



Appeal Decision

Inquiry held on 26 and 27 November 2013

Site visit made on 27 November 2013

by Martin Whitehead LLB BSc(Hons) CEng MICE

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

Decision date: 10 January 2014

Appeal Ref: APP/D1835/A/13/2202841

Former Ronkswood Hospital Site, Newtown Road, Worcester

- 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 Robert Hitchins Limited against Worcester City Council.
 - The application Ref P13Q0221, is dated 23 April 2013.
 - The development proposed is residential development (up to 200 dwellings) including infrastructure ancillary facilities, open space and landscaping; construction of new vehicular access from Newtown Road; and construction of emergency access from Newtown Road.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development (up to 200 dwellings) including infrastructure ancillary facilities, open space and landscaping; construction of new vehicular access from Newtown Road; and construction of emergency access from Newtown Road at the former Ronkswood Hospital Site, Newtown Road, Worcester in accordance with the terms of the application, Ref P13Q0221, dated 23 April 2013, subject to the conditions in the attached schedule.

Procedural and Preliminary Matters

2. At the inquiry applications for costs were made by the Council against the appellant and by the appellant against the Council. These applications are the subjects of separate decisions.
3. The Council's Planning Committee resolved on 22 August 2013 that the Council would have refused planning permission for the putative reason that I have summarised as the following: *the proposed development would have a severe impact on the transport network due to mitigation measures not being secured by way of a commuted sum through a Section 106 agreement*. The Council and appellant have indicated in their signed Statement of Common Ground that, subject to the resolution of the stated issue which is based on the above putative reason for refusal, there are no other reasons for the application to be refused planning permission, and all other matters are agreed subject to the appellant entering into an appropriate deed under Section 106 of the Act. Although the Council has subsequently raised the issue that the appeal is unnecessary and futile because a S106 agreement has become operative and would remain enforceable under a previous permission, for the reasons given below, I consider that this is not a main issue in this appeal.

Main Issue

4. The main issue is the effect of the proposal on the flow of traffic and highway safety on the local highway network, having regard to whether a planning obligation to provide contributions towards transport infrastructure would meet the tests in Community Infrastructure Levy (CIL) Regulation 122.

Reasons

5. The parties have confirmed that the application was submitted in outline form with all matters of detail, except access, reserved for later consideration. An application for a development that is identical to this appeal development and on the same site was granted outline planning permission on 22 January 2013. A Section 106 Agreement was signed by the relevant parties that included a contribution of £4,530 per residential unit towards the Worcester Transport Strategy (WTS). The only significant difference from the appeal proposal is regarding this contribution.
6. At my site visit I observed that the permitted development on the site has already commenced. I have been informed that the approval of reserved matters for this development has been granted for 181 dwellings, which would result in an overall contribution of £819,930 towards the WTS.
7. National Planning Policy Framework paragraph 32 states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe. In this respect, Worcestershire County Council as the Highway Authority (HA) has suggested that the Worcester Transport Model (WTM) demonstrates that the proposal would have a severe transport impact, both in itself and with regard to the cumulative impact of future proposed development in the emerging South Worcestershire Development Plan (SWDP). However, the appellant does not accept that a contribution towards the WTS is justified in order to mitigate any adverse impact.
8. The appeal proposal would include the same works on the public highway as the permitted development, which are deemed necessary as a direct result of the development. These would be secured by agreements under combined Sections 38 and 278 of the Highways Act 1980. Amongst these works would be the creation of a fully signalised 4 arm junction on Newtown Road at the western junction of Canterbury Road and the proposed access to the development. The HA has accepted that the proposed junction layout shown on Drawing No H399/6 Rev C would provide a safe and suitable access to the proposed development.
9. The Council's expert traffic witness at the inquiry has suggested that the Linsig modelling results for the proposed junction indicate that its design would provide benefits whilst catering for the development traffic. Although the results show that it would be running at overcapacity during the AM peak, this is the current situation and delays on all the arms except Newtown Road (east) are shown to reduce. This is even the case with respect to the review that has recently been carried out on the model. At the inquiry, the Council's expert suggested that the Linsig modelling indicates that there would be no problems with capacity during the PM peak. As such, I find that the proposed junction alterations would mitigate the impact on highway safety and traffic flows on Newtown Road due to the development.

10. The Council has confirmed in an e-mail, dated 22 November 2013, that it does not rely upon the City of Worcester Local Plan 1996-2011 (Local Plan) Policy BE1, which is the only development plan policy that has been given in the putative reason for refusal. It accepted at the inquiry that it does not have any concerns about the impact of the development on highway safety, due to the proposed changes to the junction to accommodate the access to the development. As such, I have been given insufficient evidence to demonstrate that the appeal proposal would have any significant impact on highway safety or conflict with Policy BE1.
11. The appeal proposal has been accompanied by a Transport Assessment (TA) and Travel Plan (TP) that update those submitted with the permitted development. The TP includes updated bus timetables and travel to work mode of travel from the 2011 Census. The Council has accepted that the TP would be capable of reducing car use by 10%, and this would be secured by a planning condition. It has suggested at the inquiry that this reduction is reflected in the level of contributions that are sought towards the WTS.
12. The Council has not disputed that the TA has been carried out in accordance with the Department for Transport *Guidance on Transport Assessment, 2007*. This document advises, for the highway network, that a development should be assessed for a period of no less than five years after the date of registration of a planning application. The 'forecast year' in the TA for the appeal proposal is 2026, which is well beyond that recommended date. The TA has used traffic growth factors obtained from TEMPRO in order to allow for future growth in traffic flows. It states that the TEMPRO program is based on the National Trip End Model and takes into account changes in car ownership and local planning forecasts regarding housing and employment.
13. Based on the above, the TA concludes from the modelling that the proposed junction improvement to the Newtown Road/Canterbury Road (west) traffic signal controlled junction more than mitigates the impact of the proposed development traffic on the highway network in both the weekday AM and PM peak periods. The HA has agreed the junction improvement.
14. The traffic modelling results provided in evidence for the Council used the WTM over the whole network and the *Newtown Road VISSIM Microsimulation Model*, which is more localised but linked to the WMT. That provided by the appellant was based on the *S-Paramics Traffic Modelling*, which has been used to model only the 2 nearest junctions on Newtown Road to the development. At the inquiry, the Council's traffic expert agreed that the modelling evidence provided does not show that the proposal would have a severe transport impact in itself. Therefore, I am not convinced by the evidence before me that the proposed development would result in the need for an additional bus to be run to maintain the existing level of service, as suggested by the Council, or that in itself it would have a severe residual impact on transport.
15. In terms of the cumulative impact, the WTM, and to some extent the *VISSIM Model*, rely upon future development in the emerging SWDP. In this respect, the draft SWDP has been the subject of a Stage 1 Examination in which the Inspector has submitted his interim conclusions. These ask the Council to undertake some further analysis in order to derive an objective assessment of housing need over the Plan period.

16. Whilst the Examination Inspector has not found the plan to be unsound, the weight that I can attach to the relevant policies in the emerging SWDP is reduced as a result of his interim conclusions. Furthermore, at the inquiry I was informed that there have been objections to the relevant emerging policies SWDP 4, regarding moving around Worcestershire, and SWDP 7, regarding infrastructure. Therefore, even though the Council suggested at the inquiry that the Planning Minister had indicated orally that the emerging SWDP should be given significant weight, the evidence before me leads me to give it reduced weight in this appeal, in accordance with paragraph 216 of the Framework.
17. The Council has referred to the South Worcestershire Infrastructure Delivery Plan (SWIDP) in support of the need to address the cumulative transport impact of new development. This document recognises that the quantum of development proposed in South Worcestershire will not only have a local transport impact immediately adjacent to each site but also on the local and strategic transport network further afield. It includes WTS schemes as mitigating transport infrastructure and service measures. However, it states in paragraph 1.3 that it has no formal planning status in respect of any policy or development management decisions by any of the Councils and is a technical evidence paper, written in support of the SWDP. As such, I have attached limited weight to it in this regard.
18. Whilst I accept that the cumulative impact could well include that from other committed development, including the Care Home on the adjacent site and that which has already been granted planning permission, I am concerned that the Council has allowed for the impact of all allocated future development during the emerging SWDP period. In this respect, I have found that the draft SWDP should be given reduced weight, and the Inspector's interim conclusions indicate that the allocated development in it could be subject to significant alterations following the Examination. As such, the Council's allowance for the cumulative impact in this case is not only difficult to justify, but also goes beyond that which I consider the Framework expects to be considered under paragraph 32.
19. Based on the above, I acknowledge that the appeal proposal would result in additional traffic on the highway network, which cumulatively with other future development would add to congestion in the area. However, I am satisfied that it would result in improvements being undertaken within the transport network, and through a Travel Plan, that cost effectively would limit the significant impacts of the development. As such, and based on the evidence before me, I find that, with respect to transport, the residual cumulative impacts of the development would not be severe.
20. I now consider whether the obligation to provide the required contribution would meet the tests in CIL Regulation 122, which are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonable related in scale and kind to the development. In this respect, the proposal would result in alterations to a signalised junction on Newtown Road, which the Council's expert at the inquiry has accepted would not only mitigate the impact of the development at that location but also provide benefits. The proposal would also encourage measures to reduce the use of the private car by at least 10% with a Travel Plan. These would be secured by planning conditions. As such, I have found

that the proposed mitigation would ensure that the proposal would not have a severe residual cumulative impact on transport.

21. In planning terms, the only adopted development plan policy that has been put before me regarding contributions to transport is saved Local Plan Policy TR14. This Policy requires new development to normally be required to meet the reasonable cost of providing for sustainable transport through financial contributions which relate to the development. Accompanying paragraph 5.46 in the reasoned justification indicates that contributions will be sought from non residential development and refers to a Supplementary Planning Guidance.
22. The Council's Supplementary Planning Document (SPD): *Financial Contributions for Sustainable Transport*, March 2006 states that Policy TR14 does not apply to residential development. As such, this Policy does not appear to me to support the requirement for financial contributions to be made towards the WTS for this appeal proposal, particularly as accompanying paragraph 5.47 indicates that such contributions will only be on facilities that both relate to the individual development proposal and the demands generated by that development. Furthermore, the Council has not relied upon this Policy to support its requested contributions.
23. With regard to the emerging SWDP, policies SWDP 4 and SWDP 7 provide for contributions to be made towards the provision of infrastructure to support new development. The appellant has referred to emerging Policy SWDP 62 which states that planning obligations through Section 106 agreements will continue to be sought to provide funding to mitigate negative impacts relating to specific developments, which does not suggest that they should be used to address the cumulative impact of all the proposed development in the plan period. Also, this emerging Policy refers to the production of a Developer Contribution SPD to be used in conjunction with a CIL schedule, and I am not aware that either of these documents has been produced.
24. In terms of where the contribution that would be secured by an obligation would be used, the evidence provided suggests a package of infrastructure and service schemes as set out in the WTS and these schemes are identified in the S106 Agreement for the previous permission. The list is very general and the evidence does not show how any of these schemes would be directly related to the development.
25. The Council has explained that the contribution has been calculated using the WTS Contributions Technical Note, which gives a total WTS cost of £145.5 million and equates to £653.8 per additional SWDP development trip. This has been multiplied by the TRICS figure for the number of daily trips per residential unit, and the resulting figure has been negotiated down as a result of the reduced travel demand due to the TP. However, the Council has accepted that the Technical Note has not been the subject of public consultation, and the SWDP development figures are subject to possible change through the Examination process which has led me to give them very little weight. Therefore, I find that the evidence does not demonstrate that the contribution sought through the obligation would be fairly and reasonable related in scale and kind to the development.
26. Based on the evidence provided and the submissions made at the inquiry, I conclude that a planning obligation to secure a contribution towards the WTS

would not meet the tests in CIL Regulation 122. Furthermore, there is no adopted development plan policy that supports such a contribution.

Other Matters

27. The Council has referred to 2 previous planning appeal decisions regarding residential development at Claphill Lane, Rushwick in support of the contribution towards the WTS. However, it appears to me that the appellant in these appeals is arguing against the contribution on the grounds that the Local Transport Plan is not part of the development plan and that there already is Ministerial funding for strategic highway infrastructure improvements. The current appeal is in relation to the WTS, which I have found is not connected in policy terms to the adopted development plan. Also, the arguments presented in the current appeal are not the same as those given by the Inspector in the other appeals. Whilst I have noted the points made, I have dealt with this appeal on its own individual planning merits in the light of the evidence provided and the relevant guidance and policies.
28. The Council has argued that, as the commencement of the previous planning permission has triggered the obligations under the S106 Agreement and the first instalment of the WTS contribution has been paid, the S106 Agreement has become operative and would remain enforceable whatever the outcome of this appeal. Whether this would be the case or not is a matter of law and is not a material factor in my determination of this appeal, which I have based on planning matters that are relevant to the main issue that has been given in the Statement of Common Ground. Whilst I agree with the appellant that the existence of the previous planning permission is not a barrier to the grant of planning permission for this appeal application, any court action that the appellant might take to seek to discharge the obligation and recover the money paid is beyond my considerations in this appeal.
29. The Council has also claimed that any planning benefits from the appeal proposal have already been secured by the previous permission on the site and therefore carry no weight in the appeal. However, the appeal proposal would offer the same benefits, with the exception of the WTS contribution, and they should carry the same weight in this appeal as given to them when granting the previous planning permission.

Unilateral Undertaking

30. Following the close of the inquiry, the appellant has submitted a S106 unilateral undertaking to secure 40% of the dwellings on the site as affordable housing and contributions towards education and public open space. With regard to the Council's concerns expressed in its e-mail dated 10 December 2013, I am satisfied that clause 12 is necessary to ensure that the obligations are CIL Regulation 122 compliant and clause 13 is necessary to prevent double payment of contributions under the obligations, particularly as they are similar to those in the previous S106 Agreement and the Council has accepted that the earlier commercial permission is incapable of implementation.
31. I find that the affordable housing obligation accords with the requirements in Policy H7 of the Balanced Housing Market Development Plan Document and the Affordable Housing SPD. Without the affordable housing that it would secure, the proposal would have an adverse effect on the provision of affordable housing in the City.

32. The contribution towards education facilities would be in accordance with Local Plan Policy CLT10, regarding the requirements for additional education facilities related to new development, and the SDP: *Education Contributions*. I am satisfied that it would be necessary to address the resulting additional need for facilities at schools in the catchment area of the site due to the children from the families that would occupy the proposed dwellings. Therefore, without such a contribution, the proposal would have an unacceptable harmful effect on education facilities in the area.
33. The contribution towards public open space would be used at facilities near to the site and would be likely to have an increased use by some of the occupants of the proposed dwellings. It would accord with Local Plan Policy CLT34 and the Council's Supplementary Planning Guidance Number 11: *Contributions to Open Space*. As such, I am satisfied that without the contribution the proposal would adversely affect the provision of public open space in the area.
34. Based on the evidence provided and the submissions made at the inquiry, I find that all the planning obligations in the unilateral undertaking meet the tests in CIL Regulation 122 and paragraph 204 of the Framework.

Overall Conclusions

35. For the reasons given, I have found that the proposal would, in combination with other future development, have a harmful impact on the level of congestion on the highway network, but the evidence has shown that the residual cumulative impact would not be severe and a contribution to mitigate this impact would not be compliant with CIL Regulation 122. As such, the proposal would accord with the policies in the Framework and would represent sustainable development in accordance with the Framework. I have also found that the question raised by the Council of whether the existing planning obligation to secure a contribution towards the WTS would remain enforceable is a matter of law and has no bearing on my judgement of the merits of the appeal proposal before me. I therefore conclude that, having regard to all matters raised, the appeal should succeed.

Conditions

36. I have considered the conditions agreed in the list of suggested conditions provided and those attached to the previous permission for development on the site, including the submission of reserved matters details and the standard timescales. Conditions referring to the plans and requiring further details of the requirements for reserved matters, including the layout and landscaping, are necessary for the avoidance of doubt and in the interests of proper planning and to protect the character and appearance of the surrounding area.
37. A condition regarding drainage is necessary to ensure that adequate drainage provision is made to reduce the risk of flooding and pollution. A condition regarding slow worms is necessary to ensure the preservation and protection of statutorily protected species, given the survey results. A condition to secure a Travel Plan is necessary to encourage the use of more sustainable forms of transport other than the private car.
38. A condition to control the hours of working during construction is necessary in the interests of residential amenity, given the close proximity of the site to houses. A condition regarding air quality is necessary to ensure that the

development would not lead to an Air Quality Management Area being declared due to poor air quality. A condition requiring highway works to be carried out is necessary to protect the safety and convenience of highway users. These should be completed prior to the first occupation of the dwellings.

39. I am satisfied that all these conditions are reasonable and necessary and have worded them to reflect the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*.

M J Whitehead

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

John Hobson	QC instructed by Timothy O’Gara, Legal Services, Worcester City Council and Simon Mallinson, Head of Legal Services, Worcestershire County Council
He called	
John Rowland Pattinson MA MRTPI MRICS	Town Planning Consultant
Angela Hanchett	Highways Control Manager, Worcestershire County Council
Simon Bingham BSc(Hons) MA	Associate Director, CH2M Hill

FOR THE APPELLANT:

Anthony Crean	QC, instructed by Pegasus Group
He called	
Peter L S Finlayson BSc CEng MICE MIHT MCIWEM	Managing Director, PFA Consulting
Mervyn Dobson MA MPhil MRTPI MRICS	Director, Pegasus Group

DOCUMENTS SUBMITTED AFTER OPENING THE INQUIRY

- 1 Opening Submissions on behalf of the Appellant, submitted by the appellant on 26 November.
- 2 Opening Statement on behalf of Worcester City Council and Worcestershire County Council, submitted by the Council on 26 November.
- 3 E-mail, dated 25 November 2013, from Tom Pollock, Senior Solicitor, Worcestershire County Council regarding a costs application, submitted by the Council on 26 November.
- 4 A copy of Section 106 Agreement for previous planning permission, submitted by the Council on 26 November.
- 5 A copy of unsigned Section 106 unilateral undertaking, submitted by the appellant on 26 November.
- 6 List of suggested conditions, submitted by the Council on 26 November.
- 7 A copy of the costs application on behalf of the appellant, submitted by the appellant on 27 November.
- 8 A copy of the report of the Court of Appeal case: Durham County Council v Secretary of State for the Environment, submitted by the appellant on 27 November.
- 9 The Council's notes regarding the CIL tests for the education contribution, open space contributions and affordable housing, submitted by the Council on 27 November.
- 10 Supplementary Planning Document: Affordable Housing, submitted by the Council on 27 November.
- 11 Supplementary Planning Guidance Number 11: Contributions to Open Space, submitted by the Council on 27 November.
- 12 Supplementary Planning Document: Education Contributions, submitted by the Council on 27 November.
- 13 Supplementary Planning Document: Education Contributions Sustainability Appraisal, submitted by the Council on 27 November.
- 14 Supplementary Planning Document: Education Contributions Consultation Statement, submitted by the Council on 27 November.
- 15 Closing Submissions on behalf of Worcestershire County Council and Worcester City Council, submitted by the Council on 27 November.
- 16 Closing Submissions on behalf of the Appellant, submitted by the appellant on 27 November.
- 17 Extract from the City of Worcester Local Plan giving Policy CLT34, submitted by the Council on 27 November.
- 18 Tables of Schools in the Worcester Area, submitted by the Council on 27 November.
- 19 A Short Guide to S106 Education Contributions, submitted by the Council after the close of the inquiry.
- 20 A copy of e-mail, dated 10 December 2013, from Nick Kay with a list of suggested conditions, submitted by the Council after the close of the inquiry.
- 21 A copy of amended suggested condition 9, submitted by the Council after the close of the inquiry.
- 22 A copy of e-mail, dated 12 December 2013, from the appellant with comments regarding the suggested conditions, submitted by the appellant after the close of the inquiry.
- 23 A copy of e-mail, dated 10 December, from the Council regarding the unilateral undertaking, submitted by the Council after the close of the inquiry.
- 24 A copy of executed Section 106 unilateral undertaking and accompanying letter, dated 12 December 2013, submitted by the appellant after the close of the inquiry.

PLANS SUBMITTED AT THE INQUIRY

- A Plan of the Worcester Transport Strategy, submitted by the Council on 27 November.
- B Plan of the Worcester Transport Strategy giving a suggested route for the Inspector to take, submitted by the Council on 27 November.

Richborough Estates

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, subject to compliance with other conditions of this permission: Drawing Nos RH-05, RH-03 Rev B, 03129/01A, 03129/02C, 03129/03B, RW-01 Rev B, H399/6 Rev C and RW/EMA/01.
- 5) The reserved matters details required under Condition 1 shall include the following:
 - (i) an internal site layout that is accessible by a 10.5 metre refuse truck and provision of open space; and
 - (ii) a landscape scheme to include details of all screen walls, fences, surface treatments to drives, cycle and footways, drainage pond, bat and bird boxes, tree and shrub planting, treatment of landscaped buffer areas with the provision of new and replacement tree planting and an implementation programme.

The landscape scheme shall be carried out in accordance with the approved details and implementation programme.
- 6) Prior to the first occupation of any dwelling hereby permitted, the drainage for the disposal of surface water and foul sewage shall be implemented in accordance with details that shall have been submitted to and approved in writing by the local planning authority.
- 7) In the event that slow worms are found on the site during construction of the development hereby permitted, development shall cease until a scheme for the translocation of the slow worms to receptor sites has been submitted to and approved in writing by the local planning authority. The scheme shall include a management and maintenance plan and the submission of quarterly surveys and annual reports, to include recommended monitoring, maintenance and management to meet the biodiversity objectives for the slow worm receptor sites, and a timetable for implementation. The approved scheme shall be carried out in accordance with the approved timetable.
- 8) Prior to the first occupation of any dwelling hereby permitted a Travel Plan for the site shall have been submitted to and approved in writing by the local planning authority. The Travel Plan shall identify means to restrict car use by at least 10% and measures for promoting visitors accessing the site by means other than private cars and shall include an assessment of the number and type of such journeys, together with measures for monitoring. The approved Travel Plan shall be fully implemented within 3 months of the first occupation of any of the dwellings hereby permitted.

- 9) Construction works shall not take place outside 0730 hours to 1900 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 10) Prior to commencement of development, a detailed assessment of air quality with reference to Local Air Quality Management Technical Guidance Note TG(09) issued by DEFRA shall be undertaken in accordance with details, including monitoring techniques and assessment methodologies, that shall have been submitted to and approved in writing by the local planning authority. Should the detailed assessment demonstrate that air quality will exceed government quality objectives which results in the declaration or retention of an Air Quality Management Area as defined by the requirements of TG(09), a remedial options appraisal to resolve the air quality concerns shall be submitted to the local planning authority and the development shall not commence until a remedial option has been approved by the local planning authority. The approved remedial option shall be undertaken prior to the first occupation of any of the dwellings hereby permitted.
- 11) No dwelling hereby permitted shall be occupied until works have been completed on the public highway in accordance with details that shall have been submitted to and approved in writing by the local planning authority. The details shall be generally in accordance with Drawing No H399/6 Rev C and the works shall include the creation of a fully signalised four arm junction on Newtown Road at the western junction of Canterbury Road; the creation and alteration of a footway/footpath/cycleway/emergency access/ bus stop/ verge/ tree planting systems along the north side of Newtown Road at the development frontage; the investigation and/or implementation of Traffic Regulation Orders deemed necessary as a direct result of the development; any alterations, replacement or additions to road lighting in the vicinity of the development; and any miscellaneous signage and road markings resulting from the highway works. Any existing or new tree that shall become located in the public highway by virtue of the approved layout of the development hereby permitted shall be maintained in accordance with a scheme that shall have been submitted to and approved in writing by the local planning authority prior to the commencement of any works on the public highway. The scheme shall include an initial condition survey of the existing trees.