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## Appeal Decision

Inquiry Held on 16-26 February 2021

Accompanied Site Visit made on 22 February 2021

**by Nick Fagan BSc (Hons) DipTP MRTPI**

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

**Decision date: 22<sup>nd</sup> March 2021**

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**Appeal Ref: APP/F0114/W/20/3258121**

**Former Hartwells Garage Site, Newbridge Road, Bath BA1 2PP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
  - The appeal is made by Oakhill Group Ltd against the decision of Bath & North East Somerset Council (BANES).
  - The application Ref 19/01854/OUT, dated 18 April 2019, was refused by notice dated 16 March 2020.
  - The development proposed is in outline with all matters reserved except for access and layout comprising the demolition of the existing buildings on the site; construction of replacement buildings ranging in height from 3 to 5 storeys providing a mixed use development comprising up to 104 residential units (Class C3 Use), up to 186 student bedrooms (Sui Generis Use), and a commercial retail unit (flexible A1/A3 Use); formation of new vehicular access from Newbridge Road, construction of new access ramp, and provision of vehicle parking spaces; provision of new shared bicycle and pedestrian sustainable transport route through the site and formation of new access and linkages on the eastern and western boundary; and provision of hard and soft landscaping scheme across entire site.
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### Decision

1. The appeal is allowed and planning permission is granted for the development described above at the former Hartwells Garage Site, Newbridge Road, Bath BA1 2PP in accordance with the terms of the application, Ref 19/01854/OUT, dated 18 April 2019, subject to the conditions in the Schedule below.

### Procedural Matters

2. The Inquiry was adjourned until 12 March for the execution of the S106 agreement (the S106) and left open the prospect of the appellant and Rule 6 Party being able to resolve their differences via a separate private law agreement. The S106 was signed, dated and submitted on 4 March 2021 and I address this in more detail below. No agreement was forthcoming between the appellant and Rule 6 Party. Consequently, the Rule 6 issue has been decided based on the two parties' evidence at the Inquiry including their closing submissions.

### Main Issues

3. There are six main issues as follows, which I will deal with in turn:

- 1 Whether purpose-built student accommodation (PBSA) is acceptable as part of the wider proposed development, in particular whether it would comply with Policy SB15 of the BANES Placemaking Plan (the PP).
- 2 The likely effect of the proposed development on the character and appearance of the area.
- 3 Whether it would provide an appropriate mix of housing.
- 4 Whether it would provide sufficient recreational open space in terms of the variety/typology and any specific amounts required.
- 5 Whether the proposed development would lead to a significant intensification of the use of the vehicular access route through The Maltings or any other significant effect resulting from it as an 'agent of change' that would seriously harm the industrial estate's operations (the Rule 6 issue).
- 6 The planning balance.

## Reasons

### Policy SB15

4. Policy SB15 is a site allocation policy in the PP. It encompasses the wider Hartwells site, the appeal site (1.49 hectares) and the adjacent Hanson's concrete batching plant to the west, in total amounting to some 1.7ha. It sets out the development requirements and design principles for this allocated site in the same way most of the other SB allocation policies in the PP do.
5. The explanatory text sets out at PP paragraph 202 that the opportunity cost of developing the site for student accommodation is considered too great because the site is required to help deliver the city's 7,000 net additional dwellings in the plan period. The vision at paragraph 203 is that residential development, not including student accommodation, should make the most of the site's location on sustainable transport routes and be sympathetic to the nearby context of terraced Victorian housing and conscious of its appearance from higher ground.
6. However, paragraph 1 of SB15 itself makes clear that 80-100 dwellings are required to be developed on the wider site, "*but not student accommodation, where this would prejudice the achievement of Policy DW.1 and B1 in respect of boosting the supply of standard market and affordable housing*". That wording is clear: the PBSA element of the scheme would only be contrary to SB15 if it fails to boost Class C3 dwellings in accordance with Policies DW.1 and B1.
7. Policy DW1 of the Core Strategy (CS) sets out the District-wide spatial strategy. It seeks, amongst other things, to focus housing, jobs and community facilities in Bath, Keynsham and the Somer Valley and to increase the supply of new homes by around 13,000 in the District, including by prioritising the use of brownfield opportunities for new development during the plan period (2011-2029) and retaining the general extent of the Bristol-Bath Green Belt other than on four allocated greenfield sites.
8. Policy B1 in Volume 2 of the combined Local Plan (LP) is the city of Bath spatial strategy; Volume 2 of the LP relates to policies/allocations pertaining to Bath city. Section 3 of B1 deals with Housing, which has a requirement to enable the

- development of about 7,020 new homes in a variety of city locations, including 2,100 in outer city neighbourhoods. It would appear that this allocated site falls into that category of indicated sites. The allocated sites proposing housing in the PP set out indicative or minimum dwelling numbers, which appear to add up to 7,020 dwellings. Given that the whole SB15 site is expected to deliver 80-100 of these 7,020 dwellings within the plan period, I fail to see how the appeal scheme delivering 104 dwellings on 88% of the SB15 site would prejudice the supply of market and affordable housing or be at odds with the spatial strategy for the Bath city or the District as a whole.
9. It is undeniably true that if the volume of development proposed included additional C3 dwellings rather than PBSA, then more new dwellings would be delivered in compliance with the spatial strategy. But the LP is only anticipating 80-100 dwellings to be delivered on the whole site. That number would be delivered by the appeal development. The fact that PBSA would also be delivered would not breach SB15 because it would not breach the wider site's anticipated proportionate contribution to the city's delivery of about 7,020 dwellings by 2029. There is also the likelihood that additional dwellings would come forward if and when the concrete batching plant part of the SB15 site is developed.
  10. LP Policy CP9 requires the provision of 40% affordable housing on this site. But, as per national policy, viability of any proposed development must be taken into account including in terms of whether there are exceptional build or development costs. There is no dispute between the main parties here that only 12.5% of the new dwellings (13 units) can be secured as affordable housing due to financial viability issues. Hence there is no breach of Policy CP9 or policy in the National Planning Policy Framework (NPPF).
  11. I accept in this regard that BANES's need for affordable housing will proportionately be increased on other sites, and that its overall requirement for the plan period may not ultimately be met. But that is simply an acknowledgement of national policy reflected in Policy CP9, a situation that inevitably occurs country-wide and explains why affordable housing need is very infrequently met fully or even mainly in any particular local authority area.
  12. Mr Reynold's evidence on behalf of the 'No to Hartwells Overdevelopment Group' put forward that a different development with more C3 housing, including more affordable housing, could be more viable than the appeal scheme. In theory this could be so, but that supposition is unevicenced. It is also in my opinion unlikely, given Mr Reynold's assertions that PBSA is likely to be the most profitable type of development currently in Bath. The fact that this is what the appeal scheme proposes appears to confirm that.
  13. For these reasons, and as advised by pre-application discussions between Council officers and the appellant and set out in the officer Committee report, Policy SB15 does not preclude the in-principle provision of PBSA simply because the proposed 104 dwellings would more than meet the requirement to provide 80-100 dwellings on the wider SB15 site.

#### Character and Appearance

14. The Council's case is that the deep plan form of the proposed blocks with limited space around them would be uncharacteristic and alien to the locality

and is a consequence of the proposal's overdevelopment of the site, contrary to LP Policies CP6, D1 and D2.

15. It is first important to recognise the distinguishing features of this site. The main lower part of it is a former quarry, as shown on the historic maps in the Design and Access Statement and in Mr Brown's Townscape and Design assessment (Appendix 1 of his Proof). That is over 7m below the land level of the car showroom building facing Newbridge Road. The question therefore arises as to how best to utilise this feature of the site in the design of its proposed redevelopment.
16. The proposed layout does this through seeking to maximise the opportunity afforded by the 7m drop in the site by creating 5-storeys at the rear of Blocks A and B and in the PBSA Blocks C and D whilst delivering 3 storeys on Newbridge Road. In doing so Blocks A and B project back into the site by some 35m and 38m respectively. The mass and deep plan of these Blocks, and indeed of the L-shaped Blocks C and D are clearly of a different mass and depth to the surrounding Victorian Bath stone houses to the north and east on Newbridge Road and the twentieth century houses including Rudmore Park to the west of the site.
17. The appellant's photomontages confirm that the blocks do not step down to follow the difference in height of the topography, which the Council evidences is part of the existing character of the area, for example in Figure 3 of Ms Kemal's evidence (Homelea Park East). But the rear wings of Blocks A and B are at a slightly lower height than the front parts of those Blocks facing Newbridge Road. The side elevations of these Blocks are well articulated with fenestration and in effect themselves form principal elevations of the development. Their difference in design to the surrounding houses on Newbridge Road and the residential roads off it does not amount to harm, not least because I am satisfied that such a different design approach is appropriate in order to maximise the topography and potential of this previously developed site.
18. Whilst their Newbridge Road frontage is a full 3-storeys high, higher than the houses opposite, those houses sit at a higher ground level; this change in the local topography and the width of this principal arterial road would ensure that their height on Newbridge Road is acceptable and in keeping with its residential character. In this context I note that the Council accepts that the existing car showroom building and current nature of the site detracts from the character of the local area. I agree and consider the indicative photomontage elevation would be a design improvement, in spite of largely obscuring generally open views of the southern slopes of the city above Twerton on the other side of the river from Newbridge and Charmouth Roads.
19. In terms of the space around the proposed Blocks I accept that this would not meet the height to width ratios recommended on page 29 of the Building for Life document (BfL12)<sup>1</sup>. In my opinion that standard is more suited to road patterns within a residential estate development rather than necessarily the arrangement of apartment blocks within that part of the site generally inaccessible to vehicles. This standard does not comprise a mandatory minimum standard. Though a useful design tool, BfL12 is simply guidance.

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<sup>1</sup> CD51

20. There is also criticism from the Council that these gaps, as well as providing pedestrian thoroughfares to the entrances of the flats and PBSA, would also be cluttered with rubbish and recycling bins as well as bike stores and would not provide sufficient delineation between public and private space. I consider this criticism to be overplayed. Whilst some of these facilities are indicated as being located in these areas the majority of the bike and bin stores are located within the proposed buildings and the spaces themselves in any case appear large enough to successfully accommodate those indicated, as well as sitting out and soft landscaped areas. Landscaping itself is of course a reserved matter. The private rental nature of the scheme would of course mean that these courtyard areas would be managed and maintained by the applicant, who would have a continuing direct financial interest in doing so well.
21. I make this judgement in the context of having visited some of the PBSA and residential schemes completed off the Lower Bristol Road on the south side of the river, for instance Twerton Mill, Waterside and Charlton Courts and Spring Wharf. These schemes have not dissimilar courtyards, which appear to function well. I am conscious that the requirements of students in PBSA schemes may differ from those of flat residents but it is clear that the private rented flats in this development are geared towards young professionals, as Spring Wharf is. They are likely to attract people at the start of their careers rather than couples who want to settle down and create families and therefore seek their own private gardens.
22. The design of the above schemes also reverts back in design terms to the historic development associated with the mill buildings along the riverside, as documented in evidence. I see distinct advantages in this form of development, including that proposed here. It seeks the maximum use of brownfield land where that is possible without any adverse impacts on the living conditions of existing residential neighbours. That is an acknowledged benefit of this scheme. It replicates higher density development, as per the adjacent former brewery buildings on the site of The Maltings immediately to the south of the site. Such development, in a sustainable location, is well suited and desired by its target occupiers, students and young professionals.
23. Whilst the massing and density of the proposed Blocks here is substantial, the overall site coverage by buildings and car parking is still less than 50% of the site. Whilst that is largely because of the cycle and pedestrian link (the Sustainable Transport Route or STR) running east to west through the widest part of the site and the landscaping proposed for the eastern part of the site next to it, such a facility retains much of the site as open space that will benefit the scheme's residents as well as its overall character. I acknowledge that the proposal's density far exceeds that set out in the Certificate of Appropriate Alternative Development granted in 2010. But the Council does not suggest this is a material planning consideration. I agree, because it predates the adoption of the LP and its purpose was to agree the value of the site for compulsory purchase, which obviously never took place.
24. The Council criticises the generally distant location of the car parking areas from the residential blocks including in terms of whether it would be safe to use. I agree that particularly the overflow car park to the east of the Osborne Road bridge would not be overlooked by residential windows. But any such concerns could be adequately mitigated by CCTV and suitable lighting. All the car parking areas would be overlooked by users of the STR. I would expect this

- to be well used, including in the evening, because the route would run right the way through from the city centre to the Bristol cycle path. The location of these parking spaces at the edges of the site would also make the interior courtyards between the blocks car-free and more attractive to the residents of both the apartments and the PBSA.
25. I accept that the public link through the site onto the STR may not be obvious at first. But local people will soon become familiar with the link through the site via the access ramp and the central stair and lift link from Newbridge Road to the lower level for both cyclists and pedestrians. The nature of this link is simply a result of the 7m change in level on the site, which would present a constraint for any redevelopment scheme. Under these circumstances the link to the STR is perfectly acceptable.
26. For these combined reasons I consider that the proposed access and layout of the scheme, and with reference to the description of development its indicative massing and density, would be acceptable. This is despite its significantly different design to the houses on Newbridge Road and the residential roads leading off it. Difference does not equate to harm here. There is no doubt that the site is in a zone of transition in that its lower part has more in common with the industrial sheds within The Maltings and other nearby industrial buildings on the valley floor whilst the upper part of it sits within a context of 2 and 3 storey houses. The scheme successfully bridges this transition.
27. It therefore complies with LP Policy CP6 (Environmental Quality), particularly Section 1 concerned with High Quality Design, the most relevant section to this appeal. The scheme's design is different to the houses in Newbridge Road but acceptably so because it takes in the site's specific characteristics and would create an attractive living environment for its prospective occupiers.
28. I acknowledge the Council's criticisms that a BfL12 12 design assessment is best carried out at pre-application stage, as a framework around which design issues and ideas can be explored as set out in the document<sup>2</sup>. Its text on page 10 specifically states that it should not be used to support an application where BfL12 has not been used at the inception stages of a development. But I understand that the appellant has used it in Mr Brown's rebuttal evidence to simply give some focus to this disputed issue by looking at it through the 12 relevant design issues as set out in BfL12. For the reasons set out above and in relation to the other main issues below I generally favour the appellant's Green and Amber conclusions over the Council's mostly Amber and Red conclusions.
29. LP Policies D1 (General Urban Design Principles) and D2 (Local Character and Distinctiveness) are two of ten design policies in the Plan. They encompass many of the same criteria required by BfL12. As such, and again for the above reasons, I consider the requirements of D1 and D2 to be met by the proposed development. In particular Policy D2 encourages higher net densities in accessible locations with good local facilities, to make efficient use of land.
30. The Council's second refusal reason did not cite non-compliance with Policy SB15, despite this being the site allocation policy that sets out the development requirements and design principles for the site. But, crucially, the scheme complies with Sections 2-7 of SB15 that deals with these matters, as explained above and because there is no objection by the Council that the scheme

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<sup>2</sup> CD51 pages 4-11



adversely impacts on the city as a World Heritage Site (Section 3), prevents the future residential development of the concrete batching plant (Section 6), nor that it adversely impacts on the historic environment including the Conservation Area to the eastern part of the site (Sections 3 and 7).

### Housing Mix

31. Policy CP10 (Housing Mix) is aimed at ensuring that new residential development provides for a range of housing types and needs, to help support mixed and inclusive communities and to respond to demographic change. The first paragraph of the policy itself states: "*New housing development, both market and affordable must provide for a variety of housing types and size to accommodate a range of different households, including families, single people and low income households...*". It goes on to say that the mix of housing should provide choice in tenure and housing type, having regard to the existing mix of dwellings in the locality and the character and accessibility of the location, as well as providing homes for older and disabled people and those with other special needs.
32. It does not say that every site or every site above a certain size or providing above a certain quantum of housing development must provide for every type and size of housing, nor that family housing must be provided on every site. I do not interpret it to mean that in an area like this, dominated by family houses on Newbridge Road and the streets running off it, similar types and sizes of houses must be provided. Indeed, that would be nonsensical if an area like this is to be provided with mixed and inclusive communities. The introduction of private rented one and two-bed flats and PBSA would, in this context, introduce more diversity and mix into an area heavily dominated by privately owned family housing, which I consider to be a benefit of the scheme. Whilst family housing or housing for elderly people would be acceptable on the site, there is no compunction to provide either.
33. It appears that there is still a need for additional student accommodation in the city. I acknowledge that the LP seeks the provision of additional student accommodation at the main sites of the University of Bath and Bath Spa University. But the Council did not challenge the findings of the Inspector in the recent appeal decision concerning the nearby Plumb Center site regarding the continuing need for student accommodation in the city.<sup>3</sup> Indeed, it put forward no objection to the PBSA on such grounds as part of this appeal. LP Policy B5 prevents off-campus student accommodation within the Central Area and the Enterprise Zone, but the appeal site is not located in either.
34. I acknowledge the comments made by the Councillors at the Inquiry that there is a surplus of unlet student accommodation in the city at present and that attempts are being made to let it out for short-term holiday accommodation. However, such statements are unevicenced. Even assuming they are accurate, such a situation does not surprise me because the Covid-19 pandemic has led to many students returning to their family homes. Hopefully that situation will only be temporary. For all these reasons I consider that the PBSA element of the development would contribute positively to the scheme's housing mix.
35. I acknowledge, with the exception of the 13 affordable housing units, that the units will all be privately rented and that the scheme would consequently be

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<sup>3</sup> CD61 paragraphs 34-37

predominantly mono-tenure. But the Council accepts that only 13 affordable housing units would be viable. The private rental nature of the scheme would introduce diversity into the tenure of housing in the local area, and it is likely there be a thriving market for both the PBSA and the apartments as evidenced by the appellant<sup>4</sup>. The physical constraints of the site and its sustainability credentials indicate in my view that it is well suited to this form of high-density private rented residential development.

36. I acknowledge that the floorspace of the studio flats would fall considerably below the national minimum space standards (31.92m<sup>2</sup> as opposed to 37m<sup>2</sup>). However, the other flats meet these standards and the Council has not actually adopted these standards in its LP. There are four sizes of flats in Blocks A, B and E and between them they would cater adequately for the space needs and rent prices that a variety of tenants would require and could afford.
37. For these reasons there would be no breach of Policy CP10.

### Recreational Open Space

38. The appellant does not challenge the Council's figures that the occupiers of the proposed development will create a demand for the following green space: Parks & Green Space 5,525m<sup>2</sup>, Amenity Green Space 1,275m<sup>2</sup>, Youth Play 128m<sup>2</sup>, and Allotments 1,275m<sup>2</sup>. I understand that these requirements are generated by reference to the standards in the Council's Green Space Strategy.<sup>5</sup>
39. The Council has agreed a sum of £25,000 to provide for new allotments or improve existing allotments locally, including on the Avon Allotment Site just to the west of the site. It seems unlikely that the occupiers of the development would generate a specific need for Youth Play space, although I note that Brassmill Lane Park, which includes a children's playground, is only a short walk from the site.
40. The wording of Policy LCR6 is somewhat unclear in terms of its requirement for open space on residential developments. It does not categorically set out on-site open space standards of various types for such developments. To give the Council's case the benefit of the doubt, at best it effectively says, in a roundabout way in its last paragraph, that accessible sport and recreation facilities should be provided on site in accordance with the standards in the Green Space Strategy or off-site where on-site provision is not possible. The Council argues that on-site provision for at least some of the requirement is possible if the development was not so dense. Its case is that there is insufficient useable amenity green space for the outdoor recreational needs of the occupiers.
41. I acknowledge that the indicative landscaping scheme shows a large amount of new tree and shrub planting – in part in order to increase biodiversity net gain on the site – in the larger areas of open space to the east of Block B and that there would consequently be only small areas of open space within which occupiers could, say, sunbathe, relax and read a book, or kick a football around.

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<sup>4</sup> MK Proof Appendix 8 – Letter from Carter Jonas 6 January 2021

<sup>5</sup> CD41



42. However, the officer Committee report acknowledged that it was impractical for the development to provide sufficient quantities of all four open space topologies on-site and recognised that wider green infrastructure benefits can be provided through the delivery of the STR. This route will provide improved access to existing green space typologies on the Avon river corridor and beyond by sustainable transport means and the officer report considered it could successfully meet the requirements of Policy LCR6.
43. I agree with the case officer assessment. Not only will the development provide for the STR through the site to an acceptable SUSTRANS standard, the S106 STR contribution of £260,000 will ensure that it links to and funds the connection to the existing cycle and pedestrian path on land either side of the site under the Council's ownership sufficient to establish a continuous route along the old railway line linking to the Bath-Bristol national cycle route and its establishment as an off-road facility hereafter.
44. This would be a vital and important recreational facility not just for residents of the development but for the wider public, in my view sufficiently important to obviate the need to create a dedicated Parks & Green Space area of 5,525m<sup>2</sup> or an Amenity Green Space of 1,275m<sup>2</sup> on site. The fact that the STR is a requirement of Policy SB15 does not lessen its importance as an important recreational and open space facility. The nearby Brassmill Lane Park contains a larger open grassed area which residents of the development could use as a kickabout facility or for other recreational purposes.
45. For these reasons there would be no breach of Policy LCR6.

#### Access Through The Maltings

46. The Maltings is an industrial estate (the Estate) of 15 units abutting the southern boundary of the site accessed from Brassmill Lane, constructed in the 1980s. It was sold by an associated company of the appellant to Standard Life (SL), the Rule 6 Party, in 1994. Eleven businesses occupy the 15 units; these are a mix of industrial, storage and distribution uses including some with ancillary trade counters (e.g. Toolstation, Euro Car Parts and Topps Tiles) and a brewing company which apparently offers tasting sessions.
47. The 1994 Deed of Transfer between the appellant associated company and the Rule 6 Party grants a legal right of access (an easement) through the Estate for any pedestrian and vehicular traffic – including HGVs – 24 hours a day via the quickest route from the Brassmill Lane entrance to the access into the site adjacent to Unit 6. This easement applies to any redevelopment of the site including for all construction traffic, not just the original car showroom/garage use. However, Schedule 5 of the Deed does not permit any user of the appeal site to park vehicles on the Estate. None of this is contested between the two parties.
48. SL argues that the continued use of this access for Heavy Goods Vehicles (HGVs) servicing the site and the 9 cars of residents of the apartments who would be allowed to park in Car Park 2 would intensify the use of the access through the Estate such as to prejudice its lawful operation as an established and valued industrial estate.
49. However, SL does not dispute the appellant's survey figures of the traffic using the appeal site when it was used as a car dealership nor its predicted traffic

levels for the proposed development. The appellant's evidence sets out that the latter would be likely to be less than the former.<sup>6</sup> That is uncontested by SL.

50. The concerns raised by SL in relation to delivery drivers dropping off goods via the Estate access to the site are in my view exaggerated. The appellant will manage the site. It has said that as part of its management it will request tenants to ask delivery drivers to drop off goods via Car Park 1 accessed from Newbridge Road where at all possible. I see no reason why this would not be likely to occur since this access to the site would be easier and clearer for delivery drivers. The majority of deliveries would therefore be likely to occur from here. Only deliveries of heavy goods, such as furniture, would be likely to occur through the Estate, and such deliveries would be of a far lesser volume than, say, typical deliveries by Amazon and the like.
51. Where HGVs or even MGVs (Medium Goods Vehicles) do need to drop off goods via the Estate access I see no reason why they would have to generally park up and wait to be let into the site because they could be immediately let in by the site's management staff either by having arranged such delivery in advance or by a quick phone call, as made clear by the appellant at the Inquiry round table session (RTS). There is no reason for individual tenants to have control over the access gate into the site from the Estate, with the exception of those whose car has a permit to park in Car Park 2. There is no reason why such deliveries to the site would be more likely to block access to any of the industrial units compared to the car transporters used by Hartwells when it was operating, including Units 5 and 6 next to the southern site entrance (both of which are occupied by Horstman).
52. I acknowledge that the owners of the 9 vehicles parking in Car Park 2 will need constant 24-hour vehicular access to the site. These vehicles will use the Estate access at night as well as during the working day as used by the former car showroom/garage. In order for this to work efficiently I appreciate that new electronic gates may well be needed, for instance in order to introduce an Automatic Number Plate Recognition (ANPR) system, and that the appellant will be required to fund or at least part fund and maintain any such new systems, as it mooted in the various versions of the draft Management Plan discussed at the RTS on this issue. There will inevitably need to be agreement between the appellant and SL over such measures and who pays, installs and maintains them.
53. But this is nothing new since as joint users of the Estate access there must inevitably be agreement made about any such changes under the current Deed. The S106 also requires in its Schedule 8 the agreement of a Vehicle Management Plan or VMP (including for vehicles accessing the site through the Estate) with the Council prior to commencement of development and the development's operation in accordance with it thereafter. I would expect the Council to consult SL before agreeing this.
54. The VMP must follow the principles of the Framework Management Plan appended to the S106, which makes clear that most vehicles will access the site from Newbridge Road; specifies the management of the site by on-site staff including control of residential deliveries via the Estate; the fact that the 9 parking spaces in Car Park 2 will be the last to be allocated to residential tenants; and the requirement for tenants to display authorised parking permits.

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<sup>6</sup> CD69 and IMA's Proof paragraph 7.3

On this basis there is no objection to the proposal from the Highway Authority, nor from the Council as Local Planning Authority (LPA).

55. I appreciate that construction traffic to the site has the potential to create interference with the operation of the Estate, specifically in terms of temporary blocking of access vehicles to some individual units. But any such potential interference is acknowledged in the existing Deed which allows for such construction access. It is also in the interests of the appellant to minimise any such interference as well as to minimise the construction period, which is by definition temporary.
56. NPPF paragraph 182 states that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established – the ‘agent of change’ principle. I appreciate that the industrial units are not restricted to operating only during the working day; they could operate all through the night and may be occupied by a completely different range of tenants.
57. However, Condition 6 of the Estate’s original planning permission dated 5 July 1983<sup>7</sup> prevents any processes being carried out or machinery being installed that could not be carried on or installed in any residential area by reason of noise, vibration, smell, fumes, dust etc, similar to the definition of the former industrial Use Class B1(c) and now encompassed within new Class E (g). Given this Condition, there can be no possible objection to residential development on the appeal site. In any case, LP Policy SB15 allocates the site for residential development.
58. For all these reasons I conclude that the proposed development would be unlikely to lead to a significant intensification of the use of the vehicular access route through The Maltings or any other significant effect resulting from it as an ‘agent of change’ that would seriously harm the industrial estate’s operations.

#### Other Issues including those raised by Third Party Objectors

59. There were 274 objections from local people following consultation of the application and there have been about 200 at appeal. I have addressed many of the substantive objections in the main issues above.
60. Another issue raised by objectors is the concern that students living in the PBSA blocks will substantially increase parking congestion in the area because the appellant’s attempts to prevent students bringing cars to Bath and parking them on nearby uncontrolled public roads will be inoperative or ineffective.
61. The prevention of students occupying the site parking cars on the site or on surrounding local roads would be enforced as follows. Proposed Condition 9 requires the submission and agreement by the LPA prior to first occupation of the development of a Site Management Plan that includes details of such student parking restrictions, enforcement measures and for their monitoring including any necessary remedial measures.
62. Schedule 8 of the S106 requires the submission of the VMP prior to commencement of development. It sets out that the leases to be entered into by students occupying the PBSA blocks shall contain clauses which prohibit

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<sup>7</sup> Contained in Appendix 2 of LB’s Proof

- those tenants keeping a motor vehicle on site or within 1km of the site except those eligible to use the disabled parking bays.
63. The LPA obviously agrees that these restrictions will be effective, otherwise it would not have signed the S106. Mr Reynolds argues that they breach the *Khodari* judgement<sup>8</sup>. That judgement confirmed that prevention of parking on the highway is not a restriction on the application land that can be covered by a S106. I appreciate that. But that is not what the restrictions here do. They do not limit the powers of tenants to apply for on-street parking permits but require the student tenants' leases to include a clause prohibiting parking on-site or within 1km of the site. This restricts what tenants of the appeal site land under control of the appellant can do, not seek to control the use of (public highway) land outside the control of the appellant. It would therefore fall within the remit of S106(1) of the Act. The *Khodari* judgement is therefore immaterial to this case.
64. Even if that was not the case, Condition 9 requires the submission and agreement by the LPA of such student parking restrictions. I note that Condition 14 of the recent Plumb Center appeal decision requires the prior agreement of a similar Site Management Plan encompassing such restrictions.
65. Several objections were raised on highway safety grounds including dangers regarding visibility issues at the eastern access on Newbridge Road and dangers to children walking to and from Newbridge Primary School. However, no concerns have been raised by either the Highway Authority or LPA and I am satisfied that the development would not result in danger to highway or pedestrian safety. No other matters raised by objectors warrant dismissal of the appeal.
66. At my site visit I noticed the noise of the Hanson's concrete batching plant. Although not a contested issue between the main parties I sought reassurance that this noise would not adversely affect the residents of the proposed development, particularly those in the nearest Blocks E and C. I am suitably assured of this by reference to the Summary Note produced by Matrix at the Inquiry as well as by pages 11-13 of its original Noise Assessment (CD23). I am assured that this would not prevent the opening of the habitable room windows in the nearest Blocks facing the batching plant. Condition 17 below will ensure the provision of adequate sound insulation as part of the construction of the development, as detailed in these Matrix reports.

### The Planning Balance

67. The development would comply with the most relevant LP Policies: SB15, CP6, D1, D2, CP10 and LCR6. As such it would comply with the development plan overall.
68. It would deliver a substantial amount of Class C3 housing including 13 affordable units as well as PBSA on previously developed land within the built-up area of Bath without any planning harm. The site is accessible via sustainable transport modes, especially taking into account that the development will provide the remaining links of the STR including through the site itself. For the reasons set out above I consider the development would be well suited to its likely occupiers: students, graduates and young professional

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<sup>8</sup> *R oao Khodari v Kensington and Chelsea RBC & Cedarpark Holdings Inc [2017] EWCA Civ*

single people and couples. All these are significant benefits of the scheme. Indeed, increasing development densities on such sites where possible, as it is here, is to be encouraged because this lessens the requirements of greenfield sites to provide for such required development.

69. I also note that a CIL contribution of about £1.4 million will be payable on the development to fund relevant community infrastructure.

### **The S106**

70. The S106 delivers a range of planning obligations in terms of: targeted recruitment and training contributions; restrictions on the use of the PBSA for students only and no occupation of such prior to at least 55% of the C3 dwellings having been completed; the provision of the STR including a contribution of £260,000 to join up the STR on the site with its existing sections; the payment of the £25,000 allotments contribution prior to occupation of the first dwelling; provision of the 13 affordable housing units; payment of the contribution towards fire hydrants on the site; prior provision of the VMP; and provision of a car club for the development.

71. The LPA has produced a detailed CIL compliance statement under Regulation 122 of the CIL Regulations. This accurately sets out the purpose of each of the obligations including the various financial contributions pertaining to them and the various LP Policies that they successfully meet. It successfully demonstrates that each one complies with CIL Regulation 122 as follows:

- necessary to make the development acceptable in planning terms
- directly related to the development
- fairly and reasonably related in scale and kind to the development

### **Conditions**

72. A list of 30 conditions has been agreed between the LPA and the appellant. I agree that all these conditions are needed and meet the tests required for planning conditions set out in the NPPF and Planning Practice Guidance, as reflected in the Reasons attached to all these conditions in the Schedule below. This includes of course the necessary sound insulation for the development and the submission and agreement with the Council of the Site Management Plan that will prevent the students having cars and the enforcement of such, as described above.

### **Conclusion**

73. For the reasons given above I conclude that the appeal should be allowed.

*Nick Fagan*

INSPECTOR

## Schedule of Conditions

### **1. Outline Time Limit (Compliance)**

The development hereby approved shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the latest.

Reason: As required by Section 92 of the Town and Country Planning Act (as amended), and to avoid the accumulation of unimplemented planning permissions.

### **2. Reserved Matters Time Limit (Compliance)**

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: As required by Section 92 of the Town and Country Planning Act 1990 (as amended and to avoid the accumulation of unimplemented planning permissions.

### **3. Reserved Matters (Pre-commencement)**

Approval of the details of the appearance, scale and landscaping of the site (hereinafter called the reserved matters) shall be obtained from the Local Planning Authority before any development is commenced.

Reason: This is an outline planning permission and these matters have been reserved for the subsequent approval of the Local Planning Authority under the provisions of Section 92 of the Town and Country Planning Act (as amended) and Parts 1 and 3 of the Development Management Procedure Order 2015.

### **4. Construction Management Plan (Pre-commencement)**

No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority and shall include details of deliveries (including storage arrangements and timings), contractor parking, traffic management, working hours, site opening times, wheel wash facilities and site compound arrangements. The development shall thereafter be undertaken in accordance with the approved details for the duration of the construction works.



Reason: To ensure that safe operation of the highway and in the interests of protecting residential amenity in accordance with Policy ST7 of the Bath and North East Somerset Placemaking Plan. This is a condition precedent because any initial construction or demolition works could have a detrimental impact upon highways safety and/or residential amenity.

**5. Bound/Compacted Vehicle Access (Pre-occupation)**

No occupation of the development shall commence until the vehicular accesses have been constructed with a bound and compacted surfacing material (not loose stone or gravel).

Reason: To prevent loose material spilling onto the highway in the interests of highways safety in accordance with Policy ST7 of the Bath and North East Somerset Placemaking Plan.

**6. Highway Works (Pre-Commencement)**

No development shall commence until a detailed scheme covering works affecting the public highway has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide details of the widening of the footway on Newbridge Road and the relocation and improvement to the existing bus stop. The highway works shall be carried out and completed in accordance with the approved scheme prior to first occupation of the development.

Reason: To ensure a satisfactory development and in the interest of encouraging sustainable travel methods in accordance with Policy ST1 of the Bath and North East Somerset Placemaking Plan.

**7. Parking (Compliance)**

Prior to first occupation of the development hereby approved, car parking shall be provided in accordance with a car parking provision plan which shall have first been submitted to and approved in writing by the Local Planning Authority. The areas allocated for parking and turning on the approved car parking provision plan shall be kept clear of obstructions and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.

Reason: To ensure sufficient parking and turning areas are retained at all times in the interests of amenity and highways safety in accordance with Policy ST7 of the Bath and North East Somerset Placemaking Plan.

**8. Travel Plan (Pre-occupation)**

No occupation of the development shall commence until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be operated in accordance with the approved Travel Plan.

Reason: In the interest of encouraging sustainable travel methods in accordance with Policy ST1 of the Bath and North East Somerset Placemaking Plan.

**9. Site Management Plan (Pre-occupation)**

Prior to first occupation of the development a Site Management Plan shall have been submitted to and approved in writing by the Local Planning Authority. The Site Management Plan shall include i. Arrangements for student drop off/pick up at the start and end of each university semester; ii. Details of student parking restrictions and enforcement measures; iii. Details of a scheme for monitoring the effectiveness of the parking restrictions and enforcement measures under point ii including any necessary remedial measures; iv Details of site security and access arrangements; v. Details of refuse storage and management; v Contact information for site management including information for third parties wishing to make complaints. The development shall be managed in accordance with the approved Site Management Plan.

Reason: To ensure that safe operation of the highway and in the interests of protecting residential amenity in accordance with Policy ST7 of the Bath and North East Somerset Placemaking Plan.

**10. Arboricultural Method Statement (Pre-commencement)**

No development shall take place until a Detailed Arboricultural Method Statement with Tree Protection Plan following the recommendations contained within BS 5837:2012 has been submitted to and approved in writing by the Local Planning Authority. The submitted method statement shall incorporate a provisional programme of works; supervision and monitoring details by an Arboricultural Consultant and provision of site visit records and certificates of completion to the Local Planning Authority. The statement shall also include the control of potentially harmful operations such as the storage, handling and mixing of materials

on site, burning, location of site office, service run locations including soakaway locations and movement of people and machinery.

Reason: To ensure that no excavation, tipping, burning, storing of materials or any other activity takes place which would adversely affect the trees to be retained in accordance with Policy NE6 of the Placemaking Plan and CP7 of the Core Strategy. This is a condition precedent because the works comprising the development have the potential to harm retained trees. Therefore these details need to be agreed before work commences.

**11. Arboricultural Method Statement (Compliance)**

No development or other operations shall take place except in complete accordance with the approved Arboricultural Method Statement. A signed certificate of compliance with the statement for the duration of the development shall be provided by the appointed arboriculturist to the Local Planning Authority on completion and prior to the first occupation.

Reason: To ensure that the approved method statement is complied with for the duration of the development.

**12. Electric Vehicle Charging Points (Pre-occupation)**

Prior to first occupation of the development hereby approved electric vehicle charging points shall be installed (and shall be fully operational) in accordance with an Electric Vehicle Charging Point Plan/Strategy which shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that electric vehicles are adequately accommodated for and encouraged in accordance with Policy ST7 of the Bath & North East Somerset Core Strategy.

**13. Contaminated Land**

**– Investigation and Risk Assessment (Pre-commencement)**

No development shall commence until an investigation and risk assessment of the nature and extent of contamination on site and its findings has been submitted to and approved in writing by the Local Planning Authority. The assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. The assessment must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the

Management of Land Contaminations, CLR 11' (or any revision to it or replacement of it) and shall include:

- i. A survey of the extent, scale and nature of contamination
- ii. An assessment of the potential risk to:
  - Human health
  - Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
  - Adjoining land
  - Groundwaters and surface waters
  - Ecological systems
  - Archaeological sites
- iii. An appraisal of remedial options, and proposal of the preferred option(s).

Reason: In order to ensure that the land is suitable for the intended uses and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors and in accordance with Section 11 of the National Planning Policy Framework. This is a condition precedent because the works comprising the development have the potential to uncover harmful contamination. Therefore these details need to be agreed before work commences.

**14. Contaminated Land – Remediation Scheme (Pre-commencement)**

No development shall commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment has confirmed that a remediation scheme is not required. The detailed remediation scheme shall include:

- i. All works to be undertaken
- ii. Proposed remediation objectives and remediation criteria
- iii. Timetable of works and site management procedures, and
- iv. Where required, a monitoring and maintenance scheme to monitor the long-term effectiveness of the proposed remediation and a

timetable for the submission of reports that demonstrate the effectiveness of the monitoring and maintenance carried out.

The remediation scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The approved remediation scheme shall be carried out prior to the commencement of development, other than that required to carry out remediation, or in accordance with the approved timetable of works.

Reason: In order to ensure that the land is suitable for the intended uses and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors and in accordance with Section 11 of the National Planning Policy Framework. This is a condition precedent because the works comprising the development have the potential to uncover harmful contamination. Therefore, these details need to be agreed before work commences.

**15. Contaminated Land – Verification Report (Pre-occupation)**

No occupation of the development shall be commenced until a verification report (that demonstrates the effectiveness of the remediation carried out) has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment has confirmed that a remediation scheme is not required.

Reason: In order to ensure that the land is suitable for the intended uses and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors and in accordance with Section 11 of the National Planning Policy Framework.

**16. Contaminated Land – Unexpected Contamination (Compliance)**

In the event that contamination which was not previously identified is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. Thereafter an investigation and risk assessment shall be undertaken, and where remediation is necessary, a remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with any remediation scheme approved as part of this condition and following the completion

of the measures identified in the approved remediation scheme, a verification report (that demonstrates the effectiveness of the remediation carried out) must be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development. Reason: In order to ensure that the land is suitable for the intended uses and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors and in accordance with Section 11 of the National Planning Policy Framework.

**17. Sound Insulation of Residential Dwellings (Post construction, Pre-occupation)**

Prior to any occupation of the approved development, an assessment from a competent person to demonstrate that the development has been constructed to provide sound attenuation against external noise shall be submitted to and approved in writing by the local Planning Authority. The following levels shall be achieved: Maximum internal noise levels of 35dBLAeq,16hr and 30dBLAeq,8hr for living rooms and bedrooms during the daytime and night time respectively. For bedrooms at night individual noise events (measured with F time-weighting) shall not (normally exceed 45dBLAmax.

Reason: To protect future residents from unreasonable adverse impact from existing noise.

**18. Noise and Odour Survey of Commercial Unit (Pre-occupation)**

In the event that the commercial unit hereby approved is used for café/restaurant use, that use shall not commence until a detailed scheme for the ventilation and extraction of fumes/cooking smells has been submitted to and approved in writing by the Local Planning Authority. The scheme shall specify the precise details of the flue extraction equipment to be used, including: the stack height; the design and position of all ductwork and filters; the noise/power levels of the fan(s); the number, type and attenuation characteristics of any silencers; details of anti-vibration mounts and jointing arrangements in the ductwork; the number of air changes per hour, and the efflux velocity. The scheme shall be installed in accordance with the approved details prior to the commencement of the use and thereafter maintained as such.



Reason: In the interests controlling odours and protecting residential amenity in accordance with policy PCS2 of the Bath and North East Somerset Placemaking Plan.

**19. Sustainable Drainage Strategy (to accompany reserved matters submission)**

The details submitted pursuant to Condition 3 of this permission (i.e., the reserved matters) shall include a detailed Sustainable Drainage Strategy which follows the principles set out in the West of England Sustainable Drainage Developer Guide (March 2015) or any revision to this document. The development shall subsequently be undertaken in accordance with the approved details and the sustainable drainage shall be retained for the duration of the development.

Reason: To ensure that an appropriate method of surface water drainage is installed and in the interests of flood risk management in accordance with Policy CP5 of the Bath & North East Somerset Core Strategy.

**20. Wildlife Protection and Enhancement (Pre-commencement)**

The details submitted pursuant to Condition 3 of this permission (i.e., the reserved matters) shall include a reptile mitigation strategy. No development shall take place until full details of a Wildlife Protection and Enhancement Scheme have been submitted to and approved in writing by the Local Planning Authority. These details shall be in accordance with (but not limited to) the measures and mitigation requirements identified in the approved 'Technical Briefing Note TN01: Addendum to Ecological Appraisal' (Aspect Ecology, 1 December 2020) and shall include:

- (1) Method Statement for pre-construction and construction phases to provide full details of all necessary protection and mitigation measures, including, where applicable, proposed pre-commencement checks and update surveys for the avoidance of harm to bats, badger, reptiles, nesting birds and other wildlife, and proposed notification of findings to the LPA prior to commencement of works.
- (2) Details and use of a recognised metric to demonstrate that the development will achieve measurable 'net gain' for biodiversity with a target of 10% net gain or greater.

All works within the scheme shall be carried out in accordance with the approved details and completed in accordance with specified timescales and prior to the occupation of the development.

Reason: To prevent ecological harm and to provide biodiversity gain in accordance with Policy NE3 of the Bath and North East Somerset Placemaking Plan.

NB: The above condition is required to be pre-commencement as it involves approval of measures to ensure protection of wildlife that would be otherwise harmed during site preparation and construction phases.

**21. Implementation of Wildlife Scheme (Pre-occupation)**

No occupation of the development hereby approved shall commence until a report produced by a suitably experienced ecologist confirming and demonstrating, using photographs where appropriate, implementation of the recommendations of the Wildlife Protection and Enhancement Scheme has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the implementation and success of the Wildlife Protection and Enhancement Scheme to prevent ecological harm and to provide biodiversity gain in accordance with Policy CP6 of the Bath and North East Somerset Core Strategy and Policy NE3 of the Bath and North East Somerset Placemaking Plan.

**22. External Lighting (Bespoke Trigger)**

No new external or internal (in the case of Blocks C and D) lighting shall be installed without full details of the proposed lighting design and predicted light spill levels being first submitted to and approved in writing by the Local Planning Authority; details to include proposed lamp models and manufacturers specifications, proposed lamp positions, numbers and heights with details also to be shown on a plan; details of predicted lux levels and light spill which shall not exceed the predicted light spill levels as detailed in the approved lighting report by Designs for Lighting (ref 1762-DFL-LS-001-November 2020); details of proposed operational compliance checks and monitoring, reporting and remediation scheme; and details of all proposed lighting controls and hours of use, to limit use of lights when not required and to prevent upward light spill and light spill onto bat flight paths, trees and boundary vegetation and

adjacent land; and to avoid harm to bat activity and other wildlife. The lighting should be installed, maintained and operated thereafter in accordance with the approved details.

Reason: To avoid harm to bats and wildlife in accordance with Policies NE3 and D8 of the Bath and North East Somerset Local Plan.

**23. Hard and Soft Landscaping (Pre-occupation)**

No landscape works or occupation shall commence until a hard and soft landscaping scheme that shall be broadly in accordance with drawings NPA11063 102 rev PO2 Cycle / Pedestrian Link Plan showing proposed additional planting, and NPA 110623 301 PO3 Landscape General Arrangement Plan has been submitted to and approved in writing by the Local Planning Authority showing details of all trees, hedgerows and other planting to be retained; finished ground levels; a planting specification to include numbers, density, size, species and position of all new trees and shrubs, details of existing and proposed walls, fences, other boundary treatment and surface treatment of the open parts of the site, methodologies for habitat creations; details specification of soil analysis of any soils or planting substrate to be imported, and a programme of implementation.

Reason: To ensure the provision of an appropriate landscape setting to the development in accordance with Policies D.2 and D.4 of the Bath and North East Somerset Local Plan.

**24. Hard and Soft Landscaping (Compliance)**

All hard and / or 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 (phasing) agreed in writing with the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.

Reason: To ensure that the landscaping scheme is implemented and maintained in accordance with Policies D.2 and D.4 of the Bath and North East Somerset Local Plan.

**25. Replacement Tree Details (In the event of tree losses on Newbridge Road)**

The existing Whitebeam (*Sorbus aria*) trees positioned along the site's Newbridge Road frontage shall be retained as an integral part of the development hereby approved (with the exception of those shown for removal in the approved plans/documents). In the event that any of these trees die or suffer poor health warranting their removal, within the first 10 years following first occupation of the development, details of comprehensive on-site replacement tree planting shall be submitted to and approved by the Local Planning Authority prior to the removal of any of said trees. The replacement planting approved shall be undertaken within the first planting season following the aforementioned approval of details.

Reason: To ensure that trees felled as a result of this development are satisfactorily replaced.

**26. Housing Accessibility (Compliance)**

The details submitted pursuant of Condition 3 of this permission (i.e., the reserved matters) shall demonstrate that 21 dwellings are designed such that they comply with Part M 4(2) of the Building Regulations. Those dwellings shall subsequently be constructed and completed in accordance with the details so approved.

Reason: To ensure that a proportion of the dwellings hereby approved are accessible in accordance with Policy H7 of the Placemaking Plan.

**27. Water Efficiency (Compliance)**

The approved dwellings shall be constructed to meet the national optional building requirement for water efficiency of 110 litres per person per day.

Reason: In the interests of water efficiency in accordance with Policy SCR5 of the Placemaking Plan.

**28. Renewable Energy – (Pre-occupation)**

The development shall achieve an overall reduction in carbon emissions of at least 19% as compared to the Building Regulations Part L baseline; at least 10% of the overall reduction shall be by means of on-site

renewable energy generation and the remaining 9% by other means (for example energy efficient construction).

Prior to first occupation of the development hereby approved the following tables (as set out in the Council's Sustainable Construction Supplementary Planning Document, Adopted November 2018) shall be completed in respect of the completed development and submitted for approval to the Local Planning Authority together with the further documentation listed below:

- Table 2.1 Energy Strategy (including detail of renewables)
- Table 2.2 Proposals with more than one building type (if relevant)
- Table 2.3 (Calculations);
- Building Regulations Part L post-completion documents for renewables;
- Building Regulations Part L post-completion document for energy efficiency;
- Microgeneration Certification Scheme (MCS) Certificate/s

Reason: To ensure that the approved development complies with Policy SCR1 of the Placemaking Plan (renewable energy) and Policy CP2 of the Core Strategy (sustainable construction).

**29. Sustainable Construction Details – Overheating (Pre-occupation)**

Prior to first occupation of the development hereby approved the following tables (as set out in the Council's Sustainable Construction Supplementary Planning Document, Adopted November 2018) shall be completed in respect of the completed development and submitted, along with supporting documents, to the Local Planning Authority:

- Table 5.1
- Table 5.2
- Table 5.4 (if using active cooling)

Reason: To monitor the extent to which the approved development complies with Policy CP2 of the Core Strategy (sustainable construction) in respect of overheating.

**30. Plans List (Compliance)**

The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans listed below.

Reason: To define the terms and extent of the permission.

**Plans List**

This decision has been taken on the basis of the following plans/dwellings:

- Site Location Plan: Drawing No. 0100 P3
- Proposed Site Plan: Drawing No. 0110 P4

and the following illustrative plans and drawings:

- Proposed Floor Plan – 001 Drawing No. 0202 P2
- Proposed Floor Plan – 002 (Lower Ground Floor): Drawing No. 0201 P2
- Proposed Floor Plan – 000 (Newbridge Road): Drawing No. 0203 P2
- Proposed Floor Plan - 001 Drawing No. 0204 P2
- Proposed Floor Plan – 002 Drawing No. 0205 P2
- Proposed Floor Plan – 003 (Roof Plan) Drawing No. 0206 P2
- Landscape General Arrangement Plan: Drawing No. NPA 11063 301 Rev P03
- Illustrative Elevations: Drawing No. 0300 P3
- Site Sections Sheet 1: Drawing No. 0400 P3
- Site Sections Sheet 2: Drawing No. 0401 P3
- Proposed Illustrative Section Through Cycle Path: Drawing No. 0410 Rev P3
- Cycle/Pedestrian Link Plan showing proposed additional planting: Drawing No. NPA 11063 102 Rev P02

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*End of Conditions*



## APPEARANCES

FOR THE APPELLANT: Sasha White QC & Mathew Fraser of Landmark Chambers appointed by Tom Edmunds MRTPI of Walsingham Planning:

They called

- Ian Monachino-Ayres Dip HTE, Dip TEP, IMA  
Transport Planning, Transport Witness
- Kenneth Brown MRTPI, BSc (Hons), MA Urban  
Design, Design Witness
- Mark Krassowski, BA (Hons) BSc MRICS,  
Walsingham Planning, Planning Witness
- Richard Lloyd, Eversheds, Solicitor re S106

FOR THE RULE 6 PARTY: Gregory Jones QC & Jonathon Welch of Francis Taylor Buildings instructed by Louise bending MRTPI of WSP:

They called

- Louise Bending BA (Hons) MA MRTPI
- Nicola Perry MRICS
- Amanda Cowking, Fund Manager at Standard  
Life

FOR THE LOCAL PLANNING AUTHORITY: Jonathon Darby of 39 Essex Chambers instructed by Simon Elias, Solicitor to the Council:

He called

- Funda Kemal BSc (Hons), DipArch, PgCert, ARB,  
RIBA, Senior Urban Designer at BANES
- Tessa Hampden BSc, MA, MRTPI, Senior  
Planning Officer at BANES

### INTERESTED PERSONS:

Mark Reynolds	On behalf of 'No to Hartwell's Overdevelopment Group'
Joanna Robinson	Bath Preservation Trust
John Moran	Architect and local resident
Councillor Mark Roper	BANES Councillor for Newbridge Ward
Councillor Michelle O'Doherty	As above
Councillor Manda Rigby	Councillor on BANES Planning Committee

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*End of Appearances*

## DOCUMENTS

Below is a list of documents submitted at the Inquiry (referenced by CD Case Documents where these were added onto the CD list). Other references to CDs in the text of the decision above also refers to Case Documents, all accessible via the link on the LPA's website.

- 1 Appellant Opening Statement (CD71)
- 2 LPA Opening Statement (CD72)
- 3 Rule 6 Party Opening Statement (CD73)
- 4 BfL Assessment Scores (CD74)
- 5 Fields in Trust Guidance for Outdoor Sport and Play (CD75)
- 6 BANES Planning Obligations SPD (CD76)
- 7 BANES Housing Land Supply Findings Report, April 2016 (CD77)
- 8 Officer Report re Certificate of Appropriate Alternative Development application 8 October 2010 (CD78)
- 9 Matrix Noise Summary Note 24 February 2021
- 10 Updated list of agreed Conditions submitted by LPA 25 February 2021
- 11 Planning Benefits Comparison Table between appellant and LPA
- 12 Statement of Common Ground between appellant & SL re Rule 6 Issue February 2021
- 13 Text of objection speech from Joanna Robinson 18 February 2021
- 14 Text of objection speech from Mark Reynolds (date as above)
- 15 Text of objection speech and Powerpoint presentation from John Moran (date as above)
- 16 Text of objection speech from Cllr Roper (date as above)
- 17 Text of objection speech from Cllr O'Doherty (date as above)
- 18 Text of objection speech from Cllr Rigby (date as above)
- 19 Signed and dated s106
- 20 Rule 6 Party Closing Statement (CD79)
- 21 LPA Closing Statement (CD80)
- 22 Appellant Closing Statement (CD81)

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*End of Documents*