



Appeal Decision

Inquiry Held on 26-29 March and 2-3 April 2019

Site visit made on 29 March 2019

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2019

Appeal Ref: APP/T0355/W/18/3203764
67 Alma Road, Windsor, SL4 3ES

- 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 Salmon Harvester Properties Limited against the Council of the Royal Borough of Windsor and Maidenhead.
 - The application, ref. 18/00095/FULL, is dated 11 January 2018.
 - The development proposed is: demolition of the existing basement and concrete plinth above and erection of a building of between 1 and 7 storeys containing 217 residential apartments (Use Class C3), including a café (Use Class A3) measuring 146 sqm (GIA), car and cycle parking, plant enclosures, access improvements, service bay, drop off spaces, substation, and associated landscaping and open space; and a five storey building to provide 16,389 sqm (GIA) of office floorspace (Use Class B1), together with ground level and basement car and cycle parking, service bay and associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing basement and concrete plinth above and erection of a building of between 1 and 7 storeys containing 217 residential apartments (Use Class C3), including a café (Use Class A3) measuring 146 sqm (GIA), car and cycle parking, plant enclosures, access improvements, service bay, drop off spaces, substation, and associated landscaping and open space; and a five storey building to provide 16,389 sqm (GIA) of office floorspace (Use Class B1), together with ground level and basement car and cycle parking, service bay and associated landscaping at 67 Alma Road, Windsor in accordance with the terms of the application, ref. 18/00095/FULL, dated 11 January 2018, subject to the conditions set out in the attached schedule.

Applications for costs

2. Two applications for costs was made in writing by Salmon Harvester Properties Limited against the Council of the Royal Borough of Windsor and Maidenhead. These applications are the subject of a separate decision.

Main Issues

3. The Council failed to determine the appeal application. Although three notional refusal reasons (NRRs) were agreed by the Council's Windsor Urban Development Management Panel on 20 June 2018, two of these (relating in summary to prematurity in respect of the emerging Borough Local Plan

Submission Version 2013-2033 (BLPSV) and the loss of employment land) were subsequently withdrawn. The main issue separating the Council and the appellant in this appeal is therefore:

- (a) the scheme's effect on the character and appearance of the area.
- 4. Additional concerns have been raised by other parties, notably by the Royal Windsor Residents Group and the Windsor and Eton Society who appeared at the inquiry as a joint Rule 6 Party. Bearing these in mind, I consider that there are three further main issues in this appeal, namely:
 - (b) the adequacy of the scheme's intended parking and access arrangements;
 - (c) the scheme's effects on the significance of designated and non-designated heritage assets; and
 - (d) its effects on the living conditions of nearby occupiers.

Reasons

Background

- 5. The appeal site comprises vacant land that was formerly occupied by an office building (Imperial House). This was demolished in 2014, leaving basement parking beneath a concrete plinth. It is common ground that the site comprises previously-developed land. The site is subject to an extant planning permission, granted on appeal in 2011, including 25,464 sqm of office floorspace, a café/restaurant and parking¹. Although not a 'fall-back' position, it is agreed by the main parties² that this decision is a material consideration in the present appeal. I have no reason to take a different view.
- 6. The main parties also agree that the Council is, for the purposes of this appeal, unable to demonstrate the five year supply of deliverable housing sites that is required by the National Planning Policy Framework (the Framework). In line with footnote 7 to paragraph 11(d) of the Framework, the development plan policies which are most important for determining the application are therefore deemed to be out-of-date. It is common ground that these include policies DG1, H10 and H11 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (incorporating alterations made in 2003) (the LP), as cited in the Council's remaining NRR. It is also agreed by the main parties that the 'tilted balance' contained in paragraph 11(d)(ii) of the Framework is engaged.
- 7. Although the BLPSV was submitted for examination in January 2018, the examination is currently paused. I return to this matter later in the decision.
- 8. The Windsor (excluding Central Windsor) Neighbourhood Plan 2016-2030 (NP) has been subject to consultation but has not yet been submitted for examination. The main parties agree that the NP remains at a relatively early stage and that it therefore attracts limited weight in the determination of this appeal. I agree.

¹ Appeal ref. APP/T0355/A/10/2134960 – core document (CD) CD-4-10.

² For the avoidance of doubt, references to the 'main parties' in this decision refer to the Council and appellant who have submitted one main and two supplementary statements of common ground.

Character and Appearance

9. As already noted, the appeal site is vacant. To the north, a well-used footpath/cycleway separates the site from a car park, a sheltered housing development (Viscount Court), a medical centre, and residential development on Vansittart Road, while another well-used pedestrian/cycle route runs between the site's western boundary and Vansittart Park, which contains a play area and a range of recreational facilities. Buildings to the north of the site are characteristically 1-2 storeys in height.
10. To the east of the site lie two flatted developments – Camperdown House (an extended 3½-4 storey Victorian building) and Connaught Court (a modern 4-5 storey block). These are separated by the site's intended vehicular access, which also serves the above-noted car park to the north. To the south-east lies a police station (some 6-7 residential equivalent storeys in height³) and a more recently built 4 storey hotel. Lying to the south of the site are a 2½-3 storey office building and a mainly 2 storey community centre, which is separated from the site by a further footpath.
11. Given the above, the site and its surroundings have a mixed character. In the Royal Borough of Windsor and Maidenhead Townscape Assessment 2010 (TA)⁴ the appeal site and its immediate surroundings to the north, east⁵ and south lie within a 'Large Institutional Development' townscape classification. This contrasts markedly with the 'Victorian and Edwardian Suburbs' to the north and east, the 'Inter War Suburbs' (including dwellings on Vansittart Road), and the 'Georgian Suburbs' which lie to further to the north-east. As a result, the appeal site lies within a character area⁶ that differs from its wider surroundings.
12. The appeal scheme would comprise two main elements: a residential block rising to 4-7 storeys located towards the north of the site and a 5 storey office block to the south. The buildings would be separated by a publicly accessible east-west pedestrian route through site, linking to Vansittart Park. The design concerns of the Council, and the principal design concerns of the Rule 6 Party, relate specifically to the scheme's residential element, which I discuss in more detail below. In respect of the office building I can comment as follows. While this would be the most visible part of the scheme from the well-used traffic route of Goslar Way to the south (particularly as a result of the removal of trees along the southern boundary), it would be seen in the context of existing commercial buildings nearby. Its scale, massing and overall design concept – including significant glazed areas – would not be markedly different to that of the extant office permission. Accordingly, I do not feel that the proposed office building would, in itself, materially harm the area's character and appearance.
13. The Council's concerns in respect of the proposed residential building relate to three specific matters:
 - (a) the design of the building's northern frontage – specifically at ground floor level;
 - (b) the height relationship between the north-western corner of the scheme and existing buildings to the north of the site; and

³ Although denoted as a 5 storey building in figure 14 of appendix 2 to Mr William's main proof of evidence, I agree with his view (stated orally at the inquiry) that in practice this equates to 6-7 residential storeys.

⁴ CD-5-9.

⁵ Excluding Camperdown House, which lies within the 'Victorian and Edwardian Suburbs' category.

⁶ 16E – Alma Rad, Windsor – page 166 of CD-5-9.

- (c) to a lesser extent, the effect of the combined western elevations of both residential and office buildings in views from Vansittart Park.

I address each in turn.

14. The main entrance to the residential block would lie at its south-eastern corner. As such, the ground floor of its northern elevation would be largely blank, with the exception of some windows at its western end, fire escapes and access doors to the cycle store and plant areas. While it is accepted that the intended Build to Rent (BTR) model requires a single main managed entrance point, it seems to me that the resulting arrangement would act to 'turn its back' on the pedestrian/cycleway to the north. Although passive surveillance would be available from residential windows at upper floors, the presence of a blank wall with few openings for around two thirds of the ground floor would create an inactive area of 'dead space' that would be at odds with its prominent position.
15. It is accepted that the site's existing northern boundary, which contains an ivy-clad wire fence, currently presents an inactive frontage. Nevertheless, while the site's redevelopment creates the potential to introduce greater activity, this would not be adequately achieved given the largely blank nature of much of the northern façade. The resulting arrangement would in my view amount to poor urban design practice, to the detriment of the area's character. It would contrast unacceptably with the activity associated with the medical centre and Viscount Court, which as already noted also lie within the 'Large Institutional Development' townscape area, and would differ markedly from the extant scheme, which proposed a main north-facing entrance. For these reasons, the appeal scheme would fail to take the opportunities available for improving the character and quality of the area and the way it functions. This would conflict with paragraph 130 of the Framework.
16. The Council's second relates to the 5 storey element that would make up the building's north-western corner⁷. This would contrast markedly with the low rise (1½-2 storey) housing nearby on Vansittart Road, creating an abrupt and discordant change of scale. It is accepted that the TA identifies the appeal site as lying within a different character area to that of the nearby housing. A degree of character contrast is already part of the established street scene. However, this does not mean that the effects of a scheme in respect of a neighbouring character area should be disregarded.
17. In the present case there is a strong visual relationship between the north-west corner of the appeal site and the houses in Vansittart Road. While some trees would be retained, the new building would be prominently seen in views looking south down Vansittart Road. The resulting effect would be dramatically at odds with the character of Vansittart Road, creating an awkward and jarring effect. It is noteworthy in this context that buildings to the east of Vansittart Road lying within the same character area as the appeal site (the medical centre and Viscount Court) exhibit a domestic scale that sits comfortably with the nearby low rise housing.
18. I am aware that the Inspector who determined the previous appeal felt that the 'unashamedly contemporary buildings' then proposed would not 'loom over the footpath or dominate views from the north', concluding that the scheme would

⁷ Verified view 5 –Design and Access Statement (no page number) – CD-1-6.

not have a harmful visual impact on the northern boundary of the site⁸. However, in the present case (as is apparent from the verified view 5 wirelines), the new residential block would have a more bulky – and therefore more prominent – appearance in such views. This is largely because this part of the building would extend closer to the north-west corner of the site⁹, while there would also be differences in the resulting roof profile. My assessment of this matter is therefore based upon the specific nature of the present proposal.

19. The western elevation of the appeal scheme, comprising both residential and office elements, would be seen from Vansittart Park¹⁰. The Council alleges that there has been no attempt to break down the mass/bulk of this elevation. I do not agree. Although a six-storey element would be present on this elevation (namely the south-western corner of the residential block) this would be seen next to the gap separating the office and residential buildings. This gap would prevent an unduly monolithic effect from being created. While a number of trees would be removed (it is common ground that the verified views show the existing trees around the site rather than the proposed arrangements), the presence of retained trees within the site along with trees outside the site would also reduce the prominence of the development in views from that direction. I consider that this aspect of the scheme would not result in material harm to the area's character and appearance.
20. Turning to the additional design concerns raised by other parties, it is accepted that the new residential building would – in functional terms – comprise a single structure. However, I am satisfied that the intended design solution, particularly the breaking up of the building into blocks joined by lower linking sections and the angled, rather than formal linear, arrangement of the proposed elements, would act to reduce the overall massing as well as adding visual interest. Notwithstanding my concerns about the detailed design of its ground floor I feel that – in terms of scale and massing – the resulting variation of height and set-back distances on the scheme's northern elevation would compare favourably with the rectangular, and to my mind stark, profile of the approved development¹¹.
21. Furthermore, I feel that the inclusion of lower linking sections and gaps between some of the new blocks would act to create an impression of separate buildings, most notably on the important eastern elevation which would be visible from Alma Road along the intended vehicular access¹².
22. While the height of the blocks on the scheme's north-eastern corner and southern elevation would be somewhat greater than the north-western corner already discussed, these would be seen in the context of existing buildings to the east of the site which are, as already described, markedly taller than those to the north. The scheme's two 7 storey elements would be sited towards the centre of the development and would be seen in the context of the nearby police station. On balance, I do not feel that these aspects of the scheme would appear discordant or out-of-keeping with the area's character.
23. Criticism is made of the intended position of the east-west pedestrian route through the site, notably that (in contrast to the approved scheme) it would

⁸ Paragraph 17 of CD-4-10.

⁹ See Fig 24 of Appendix R1 to Mr Williams Townscape Rebuttal Statement.

¹⁰ See for example verified view 2 Design and Access Statement (no page number) – CD-1-6.

¹¹ See figures 23A and 23B of Mr Williams' rebuttal proof.

¹² See verified view 9.

not be visible when looking towards the site from Alma Road. However, I do not feel that this would be a harmful arrangement. East-west pedestrian movements are already well catered for by the route to the north of the site – which broadly aligns with Claremont Road – and, to a lesser extent, by the footpath to the south. As such, there is little functional need for an additional link to be provided between Alma Road and Vansittart Park. Nevertheless, the link that is now proposed would provide welcome permeability to the site, as well as allowing the scheme’s users and occupiers to access the park.

24. Drawing the above matters together, I consider that the detailed design of the ground floor level of the scheme’s northern elevation and the height relationship between the north-western corner of the scheme and existing buildings to the north of the site would both adversely affect the character and appearance of the area. However, these relate to specific and restricted parts of the overall development. Given that I have found no concerns about the effects of the scale and massing of the remainder of the residential building – or indeed the office building – and bearing in mind that the site’s development would remove an unsightly area of vacant land, my conclusion on this main issue is that while the scheme would adversely affect the area’s character and appearance, the degree of resulting harm would be limited. Nevertheless, the development would conflict with LP policies DG1, H10 and H11. However, given the out-of-date nature of the LP policies (as already discussed), I afford this policy conflict reduced weight.
25. As a result of this conclusion, the appeal scheme would also conflict with draft policies SP1, SP2 and SP3 of the BLPSV. However, I do not share the Council’s view that significant weight should be given to these policies. As already noted, the examination has been paused and the Inspector has yet to reach a final view on the Plan’s soundness. All three policies have been the subject of a considerable number of objections from interested parties that bear upon the issues in dispute in the present appeal. In circumstances, I can only afford these policies limited weight.

Parking and Access

26. The appeal scheme proposes 219 car parking spaces (plus 94 cycle parking spaces) in respect of the office element and 142 car parking spaces (plus 228 cycle parking spaces) in respect of the residential units. Considerable concern is voiced that this level of provision would be inadequate, resulting in on-street parking problems in adjoining roads and further afield, as well as leading to traffic congestion and pollution in local roads.
27. Put simply, the evidence does not support these assertions. The appeal scheme would represent a significant reduction in on-site parking from the approved development (which proposed some 495 employee parking spaces plus three drop-off spaces). Both the office and residential parking provision would be within the Council’s maximum parking standards. It is common ground between the main parties that the scheme’s office element would provide an acceptable amount of car parking (on the basis of a ratio of approximately 1 space per 53 sqm of gross floor area). It is also agreed that the site lies close to Windsor town centre and is ‘good’ in terms of accessibility. While I accept that these matters are disputed by local residents, I have seen no substantive technical evidence to cause me to take a different view.

28. Importantly, the appeal site and its surroundings lie within a controlled parking zone, within which on-street parking is restricted. I am satisfied that this would provide an effective deterrent against additional on-street parking in the site's vicinity.
29. The submitted Section 106 agreement requires compliance with residential and office travel plans; the draft office travel plan proposes the introduction of a shuttle bus between the site and Windsor and Eton Central railway station. This would further reduce the reliance on private car use, although to my mind the station lies within a reasonable walking distance from the site in any event (an approximate 10 minute walk). Unlike alternatives suggested in respect of the previous scheme, the proposed shuttle bus arrangement would not require the agreement of third party landowners.
30. While some concerns have been raised about the detailed design of the site's vehicular access, I am satisfied that the intended arrangements would accord with relevant national guidance. Adequate space exists within the site's red-line boundary to accommodate an access road of 5.5 metres in width with 2 metre wide footways on either side. At the inquiry, the appellant accepted however that this would require the removal of vegetation on the northern side of the access, contrary to the impression given by verified view 9.
31. The Council and local highway authority raise no objections to the appeal scheme on highways grounds. Bearing the above in mind, I have seen no technical evidence to cause me to override this assessment. I conclude that the scheme's intended parking and access arrangements would be adequate.

Heritage Assets

32. To the north-east, the appeal site is adjoined by the Trinity Place and Clarence Crescent Conservation Area (CA), the special interest of which (in summary) is focussed on the planned layout of the Bedborough Estate with an early 19th century/Regency architectural character, its openness, greenery and residential uses being punctuated by places of worship (notably Holy Trinity, St Edwards and Windsor Methodist churches – all listed grade II).
33. The existing character of the appeal site, and indeed its past and varied history of built structures, contrasts markedly with that of the CA. The site cannot be seen from most public routes in the CA, with only glimpsed views possible from the relevant section of Alma Road due to the presence of intervening buildings. Bearing this relationship in mind, I consider that the appeal scheme would have a negligible effect on the setting of the CA and no material effect on the CA's significance.
34. There is very limited intervisibility between the appeal site and the listed churches mentioned above, and I am aware of no specific connection between the site and the significance of these heritage assets. In the circumstances, I am satisfied that the appeal scheme would not materially affect the setting of these listed buildings.
35. The Rule 6 party refers to the scheme's effect on views towards the spire of Holy Trinity Church from Vansittart Park and the Round Tower of Windsor Castle from 'York Road Vantage Points'¹³ – although the exact location of the York Road viewpoint(s) was not clarified. While it is likely that the

¹³ Fig A appended to Rule 6 Party proof of evidence.

development would block views towards both buildings from certain points to the west of the site, I have seen no evidence that such views have any specific relation to the significance of the assets concerned. Both assets, particularly Windsor Castle, are visible from a large number of viewpoints in and around the town.

36. The appeal scheme would be visible from Camperdown House itself. This non-listed 19th century building with later additions has not been formally included on the Council's local list of buildings. However, there is a proposal to do so in the emerging NP and, as such, the appellant's Heritage Statement has treated it as a non-designated heritage asset in the terms of the Framework. I have no reason to take a different view. While the appeal scheme's residential element would be larger and more bulky than Camperdown House, it would be separated from that building by parking spaces and the access road to the northern car park. The modern extension to Camperdown House would lie between the appeal scheme and the 19th century part of the structure. As such, I consider that the development would have a neutral effect on the significance of this non-designated heritage asset.
37. For these reasons, I conclude that the appeal scheme would have no adverse effect on the significance of designated and non-designated heritage assets. I note that the Council does not object to the proposal on these grounds.

Living Conditions

38. While concern has been raised about the scheme's effects on the living conditions of existing residential occupiers, I have seen no technical evidence to cause me to disagree with the assessments of both the appellant and the Council that an adequate degree of separation would be achieved between the proposed residential building and existing housing to the north and north-east. The closest distance between the new building and the side elevation of 166 Vansittart Road would be somewhat in excess of 21 metres. This property benefits from a substantial garden fence (approximately 2 metres in height), while direct views would also be partly blocked by retained trees. On balance, I am satisfied that the resulting relationship would not cause material harm in respect of overlooking or visual impact. I therefore conclude that the living conditions of nearby occupiers would not be materially harmed.

Planning Balance

39. It is common ground that the Council cannot demonstrate a five year supply of deliverable housing sites, as is required by paragraph 73 of the Framework. As already noted, this engages the 'tilted balance' set out in the Framework's paragraph 11(d) in respect of the presumption in favour of sustainable development. Given my conclusion above in respect of heritage assets, I am satisfied that the application of policies in the Framework that protect areas or assets of particular importance does not provide a clear reason for refusing the development proposed. While I have identified a conflict with paragraph 130 of the Framework, this is not one of the policies referred to in the relevant footnote (footnote 6) to paragraph 11(d). For these reasons, the provisions of the Framework's paragraph 11(d)(i) do not apply to the appeal.
40. However, the provisions of paragraph 11(d)(ii) are clearly relevant. These state that planning permission should be granted unless any adverse impacts

of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

41. I have concluded above that the scheme's intended parking and access arrangements would be adequate, that would be no adverse effect on the significance of designated and non-designated heritage assets and that the living conditions of nearby occupiers would not be materially harmed. However, I have also concluded that limited harm would be caused to the area's character and appearance and that, as a result, there would be a conflict with LP policies DG1, H10 and H11. Nevertheless, for the reasons discussed, I afford the conflict with these policies reduced weight, while I attach limited weight to the scheme's conflict with draft policies SP1, SP2 and SP3 of the BLPSV. Taking these matters together, I consider that the adverse effects that would arise from a grant of planning permission would be limited in scale.
42. Set against this limited harm would be significant benefits. Three are particularly compelling. First, the proposal would result in the redevelopment of a vacant and unsightly area of previously-developed land within the urban area. There is general agreement that the site is suitable for development in principle. It is common ground between the main parties that, unlike some 'brownfield' sites, it has a low ecological value and a negligible potential as a habitat for protected species. Paragraph 118(c) of the Framework says that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land. I afford this benefit substantial weight.
43. Second, the appeal scheme would provide 217 new homes to rent in a borough that has an acknowledged housing shortfall. The scale of the shortfall is disputed by the main parties; however, on the lowest shortfall estimate (that of the Council), the appeal proposal would contribute approximately one third of the required number of homes. I give great weight to this benefit.
44. Third, the appeal scheme would also provide an employment opportunity, estimated by the appellant to amount to approximately 700 jobs. The design of the proposed office building would incorporate flexibility to enable it to accommodate single or multiple users. Paragraph 80 of the Framework states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Given that the Council has identified this site as providing office space in the evidence base produced in support of the BLPSV (suggesting the delivery of 16,112 sqm – a figure not dissimilar from the 16,389 sqm presently proposed), it seems to me that the appeal scheme's likely employment benefits should be afforded significant weight.
45. The appellant accepts that the scheme's likely contribution to the New Homes Bonus should not be considered to comprise a benefit in the terms of the planning balance. I have no reason to disagree. The main parties dispute the degree to which the likely Community Infrastructure Levy (CIL) contribution – estimated by the appellant at some £6.6 million – should weigh in this assessment. However, irrespective of that matter it seems to me that the three benefits that I have outlined above are in themselves so substantial that they are not outweighed by the limited harm that I have found. Accordingly, and notwithstanding the considerable level of local opposition to the appeal

proposal, I consider that the adverse impacts discussed above are not sufficient to significantly and demonstrably outweigh the scheme's benefits when assessed against the policies in the Framework taken as a whole. As such, the proposal would amount to sustainable development in terms of the Framework.

46. While the scheme would conflict with the development plan as a whole as a result of its conflict with LP policies DG1, H10 and H11, I consider that the material considerations outlined above are sufficient to over-ride these conflicts in the present case.

Planning Obligations

47. The submitted Section 106 agreement contains a number of obligations. Most are not in dispute between the main parties. Obligations in respect of a car club scheme, residential and commercial travel plans and public access to the proposed pedestrian link are all necessary to promote accessibility by alternatives to the private car. Highway works are needed to ensure that adequate access is achieved from Alma Road, while servicing management plans are needed in order to secure acceptable servicing arrangements. Implementation of a landscape management plan is needed to secure future management and maintenance of the scheme's landscaping strategy. Adopting a residential 'secure by design' strategy is necessary to ensure that integrated security measures are introduced in line with LP policy H10. Given that the submitted viability assessment, and the intended mechanism for viability review (see below) is based upon the BTR model, I accept that the BTR obligation is necessary in planning terms. All of the above obligations meet the tests of Regulation 122(2) of the CIL Regulations 2010.
48. It is common ground¹⁴ that the appeal scheme cannot viably support the delivery of, or a financial contribution towards, the delivery of affordable housing. It is also agreed that it is necessary to incorporate a viability review mechanism in order to ensure that any changes to the timing or phasing of the proposed development allow for a further assessment of scheme viability and the potential securing of an appropriate affordable housing contribution. This is included in the submitted Section 106 agreement. Bearing in mind relevant planning policy (notably LP policy H3), I agree with both main parties that this obligation complies with Regulation 122(2) of the CIL Regulations 2010.
49. However, the main parties disagree about the detail of part of this obligation. Specifically, there is dispute about the extent of the appeal scheme (the 'relevant part' in the agreement's schedule of definitions) that should be used to calculate the development viability information for any future review – which would be derived from the estimated GDV and the estimated build costs. The obligation provides for this matter to be determined by the Inspector.
50. The appellant's position is that the information should only relate to the building that is the subject of the review, stating that the residential and commercial parts of the scheme could be developed by separate parties and in separate time frames. The appellant considers that it would be virtually impossible to enter an agreement with separate parties relating to the sale and development of the two buildings if the viability review of one part of the scheme results in a surplus being created due to the uplift in value of the other part.

¹⁴ Supplementary Statement of Common Ground between the two main parties, with appendices.

51. Bearing in mind the intended BTR model for the scheme's housing component, I accept that it is likely that the two elements of the scheme would eventually be owned and managed separately. However, no substantive or detailed evidence has been provided about the intended delivery mechanism for the development. It has not been shown that delivery, as opposed to long term ownership and management, of the two elements would necessarily be brought forward by separate developers. Neither has it been demonstrated that requiring a viability review based upon the scheme as a whole would necessarily prevent the scheme from coming forward.
52. As such, I feel that the appellant's concerns about the likely difficulty of securing an appropriate agreement have not been sufficiently justified. The detailed viability evidence that has been provided by the appellant (and assessed by the Council) to date, most recently the Daniel Watney assessment of December 2018¹⁵, considered the scheme as a single development in viability terms. It did not 'build in' the concern that is now raised by the appellant. I see no reason to depart from this previous approach. I am also aware of the importance, in both national and local policies, of seeking to secure much needed affordable housing. Accordingly, my determination is that the 'relevant part' should comprise the 'development' as defined in the submitted agreement.

Conditions

53. A list of agreed conditions was submitted at the end of the inquiry. I have considered (and, where necessary, reworded or deleted) these in the light of the Framework and Planning Practice Guidance. The appellant has agreed in writing to the suggested pre-commencement conditions. Given that these relate to matters that are likely to affect the subsequent details of the scheme (such as materials), require work to be undertaken to the undeveloped site (such as precautionary investigations for bats or breeding birds) or affect the construction process (such as the construction method statement and management plan) it is necessary that these requirements pre-date the start of work on site.
54. Development should be carried out in accordance with the approved plans and confirmation should be provided about the scheme's phasing as this provides certainty. For highways safety reasons and to protect the living conditions of nearby residents, it is necessary for a construction method statement and management plan and a construction noise management plan to be submitted, approved and implemented. Given the proximity of underground water infrastructure it is necessary for a method statement to be submitted, approved and implemented in respect of any piling.
55. Samples of external materials are needed to ensure a satisfactory appearance; details of external doors, windows and balconies are also needed for this reason as well as to safeguard neighbours' living conditions. For highway safety reasons it is necessary to ensure that the site access, pedestrian routes, vehicle and cycle parking arrangements (including management arrangements for the basement office parking and car parking management plans) are put in place in accordance with approved details and thereafter retained. Details of refuse and recycling facilities are needed in order to ensure adequate provision. Controls over odour, noise, vibration, lighting and, in respect of the proposed

¹⁵ Supplementary Statement of Common Ground – appendix 1.

café, outdoor seating are necessary to ensure acceptable living conditions for the scheme's occupiers. Tree protection measures, an arboricultural management plan and landscaping details are needed to safeguard the area's character and appearance. Given my concerns about the landscape framework submitted before the inquiry¹⁶, which is indicative only and shows pedestrian links on the scheme's northern edge which do not relate to doorways in the proposed building, it is necessary for full landscape details to be submitted, approved and implemented.

56. Precautionary surveys are needed to ensure that construction works do not adversely affect bats and breeding birds and an ecological management plan is needed to protect and enhance biodiversity. Submission of, and adherence to, a flood management plan having regard to the recommendations of the appellant's flood risk assessment is necessary to ensure that flood risk is managed effectively. For the same reason it is necessary for a surface water drainage strategy to be submitted, approved and put in place. The site is mostly in flood zone 2, with part in flood zone 1. It is assessed at being at a moderate risk of groundwater flooding. It is common ground between the main parties that the sequential test submitted by the appellant is acceptable.
57. Network reinforcement works are likely to be required to ensure that sufficient water capacity is available for the appeal development. In line with advice from Thames Water it is therefore necessary to ensure that details of a water infrastructure capacity study and pumping station should be submitted, approved and implemented and that the relevant phase of the scheme is not occupied until appropriate water network upgrades have been completed.
58. The Council confirmed at the inquiry that it is not carrying forward its earlier suggestion that an additional condition should be imposed to restrict permitted development rights. I have not imposed such a condition.

Overall Conclusion

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

M J Hetherington

INSPECTOR

¹⁶ Drawing no. DE360_001 – fig 16 of appendix 2 to Mr Williams proof of evidence.

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 approved plans listed in schedule attached to this decision.
- 3) At least three weeks prior to the commencement of development, written confirmation of the implementation of the planning permission and confirmation of the phase of development being implemented (as shown on drawing no. 15002-(03)-P-S-001_PL – Phasing plan) shall be submitted to and approved in writing by the local planning authority.
- 4) Prior to the commencement of the relevant phase of the development, including any works of demolition or ground works, a Construction Method Statement and Management Plan shall be 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, routing and manoeuvring of vehicles (including cranes) 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) facilities for operatives;
 - (v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (vi) wheel washing facilities;
 - (vii) measures to control the emission of dust and dirt during demolition and construction; and
 - (viii) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 5) Prior to the commencement of the relevant phase of the development, a detailed site-specific construction noise management plan in accordance with BS 5228 'Code of practice for noise and vibration control on construction and open sites' shall be submitted to and approved in writing by the local planning authority. The plan shall be implemented in accordance with the approved details.
- 6) No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for works) has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the approved details statement.
- 7) Prior to the commencement of any construction works above ground level within the relevant phase of the development, samples of the materials to be used on the external surfaces of the development shall have been

submitted to and approved in writing by the local planning authority. Development shall accord with the approved details.

- 8) Prior to their installation on the residential building, details of all proposed external windows and doors shall be submitted and approved in writing by the Local Planning Authority. Details should include plans, elevations and sections at a scale no less than 1:20 and should be shown in context with the adjacent building. The details shall show which windows are to be obscurely glazed and fixed shut to a height of 1.7m from finished floor level. Development shall accord with the approved details.
- 9) Prior to their installation on the residential building, detailed design of the proposed balconies to show their structure and design shall be submitted and approved in writing by the Local Planning Authority. Details should include plans, elevations, and sections at a scale no less than 1:20 and should be shown in context with the adjacent building. Development shall accord with the approved details.
- 10) No part of the development shall be occupied until the access has been constructed in accordance with approved drawing no. TPHS/155/DR/001 Rev A. The access shall thereafter be retained.
- 11) The relevant phase of development shall not be occupied until the vehicle parking spaces associated with that phase as shown on the approved drawings have been provided. The spaces approved shall be retained for parking in association with the development.
- 12) The relevant phase of the development shall be not occupied until a pedestrian plan has been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The plan shall set out how pedestrian routes across the site would be provided and how conflict with vehicular traffic will be avoided. Development shall accord with the approved details.
- 13) The relevant phase of the development shall be not occupied until covered and secure cycle parking facilities have been provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. The approved facilities shall thereafter be kept available for the parking of cycles in association with the development at all times.
- 14) Prior to the first use of the basement car park serving the office building, details of how access to the basement car park will be managed shall be submitted to and approved in writing by the local planning authority. The development shall be carried out and maintained in accordance with the approved details.
- 15) The relevant phase of the development shall not be occupied until a refuse bin storage area and recycling facilities have been provided in accordance with details that shall have first been submitted to and approved in writing by the local planning authority. These facilities shall be kept available for use in association with the development at all times.
- 16) The café shall not be occupied until odour control measures including details of means of ventilation and the filtration system to be installed in the commercial cooking areas have been submitted to and approved in writing by the local planning authority. Such equipment shall be installed

and retained as approved and shall be maintained in good working order at all times.

- 17) The rating level of the noise emitted from the plant on the office or residential building shall be lower than the existing background level (to be measured over the period of operation of the proposed plant and equipment and over a minimum reference time interval of 1 hour in the daytime and 15 minutes at night) by at least 5dB(A). The noise levels shall be determined 1m from the nearest noise-sensitive premises. The measurement and assessment shall be made in accordance with BS 4142: 2014.
- 18) All plant and equipment and machinery, including ventilation plant and ducting, shall be installed and operated to prevent the transmission of vibration into any noise sensitive premises attached to the building where the plant and equipment is installed.
- 19) Prior to the commencement of construction work on the residential building above ground level, details of the measures to be taken to acoustically insulate all habitable rooms of the residential development hereby permitted against environmental and operational noise, together with details of the methods of providing acoustic ventilation to habitable rooms shall be submitted to and approved in writing by the local planning authority. The following internal noise design criteria will apply to all new residential units hereby granted planning permission.

Indoor ambient noise levels in residential units unoccupied and unfurnished

Period	Internal Noise Level criteria
Day time (07.00 to 23.00)	40 dB $L_{Aeq,16 \text{ hours}}$
Night time (23.00 to 07.00)	30 dB $L_{Aeq,8 \text{ hours}}$
Night time (23.00 to 07.00)	45 dB L_{Amax}

- 20) Where the proposed café shares a party wall or ceiling/floor with a new residential apartment as part of this scheme then the building sound insulation to be provided between the café and residential units shall be designed and built to a standard to ensure that the sound reduction between the two uses is capable of achieving an internal noise level within the residential unit of 10dB below the daytime and night time standard specified in condition 19, and as referred to the table below:

Indoor ambient noise levels in residential units unoccupied and unfurnished

Period	Sound Insulation Internal Noise Level criteria
Day time (07.00 to 23.00)	30 dB $L_{Aeq,16 \text{ hours}}$
Night time (23.00 to 07.00)	20 dB $L_{Aeq,8 \text{ hours}}$
Night time (23.00 to 07.00)	35 dB L_{Amax}

- 21) The external seating area associated with the café shall not be used outside the following hours: Monday-Sunday: 08.00-18.00
- 22) Prior to the occupation of the relevant phase of the development, details of a scheme for installing external lighting within the site, including night-time security lighting and its means of actuation, light spread and average illuminance, shall be submitted to and approved in writing by the local planning authority. The development shall accord with the approved details.

- 23) Prior to commencement of the relevant phase of development and before any equipment, machinery, or materials are brought onto the site for the purposes of the development, tree protection measures shall be put in place in accordance with the approved Arboricultural Assessment (January 2018) and British Standard 5837. They shall remain in place until the development is complete and all equipment, machinery, and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 24) An Arboricultural Management Plan, including a management programme for all retained trees, any long-term design objectives, management responsibilities and maintenance schedules for all landscape areas and implementation timetables shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner. The Arboricultural Management Plan shall be implemented as approved.
- 25) In this condition, "retained tree" means an existing tree which is to be retained in accordance with the approved Arboricultural Assessment (January 2018) and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the date of completion of the development.
- (i) No retained tree shall be cut down, uprooted, or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).
 - (ii) If any retained tree is removed, uprooted or destroyed, or dies, another tree shall be planted at the same place, or an alternative location as agreed with the local planning authority, and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
- 26) The relevant phase of the development shall not be occupied until full details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include hard surfacing materials and street furniture, including all light columns and fixings, and boundary treatments.

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, unless the Local Planning Authority gives written approval to any variation.

The development shall be carried out in accordance with the approved details.

- 27) Prior to the demolition of any of the existing basement or felling of any trees on-site, a precautionary bat survey shall be undertaken by an agreed expert to establish the presence or absence of bats in the structure or trees in accordance with details that shall have previously been submitted to and approved in writing by the local planning authority. Should bats be found, mitigation measures and contingency plans shall be implemented in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.
- 28) No disturbance of soil, roots, trees or vegetation in respect of the development hereby approved shall take place until a full survey for potential nesting birds has been undertaken in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The details shall include measures and programme for mitigation and conservation. Development shall accord with the approved details.
- 29) Prior to the occupation of the relevant phase of the development, an ecological management plan, including details of wildlife friendly landscaping, planting of native tree species, the biodiverse roof, hedgehog friendly boundary features, bat and bird boxes and invertebrate features, shall be submitted to and approved in writing by the local planning authority. The ecological management plan shall be implemented in accordance with the approved details and thereafter retained.
- 30) Prior to the commencement of any construction works above ground level within the relevant phase of the development, a flood management plan shall be submitted to and approved in writing by the local planning authority. The flood management plan shall have regard to the recommendations of section 5.3 of the Flood Risk Assessment (January 2018) and shall set out measures to ensure occupants are aware of the potential risk of flooding and procedures in the event that flooding is expected or has occurred. Development shall accord with the approved details.
- 31) Prior to the commencement of the relevant phase of the development, including any demolition or groundworks, a surface water drainage strategy detailing any on and/or off-site drainage works, and maintenance programme shall be submitted to and approved in writing by the local planning authority. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed. Development shall accord with the approved details.
- 32) Prior to the commencement of the relevant phase of the development, an impact study of the existing water supply infrastructure shall be submitted to and approved in writing by the local planning authority. The study should determine the magnitude of any new additional capacity required in the system and a suitable connection point. The development shall be carried out in accordance with the approved details.
- 33) Prior to the occupation of the relevant phase of the development, details of the proposed pumping station, including the rate of proposed discharge, 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.

- 34) The relevant phase of the development shall not be occupied until confirmation has been submitted to and approved in writing by the local planning authority that either:
- (i) all water network upgrades required to accommodate the additional flows from the development have been completed; or
 - (ii) a housing and infrastructure phasing plan has been submitted and approved in writing by the local planning authority to allow additional properties to be occupied.

Where a housing and infrastructure phasing plan has been approved no occupation shall take place other than in accordance with the approved housing and infrastructure phasing plan.

- 35) Prior to the occupation of the residential building, a car parking management plan shall be submitted to and approved in writing by the local planning authority. The residential car parking management plan shall be implemented in accordance with the approved details.
- 36) Prior to the occupation of the office building, a car parking management plan shall be submitted to and approved in writing by the local planning authority. The office car parking management plan shall be implemented in accordance with the approved details.

Richborough Estates

Schedule of Drawings

15002-(01)-P-S-001_PL – Site location plan
15002-(01)-P-S-002_PL – Existing site plan
15002-(03)-P-S-000_PL – Site context plan
15002-(03)-P-S-001_PL – Phasing plan
15002-(03)-O-E-001_PL – Office building elevation east
15002-(03)-O-E-002_PL – Office building elevation south
15002-(03)-O-E-003_PL – Office building elevation west
15002-(03)-O-E-004_PL – Office building elevation north
15002-(03)-O-P-0B0_PL – Office building basement plan
15002-(03)-O-P-0G0_PL – Office building ground plan
15002-(03)-O-P-0R0_PL – Office building roof plan
15002-(03)-O-P-001_PL – Office building first floor plan
15002-(03)-O-P-002_PL – Office building second to fourth floor plan
15002-(03)-O-X-001_PL – Office building section A-A
15002-(03)-R-E-001_PL – Residential building elevation east
15002-(03)-R-E-002_PL – Residential building elevation south
15002-(03)-R-E-003_PL – Residential building elevation west
15002-(03)-R-E-004 Rev P1 – Residential building elevation north
15002-(03)-R-P-0G0_PL – Residential building ground floor plan
15002-(03)-R-P-0R0 Rev P1 – Residential building seventh floor plan
15002-(03)-R-P-001 Rev P2 – Residential building first floor plan
15002-(03)-R-P-002 Rev P2 – Residential building second floor plan
15002-(03)-R-P-003 Rev P1 – Residential building third floor plan
15002-(03)-R-P-004 Rev P2 – Residential building fourth floor plan
15002-(03)-R-P-005 Rev P1 – Residential building fifth floor plan
15002-(03)-R-P-006 Rev P1 – Residential building sixth floor plan
15002-(03)-R-X-001_PL – Residential building section A-A
15002-(03)-R-X-002_PL – Residential building section B-B
15002-(03)-S-E-001_PL – Site context elevation - east
15002-(03)-S-E-002_PL – Site context elevation - south
15002-(03)-S-E-003_PL – Site context elevation - west
15002-(03)-S-E-004 Rev P1 – Site context elevation - north
15002-(03)-S-E-005_PL – Substation elevations
TPHS/155/DR/001 Rev A – Proposed vehicle & pedestrian access (with swept paths)

APPEARANCES

FOR THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD (RBWM):

Mr Mark Beard of Counsel
Instructed by the Borough Solicitor

He called:

Ms Sue Rowlands BA(Hons) DipArch MA RIBA MRTPI	Tibbalds Planning and Urban Design Ltd
Mrs Sian Saadeh MSc MRTPI	RBWM

FOR THE APPELLANT:

Mr Christopher Katkowski QC
Instructed by Barton Willmore LLP

He called:

Mr Christopher Darling MA Hons DipArch RIBA	Darling Associates Architects
Mr Andrew Williams BA(Hons) DipLA DipUD CMLI	Define
Mr Robert Bevan BA(Hons) PGDipUD MCD	Authentic Futures
Mr Stephen Jones BA(Hons) MCIHT CMILT	TPHS
Mr Gary Stevens BSc(Hons) MSc MRTPI	Barton Willmore LLP
Mr Nick Harding	Solicitor, Gowling WLG (conditions and planning obligations sessions only)
Mr Douglas Stewart BSc(Hons) FRICS	Salmon Harvester Properties Limited (conditions and planning obligations sessions only)

JOINT RULE 6 PARTY

(ROYAL WINDSOR RESIDENTS GROUP AND THE WINDSOR AND ETON SOCIETY):

Ms Raewyn Porteous
Mr David Eglise

INTERESTED PERSONS:

Mr Edwards	Local resident
Councillor Quick	RBWM Councillor and local resident
Councillor John Bowden	RBWM Councillor and local resident
Mr David Beasley	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

- Document 1: Appellant's Opening Submissions.
- Document 2: Rule 6 Party's Opening Submission.
- Document 3: Statement from Mr David Beasley.
- Document 4: Section 106 Agreement, dated 3 April 2019.
- Document 5: Design and Access Statement for previous application (submitted electronically).
- Document 6: Explanatory note by Gowling WLG in respect of Section 106 agreement.
- Document 7: Annotated Site Context Plan (no. 15002-(03)-P-S-000-P3).
- Document 8: Access drawing (no. TPHS/155/DR/001/A).
- Document 9: Council's note on Section 106 agreement.
- Document 10: Commentary on Section 106 agreement.
- Document 11: Agreed list of conditions (with appellant's agreement to pre-commencement conditions) – as amended.
- Document 12: Rule 6 Party's Closing Statement.
- Document 13: Closing Submissions on behalf of the Local Planning Authority.
- Document 14: Appellant's Closing Submissions.