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## Appeal Decisions

Hearing held on 13 January & 21 April 2015

Site visit made on 12 January & 21 April 2015

**by Chris Preston BA (Hons) BPI MRTPI**

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

**Decision date: 19 May 2015**

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### **APPEAL A:**

**Appeal Ref: APP/W3520/A/14/ 2223510**

**Thurston Granary, Station Hill, Thurston, Bury St. Edmunds IP31 3QU**

- 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 the extension to the time limit for implementing a planning permission.
  - The appeal is made by Mr John Oldknow against the decision of Mid-Suffolk District Council.
  - The application Ref 2613/11 is dated 29 January 2011.
  - The development proposed is described on the original planning permission (ref: 0140/04/OUT) as: Outline application for residential and retail development with demolition of existing structures and new access road.
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### **APPEAL B:**

**Appeal Ref: APP/W3520/A/14/ 2226787**

**Thurston Granary, Station Hill, Thurston, Bury St. Edmunds IP31 3QU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Playdri Products Ltd against the decision of Mid-Suffolk District Council.
  - The application Ref 3181/13, dated 29 October 2013, was refused by notice dated 07 April 2014.
  - The development proposed is: Mixed retail/ residential development with demolition of existing buildings and altered access.
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## **Decisions**

### **APPEAL A**

1. The appeal is allowed and planning permission is granted for residential and retail development with demolition of existing structures and new access road at Thurston Granary, Station Hill, Thurston, Bury St. Edmunds IP31 3QU in accordance with the terms of the application, Ref 2613/11, dated 29 January 2011, and the plans submitted with it, subject to the conditions set out in the schedule attached to this Decision.

### **APPEAL B**

2. The appeal is allowed and planning permission is granted for mixed retail/ residential development with demolition of existing buildings and altered access at Thurston Granary, Station Hill, Thurston, Bury St. Edmunds IP31 3QU in accordance with the terms of the application, Ref 3181/13, dated 29 October

2013, and the plans submitted with it, subject to the conditions set out in the schedule attached to this Decision.

### **Application for costs**

3. At the Hearing an applications for costs in relation to Appeal A and Appeal B were made by Mr John Oldknow (Playdri Products Ltd) against Mid-Suffolk District Council. These applications will be the subject of separate Decisions.

### **Procedural Points and Background to Main Issues**

4. I held the Hearing over two days; 13 January and 21 April 2015. Upon opening the Hearing in January, it became apparent that the Council had failed to notify interested parties of the date and time of the Hearing. Consequently, with the agreement of the Council and appellant, I adjourned the Hearing without discussing any of the main issues. Subsequently, interested parties were notified of the re-scheduled date and the Hearing was reconvened on 21 April.
5. The Hearing was in relation to two appeals at the same site. I have referred to them as Appeal A and Appeal B and my decision covers both proposals. Appeal B related to an application for full planning permission to develop part of the site; in effect, the front section adjacent to Station Hill.
6. The application to which Appeal A relates was submitted under the provisions of the Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009 (the GDPO); legislation that provided a mechanism for the extension to the time limit for implementing existing planning permissions. The background to this regime was set out within the guidance document *Greater Flexibility for Planning Permissions*, issued by the Department for Communities and Local Government in October 2010.
7. The legislative provisions for extending the time limit for planning permissions related to unimplemented planning permissions that were granted prior to 01 October 2009. The current Town and Country Planning (Development Management Procedure) (England) Order 2015 does not contain provision for extending the time limit for the implementation of planning permissions in the same manner as the 2009 GDPO. *Greater Flexibility for Planning Permissions* has also been revoked and replaced with the suite of advice in the Planning Practice Guidance. Notwithstanding these points, the application to which Appeal A relates was validly made under the legislative provisions, as they applied at the time of submission. Consequently, I am satisfied that the appeal is also validly made. Although *Greater Flexibility for Planning Permissions* has been superseded, the guidance within the document provides advice as to how such applications were intended to be considered. In the absence of any current comparative guidance I consider it appropriate to have regard to the document and have done so in reaching my decision.
8. The appellant sought consent to extend the time limit for the implementation of outline planning permission reference 0140/04/OUT. However, as part of the submission, they also sought to include the details under the reserved matters (RM) approval reference 2419/08 (granted on appeal under reference number APP/W3520/A/09/2098227). The Council is satisfied with this approach and it is common ground that those details should be included as part of my consideration of Appeal A. That approach complies with that recommended

within *Greater Flexibility for Planning Permissions* which explicitly stated that it was unnecessary for reserved matters details to be applied for again.

9. As set out within the Statement of Common Ground (SoCG) the approved RM application included the provision of a two-storey building containing 705 square metres of retail floorspace, 97 residential flats, and 134 car parking spaces. I have considered the appeal on that basis and have taken account of the reserved matters details in reaching my decision.
10. Appeal A was submitted following the failure of the Council to reach a decision within the prescribed period. The Council set out two putative reasons for refusal following a resolution by its Development Control Committee on 24 September 2014<sup>1</sup>. Those reasons for refusal made no reference to the lack of a legal undertaking to secure financial contributions towards local leisure facilities or rail safety measures. However, within their subsequent appeal statement, the Council set out a view that financial contributions towards those measures should be attached to any grant of planning permission<sup>2</sup>.
11. No legal undertaking was submitted with the application or appeal. At the Hearing I sought confirmation on the Council's position with regard to the requested contributions with a view to understanding whether the lack of any financial contribution formed part of their case against the Appeal A proposal. Following an adjournment to allow discussion between the consultant acting on behalf of the Council and the head of planning, the Council confirmed that the lack of contributions with respect of those matters did not form part of their case against the proposal. Therefore, I have considered Appeal A on the basis that the lack of a planning obligation to secure such contributions is not a matter over which the Council and appellant are in dispute.
12. I heard representations from Cllr Powell and Cllr Hayley, local ward members, regarding the proposal, including the effect on local service provision and railway safety. I shall consider the representations made in reaching my decision but, for the reasons given, have not included the lack of financial contributions towards rail safety and leisure facilities as a main issue in dispute between the Council and the appellant in relation to Appeal A.
13. A report to the Council's Development Control Committee of 18 March 2015 was submitted to the Hearing, with reference to planning application reference 4002/14<sup>3</sup>. Within that report, the Council acknowledged that it could not demonstrate a five-year supply of deliverable housing land; their view being that a supply of 4.3 years was available, representing a shortfall of 300 dwellings. The Council stated that this remained its current position at the time of the Hearing. No contrary evidence is before me to challenge that view and I have determined the appeal on the basis that the Council cannot demonstrate a five-year supply of deliverable housing land, as required by paragraph 47 of the National Planning Policy Framework (the Framework).
14. A revised layout plan (drawing reference 12.01/05), showing minor amendments to clarify pedestrian footways linking to the site from Station Hill, was submitted with Appeal B. The Council has no objections to the plan and,

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<sup>1</sup> Set out in full at paragraph 5.6 of the Council's written statement.

<sup>2</sup> Paragraphs 7.1 to 7.3 of the Council's written statement.

<sup>3</sup> Appeal Document 6

given the minor nature of the amendments, I am satisfied that no party will be prejudiced by my decision to take the revision into account.

15. Four documents make up the development plan for the area. For clarity, I shall refer to in the manner summarised in brackets; The Mid-Suffolk Local Plan 1998 (the LP); The Mid-Suffolk Local Plan First Alteration 2006 (LP First Alteration); The Mid-Suffolk Core Strategy Development Plan Document 2008 (the CS); and the Core Strategy Focussed Review 2012 (CS Focussed Review)

### **Main Issues**

16. In view of the above, the main issues in relation to the appeals are:

#### ***In relation to Appeal A alone***

- i) Whether the absence of any affordable housing provision would be acceptable, having regard to the requirements of the development plan, the National Planning Policy Framework and the Planning Practice Guidance;
- ii) Whether the loss of existing employment uses on the site would have a harmful economic impact and be contrary to saved policy E6 of the LP;

#### ***In relation to Appeals A and B***

- iii) Whether the proposals would represent good design, with particular regard to the proposed layout and relationship between pedestrian and vehicle users;
- iv) Whether the scale of retail provision would have a harmful effect upon the vitality and/or viability of any recognised retail centre; and
- v) Whether the proposals would represent sustainable development, having regard to the policies of the National Planning Policy Framework, taken as a whole, and policies FC1 and FC1.1 of the CS Focused Review.

### **Reasons**

#### ***Matters in Relation to Appeal A Alone***

##### ***i) Affordable Housing***

17. Policy H4 of the LP First Alteration states that the Council will seek to negotiate an element of affordable housing, up to 35% of the total provision of housing on appropriate sites. It also states that negotiations will take account of the identified local needs, the economics and viability of development and the availability of local services.
18. In its form, the policy is positively worded noting that the Council 'will seek to negotiate an element of affordable housing'. It does not stipulate a lower level of provision or state that permission will be refused in circumstances where no affordable housing is secured. The policy accepts that negotiations will take account of economics and viability of development and protracted negotiations over the viability of the site took place between the Council and the appellant on that point, culminating in an independent review which concluded that the inclusion of affordable housing provision would render the development unviable; a point that is common ground between the main parties.

19. The flexible wording of policy H4 is consistent with the aims of paragraph 205 of the Framework and supplementary advice on viability within the PPG which is that planning authorities should look to be flexible in applying policy requirements, where possible, where the viability of a development is in question, particularly where there is an opportunity to encourage the re-use of previously developed land<sup>4</sup>.
20. The wording of the policy provides flexibility to take account of the outcome of any negotiations with regard to viability. To my mind, reading the policy as it is written, that flexibility would provide for a level of affordable housing from 0% to 35%. Thus, the lack of any affordable housing provision does not, necessarily, render that a proposal is contrary to the aims of policy H4.
21. That said, the wording of the policy does not set out a recommended approach for situations where no affordable housing is viable for a particular scheme. The policy is silent on that point and, in my view, consideration of whether the absence of any affordable housing is acceptable must be determined on the merits of each individual case. In that regard, I give little weight to the Council's concerns regarding the precedent that would be set by approving a scheme with no affordable housing. Such matters can only be considered on the circumstances relating to a particular site and conclusions on viability in a specific case will not set an undue precedent for other development elsewhere.
22. However, policy H4 notes that negotiations regarding affordable housing will take account of identified local needs, in addition to matters of viability. In this case, there is a local and district wide need for affordable housing, as set out at paragraph 6.32 of the Council's written statement, and affordable housing is identified as one of 15 strategic objectives within the CS. The appellant does not dispute this need and I concur with the Council that the interpretation of policy H4 should be viewed in the context of the over-arching strategy of the development plan. Therefore, notwithstanding the viability arguments relating to the scheme, the failure to secure any affordable housing within a scheme for 97 units, a substantial development in a rural context, would be contrary to the wider aims of the development plan in meeting local housing needs. This aim is consistent with paragraph 47 of the Framework, with regard to the need to meet local needs for affordable housing and paragraph 50, which identifies a preference for meeting affordable housing needs on-site. The provision of affordable housing is also a key aspect of the social element of sustainable development, as set out at paragraph 7 of the Framework
23. Thus, it is clear that there is an inherent conflict within both local and national policy between the need to provide for affordable housing and the need to take account of viability and market conditions. Whilst recognising the need to take account of viability, the PPG is clear that development should be refused where the safeguards necessary to make a development acceptable in planning terms cannot be secured<sup>5</sup>. In this case, the lack of any affordable housing is in clear conflict with the aims of the development plan and the need to secure affordable housing to meet a defined local need. Whether the absence of affordable housing is such that development should be refused is a matter of planning balance, taking account of the need to secure sustainable development. I shall conduct that exercise later within my decision.

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<sup>4</sup> Paragraphs 001 reference ID: 10-001-20140306 and 026 reference ID: 10-026-201403306

<sup>5</sup> Paragraph 19 reference ID: 10-019-20140306

*ii) Whether the loss of employment uses would have a harmful economic impact, contrary to saved policy E6 of the Local Plan*

24. Setting aside the absence of a s.106 agreement, the proposal is identical to that previously approved at the outline and reserved matters stage. Policy E6 of the LP was a relevant policy at the time those applications were considered and the loss of employment generating uses at the site was found to be acceptable.
25. In considering the redevelopment of employment generating premises, Policy E6 states that the planning authority will expect significant benefit for the surrounding environment, particularly in terms of improved residential amenity or traffic safety. The Council acknowledges that there have been no material change in circumstances with regard to those two issues but suggests that the lack of any affordable housing provision dictates that a different conclusion should be reached as to the acceptability of the loss of employment uses at the site.
26. I can find no basis for such an approach within the wording of policy E6. That policy simply states that the planning authority will expect a significant benefit for the surrounding environment, with particular reference to residential amenity and traffic. To my mind, the effect on the surrounding environment is not dependent on whether any affordable housing is included as part of the scheme. Thus, any arguments in that regard should have no bearing on whether the proposal complies with the requirements of policy E6. Therefore, from the evidence presented, there has been no material change in circumstances that would warrant a different conclusion.
27. Moreover, the appellant has provided evidence with regard to the supply of local business premises and the nature of the employment uses at the site. The Council has not sought to challenge this evidence, which points to a readily available supply of alternative premises within the local area. I am also mindful that the scheme itself contains employment uses in the form of the retail space. Taking these factors into account I am satisfied that the proposal would not lead to any harmful economic impacts that would warrant the refusal of planning permission.

***Matters in Relation to Appeal A and Appeal B***

*iii) Whether the proposals would represent good design, with particular regard to the proposed layout and relationship between pedestrian and vehicle users*

***Appeal A***

28. The layout and design of the scheme is identical to that previously considered and approved. It is common ground that the proposal is acceptable in terms of impact on heritage assets; that the height and external appearance of the buildings are acceptable; that the scale of the buildings will have an acceptable impact on the character and appearance of the area; and that the access arrangements from Station Hill are acceptable. The SoCG also confirms that the proposed level of car parking is in compliance with the Suffolk car parking standards. The proposal has previously been found to be acceptable in respect of these matters and no material circumstances have been presented that would lead me to take a different view.

29. In terms of design, the Council's putative reasons for refusal relate specifically to the alleged conflict between pedestrians and vehicle users within the site. The subsequent written statement makes no reference to this matter. At the Hearing, the Council did not identify any specific issue with regard to the proposed layout that would lead to conflict between pedestrians and vehicle users but raised concerns relating to the management of parking spaces in terms of potential use associated with the railway station and how the residential and retail spaces would be allocated to ensure that they remained available for their intended use.
30. These matters were found acceptable in relation to previously approved outline and reserved matters schemes and little evidence has been presented to suggest that traffic conditions have altered since those decisions were made. It was suggested orally at the Hearing that use of the station has increased in the intervening years but no supporting statistics or written evidence was produced in support of these claims. I am satisfied that the proposed layout, and the level of car parking, remains adequate to serve the proposed development. There would be clear segregation between pedestrians and other road users and parking provision would be in-line with local standards. No compelling evidence is before me to suggest that conflict is likely to arise in terms of parking demand or inappropriate use of the parking provision at the site. Should such a situation arise in future, parking controls within the development could be implemented to ensure proper use of the dedicated areas. Thus, general concerns regarding a situation that may or may not arise in future are not sufficient to warrant a different decision from those taken previously.
31. In terms of design, the Council's written statement highlights concerns regarding the suitability of flats above retail units, should those units be used as affordable housing. However, no affordable housing is put forward as part of the development and, consequently, those concerns are not relevant to the proposal before me.
32. In view of the above, I am satisfied that the design and layout of the proposal are acceptable and compliant with the design related criteria of saved policies GP1, H13 and T10 of the LP. Those policies were in force at the time the previous applications were considered and approved and no material change in circumstances have been identified, in relation to matters of design, that would lead me to reach a different conclusion.

#### *Appeal B*

33. As with Appeal A, it is common ground that the proposal would be acceptable in terms of its effect on heritage assets; the character and appearance of the area, its height and external appearance, and that the access arrangements from Station Hill would be acceptable. It is also common ground that the proposed level of parking provision would comply with adopted Suffolk parking standards. I find no reason to depart from that agreed position.
34. The first reason for refusal in relation to Appeal B mirrored, to a large extent, the putative reason for refusal in Appeal A, with regard to the potential conflict between pedestrians and vehicle users. However, an additional concern was raised with regard to the relationship of the scheme with the remaining, undeveloped, section of the site and the relationship with the existing retail units which are shown to remain as part of the development.

35. In terms of the relationship with existing retail uses, the proposed layout would include dedicated parking bays on both sides of the main access road running through the site. These spaces would be properly marked out and surfaced and adequate reversing space would be available within the carriageway to enable vehicles to pull in and out safely. There is nothing to suggest that this arrangement would cause any conflict between pedestrian and other road users, as pedestrian routes through the site are clearly demarcated from the parking areas and carriageway. Speed bumps/ pedestrian crossings would also help to slow traffic speeds through the site.
36. Sufficient space is available for any lorries to turn within the site, as shown on the turning circle on the proposed layout plan. The Council raised concern at the Hearing that it was not clear how the turning arrangements would be retained in the course of any future development of the remainder of the site, leading to potential conflict between turning vehicles and through traffic to the rest of the development area.
37. Whilst these future arrangements are not shown on the proposed plans, I am satisfied that sufficient space has been retained to incorporate a turning area for larger vehicles and the precise geometry of any future road layout would be a matter for consideration at the stage of any future development. This would be a detailed matter of design for consideration at that stage. Thus, the proposal would not prejudice the provision of a safe and satisfactory access in that regard.
38. No specific features of the proposed layout have been identified that would, of themselves, cause conflict between various users of the site and the local highway authority were satisfied with the proposal in terms of highway safety. As with Appeal A, the level of parking is acceptable to serve the proposed development and there is no compelling evidence to suggest that conflict will arise through the use of dedicated spaces. If such conflict arose in future, there is no reason to doubt that satisfactory management arrangements could be put in place to restrict use of parking spaces for their intended purpose.
39. Therefore, I am satisfied that the design and layout of the proposal are acceptable and that the scheme would not prejudice any future development at the site, or lead to undue conflict between pedestrians and other road users. For these reasons the proposal would conform to the design related criteria of saved policies GP1, H13 and T10 of the LP.

*iv) Whether the scale of retail provision would have a harmful effect upon the vitality and/or viability of any recognised retail centre*

40. The Council accepts that the scale of retail provision in relation to both appeals is not sufficient to warrant the submission of a retail impact assessment under the terms of saved policy S10 of the LP and, moreover, acknowledges that competition between retailers is not a relevant planning consideration. The existing retail provision in Thurston is dispersed throughout the village and there is no defined retail centre within the settlement that benefits from protection through the provisions of policy S10.
41. The proposed level of retail provision in both appeals is of a scale that would meet local needs within the village. The Council do not allege that the proposals, in either appeal, would have any material effect on the vitality or viability of retail provision within defined centres in other locations. In the



absence of a defined centre, no sequentially preferable sites have been identified that would be more suitable to meet those needs, in terms of the requirements of policy S10.

42. Consequently, in terms of saved policy S10 of the LP, which sets a number of criteria against which new convenience stores will be judged, no specific conflict has been identified. Similarly, the Council do not contend that the proposal would contravene the requirements of saved policy S7 of the LP which states that new shops will be permitted within settlement boundaries subject to criteria relating to scale and appearance, effect on residential amenity, local distinctiveness and parking provision. In the absence of any evidence to the contrary, and based on the limited scale of retail provision proposed, I am satisfied that both proposals would accord with policies S7 and S10 of the LP. The proposals would also conform to the principles for maintaining the vitality and viability of town centres, as set out at chapter 2 of the Framework.
43. Whilst I acknowledge that there are local concerns regarding the potential impact on existing shops within the village, matters of competition between retailers are not planning considerations that can be taken into account in reaching my decision, as acknowledged by the Council. For the reasons given, both proposals would accord with local and national policies with regard to retail provision and I am satisfied that the retail element in both schemes would increase local choice and competition, in a suitable location, close to the centre of the village, in a convenient location in relation to public transport links.

*v) Whether the proposals would represent sustainable development, having regard to the policies of the National Planning Policy Framework, taken as a whole, and policies FC1 and FC1.1 of the CS Focused Review.*

#### *Appeal A*

44. The Council acknowledged at the Hearing that it is unable to demonstrate a five-year supply of deliverable housing land, as required by paragraph 47 of the Framework. Accordingly, in accordance with paragraph 49 of the Framework, the proposal should be considered in the context of the presumption in favour of sustainable development. For the purposes of decision taking, that means granting planning permission unless the adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework, taken as a whole.
45. The provision of 97 units would represent a substantial addition to the local supply of housing and, in view of the shortfall in the five-year supply, and the aims of the Framework to significantly boost the supply of housing, that is a matter that weighs in favour of the development.
46. At the Hearing, the appellant stated that he is in advanced discussions with a local developer over a joint-venture arrangement that would, in effect, allow the land to be put forward at no initial cost to the developer, with a view to the appellant (the landowner) recovering the costs already laid out on the site. Such an arrangement would not be based on the traditional assumption of a landowner profit or return, as is commonly used within financial appraisals, but would be a means by which the landowner could recover costs already expended in the site. Similarly, the risk to the developer would be reduced through lower initial outlay in terms of land acquisition. The independent

financial assessment carried out prior to determination of the application<sup>6</sup> noted that the total return (residual land value, plus developer profit) may be sufficient for the development to come forward in circumstances where the landowner and developer may be one and the same; in effect by avoiding the need for land acquisition. That is precisely the kind of scenario put forward by the appellant at the Hearing and I have no reason to doubt those intentions, given the lack of any contrary evidence from the Council and the findings of the viability assessment.

47. Consequently, the evidence before me does suggest that the proposal is capable of being delivered and I attach weight to the benefit of housing delivery accordingly. The provision of housing is a key social element of the three-stranded definition of sustainable development at paragraph 7 of the Framework. Similarly, the proposal would facilitate the redevelopment of a brownfield site in a sustainable location close to public transport links, bringing economic benefits through construction activity and additional spending capacity in the local economy from the increased population and environmental benefits from the redevelopment of an under-used and relatively unattractive range of buildings. The layout and appearance of the scheme have previously been found to be acceptable and no material changes in circumstance have been put forward that would lead me to reach a different conclusion in those respects.
48. The consultation responses in relation to the application indicated that there was sufficient capacity within local schools to accommodate children from the proposed development. Although the Council's putative reasons for refusal did not refer to the lack of a contribution towards open space and recreation, this matter was referred to within their subsequent statement of case. As set out above, the Council confirmed that they were not seeking to rely upon the lack of such a contribution as part of their case against the proposal. In any event, the consultation responses that identified a need for a contribution were of a historic nature, the latest dating from 2011 and I cannot be certain that they are reflective of needs as they exist at present. Open space, including a Local Area for Play (LAP) would be provided within the development to serve residents living in the scheme and a link would be provided to the local recreation ground. Thus, I am satisfied that residents would have access to adequate open space and recreation provision commensurate to their needs.
49. Furthermore, the Council's contributions were based upon a formulaic approach set out within the Council's Supplementary Planning Document for *Social Infrastructure, including Open Space, Sport and Recreation* (the SPD). The Community Infrastructure Levy Regulations 2010, restrict the use of planning obligations for the collection of 'pooled' contributions towards infrastructure. As of 6 April 2015, it is no longer possible to collect funding for an infrastructure project or type of infrastructure that is capable of being funded through CIL, where 5 or more obligations have been entered into since April 2010. From the evidence presented, open space and recreation is a type of infrastructure capable of being funded through CIL and it is likely that more than 5 obligations have been sought for such infrastructure since April 2010, on the basis of the tariff based approach of the SPD. Consequently, the type of funding sought by the Council in respect of open space and recreation would no longer be capable of funding through contributions in a planning obligation.

<sup>6</sup> Independent Section 106 Viability Assessment, PBA, dated 11 August 2014 (reference paragraph 5.4.4)

50. In terms of rail safety, no substantive information has been provided regarding the need for any specific measures, why they may be required as a result of the development, the likely cost of any measures, or how any suggested contribution would be proportionate to the development proposed. Consequently, I cannot conclude that such a contribution would comply with the requirements of paragraph 204 Of the Framework. Thus, the absence of a contribution towards rail safety is not a matter that weighs against the proposal.
51. Consequently, the development would bring substantial benefits in terms of housing provision, re-use of previously developed land in a sustainable location, an increased range of retail services and improvements in terms of the character and appearance of the local environment. Set against these benefits is the fact that the proposal would fail to provide any affordable housing. The lack of provision in that respect would be contrary to the one of the strategic objectives of the development plan and the aims of the Framework to provide affordable housing to meet local needs. Affordable housing is a key element of the social dimension of sustainable development, identified at paragraph 7 of the Framework.
52. However, the absence of affordable housing is brought about by the specific circumstances of the site, based on an assessment of financial viability. It is clear that the site cannot provide affordable housing in a manner that would maintain the viability of the scheme. The consequences of a refusal to grant planning permission would be that the benefits identified above would be unlikely to materialise and the site would lay largely undeveloped. It is clear to me that the benefits of the proposal would significantly outweigh the disadvantages of the scheme, taking account of the lack of affordable housing provision. Based on an assessment of the policies of the Framework, taken as a whole, I am satisfied that the proposal would represent a sustainable form of development.
53. For the same reasons, I am satisfied that the proposal would comply with the requirements of policies FC1 and FC1.1 of the CS Focussed Review. The presumption in favour of sustainable development within policy FC1 replicates the approach of the Framework, including the balancing exercise required by paragraph 14, where relevant policies are out of date, as is the case with the Council's housing policies. Policy FC1.1 provides more details about how the Council will interpret the presumption in favour of sustainable development at the local level. Taken in the round, the balance of material considerations are such that the proposal would comply with the requirements of policies FC1 and FC1.1.

#### *Appeal B*

54. The proposal would make a modest contribution towards the local supply of housing, a social benefit that carries positive weight in view of the lack of an identified five-year supply of housing within the district. In addition, the proposal would generate economic benefits through construction work, through the on-going spending power of the increased population and through the jobs created within the retail element of the scheme. The retail provision would provide enhanced choice for local customers and the site is located in a sustainable location in the centre of the village, close to transport links.

55. The proposal would also enhance the character and appearance of the area. The layout and design of the scheme is acceptable in terms of its appearance and the parking and access arrangements would provide for safe and convenient access to the site and the mix of uses proposed. I am satisfied that the proposal would not cause harm to any recognised retail centre.
56. In view of the above, the proposal would produce a range of economic, social and environmental benefits. No significant harm has been identified that would outweigh those benefits and, consequently, the proposal would represent sustainable development, when assessed against the policies of the Framework, taken as a whole, and the provisions of policies FC1 and FC1.1 of the CS Focussed Review.

### *Conditions*

#### *Appeal A*

57. The Council put forward a number of suggested conditions in the event that the appeal was allowed. However, those conditions largely replicated conditions attached to the original outline consent requiring further details to be submitted in relation to the reserved matters and other details. Those matters were subsequently approved and the previously approved details form part of the application before me. Consequently, it is not necessary to replicate conditions that would require the appellant to resubmit details that have been agreed previously. In line with discussion at the Hearing, I have therefore avoided such replication.
58. I have attached a condition to ensure that the development is commenced within three years, in accordance with the default period set out within the Town and Country Planning Act. I have also attached a condition to ensure compliance with the approved plans, for the avoidance of doubt and in the interests of proper planning. Conditions are required in the interests of highway safety to ensure that the visibility splays at the site access, as shown on the approved drawings, are implemented prior to occupation of any dwelling or building and maintained thereafter, and to ensure that the site is laid out in accordance with the approved layout plan, including the demarcation of areas for car parking and manoeuvring. Given my conclusions on the issue of parking provision in the main body of my decision, I consider it unnecessary to attach a specific condition requiring a scheme of management of the on-site parking spaces at the outset of development. Similarly, I am satisfied that the previously approved layout provides acceptable delineation in order to avoid conflict between the needs of different users, including segregated footways for those passing through the site from the railway station. As such, the suggested condition regarding the need to safeguard rail users passing through the site is unnecessary. Details of secure cycle storage areas to serve the development are also required in the interests of facilitating sustainable modes of travel.
59. A condition is required to ensure that windows in units in the south, east and west elevations are fitted with sound attenuation, in order to ensure that the internal environment within those units is not adversely effected by noise from the railway line. Conditions put forward in relation to Appeal B regarding noise standards within flats above the retail units and the control of external plant and machinery on those units were not included on the previous grant of planning permission in relation to the Appeal A scheme. Notwithstanding that

point, the appellant accepted that the conditions were necessary in relation to Appeal B and I concur with that view. In the interests of consistency, and to secure appropriate living conditions for residents of those flats I consider it reasonable and necessary to impose the same conditions in relation to Appeal A.

60. Details of retaining structures on the northern site boundary have previously been submitted and agreed and a condition is necessary to secure the implementation of those retaining structures, in the interests of land stability. A scheme of boundary enclosure to separate the site from the railway line is required, in the interests of public safety and full details of the means of enclosure across the site are necessary in the interests of the character and appearance of the area. For the same reason, a condition is necessary to secure implementation of the approved scheme of landscaping, as previously agreed. A condition is also necessary to secure the implementation of a LAP, to ensure that the development meets the needs of its occupants in terms of access to outdoor recreation space.
61. Prior to the demolition of any building on site, a scheme of historic recording of those buildings is necessary, in the interests of recording the historic environment, and in line with the requirements of the archaeological desk based assessment previously carried out by AOC Archaeology, dated 25 June 2008. I am also satisfied that a programme of demolition should be submitted to and agreed in writing by the Council, to ensure that the work takes account of the need to protect the amenity of nearby residents. A condition is necessary to ensure that the development is carried out in line with the phasing plan, as previously submitted and agreed, to ensure an ordered pattern of development, in the interests of highway safety, due to the single point of access, and residential amenity. A condition to limit working hours during the course of construction is also necessary, in the interests of neighbouring residential amenity.
62. A condition to secure the implementation of a scheme for dealing with surface water drainage, in accordance with details to be submitted and agreed in writing by the Council, is necessary in the interests of preventing flood risk and surface water run off to adjacent highways. Foul sewage is also required to be connected to the foul sewer, in accordance with conditions previously agreed. I am also satisfied that details of fire hydrants to be installed within the development should be submitted and agreed in writing in the interests of public safety. Given the historic uses associated with the site, a scheme to investigate and address any contamination is necessary to ensure that risks from such contamination in the interests of pollution control. Finally, a condition to secure the provision of bin stores is necessary in the interests of amenity and the character and appearance of the area.

#### *Appeal B*

63. In addition to the statutory time limit for commencement, a condition is required to ensure that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning. A condition to ensure that appropriate external facing materials are used is necessary in the interests of the character and appearance of the area. For the same reason a scheme of hard and soft landscaping is required, in accordance with details to be first agreed in writing by the Council.

64. A number of conditions are required in the interests of highway safety, to ensure that the access is laid out as shown on the approved plans; to ensure that suitable visibility splays are created and maintained; to provide refuse and recycling bins that do not obstruct the highway; and to prevent surface water discharging onto the highway. The access into the site from Station Hill is on a shallow gradient and there is no need for a specific condition to stipulate that this shall be no greater than 1 in 20.
65. A scheme of archaeological recording is necessary prior to the demolition of existing buildings on site, in the interests of recording the historic environment. Given the historic uses associated with the site, a scheme to investigate and address any contamination is necessary to ensure that risks from such contamination in the interests of pollution control. I am satisfied that a condition to control external plant and machinery and/or air conditioning units for the retail element of the scheme is necessary, given the close relationship with flats above the shops, in the interests of maintaining reasonable living conditions within those units. For the same reason a condition is necessary to secure a scheme that will a 'good' standard in terms of internal noise levels, with reference to British Standard BS8233: 1999.
66. The assessment of internal living conditions and the achievement of that standard will need to take account of the potential impact of delivery vehicles to and from the retail unit. The Council has put forward a condition in relation to Appeal B which seeks to prevent deliveries outside the hours of 0700 and 2000. No such condition was attached to the previous approvals in relation to the Appeal A scheme. The application details specifically noted that deliveries of bread, newspapers and milk would be required outside of those times and I accept that early morning deliveries for those types of goods would be necessary, given the nature of the convenience store. Consequently, I consider that the condition put forward is unduly onerous, given the nature of the proposal. The requirement to achieve good standard in terms of internal noise levels would offer adequate protection for future residents and the nature of the location of those units, above retail premises, is such that residents will become accustomed to activity associated with the retail units. The limited size of the store is such that the number of deliveries would not be excessive. As such, I consider that the separate delivery hours condition is unnecessary.
67. In contrast, works for demolition and construction have the potential to cause a greater level of disturbance over a wider area, through activity on site and the number of vehicle movements. Although not suggested by the Council in relation to Appeal B I attach a condition to control working hours during the course of construction in the interests of protecting the living conditions of nearby residents, for the same reasons as given for Appeal A, above.
68. A condition specifying the level of retail floorspace is not necessary in this instance because the retail space is clearly shown on the approved plans. The condition to ensure compliance with the approved plans will therefore ensure that the proposal is constructed, as approved.

## **Overall Conclusions**

### *Appeal A*

69. The physical form and nature of the scheme has not altered since the previous outline and reserved matters proposals were approved. There have been no

material changes in circumstances that would lead me to reach a different conclusion in relation to the impact of the proposal on the surrounding environment. For the reasons given, I conclude that the development would have a positive impact in this regard. The viability of the scheme is such that no affordable housing is proposed as part of the scheme. This would conflict with one of the strategic objectives of the CS and the aims of the Framework of providing for affordable housing needs.

70. However, I have concluded that the proposal would represent a sustainable form of development and that the benefits of the development would significantly outweigh any harm caused by the lack of affordable housing provision. Were the scheme to be refused, those benefits would not be realised.
71. Consequently, having regard to all material considerations, I conclude that Appeal A should be allowed and that permission should be granted to extend the time-limit for implementation of the scheme.

#### *Appeal B*

72. For the reasons set out above, I have found that the proposal would bring benefits in terms of the provision of housing to meet local needs, increased competition and choice in retail provision, economic benefits through job creation, increased spending in the local economy and construction activity. I am satisfied that the design of the proposal would be acceptable in terms of the character and appearance of the area, the relationship between pedestrians and other road users, and the compatibility with potential future development of the remainder of the site.
73. No harm has been identified that would outweigh these benefits and the proposal would represent a sustainable form of development. Having regard to this, and all other material considerations I conclude that Appeal B should be allowed.

*Chris Preston*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Paul Dickinson	Paul Dickinson & Associates
Mr John Oldknow	Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr John Bowles	Porta Planning
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### **INTERESTED PERSONS:**

Cllr Samantha Powell	Local Councillor
Cllr Derek Hayley	Local Councillor

## **DOCUMENTS**

- 1) Local Plan Coe Strategy Focussed Review – Objectively Assessed Need and Rural Policy Growth, Issues and Options Paper, dated January 2015
- 2) Core Strategy Focussed Review (December 2012)
- 3) Core Strategy (September 2008)
- 4) Appeal decision ref: APP/N4205/Q/14/2216240
- 5) Written submission from Cllr Samantha Powell
- 6) Report to Mid-Suffolk Development Control Committee of 18 March 2015, with reference to application 4002/14
- 7) Minutes of the Mid-Suffolk Development Control Committee meeting of 24 September 2014



## **Schedule of Conditions:**

### **Conditions in relation to Appeal A:**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Plans prefixed 0708 118: 040 Rev C (Site Layout); 041 rev C (indicative levels); 042 (phasing plan); 043 (circulation plan); 044 (site location plan); 045 (topographical survey); 046 (indicative drainage plan); 047 (alternative block A); 048 rev A (junction layout); 049 (retaining wall detail); 050 rev C (blocks A and B plans); 051 rev C (blocks A and B plans 1); 052 rev C (blocks A and B plans 2); 053 rev C (blocks A and B plans 3); 054 (block C plans); 055, 056, 057 and 058 (blocks D and E plans); 059 and 60 (block F plans); 061 (block G plans); 070 rev A, 071 rev C and 072 rev C (blocks A and B elevations); 073 rev A (block C elevations); 074 rev A and 075 rev A (blocks D and E elevations); 076 and 077 (block F elevations); 078 rev A (block G elevations); 079 and 080 (sections 1-7); 081, 082, 083 and 084 (visuals)
  - 1100/01 (landscape masterplan) and 1100/02 (detailed planting proposals)
  - Drawing NHK/E3412/151D (access proposals)
- 3) Prior to the occupation of any residential unit or retail unit, the means of access to the site from Station Hill shall have been constructed in accordance with the approved junction layout as shown on plan number 0708.118/048 revision A, including the provision of visibility splays of 3.5m x 70m, as shown on the approved drawing. Thereafter, the visibility splays shall be maintained at all times and no obstruction above a height of 0.6 metres shall be permitted within any part of the visibility splay.
- 4) The development shall be carried out in accordance with the details shown on phasing plan numbered 0708.118 042. No dwelling or retail unit shall be occupied within each respective phase until the internal road layout, parking and manoeuvring areas in association with that phase of development have been hard surfaced and marked out, in accordance with the approved layout plan numbered 0708.118 040 revision C. Prior to the construction of the internal access arrangements details of the hard surfacing materials to be used shall have first been submitted to and approved in writing by the Local Planning Authority.
- 5) Secure cycle stores shall be provided prior to the occupation of each building in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority, such details to take account of the indicative location of cycle stores shown on circulation plan numbered 0708.118/043.
- 6) Windows to south, east and west elevations of the residential units shall provide sound insulation to a minimum standard of 32 RW (sound reduction index) and shall incorporate acoustically treated trickle vents.

- 7) Before the commercial units hereby approved are brought into use full details of any external plant and machinery for air conditioning shall have been submitted to the Local Planning Authority for approval in writing. The scheme shall be implemented in accordance with the approved details and shall be retained thereafter.
- 8) Before the commencement of development a detailed noise control scheme, in relation to the apartments above the retail/ commercial units, shall be submitted to and agreed in writing by the Local Planning Authority. This scheme must demonstrate that internal noise levels in those apartments above the will meet the "good" standard of British Standard BS8233: 1999 – Sound Insulation and Noise Reduction for Buildings: Code of Practice. Once approved the scheme shall be installed in its entirety for each respective dwelling, prior to the occupation of that dwelling.
- 9) Full details of the retaining walls to be provided along the northern site boundary (as shown indicatively on drawing number 0708.118/049) shall be submitted to and approved in writing by the local planning authority prior to the commencement of work of the respective phase of development within which those retaining structures are located. The details provided shall include the height, location, extent, construction and landscaping of the retaining walls and shall include cross-sectional diagrams illustrating their relationship to the site (including any areas of cut or fill) and the adjacent land to the north. Thereafter, the retaining walls in any phase of development shall be completed prior to the occupation of any dwelling or building within that phase.
- 10) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected across the development. Such details shall include proposals for the enclosure of the site along its southern and eastern boundaries adjacent to the railway line. The boundary treatments in respect of each phase of development shall be completed before any buildings within that respective phase are occupied, in accordance with the approved details.
- 11) The site shall be constructed in accordance with the hard and soft landscaping details shown on the approved plans numbered 1100/01 (landscape masterplan) and 1100/02 (detailed planting proposals). The hard landscaping for each phase of development shall be completed prior to the occupation of any buildings within that phase and the soft landscaping and planting shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the local planning authority. Any tree, shrub, hedge (of part thereof) which, within a period of 5 years of being planted dies, is removed or is seriously damaged or becomes seriously diseased shall be replaced in the next planting season in accordance with the scheme of landscaping originally approved, unless the local planning authority had agreed in writing to alternative landscaping provision.
- 12) A Local Area for Play (LAP) shall be provided within the development in accordance with the location shown on approved layout plan numbered 0708.118/040 revision C. Prior to the commencement of work on the

phase within which the LAP is located, full details of the LAP shall be submitted to and agreed in writing by the local planning authority. Thereafter, the LAP shall be completed in accordance with those details, prior to the occupation of any dwelling within the phase of development within which it is located and, once completed shall be retained in its entirety for its approved purpose.

- 13) No demolition of any buildings on the application site (with the exception of the single storey red brick buildings adjacent to southern site boundary with the railway line) shall be commenced until a programme of demolition has been submitted to and approved in writing by the local planning authority. The demolition work shall be undertaken in accordance with the approved timetable. Furthermore, no works of demolition to any buildings within the site (with the exception of the single storey red brick buildings adjacent to southern site boundary with the railway line) shall be commenced until the applicant or developer has secured the implementation of a scheme of historic building recording and analysis of the remaining buildings within the site to be demolished in accordance with the recommendations set out at section 10 'Conclusions and Recommendations' of the document 'An Archaeological Desk Based Assessment of The Granary, Station Hill, Thurston, Suffolk' by Messrs. AOC Archaeology Group (received 25 June 2008). Thereafter, no building shall be occupied until the archaeological has been completed, submitted to, and approved in writing by the Local Planning Authority.
- 14) Works of demolition and construction works in respect the development hereby permitted shall only take place between the hours of 07.00 and 19.00 Mondays to Fridays and between the hours of 07.00 and 13.00 on Saturdays. There shall be such works on Sundays or Bank Holidays neither shall there be any delivery or collection of materials or waste to or from the site except during the approved working hours.
- 15) With the exception of the demolition of the existing buildings within the site no development shall be commenced until a scheme of surface water drainage for the site has been submitted to and approved in writing by the local planning authority. The aforesaid scheme shall include details of finished site levels and contouring to ensure no discharge of surface water directly onto adjoining land, together with express provision for the disposal of surface water from the access road servicing the development in order to ensure that surface water runoff onto Station Road is minimised.
- 16) All sewage and waste water shall be discharged to the foul sewer.
- 17) The development hereby permitted shall be carried out in accordance with the recommendations and remediation strategy set out in the document 'Review of Historic Geo-environmental Investigations and Outline Remediation Strategy' prepared by Messrs. Powell Associates on behalf of Thames Vale Developments Limited (received 25 June 2008) pursuant to condition 10 of outline planning permission OL/140/04. Remediation shall be carried out concurrently with the development of the site in its respective development phases or such other schedule as shall have previously been agreed in writing by the local planning authority. Remediation for each phase shall be completed and a

Validation Report (including details of the remediation works undertaken, together with validation data) shall have been submitted to and approved in writing by the local planning authority prior to the first occupation of any residential unit located within the phase to which the validation report relates.

- 18) No development shall be commenced until details for the provision of a minimum of 2 no. fire hydrants to be provided within the site have been submitted to and approved in writing by the local planning authority. The hydrants shall be located no more than 180 metres apart, no more than 90 metres from any proposed building or associated risk, and no closer than 7 metres to any proposed building or associated risk. The hydrants shall be provided in accordance with the approved details and shall be functionally available prior to any building to which they relate being first brought into use.
- 19) Covered bin stores shall be provided prior to the occupation of each building in accordance with design details that shall have first been submitted to and approved in writing by the Local Planning Authority, such details to take account of the indicative location of the bin stores shown on circulation plan numbered 0708.118/043.

#### **Conditions in relation to Appeal B:**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers: 12.01/01; 12.01/02; 12.01/05 revision B; 12.01/10; and 12.01/11.
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include details of any proposed changes in ground levels; details of hard surfacing materials for the public areas of the site; and details of planting schedules for areas of soft landscaping.
- 5) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 6) None of the dwellings or retail units shall be occupied until covered bin stores have been erected, in the location shown on approved layout plan 12.01/05 revision B, in accordance with design details that have first been submitted to and approved in writing by the local planning authority.
- 7) Prior to the occupation of any residential unit or retail unit, the means of access to the site from Station Hill shall have been constructed in

accordance with the approved access arrangement as shown on plan number 12.01/05 revision B, including the provision of visibility splays of 3.5m x 70m, as shown on the approved drawing. Thereafter, the visibility splays shall be maintained at all times and no obstruction above a height of 0.6 metres shall be permitted within any part of the visibility splay.

- 8) No dwelling or retail unit shall be occupied until the internal road layout, parking and manoeuvring areas have been hard surfaced and marked out, in accordance with the approved layout plan numbered 12.01/05 revision B. Prior to the construction of the internal access arrangements details of the hard surfacing materials to be used shall have first been submitted to and approved in writing by the Local Planning Authority.
- 9) Prior to the commencement of the development details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained and maintained thereafter in its approved form.
- 10) No development shall take place, including any works for demolition, until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. Thereafter, no building shall be occupied until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation.
- 11) No development shall take place until;
  - (i) A strategy for investigating any contamination present on site has been submitted for approval by the Local Planning Authority.
  - (ii) Following approval of the strategy, an investigation shall be carried out in accordance with the strategy.
  - (iii) A written report shall be submitted detailing the findings of the investigation referred to in (ii) above, and an assessment of the risk posed to receptors by the contamination, for approval in writing by the Local Planning Authority. Subject to the risk assessment, the report shall include a Remediation Scheme and timetable of the scheme which must be submitted to and approved in writing by the Local Planning Authority.
  - (iv) Any remediation work as may be agreed shall be carried out in its entirety in accordance with the approved Remediation Scheme and its timetable.

Following remediation, evidence shall be provided to the Local Planning Authority verifying that remediation has been carried out in accordance with the approved Remediation scheme prior to the first use/occupation of the development. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of this condition and where remediation is necessary a remediation scheme must be prepared in

accordance with the requirements of this condition, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be submitted to and agreed in writing by the Local Planning Authority.

- 12) Before the commercial units hereby approved are brought into use full details of any external plant and machinery for air conditioning shall have been submitted to the Local Planning Authority for approval in writing. The scheme shall be implemented in accordance with the approved details and shall be retained thereafter.
- 13) Before the commencement of development a detailed noise control scheme shall be submitted to and agreed in writing by the Local Planning Authority. This scheme must demonstrate that internal noise levels in all apartments will meet the "good" standard of British Standard BS8233: 1999 – Sound Insulation and Noise Reduction for Buildings: Code of Practice. Once approved the scheme shall be installed in its entirety for each respective dwelling, prior to the occupation of that dwelling.
- 14) Works of demolition and construction works in respect the development hereby permitted shall only take place between the hours of 07.00 and 19.00 Mondays to Fridays and between the hours of 07.00 and 13.00 on Saturdays. There shall be such works on Sundays or Bank Holidays neither shall there be any delivery or collection of materials or waste to or from the site except during the approved working hours.

Richborough Estates