
Appeal Decision

Hearing held on 8 April 2015

Site visit made on 8 April 2015

by Joanne Jones BSc(Hons) MA MRTPI

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

Decision date: 20 May 2015

Appeal Ref: APP/J1860/W/14/3001286

Land off Hospital Lane, Collett's Green, Worcester, Worcestershire WR2

- 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 Selbourne Homes against Malvern Hills District Council.
 - The application Ref 14/00617/OUT is dated 14 May 2014.
 - The development proposed is an outline application for residential development for up to 61 dwellings with all matters reserved except access.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development for up to 61 dwellings with all matters reserved except access at Land off Hospital Lane, Collett's Green, Worcester, Worcestershire WR2 in accordance with the terms of the application, Ref 14/00617/OUT, dated 14 May 2014, and the plans submitted with it, subject to conditions attached in the Annex to this decision.

Application for costs

2. At the Hearing an application for costs was made by Selbourne Homes against Malvern Hills District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application is in outline with all matters reserved other than access, which is proposed to be taken from Hospital Lane. A proposed indicative master plan, showing a preliminary housing layout was included; however the housing layout element of this plan is for indicative purposes only.
4. An obligation under Section 106 of the Town and Country Planning Act 1990, dated 7 April 2015, was submitted by the appellant at the hearing (Doc 03). I shall refer to this in more detail below.
5. The appellant's Statement of Case included in its appendices a number of court cases and appeal decisions. However, at the hearing it was confirmed that the most relevant were those cited in the appellant's Planning Statement.

6. At its meeting on 7 January 2015 the Council's Northern Area Development Management Committee resolved that had it been in a position to determine the planning application it would have refused it for the following reason:

Notwithstanding the information submitted regarding land contamination the Local Planning Authority is not satisfied that the site is suitable for residential development. Furthermore, it is considered that the development of the site would be harmful to the health and general amenity of existing residents, users of neighbouring land and occupiers of the proposed dwellings because the development could not be satisfactorily monitored and managed to mitigate the risk of disturbance and release of contaminants from the former landfill operations both during the construction phase and subsequently, for the lifetime of the development. The development is therefore considered to be environmentally and socially unsustainable and contrary to Policy DS3 criteria (c) and (d) and (n)- General Development Requirements of the Malvern Hills District Council Local Plan, Policy SWDP31: Pollution of the emerging South Worcestershire Development Plan, and paragraphs 7, 120-122 of the Framework.

Main Issue

7. The main issue in this case is whether, with due regard to the development plan, the National Planning Policy Framework (the Framework) and the ground conditions of the area, the proposal would be a suitable sustainable form of development.

Reasons

Policy Background

8. The Framework seeks to boost significantly the supply of housing and paragraph 49 of the Framework indicates that housing applications should be considered in the context of the presumption in favour of sustainable development and that policies for the supply of housing will not be considered up-to-date where local planning authorities cannot demonstrate a five year supply of deliverable housing sites. This in turn triggers paragraph 14 of the Framework which explains that where this is the case, planning permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies, taken as a whole.
9. The Council has conceded that it does not have a deliverable five year housing land supply and accordingly, its policies for the supply of housing are out of date in accordance with the Framework. Furthermore, this position is supported by Inspectors' in recent appeal decisions cited by the appellant¹.
10. Nevertheless, the Malvern Hills District Council Local Plan (Local Plan) Policy DS3, referred to in the Council's reason for refusal as set out above, does not restrict the supply of housing and is broadly consistent with the objectives of the Framework; therefore I afford it significant weight.
11. The Council has also made reference to policies in the emerging South Worcestershire Development Plan. This plan is currently under examination and subject to change, therefore I have afforded its policies only limited weight.

¹ APP/J1860/A/13/2194904 & APP/J1860/A/13/2200044

Sustainable development

12. Paragraph 7 of the Framework identifies three dimensions to sustainable development – economic, social and environmental – whilst Paragraph 12 sets out twelve core planning principles that should underpin planning decision taking. In combination, these two paragraphs provide the most useful context in which to examine sustainability. I shall apply them in assessing the benefits and adverse impacts of the proposed development.

a) The economic dimension

13. Although housing development does not equate to economic development, the proposal would nevertheless provide modest economic benefits, in providing employment and trade in building materials, which would help to foster economic growth. In the longer term, the level of disposable income would also be increased with some commensurate growth in the demand for local goods and services.

14. I heard no evidence at the hearing that the proposed development would result in any adverse economic impacts and I conclude that, for this dimension of sustainable development, the balance must clearly be in its favour.

b) The social dimension

15. The principal social benefit of the proposed development would be the provision of additional housing in an area where the on-going Local Plan process has demonstrated that there is an, as yet unresolved, shortage of provision. In the light of the Framework's priority to '...boost significantly the supply of housing...', the additional dwellings to be provided must carry very substantial weight in my decision.

16. There is also the appellants' commitment, reflected in the signed and dated Section 106 agreement, that 40% of the proposed dwellings would be affordable. Significant weight must be given to this aspect of the development.

17. There was some debate at the hearing as to the accessibility of local services and the integration of future occupiers with the rest of the community. However, some 1.2km to the north east is the settlement of Powick, which contains a number of facilities including: several pubs; a primary school; church; village hall; and petrol filling station with a small convenience store. The City of Worcester is approximately 3km from the site, with the large town of Malvern also some 3km away, with their wider range of facilities such as doctors and secondary schools. The proposed development would be no further away from local services than other new estates in the vicinity of the appeal site. Furthermore, there are regular bus services to Malvern and Worcester which operate 7 days a week.

18. Moreover, also to be recognised in considering the accessibility of the site is that Malvern is a largely rural district, which has a substantial need for additional housing. In this context, while there would no doubt be some use of the private car by occupants of the development, the site offers some choice of travel by other modes. In addition, the site can be regarded as reasonably compliant with the advice of the Framework that housing in rural areas should be located where it would enhance or maintain the vitality of rural communities.

19. There may be a wider issue about the future integration of the proposed development within Collett's Green and Powick. It was put to me, and I do not dispute it, that many occupants would commute out of the village to work. I am, however, sceptical that this would necessarily result in a lack of connection to the community. Due to the limited employment opportunities in Powick and Collett's Green many of the local residents would already commute to work outside the village. Moreover, experience suggests that newcomers are often eager to become involved in village life and sometimes become the most vigorous defenders of perceived threats to the village environment.
20. The balance within the social dimension of sustainable development may not be as overwhelmingly clear-cut as with the economic dimension of the proposal, but given the very substantial weight I must afford to the provision of additional market and affordable housing, it remains strongly positive.

c) Environmental dimension

21. With respect to the environmental dimension of sustainable development, the elements that I consider to be especially relevant to the proposed development are: landscape and visual impact; drainage; contaminated land; and highway safety.

c)(i) Landscape and visual impact

22. The site forms an area of pasture land currently used for the grazing of sheep and is enclosed by a post and wire fence and some mature hedging. To the south and east is agricultural land, comprising of fields and mature wooded copse. There is residential development to the north and west, which forms part of the settlement of Collett's Green.
23. The site historically formed part of the Powick Hospital estate and the area was excavated to supply building material for the hospital's construction and subsequently in-filled when the hospital was demolished. Accordingly, some of the site was registered as an inert landfill site. Whilst these actions have altered the natural topography of the site, the slope of the former valley, in a southerly direction towards the 'Carey's Brook', can still be appreciated.
24. Paragraph 17 of the Framework recognises the intrinsic character and beauty of the countryside as a core planning principle. That there must be an impact on the landscape from a development of up to 61 houses is undeniable. The nature of the appeal site would be changed from pasture land to a residential estate. That would be true irrespective of what mitigation is sought at reserved matters stage by means of layout or landscaping to reduce the proposed development's impact. The issue is how significant that impact would be and whether it would represent substantial material harm.
25. The Landscape and Visual Impact Assessment shows that the scheme's influence on its surroundings would be modest in scale and, in many ways, complementary to the existing rural edge of the area. Indeed, on this latter point, it appears to me that the appeal scheme represents an appropriate rounding-off to existing housing estate development hereabouts. Nevertheless, I do acknowledge that there would be a slight reduction in the overall value of the appeal site as open space and in the contribution it makes to the quality of its surroundings.

26. However, whilst I recognise that the existing open views towards Bredon Hill and the Cotswold's Area of Outstanding Natural Beauty from Hospital Lane and Hamilton Close would be reduced, due to the topography of the site, the continuance of the Public Rights of Way and areas of open space within the scheme, long distance views would be maintained and through the reserved matters the development could be successfully assimilated in this landscape. Moreover, I attach weight to the fact that the Council's Landscape Officer also expressed no objection on landscape grounds.
27. In forming this conclusion I have taken into account the obvious loss of the site's present open aspect presently enjoyed by those living off Hospital Close and to the west of Hospital Lane. But such matters, which involve land not in the control of the people who currently have the benefit of looking over agricultural fields, cannot be a significant land use planning reason for preventing sustainable development.

c)(ii) Drainage

28. The Flood Risk Assessment does not identify any significant dangers. The Drainage Strategy aims to prevent flash-flooding, on the site and on land downstream from it, caused by storm water run-off, by using a Sustainable Drainage System (SuDS). Clearly as the land form drops away into the valley bottom great care will be needed, at the detailed design stage, to ensure that any drainage features are properly integrated into any reshaped landform. Furthermore, I attach weight to the fact that the Environment Agency, subject to planning conditions relating to drainage, expressed no objection to the scheme.

c)(iii) Contaminated land

29. From historical evidence concerning past activities at the appeal site the Council and local residents have concerns regarding contaminated land. The government's Planning Policy Guidance (PPG) states that "*failing to deal adequately with contamination could cause harm to human health, property and the wider environment*". The Framework also states that "*where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner*".
30. Only an appropriate investigation can establish whether there is contamination at a particular site. Therefore, the appellant has commissioned a number of ground surveys to ascertain potential contamination levels. This included 83 sampling locations and laboratory testing on 147 soil samples. The appellant's Written Statement on Contamination, dated February 2015, shows the site to contain localised relatively low contamination levels (PAH, asbestos and lead) as well as slightly elevated concentrations of carbon dioxide and methane. It concludes that the site can be safely redeveloped for housing by using commonly used construction methods and remediation techniques.
31. Nevertheless, the Council and local residents, including the Hospital Lane Action Group (HLAG) contend that further survey work should be conducted to properly categorise the site, particularly where asbestos has been found. Indeed, whilst the Council's own independent evaluation of the appellant's evidence (Doc 9) states that the site has been adequately characterised and is capable of redevelopment for residential end use providing the appropriate site control and remediation strategy are implemented, the HLAG commissioned

report concludes that given the current lack of information it is not possible to prepare remediation strategies and mitigation measures to facilitate the development.

32. Whilst I agree with the Council and third parties that a precautionary approach is required, it is my opinion that the appellant has provided a proportionate but sufficient site investigation which has determined the existence of the contamination, categorised the nature and extent of the material, the risks it may pose to whom/what, so that these risks can be satisfactorily reduced to an acceptable level by viable and practicable methods of remediation. Additionally, I attach weight to the fact that the Environment Agency and Worcestershire Regulatory Services also expressed no objection on land contamination grounds, subject to conditions to ensure appropriate remediation.
33. The broad aim of remediation should be: to remove identified significant contaminant linkages, or permanently to disrupt them to ensure they are no longer significant and that risks are reduced to below an unacceptable level; and/or to take reasonable measures to remedy harm or pollution that has been caused by a significant contaminant linkage. From the evidence before me I consider that the required remediation can be achieved at the site, particularly given the tools put in place through appropriate planning conditions.
34. In reaching this conclusion I acknowledge the concerns raised by local residents about the monitoring and enforcement of planning conditions. However I have no reason to think that regulatory authorities would not effectively discharge their responsibilities.
35. I also read with interest the judgements referred to by the Council², and '*Corby – the implications for Remediation*' brought to my attention by the HLAG (Doc6), which resulted from the Corby toxic waste scandal. Having regard to these cases the residents' fears and perceptions resulting from the appeal scheme are genuinely held and to my mind are not malicious or invented, and this perception of harm is a material consideration. Nevertheless, whilst the fears are real, there is limited evidence of any direct effects from the perception of harm at this stage. To my mind there is a clear gulf between the technical assessment of the risk and the public perception.
36. I note the objectors concerns regarding the difficulties that prospective purchasers may have in securing mortgages but that is not a planning matter to which I can attribute any weight.

c)(iv) Highway safety

37. The documents submitted with the planning application included a comprehensive Transport Assessment, which was prepared in consultation with the Highway Authority. The Highway Authority stated it was satisfied with the proposed access arrangements to the site, and the capacity of the highway network to accommodate safely the consequent increase in traffic.

² Gateshead MBC v Secretary of State for the Environment, 12 May 1994, [1995] Env LR 37; Westminster City Council Appellants v Great Portland Estates Plc. Respondents 31 October 1984 3 W.L.R. 1035; Newport BC v The Secretary of State for Wales and Browning Ferris Environmental Services Ltd 18 June 1997 [1998] ENV. L.R. 174; West Midlands Probation Committee v Secretary of State for the Environment [1997] J.P.L 323; R. v Broadlands District Council and St Matthew Society Limited and Peddars Way Housing Association 26 January 1998 [1998] P.L.C.R 119; and Smith v First Secretary of State, Mid Bedfordshire District Council CO/4241/2004 [2004] EWHC 2583 (Admin)

38. However, whilst highway safety was not a matter disputed by the Council, third parties were concerned that the existing road infrastructure does not have the capacity to cope with the increase in vehicular traffic likely to be generated by the proposed development and other developments permitted locally. Furthermore, future changes to the access/egress to The Crown Public House to facilitate additional housing development would increase queuing at the Hospital Lane / A449 Malvern Road junction, thereby increasing the accident risk. To support their case the HLAG submitted an addendum to their Transport and Road Safety Impact Report (Doc 2). This provided conclusions from a recent highway speed survey, however I was not provided with the supporting data or the methodology used for calculating the predicted increase in volume of traffic. Therefore I remain unconvinced that the appellant's Transport Statement contains fundamental flaws that would invalidate its findings.
39. Even so, the Council stated at the hearing that, as a result of the recent planning application by Marston's PLC³, the Highway Authority has again considered the Hospital Lane/A449 Malvern Road junction, which has been analysed subject to those known and predicted traffic flows, and has concluded that such proposals would not have a significant effect on this junction. Moreover, I have no substantive evidence before me from the Highways Authority or any other party to state that the junction with the Malvern Road is inherently unsafe.
40. I recognise that there may well be problems with congestion in the locality, particularly during the morning and evening peak hours. Indeed, the trip data used in the transport evidence of the appellant is based on the peak periods, as advised by the Highway Authority, in order to present robust 'worst-case' scenarios. Nonetheless, the technical evidence before me is that this part of the highway network would be able to operate within capacity, with no significant queuing.
41. Therefore, given the stated position of the Highway Authority and the Framework which states at paragraph 32 that *development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*, I do not consider that the appeal scheme would material harm the safety or free flow of traffic in the area.
42. The balance in favour of the environmental dimension of sustainable development is not as apparent as the economic dimension. Clearly the benefits of the development such as the creation of public open space have to be set against the loss of open countryside, leading to a change in the local landscape. However, such harm is off-set by location of the development close to an existing residential estate, and viewed in that context, and that the appeal site is not designated or so special that its loss to development would represent significant material harm. The adequacy of the contamination investigations and the lack of harm I have found in respect of highway safety and flooding are neutral in the final balance as this is expected of all developments.

³ Planning application 14/01360/OUT refers

Other matters

43. The extent of local opposition to a scheme is not, in itself, a reasonable ground for resisting development, but opposition founded on valid planning reasons certainly can be. Local residents, organisations and Councillors have taken considerable trouble to advise me of a number of material issues and genuine concerns, and I have had careful regard to all those that were relevant.
44. At the hearing concerns were expressed about the capacity of local infrastructure such as the school and village hall to cope with future occupiers of the proposed development. In this regard I read with interest the HLAG's Sustainability Appraisal and the Byron's Wood Sustainability Survey. These documents stated that several local facilities, such as the post office and general store, have been lost in recent years. However, to my mind new developments provide additional income and support for local shops and services and the provision of a contribution towards education will assist against any shortfall in school places. Whilst I appreciate that the capacity of local facilities, such as the village hall, is a genuine concern it is not a matter that justifies dismissal of the appeal.

Legal Undertaking

45. The signed Section 106 Unilateral Undertaking (UU) is a legal covenant and once it comes into effect its terms are binding on the person(s) against whom it is enforceable. In this case the provisions for: securing 40% affordable housing on the site, and; contributions towards education facilities in the locality, open space provision, provision of an on-site LEAP, 40% of the application site to be retained as open space, Worcester Transport Strategy and, public transport are all legitimately required (by policies DS18, CN2 and CN12 of the Local Plan, the Malvern Hills District Council's: Affordable Housing Supplementary Planning Guidance 2004; Part One: Developer Contributions Supplementary Planning Document 2006; Education Contributions Supplementary Planning Document; and Open Space Supplementary Planning Document 2008).
46. The UU meets the tests set out in the current CIL regulation 122 in that it is: necessary to make the development acceptable in planning terms; directly related to the development, and; fairly and reasonably related in scale and kind to the development. Additionally discussion at the hearing satisfied me that the agreement would provide appropriate financial contributions to necessary infrastructure generated by the proposed development and ensure the agreed proportion of affordable housing.

The overall planning balance

47. The Framework explains, at paragraph 12, that its existence does not change the statutory status of the Development Plan as the starting point for decision making. This means that a determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. Further, at the heart of the Framework is a presumption in favour of sustainable development, and as noted above, paragraph 14 explains that for decision taking, this means approving development proposals that accord with the development plan without delay.

48. In my consideration of this appeal, I have not found any conflict with the adopted policies of the Development Plan. I have found that the slight reduction in the overall value of the appeal site as an open space and in the contribution it makes to the quality of its surroundings, are considerations which weigh against the proposal. However, of considerably greater weight, in my view, are the benefits that the proposed development would have in terms of making significant contributions to addressing the clear shortfall in the Council's housing supply, and the pressing need for more affordable housing in the local area.
49. Taking all of this into account, I conclude that the proposed development would accord with Local Plan Policy DS3 criteria (c), (d) and (n) where development will only be permitted that has no significant effect on amenity, and there would be no unacceptable levels of air, water, soil, noise, odour, light and other environmental pollution, and the overall balance of material considerations weighs strongly in favour of granting planning permission. I shall therefore allow the appeal.

Conditions

50. Conditions should only be imposed if they are; reasonable, enforceable, precise and relevant both to planning and to the development to be permitted.
51. Although this is an outline application detailed assessments and statements were material in my deciding to grant planning permission. It is important, therefore, that what would normally be detailed requirements are also reflected in the conditions that I impose now despite the further opportunities offered for control at the detailed application stage.
52. There is no reason to attach anything other than the usual time limits for commencement of development and the submission of details for subsequent approval. It is necessary that the requirements for the reserved matters are set out and that the development be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning.
53. Due to the previous landfill operations, conditions 5 to 8 and 12 are necessary to ensure that risks from land contamination are minimised and to ensure a satisfactory form of development. Conditions to ensure a satisfactory drainage scheme will be necessary to limit flood risk, pollution and the efficient disposal of foul and surface water from the site. Whilst at the hearing the Council requested amendments to conditions agreed by both parties in the Statement of Common Ground, nevertheless, to my mind the additional information requested by the Council could be achieved by the agreed conditions.
54. Landscaping and protection of existing trees and hedgerow conditions are attached to ensure that the scheme is well integrated into its surroundings. Conditions to ensure the submission of a specification for the enhancement of biodiversity and a lighting scheme are necessary to prevent harm to biodiversity.
55. Conditions regarding highway safety for the lifetime of the development are required to ensure visibility splays, a vehicular access, roads and highways drains, parking and turning areas are constructed prior to the occupation of the development. Additionally cycle parking, travel plans, and footways are

required in the interests of sustainability. To ensure highway safety during construction conditions requiring wheel cleaning apparatus and parking for operatives are required.

56. It is also necessary to impose a condition requiring the timing of demolition, ground works and construction works to ensure a good standard of amenity for existing neighbouring occupiers.

57. Finally a condition to require details of the proposed utility connections to facilitate super-fast broadband connectivity is necessary and appropriate to a modern development.

Overall Conclusion

58. For the reasons set out above, I find no conflict with the development plan, nor any other material harm. On balance, therefore, the evidence in this case has led me to conclude that the appeal should be allowed.

Joanne Jones

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mr D Onions	Planning Consultant, Pegasus Group
Mr I Spindler	Landscape Architect, Pegasus Landscape Design
Mr M Higgins	Transport Consultant, BWB Consultancy
Mr D James	Technical Director, Wardell Armstrong

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Rudge	Development Control Manager, Malvern Hills District Council
Mr S Jones	Senior Planning Officer, Malvern Hills District Council
Ms V Simpson	Planning Officer, Malvern Hills District Council

INTERESTED PERSONS

Mr P Huntingdon	Hospital Lane Action Group, Local resident
Mr W Burnett-Jones	Hospital Lane Action Group, Local Resident
Mr P Inman	Hospital Lane Action Group, Local Resident
Ms F Townley	RAW Technology, on behalf of the Hospital Lane Action Group
Mrs E Newman	Councillor, Powick Ward
Mr C McSweeney	Hospital Lane Action Group, Local Resident
Mr T Wells	Councillor, Powick Ward
Ms A Inman	Hospital Lane Action Group, Local Resident
Mr A Lamb	Powick Parish Council
Mr B Bowen	Local Resident

DOCUMENTS SUBMITTED DURING THE HEARING

Doc 01	Appeal hearing notification, submitted on behalf of the Council.
Doc 02	Transport and Road Safety Impact Report – Addendum 1, submitted on behalf of the Hospital Lane Action Group.
Doc 03	True copy of executed S106 Unilateral Undertaking dated 7 April 2015, submitted on behalf of the appellant.
Doc 04	Appeal decision ref APP/J1860/A/14/2227378, submitted on behalf of the appellant.
Doc 05	Judgement in the case of Gateshead MBC v Secretary of State for the Environment, Court of Appeal, 12 May 1994, submitted on behalf of the Council.
Doc 06	Corby – the implications for Remediation, submitted on behalf of the Hospital Lane Action Group.
Doc 07	Application for Costs, submitted on behalf of the appellant.
Doc 08	Rebuttal of Application for Award of Costs, submitted on behalf of the Council.
Doc 09	Technical Note, submitted on behalf of the Council.
Doc 10	Community Services Planning Application Response, Submitted on behalf of the Council.
Doc 11	Northern Area Development Management Committee Update Sheet, submitted on behalf of the Council.

Annex – Conditions attached to Appeal Ref APP/J1860/W/14/3001286

- 1) 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. The development hereby permitted shall be begun not later than whichever is the latest of the following dates:-
 - i) The expiration of three years from the date of this permission; or
 - ii) The expiration of two years from the final approval of the reserved matters; or
 - iii) In the case of approval on different dates, the final approval of the last such matter to be approved.
- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings: BMW/2296/100 rev 2 – received 11th July 2014 and, Site Location Plan rev A – scale 1:1250 – received 11th August 2014, unless otherwise required by conditions attached to this permission.
- 3) Approval of the details of the appearance, landscaping, layout and scale (hereinafter called “the reserved matters”) shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 4) The landscaping scheme submitted in accordance with condition 3 of this permission shall include details of fences, surface treatments to drives and a plan detailing the disposition of planting, cross referenced to a schedule listing the species, size and number of plants proposed. The scheme shall include the establishment of hedgerows along the southern and eastern site boundaries with provision for tree planting to be carried out concurrently with the development and completed within one year of substantial completion of the development.

If within a period of five years from the date of the planting of any tree planted pursuant to this condition that tree, or any tree planted in replacement for it is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.

- 5) Part 1. Prior to the commencement of the development, a preliminary risk assessment must be submitted to and approved in writing by the Local Planning Authority. This study shall take the form of a Phase I desk study and site walkover and shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses (including asbestos) and any other relevant information. The preliminary risk assessment report shall contain a diagrammatical representation (conceptual model) based on the information above and shall include all potential contaminants, sources and receptors to determine whether a site investigation is required and this should be detailed in a report supplied to the Local Planning Authority.

Part 2. Where any unacceptable risks are identified within part 1 of this condition, a scheme for detailed site investigation must be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The investigation and risk assessment scheme must be compiled by competent persons and must be designed in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Contaminated Land, CLR11".

Part 3. Unless otherwise agreed in writing by the Local Planning Authority, prior to the commencement of the development a detailed site investigation and risk assessment findings report, in accordance with part 2 of this condition, must be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The investigation and risk assessment must be undertaken by competent persons and must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Contaminated Land, CLR11".

Part 4. Where identified as necessary (by parts 1 to 3 of this condition) prior to the commencement of the development a detailed remediation scheme, including details of a watching brief to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be submitted to and approved in writing by the Local Planning Authority. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part 5. The development shall be carried out strictly in accordance with the approved remediation scheme unless otherwise agreed in writing by the Local Planning Authority.

Part 6. Following the completion of the measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any buildings.

Part 7. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, the development shall cease immediately, and it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must then be undertaken and where necessary a remediation scheme must be prepared. These shall be submitted to and approved in writing by the local planning authority prior to any re-commencement of the development, which shall then be undertaken in accordance with the approved scheme. Following the completion of any measures identified in the approved remediation scheme a validation report must be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any buildings.

- 6) Any site investigation works and remediation strategies produced in accordance with condition 5 shall be informed by the recommendations made within the Wardell Armstrong Site Investigation Report, unless

otherwise agreed in writing by the Local Planning Authority. These include, but are not limited to:

Asbestos Containing Material (ACM) Management

- i. Site inductions for workers to inform them of the potential presence of asbestos and safe methods of workings with reminders through tool box talks.
- ii. Preparation of a Materials Management Plan for the site to show areas where potential asbestos material is present and detailing appropriate methods of handling and storage of excavated material from these areas.
- iii. A watching brief carried out by a suitably experienced person during the works in soils where asbestos is present. Such personnel should carry portable monitors around the works that can provide an indication of asbestos concentrations on the site. The Curriculum Vitae (CV) of the person conducting the watching brief should be supplied to the LPA in advance of the works highlighting their experience and suitability for carrying out this role.
- iv. Keeping soil materials wet in areas which could potentially contain asbestos to minimise the release of fibres, and keeping any potentially contaminated soils covered.
- v. Service runs to be laid in clean soil in areas that can potentially contain asbestos to minimise exposure to future workers.
- vi. Preparation of a method statement and action plan to address the situation should suspected asbestos be uncovered during the site works.
- vii. Construction of perimeter monitoring for asbestos fibres.
- viii. Dust suppression on haul road, site accesses and other trafficked areas.
- ix. Inclusion of a clean cover system (details of the thickness of which to be submitted to and agreed in writing by the Local Planning Authority in advance of the commencement of the development) to act as a pathway break between potentially contaminated soils and future site users.

Groundwater and surface water

- x. Additional groundwater and surface water sampling and testing before, during and after construction to determine the impact of the development on groundwater and surface water receptors. A scheme detailing the testing locations, frequency of testing, testing suites and the duration of testing should be submitted to and approved in writing by the Local Planning Authority in advance of the testing.

Ground gases

- xi. Additional ground gas monitoring to assess the gas regime at the site and the appropriate level of gas protection measures for new houses in accordance with NHBC's traffic light system. A scheme

detailing the testing locations, frequency of testing and the duration of testing and gas protection measures should be submitted to and approved in writing by the LPA in advance of the testing.

- 7) No development shall take place until a long term monitoring scheme related to pollutant linkages, maintenance and arrangements for contingency action is submitted to and approved in writing by the Local Planning Authority. The scheme shall include: frequency and location of monitoring in surface and groundwater monitoring locations; method and nature of sampling including analysis suite (determinants). Thereafter monitoring shall be carried out pre, during and post development and reviewed in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.
- 8) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
- 9) The development hereby permitted shall not commence until drainage plans for the disposal of foul sewage have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details, prior to the first occupation of any unit of accommodation hereby approved.
- 10) Prior to the commencement of the development hereby approved a scheme for surface water drainage shall be submitted to, and approved in writing by the Local Planning Authority. Prior to submission of the scheme an assessment shall be carried out into the potential for disposing of surface water by means of a sustainable drainage system (SuDS), and the results of this assessment shall be submitted to and approved by the Local Planning Authority. If infiltration techniques are used then the plan shall include the details of field percolation tests. There shall be no increase in surface water run-off rate and volume from the site compared to the existing pre-application run-off rate and volume up to a 1 in 100 year storm event plus an appropriate allowance for climate change. The scheme shall provide an appropriate level of runoff treatment. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 11) Unless otherwise agreed in writing by the Local Planning Authority, prior to the commencement of the development details of the proposed Sustainable Drainage System shall be submitted to and agreed in writing by the Local Planning Authority. The submitted details shall include:
 - i. Information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii. Include a timetable for its implementation;

iii. Provide a management and maintenance plan for the lifetime of the development which shall include the arrangements to secure the safe and effective operation of the scheme throughout its lifetime.

iv. Details of field percolation tests, if infiltration techniques are used.

The submitted scheme shall result in no increase in surface water run-off rate and volume from the site compared to the existing pre-application runoff rate and volume up to a 1 in 100 year storm event plus an appropriate allowance for climate change. The scheme shall provide an appropriate level of runoff treatment. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

- 12) Prior to the commencement of the development, details of where any materials that are excavated as part of the development will be removed to, 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.
- 13) Any reserved matters application which relates to landscaping shall include a scheme for the re-establishment of hedgerows set behind the required visibility splays either side of the vehicular access point, as well as details of a proposed management plan for the care of the new hedgerow for a period of five years after first planting. The development shall be carried out in accordance with the approved details.
- 14) Before any other works hereby approved are commenced, visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 59 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 15) Before any other works hereby approved are commenced, the construction of the vehicular access, having a carriageway width of 5.5 metres with 2.0 metre wide footways and 6.0 metre bellmouth radii all as indicated on drawing BMW/2296/100 rev P2 but without prejudice to the visibility requirements set out in Condition 14 above, shall be carried out in accordance with a specification to be agreed in writing with the Local Planning Authority.
- 16) Prior to the first occupation of any dwellings hereby approved space shall be laid out within the curtilage of each property for car parking and vehicular turning facilities to accord with the Council's standards. The parking and turning areas shall be properly consolidated, surfaced and drained in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall not thereafter be used for any other purpose than the parking of vehicles.
- 17) Prior to the first occupation of any dwelling hereby approved secure parking for cycles to comply with the Council's standards shall be provided within the curtilage of each dwelling and these facilities shall thereafter be retained for the parking of cycles only.

- 18) Prior to the commencement of the development hereby permitted engineering details of:

- i. A 2.0 metre wide frontage footway between the site access and Hamilton Close, and
- ii. A tactile paved pedestrian crossing on Hamilton Close to link with the new footway in 1 above, and
- iii. Tactile paved pedestrian crossing on King Charles Avenue and Cromwell Road at their junctions with Hospital Lane, and
- iv. The enhancement of the 2 No. bus stops on the A449 near the junction of Hospital Lane by the provision of raised kerbs shall be submitted to, and approved in writing by, the Local Planning Authority.

The development shall not be brought in to use prior to the completion of the footway, tactile crossings and bus stop enhancement, in accordance with the approved details.

- 19) Development shall not begin until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in writing by the Local Planning Authority, and the development shall not be occupied until the scheme has been constructed in accordance with the approved drawings.
- 20) No individual dwelling shall be first occupied prior to the road works necessary to provide access from the nearest publicly maintained highway to that property have been completed in accordance with details submitted to and approved in writing by the Local Planning Authority.
- 21) The development shall not begin until wheel cleaning apparatus has been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and which shall be operated and maintained during the construction of the development hereby approved.
- 22) The development shall not begin until parking for site operatives and visitors has been provided within the application site in accordance with details to be submitted to and approved by the Local Planning Authority and such provision be retained and kept available during the construction of the development.
- 23) The development hereby permitted shall not be brought into use until the applicant has submitted to and have approved in writing a travel plan that promotes sustainable forms of access to the site within the Local Planning Authority. This plan thereafter will be implemented and updated in agreement with the Local Planning Authority.
- 24) With the exception of the hedgerow that would be required to be removed to provide the required visibility splays (as specified within condition 14), no other existing trees or hedgerows shall be destroyed or removed from the site, unless previously approved in writing by the Local Planning Authority as part of any landscaping scheme approved as part of any reserved matters application.
- 25) Prior to the commencement of the development a tree and hedgerow protection plan shall be submitted to and approved in writing by the local Planning authority, which relates to all of the trees and hedges within the

site which are to be retained. The development shall subsequently be carried out in accordance with the approved protection plan.

- 26) Prior to the commencement of the development hereby approved, a specification (including methodology and programme of implementation) for the enhancement of biodiversity, in accordance with the recommendations contained within the Phase 1 Survey and Protected Species Survey Assessment (dated April 2014) which accompanied the planning application, shall be submitted to and approved in writing by the Local Planning Authority. The works so approved, shall be carried out in accordance with the approved programme of implementation.
- 27) Prior to the commencement of the development an external lighting scheme covering the whole application site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.
- 28) Demolition/ground works/construction works shall not take place outside the following hours:
Monday to Friday 07.30 – 18.00hrs
Saturday 08.00-13.00hrs
There shall be no work on Sundays or Public Holidays
- 29) Prior to the construction of the dwellings hereby approved, details of the proposed utilities connections to the dwellings to facilitate super-fast broadband connectivity (landline, mobile and wi-fi) including fibre optic rather than copper cabling where practicable, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details so agreed.