and associated works at North Lodge Farm, Lower Road, Effingham, in accordance with the terms of the application, Ref 21/P/01306, dated 7 May 2021, subject to the schedule of conditions appended.
2. **Appeal B is dismissed.**



## Applications for Costs

- Applications for costs were made by Berkeley Homes (Southern) Ltd against Guildford Borough Council and by Guildford Borough Council against Berkeley Homes (Southern) Ltd. These applications shall be the subject of separate Decisions to follow.

## Background and Preliminary Matters

- As set out above, there are two appeals relating to two separate planning applications concerning distinct parcels of land. In the case of Appeal A the land in question concerns three separate areas known as Sites A, B and C. The Council's remaining objections to Appeal A relate only to the development proposed at Site A involving, amongst other things, the erection of 110 dwellings. Consequently, the assessment of the Appeal A scheme set out below primarily relates to the development proposed at its Site A.
- Appeal A is a hybrid planning application with full planning permission sought for all elements of the proposals, including the 110 dwellings at Site A, except for four self-build dwellings proposed at Site B for which outline permission is sought. This outline element seeks only the determination of access at this stage, with appearance, landscaping, layout and scale reserved for future approval. Whilst not formally part of the scheme, I have treated the submitted details relating to these reserved matters as a guide as to how Site B might be developed.
- An extant outline planning permission<sup>1</sup> establishes the principle of the proposed Appeal B development along with details of access. For ease of reference, I **refer to that permission as 'the outline planning permission'** henceforth. It was granted by the Secretary of State via his decision letter dated 21 March 2018, to which my colleague Inspector's report is appended (the previous Inspector's report), following a public inquiry held during May and June 2017.
- The outline planning permission approved development at a number of sites in addition to the Appeal B site, including land to the north on the opposite side of Lower Road. In broad terms, the Appeal B site equates to the existing Howard of Effingham School site. The Appeal B scheme is principally for 99 new dwellings pursuant to the outline planning permission. It would entirely replace the existing school as envisaged by the outline planning permission scheme (the Outline Scheme).
- In summary, the Outline Scheme aimed to replace the existing school with a new purpose built school north of Lower Road, and to support this through the delivery of residential development at land to the west of the new school site, at the current school site and at a site to the south at Brown's Lane. Pursuant reserved matters applications have been made, including two for the new school and associated development that have been approved. The **appellant's** case, amongst other things, is that the Outline Scheme is no longer viable such that the Appeal A development is required in order to deliver the new school.
- On the appellant's evidence, therefore, the Outline Scheme cannot be considered to represent any kind of fallback given that without the Appeal A development it would not be developed for reasons of viability. On this basis,

<sup>1</sup> Ref: 14/P/02109 – It should be noted that this permission is not only an outline planning permission but also includes an element of full planning permission for residential development at land at 'Brown's Field'



due to the terms under which the appellant seeks planning permission for the Appeal A scheme, it would only be delivered alongside the Outline Scheme, and not as a standalone development. Consequently, it is reasonable to assess the Appeal A scheme on that basis and bearing in mind that the Secretary of State has already found the Outline Scheme to be acceptable, albeit that it does not represent a fallback option.

10. It is common ground that the proposed development at Site A of Appeal A would be inappropriate development in the Green Belt in the terms of the National Planning Policy Framework (Framework) paras 147-150, such that it should not be approved except in very special circumstances. I have found no reason to disagree.
11. It is also common ground that the Appeal B development would cause *less than substantial harm*, in the terms of Framework paras 199 and 202, to the significance of both the Grade II\* listed Church of All Saints and the Little Bookham Conservation Area as designated heritage assets. I have determined Appeal B on that basis as explained in the relevant 'Reasons' section below.
12. There is a legal agreement, dated 11 October 2022, made under s106 of the Town and Country Planning Act 1990 (the s106 Agreement) concerning the Appeal A scheme only. The Council has confirmed that the s106 Agreement resolves its third and fourth reasons for refusal in respect to that Appeal scheme. I have had regard to it when making my decision.

## Main Issues

13. The main issues for **Appeal A** are:
  - The effect the proposed development would have on the openness of the Green Belt and whether it would conflict with the purposes of including land within the Green Belt by reason of encroachment into the countryside;
  - The effect that the proposed development would have on the character and appearance of the area; and
  - On the basis that the proposals at Site A would be inappropriate development in the Green Belt, whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.
14. The main issue for **Appeal B** is the effect of the proposed development on the setting of the Grade II\* listed Church of All Saints and on that of the Little Bookham Conservation Area.
15. As part of these main issues both appeals require an assessment of wider considerations some of which are common to both appeals, such as housing land supply.

## Reasons - Appeal A

### *Green Belt – Openness and Purposes*

16. The proposed development at Site A would extend the built form of the village north of the housing and west of the school as permitted by the Outline Scheme. Consequently, it would affect the openness of the Green Belt. That effect would be tempered to an extent by the containing effect of nearby development, particularly that planned at the adjoining Outline Scheme site,

and of mature planting in the vicinity, particularly the trees that line Effingham Common Road to the west, those that would stand between Site A and the new school site and most significantly the dense woodland at Thornet Wood to the north, which includes Ancient Woodland. In this regard, it should also be noted that the proposed housing would occupy only the southern portion of Site A leaving the northern portion closest to Thornet Wood more open.

17. Nonetheless, the proposed development at Site A would have a very marked effect on the openness of the Green Belt, both visually and spatially. This is due largely to the scale and nature of the development proposed and the comparatively open nature of the Site as it stands and even in the context of the permitted Outline Scheme were that to be fully implemented. In short, it would result in a significant reduction in the openness of the Green Belt. For broadly these reasons, the proposed development at Site A would also conflict with the purposes of Green Belt, particularly in terms of safeguarding the countryside from encroachment and checking unrestricted sprawl.
18. These considerations, alongside the agreed position that the proposed scheme at Site A would represent inappropriate development in the Green Belt, weigh against the Appeal A proposals and are relevant to the assessment of whether the very special circumstances necessary to justify the development exist. In this regard, the Framework is clear that substantial weight should be given to any harm to the Green Belt.
19. There would, therefore, be conflict with Policies ENP-G1 (A Spatial Plan for Effingham) and ENP-G5 (Assessing suitability of sites for residential development) of the Effingham Neighbourhood Plan 2016-2030 (the ENP). These Policies, in terms of how they relate to development in the Green Belt, carry full weight bearing in mind that national Green Belt policy has not changed significantly since the ENP was made in 2018.
20. Compliance or conflict with Policy P2 (Green Belt) of the Guildford Borough Local Plan Strategy and Sites 2015-2034 (the GBLPSS) is dependent on the outcome of the assessment of whether very special circumstances exist to justify the development. Consequently, it is dealt with later in my decision.

#### *Character & Appearance*

21. As outlined above, the Appeal A development would only proceed in the context of the permitted Outline Scheme. The Council has granted a reserved matters consent for housing pursuant to the outline planning permission on the adjoining land to the south of Site A, which is known as 'Phase 1'.
22. By extending the built form of the settlement, beyond that found to be acceptable by the Secretary of State under the Outline Scheme, northward into the countryside, the proposed development at Site A would harm the character and appearance of the area. This is particularly so given the gateway role performed by Effingham Common Road. Moreover, the relevant Landscape Character Area appraisal identifies the value of gaps in linear development, particularly where they allow rural views over fields or into woodland, and that the expansion of residential development along roads and the proliferation of suburban development are detracting features of the local area.
23. Nonetheless, that harm would be tempered due to the fairly contained nature of the site as outlined in the preceding section and by the context that would

be provided by the approved neighbouring school and Phase 1 housing developments to the east and south. It would, nonetheless, be readily perceived in the local landscape, particularly from Effingham Common Road, including from the new access point.

24. Notwithstanding the harm discussed above, the detail of the development proposed at Site A represents a reasonable response to the site's context, particularly bearing in mind the detail of the scheme approved for the neighbouring Phase 1 development. While the density of the proposed housing at Site A would be somewhat higher than that of the approved Phase 1 scheme, its general design would broadly reflect the principles and character of the Phase 1 scheme. The proposed density is also not untypical of that found in other parts of the village.
25. Furthermore, the proposed landscaping scheme, including extensive tree and hedge planting, would help give the impression of a lower density development, providing an attractive setting for the proposed buildings and structures, complementing the existing surrounding mature wooded landscape and assist with assimilating the scheme into its context.
26. Nonetheless, the Site A development at large would represent a harmfully urbanising addition to the extended form of the settlement resulting in the loss of open countryside around the village. This harm to the character and appearance of the area would be fairly moderate, though, given the reasonably contained nature of Site A. Accordingly, in that regard, the Appeal A scheme would be contrary to Policy D1 (Place Shaping) of the GBLPSS, and Policy ENP-G2 (Landscape, Heritage, Character, and Design) of the ENP.

#### *Other Considerers*

27. As the appeal scheme would be inappropriate development that is harmful to the Green Belt it should not be approved except in very special circumstances. **'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.** In addition to the harm identified above there are a number of considerations within the evidence that have the potential to affect the outcome of the assessment of whether very special circumstances exist to justify the development (the VSC balance). While not the only other considerations, notable amongst these are matters associated with housing land supply and the existing and proposed school.

#### *Housing Supply*

28. There was much evidence before the Inquiry relating to whether or not the Council can demonstrate a five year housing land supply in the terms of the Framework (5YHLS). In this case the so-called tilted planning balance cannot be engaged due to the site's location within the Green Belt. Consequently, in that respect the 5YHLS position is somewhat academic, such that I have not found it necessary to come to a formal position on the matter. In broader terms though, the housing delivery position in the area needs to be adequately appreciated so that the significance of the contribution that the proposed development would make to housing delivery may be appropriately assessed. In that sense the 5YHLS evidence is of considerable assistance.

29. During the GBLPSS adoption process, the Council was allowed by the local plan examining Inspector to adopt an approach of spreading past unmet need over the plan period in recognition of the contribution that would be made by strategic allocations which typically have a longer lead-in time. This is known as the Liverpool approach. It contrasts to the Sedgefield approach whereby the level of deficit or shortfall is calculated from the base date of the adopted plan and then added to the plan requirement for the next 5 year period. Of course, I make no criticism of the GBLPSS examining Inspector for taking this approach, the sound justification for which is clearly set out in his report of 27 March 2019.
30. Nonetheless, unmet housing need existed at that time. The GBLPSS appears likely to have been adopted on the understanding that housing would be delivered along the lines of the trajectory set out in its Appendix 1. In practice, there has already been significant slippage against that trajectory. The base date employed by the Council and the appellant for their 5YHLS calculations is 1 April 2021, against which there is a substantial shortfall in housing delivery on either of these parties' evidence.
31. The Council considers that shortfall to be 828 homes whereas the appellant maintains that it is 1,011, compared to the adopted annualised requirement of 562 homes. Of course this annualised requirement figure is derived from the GBLPSS rather than the Government's current preferred standard method approach. The **appellant's** evidence indicates the annualised figure calculated using the standard method would be uncapped at 803 homes and capped at 787 dwellings, such that housing need appears likely to be greater than is planned for in the GBLPSS.
32. Again, I make no criticism of the approach taken at the time the GBLPSS was prepared and adopted. I make these points merely to help build a reasonable picture of likely housing need as it is understood now. To that end, based on the evidence before me, the appellant's figure of 1,011 homes appears to be the more accurate of the two 5YHLS shortfall figures put forward. The reasons for this are primarily associated with how student accommodation is accounted for. I favour the appellant's evidence on this matter as it appears to be more consistent with the approach taken in the GBLPSS from which the 5YHLS housing requirement is derived. An uplift was applied to the objectively assessed housing need of the GBLPSS to take account of an increased growth in the student population, which is explained in the examining Inspector's report.
33. Another area of dispute between the Council and the appellant concerns the yield of housing that would be delivered from 13 specific sites over the relevant 5 years period. The difference between the parties is some 696 homes. As stated above, I have not found it necessary to take a formal position on 5YHLS. I have, nonetheless, used the Council's 5 year housing delivery figure of 3,785 homes as a guide as to what might be delivered in the coming years. In reality, however, it seems more likely that delivery will be notably lower than that figure over the 5 years in question. This is because of some of the likely delivery issues identified by the appellant at the disputed sites, and because the Council's approach to windfall sites is based on past permissions rather than actual delivery such that it is likely to overstate future windfall yield.

34. Overall, the key points that come out of the housing supply evidence are that the current delivery backlog is substantial, there has been slippage in delivery, and that the backlog is very unlikely to be fully addressed for several years. Even applying the Council's supply figure of 3,785 homes, and using the appellant's shortfall figure of 1,011 homes and the GBLPSS requirement figure of 562 homes per annum, the backlog would not be cleared before March 2026 at the earliest.
35. It is worth pausing here to remember that behind these figures are real households that have experienced real housing need for a number of years, need which seems unlikely to be fully addressed for several more years. Consequently, regardless of the 5YHLS position, the contribution the Appeal A development would make to helping to address the evident need for market housing is significant.
36. An affordable housing need of 517 homes per annum was identified as part of the evidence base for the GBLPSS. Yet an average of only 39 affordable homes per annum have been delivered in the last 6 years. Unsurprisingly, therefore, the evidence indicates that waiting lists for affordable housing are lengthy in terms of the time it takes applicants to access an affordable home. Accordingly, the contribution that the Appeal A development would make to the delivery of affordable homes would also be significant.
37. I have made the foregoing assessment bearing in mind the appeal decision made in May this year concerning development at Land at Ash Manor, Ash, Guildford. Although there is reference to housing land supply in that decision, the Council's case then, that it could demonstrate a greater than 5YHLS, was not in dispute such that the housing land supply evidence at that appeal would not have been tested in the manner that it has been in the case before me. That site also formed part of an allocation in the development plan such that the principle of its development was not in question. Consequently, in regard to the 5YHLS position, I have given that decision very limited weight when making my assessment.

#### *The School – Need*

38. The Framework states, at para 95, that *it is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should: a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and b) work with school promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.*
39. The Policy Statement – Planning for Schools Development (the Schools Policy Statement), a joint statement by the then Secretaries of State for Communities and Local Government and for Education, sets out the **Government's commitment to support the development of state-funded schools and their delivery through the planning system.** While the Schools Policy Statement was published in August 2011 prior to any iteration of the Framework, it remains a statement of Government policy.

40. As stated in the previous Inspector's report, the Schools Policy Statement makes clear that the Government is firmly committed to ensuring there is sufficient provision to meet growing demand and increasing choice and opportunity in state-funded education. Its purpose, to allow for more provision and greater diversity to meet both demographic need and drive increased choice and higher standards, remains unambiguous. Consequently, need in this context is not only comprised of demographic need, but also the need for greater choice as well as the need to raise educational standards.
41. In its statement of case for the current appeals, while referring to changed circumstances since the outline planning permission was granted, the Council accepted the need for the school and identified that the benefits of the development include the continuing need for the replacement of the existing school on grounds of the inadequacy of the existing facility and the need for its expansion. Reserved matters, pursuant to the outline planning permission, for the replacement school has been approved by the Council. The approved details include the sixth form centre, the Cullum Centre, office accommodation for the wider school Trust, and a caretaker's dwelling.
42. There is evidence before me that challenges a demographic need for the additional two forms of entry that the approved scheme would provide. Nonetheless, there is good reason to believe that there is in the region of 53 additional places per year, including a capacity buffer to allow for variability and choice, now needed compared to a standard 60 places for two forms per year. Additionally, there are housing proposals in the **school's** catchment, which are likely to lead to even greater local need and for which there is uncertainty regarding how such need would be met. Overall, therefore, while there may not be a statutory duty on any school to plan for or provide a specific number of places generally or at sixth form level, there is good reason to believe that there is numerical need for a 10 form entry school.
43. Specifically regarding the sixth form, Years 12 and 13, the **school's plan to** accommodate 500 students in total also appears reasonable given the evidence regarding stay-on rates from Year 11 and that in the region of 50 external students per school year may join the sixth form.
44. Surrey County Council (SCC) does have a statutory duty to secure sufficient schools for providing secondary education. Those schools shall not be regarded as sufficient unless they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education. In my view, need as expressed in policy, as discussed above, goes beyond sufficiency in the terms of SCC's statutory role. I note also that SCC supports the proposed expanded school.
45. There also appears to be no dispute that the school is a good school. This is supported by Ofsted, for instance the sixth form is currently rated as 'Outstanding'. The evidence, taken as a whole, also indicates that it is a popular school. It seems very likely that its appeal would increase, including the sixth form, were the approved school to be implemented given the enhanced facilities that would be on offer not only compared to the existing school but to other schools that might otherwise have attracted students away from it, including non-state schools. Accordingly, while I recognise that there are other high performing schools in the area that will continue to be attractive to students and their parents, the proposed school's capacity appears very



realistic in terms of responding to need and of proving sufficiently attractive to meet that planned capacity.

46. The Cullum Centre would also respond to a recognised and important special educational need. Incorporating it into the new school, as is planned and as is provided for in the approved school scheme, would allow children to be taught within the mainstream of the school while providing them with the additional support and bespoke space needed to support their education. There is reference to there being potential to provide it at the existing school site and, in theory, it could be provided elsewhere. Moreover, the funding for the Cullum Centre was sought and awarded without reliance on a new school. Nonetheless, in practice there are no realistic firm plans to deliver such a facility other than as part of the new school.
47. Given that these special needs students may be either in the mainstream part of the school or within the Cullum Centre, provision should be made for them in both. Making such dual provision is integral to supporting these students' education. Consequently, the addition of the Cullum Centre cannot amount to double-counting in terms of quantifying need for school places.

#### *The School – Design & Costing*

48. The appellant's viability case is linked to the matter of whether or not the cost of delivering the proposed school would be excessive. If it were to be for any reason, including those that might be associated with its design, that excessive cost has the potential to effect the viability of the Outline Scheme.
49. Amongst the areas of disagreement between the main parties on this matter are the size of the planned school, the Cullum Centre, the sports facilities, and the school trust offices that are planned to be provided at the new school site. Before considering these and other matters, it is worth remembering that the planned new school is a self-funded project. It is not a Department for Education (DfE) / Education & Skills Funding Agency project and nor would it involve any financial contribution from either. Consequently, the DfE funding model is of limited assistance to my assessment.
50. Regarding the school size, Building Bulletin 103 - Area Guidelines for Mainstream Schools, June 2014, (BB103) sets out area guidelines for mainstream school buildings and sites for all age ranges from 3 to 19. On reasonable reading, BB103 provides a floorspace range, as is clearly shown in Figure 4 for ages 11 to 16 and Figure 5 for post 16 places. I see no good reason why these ranges should not be used to help assess the reasonableness of the approved school's area.
51. As set out in the preceding sub-section, the planned capacity of 1,500 students in Years 7 to 11, the age range 11 to 16, and 500 students in the sixth form, the plus 16 age group, appears reasonable based on need. Applying Figure 4 to 1,500 students gives an area range of some 10,500-12,000m<sup>2</sup>. Figure 5 only shows the ranges for up to 300 students. Nonetheless, the ranges for 200 and 300 students can be combined to give a reasonable range for a sixth form of 500 students. The result of doing so is a combined area range for a sixth form of some 4,150-4,800m<sup>2</sup>. When these figures are combined, they give a whole school, Years 7 to 13, area range of some 14,650-16,800m<sup>2</sup>.



52. The area of the approved school facility alone is some 14,964m<sup>2</sup>. This would be comfortably within the area range identified above based on BB103. The combined area of the school along with the Cullum Centre, Trust office space and nursery area of the approved reserved matters amounts to some 16,187m<sup>2</sup>, which is also below the upper end of the range for a 2,000 student school.
53. Nonetheless, as outlined above, the Cullum Centre would sit alongside the mainstream element of the school to allow students with particular special educational needs to move from one to the other according to their needs at any given time. Indeed, the Cullum Centre appears to align more closely to a designated unit for students with autistic-spectrum disorder, which attracts additional facilities over and above the standard BB103 area allowance rather than an integrated specialist resource provision. Consequently, there is good reason to omit its some 474m<sup>2</sup> from the area calculations based on BB103. This planned area for the Cullum Centre also appears reasonable in order to accommodate the 20 students it is designed to support.
54. As it would serve pre-school aged children who would be well outside the age range considered in BB103 Figures 4 and 5, there is also good reason to omit the some 155m<sup>2</sup> nursery from the area calculations based on BB103. Nor does this area appear excessive having regard to the evidence on early learning and childcare.
55. The Council's evidence is that the school should be planned for a capacity of 1,935 rather than 2,000 students. Applying BB103 Figures 4 and 5 to 1,935 students results in an area range of up to some 16,250m<sup>2</sup>, a little larger than the combined area of the approved school of some 16,187m<sup>2</sup>, including the Cullum Centre and nursery.
56. For all of the foregoing reasons, therefore, the approved school area would not be overlarge.
57. Regarding sports facilities, including the all-weather pitches, the sports hall and the sprint track, the approved details are large, extensive and of good quality. Nonetheless, given the planned size of the school they do not appear excessive in any way.
58. The school forms part of a multi-academy trust, the Howard Partnership Trust (the Trust), which is comprised of 13 schools with a 14<sup>th</sup> in the pipeline. The Trust's main offices are currently hosted at the existing school site. It is proposed that the new school site would also accommodate the main offices of the Trust. The approved school premises include 594m<sup>2</sup> of office space for this purpose. In theory this office space could be located elsewhere. Nonetheless, there appear to be sound operational reasons for including this facility at the school now and in the future, including if the school were to relocate to new premises, as is planned, particularly given that this is the lead school in the Trust.
59. While I recognise that they would have been purely for illustrative purposes, the details that were before the previous Inspector and the Secretary of State when the Outline Scheme was considered and approved, included clear reference to and provision for such cross-Trust accommodation. Consequently, it is reasonable to conclude that they both found this aspect of the proposals acceptable as a matter of principle even though it is not expressly referenced in

the description of development or controlled by way of planning conditions / planning obligation.

60. Bearing in mind the scale of the Trust, with some 1,417 employees, and that the proposed space would house a range of functions, including finance, human resources, information technology, estates and senior management, the planned provision for 56 members of Trust staff at the new school seems reasonable. The area of cross-Trust office space that has been approved at the reserved matters stage also appears proportionate to this amount of staff. Overall, therefore, the proposals to accommodate Trust office facilities at the new school appear reasonable.
61. A caretaker's dwelling forms part of the approved details which are planned to be implemented as part of the new school site. Like any other aspect of those approved details, it could in theory be omitted or altered via a new reserved matters application. Nonetheless, there is a caretaker's dwelling at the existing school site, which serves a functional purpose linked to the school use. As one of the key, if not the key, objectives of the overall project is to replace the existing school facility at a new site, it seems reasonable to have included the caretaker's dwelling as part of the new school development. As such its inclusion as planned and approved is not unacceptable for the purposes of assessing viability.
62. The Council maintains that a number of costs should be removed from the cost of the new school as forecast by the appellant. At least some of these appear to be as a consequence of using a BCIS rate that appears to be more appropriate for school extensions than for a new school. Extensions can be expected to be less costly than entirely new schools as they are unlikely to require the same infrastructure and may involve the use of existing structures, such as an external wall to build off. Consequently, the use of the BCIS rate employed by the appellant for whole new high schools appears more appropriate. I note that the appellant's detailed costings for the planned school are a little less than this whole school BCIS rate.
63. My attention has also been drawn to aspects of the contract between the appellant and the Trust, including in terms of 'Information Computer Technology' equipment and 'Fixtures Fittings and Equipment' for the new school. The general approach taken to these matters appears reasonable, particularly bearing in mind that such existing loose equipment would be largely transferred from the existing school to the new school thereby avoiding additional expense. Nonetheless, the appellant's costings appear to include at least some costs for loose equipment that would be transferred from the existing school to the new school as well as for some equipment that the Trust would fund under the terms of the contract.
64. For the foregoing reasons, therefore, I have found no good reason to conclude that the planned school premises would be inappropriate in size, content and quality. Subject to the preceding point, the same can be said in respect to costs.
65. I return to costing in the following subsection on viability. Before doing so and while not determinative, I also note that, aside from the planning process, the approval of the Government's Education & Skills Funding Agency is necessary for the school to proceed. I am advised that the Secretary of State has to

approve all disposals of publicly owned schools and be satisfied that value for money is being achieved.

### *Viability*

66. As outlined above, having regard to everything I saw and heard during the appeal process, I do not consider that the approved/planned school is excessive, including in terms of its function, size and quality. The anticipated costs associated with its delivery, with some limited exceptions, do not appear to be overstated.
67. At the planning application stage the scheme was independently assessed in terms of costs and viability by suitably qualified consultants on behalf of the Council. That assessment found the scheme to be unviable, broadly in line with the appellant's submissions at that stage. I have found no good reason to disagree with the findings of that independent assessment. Indeed the most up to date, bespoke evidence on viability before me indicates that the scheme would be unviable without the Appeal A development. The evidence also indicates that the appellant has generally gone to reasonable lengths to constrain building costs and that this appears to have been reasonably successful given that costs would be below the appropriate BCIS median figure. This also indicates that, notwithstanding the foregoing matters, the appellant's overall assessment of costs is reasonable.
68. Although it refers expressly to plan making, I also see no good reason why the profit range of 15-20% identified in the Government's planning practice guidance (PPG) should not reasonably be applied to a scheme of this type in order to assess viability, particularly when read in the context of para 58 of the Framework. Given the fairly difficult and comparatively uncertain economic circumstances for the construction sector at present and regardless of what profit margin the appellant has worked to in the past, it is reasonable to assume developer risk is greater now than at other more economically stable times. Consequently, notwithstanding the evidence regarding house prices and demand for housing in the area, and in respect to programming and sales revenue, a profit target to the higher end of the range, up to 20% of gross development value, is reasonable.
69. While I generally favour the appellant's assessment of costs and viability, once adjusted for the additional cost of the all-weather pitches, which I consider to be appropriate, the Council's witnesses' cost plan and viability assessment indicate that the blended return on gross development value would equate to a value, towards the higher end of the range identified in the PPG, but below 20%. On this basis, this aspect of the evidence lends support to the case that without the Appeal A development the wider development would not be viable, and that the appellant's overall assessment of costs is reasonable.
70. Given the foregoing, while having regard to all of the evidence on viability, overall it has been demonstrated that the Outline Scheme, including the new school, would not be viable without the Appeal A development.

### *Other Potential Alternatives*

71. Various further potential alternatives to delivering a replacement school, enhancing the existing school and the means of financing the delivery of such alternatives rather than via the Appeal A development have been put to me.

There is though an approved detailed scheme for the replacement school which has outline planning permission and reserved matters approval, which the Trust wishes to implement. I have also found the approved school scheme to be acceptable in the terms I have outlined above.

72. None of these suggested alternatives are as well developed as the approved school scheme and nor do they appear to have been subjected to anything approaching the degree and range of scrutiny, testing and assessment that the approved scheme has been the subject of. Whether such other schemes represent genuine alternatives, therefore, remains very doubtful. As they have not been thoroughly scrutinised, for instance through the planning application / reserved matters process, the extent and degree of harm that they might give rise to is also very hard to estimate.
73. The only planning permission for an enhanced school is that which is comprised within the Outline Scheme. There are, of course, two approved reserved matters schemes pursuant to that planning permission for new schools, one of which does not include elements of the other, including the **caretaker's** dwelling. Nonetheless, for the reasons outlined above, there are good reasons for including all of the elements of the Trust's preferred scheme.
74. Consequently, attempting to compare the approved school and / or the Appeal A development with such 'alternatives' is of very limited assistance. I have, therefore, primarily focussed on the Appeal A development in the context of the Outline Scheme, including the approved details of the replacement school that the Trust intends to implement. The VSC balance of the Framework is the appropriate mechanism for assessing the acceptability or otherwise of inappropriate development in the Green Belt.

#### *Other Matters*

75. In addition to the foregoing matters, concern has been expressed by interested parties, including those who spoke at the Inquiry, in respect to a number of other considerations relating to Appeal A. These matters include the effect of the proposed development on traffic and highway safety, on biodiversity, on the ENP, on the Ancient Woodland and other trees and hedges, on drainage / flooding risk, on open space including within the approved scheme, on separation between settlements, on playing fields and their provision, on mental health, on pollution, and on climate change; and the adequacy of local facilities, services and infrastructure and the measures proposed to supplement these, of parking, of affordable housing, of local employment opportunities, and of renewable energy measures within the development.
76. Additionally concerns have been raised in respect to the site not being allocated for housing in the development plan, the proposed housing mix and location of affordable **housing, the masterplan for the appellant's wider proposals should** be revisited and / or a new application made for the whole development, the increased local population resulting from the development, the approval of this development leading to further proposed housing, the loss of 408 and 410 Lower Road instead of being retained and refurbished, changed circumstances since the Outline Scheme was approved, loss of countryside, the relevance of the approved school scheme to the determination of Appeal A, the **appellant's** motives and conduct, the condition of the existing school, the consideration of the Appeal A in the wider context of other development plans and proposals in

the area, the strength and volume of local objection compared to support, and the displacement of students.

77. Other than as set out above, the Council did not conclude at the application determination stage or at the appeal stage that these matters would amount to reasons to justify withholding planning permission. I have been provided with no substantiated evidence which would prompt me to disagree with the **Council's conclusions** in that regard.

#### *Planning Obligations*

78. In the event that planning permission for the Appeal A scheme were to be granted and implemented the s106 Agreement would secure:

- Payments towards early years education, bus service improvements, including a Digital Demand Responsive Bus Service, the traffic calming scheme in Lower Road / Effingham Common Road, auditing of the travel plan, and police and health infrastructure;
- Provision of 22 affordable homes on site;
- Provision of the four proposed self-build dwellings at Site B and controls in the event that there is insufficient demand for the plots;
- Measures to mitigate the effects on the Thames Basin Heaths Special Protection Area (TBHSPA) as a European Site, as discussed below;
- The provision and equipping of the proposed on-site open space, including play equipment and allotments, and controls on delivery; and
- Timing restriction on development related to the delivery of the school permitted by the outline planning permission.

79. The Council has submitted a detailed statement for Appeal A (the CIL Statement), which addresses the application of statutory requirements to the planning obligations within the s106 Agreement and also sets out the relevant planning policy support / justification. I have considered the s106 Agreement in light of Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended) and Government policy and guidance on the use of planning obligations. Having done so, I am satisfied that they would be required by and accord with the policies set out in the CIL Statement. Overall, I am also satisfied that all of those obligations are directly related to the Appeal A development, and in each case are fairly and reasonably related to it and necessary to make it acceptable in planning terms.

#### *Appropriate Assessment*

80. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) as competent authority I am required to undertake an Appropriate Assessment of the Appeal A development on the basis of its Likely Significant Effects on the TBHSPA as a European Site. The mitigation proposed to address these effects are the provision of Suitable Alternative Natural Greenspace and Strategic Access Management and Monitoring.

81. Having regard to the submissions of Natural England and relevant planning **policy, including the Council's Thames Basin Heaths Special Protection Area Avoidance Strategy Supplementary Planning Document**, I consider that the proposed measures would adequately mitigate the effects of the Appeal A development, either alone or in combination with other plans and projects, so that there would be no adverse effect upon the integrity of the TBHSPA.

Moreover, in the event that Appeal A were to be allowed, the mitigation would be secured and managed via the s106 Agreement.

### *Conditions*

82. The Council and appellant have put forward suggested planning conditions to be imposed in the event that Appeal A were to be allowed. I have considered these in the light of Government guidance on the use of conditions in planning permissions and made amendments accordingly. My conclusions are summarised below.
83. In order to provide certainty, conditions requiring that the development is carried out in accordance with the approved plans, so far as they relate to matters that are not reserved for future consideration, would be necessary. A condition would be necessary to ensure that features of archaeological interest are properly examined / recorded. In the interests of protecting highway safety, biodiversity, Ancient Woodland and **residents' living conditions**, and safeguarding against pollution, conditions would also be necessary to ensure that the construction works proceed in accordance with a Construction Environmental Management Plan, with a Construction Transport Management Plan and a Site Waste Management Plan, and to control hours of working.
84. To ensure that the Ancient Woodland is further protected, a condition to secure the implementation of a woodland management plan would be necessary. A condition to control drainage and its management would be necessary in the interests of flood prevention, to protect the environment and to secure acceptable living conditions for residents. To protect the character and appearance of the area, conditions to control the ground and floor levels and the detailed appearance of the development, including facing materials and boundary treatment, would also be necessary. For that reason and in the interests of biodiversity, conditions would be necessary to secure and maintain planting and landscaping as part of the development, to protect trees beyond the Ancient Woodland, reptiles and bats, and to secure the implementation of a landscape and ecological management plan.
85. To help the development harmonise with its context, in the interests of highway safety and to secure suitable access arrangements, conditions would also be necessary to control details of access, internal highways, visibility splays, parking, turning and service areas. To promote sustainable modes of transport, reduce the need for travel and in the interests of highway safety, conditions would be necessary to secure the implementation of a travel plan and to secure suitable on-site cycle storage, e-vehicle charging infrastructure and an e-car club. A condition to safeguard against contamination that might affect the site, along with any requisite remediation, would be necessary to protect the health and well-being of future occupiers and off-site receptors as well as in the interests of biodiversity.
86. To support the development of high quality communication infrastructure, a condition to assist the delivery of high-speed broadband to the development would be necessary. To ensure suitable servicing of the development and to protect the character and appearance of the area, a condition would be necessary to secure the implementation of a Refuse Strategy for the site. Conditions to secure off-site highway improvements to the junctions of Lower Road / Church Road / High Street and of The Street / Guildford Road / Beech Avenue, would be necessary in the interests of highway safety. To improve



water efficiency and respond to climate change, a condition to secure the implementation of a water efficiency statement would be necessary.

87. To help provide a flexible housing stock to meet a wide range of needs, a condition would be necessary to secure accessible and adaptable homes as part of the development. A condition would exceptionally be necessary to provide control over the enclosure of garages / parking barns to protect the character and appearance of the area and to retain parking in the interests of highway safety. To help ensure that the development has an acceptable effect in terms of crime and safety, a condition would be necessary to ensure that it accords with the Secured by Design standard. To respond to climate change and improve energy efficiency, conditions would be necessary to ensure compliance with the submitted Energy Statement, Supplementary Sustainability Statement and Sustainable Specification and Procurement Policy documents.

*Conclusion on Very Special Circumstances*

88. For the reasons outlined earlier in this section, the proposed Appeal A development would be necessary in order to render the Outline Scheme viable and the replacement school deliverable. Moreover, the approved / planned replacement school, including the associated facilities that would be provided within the school premises, would be appropriate, including in terms of size, quality and cost viability.
89. Consequently, the Appeal A development would allow the delivery of the approved school and with it the associated benefits of the Outline Scheme. By the same token it would also result in the associated harm. These include various forms of harm to the Green Belt, harm to the character and appearance of the area and less than substantial harm to Effingham Conservation Area. These benefits and harms were assessed by the previous Inspector and the Secretary of State when considering the Outline Scheme. Those benefits of that Scheme were found to clearly outweigh the harm to the Green Belt by reason of inappropriateness and other harm such that very special circumstances were found to exist at that time, thus leading to planning permission being granted.
90. Since the Outline Scheme was approved the housing land supply position in the area has improved. Nonetheless, for the reasons outlined above, the contribution that the Outline Scheme would make to housing delivery is still very weighty as a benefit and would be augmented by the additional homes that would be provided by the Appeal A development. The weight carried by the wider benefits of the Outline Scheme does not appear to be significantly altered now compared to how they were identified and characterised by the previous Inspector. The delivery of the new school and the Cullum Centre, in the context of need and of the condition of the existing school, were found to carry particularly substantial cumulative weight. In light of the foregoing, they still carry such weight in the Green Belt planning balance.
91. In addition to the harm associated with the Outline Scheme, the Appeal A development would cause further harm to the Green Belt and to the character and appearance of the area as outlined above. Taken together these components of harm weigh very heavily against the Appeal A development in the Green Belt planning balance, particularly bearing in mind the great importance the Government attaches to Green Belts. Indeed, the cumulative harm that would now arise would be even greater than the 'significant quantum

of planning harm' found by the previous Inspector associated with the Outline scheme, which of course would involve the demolition of the existing school buildings and construction of an entirely new school and with these the associated sustainability impacts.

92. Against this harm, if Appeal A were to be allowed it would release the delivery of an even more significant number of homes than permitted by the Outline Scheme, both affordable and market. Irrespective of whether or not the Council can currently demonstrate a 5YHLS, given the circumstances outlined above regarding housing delivery and the need for affordable housing, the effect of allowing Appeal A on housing supply would be very significant, carrying very considerable beneficial weight.
93. I have found no reason to disagree with the previous Inspector's assessment that *the provision of a new and expanded school on the basis of the significant shortcomings of its current infrastructure, its condition and current financial circumstances for its maintenance and repair, the demonstrated need for its expansion, and very strong Government policy support for such a proposal for which there are no credible or sustainable alternatives, all together merit, in the particular circumstances of this case, very substantial weight being given to them.*
94. While there are other lesser benefits at play, including biodiversity net gain associated with the Appeal A development, it is the benefits associated with the delivery of the much needed approved new school and the provision of new housing, as previously approved and as supplemented by the current proposal, that when taken together would clearly outweigh the totality of harm, including to the Green Belt, heritage, character and appearance, and the associated development plan conflict, so that very special circumstances exist. The Appeal A development therefore accords, in that regard, with Policy P2 of the GBLPSS.
95. In making this assessment I have taken into account that a colleague Inspector gave lesser weight than I have to some of these benefits in her appeal decision, which concerns housing development that was proposed at a site in Church Lane, Effingham, made in December 2021. Nonetheless, that proposal was for a significantly smaller quantum of development, such that the scale of benefits would have been likely to have been less weighty than in this case, thus accounting for our apparently differing approaches.
96. Additionally, that appeal decision was made via the written representations procedure. Consequently, the breadth and depth of evidence concerning such benefits, particularly that related to housing land supply, is likely to have been significantly less in that case compared to this one. Nor would that evidence have been tested in the manner that has been possible in this case via the inquiry process. These matters might, therefore, also account for why she and I have taken a different approach to the weight carried by the benefits of the respective schemes.
97. Given the outcome of the VSC balance, the Appeal A scheme would represent sustainable development in the terms of the Framework, which is a material consideration that, in the particular circumstances of the case, outweighs the conflict with the development plan as a whole sufficient to warrant the granting of planning permission.

## Reasons - Appeal B

98. All of the main parties' evidence at the appeal stage identifies at least some harm to the historic environment resulting from the Appeal B development, particularly in terms of the effect it would have on the Church of All Saints, as a grade II\* listed building, and on Little Bookham Conservation Area. I have applied the appellant's position that the resulting harm to the significance of each of these heritage assets would be at the lower end of the less than substantial spectrum rather than towards the mid-point as contended by the Council, and that this would be for the reasons identified by the appellant.
99. I do not necessarily agree with this position. I have simply employed it as a benchmark to assist in making my decision on the basis that it identifies the least amount of harm that the witnesses on this matter have identified. I have also found no good reason to conclude that the development would be any less harmful to the historic environment than the appellant has identified. It represents the minimum harm, therefore.
100. Consequently, in this regard, the Appeal B development would conflict with Policy D3 (Historic Environment) of the GBLPSS, Policies HE4 (Setting of a Listed Building) and HE10 (Setting of a Conservation Area) of the Guildford Borough Local Plan 2003 and Policy ENP-G3 (Archaeology and the Historic Environment) of the ENP. I note that Policies HE4, HE10 and ENP-G3 do not include the public benefits balance of Framework para 202.
101. Applying this minimum level of harm as a benchmark, there are two balancing exercises to be done. The first is that set out in para 202 of the Framework, in the context of the statutory requirements of s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act). The second is the more common balancing exercise under s38(6) of the Planning and Compulsory Purchase Act 2004 having regard, amongst other material considerations, to the Framework, including its paras 200 and 202. The former is dealt with first as its outcome has the potential to effect the operation of the latter.
102. Para 199 of the **Framework gives 'great weight' to the conservation of** designated heritage assets irrespective of whether that harm would be substantial or less than substantial. This weight applies to all designated heritage assets and is then amplified in proportion to the importance of the asset. In this case there are two heritage assets that are effected.
103. The Appeal B site is not within Little Bookham Conservation Area, but does stand within its setting. While the LBCA Act provides no statutory protection for the setting of conservation areas, para 200 of the Framework establishes the need to consider the negative impact of development within the setting of all designated heritage assets. The Church of All Saints, as a grade II\* listed building, is a particularly important building and of more than special interest, with only around 5.8% of listed buildings being at grade II\*. Consequently, the weight to be attached to the identified 'benchmark' level of harm to the significance of these heritage assets is very great.
104. There are strong public benefits at play in this case. The Appeal B development would directly deliver 99 homes, including 19 affordable homes. In contrast to the Appeal A assessment, I have also taken the appellant's position on housing land supply as a further benchmark to establish relative

weight to assist in making my decision on Appeal B. On that basis, the delivery of the homes, both market and affordable, permitted at the Appeal B site would be very significant in terms of public benefits. Moreover, as a component of the Outline Scheme the delivery of the replacement school is dependent on the Appeal B development. For the reasons outlined above, the delivery of the planned new school would also be very significant in terms of public benefits.

105. All of the public benefits that have been identified by the appellant, including those associated with the housing to be provided at the Appeal B site and those associated with the new school, would undoubtedly be very weighty as assessed above in respect to Appeal A. In this case, however, in contrast to the Appeal A assessment, the previous Inspector found that the approved development at the Appeal B site could be achieved without *material harm to the setting of the Little Bookham designated heritage assets* and that development of the site *would preserve the setting of the listed buildings, so according with the requirements of section 66*.
106. Having regard to all of the evidence, I have found no reason to disagree with the previous Inspector on this matter as set out in his report, including its para 388. Having regard to this and other parts of his report, the Secretary of State agreed *that there is no policy conflict in respect of the impact on the settings of other heritage assets*. It is clear, therefore, that both the previous Inspector and the Secretary of State did not envisage even the least level of harm that would result from the Appeal B scheme when they considered the parent outline application. Moreover, it is reasonable to conclude that a reserved matters scheme of some form for this part of the Outline Scheme could deliver all of the benefits of the Appeal B scheme without harm, or at the least less harm, to the significance of the two heritage assets in question that would occur as a result of the Appeal B development.
107. In this context, therefore, notwithstanding the great totality of public benefits, those benefits are not collectively sufficient to outweigh the 'benchmark' less than substantial harm to the significance of the Church of All Saints and to the significance of Little Bookham Conservation Area, bearing in mind the strong presumption against development that would cause such harm, and that such harm should be given considerable importance and weight, especially having regard to the particular national importance and more than special interest of the grade II\* listed building. Consequently, irrespective of the 5YHLS position, the tilted balance of Framework para 11 does not apply.
108. Given the outcome of the Framework para 202 balance, even if the **appellant's** best position on the weight currently carried by the relevant policies of the development plan were to be adopted, when undertaking the s38(6) planning balance there would be insufficient additional weight in favour of the Appeal B development to outweigh the harm to the two heritage assets in question and the associated development plan conflict. Accordingly, the Appeal B scheme does not represent sustainable development in the terms of the Framework and the relevant reserved matters details do not warrant approval.

**Conclusions**

109. For the foregoing reasons, therefore, **Appeal A is allowed**, subject to the appended schedule of conditions, and **Appeal B is dismissed**.

*G D Jones*

INSPECTOR

**APPEARANCES<sup>2</sup>**

## FOR THE APPELLANT:

Chris Young of Kings Counsel	Instructed by Matt Briant, Senior Planner, Quod Limited
He called	
Philip Grover BA(Hons) BTP DipArch(Cons) MRTPI IHBC	Heritage / Design – Grover Lewis Associates
Ben Pycroft BA(Hons) DipTP MRTPI	Housing Land Supply - Emery Planning
Barney Stringer BSc(Hons) PGCert MSc FRSA	School matters – Quod Limited
Rhona Barnfield BSc(Hons), MA PGCE CBE	School matters - The Howard Partnership Trust
Michael Olliff BA(Hons) DipArch RIBA BNA	School Design - Scott Brownrigg
John Turner BA(Hons) MRCIS	Viability - Turner Morum LLP
Simon Britton RCIS	School costs - Artelia UK
John Rhodes BA(Hons) MRCIS OBE	Planning – Quod Limited

## FOR THE LOCAL PLANNING AUTHORITY:

Charles Streeten, of Counsel	Instructed by Legal and Democratic Services, Guildford Borough Council
He called	
Julia Bennett Smith BA(Hons) MA AIfA	Heritage – Chris Blandford Associates
Ian Johnson BSc(Hons) MA DipUD MRTPI	Design - Luken Beck MDP
Martin Miller BA(Hons) MPHIL MRTPI	Housing Land Supply - <b>Terence O'Rourke Ltd</b>
Sean Fishlock MBA MCIOB MCICES MRICS	School Delivery/Costing - Berkeley Research Group
Andrew Jones BSc MRICS	Viability - BPS Chartered Surveyors
Nigel Jarvis BA(Hons) MSc MRTPI	Planning – Luken Beck MDP

## FOR EFFINGHAM PARISH COUNCIL: PTO

<sup>2</sup> Additionally, Matt Briant of Quod Limited, and David Gilchrist and Heidi Perrin, both of Berkeley Homes, contributed to the conditions / planning obligations session



## FOR EFFINGHAM PARISH COUNCIL:

Scott Stemp, of Counsel	Instructed by Effingham Parish Council
He called <sup>3</sup>	
Julie Iles	School Places - former Surrey County Council Ward Councillor and Cabinet Member for All Age Learning
Pidwell BA(Hons) DipArch RIBA MAPM FRSA APS	Sustainability Issues – Shepherd Epstein Hunter
Liz Hogger BSc(Hons) BA MSc DIC ARCS	Planning – Effingham Parish Council

## INTERESTED PERSONS:

Rev Mandy MacVean	Rector of the Parish of Effingham with Little Bookham, responsible for St Lawrence Church, Effingham and All Saints Church, Little Bookham
Vivien White	Chairman of the Effingham Residents Association

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<sup>3</sup> Although he produced a proof of evidence on Financial Viability, Perry Stock was not called to give evidence. His written evidence and supporting documents have nonetheless been taken into account in my decisions

**APPEAL A - REF APP/Y3615/W/22/3298341 - SCHEDULE OF CONDITIONS:***Full Planning Permission*

1. The development hereby permitted in detail shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted in detail shall be carried out in accordance with the following approved plans:
  - 01023C\_S01 Site Location Plan
  - 01023C\_MP02 Illustrative Masterplan
  - 01023C\_S02 Site Sections - Sheet 2
  - 01023C\_S03 Site Sections - Sheet 3
  - 01023C\_S04 Site Sections - Sheet 4
  - 01023C\_S05 Site Sections - Sheet 5
  - 01023C\_001A Plot 1 - Elevations
  - 01023C\_001C Plot 1 - Plans
  - 01023C\_002A Plot 2 - Elevations
  - 01023C\_002B Plot 2 - Plans
  - 01023C\_003A Plot 3 - Elevations
  - 01023C\_003B Plot 3 - Plans
  - 01023C\_004A Plot 4 - Elevations
  - 01023C\_004B Plot 4 - Plans
  - 01023C\_005A Plot 5-6 - Elevations 1
  - 01023C\_005B Plot 5-6 - Elevations 2
  - 01023C\_006A Plot 5-6 - Plans 1
  - 01023C\_006B Plot 5-6 - Plans 2
  - 01023C\_007A Plot 7-8 - Elevations 1
  - 01023C\_007B Plot 7-8 - Elevations 2
  - 01023C\_008A Plot 7-8 - Plans 1
  - 01023C\_008B Plot 7-8 - Plans 2
  - 01023C\_009A Plot 9 - Elevations
  - 01023C\_009B Plot 9 - Plans
  - 01023C\_010A Plot 10 - Elevations
  - 01023C\_010B Plot 10 - Plans
  - 01023C\_011A Plot 11 - Elevations
  - 01023C\_011B Plot 11 - Plans
  - 01023C\_012A Plot 12 - Elevations
  - 01023C\_012B Plot 12 - Plans
  - 01023C\_013A Plot 13 - Elevations
  - 01023C\_013B Plot 13 - Plans
  - 01023C\_014A Plot 14 - Elevations
  - 01023C\_014B Plot 14 - Plans
  - 01023C\_015A Plot 15 - Elevations
  - 01023C\_015B Plot 15 - Plans
  - 01023C\_016A Plot 16 - Elevations
  - 01023C\_016B Plot 16 - Plans
  - 01023C\_017 Plot 17-18 - Elevations
  - 01023C\_018 Plot 17-18 - Plans
  - 01023C\_019A Plot 19-20 - Elevations 1
  - 01023C\_019B Plot 19-20 - Elevations 2
  - 01023C\_020A Plot 19-20 - Plans 1
  - 01023C\_020B Plot 19-20 - Plans 2

- 01023C\_021A Plot 21 - Elevations
- 01023C\_021B Plot 21 - Plans
- 01023C\_022A Plot 22 - Elevations
- 01023C\_022B Plot 22 - Plans
- 01023C\_023A Plot 23 - Elevations
- 01023C\_023B Plot 23 - Plans
- 01023C\_024A Plot 24 - Elevations
- 01023C\_024B Plot 24 - Plans
- 01023C\_025A Plot 25-26 - Elevations 1
- 01023C\_025B Plot 25-26 - Elevations 2
- 01023C\_026A Plot 25-26 - Plans 1
- 01023C\_026B Plot 25-26 - Plans 2
- 01023C\_027A Plot 27 - Elevations
- 01023C\_027B Plot 27 - Plans
- 01023C\_028 Plot 29-30 - Elevations1
- 01023C\_029 Plot 29-30 - Elevations1
- 01023C\_030 Plot 29-30 - Plans
- 01023C\_031A Plot 31-32 - Elevations 1
- 01023C\_031B Plot 31-32 - Elevations 2
- 01023C\_032 Plot 31-32 - Plans
- 01023C\_033 Plot 33-34 - Elevations
- 01023C\_034 Plot 33-34 - Plans
- 01023C\_035A Plot 35 - Elevations
- 01023C\_035B Plot 35 - Plans
- 01023C\_036 Plot 36-39 - Elevations 1
- 01023C\_037 Plot 36-39 - Elevations 2
- 01023C\_038 Plot 36-39 - Plans
- 01023C\_040 Plot 40-41 - Elevations
- 01023C\_041 Plot 40-41 - Plans
- 01023C\_042 Plot 42-47 - Elevations 1
- 01023C\_043 Plot 42-47 - Elevations 2
- 01023C\_044 Plot 42-47 - Plans 1
- 01023C\_045 Plot 42-47 - Plans 2
- 01023C\_048 Plot 48-53 - Elevations 1
- 01023C\_049 Plot 48-53 - Elevations 2
- 01023C\_050 Plot 48-53 - Plans 1
- 01023C\_051 Plot 48-53 - Plans 2
- 01023C\_054A Plot 54 - Elevations
- 01023C\_054B Plot 54 - Plans
- 01023C\_055A Plot 55 - Elevations
- 01023C\_055B Plot 55 - Plans
- 01023C\_056A Plot 56 - Elevations
- 01023C\_056B Plot 56 - Plans
- 01023C\_057A Plot 57 - Elevations
- 01023C\_058B Plot 57 - Plans
- 01023C\_058A Plot 58-59 - Elevations 1
- 01023C\_058B Plot 58-59 - Elevations 2
- 01023C\_059A Plot 58-59 - Plans 1
- 01023C\_059B Plot 58-59 - Plans 2
- 01023C\_060A Plot 60 - Elevations
- 01023C\_060B Plot 60 - Plans
- 01023C\_061A Plot 61 - Elevations
- 01023C\_061B Plot 61 - Plans

- 01023C\_062A Plot 62 - Elevations 1
- 01023C\_062B Plot 62 - Elevations 2
- 01023C\_062C Plot 62 - Plans
- 01023C\_063A Plot 63 - Elevations 1
- 01023C\_063B Plot 63 - Elevations 2
- 01023C\_063C Plot 63 - Plans
- 01023C\_064A Plot 64 - Elevations
- 01023C\_064B Plot 64 - Plans
- 01023C\_065 Plot 65-67 - Elevations
- 01023C\_066 Plot 65-67 - Plans
- 01023C\_068 Plot 68-69 - Elevations
- 01023C\_069 Plot 68-69 - Plans
- 01023C\_070 Plot 70-71 - Elevations
- 01023C\_071 Plot 70-71 - Plans
- 01023C\_072 Plot 72-79 - Elevations 1
- 01023C\_073 Plot 72-79 - Elevations 2
- 01023C\_074 Plot 72-79 - Plans 1
- 01023C\_075 Plot 72-79 - Plans 2
- 01023C\_080A Plot 80 - Elevations
- 01023C\_080B Plot 80 - Plans
- 01023C\_081A Plot 81-82 - Elevations 1
- 01023C\_081B Plot 81-82 - Elevations 2
- 01023C\_082 Plot 81-82 - Plans
- 01023C\_083A Plot 83 - Elevations
- 01023C\_083B Plot 83 - Plans
- 01023C\_084 Plot 84-91 - Elevations 1
- 01023C\_085 Plot 84-91 - Elevations 2
- 01023C\_086 Plot 84-91 - Plans 1
- 01023C\_086 Plot 84-91 - Plans 2
- 01023C\_086 Plot 84-91 - Plans 3
- 01023C\_092 Plot 92-94 - Elevations
- 01023C\_093 Plot 92-94 - Plans
- 01023C\_095 Plot 95-106 - Elevations 1
- 01023C\_096 Plot 95-106 - Elevations 2
- 01023C\_097 Plot 95-106 - Plans 1
- 01023C\_098 Plot 95-106 - Plans 2
- 01023C\_099 Plot 95-106 - Plans 3
- 01023C\_107A Plot 107-108 - Elevations 1
- 01023C\_107B Plot 107-108 - Elevations 2
- 01023C\_108A Plot 107-108 - Plans 1
- 01023C\_108B Plot 107-108 - Plans 2
- 01023C\_109 Plot 109-110 - Elevations 1
- 01023C\_110 Plot 109-110 - Plans
- 1581-002E Thornet Wood Community Open Space
- 1581-003D Residential Landscape Masterplan
- 1581-004E Village Green Landscape Plan

3. No development shall take place until the applicant has secured the implementation of a programme of archaeological work on the site in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Written Scheme of Investigation.

4. No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. This shall:
- a) Include measures for noise and vibration mitigation during each phase of construction, together with plans to monitor noise and vibration during construction;
  - b) Include details of lighting requirements during construction;
  - c) Include a Dust Management Plan to minimise dust and emissions including an inventory and timetable of dust generating activities, emission control methods and where appropriate air quality monitoring;
  - d) Measures on avoiding impacts to nesting birds during clearance of the site;
  - e) A plan showing habitat areas to be specifically protected during the works and how they shall be protected (i.e. with fencing). This shall include the 15m buffer zone to the Ancient Woodland, the extent of the Ancient Woodland can be seen in drawing 1581-002E;
  - f) Any necessary pollution protection methods; and
  - g) Information on the persons/bodies responsible for particular activities associated with the method statement that demonstrate they are qualified for the activity they are undertaking.

The CEMP measures shall be implemented and maintained for the course of the development works.

5. No development shall commence until a Construction Transport Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority, to include details of:
- a) Parking for vehicles of site personnel, operatives and visitors;
  - b) Loading and unloading of plant and materials;
  - c) Storage of plant and materials;
  - d) Programme of works (including measures for traffic management);
  - e) Provision of boundary hoarding behind any visibility zones;
  - f) HGV deliveries and hours of operation;
  - g) Vehicle routing such that HGVs access the site from the north along Effingham Common Road at all times, and avoid the use of The Street, Lower Road, Church Street, and Orestan Lane;
  - h) Measures to prevent the deposit of materials on the highway;
  - i) No HGV movements to or from the site shall take place between the hours of 8.30 and 9.15 am and 3.15 and 4.00 pm;
  - j) Details of how the lay-up and waiting of HGVs associated with the development in Lower Road, Orestan Lane, Effingham Common Road, Church Street, Manorhouse Lane or The Street during these times (set out in (i)) shall be discouraged; and
  - k) on-site turning for construction vehicles.

The CTMP measures shall be implemented and maintained for the course of the development works.

6. No development shall commence until a Site Waste Management Plan has been submitted to and approved in writing by the Local Planning Authority that demonstrates how waste generated from construction and excavation activities would be dealt with in accordance with the waste hierarchy. The development

shall only be carried out in accordance with the approved Site Waste Management Plan which shall subsequently be kept up-to-date throughout the development process in accordance with established methodology.

7. No development shall commence (excluding works for the site access) until details of a woodland management plan have been submitted to and approved in writing by the Local Planning Authority. This shall include but not be limited to details on exclusion zones, public access, root protection zones and details of interpretation boards which provide information on the Ancient Woodland and its management. The extent of the Ancient Woodland can be seen in drawing 1581-002E. The approved details shall be implemented and thereafter maintained as approved.
8. No development shall commence (excluding site preparation/ earthworks/ enabling works) until details of the design of a surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The design shall satisfy the Sustainable Drainage Systems Hierarchy and be compliant with the national Non-Statutory Technical Standards for SuDS, National Planning Policy Framework (2021) and Ministerial Statement on SuDS (December 2014). The required drainage details shall include:
  - a) Evidence that the proposed drainage solution shall effectively manage the 1 in 30 & 1 in 100 (+40% allowance for climate change) storm events and 10% allowance for urban creep, during all stages of the development. The proposed drainage solution shall follow the principles set out in the approved drainage strategy. Associated discharge rates and storage volumes shall be provided using a maximum discharge rate of 7.6 l/s;
  - b) Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features (such as silt traps and inspection chambers);
  - c) A plan showing exceedance flows (i.e. during rainfall greater than design events or during blockage) and how property on and off site shall be protected from increased flood risk;
  - d) Proposed point of discharge to public network, method of connection (pumped or gravity) etc;
  - e) Details of drainage management responsibilities and maintenance regimes for the drainage system; and
  - f) Details of how the drainage system shall be protected during construction and how runoff (including any pollutants) from the development site shall be managed before the drainage system is operational.

The development shall be built in accordance with the approved details and thereafter maintained as approved.
9. No development shall commence until levels details including the existing and proposed ground, finished floor, ridge height and hard surfaced areas levels, a datum point and spot heights of the adjoining building(s) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with those approved levels.
10. No development shall take place until a finalised Arboricultural Method Statement detailing all aspects of construction and staging of works) and a



finalised Tree Protection Plan, in accordance with British Standard 5837: 2012, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved method statement and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until fencing has been erected in accordance with the Tree Protection Plan. Within any area fenced in accordance with this condition, nothing shall be stored, placed or disposed of above or below ground, the ground level shall not be altered, no excavations shall be made, nor shall any fires be lit. The fencing shall be maintained in accordance with the approved details, until all equipment, machinery and surplus materials have been moved from the site.

11. No development (including demolition, site clearance and groundworks) shall commence until, a Reptile Mitigation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall be based on the recommendations within section 6 of Technical Annex 5 of the Environmental Statement, Report Ref. DFA21024 (Derek Finnie Associates, 2021). All approved details shall be implemented in full prior to the first occupation of the development (or in accordance with a timetable that has previously been approved in writing by the Local Planning Authority) and in accordance with the Reptile Mitigation Strategy.
12. Prior to the commencement of development above the damp proof course level, large scale plans to a scale of at least 1:20 shall be submitted to and approved in writing by the Local Planning Authority for:
  - a) Fenestration details including depths of reveal, sections, mouldings, glazing bars, trickle vents, materials, finishes and method of opening;
  - b) Pattern/header brickworks and pattern hanging tile work;
  - c) Headers and cills;
  - d) Balcony, access ramp and other balustrading, excluding the use of glass and sheet materials;
  - e) Garage doors, including panelisation, glazed window and door within a door (where practicable)
  - f) Porches;
  - g) Chimneys;
  - h) Roof verges and eaves including brick corbels;
  - i) Dormer windows;
  - j) Standing seams to metal roofs;
  - k) Fascias and soffits; and
  - l) Rainwater goods, vents and flues.

The development shall be carried out in accordance with the plans approved by the Local Planning Authority.

13. Prior to the commencement of development above the damp proof course level, details and samples of the proposed external facing and roofing materials and any hardstanding materials, including colour and finish, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and samples.

14. Prior to the commencement of development other than the access and groundworks, details shall be submitted to and approved in writing by the Local Planning Authority for the installation of a High Speed wholly Fibre broadband To The Premises (FTTP) connection to each dwelling/building hereby approved. Thereafter, the infrastructure shall be laid out in accordance with the approved details at the same time as other services during the construction process and be available for use on the first occupation of each dwelling where practicable or supported by evidence detailing reasonable endeavours to secure the provision of FTTP and alternative provisions that been made in the absence of FTTP.
15. Prior to the first occupation of the development hereby approved, a Refuse Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Strategy shall include refuse collection and storage points. The approved details shall be installed and made available for use before the first occupation of the dwellings that they serve. Thereafter, the approved details shall be retained for the lifetime of the development.
16. Prior to the commencement of development other than the access and groundworks, details shall be submitted to and approved in writing by the Local Planning Authority for the layout of internal roads, footways and cycle routes, including details of the following:
- a) Visibility splays (including pedestrian inter-visibility splays) for all road users;
  - b) Pram crossing points;
  - c) Any required signage; and
  - d) Road markings.
- The approved details shall be implemented before the first occupation of the development and all internal roads, footways and cycle routes shall remain open and accessible to the public thereafter. There shall be no obstruction to visibility splays between 0.6m and 2m high above ground level.
17. No development shall commence until a contaminated land remediation scheme is submitted to and approved in writing by the Local Planning Authority, including details of the following:
- a) Documentary proof together with a quality assurance certificate to show that the works have been carried out in full accordance with the approved remediation strategy;
  - b) Post remediation sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste material has been removed from the site before the development hereby permitted is occupied by any person not directly involved in constructing the development.
- The development shall be implemented in accordance with the approved details and maintained thereafter.
18. Prior to first occupation a plan indicating the positions, height, species (if applicable), design, materials, and type of boundary treatment to be implemented within and around the site, and a timetable for carrying out the works shall be submitted to and approved in writing by the Local Planning

Authority. The boundary treatment(s) shall then be implemented in accordance with the approved details and permanently maintained thereafter.

19. Prior to the first occupation of the development (or phased in accordance with a scheme which is first to be submitted to and approved in writing by the Local Planning Authority), a verification report carried out by a suitably qualified drainage engineer shall be submitted to and approved in writing by the Local Planning Authority. This shall demonstrate that the drainage system has been constructed in accordance with the approved scheme (or detail any minor variations), provide the details of any management company engaged to manage the drainage system and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls) and confirm any defects have been rectified.
20. The development hereby approved shall accord with the approved plans (drawing number 01023C\_MP02 Rev\_P01) for vehicles and cycles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear, to be implemented before the first occupation of the dwellings that they serve. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
21. Prior to first occupation, the secure, covered, lit cycle storage facilities shall be laid out within the site in accordance with the approved plans (drawing numbers 01023C\_G06 Rev\_P01, No. 01023C\_G07 Rev\_P01, 01023C\_G08 Rev\_P01 & No. 01023C\_097 Rev\_P01) for cycles to be parked to serve the blocks of flats within the site. Thereafter the cycle parking facilities shall be maintained for their designated purpose.
22. Prior to first occupation of the dwellings or apartment blocks that they serve, each of the proposed cycle parking spaces within garages and at least 20% of cycle spaces within communal storage facilities shall be provided with an electrical plug socket for the charging of electric bicycles, and maintained as such thereafter.
23. Prior to first occupation of each of the proposed dwellings (flat or house) details of fast charge sockets for electric cars (current minimum requirements – 7kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented before the first occupation of the dwellings that they serve and maintained thereafter.
24. Prior to first occupation of the development, details of (i) where one electric car club vehicle shall be provided on the site; (ii) how the car club shall be promoted as part of sales and marketing of the development; and (iii) **details of membership offers to be provided for residents; for example, one year's free membership and some free drive time shall be submitted to and approved in writing by the Local Planning Authority.** The car club parking space shall be provided with a fast-charge electric vehicle charging point (current minimum requirement: 7kw Mode 3 with Type 2 connector - 230 v AC 32 amp single phase dedicated supply) and nearby to accessible cycle parking facilities. The car club space shall be provided in accordance with a timetable to be approved in writing by the Local Planning Authority and the car club space, vehicle and facilities shall remain in place and operational for at least a period of five years following the first provision of the car club. Thereafter, the demand for the car club shall be reviewed through the Travel Plan monitoring process.

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25. Prior to the first occupation of the development a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority in accordance with the sustainable development aims and objectives of the National Planning Policy Framework, Surrey County Council's "Travel Plans Good Practice Guide", and in general accordance with the 'Heads of Travel Plan' document. The approved Travel Plan shall be implemented in accordance with a timetable to be approved in writing by the Local Planning Authority. Thereafter the Travel Plan shall be maintained and developed in line with the approved timetable.
26. Prior to the first occupation of the development, the improvements to the junction of Lower Road, Church Road and High Street in Great Bookham shall be constructed in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.
27. Prior to the first occupation of the development, the capacity improvements to the signalised junction of The Street, Guildford Road and Beech Avenue shall be constructed in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The approved details shall be in general accordance with drawing number 2012009-05 of the Transport Assessment (issue date 20 April 2021) and the junction controller shall be updated to incorporate Microprocessor Optimised Vehicle Actuation technology to the satisfaction of the Local Planning Authority.
28. Prior to first occupation of the development hereby permitted a landscape and ecological management plan (LEMP), including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas shall be submitted to and approved in writing by the Local Planning Authority. Depending on the time period between the completed ecological surveys and the commencement of development activities, updated survey works may be required prior to drafting this plan. The plan shall also include the additional elements listed below:
- a) Aims and objectives of the management plan;
  - b) Description of the ecological features of the site to be managed and habitat condition to be achieved;
  - c) Ecological trends and constraints on site that might influence management;
  - d) Details of maintenance regimes for each habitat type supported by a detailed map
  - e) Timings of maintenance activities and ecological considerations;
  - f) Landscape maintenance for a minimum period of 10 years, including timings, work programmes, replacements etc;
  - g) Details of the ecological enhancements;
  - h) Monitoring for and control of non-native invasive species;
  - i) Details of on-going ecological survey work to further shape the Management Plan details of management responsibilities;
  - j) All native planting is to be of local provenance; and
  - k) Details of the legal and funding mechanism(s) by which long term implementation of the plan shall be secured by the developer with the management body responsible for its delivery.
- The LEMP shall be implemented in accordance with the approved details and thereafter maintained.

- 
29. Prior to first occupation, a water efficiency statement shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of water management measures that achieve a maximum water usage of 110 litres per person per day and prioritises demand reduction measures over supply measures for each dwelling.
30. Before the development hereby approved is commenced, a plan showing the **location of the 11 Building Regulations 'accessible and adaptable dwellings M4(2) and the six Building Regulations M4(3)(2) wheelchair accessible dwellings** shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.
31. Works related to the construction of the development hereby permitted, including works of demolition or preparation prior to building operations, shall not take place other than between the hours of 0800 and 1800 Mondays to Fridays and between 0800 and 1330 Saturdays and at no time on Sundays or Bank / National Holidays.
32. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification) any garage or car barn which has been approved with open sides, fronts or backs shall remain as such in perpetuity and they shall not be further enclosed in full or in part at any time.
33. Before the first occupation of the development a certificate demonstrating that Secured by Design has been successfully achieved shall be submitted to and approved in writing by the Local Planning Authority.
34. All planting, seeding or turfing approved shall be carried out in the first planting and seeding season following the occupation of the development or the completion of the development, whichever is the sooner. Any trees or plants which, within a period of five years after planting, are removed, die or become seriously damaged or diseased in the opinion of the Local Planning Authority, shall be replaced in the next available planting season with others of similar size, species and number, unless otherwise approved in writing by the Local Planning Authority.
35. The development hereby permitted shall be built in accordance with the measures, processes and standards set out in the following documents:
- Energy Statement Rev B (prepared by Southern Energy Consultants, dated 28/02/2022).
  - Supplementary Sustainability Statement (prepared by Berkeley Homes, dated February 2022)
  - Sustainable Specification and Procurement Policy (prepared by Berkeley Group PLC, dated June 2017)
- The approved details shall be implemented prior to the first occupation of the development and retained as operational thereafter.
36. Prior to the occupation of each completed building, a pressure test shall be undertaken and the results submitted to and approved in writing by the Local Planning Authority. Where a pressure test does not meet the standards proposed in the Energy Statement Rev B (prepared by Southern Energy

Consultants, dated 28/02/2022) (a maximum air leakage rate of 4m<sup>3</sup>/h.m<sup>2</sup>@50Pa) the building shall be brought up to standard prior to the occupation of each completed building.

37. No above ground works shall take place (excluding ground works and construction up to damp proof course and the construction of the access) until a Sensitive Lighting Management Plan (to comply with 'Bats and Lighting in the UK - Bats and Built Environment Series) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for the implementation of the works. The development shall then be carried out in accordance with the approved details.

#### *Outline*

38. The self-build units hereby permitted shall be begun either before the expiration of two years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the latter.
39. 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 begins on the site of the self-build plots and the development shall be carried out as approved.
40. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission.
41. The outline development hereby permitted shall be carried out in accordance with the design parameters set out in pages 74-86 of the Design and Access Statement as well as approved plans: 01023C\_S01 P01 and 01023C\_MP02 P01.



**Appendix 16 - Appellant Updated ARGUS Summary Appraisal**

**APPRAISAL SUMMARY****ALDER KING LLP**

**SALE - 35 Oakfield (Appeal - November 2023)**  
**McCS Proposal (RL 25 Apartments)**  
**Alder King LLP - 2023**

**Appraisal Summary for Phase 1**

Currency in £

**REVENUE**

Sales Valuation	Units	m	Sales Rate m <sup>2</sup>	Unit Price	Gross Sales
RL - 1 Bed	14	740.19	6,619.92	350,000	4,900,000
RL - 2 Bed	<u>11</u>	<u>819.50</u>	6,442.95	480,000	<u>5,280,000</u>
<b>Totals</b>	<b>25</b>	<b>1,559.69</b>			<b>10,180,000</b>

**NET REALISATION****10,180,000****OUTLAY****ACQUISITION COSTS**

Residualised Price		2,008,186			2,008,186
Stamp Duty		89,909			
Effective Stamp Duty Rate	4.48%				
Agent Fee - 1%		22,800			
Legal Fee - 0.8%		18,240			
					130,949

**CONSTRUCTION COSTS**

Construction	m	Build Rate m <sup>2</sup>	Cost	
RL - 1 Bed	1,104.76	1,671.00	1,846,056	
RL - 2 Bed	<u>1,223.13</u>	1,671.00	<u>2,043,857</u>	
<b>Totals</b>	<b>2,327.90 m<sup>2</sup></b>		<b>3,889,913</b>	
Contingency		3.00%	127,908	
Demolition			98,670	
				4,116,492

**Other Construction Costs**

External Costs		8.00%	311,193	
Part L	25.00 un	2,500.00 /un	62,500	
				373,693

**PROFESSIONAL FEES**

Other Professional Fees		8.00%	348,982	
				348,982

**DISPOSAL FEES**

Sales & Marketing		5.00%	509,000	
Sales Legal Fee	25.00 un	650.00 /un	16,250	
				525,250

**Additional Costs**

Additional Costs - EPC			59,119	
				59,119

**TOTAL COSTS BEFORE FINANCE****7,562,671****FINANCE**

Timescale	Duration	Commences
Pre-Construction	4	Sep 2023
Construction	12	Jan 2024
Sale	18	Jan 2025
<b>Total Duration</b>	<b>34</b>	

Debit Rate 7.000%, Credit Rate 1.000% (Nominal)

Land	193,997
Construction	152,464
Other	234,868

**APPRAISAL SUMMARY****ALDER KING LLP****SALE - 35 Oakfield (Appeal - November 2023)****McCS Proposal (RL 25 Apartments)****Alder King LLP - 2023**

Total Finance Cost	581,329
<b>TOTAL COSTS</b>	<b>8,144,000</b>
<b>PROFIT</b>	<b>2,036,000</b>

**Performance Measures**

Profit on Cost%	25.00%
Profit on GDV%	20.00%
Profit on NDV%	20.00%
IRR% (without Interest)	24.91%
Floor Area Ratio	0.00%

**PROJECT CASH FLOW REPORT****ALDER KING LLP**

SALE - 35 Oakfield (Appeal - November 2023)

McCS Proposal (RL 25 Apartments)

Alder King LLP - 2023

	Total £	Per GSM£	Per NSM£	% of Cost or Revenue	Aug 2023	Month 1 Sep 2023	Month 2 Oct 2023	Month 3 Nov 2023	Month 4 Dec 2023	Month 5 Jan 2024	Month 6 Feb 2024	Month 7 Mar 2024
<b>Revenue</b>												
Unit Sales Revenue	10,180,000	4,373.06	6,526.94	100.00%	0	0	0	0	0	0	0	0
<b>Total Project Revenue</b>	<b>10,180,000</b>	<b>4,373.04</b>	<b>6,526.94</b>	<b>100.00%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Land and Acquisition Costs</b>												
Fixed Price	(2,008,186)	(862.66)	(1,287.55)	(26.55%)	0	(2,008,186)	0	0	0	0	0	0
Stamp Duty	(89,909)	(38.62)	(57.65)	(1.19%)	0	(89,909)	0	0	0	0	0	0
Agent Fee	(22,800)	(9.79)	(14.62)	(0.30%)	0	(22,800)	0	0	0	0	0	0
Legal Fee	(18,240)	(7.84)	(11.69)	(0.24%)	0	(18,240)	0	0	0	0	0	0
<b>Total Acquisition Costs</b>	<b>(2,139,135)</b>	<b>(918.91)</b>	<b>(1,371.51)</b>	<b>(28.29%)</b>	<b>0</b>	<b>(2,139,135)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Construction Costs</b>												
Construction Cost	(3,889,913)	(1,671.00)	(2,494.03)	(51.44%)	0	0	0	0	0	(84,097)	(198,832)	(292,241)
Contingency	(127,908)	(54.95)	(82.01)	(1.69%)	0	0	0	0	0	(2,765)	(6,538)	(9,609)
Demolition	(98,670)	(42.39)	(63.26)	(1.30%)	0	0	0	0	0	(98,670)	0	0
Other Construction Costs	(373,693)	(160.53)	(239.59)	(4.94%)	0	0	0	0	0	(8,079)	(19,101)	(28,075)
<b>Total Construction Costs</b>	<b>(4,490,185)</b>	<b>(1,928.86)</b>	<b>(2,878.90)</b>	<b>(59.37%)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(193,611)</b>	<b>(224,471)</b>	<b>(329,925)</b>
<b>Professional Fees</b>												
Other Professional Fees	(348,982)	(149.91)	(223.75)	(4.61%)	0	0	0	0	0	(15,268)	(17,435)	(25,625)
<b>Total Professional Fees</b>	<b>(348,982)</b>	<b>(149.91)</b>	<b>(223.75)</b>	<b>(4.61%)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(15,268)</b>	<b>(17,435)</b>	<b>(25,625)</b>
<b>Marketing and Disposal</b>												
Sales Agent Fee	(509,000)	0.00	0.00	(5.00%)	0	0	0	0	0	0	0	0
Sales Legal Fee	(16,250)	0.00	0.00	(0.16%)	0	0	0	0	0	0	0	0
<b>Total Marketing and Disposal</b>	<b>(525,250)</b>	<b>(225.63)</b>	<b>(336.77)</b>	<b>(6.95%)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Additional Costs</b>												
Additional Costs	(59,119)	(25.40)	(37.90)	(0.78%)	0	0	0	0	0	0	0	0
<b>Total Additional Costs</b>	<b>(59,119)</b>	<b>(25.40)</b>	<b>(37.90)</b>	<b>(0.78%)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**PROJECT CASH FLOW REPORT****ALDER KING LLP**

**SALE - 35 Oakfield (Appeal - November 2023)**  
**McCS Proposal (RL 25 Apartments)**  
**Alder King LLP - 2023**

	Total £	Per GSM£	Per NSM£	% of Cost or Revenue	Aug 2023	Month 1 Sep 2023	Month 2 Oct 2023	Month 3 Nov 2023	Month 4 Dec 2023	Month 5 Jan 2024	Month 6 Feb 2024	Month 7 Mar 2024
<b>Total Project Cost (Pre-Finance)</b>	<b>7,562,671</b>	<b>(3,248.71)</b>	<b>(4,848.83)</b>	<b>(100.00%)</b>	<b>0</b>	<b>(2,139,135)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(208,878)</b>	<b>(241,906)</b>	<b>(355,551)</b>
<b>Net Cash Flow Before Debt Service</b>	<b>2,617,329</b>	<b>1,124.33</b>	<b>1,678.11</b>		<b>0</b>	<b>(2,139,135)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(208,878)</b>	<b>(241,906)</b>	<b>(355,551)</b>
<b>Pre-Finance IRR</b>	<b>24.91%</b>											
<b>Total Project Cost (Incl. Finance)</b>	<b>8,144,000</b>	<b>(3,498.43)</b>	<b>(5,221.55)</b>		<b>0</b>	<b>(2,139,135)</b>	<b>(12,478)</b>	<b>(12,478)</b>	<b>(12,624)</b>	<b>(221,502)</b>	<b>(255,748)</b>	<b>(371,032)</b>
<b>Net Cash Flow After Debt Service</b>	<b>2,036,000</b>	<b>874.61</b>	<b>1,305.39</b>		<b>0</b>	<b>(2,139,135)</b>	<b>(12,478)</b>	<b>(12,478)</b>	<b>(12,624)</b>	<b>(221,502)</b>	<b>(255,748)</b>	<b>(371,032)</b>

**Project IRR** **24.91%**

**Area Summary**

Total Gross Unit Sales Area	2,327.89 /m <sup>2</sup>
Total Net Unit Sales Area	1,559.69 /m <sup>2</sup>
Total Gross Area	2,327.90 /m <sup>2</sup>
Total Net Area	1,559.69 /m <sup>2</sup>
Total Cost	7,562,671

**PROJECT CASH FLOW REPORT****ALDER KING LLP**

**SALE - 35 Oakfield (Appeal - November 2023)**  
**McCS Proposal (RL 25 Apartments)**  
**Alder King LLP - 2023**

	Month 8 Apr 2024	Month 9 May 2024	Month 10 Jun 2024	Month 11 Jul 2024	Month 12 Aug 2024	Month 13 Sep 2024	Month 14 Oct 2024	Month 15 Nov 2024	Month 16 Dec 2024	Month 17 Jan 2025	Month 18 Feb 2025	Month 19 Mar 2025
<b>Revenue</b>												
Unit Sales Revenue	0	0	0	0	0	0	0	0	0	0	0	3,054,764
<b>Total Project Revenue</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3,054,764</b>
<b>Land and Acquisition Costs</b>												
Fixed Price	0	0	0	0	0	0	0	0	0	0	0	0
Stamp Duty	0	0	0	0	0	0	0	0	0	0	0	0
Agent Fee	0	0	0	0	0	0	0	0	0	0	0	0
Legal Fee	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Acquisition Costs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Construction Costs</b>												
Construction Cost	(364,324)	(415,080)	(444,511)	(452,615)	(439,392)	(404,844)	(348,969)	(271,768)	(173,240)	0	0	0
Contingency	(11,980)	(13,649)	(14,616)	(14,883)	(14,448)	(13,312)	(11,475)	(8,936)	(5,696)	0	0	0
Demolition	0	0	0	0	0	0	0	0	0	0	0	0
Other Construction Costs	(35,000)	(39,876)	(42,703)	(43,481)	(42,211)	(38,892)	(33,524)	(26,108)	(16,643)	0	0	0
<b>Total Construction Costs</b>	<b>(411,303)</b>	<b>(468,605)</b>	<b>(501,830)</b>	<b>(510,979)</b>	<b>(496,052)</b>	<b>(457,048)</b>	<b>(393,968)</b>	<b>(306,812)</b>	<b>(195,580)</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Professional Fees</b>												
Other Professional Fees	(31,946)	(36,396)	(38,977)	(39,688)	(38,528)	(35,499)	(30,599)	(23,830)	(15,191)	0	0	0
<b>Total Professional Fees</b>	<b>(31,946)</b>	<b>(36,396)</b>	<b>(38,977)</b>	<b>(39,688)</b>	<b>(38,528)</b>	<b>(35,499)</b>	<b>(30,599)</b>	<b>(23,830)</b>	<b>(15,191)</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Marketing and Disposal</b>												
Sales Agent Fee	0	0	0	0	0	0	0	0	0	0	0	(152,738)
Sales Legal Fee	0	0	0	0	0	0	0	0	0	(16,250)	0	0
<b>Total Marketing and Disposal</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(16,250)</b>	<b>0</b>	<b>(152,738)</b>
<b>Additional Costs</b>												
Additional Costs	0	0	0	0	0	0	0	0	0	(4,736)	(6,926)	(6,302)
<b>Total Additional Costs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(4,736)</b>	<b>(6,926)</b>	<b>(6,302)</b>



**PROJECT CASH FLOW REPORT**

**ALDER KING LLP**

**SALE - 35 Oakfield (Appeal - November 2023)**  
**McCS Proposal (RL 25 Apartments)**  
**Alder King LLP - 2023**

	Month 8 Apr 2024	Month 9 May 2024	Month 10 Jun 2024	Month 11 Jul 2024	Month 12 Aug 2024	Month 13 Sep 2024	Month 14 Oct 2024	Month 15 Nov 2024	Month 16 Dec 2024	Month 17 Jan 2025	Month 18 Feb 2025	Month 19 Mar 2025
<b>Total Project Cost (Pre-Finance)</b>	<b>(443,249)</b>	<b>(505,001)</b>	<b>(540,807)</b>	<b>(550,667)</b>	<b>(534,580)</b>	<b>(492,547)</b>	<b>(424,568)</b>	<b>(330,642)</b>	<b>(210,770)</b>	<b>(20,986)</b>	<b>(6,926)</b>	<b>(159,040)</b>
<b>Net Cash Flow Before Debt Service</b>	<b>(443,249)</b>	<b>(505,001)</b>	<b>(540,807)</b>	<b>(550,667)</b>	<b>(534,580)</b>	<b>(492,547)</b>	<b>(424,568)</b>	<b>(330,642)</b>	<b>(210,770)</b>	<b>(20,986)</b>	<b>(6,926)</b>	<b>2,895,724</b>
<b>Pre-Finance IRR</b>												
<b>Total Project Cost (Incl. Finance)</b>	<b>(460,805)</b>	<b>(525,142)</b>	<b>(564,204)</b>	<b>(577,219)</b>	<b>(564,344)</b>	<b>(525,895)</b>	<b>(460,788)</b>	<b>(369,340)</b>	<b>(252,028)</b>	<b>(63,473)</b>	<b>(49,536)</b>	<b>(184,608)</b>
<b>Net Cash Flow After Debt Service</b>	<b>(460,805)</b>	<b>(525,142)</b>	<b>(564,204)</b>	<b>(577,219)</b>	<b>(564,344)</b>	<b>(525,895)</b>	<b>(460,788)</b>	<b>(369,340)</b>	<b>(252,028)</b>	<b>(63,473)</b>	<b>(49,536)</b>	<b>2,870,156</b>

**Project IRR**

**PROJECT CASH FLOW REPORT****ALDER KING LLP**

**SALE - 35 Oakfield (Appeal - November 2023)**  
**McCS Proposal (RL 25 Apartments)**  
**Alder King LLP - 2023**

	Month 20 Apr 2025	Month 21 May 2025	Month 22 Jun 2025	Month 23 Jul 2025	Month 24 Aug 2025	Month 25 Sep 2025	Month 26 Oct 2025	Month 27 Nov 2025	Month 28 Dec 2025	Month 29 Jan 2026	Month 30 Feb 2026	Month 31 Mar 2026
<b>Revenue</b>												
Unit Sales Revenue	462,797	462,797	462,797	462,797	462,797	462,797	462,797	462,797	462,797	462,797	462,797	339,079
<b>Total Project Revenue</b>	<b>462,797</b>	<b>462,797</b>	<b>462,797</b>	<b>462,797</b>	<b>462,797</b>	<b>462,797</b>	<b>462,797</b>	<b>462,797</b>	<b>462,797</b>	<b>462,797</b>	<b>462,797</b>	<b>339,079</b>
<b>Land and Acquisition Costs</b>												
Fixed Price	0	0	0	0	0	0	0	0	0	0	0	0
Stamp Duty	0	0	0	0	0	0	0	0	0	0	0	0
Agent Fee	0	0	0	0	0	0	0	0	0	0	0	0
Legal Fee	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Acquisition Costs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Construction Costs</b>												
Construction Cost	0	0	0	0	0	0	0	0	0	0	0	0
Contingency	0	0	0	0	0	0	0	0	0	0	0	0
Demolition	0	0	0	0	0	0	0	0	0	0	0	0
Other Construction Costs	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Construction Costs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Professional Fees</b>												
Other Professional Fees	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Professional Fees</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Marketing and Disposal</b>												
Sales Agent Fee	(23,140)	(23,140)	(23,140)	(23,140)	(23,140)	(23,140)	(23,140)	(23,140)	(23,140)	(23,140)	(23,140)	(16,954)
Sales Legal Fee	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Marketing and Disposal</b>	<b>(23,140)</b>	<b>(23,140)</b>	<b>(23,140)</b>	<b>(23,140)</b>	<b>(23,140)</b>	<b>(23,140)</b>	<b>(23,140)</b>	<b>(23,140)</b>	<b>(23,140)</b>	<b>(23,140)</b>	<b>(23,140)</b>	<b>(16,954)</b>
<b>Additional Costs</b>												
Additional Costs	(5,838)	(5,374)	(4,910)	(4,446)	(3,982)	(3,518)	(3,054)	(2,590)	(2,126)	(1,772)	(1,418)	(1,063)
<b>Total Additional Costs</b>	<b>(5,838)</b>	<b>(5,374)</b>	<b>(4,910)</b>	<b>(4,446)</b>	<b>(3,982)</b>	<b>(3,518)</b>	<b>(3,054)</b>	<b>(2,590)</b>	<b>(2,126)</b>	<b>(1,772)</b>	<b>(1,418)</b>	<b>(1,063)</b>

**PROJECT CASH FLOW REPORT****ALDER KING LLP**

**SALE - 35 Oakfield (Appeal - November 2023)**  
**McCS Proposal (RL 25 Apartments)**  
**Alder King LLP - 2023**

	Month 20 Apr 2025	Month 21 May 2025	Month 22 Jun 2025	Month 23 Jul 2025	Month 24 Aug 2025	Month 25 Sep 2025	Month 26 Oct 2025	Month 27 Nov 2025	Month 28 Dec 2025	Month 29 Jan 2026	Month 30 Feb 2026	Month 31 Mar 2026
<b>Total Project Cost (Pre-Finance)</b>	<b>(28,978)</b>	<b>(28,514)</b>	<b>(28,050)</b>	<b>(27,586)</b>	<b>(27,122)</b>	<b>(26,658)</b>	<b>(26,194)</b>	<b>(25,730)</b>	<b>(25,266)</b>	<b>(24,912)</b>	<b>(24,558)</b>	<b>(18,017)</b>
<b>Net Cash Flow Before Debt Service</b>	<b>433,819</b>	<b>434,283</b>	<b>434,747</b>	<b>435,211</b>	<b>435,675</b>	<b>436,139</b>	<b>436,603</b>	<b>437,067</b>	<b>437,531</b>	<b>437,885</b>	<b>438,239</b>	<b>321,062</b>
<b>Pre-Finance IRR</b>												
<b>Total Project Cost (Incl. Finance)</b>	<b>(52,773)</b>	<b>(49,779)</b>	<b>(47,194)</b>	<b>(44,194)</b>	<b>(41,191)</b>	<b>(38,476)</b>	<b>(35,468)</b>	<b>(32,457)</b>	<b>(29,606)</b>	<b>(26,699)</b>	<b>(24,448)</b>	<b>(17,650)</b>
<b>Net Cash Flow After Debt Service</b>	<b>410,023</b>	<b>413,018</b>	<b>415,603</b>	<b>418,603</b>	<b>421,606</b>	<b>424,321</b>	<b>427,329</b>	<b>430,340</b>	<b>433,191</b>	<b>436,097</b>	<b>438,348</b>	<b>321,428</b>

**Project IRR**

**PROJECT CASH FLOW REPORT****ALDER KING LLP**

**SALE - 35 Oakfield (Appeal - November 2023)**  
**McCS Proposal (RL 25 Apartments)**  
**Alder King LLP - 2023**

	Month 32 Apr 2026	Month 33 May 2026	Month 34 Jun 2026	Month 35 Jul 2026	Month 36 Aug 2026
<b>Revenue</b>					
Unit Sales Revenue	339,079	339,079	339,079	339,079	339,079
<b>Total Project Revenue</b>	<b>339,079</b>	<b>339,079</b>	<b>339,079</b>	<b>339,079</b>	<b>339,079</b>
<b>Land and Acquisition Costs</b>					
Fixed Price	0	0	0	0	0
Stamp Duty	0	0	0	0	0
Agent Fee	0	0	0	0	0
Legal Fee	0	0	0	0	0
<b>Total Acquisition Costs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Construction Costs</b>					
Construction Cost	0	0	0	0	0
Contingency	0	0	0	0	0
Demolition	0	0	0	0	0
Other Construction Costs	0	0	0	0	0
<b>Total Construction Costs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Professional Fees</b>					
Other Professional Fees	0	0	0	0	0
<b>Total Professional Fees</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Marketing and Disposal</b>					
Sales Agent Fee	(16,954)	(16,954)	(16,954)	(16,954)	(16,954)
Sales Legal Fee	0	0	0	0	0
<b>Total Marketing and Disposal</b>	<b>(16,954)</b>	<b>(16,954)</b>	<b>(16,954)</b>	<b>(16,954)</b>	<b>(16,954)</b>
<b>Additional Costs</b>					
Additional Costs	(709)	(354)	(1)	0	0
<b>Total Additional Costs</b>	<b>(709)</b>	<b>(354)</b>	<b>(1)</b>	<b>0</b>	<b>0</b>

**PROJECT CASH FLOW REPORT****ALDER KING LLP**

**SALE - 35 Oakfield (Appeal - November 2023)**  
**McCS Proposal (RL 25 Apartments)**  
**Alder King LLP - 2023**

	Month 32 Apr 2026	Month 33 May 2026	Month 34 Jun 2026	Month 35 Jul 2026	Month 36 Aug 2026
<b>Total Project Cost (Pre-Finance)</b>	<b>(17,663)</b>	<b>(17,308)</b>	<b>(16,955)</b>	<b>(16,954)</b>	<b>(16,954)</b>
<b>Net Cash Flow Before Debt Service</b>	<b>321,416</b>	<b>321,771</b>	<b>322,124</b>	<b>322,125</b>	<b>322,125</b>
<b>Pre-Finance IRR</b>					
<b>Total Project Cost (Incl. Finance)</b>	<b>(17,029)</b>	<b>(16,406)</b>	<b>(15,783)</b>	<b>(15,514)</b>	<b>(16,954)</b>
<b>Net Cash Flow After Debt Service</b>	<b>322,050</b>	<b>322,673</b>	<b>323,296</b>	<b>323,565</b>	<b>322,125</b>

**Project IRR**