



Appeal Decision

Site visit made on 19 March 2025

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd June 2025

Appeal Ref: APP/M1005/W/24/3354061

Land Adjacent to Langley Mill Railway Station, Station Road, Langley Mill, Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Paul Hearn against the decision of Amber Valley Borough Council.
- The application reference is AVA/2022/0336.
- The development proposed is 54 no. residential apartments with parking and associated landscaping.

Decision

1. The appeal is allowed and planning permission is granted for 54 no. residential apartments with parking and associated landscaping, at Land Adjacent to Langley Mill Railway Station, Langley Mill, Derbyshire in accordance with the terms of the application, Ref AVA/2022/0336, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are i) the effect of the proposal on biodiversity and ii) whether the proposal is capable of providing affordable housing and other contributions towards local infrastructure.

Reasons

Biodiversity

3. The existing site is vacant since the demolition of a former care home in 2007. Since then, the site has been left unattended and a degree of renaturalisation has occurred. The site is described as now containing disturbed ground with retained hardstanding, scattered tree groups and semi-improved neutral grassland and scrub habitats. The land is connected to more open grassland habitat to the south.
4. Biodiversity Net Gain (BNG) is required under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by the Environment Act 2021 (the EA2021)). The Council's reason for refusal alleges that the appellant has failed to fully satisfy the biodiversity trading rules required under the EA2021.
5. The appellant acknowledges this, but points out that, for major development, the statutory requirements under the EA2021 did not come into force until 12 February 2024, with guidance published by the government stating that applications made before this date are exempt from the requirements for BNG. The application was made valid on 22 April 2022. As such, the application is not mandated to accord

with the BNG requirements of the EA2021, and the fact that the trading rules are not fully met is not therefore reason alone to dismiss the appeal.

6. Rather, the assessment falls to be considered against the Framework test at Paragraph 193(a) that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
7. In this case, the appellant submitted a biodiversity metric showing development of the site for housing would result in the loss of area of woodland, trees, and neutral grassland habitats over an area of 0.47 hectares, equating to a loss of 2.09 habitat units. No hedgerow or watercourse loss was predicted.
8. The appellant has proposed 0.089 hectares of neutral grassland, 0.1299 hectares of biodiverse green roofs, 25 small trees and one pond. Based on the submitted metric, this would equate to 2.32 habitats units, or a gain of 1.16%. I understand the failure in respect of the trading rules relates to the failure to replace the lost woodland habitat.
9. During the application, and in response to comments from Derbyshire Wildlife Trust, an alternative approach was assessed through the metric in an effort to satisfy the trading rules. This option protected woodland, but resulted in the loss of additional grassland, and an overall 10% loss of biodiversity. I note from the evidence that efforts were made to otherwise compensate for this loss through off-site measures, including tree planting on Council land or a contribution to the Council's Parks Department, but no feasible plan emerged from these discussions. Officers therefore recommended that the original option that provided a modest biodiversity net gain of 1.16% was acceptable in the circumstances.
10. It is not incumbent on elected members to follow the advice of officers, but where they disagree, the reasons for doing so need to stand up to scrutiny and be supported by robust objective evidence. The Council's appeal statement offers no substantive evidence to justify the position taken. In particular, no response is made to the appellant's argument that the provisions of the EA2021 were not applicable to the scheme. Rather, the Council's statement is limited to questioning the validity of a pre-commencement condition should further off-site biodiversity net gain be found necessary to make the development acceptable. Notably, there is no evidence to substantiate the Council's claim that the proposal would result in significant harm to biodiversity, per the test of the Framework.
11. The evidence before me indicates that the question of biodiversity has been the subject of lengthy discussions between the appellant, Council officers and consultees, notably DWT. It also makes clear that the area of land is limited in size, which has restricted the options available to the appellant. The proposed scheme would not offset the loss of woodland, but it would nevertheless deliver a small net gain in biodiversity. I recognise that the Council may wish to secure a greater net gain, per the EA2021, but the application is not subject to this requirement. The Framework seeks to provide net gains without setting a specific benchmark, and in this respect, the proposal would align with this aim.
12. Moreover, there is no development plan policy put to me that would require the appellant to go further and secure additional off-site gains. Consequently, it is not

necessary to require this of the appellant, and the evidence before me regarding the suitability of a planning condition to achieve this, whilst noted, is not decisive.

13. In other respects, the appellant's ecology report does not suggest there is likely to be harm to any protected species, a finding that is not contested, subject to suitable precautionary working during construction, including reasonable avoidance measures.
14. Overall, therefore, the proposal would deliver a modest net gain in biodiversity on site and would not adversely affect protected species. On this evidence, I am satisfied that the proposal would not result in significant harm to biodiversity, but rather that a modest net gain in biodiversity can be secured by planning condition. Consequently, the proposal would accord with the aims of the Framework that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.
15. No development plan conflict is alleged by the Council. The most relevant policy, Saved Policy EN13 of the Amber Valley Borough Local Plan (April 2006) (the AVBLP), resists development that would have an adverse impact on protected species or their habitats, but is inconsistent with the Framework as it does not contain provisions for biodiversity net gain. As such, the policy attracts only limited weight in consideration of the proposal, but given my findings above, I find no conflict with its aims in any event.

Provision of affordable housing and local infrastructure

16. Saved Policy H10 of the AVBLP seeks the provision of affordable housing on allocated sites and other suitable sites of more than 1 hectare or 25 dwellings. The expected range of affordable housing provision is 20-30%. The Council's Affordable Housing Supplementary Planning Document (April 2007) (SPD) sets out further evidence regarding the need for affordable housing and its delivery.
17. Saved Policy LS5 states that the Council may seek to negotiate Section 106 Agreements with developers to make adequate provision for infrastructure requirements and/or community facilities, the need for which arises directly as a consequence of that development.
18. The Council's committee report set out a requirement for 30% affordable housing delivery in line with the SPD, alongside a primary education contribution of £90,827.75. Two other contributions, a Public Open Space contribution of £95,893.20 and a health contribution of £48,600 were considered by officers not to satisfy the requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010, and thus were not pursued by officers.
19. The Council states that it adopted a corporate planning viability policy in December 2010, setting out the detailed financial information required to be submitted by a developer where viability issues are being identified. It adds that the Council will have this submitted information independently assessed and where a scheme is confirmed to be unviable, it will enter into negotiations with the developer to secure the deliverability of a development.
20. The appellant has submitted a viability appraisal which concluded that the proposal would be unviable if required to deliver the requested affordable housing and make the requested education contribution. The Council sought independent

analysis of the appellant's appraisal. The Council's assessor substantively agreed on both the methodology and figures in the appellant's appraisal, concluding that the scheme was unviable and contributions could not be made.

21. However, the Council, through its planning committee, refused planning permission on the basis that the proposal did not deliver the required 30% affordable housing and that it was not adequately demonstrated that the viability of the scheme was such that no affordable housing could be provided. Specifically, the Council has queried the approach of the appellant to calculating the benchmark land value (BLV) of the site, stated to be £192,888.
22. The evidence before me indicates that the appellant has followed the Council's own guidance in preparing a viability appraisal, and the Council in turn has sought independent assessment by its own consultant. The conclusions of both professionals are aligned, with no material disagreement.
23. The Council's planning committee was entitled to determine the application as it saw fit, but the reasons for doing so must stand up to scrutiny. The Council's evidence at appeal does not include any review or re-assessment of the appellant's evidence, but seeks to cast doubt on the conclusions on BLV as they were based on the site being industrial/storage land, for which the Council argues that there is no such lawful use. Rather, the Council's position is that the assessment should have been made on the basis of the site being vacant land with no permitted planning use.
24. The evidence before me indicates that the BLV was based on a number of factors, including the site history and adjacent uses. I note the point that industrial/storage use is considered among the lowest value land uses and the nature of the site being brownfield land distinguishes it from undeveloped, agricultural land, to which a lower value might be attributable. This aside, the Council does no more than question the value without offering any contrary calculations or evidence that specific industry guidance has not been followed. Indeed, the Council's own consultant found storage use may generate a higher value than adopted by the appellant. In short, I have no basis to disagree with the agreed position on BLV of the main parties' respective viability consultants.
25. Moreover, the outcome of the viability assessment for a policy complaint scheme was a negative residual land value of over £1 million. Even attributing a BLV of £0 would not move the needle sufficiently to create a viable scheme in this circumstance. The Council's consultant also undertook sensitivity testing showing that construction costs would have to decrease by 12.5% and rental income increase by the same amount to achieve a barely viable scheme. However, the Council has offered no evidence to suggest the figures for construction costs or rental levels within the appellant's appraisal are not reasonable, or that such large changes in these figures are realistic possibilities.
26. There is oblique reference in the minutes of the committee meeting to a failure to provide for local infrastructure, including contributions towards education and health facilities. The Council has not provided any evidence to explain its position and how it departs from that expressed by its officers in the committee report, where it states that contributions sought in respect of education and health facilities were deemed not to be compliant with the Community Infrastructure Levy Regulations. As such, whilst I have had regard to the public representations raising

concerns at pressure on local services including doctors, dentists and schools, the evidence before me is that the health contribution requested by the NHS was not supported by evidence to demonstrate it was necessary to make the development acceptable in planning terms. The education contribution, although considered to meet the tests for planning obligations, cannot be made given the viability position set out above.

27. In summary, there is no substantive evidence before me to indicate that the proposed scheme is capable of delivering policy-compliant affordable housing or contributions towards education provision. The failure to provide affordable housing and local infrastructure would conflict respectively with Saved Policies H10 and LS5 of the AVBLP; however, the outcome of the viability assessment is a significant material consideration weighing against these conflicts in the overall planning balance.

Other Matters

28. The Council did not refuse permission for any other reason. The site is located within the built-up area of Langley Mill, in a highly sustainable location adjacent to the train station and within walking distance of local shops and facilities. The proposal would result in a substantial brownfield site being redeveloped for housing, in accordance with Saved Policy H3.
29. The proposed apartment blocks, at three to four storeys in a mix of brick and render, would be appropriate in scale and appearance, having regard to the size of the site and the varied townscape within the immediate surroundings. The buildings would also be sufficient distances from the nearest neighbouring dwellings to protect the living conditions of neighbouring occupants.
30. I note the points raised regarding the noise sensitivity of the site due to the proximity of the train station, and that to achieve a suitable noise environment, windows would need to be closed to the flats. The evidence is that some 26 trains are scheduled between 07:18am and 22:46pm, roughly every 30 minutes. As such, noise from trains is neither constant nor at unsociable hours, and I concur that it would not result in significant harm to future occupants in terms of noise and disturbance.
31. Whilst located close to the railway, the proposal would provide sufficient car parking on site, and the existing access is suitable in highway safety terms. Elsewhere, I have no reasons to dispute the Council's conclusions in respect of land stability, flood risk and drainage.

Planning Balance

32. On the main issues, I have found no conflict with Saved Policy H13, albeit this is a policy attracting limited weight due to its inconsistency with the Framework's approach to biodiversity net gain. There would be conflict with Saved Policy H10 due to the failure to provide affordable housing on site, but again this policy is afforded limited weight as it addresses affordable housing need only to 2011 and does not reflect the requirements of the Framework to establish the amount and type of affordable housing required. Saved Policy LS5 is also inconsistent with the Framework in that it does not set out the levels and types of contributions expected from development, including education, and so is of limited weight.

33. In view of this, I find that policies which are the most important for determining the application are out of date. Paragraph 11(d) of the Framework is engaged, and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
34. The proposal would be sustainably located and would deliver a substantial new housing development that would accord with the Framework's aim of significantly boosting the supply of homes. I afford this benefit significant weight. There would also be moderate benefits arising from the economic activity generated by the development, both during construction and afterward as new residents avail of local services, including increasing train usage from Langley Mill station. There would also be limited environmental benefits in terms of biodiversity net gain and moderate benefits in making effective use of brownfield land.
35. Taken together, I find that the adverse effects of the proposal would not significantly and demonstrably outweigh the benefits in this case, when assessed against the policies in the Framework taken as a whole. Pursuant to Paragraph 11, the presumption in favour of sustainable development therefore applies.
36. In the overall balance, significant material considerations in this case, including the Framework and the evidence on viability, outweigh the identified conflicts with Saved Policies H10 and LS5, and so justify a determination other than in accordance with the development plan.

Conditions

37. I have had regard to the list of suggested conditions provided by the Council. Where necessary, I have amended their wording to ensure they meet the relevant test for conditions set out in the Framework. The appellant has also confirmed their agreement to those conditions which would be pre-commencement, namely those numbered 3 to 13, which relate to impacts that may arise from the outset of the construction phase and would be ineffective or lead to harm or irreversible loss were they required to be addressed at a later stage.
38. In addition to the statutory time limit for implementation [1], a condition setting out the approved plans is necessary to provide certainty [2]. Notwithstanding the approved drawings, it is necessary to secure details of external materials [14] to ensure a suitable appearance.
39. Conditions requiring on-site investigation and where necessary mitigation, remediation and verification, are necessary to safeguard the site from potential ground and gas contamination risks [3, 4] and land instability from mining [5, 20]. Details of a surface water drainage scheme are required to address site drainage and flood risk over the life of the development [6, 21] and during construction [7]. A construction method statement is required to ensure development safeguards the neighbouring railway line [8]. Details of a scheme to prevent vehicular access from the site to the railway line are also required for safety reasons [9].
40. A Construction Environment Management Plan is required to protect biodiversity on site during works [10], with a Landscape and Biodiversity Enhancement and Management Plan also required to secure details for the creation, enhancement and management of habitats and species on the site post-development [11]. A condition is required for the proper removal of a non-native invasive species on

site, in the interest of protecting ecology [13]. A lighting strategy is also required to protect biodiversity [24].

41. Several conditions are necessary in the interests of highway safety before and during construction, including upgrading of the site access to provide adequate visibility splays [12]; a requirement for all construction materials, plant, accommodation, loading/unloading and parking to be contained within the site [17]; provision of wheel washing facilities during construction [18] and measures to prevent surface water flows to the highway from the access drive [23]. In addition, prior to occupation, provision of on-site parking and manoeuvring spaces is necessary [22] as is a restriction on the position of gates to the main access [25].
42. Controls on construction working hours, noise, dust, waste and lighting are necessary to protect existing occupants' living conditions [16]. Details of a scheme of noise and vibration protection for dwellings are required to provide suitable living conditions for future occupants [15, 19].

Conclusion

43. For the reasons set out, the appeal should be allowed.

K Savage

INSPECTOR

Schedule of Conditions

Timing/Plans

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The hereby approved development shall be carried out in accordance with the following approved documents and drawings:
 - 21028-00-001_P3 (Site Location Plan)
 - 21028-00-002_P2 (Proposed Block Plan)
 - 21028-20-001_P3 (Block 1 – Ground Floor Plan)
 - 21028-20-002_P2 (Block 1 – First Floor Plan)
 - 21028-20-003_P2 (Block 1 – Second Floor Plan)
 - 21028-20-004_P2 (Block 1 – Third Floor Plan)
 - 21028-20-006_P4 (Block 2 – Ground Floor Plan)
 - 21028-20-007_P4 (Block 2 – First Floor Plan)
 - 21028-20-008_P4 (Block 2 – Second Floor Plan)
 - 21028-20-009_P4 (Block 2 – Third Floor Plan)
 - 21028-21-001_P3 (Block 1 GA Elevations (1 of 2))
 - 21028-21-002_P3 (Block 1 GA Elevations (2 of 2))
 - 21028-21-003_P4 (Block 2 GA Elevations)
 - 21028-21-004_P2 (Street Elevations)
 - 21028-70-002_P8 (Proposed Site Layout)

Pre-Commencement

- 3) a) No development shall commence until:
 - i. The approved development site has been subjected to a detailed investigation to determine the extent, scale and nature of any contamination, and an assessment of the potential risks (the "Assessment") has been carried out.
 - ii. A report providing the details of the site investigation and the Assessment been submitted and approved in writing by the Local Planning Authority.
 - iii. A Remediation Method Statement (the "RMS") to address any remediation required by the Assessment including a plan for how the remediation methods will be verified, has been submitted and approved in writing by the Local Planning Authority.
- b) The development shall be undertaken in strict compliance with the requirements contained within the approved RMS. Any proposed revisions to the RMS must be submitted and approved in writing by the Local Planning Authority prior to any changes in remediation methods.
- c) If during development works, any contamination is encountered which was not previously identified and is derived from a different source and/or of a different type to those already identified, then no further works shall take place until a revised RMS is submitted to and approved in writing by the Local Planning Authority, and the works shall then be carried out in accordance with the revised RMS.

- d) If during development work, site contamination is found in areas previously expected to be uncontaminated, then the remediation of those areas shall be carried out in accordance with the approved RMS.
 - e) No building shall be occupied unless and until a verification report in accordance with the RMS has been submitted to and approved in writing by the Local Planning Authority.
 - f) All investigations, assessments and reports must be carried out by a suitably qualified competent person previously agreed in writing by the Local Planning Authority and in accordance with the Environment Agency publication Land contamination: risk management (LCRM).
- 4) a) No development shall commence until a detailed Ground Gas Mitigation Method Statement, which includes details of the methods which will address the ground gas risks identified in the EMCUS Ground Gas Monitoring Report dated 3 November 2022, ref: MJH/J2063/D1/1, and a plan for how the mitigation will be verified and reported has been submitted and approved in writing by the Local Planning Authority.
- b) The development shall be undertaken in strict compliance with the requirements contained within the approved Ground Gas Mitigation Method Statement. Any proposed revisions to the Ground Gas Mitigation Method Statement must be submitted and approved in writing by the Local Planning Authority prior to any changes.
- c) No building shall be occupied unless and until a report verifying satisfactory installation of the gas protection measures has been submitted to and approved by the Local Planning Authority.
- 5) No development shall commence until:
- a) a scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by recorded mine shaft 444346-014, past surface (opencast) activity and possible unrecorded shallow coal mining activity; and
- b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full, in order to ensure that the site is made safe and stable for the development proposed.
- The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.
- 6) No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
- a) Station Road, Langley Mill Drainage Statement 600374 17.03.22 V03 including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team; and
- b) DEFRA's non-statutory technical standards for sustainable drainage systems (March 2015) have been submitted to and approved in writing by the Local Planning Authority.
- The plan shall include a detailed assessment to demonstrate that the proposed destination for surface water accords with the drainage hierarchy

as set out in paragraph 80 reference ID: 7-080-20150323 of the planning practice guidance, and to obtain a full understanding of the springs within the site and any associated mitigation requirements.

- 7) Prior to commencement of the development, the applicant shall submit for approval to the Local Planning Authority, details indicating how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the Local Planning Authority, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.
- 8) Development shall not commence until a construction methodology has been submitted to and approved in writing by the Local Authority. The construction methodology shall demonstrate consultation with the Asset Protection Project Manager at Network Rail. The development shall thereafter be carried out in accordance with the approved construction methodology unless otherwise agreed in writing by the Local Planning Authority.
- 9) Prior to the commencement of development, a scheme for the protection of the railway line to prevent vehicle incursion shall be submitted to and implemented in full prior to first occupation. The approved scheme will be implemented in accordance with the approved details.
- 10) No development shall take place (including demolition, ground works, vegetation clearance and movement of plant, machinery and materials) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall be in accordance with B.S. 42020:2013 Biodiversity – Code of Practice for Planning and Development shall include the following:
 - a) Risk assessment of potentially damaging construction activities.
 - b) Identification of "biodiversity protection zones".
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts (RAMS) for great crested newt, reptiles, breeding birds, badger and other mammals during construction.
 - d) The location and timing of sensitive works to avoid harm to biodiversity features.
 - e) The times during construction when specialist ecologists need to be present on site to oversee works.
 - f) Responsible persons and lines of communication.
 - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
 - h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

- 11) A Landscape and Biodiversity Enhancement and Management Plan (LBEMP) shall be submitted to and be approved in writing by the Local Planning Authority prior to the commencement of the development. The LBEMP shall provide details for the creation, enhancement and management of habitats and species on the site post-development. The LBEMP shall combine both the ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. It shall include the following:
- a) An updated biodiversity metric clearly demonstrating a net gain in compliance with the trading rules of the metric.
 - b) Description and location of features to be retained, created, enhanced and managed, as per the biodiversity metric.
 - c) 30 integrated swift bricks in line with BS 42021:2022.
 - d) Aims and objectives of management, in line with desired habitat conditions detailed in the metric.
 - e) Appropriate management methods and practices to achieve aims and objectives.
 - f) Prescriptions for management actions.
 - g) Preparation of a work schedule (including a 30-year work plan capable of being rolled forward in perpetuity).
 - h) Details of the body or organization responsible for implementation of the plan.
 - i) A monitoring schedule to assess the success of the habitat creation and enhancement measures at intervals of 1, 2, 3, 5, 7, 10, 15, 20, 25 and 30 years.
 - j) A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met.
 - k) Detailed habitat enhancements for wildlife, in line with British Standard BS 42021:2022.
 - l) Detailed specifications for open water habitats to provide biodiversity benefits.
 - m) Requirement for a statement of compliance upon completion of planting and enhancement works.

The LBEMP shall also include details of the means by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved plan will be implemented in accordance with the approved details.

- 12) Before any other operations are commenced, and notwithstanding the approved drawings, the existing access to Station Road shall be modified and constructed as a splayed dropped crossing, laid out, constructed and provided with 2.4 metres x 43 metres visibility splays in both directions. The area in advance of the sightlines being maintained clear of any object greater than 1 metre in height (0.6 metre in the case of vegetation) relative to the adjoining nearside carriageway channel level.

- 13) Prior to the commencement of development, an invasive non-native species protocol shall be submitted to and approved by the Local Planning Authority, detailing the containment, control and removal of Snowberry on site. The measures shall be carried out strictly in accordance with the approved scheme.

Slab Level

- 14) Notwithstanding the approved plans, no development above slab level shall take place until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details/samples.
- 15) No development above slab level shall take place until details of a scheme for protecting the proposed dwellings from external road and rail traffic noise, and from noise associated with activities at Langley Mill Station, specifically, announcements from the platform speakers and use the self-service platform 'Help Point', shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall ensure that, upon completion of the development, good acoustic design will be used to ensure that the following noise levels are not exceeded:
- 55dB LAeq,16 hour (free field) in outdoor living areas between 07:00 hrs and 23:00 hrs;
 - 35dB LAeq,16 hour inside living rooms and bedrooms between 07:00 hrs and 23:00 hrs;
 - 40dB LAeq,16 hour inside dining rooms/areas between 07:00 hrs and 23:00 hrs; and
 - 30dB LAeq,8hour, and 45dB LAm_{ax}, fast more than 10 times a night, inside bedrooms between 23:00 hrs and 07:00 hrs.

In dwellings where windows must be closed to achieve the above levels, adequate acoustically treated ventilation and cooling shall be provided to ensure compliance with the Building Regulations' Approved Documents F (Means of Ventilation) and O (Overheating).

Should the proposals for the site layout, levels or building design/ construction alter from that on which the agreed mitigation scheme is based, a further audit of the noise assessment and proposed mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority before the proposed amendments are implemented.

A noise verification report demonstrating compliance with the above noise levels shall be submitted to and approved in writing by the Local Planning Authority before any of the dwellings are occupied. This assessment shall be conducted in accordance with 'Professional Practice Guidance on Planning & Noise: New Residential Development' (ProPG) (May 2017) and the approved mitigation scheme. The noise protection measures shall thereafter be maintained and operated in accordance with the approved scheme.

The developer shall notify prospective occupants of the standard of sound insulation installed and, where necessary, of the need to keep windows

closed and use the alternative ventilation and cooling measures provided to obtain its full benefit.

During Construction

16) All construction activities shall comply with the following:

a) Operating hours:

No works, or deliveries to and from the site, shall occur other than between 08:00 hrs and 18:00 hrs on weekdays, and between 08:00 hrs and 13:00 hrs on Saturdays. No works shall take place on Sundays or bank holidays. Any essential extension to these hours, other than for emergency works, shall be agreed with the Local Planning Authority before work commences. Activities that do not create noise and disturbance to residents may still take place outside these hours.

b) Noise and vibration:

All activities shall comply with the guidance in British Standard BS 5228-1:2009+A1:2014 'Code of practice for noise and vibration control on construction and open sites – Part 1: Noise' (Section 8 and Annex B) and Part 2: Vibration' (Section 8). A health and safety risk management system shall be designed and implemented to eliminate or minimise reversing and the use of high-pitched reversing alarms.

No piling, blasting, dynamic compaction or use of vibrating rollers shall occur on the site before notifying the Borough Council's Pollution Control Team.

c) Dust/Particulate emissions:

No visible dust/particulate matter shall be emitted beyond the site boundary. At such times as the prevention of nuisance is not possible, dust/particulate generating activities shall temporarily cease until such time as dust suppression measures become effective. Internal haul roads shall be hard-surfaced and regularly swept, at least once daily, and cleaned by mechanical road sweepers with an adequate filtration system and water supply to minimise the impact of dust/mud on sensitive receptors on and off-site. Under no circumstances shall a sweeper be operated dry, without an adequate water supply. A drive-through bath/wash shall be provided, on a suitable area of hardstanding, to clean the wheels of all vehicles before leaving the site.

d) Waste:

No unwanted materials shall be disposed of on site by burning.

e) Lighting:

Any temporary site lighting shall be positioned on site to minimise light trespass and glare.

17) Throughout the construction phase, space shall be provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles.

18) Throughout the period of construction, wheel washing facilities shall be provided within the site and used to prevent the deposition of mud and other extraneous materials on the public highway.

Prior to Occupation

- 19) All dwellings on the site shall be protected from rail traffic vibration such that, when assessed in accordance with BS 6472-1:2008 'Guide to evaluation of human exposure to vibration in buildings – Vibration sources other than blasting', the vibration dose value results in no more than a 'low probability of adverse comment' (Table 1). The noise verification report, required by condition 15, shall demonstrate compliance with this standard before any of the dwellings are occupied.
- 20) Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity, as required by Condition 5.
- 21) Prior to occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the scheme approved under Condition 6 (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).
- 22) The development hereby permitted shall not be occupied until space has been provided within the application site in accordance with the approved drawings for the parking and manoeuvring of residents and service delivery vehicles, laid out, surfaced and maintained throughout the life of the development, free from any impediment to its designated use.
- 23) The gradient of the proposed access drive to Station Road shall be no steeper than 1 in 15 for the first 10 metres from the nearside highway boundary, and measures shall be implemented to prevent the flow of surface water onto the adjacent highway. Once provided, such facilities shall be maintained in perpetuity free from any impediment to their designated use.

Other Conditions

- 24) Prior to the installation of lighting fixtures, a detailed lighting strategy shall be submitted to and approved in writing by the Local Planning Authority to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. (Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of light spill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/18 – Bats and Artificial Lighting in the UK (BCT and ILP, 2018)). Such approved measures shall be implemented in full.
- 25) There shall be no gates or other barriers within 10 metres of the nearside highway boundary and any gates shall open inwards only.
