

NOTICE  
OF  
MEETING

**WINDSOR RURAL DEVELOPMENT  
MANAGEMENT PANEL**

will meet on

**WEDNESDAY, 30TH MAY, 2018**

**At 7.00 pm**

in the

**COUNCIL CHAMBER - GUILDHALL WINDSOR**

TO: MEMBERS OF THE WINDSOR RURAL DEVELOPMENT MANAGEMENT PANEL

COUNCILLORS DR LILLY EVANS (CHAIRMAN), COLIN RAYNER (VICE-CHAIRMAN),  
MICHAEL AIREY, CHRISTINE BATESON, DAVID HILTON, JOHN LENTON,  
JULIAN SHARPE, LYNDA YONG AND MALCOLM BEER

SUBSTITUTE MEMBERS

COUNCILLORS JOHN BOWDEN, SAYONARA LUXTON, NICOLA PRYER,  
EILEEN QUICK, JACK RANKIN, WESLEY RICHARDS, SAMANTHA RAYNER,  
JOHN STORY AND LYNNE JONES

David Cook - Democratic Services Manager - Issued: Monday, 21 May 2018

Members of the Press and Public are welcome to attend Part I of this meeting. The agenda is available on the Council's web site at [www.rbwm.gov.uk](http://www.rbwm.gov.uk) or contact the Panel Administrator **Andy Carswell** 01628 796319

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## AGENDA

### PART I

<u>ITEM</u>	<u>SUBJECT</u>	<u>PAGE NO</u>
1.	<u>APOLOGIES FOR ABSENCE</u>  To receive any apologies for absence.	-
2.	<u>DECLARATIONS OF INTEREST</u>  To receive any Declarations of Interest.	5 - 6
3.	<u>MINUTES</u>  To confirm the Part I Minutes of the meeting of the previous meeting	7 - 8
4.	<u>PLANNING APPLICATIONS (DECISION)</u>  To consider the Director of Development & Regeneration / Development Control Manager's report on planning applications received.  Full details on all planning applications (including application forms, site plans, objections received, correspondence etc.) can be found by accessing the Planning Applications Public Access Module by selecting the following link. <a href="http://www.rbwm.gov.uk/pam/search.jsp">http://www.rbwm.gov.uk/pam/search.jsp</a> or from Democratic Services on 01628 796251 or <a href="mailto:democratic.services@rbwm.gov.uk">democratic.services@rbwm.gov.uk</a>	9 - 48
5.	<u>PLANNING ENFORCEMENT REPORT (DECISION)</u>  To consider the above report.	49 - 64
6.	<u>ESSENTIAL MONITORING REPORTS (MONITORING)</u>  To consider the Essential Monitoring Reports.	65 - 68

**PRIVATE MEETING - PART II**

<u>ITEM</u>	<u>SUBJECT</u>	<u>PAGE NO</u>
7.	<u>LOCAL GOVERNMENT ACT 1972 - EXCLUSION OF THE PUBLIC</u>  To consider the following resolution:- “That under Section 100 (A)(4) of the Local Government Act, the public should be excluded from the remainder of the meeting whilst discussion takes place on item 8 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1 and 3 of Part I Schedule 12A of the Act”.	-
8.	<u>ENFORCEMENT REPORT APPENDICES</u>  To consider the above report.  <b><i>(Not for publication by virtue of Paragraph 1, 3 of Part 1 of Schedule 12A of the Local Government Act 1972)</i></b>	69 - 108

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## **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

In accordance with the requirements of the Local Government (Access to Information) Act

1985, each item on this report includes a list of Background Papers that have been relied

on to a material extent in the formulation of the report and recommendation.

The list of Background Papers will normally include relevant previous planning decisions, replies to formal consultations and relevant letter of representation received from local societies, and members of the public. For ease of reference, the total number of letters received from members of the public will normally be listed as a single Background Paper,

although a distinction will be made where contrary views are expressed. Any replies to consultations that are not received by the time the report goes to print will be recorded as

“Comments Awaited”.

The list will not include published documents such as the Town and Country Planning Acts

and associated legislation, Department of the Environment Circulars, the Berkshire Structure Plan, Statutory Local Plans or other forms of Supplementary Planning Guidance,

as the instructions, advice and policies contained within these documents are common to

the determination of all planning applications. Any reference to any of these documents will be made as necessary under the heading “Remarks”.

## **STATEMENT OF THE HUMAN RIGHTS ACT 1998**

The Human Rights Act 1998 was brought into force in this country on 2nd October 2000, and it will now, subject to certain exceptions, be directly unlawful for a public authority to act in a way which is incompatible with a Convention right. In particular, Article 8 (respect

for private and family life) and Article 1 of Protocol 1 (peaceful enjoyment of property) apply to planning decisions. When a planning decision is to be made however, there is further provision that a public authority must take into account the public interest. In the vast majority of cases existing planning law has for many years demanded a balancing exercise between private rights and public interest, and therefore much of this authority's decision making will continue to take into account this balance.

The Human Rights Act will not be referred to in the Officer's report for individual applications beyond this general statement, unless there are exceptional circumstances which demand more careful and sensitive consideration of Human Rights issues.

## MEMBERS' GUIDANCE NOTE

### DECLARING INTERESTS IN MEETINGS

#### **DISCLOSABLE PECUNIARY INTERESTS (DPIs)**

DPIs include:

- Any employment, office, trade, profession or vocation carried on for profit or gain.
- Any payment or provision of any other financial benefit made in respect of any expenses occurred in carrying out member duties or election expenses.
- Any contract under which goods and services are to be provided/works to be executed which has not been fully discharged.
- Any beneficial interest in land within the area of the relevant authority.
- Any license to occupy land in the area of the relevant authority for a month or longer.
- Any tenancy where the landlord is the relevant authority, and the tenant is a body in which the relevant person has a beneficial interest.
- Any beneficial interest in securities of a body where
  - a) that body has a piece of business or land in the area of the relevant authority, and
  - b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body **or** (ii) the total nominal value of the shares of any one class belonging to the relevant person exceeds one hundredth of the total issued share capital of that class.

#### **PREJUDICIAL INTERESTS**

This is an interest which a reasonable fair minded and informed member of the public would reasonably believe is so significant that it harms or impairs your ability to judge the public interest. That is, your decision making is influenced by your interest that you are not able to impartially consider only relevant issues.

#### **DECLARING INTERESTS**

If you have not disclosed your interest in the register, you **must make** the declaration of interest at the beginning of the meeting, or as soon as you are aware that you have a DPI or Prejudicial Interest. If you have already disclosed the interest in your Register of Interests you are still required to disclose this in the meeting if it relates to the matter being discussed. A member with a DPI or Prejudicial Interest **may make representations at the start of the item but must not take part in discussion or vote at a meeting.** The term 'discussion' has been taken to mean a discussion by the members of the committee or other body determining the issue. You should notify Democratic Services before the meeting of your intention to speak. In order to avoid any accusations of taking part in the discussion or vote, you must move to the public area, having made your representations.

If you have any queries then you should obtain advice from the Legal or Democratic Services Officer before participating in the meeting.

If the interest declared has not been entered on to your Register of Interests, you must notify the Monitoring Officer in writing within the next 28 days following the meeting.

# Agenda Item 3

## WINDSOR RURAL DEVELOPMENT MANAGEMENT PANEL

WEDNESDAY, 2 MAY 2018

PRESENT: Councillors Dr Lilly Evans (Chairman), Colin Rayner (Vice-Chairman), Michael Airey, Christine Bateson, David Hilton, Julian Sharpe, Lynda Yong and Malcolm Beer

Officers: Andy Carswell, Victoria Gibson, Jo Richards and Sean O'Connor

### APOLOGIES FOR ABSENCE

Apologies were received from Cllr Lenton. Cllr Bowden was attending as a substitute.

### DECLARATIONS OF INTEREST

**Cllr Beer** – Declared a personal interest in item 2 as a member of Old Windsor Parish Council. He stated he had not attended the meeting where the application was discussed previously and confirmed he was attending Panel with an open mind.

### MINUTES

The minutes of the meeting held on April 4<sup>th</sup> 2018 were agreed as an accurate record.

### PLANNING APPLICATIONS (DECISION)

**17/02204 Construction of a building to provide x8 two bed flats, together with access to London Road and landscaping, following demolition of the existing buildings at Bluebells Restaurant and Bar, London Road, Sunningdale, Ascot SL5 0LE**

The item was withdrawn from the agenda.

**18/00820 Mr Gallagher: Single storey side extension at Old Windsor Library, Memorial Hall, Straight Road, Old Windsor, Windsor SL4 2RN**

Members voted UNANIMOUSLY to APPROVE the application as per the Officer recommendation, subject to the conditions that work must commence within three years of approval being granted; matching materials as specified in the application were used; and for the application to be built in accordance with the agreed plans.

### ESSENTIAL MONITORING REPORTS (MONITORING)

The contents of the reports were noted.

The meeting, which began at 7.00 pm, finished at 7.13 pm

CHAIRMAN.....

DATE.....

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# Agenda Item 4

## ROYAL BOROUGH OF WINDSOR & MAIDENHEAD

### Windsor Rural Panel

30th May 2018

#### INDEX

APP = Approval  
CLU = Certificate of Lawful Use  
DD = Defer and Delegate  
DLA = Defer Legal Agreement  
PERM = Permit  
PNR = Prior Approval Not Required  
REF = Refusal  
WA = Would Have Approved  
WR = Would Have Refused

**Item No.** 1      **Application No.** 17/02204/FULL      **Recommendation** PERM      **Page No.** 9  
**Location:** Bluebells Restaurant And Bar London Road Sunningdale Ascot SL5 0LE  
**Proposal:** Construction of a building to provide x8 two bed flats, together with access to London Road and landscaping, following demolition of the existing buildings.  
**Applicant:**      **Member Call-in:** Not applicable      **Expiry Date:** 31 January 2018

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**Item No.** 2      **Application No.** 18/00346/FULL      **Recommendation** PERM      **Page No.** 26  
**Location:** 3 Hermitage Drive Ascot SL5 7LA  
**Proposal:** Two storey front/side extension, single storey rear extension and new first floor front and side windows, alterations to entrance and fenestration.  
**Applicant:** Ashton Hawthorne      **Member Call-in:** Cllr D Hilton      **Expiry Date:** 4 May 2018

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**ROYAL BOROUGH OF WINDSOR & MAIDENHEAD  
PLANNING COMMITTEE**

**WINDSOR RURAL DEVELOPMENT CONTROL PANEL**

30 May 2018

Item: 1

<b>Application No.:</b>	17/02204/FULL
<b>Location:</b>	Bluebells Restaurant And Bar London Road Sunningdale Ascot SL5 0LE
<b>Proposal:</b>	Construction of a building to provide x8 two bed flats, together with access to London Road and landscaping, following demolition of the existing buildings.
<b>Applicant:</b>	
<b>Agent:</b>	Mr Douglas Bond
<b>Parish/Ward:</b>	Sunningdale Parish/Sunningdale Ward
<b>If you have a question about this report, please contact:</b> Alys Hughes on 01628 796040 or at <a href="mailto:alys.hughes@rbwm.gov.uk">alys.hughes@rbwm.gov.uk</a>	

**1. SUMMARY**

- 1.1 Permission is sought for a two-storey building comprising 8 x 2-bed apartments, with associated parking and landscaping to replace the existing two-storey restaurant building on site.
- 1.2 The application follows a previous proposal, ref 16/03177/FUL, for 9 apartments which was refused by the Council under delegated authority on 01.02.2017 on grounds of inappropriate development in the Green Belt and impact on the character of the area due its design and massing.
- 1.3 The current proposal, which follows pre-application discussions with the Council, is for a development of reduced scale and massing which is now considered to have no greater impact on the openness of the Green Belt than the existing development and thus can be deemed as appropriate development in the Green Belt. Furthermore, the amended design and appearance of the building is considered to respond positively to the context of the surrounding area.
- 1.4 The reasons for refusal of the previous planning application ref: 16/03177/FUL have now been overcome and thus it is recommended that planning permission be forthcoming for the proposed development.
- 1.5 This application was withdrawn from the panel agenda last month following a query over the internal floor area of the development. Amended plans have now been received reducing the internal floor area to below 1,000sq.m. Officers are now able to recommend the application for approval for the reasons outlined within this report.

<b>It is recommended the Panel authorises the Head of Planning:</b>	
1.	<b>To grant planning permission following satisfactory amendment to the secured Section 111 for mitigation to the SPA</b>

**2. REASON FOR PANEL DETERMINATION**

- The Council's Constitution does not give the Head of Planning delegated powers to determine the application in the way recommended; such decisions can only be made by the Panel.

### **3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS**

- 3.1 This application site currently comprises a large but unassuming two storey building with various single storey extensions and outbuildings. Its existing use is as a restaurant, with car parking to the rear of the building and a lawned area beyond. Near the rear boundary, behind a row of leylandii trees, is a large storage building.
- 3.2 The building is set back from the main A30, with a surfaced vehicular access to either side. There is a mix of residential development in the locality, of a variety of types, sizes and ages, including a modern apartment building to the immediate west.
- 3.3 The site is situated within the Green Belt, and most of the site is covered by a group Tree Preservation Order. The site is situated within 5 km of the Thames Basin Heaths Special Protection Area.
- 3.4 A small part of the application site (a section of land adjacent to the access) is within Runnymede Borough Council, and a planning application has been submitted to that Council for the proposed development.

### **4. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY**

- 4.1 The proposal is to demolish the existing buildings on site, one of which includes a restaurant, and to build a new part single storey/part two-storey building to accommodate 8 x 2-bed apartments. A previous application, reference 16/03177/FULL, was refused under delegated authority by the Borough Council in January 2017. The reasons for refusal related solely to design issues and the harmful impact on the openness of the Green Belt, thereby constituting inappropriate development.
- 4.2 The front elevation of the proposed building would be of a traditional design and has features common in Victorian and Edwardian buildings. This elevation would be finished in render, with a red brick plinth. The roof would be in a plain clay tile. The two storey part of the building would have a height of circa 7.7 metres to the ridge.
- 4.3 The proposed building is a T-shape. The section to the rear is lower in height than the front section with accommodation at ground floor only. Both sections are joined by a two storey flat roof element. The single storey side elements also incorporate a flat roof with parapet.
- 4.4 The proposed building would have a single storey depth of circa 28.5 metres and a single storey width of circa 42 metres. The width of the rear wing varies from 9.5 metres (two storey) to 20 metres (single storey).
- 4.5 Two of the existing accesses would be used to serve the development. Two parking spaces would be provided on the western part of the site, with the remainder of parking spaces provided on the eastern part of the site. New outbuildings to accommodate bike and bin storage would be provided within this parking area.
- 4.6 Tree planting is shown in the rear part of the site, in place of the existing building to be demolished.

### **5. MAIN RELEVANT STRATEGIES AND POLICIES RELEVANT TO THE DECISION**

- 5.1 National Planning Policy Framework Sections 6 (Delivering a wide choice of high quality homes), 7 (Requiring Good Design), 8 (Promoting Healthy Communities) and 9 (Protecting Green Belt Land)

#### **Royal Borough Local Plan**

- 5.2 The main strategic planning considerations applying to the site and the associated policies are:

Issue	Local Plan Policy	Compliance	
Design in keeping with character of area	DG1	Yes	
Acceptable impact on appearance of area	DG1, H10, H11	Yes	
Acceptable impact on highway safety	T5	Yes	
Sufficient parking space available	P4	Yes	
Acceptable impact on Green Belt	GB1, GB2 (Part A)	Yes	
Acceptable impact on trees important to the area	N6	Yes	

### **Ascot, Sunninghill & Sunningdale Neighbourhood Plan 2011-2026**

Issue	Neighbourhood Plan Policy	Compliance	
Good Quality Design	NP/DG3	Yes	
Respecting the Townscape	NP/DG1	Yes	
Density, Footprint, Separation Scale, Bulk	NP/DG2	Yes	
Parking and Access	NP/T1	Yes	
Trees	NP/EN2	Yes	
Biodiversity	NP/EN4	Yes	

The Council's planning policies in the Local Plan can be viewed at:

[https://www3.rbwm.gov.uk/downloads/download/154/local\\_plan\\_documents\\_and\\_appendices](https://www3.rbwm.gov.uk/downloads/download/154/local_plan_documents_and_appendices)

### **Borough Local Plan: Submission Version**

Issue	Local Plan Policy
Appropriate Development in Green Belt and acceptable impact on Green Belt	SP1, SP5
Design in keeping with character and appearance of area	SP2, SP3
Makes suitable provision for infrastructure	IF1
Trees	NR2

The NPPF sets out that decision-makers may give weight to relevant policies in emerging plans according to their stage of preparation. The Borough Local Plan Submission Document was published in June 2017. Public consultation ran from 30 June to 27 September 2017. Following this process the Council prepared a report summarising the issues raised in the representations and setting out its response to them. This report, together with all the representations received during the representation period, the plan and its supporting documents have now been submitted to the Secretary of State for examination. The Submission Version of the Borough Local Plan does not form part of the statutory development plan for the Borough. However, by publishing and submitting the Borough Local Plan for independent examination the Council has formally confirmed its intention to adopt the submission version. As the Council considers the emerging Borough Local Plan to be sound and legally compliant, officers and Councillors should accord relevant policies and allocations significant weight in the determination of applications taking account of the extent to which there are unresolved objections to relevant policies. Therefore, the weight afforded to each policy at this stage will differ depending on the level and type of representation to that policy. This is addressed in more detail in the assessment below.

This document can be found at:

[https://www3.rbwm.gov.uk/info/201026/borough\\_local\\_plan/1351/submission/1](https://www3.rbwm.gov.uk/info/201026/borough_local_plan/1351/submission/1)

## Other Local Strategies or Publications

5.3 Other Strategies or publications relevant to the proposal are:

- RBWM Townscape Assessment – view at:
- RBWM Parking Strategy – view at:

More information on these documents can be found at:

[https://www3.rbwm.gov.uk/info/200414/local\\_development\\_framework/494/supplementary\\_planning](https://www3.rbwm.gov.uk/info/200414/local_development_framework/494/supplementary_planning)

## 6. EXPLANATION OF RECOMMENDATION

6.1 The key issues for consideration are:

- i Development within the Green Belt;
- ii Impact on the character and appearance of the area;
- iii Neighbouring Amenity
- iv Parking and highways
- v Trees
- vi Ecology
- vii Thames Basin Heaths Special Protection Area

### Development within the Green Belt

6.2 The proposed development would be situated within the Green Belt where development is restricted to protect its open and undeveloped character. Paragraph 89 of the National Planning Policy Framework (NPPF) states that the construction of new buildings within the Green Belt are inappropriate however it goes on to list certain exceptions to this. One of which includes the:

*'limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.'*

6.3 Within the Local Plan, policy GB2 (Part A) explains that proposals should not have a greater impact on the openness of the Green Belt than the existing development. Policy SP1 (Spatial Strategy) of the emerging Borough Local Plan states that the Green Belt will be protected from inappropriate development in line with Government policy. Policy SP5 (Development in the Green Belt) closely reflects the national Green Belt policy outlined in section 9 of the NPPF adding further detail where required in terms of the exceptions to inappropriate development. These policies carry substantial weight in the determination of this planning application.

6.4 It is considered that the scheme represents the redevelopment of a previously developed site. Previously developed land is defined in the NPPF as *'land which is or was occupied by a permanent structure, including the curtilage of development land and any associated fixed surface infrastructure'*. The site is occupied by a permanent restaurant building and associated hard-surfacing and therefore the proposal passes the first test of the above exception to inappropriate development.

- 6.5 The second test is that the development would not have a greater impact on the openness of the Green Belt than the existing development. This assessment consists of a comparison test between the existing and proposed development, in particular their floorspace, volume, height, scale, form and mass.

<b>Floor space comparison</b>			
Application Number: 17/02204/FULL	% Increase		
Floorspace of existing building	1076.5	sq. metres	
Floor space of proposed building	1092.5	sq. metres	
		<b>18 sq.m or 1.5% increase</b>	

- 6.6 Looking firstly at floorspace, the proposed development would result in a circa 1.5% increase in floorspace over the existing development on site, which is significantly smaller than the previously refused scheme. Whilst there is a very marginal increase in floorspace, floorspace is not the sole determining factor. In terms of volume, an amended volume comparison plan has been provided to show an overall reduction in volume across the site of 12%. (The increase in floor area but overall decrease in volume of development across the site is likely to have arisen through the proposed demolition of a large detached outbuilding positioned at the rear of the site, which, whilst only single storey, has a considerable footprint and a pitched roof.)
- 6.7 The floor space and volume figures are only guiding factors, and ultimately the height, scale, mass and spread of the proposed built form needs to be assessed, including a comparison of the amount of hard-surfacing within the site.
- 6.8 With regard to height, the central part of the proposed development would be two storeys, with single storey wings and a narrower single storey rear projecting section. The height of development would be no higher than the two-storey part of the existing building.
- 6.9 The main objection to the previous application was to the mass and bulk of development resulting from the use of crown and flat roofs. It was considered that this would have resulted in a built form and mass that would have a greater impact on the openness of the Green Belt than the existing building, which has a very limited first floor mass. The bulk and massing of the building has been reduced significantly since the last application, including a reduction in the depth and height of the rear projecting section. Furthermore, the link section of the development now has a flat roof, thereby reducing the overall bulk at first floor level. Also taking into account the reduction in spread of development across the site and the significant reduction in hard-surfacing, when considering these factors cumulatively, along with the decrease in volume of development, the proposal is considered not to have a greater impact on the openness of the Green Belt than the existing development and thus the second part of bullet point 6 of paragraph 89 of the NPPF has been met.
- 6.10 The change of use from a restaurant to a residential development would not conflict with the purposes of the Green Belt.
- 6.11 The amended scheme has therefore met the tests set out by bullet point 6 of paragraph 89 of the NPPF and thus constitutes appropriate development in the Green Belt. There is no other harm to the Green Belt arising from the proposal.

## **Impact on the character and appearance of the area**

- 6.12 Paragraph 64 of the NPPF explains that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. SP2 of the emerging Borough Local Plan states that 'All new developments should contribute to the places in which they are located.' Furthermore, policy SP3 states that development proposals should achieve various design principles, including but not limited to, respecting and enhancing the local character and high quality townscapes and providing high quality soft and hard landscaping. Significant weight can be given to these emerging policies at this time.
- 6.13 The existing building on site is considered to be of a good quality design, which contributes positively to the character and appearance of the area. The scale and mass of the building together with a fairly simple appearance contributes to the high quality appearance of the building.
- 6.14 Looking in isolation at the front elevation of the proposed building only, this elevation has Victorian and Edwardian features, and it is considered that the form and proportions of this elevation make it a good quality design. It was considered under application 16/03177/FULL that the appearance of the side and rear elevations of the building by reason of the extensive flat roof at two stories in height would not contribute to the character of the area or the site itself and so was considered to represent poor design.
- 6.15 As mentioned above, the extensive flat roof element has been eliminated from the current scheme. A small section of flat roof still exists on the two storey link element between the front and rear section of the building however due to its scale and positioning, it is not a prominent element of the scheme. The rear wing now relates well to the high quality design of the front wing in terms of scale and form and its single storey height allows it to appear subservient.
- 6.16 Looking at the surrounding area, the buildings opposite the site are of a traditional design with pitched roofs and are considered to make a positive contribution to the character and appearance of the area. The apartment block to the west of the site is a modern building with a crown roof, and this also forms part of the local area. Whilst this neighbouring building may not be as high a quality design as other buildings in close proximity to the site, this building does have a coherent design on all elevations.
- 6.17 Based on the above, the proposed appearance, scale, form and design of the building is considered to harmonise well with surrounding development and would represent good quality design that does not appear prominent or overdominant from the street scene.

## **Impact on neighbouring amenity**

- 6.18 The roof terrace on the proposed building which faces the boundary with the Garden Lodge is 16 metres off this boundary. This distance is considered sufficient in order for there not to be unacceptable levels of overlooking to this site. The proposed rear balconies are of a greater distance than this from neighbouring boundaries to avoid unacceptable levels of overlooking. First floor side facing windows in the proposed building would be over 20 metres off the side boundaries, and so it is not considered that any of these windows would result in unacceptable levels of overlooking to neighbouring properties.
- 6.19 The side roof terrace facing South Lodge, would be over 25 metres off the boundary with this property; this distance is considered sufficient for there not to be unacceptable levels of overlooking to this property.

## **Parking and highways**

- 6.20 It is considered that the proposed development is likely to lead to a reduction in vehicle movements when compared with the existing use. The change from restaurant to residential use is also likely to result in a marked reduction in visits by larger delivery and service vehicles.



- 6.21 The scheme as originally submitted under the current application proposed 10 x 2-bed apartments with a provision of 16 parking spaces. This level of parking was considered insufficient and gave rise to an objection from the Highways Authority. The amended scheme now proposes 8 x 2-bed apartments with a provision of 20 parking spaces. This represents a slight overprovision (16 spaces are required by the standards for 8 2-bed residential units). However, it is noted that Neighbourhood Plan Policy NP/T1 (Parking and Access) places a great emphasis on visitor parking and the need to reduce reliance on on-street parking. It is also noted that car ownership levels are slightly higher in Ascot, Sunninghill and Sunningdale than the Borough average. Taking this into consideration along with the overall reduction in hard-surfacing across the site and the benefits of the scheme as a whole, this slight overprovision in parking is not objected to. The proposed access, parking turning arrangements are considered to be acceptable and the scheme is considered to have an acceptable impact on highway safety. The scheme is supported by the Highways Authority.

### **Trees**

- 6.22 The site and neighbouring properties are covered by Tree Preservation Order 1 of 1957, an 'Area' designation protecting all species. The proposal would result in the loss of two Wild Cherry trees and one Ash tree which form a group on the southern eastern boundary. Other tree loss is acceptable as it mainly comprises the linear group of Leyland cypress and some other small ornamental trees of little significance. There will also be a need for additional tree planting within the site, in the front garden and intermittently along the western boundary. The Council's Tree Officer has recommended conditions should planning permission be granted and these relate to Tree protection (condition 8), site storage and services/drainage (condition 7), landscaping scheme (condition 10) and a landscape management plan (condition 11). The proposal is considered to comply with policy N6 of the adopted local plan and policy NR2 of the emerging Borough Local Plan.

### **Ecology**

- 6.23 An ecological assessment was undertaken in September 2015 in support of the previous application and was initially resubmitted with the current application. As the survey was two years old, it was recommended that an updated survey was undertaken.
- 6.24 Regarding potential impact on designated sites, this is discussed in the following section at paragraphs 6.26 -6.27).
- 6.25 In terms of the impact on bats, the updated survey showed similar site conditions to the original survey – the building was recorded as supporting an individual roost of common pipistrelle bats and one sweet chestnut tree was recorded as having moderate potential to support roosting bats. The applicant's ecologist has provided an outline bat mitigation strategy which includes removal of all tiles on roof and other bat roosting features within the main building by hand under ecological supervision, provision of temporary and permanent roosting features on retained mature trees and within the new buildings and sensitive lighting, all of which will be detailed within a method statement to accompany a European Protected Species licence (EPSL). Therefore, it is likely that the development proposals would not have a detrimental effect to the maintenance of the populations of bats species at a favourable conservation status in their natural range, as long as the mitigation and compensation measures are followed. The trees on site which have potential for roosting bats are not shown for removal. It is considered that the scheme would have an acceptable impact on bats, provided that certain conditions being imposed which have been recommended by the Council's ecologist (see condition 5). Condition 6 is also recommended in regard to biodiversity enhancements.

### **Thames Basin Heaths Special Protection Area**

- 6.26 The proposed development site is within 800 m of the Thames Basin Heaths Special Protection Area (SPA), which was classified in 2005 under the EC Birds Directive. The councils Thames Basin Heath SPA Supplementary Planning Document (Part 1) states that within the zone of 400m to 5km from the Thames Basin Heath SPA, it is likely that additional residential dwellings (either alone or in combination with other new dwellings) are likely to have a significant effect on the

SPA unless mitigation measures are put in place. The guidance within this document stipulates that the agreed approach to mitigation is for developers to provide Suitable Alternative Natural Greenspace (SANG) (or financial contribution towards a Council SANG) and financial contributions towards Strategic Access Management and Monitoring.

- 6.27 The Council has an adopted Suitable Alternative Natural Greenspace (SANG), Allen's Field. Financial contributions in line with the scale of charges set out in the Council's SPD would provide the mitigation required to ensure that the additional residents of additional dwellings would not impact adversely on the SPA, satisfying the requirements of the regulatory framework and SPD that are discussed above. Mitigation measures have been secured through a section 111 agreement, which is currently in the process of being amended to reflect the reduction in number of units. The recommendation is subject to securing the amended section 111 agreement.

### **Other Material Considerations**

#### Affordable Housing

- 6.28 Adopted local plan policy H3 states that the Council will seek to achieve affordable housing on sites of over 0.5ha or more or schemes proposing 15 or more net additional dwellings. Whilst the site is greater than 0.5ha, the combined gross maximum floor area of the development is less than 1,000sq.m and in cases such as this substantial weight is given to the NPPG which advises that 'contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1,000 square meters (gross internal area)'. (The gross internal floor area of the development as shown within the latest set of amended plans has been verified using the Council's electronic measuring tool).

#### Housing Land Supply

- 6.29 Paragraphs 7 and 14 of the National Planning Policy Framework (NPPF) sets out that there will be a presumption in favour of Sustainable Development. Paragraph 49 of the NPPF states that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites.
- 6.30 The Berkshire (including South Bucks) Strategic Housing Market Assessment (SHMA) (2016) identifies an objectively assessed housing need (OAN) of 712 dwellings per annum. Sites that deliver the OAN and a stepped housing trajectory over the plan period (2013-2033) are set out in the Submission Version Borough Local Plan that is currently undergoing examination. A five year supply of deliverable housing sites can be demonstrated against this trajectory.

#### Flooding/drainage

- 6.31 The Lead Local Flood Authority (LLFA) has commented on the application and recommended a condition to ensure the proposed development is safe from flooding and does not increase flood risk elsewhere. The LPA are satisfied that the application is still for a major development as the external floor area of the building exceeds 1,000 sq.m and thus this condition is reasonable and necessary.

### **7. COMMUNITY INFRASTRUCTURE LEVY (CIL)**

- 7.1 The application proposes a new residential development and therefore would be liable for a Community Infrastructure Levy contribution. The applicant has submitted the relevant CIL forms and the floor areas have been checked.

### **8. CONSULTATIONS CARRIED OUT**

## 8.1 Comments From Interested Parties

14 letters were sent to neighbouring residents and a site notice was posted by the planning officer.

1 letter was received objecting to the application summarised as:

Comment	Officer Response
I own land on two sides - at the back right of Bluebells and I have not been notified of this application	Occupiers of the adjoining land were notified by letter and a site notice was displayed at the site as required by legislation.

## 8.2 Other Consultees and Organisations

Comment	Officer Response
Highways Authority: Amended plans now acceptable with regard to parking provision. No objections subject to conditions.	See section 6.20-6.21
Council's Tree Team: Recommend approval subject to conditions	Noted
Council's Ecologist: Recommend approval subject to conditions	Noted
Rights of Way: No objection	Noted
Lead Local Flood Authority: No objection subject to condition and informatives	Noted
Parish Council: Object on following grounds: <ul style="list-style-type: none"> <li>- Insufficient tree information</li> <li>- Transport statement states that 24 parking spaces would be provided however only 16 parking spaces shown on site layout plan. 24 should be provided.</li> </ul>	Further tree information submitted since following comments from Tree Officer. Amended site plan also submitted which includes 20 parking spaces.
SPA: - Inadequate parking provision <ul style="list-style-type: none"> <li>- Further information submitted on trees should be reviewed by the Council</li> </ul>	Further comments provided by Council's tree officer on 27 <sup>th</sup> of September.
Runnymede Borough Council: No objection	Noted

## 9. APPENDICES TO THIS REPORT

- Appendix A - Location plan
- Appendix B – Site plan
- Appendix C – Proposed elevations
- Appendix D - Volume comparison

## 10. CONDITIONS RECOMMENDED FOR INCLUSION IF PERMISSION IS GRANTED

1 The development hereby permitted shall be commenced within three years from the date of this permission.

Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

2 No development shall take place until samples of the materials to be used on the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.

Reason: In the interests of the visual amenities of the area. Relevant Policy

- 3 Within one month of the substantial completion of the development the building shown to be removed on the approved plans, shall be demolished in its entirety and all materials resulting from such demolition works shall be removed from the site.  
Reason: To prevent the undesirable consolidation of development on the site having regard to its Green Belt location. Relevant Policies - Local Plan GB1, GB2,
- 4 No development shall take place until samples and/or a specification of all the finishing materials to be used in any hard surfacing on the application site have been submitted to and approved in writing by the Local Planning Authority and thereafter undertaken in accordance with the approved scheme.  
Reason: In the interests of the visual amenities of the area. Relevant Policies - Local Plan DG1.
- 5 Prior to development a copy of the EPSL for bats, issued by Natural England, shall be provided to the Local Planning Authority. Development shall then be carried out and maintained in accordance with the details within the agreed licence.  
Reason: In order to comply with advice in the National Planning Policy Framework 2012 and Neighbourhood Plan NP/EN4.
- 6 The development shall be carried out in accordance with the recommendations for biodiversity enhancements contained within the ecological survey produced by AA Environmental Consultants, dated 8th of November 2018.  
Reason: To secure biodiversity enhancements.
- 7 Prior to the commencement of development details of the areas to be used for on site materials storage, construction workers' parking, and for ancillary temporary building(s) including any phasing of use such areas, shall be submitted to and approved in writing by the Local Planning Authority and the works shall be undertaken in accordance with the approved details.  
Reason: To ensure that retained landscaping on the site is not damaged or destroyed during construction. Relevant Policies - Local Plan DG1, N6.
- 8 The erection of fencing for the protection of any retained tree and any other protection specified shall be undertaken in accordance with the 'ACD Arboricultural Method Statement rev. A '31.07.2017, dated 11.10.17' before any equipment, machinery or materials are brought on to the site, and thereafter maintained until the completion of all construction work and all equipment, machinery and surplus materials have been permanently removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority  
Reason: To protect trees which contribute to the visual amenities of the site and surrounding area. Relevant Policies - Local Plan DG1, N6.
- 9 Prior to the commencement of development details of the areas to be used for on site materials storage, construction workers parking, and for ancillary temporary building(s) including any phasing of use such areas, as well as details of underground services and drainage, shall be submitted to and approved in writing by the Local Planning Authority and the works shall be undertaken in accordance with the approved details.  
Reason: To ensure that retained landscaping on the site is not damaged or destroyed during construction. Relevant Policies - Local Plan DG1, N6.
- 10 No development shall take place until full details of both hard and soft landscape works, have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity, unless the Local Planning Authority gives its prior written consent to any variation.  
Reason: To ensure a form of development that maintains, and contributes positively to, the character and appearance of the area. Relevant Policies - Local Plan DG1.

- 11 Prior to the commencement of development a landscape management plan including long-term design objectives, management responsibilities and maintenance schedules for a minimum period of 5 years shall be submitted to and approved in writing by the Local Planning Authority. The plan shall cover any areas of existing landscaping, including woodlands, and all areas of proposed landscaping other than private domestic gardens.  
Reason: To ensure the long term management of the landscaped setting of the development and to ensure it contributes positively to the visual amenities of the area. Relevant Policies - Local Plan DG1.
- 12 Prior to the commencement of any works or demolition a construction management plan showing how demolition and construction traffic, (including cranes), materials storage, facilities for operatives and vehicle parking and manoeuvring will be accommodated during the works period shall be submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented as approved and maintained for the duration of the works or as may be agreed in writing by the Local Planning Authority.  
Reason: In the interests of highway safety and the free flow of traffic. Relevant Policies - Local Plan T5.
- 13 No part of the development shall be occupied until vehicle parking space has been provided in accordance with the approved drawing. The space approved shall be retained for parking in association with the development.  
Reason: To ensure that the development is provided with adequate parking facilities in order to reduce the likelihood of roadside parking which could be detrimental to the free flow of traffic and to highway safety. Relevant Policies - Local Plan P4, DG1.
- 14 No part of the development shall be occupied until covered and secure cycle parking facilities have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. These facilities shall thereafter be kept available for the parking of cycles in association with the development at all times.  
Reason: To ensure that the development is provided with adequate parking facilities in order to encourage the use of alternative modes of transport. Relevant Policies - Local Plan T7, DG1
- 15 No part of the development shall be occupied until the refuse bin storage area and recycling facilities have been provided in accordance with the approved drawing. These facilities shall be kept available for use in association with the development at all times.  
Reason: To ensure that the development is provided with adequate facilities that allow it to be serviced in a manner which would not adversely affect the free flow of traffic and highway safety and to ensure the sustainability of the development. Relevant Policies - Local Plan T5, DG1.
- 17 Any gates provided shall open away from the highway and be set back a distance of at least 5 metres from the highway boundary or 7 metres from nearside edge of the carriageway of the adjoining highway.  
\_ To ensure that vehicles can be driven off the highway before the gates are opened, in the interests of highway safety. Relevant Policies - Local Plan T5
- 18 No construction shall commence until a surface water drainage scheme for the development, based on sustainable drainage principles has been submitted to and approved in writing by the Local Planning Authority. Details shall include- Full details of all components of the proposed surface water drainage system including dimensions, locations, gradients, invert levels, cover levels and relevant construction details.- Supporting calculations based on infiltration rates determined by infiltration testing carried out in accordance with BRE365 confirming compliance with the Non-Statutory Standards for Sustainable Drainage Systems- Details of finished floor levels and adjoining surface levels- Details of existing and proposed surface water flooding exceedance routes- Details of the maintenance arrangements relating to the proposed surface water drainage system, confirming who will be responsible for its maintenance and the maintenance regime to be implemented The surface water drainage system shall be implemented and maintained in accordance with the approved details thereafter.  
Reason - To ensure compliance with National Planning Practice Guidance and the Non-Statutory Standards for Sustainable Drainage Systems, and to ensure the proposed development is safe

from flooding and does not increase flood risk elsewhere.

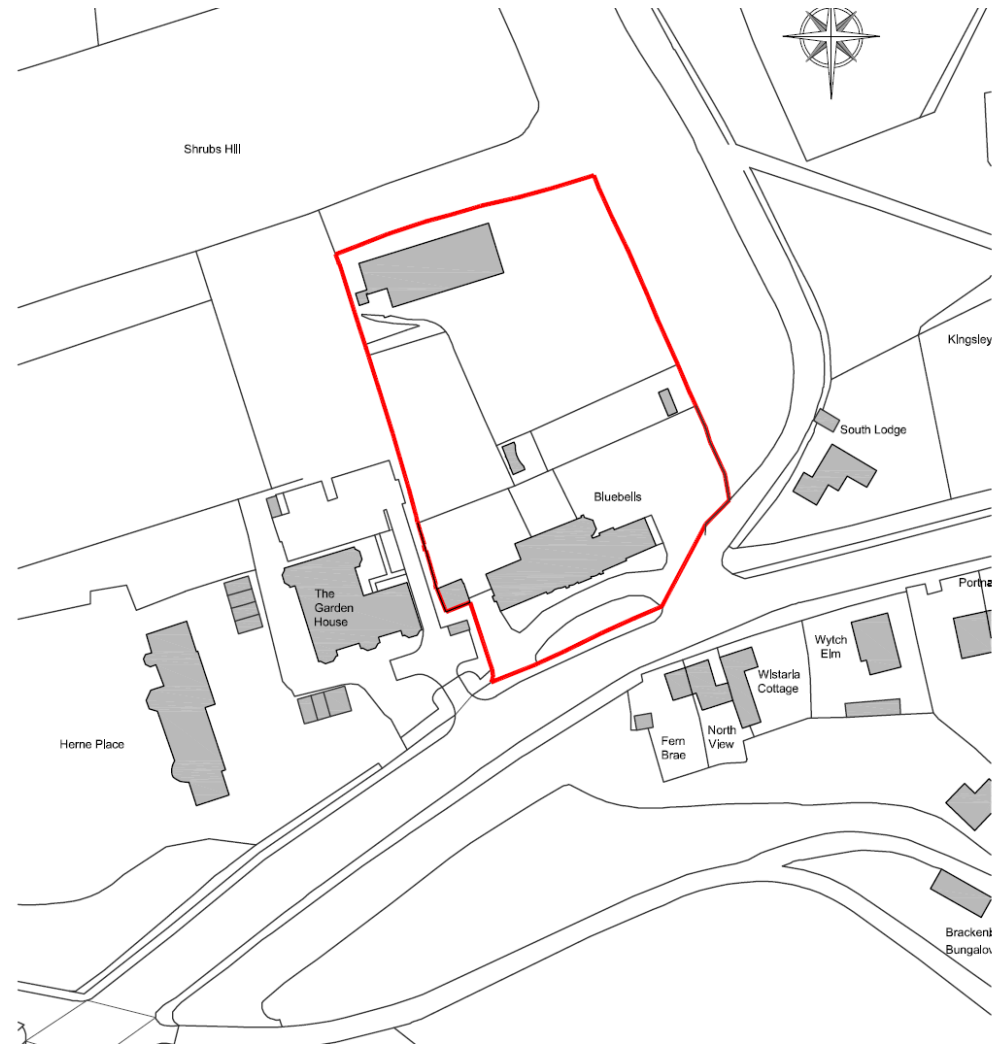
- 19 The development hereby permitted shall be carried out in accordance with the approved plans listed below.

Reason: To ensure that the development is carried out in accordance with the approved particulars and plans.

### **Informatives**

- 1 The Streetcare Services Manager at Tinkers Lane Depot Tinkers Lane Windsor SL4 4LR should be contacted for the approval of the access construction details and to grant a licence before any work is carried out within the highway. A formal application should be made allowing at least 4 weeks' notice to obtain details of underground services on the applicant's behalf.
- 2 Proposed exceedance routes, for events beyond the 1 in 100+40% climate change event, are indicated as running on to the public highway. While this may be acceptable in extreme events, the detailed design should ensure that this does not occur during more frequent events. The indicated maximum pond water level (60.60m A.O.D) and existing ground levels in the vicinity of the western entrance (60.27m A.O.D.) indicate that water could runoff on to the highway during more frequent events

Appendix A – Location plan



Appendix B – Site plan

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A. Claire Pugh, Principle Planning Officer, RBWM, 12th April 2017 "From looking at the previously refused scheme, and the current pre-application scheme, I measure that the building has been reduced in depth by circa 2-3 metres". Comment: The proposal in terms of its overall depth has been reduced further.

**KEY**

- PROPOSED NEW TREES
- EXISTING TREES TO BE RETAINED
- TREES TO BE REMOVED
- TREE SPA
- PROPOSED NEW HEDGE PLANTING
- EXISTING SPOF SITE LEVELS
- PROPOSED SPOF SITE LEVELS
- PROPOSED HOUSE FINISHED FLOOR LEVELS - SHOWN TO CORRELATION OF EXISTING FINISHED FLOOR LEVELS
- AMENITY AND PARKING/ROBBING TO BE DEVELOPED
- DETAILED LINE INDICATING EXTENT OF EXISTING AMENITY SPACES
- NO DIG CONSTRUCTION

SCALE BAR 1:250

0 5 10m 20 30

DATE: 09-03-18 UNITS 9 & 10 REMOVED  
 REV: 11-17 HARDSTANDING REDUCED

FOR COMMENT 08-03-18

**ad**  
**ASCOT DESIGN**  
 Timeless architecture

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 Tel: 01344 299220 Fax: 01344 299221 Email: info@ascotdesign.co.uk  
 www.ascotdesign.co.uk

Client: LAIMOND PROPERTY INVESTMENT CO.LTD & CONSERO LONDON  
 Project No: BLUEBELLS RESTAURANT LONDON ROAD, SUNNINGDALE

Drawn by: **SITE LAYOUT PLAN**

Scale: 1:250 @ A1 Date: JUNE '17 Issue: DQ

Project No: 16-P1306 - 200 Rev: D

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Appendix C – Proposed elevations



FRONT ELEVATION



SIDE ELEVATION (EAST)



SIDE ELEVATION (WEST)



REAR ELEVATION

25

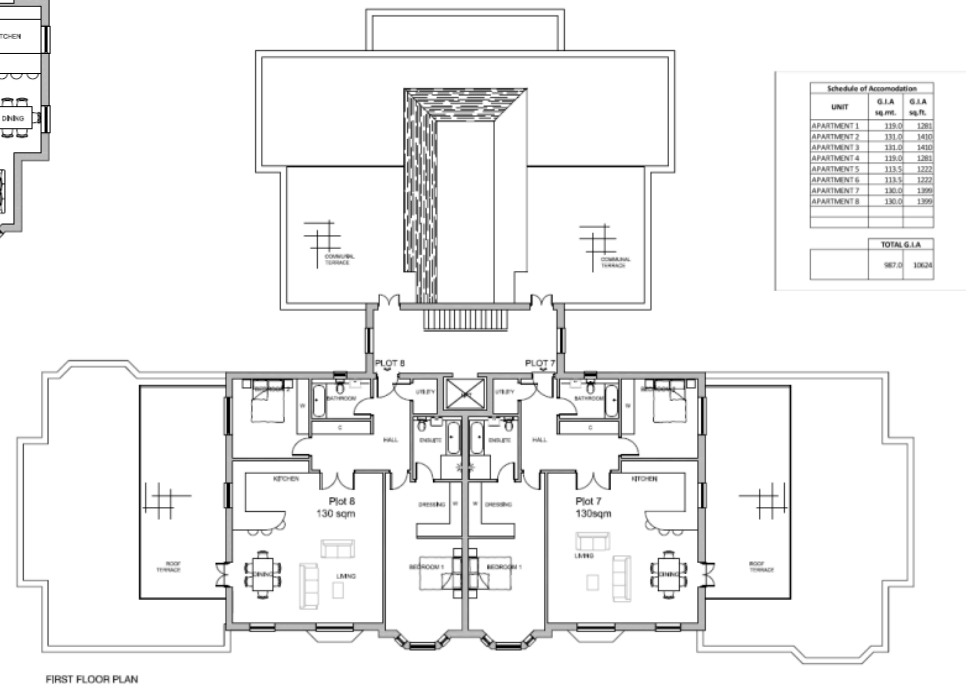
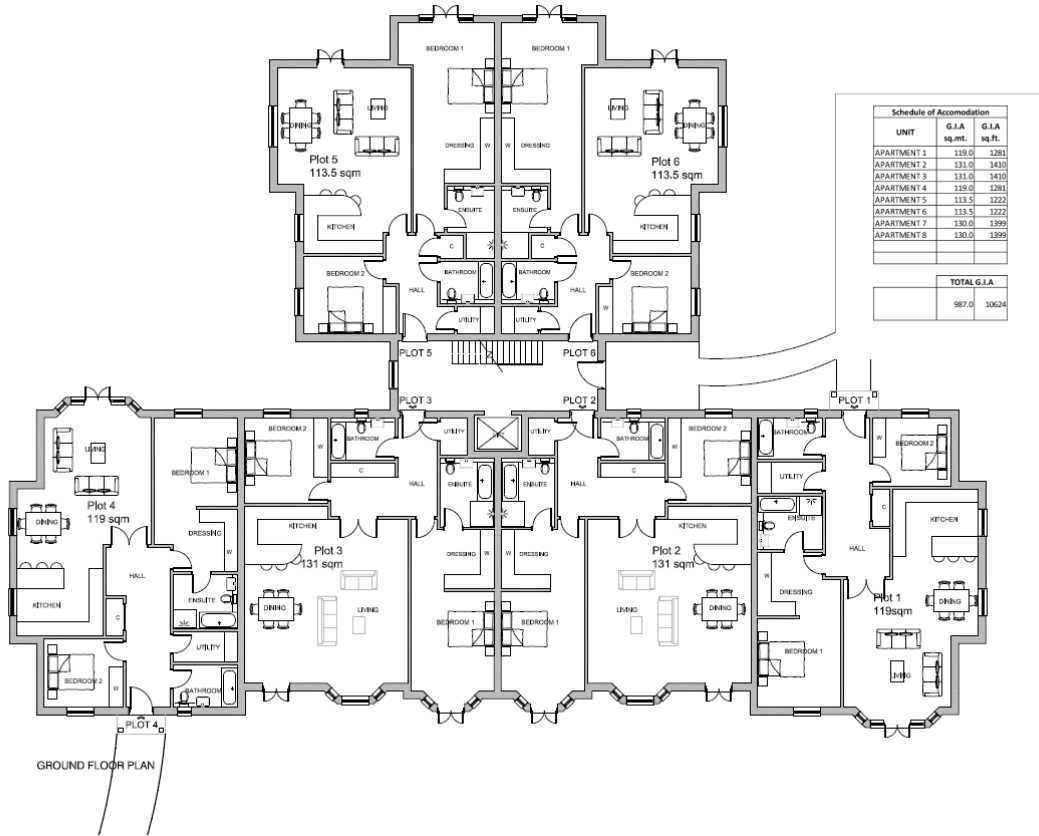
0 1 2 3 4m 5 6 7 8 10  
SCALE 1:100

A	08-03-18	UNITS 9 & 10 REMOVED
FOR COMMENT 08-03-18		
 <b>ASCOT DESIGN</b> <i>Timeless architecture</i> <small>Ascot Design Ltd, Buntingford Road, 200 High Street, Ascot, Berkshire, SL1 7YJ          Tel: 01344 895500, Fax: 01344 895501, Email: info@ascotdesign.com          www.ascotdesign.com</small>		
Client: <b>LAIMOND PROPERTY INVESTMENT CO. LTD &amp; CONSERO LONDON</b>		
Project No: <b>BLUEBELLS RESTAURANT LONDON ROAD, SUNNINGDALE</b>		
Drawings No: <b>ELEVATIONS</b>		
Scale: 1:100 @ A1	Date: JUNE '17	Drawn: DQ
Project No: <b>16-P1306 - 203</b>	Sheet: <b>A</b>	

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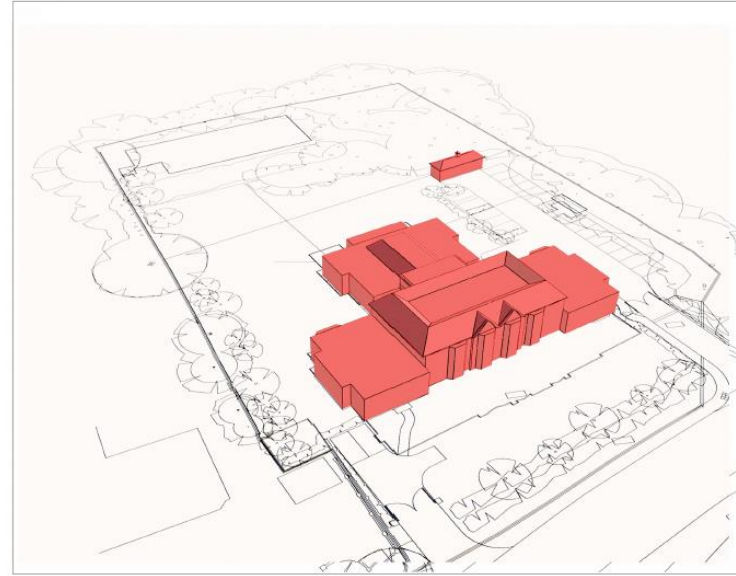
Appendix D – Proposed floorplans

26

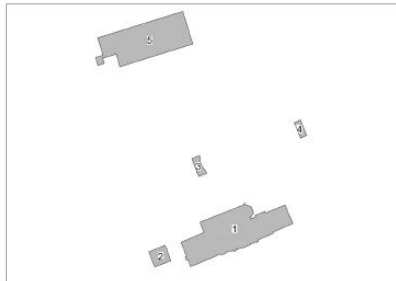


Appendix D – Volume comparison

27



EXISTING VOLUME SCHEDULE	
BUILDING 1 -	1974.0 m <sup>3</sup>
BUILDING 2 -	144.9 m <sup>3</sup>
BUILDING 3 -	49.1 m <sup>3</sup>
BUILDING 4 -	37.8 m <sup>3</sup>
BUILDING 5 -	2043.0 m <sup>3</sup>
<b>TOTAL -</b>	<b>4248.8 m<sup>3</sup></b>



PROPOSED VOLUME SCHEDULE	
MAIN BUILDINGS -	4035 m <sup>3</sup>
CYCLE STORE -	63 m <sup>3</sup>
<b>TOTAL -</b>	<b>4098 m<sup>3</sup></b>

 <p><b>ASCOT DESIGN</b> Timeless architecture</p> <p><small>Ascot Design Ltd. Bedford Square 39-51 High Street Reading RG1 1HT Tel: 01344 399222 Fax: 01344 399221 Email: info@ascotdesign.com www.ascotdesign.com</small></p> <p><small>The copyright in this document and design is confidential to and the property of Ascot Design Limited</small></p>	<p><b>PLANNING APPLICATION SET</b></p> <p><b>LAIMOND PROPERTY INVESTMENT CO.LTD &amp; CONSERO LONDON</b></p> <p><b>BLUEBELLS RESTAURANT LONDON ROAD, SUNNINGDALE</b></p>	<p>Rev: C Date: 12.03.18 Issue: VOLUME REDUCED</p> <p><b>VOLUME COMPARISON</b></p> <p>Scale: not to scale @ A3 Date: NOV'16 Drawn: JP</p> <p>Drawing No: 16-P1306-500 Rev: C</p>
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## WINDSOR RURAL DEVELOPMENT CONTROL PANEL

30 May 2018

Item: 2

<b>Application No.:</b>	18/00346/FULL
<b>Location:</b>	3 Hermitage Drive Ascot SL5 7LA
<b>Proposal:</b>	Two storey front/side extension, single storey rear extension and new first floor front and side windows, alterations to entrance and fenestration.
<b>Applicant:</b>	Ashton Hawthorne
<b>Agent:</b>	Mr Anthony Richardson
<b>Parish/Ward:</b>	Sunninghill And Ascot Parish/Ascot And Cheapside Ward
<b>If you have a question about this report, please contact:</b> Harrison Moore on 01628 796070 or at harrison.moore@rbwm.gov.uk	

### 1. SUMMARY

- 1.1 The proposal was originally for a much larger two storey front/side extension however, the plans have now been amended to include a single storey front extension, a smaller two storey front/side extension and a single storey rear extension.
- 1.2 Given the amendments that have been made officers consider that the scheme respects the character and appearance of the host property and would not cause harm to the character and appearance of the area. Furthermore there would be no significant impact on neighbouring amenity or trees.

**It is recommended the Panel grants planning permission with the conditions listed in Section 9 of this report.**

### 2. REASON FOR PANEL DETERMINATION

- At the request of Councillor Hilton. I have been asked by the Sunninghill and Ascot Parish Council to call this application in on their behalf. The Planning Committee object to the application on the following grounds. The proposal is an overdevelopment of the site, with the proposed roofscape being detrimental to the street scene, thus contrary to Neighbourhood Plan Policies NP/DG2.2 and NP/ DG3.1 and Local Plan Policy H14.

### 3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 3.1 The application site is located in Ascot on the south side of the cul-de-sac of Hermitage Drive. The site comprises of an approximately 22.5 metre deep rear garden and an existing large detached dwelling set approximately 15 metres back from the edge of the road. The dwelling's principal elevation faces north and the property has a south facing rear garden. The dwelling benefits from a semi-circular driveway, low bushes to the front, the west boundary is separated by a 2 metre fence whereas the east boundary is characterised by a mixture of trees, bushes and an approximate 1 metre high fence.
- 3.2 There is a nearby TPO area (14year: 2014 status: Active) that runs covers the rear garden of Five Tree Cottages sited to the rear. The existing street scene of Hermitage Drive is characterised by large detached dwellings of predominately red brick and tile and some partial white painted brick, with the exception of the host dwelling which is a mixture of white render and timber panels. The properties on Hermitage Drive are large detached dwellings but there is no real consistency in the form and siting within the street scene.

#### 4. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY

4.1 The application was originally for a much larger two storey front/side extension. The plans have been amended several times to reduce the size of the proposal and make improvements to the overall design quality. The proposed development now consists of a part 2 storey part single storey front/side extension and a small single storey rear extension.

4.2 The proposed materials are to match the host dwelling and are not necessarily in keeping with neighbouring properties within the locality.

4.3

Ref.	Description	Decision and Date
03/84575/FULL	Erection of front and first floor extension to garage and single storey extension to rear of garage.	Refused: 21.01.2004
13/00726/FULL	Front extension to garage with first floor extension over and a single storey side/rear extension.	Permitted: 24.04.2013
13/01882/FULL	Front extension to garage with first floor extension over and a single storey side/rear extension.	Permitted: 15.08.2013
13/02911/FULL	Front extension to garage with first floor extension over and a single storey side / rear extension, together with changes to the materials on the existing dwelling.	Permitted: 13.11.2013

#### 5. MAIN RELEVANT STRATEGIES AND POLICIES RELEVANT TO THE DECISION

5.1 National Planning Policy Framework Sections.

##### **Royal Borough Local Plan (2003)**

5.2 The main strategic planning considerations applying to the site and the associated policies are:

	Within settlement area	Highways and Parking
Local Plan	DG1, H14	P4

These policies can be found at:

[https://www3.rbwm.gov.uk/downloads/download/154/local\\_plan\\_documents\\_and\\_appendices](https://www3.rbwm.gov.uk/downloads/download/154/local_plan_documents_and_appendices)

The Ascot, Sunninghill and Sunningdale Neighbourhood Plan was made part of the Development Plan in April 2014 and all relevant planning decisions should be made in line with this plan. As such it is afforded full weight when determining planning applications. The policies considered as part of this application are as follows:

- Policy NP/DG2 – Density, footprint, separation, scale, bulk
- Policy NP/DG3 – Good quality design

## Borough Local Plan: Submission Version

5.3

Issue	Local Plan Policy
Design in keeping with character and appearance of area	SP2, SP3

The NPPF sets out that decision-makers may give weight to relevant policies in emerging plans according to their stage of preparation. The Borough Local Plan Submission Document was published in June 2017. Public consultation ran from 30 June to 27 September 2017. Following this process the Council prepared a report summarising the issues raised in the representations and setting out its response to them. This report, together with all the representations received during the representation period, the plan and its supporting documents have now been submitted to the Secretary of State for examination. The Submission Version of the Borough Local Plan does not form part of the statutory development plan for the Borough. However, by publishing and submitting the Borough Local Plan for independent examination the Council has formally confirmed its intention to adopt the submission version. As the Council considers the emerging Borough Local Plan to be sound and legally compliant, officers and Councillors should accord relevant policies and allocations significant weight in the determination of applications taking account of the extent to which there are unresolved objections to relevant policies. Therefore, the weight afforded to each policy at this stage will differ depending on the level and type of representation to that policy. This is addressed in more details in the assessment below.

Significant weight is to be accorded to Borough Local Plan Submission Version policies SP2 and SP3 in this case. The above application is considered to comply with the relevant policies listed within the Development Plan and those Borough Local Plan Submission Version policies to which significant weight is to be accorded.

### Supplementary planning documents

5.4 Supplementary planning documents adopted by the Council relevant to the proposal are:

- Appendix 12 – House Extensions

More information on this document can be found at:

[https://www3.rbwm.gov.uk/info/200414/local\\_development\\_framework/494/supplementary\\_planning](https://www3.rbwm.gov.uk/info/200414/local_development_framework/494/supplementary_planning)

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### Other Local Strategies or Publications

5.5 Other Strategies or publications relevant to the proposal are:

- RBWM Landscape Character Assessment – view at:
- RBWM Parking Strategy – view at:

More information on these documents can be found at:

[https://www3.rbwm.gov.uk/info/200414/local\\_development\\_framework/494/supplementary\\_planning](https://www3.rbwm.gov.uk/info/200414/local_development_framework/494/supplementary_planning)

## 6. EXPLANATION OF RECOMMENDATION

6.1 The key issues for consideration are:

- i Whether the principle of the development in this location is acceptable;
- ii The visual impact of the proposal on the character and appearance of the host dwelling and existing street scene;

- iii The impact to neighbouring amenity;
- iv Trees
- v Parking provision;

### **The principle of development**

- 6.2 The application site is located within a developed area of Ascot, wherein the principle of development is acceptable.

### **Visual Impact**

- 6.3 The appearance of a development is a material planning consideration and the National Planning Policy Framework, Section 7 (Requiring Good Design), Local Plan Policy DG1, Ascot, Sunninghill and Sunningdale Neighbourhood Plan policies NP/DG2 & NP/DG3 and emerging Borough Local Plan (Submission 2017) policy SP3 advises that all development should seek to achieve a high quality of design.
- 6.4 The proposal includes a two storey front/side infill extension that would be located between an existing side and front elevation, it would have an eaves height of 4.80 metres and an overall height of 6.90 metres, a length and depth of approximately 5 metres with the addition of a single storey pitched roof porch to the front elevation with a depth of 1.4 metres. The proposed single storey rear extension would also have a pitched roof with a depth of 3 metres.
- 6.5 The existing street scene of Hermitage Drive is characterised by large detached dwellings of predominately red brick for the ground floor walls and reddish-brown vertical tile-hanging finish at first floor level. The exception on Hermitage Drive is the host dwelling which is a mixture of white render and timber panels. The proposed materials are to match the existing dwelling.
- 6.6 The proposed form and design of the works would respect the host dwelling and would not look out of keeping within the application site. The works would result in the dwelling becoming one of the largest on Hermitage Drive but due the front/side extension's siting and position set back from the road, it is considered that the proposed extension would respect the existing street scene and would not be overly dominant or over bearing.
- 6.7 Additionally, as the proposed two storey front/side extension would be in an infill location between an existing front and side elevation it would not add significant bulk that would detract from the overall character and appearance of the host dwelling. The proposed two storey front/side extension would be lower than the existing highest ridge heights and would not be a bulky or unbalanced addition among the existing roofscape. The original plans have been amended to show the proposed single storey front extension to have a pitched roof which would be more in keeping with the type of entrance finishing on Hermitage Drive.
- 6.8 The proposed single storey rear extension would be located to the rear of No. 3 Hermitage Drive and would not be highly visible when viewed from the public realm, as such the proposed rear extension would not have a detrimental impact on the existing street scene
- 6.9 The type of finishing and fenestration proposed would not necessarily be in keeping with the character of the rest of Hermitage Drive but taking into consideration the existing appearance of No.3, the proposed alterations to fenestration are considered to respect the existing character and appearance of the host dwelling.
- 6.10 The proposed works would introduce a new roof form to the existing dwelling that would obscure a large part of the existing roof form and it would be seen to be in keeping with existing dwelling as such there would not be a detrimental impact to the street scene. The proposal is considered to respect the appearance and design of the host dwelling and the appearance and character of the street scene would not be harmed.

## **Neighbour amenity**

- 6.11 The amended plans changing the 2 storey rear extension to a single storey was requested by officers in order to prevent the development from having an overbearing and intrusive impact on No.1 Hermitage Drive, given the extensions proximity to the boundary and the fact that most of the rear garden of No.1 Hermitage Drive would be facing 2 storey built form. The siting of the front/side extension would be partially screened from No.1 Hermitage Drive by an existing garage and the extension is also set away at an angle to no 1 Hermitage Drives house and rear garden. Given this off set and the fact that currently the view is of the built form of the side of the application property, albeit further away, the proposal is not considered to have an overbearing impact or result in an unacceptable loss of light to the amenities of No 1. Hermitage Drive.
- 6.12 Taking the above into account and the most recent set of amended the plans, it is considered that the works would not result in a significant loss of outlook, or have an overbearing impact or result in loss of sunlight that could warrant refusal of this application.
- 6.13 The proposed works are sited on the west side of the property away from No. 5 Hermitage Drive and would not have a significant impact to the neighbouring amenity of No.5 which lies to the east.
- 6.14 The proposed works would result two first floor side windows sited closer to No.1 Hermitage Drive these windows could result in overlooking. To mitigate this harm a condition is recommended that they are both obscure glazed and non-opening design, with the exception of an opening toplight that is a minimum of 1.7m above the finished internal floor level. (See condition 3). Subject to this condition it is considered that there would be no significant harm caused to the immediate neighbouring properties in terms of loss of privacy, outlook, daylight, sunlight or otherwise.

## **Trees**

- 6.15 The single storey rear extension is of a sufficient distance away so that there would be no detrimental impact on the TPO trees sited in the neighbouring rear property Five Trees.

## **Parking**

- 6.16 The proposed works would not result in any additional bedrooms. The resultant dwelling would still benefit from a semi-circular parking area that provides 3 car parking spaces and a double garage. As such, sufficient space would remain on the site to accommodate the car parking for the resulting dwelling in compliance with the adopted parking standards in Appendix 7 of the Local Plan as amended by the Royal Borough of Windsor and Maidenhead Parking Strategy, May 2004.

## **Other Material Considerations**

### **7. CONSULTATIONS CARRIED OUT**

#### **Comments from interested parties**

5 occupiers were notified directly of the application.

The planning officer posted a statutory notice advertising the application at the site on 21<sup>st</sup> February 2018.

3 letters were received objecting to the application, summarised as:



Comment		Where in the report this is considered
1.	The Proposed Ground Floor plan is not present. The rectangular building between number 1 and 3 is shown on the location plan as belonging to number 3 - this is part of number 1's property.	The plan has been updated with the submission of the amended plans.
2.	Number 1 and the large house are 19 <sup>th</sup> century buildings and remaining houses are 1970s in keeping with style of the area, the exception is 3 Hermitage Drive that has been previously extended and style changed. It is hoped the dwelling is in keeping with Parish's neighbourhood plan, in relation to consistency of style and the impact on the look and feel of the immediate area; including trees and replacement thereof, size of the property, footprint and massing of the property.	See sections 6.3 -6.10
3.	The proposal shows an elevation to the west of the property indicating an edifice that would be a large, white mass close to our property where three of our bedrooms would be much closer than at present – a bedroom could be overlooked. The view upon entry of the road would reveal a white wall with few windows to break up façade. At present, the white façade is staggered and broken by cedar cladding, ameliorating the view. The plans indicate a window in an upper floor lounge area that would overlook our garden on the south east of our property.	See sections 6.3 -6.10
4.	The entire property would result in a disproportionately large and bland appearance, further out of keeping with the properties in the road.	See sections 6.3 -6.10
5.	The property has been extended within the last five years and that the proposed extension would increase the size yet again, in this case by some 20%. We have not been able to readily calculate the increase from the original; more than likely exceeds the normal 50% recommendation.	The proposal in combination with previous extensions are considered acceptable
6.	Previous work changed the cladding from brick and tile in original submissions to the current white façade, resulting in radical change of style. Current submission would exacerbate this change.	See sections 6.3 -6.10
7.	Several mature trees have been removed from this and its adjacent property (number 5). Green frontages of numbers 3,5 & 7 have reduced a great deal over the last ten years and hedges have been removed between properties. None of the trees have been replaced as is suggested in the Neighbourhood Plan. These areas have been extensively paved. The lowest section of Hermitage Drive accumulates a great deal of water and the run-off from these paved areas contributes to the flooding between numbers 3 and 4. Such an extension would reduce the ability to soak-away ground water further.	The application does not include the loss of any trees and ensures that TPO trees are not lost. The application site is not located within a Flood Zone 2 or 3, as such does not need to comply with Flooding policy. Building regulations covers the necessary soakaways required.

8.	We have seen a reduction in wildlife; a family of hedgehogs no longer visit us and we have had no recent sightings of the bats that used to frequent our property.	This proposal does not directly relate to the loss of any protected species. Any impact on biodiversity would be minimal.
9.	The latest plans show that the extensions, front and back, are similar to those first submitted, but effectively 'slid' backwards by three metres. This will have minimum effect on the size of the development and its roofscape; we still consider it to be an overdevelopment of the site. However, it now proposes a large change to the rear of the property ~ in essence a monolithic slab that we estimate would encroach a metre or so from the fence dividing the properties. In addition this would dramatically reduce the light that reaches our garden, being 7.765 metres tall and an added 3 metre in length.	The rear extension has been amended so that it is only single storey and the front/side extension reduced in size also.
10.	The proposed rear extension would extend beyond the RHS of the climbing frame in our rear garden. The proposed extension to the front extends to the left some eight metres.	See sections 6.11 – 6.14
11.	At present, the garden benefits from clear sunlight in the mornings and light & views of the sky. These would be badly affected were the rear extension to be built.	See sections 6.11 – 6.14. There is no right to a view in planning law.
12.	According to the revised plan, the extension will present a plain white façade extending as far as the 'middle' section. Our understanding is that the current cedar cladding was suggested by the Parish Council to enhance the rather stark image. The extension's roof would be a lower level than those extant. We believe that this would yield an unbalanced and inelegant configuration, out of keeping with the neighbouring properties.	The middle section would not be highly visible from the public realm and as such would not have a detrimental impact to the street scene

### Statutory consultees

Consultee	Comment	Where in the report this is considered
Sunninghill & Ascot Parish Council	Objections on the grounds of overdevelopment of the site, with the proposed roofscape being detrimental to the street scene, thus contrary to Neighbourhood Plan Policies NP/DG2.2 and NP/ DG3.1 and Local Plan Policy H14. The committee requested that the application was called in front of the Windsor Rural Development Management Panel should the Borough be minded to approve it.	See sections 6.3 – 6.10

## Other consultees and organisations

Consultee	Comment	Where in the report this is considered
Society for the Protection of Ascot & Environs (SPAЕ)	Consulted, no response.	Noted.
Ascot, Sunninghill and Sunningdale Neighbourhood Plan Delivery Group	Consulted, no response.	Noted.

## 8. APPENDICES TO THIS REPORT

- Appendix A - Location Plan
- Appendix B – Block Plan
- Appendix C – Existing Plans
- Appendix D – Proposed Plans

Documents associated with the application can be viewed at <http://www.rbwm.gov.uk/pam/search.jsp> by entering the application number shown at the top of this report without the suffix letters.

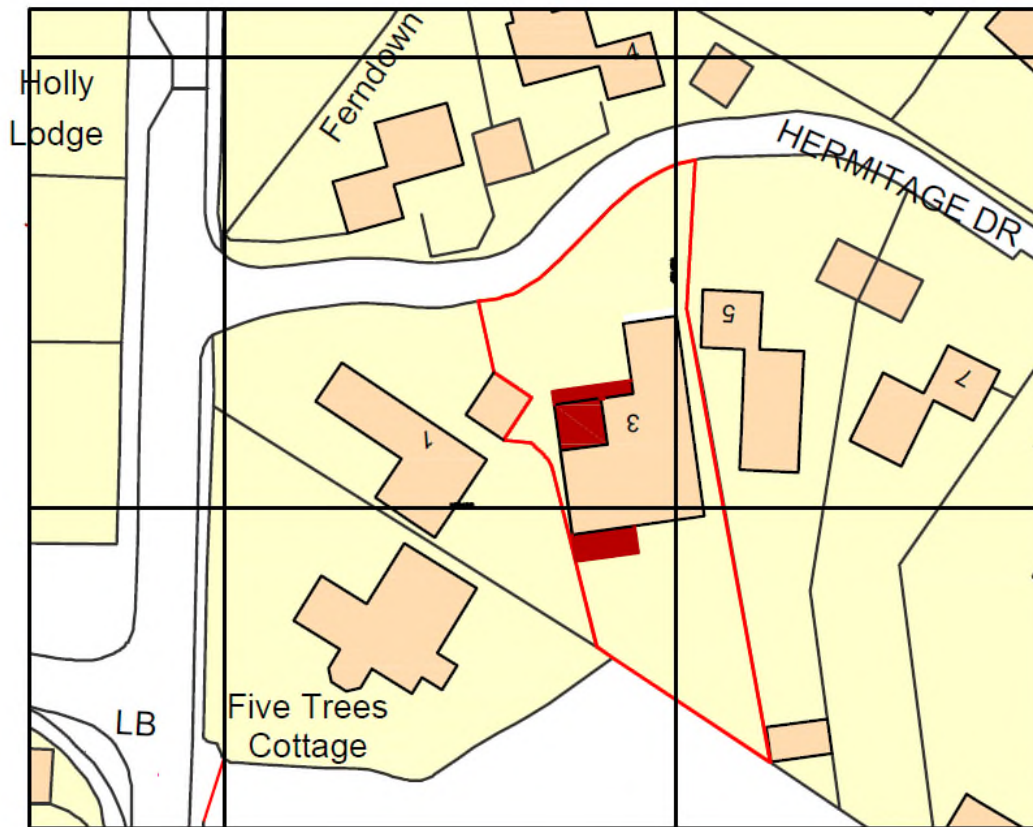
This recommendation is made following careful consideration of all the issues raised through the application. The Case Officer has sought solutions to these issues where possible to secure a development that improves the economic, social and environmental conditions of the area, in accordance with NPFF.

In this case the issues have been successfully resolved.

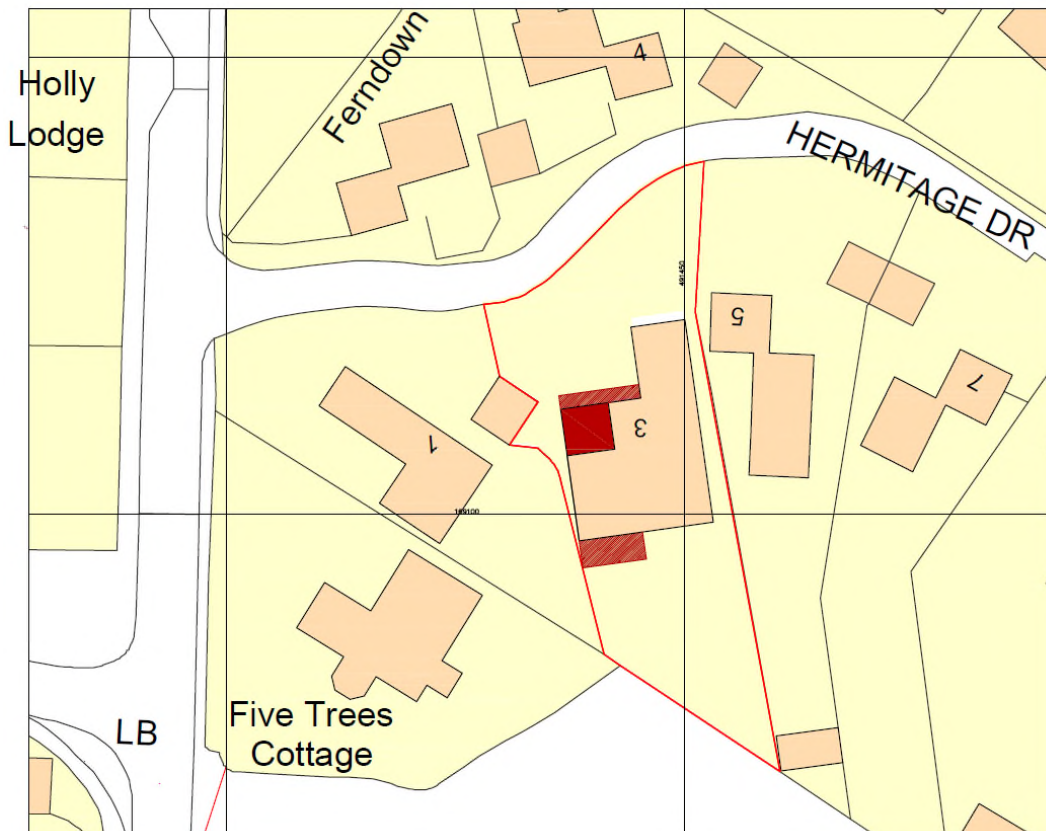
## 9. CONDITIONS RECOMMENDED FOR INCLUSION IF PERMISSION IS GRANTED

- 1 The development hereby permitted shall be commenced within three years from the date of this permission.  
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 The materials to be used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwelling house unless first otherwise agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.  
Reason: In the interests of the visual amenities of the area. Relevant Policies - Local Plan DG1
- 3 The first floor window(s) in the west elevation(s) of the extension shall be of a permanently fixed, non-opening design, with the exception of an opening toplight that is a minimum of 1.7m above the finished internal floor level, and fitted with obscure glass and the window shall not be altered without the prior written approval of the Local Planning Authority.  
Reason: To prevent overlooking and loss of privacy to neighbouring occupiers. Relevant Policies - Local Plan H14.
- 4 The development hereby permitted shall be carried out in accordance with the approved plans listed below.  
Reason: To ensure that the development is carried out in accordance with the approved particulars and plans.

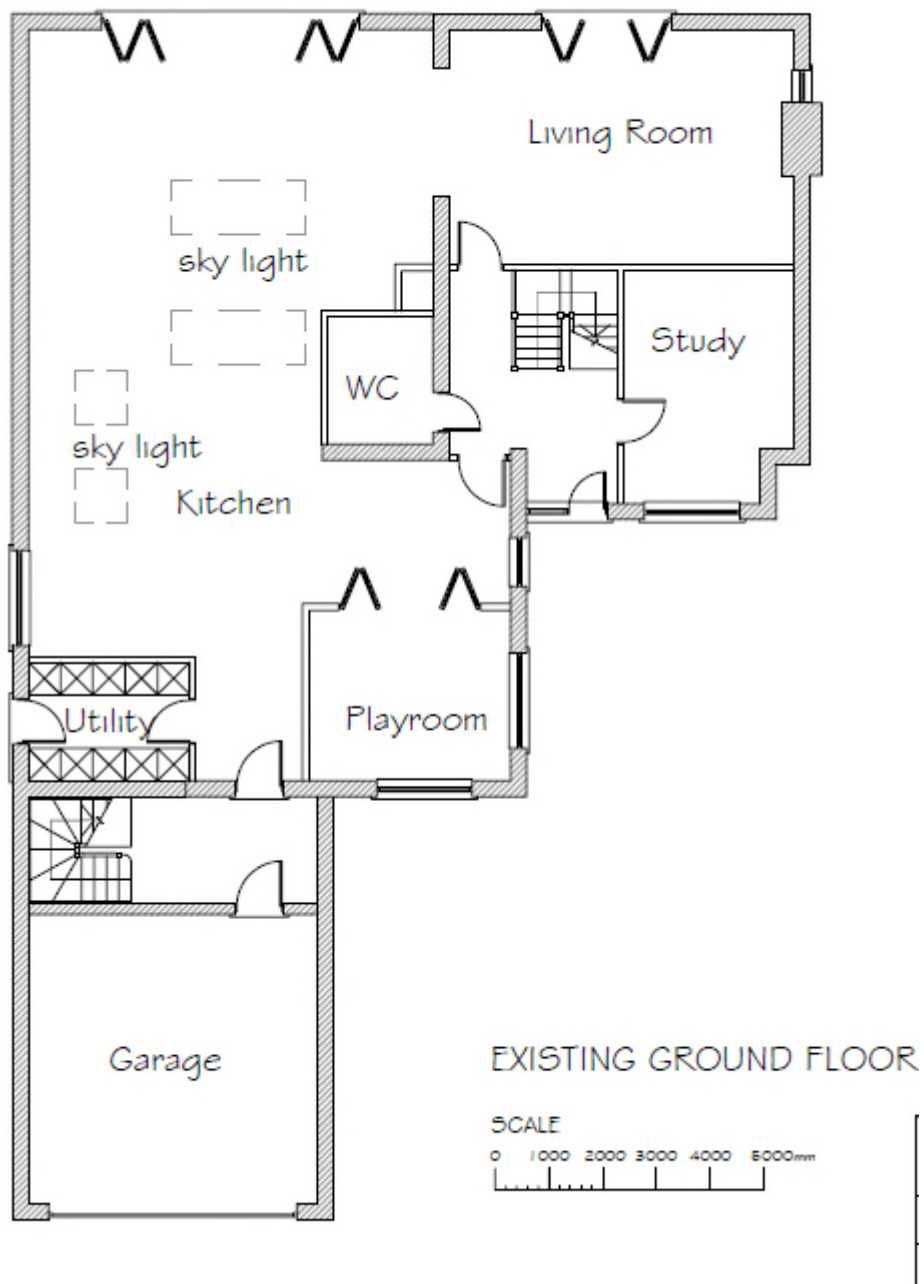
Appendix A – Location Plan



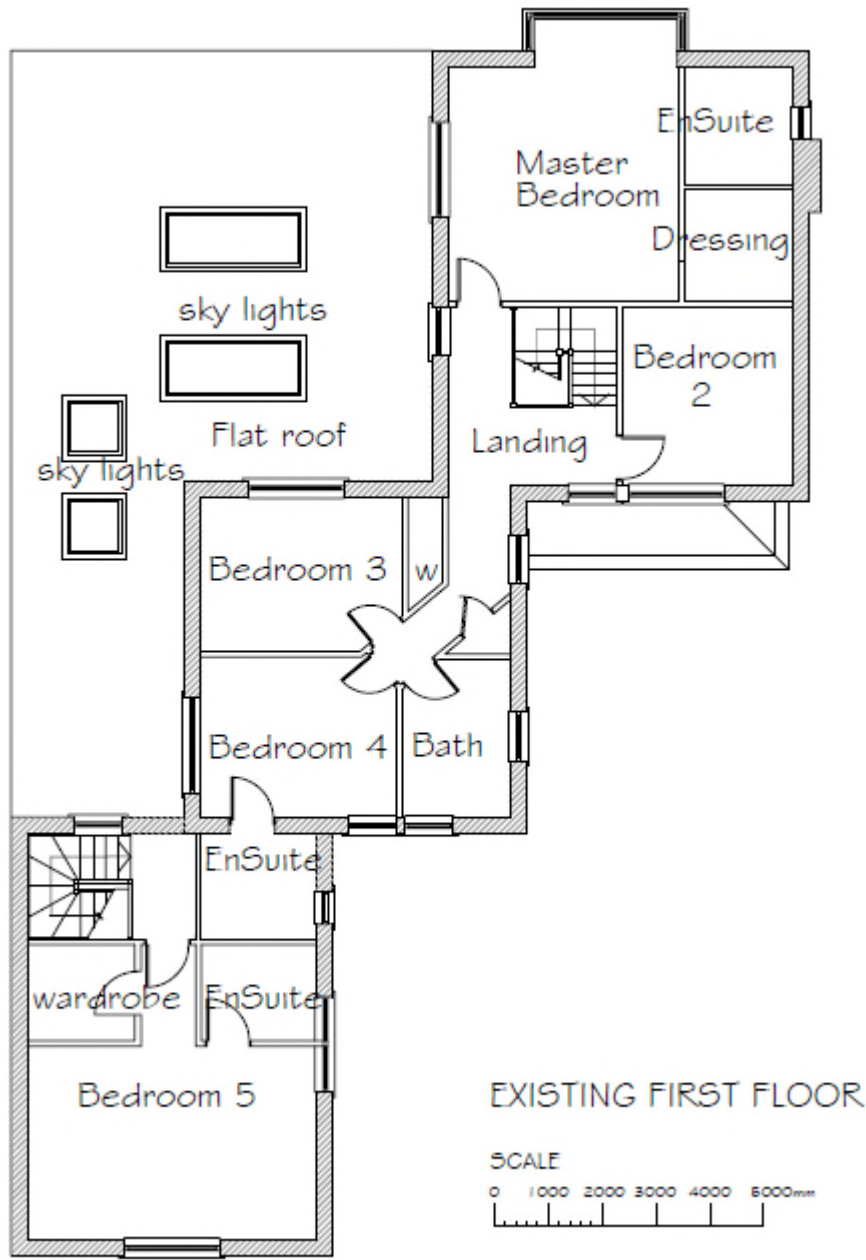
Appendix B – Block Plan

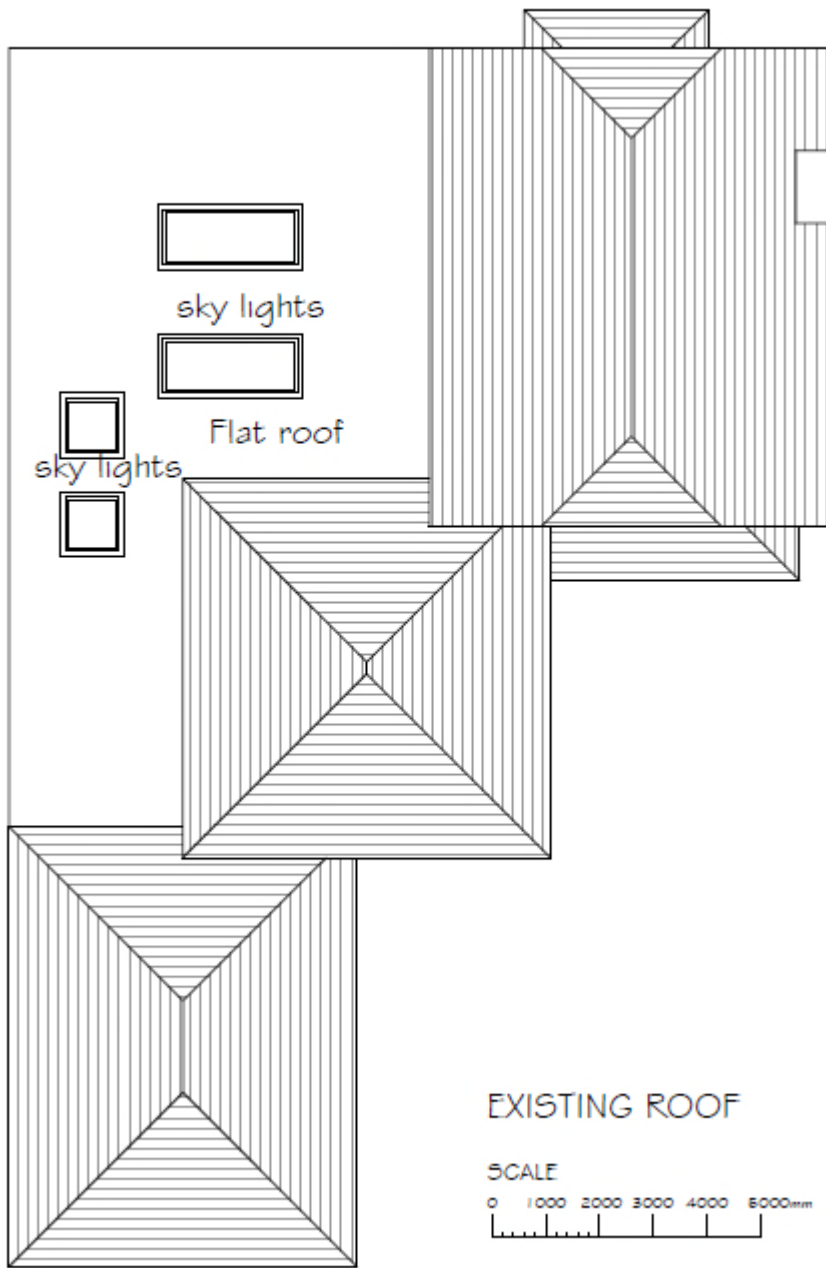


Appendix C- Existing plans



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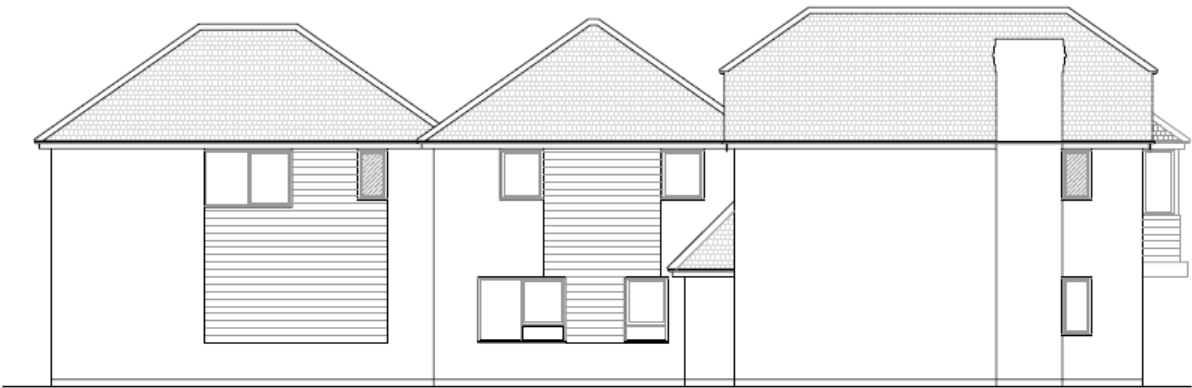
EXISTING REAR ELEVATION



EXISTING FRONT ELEVATION

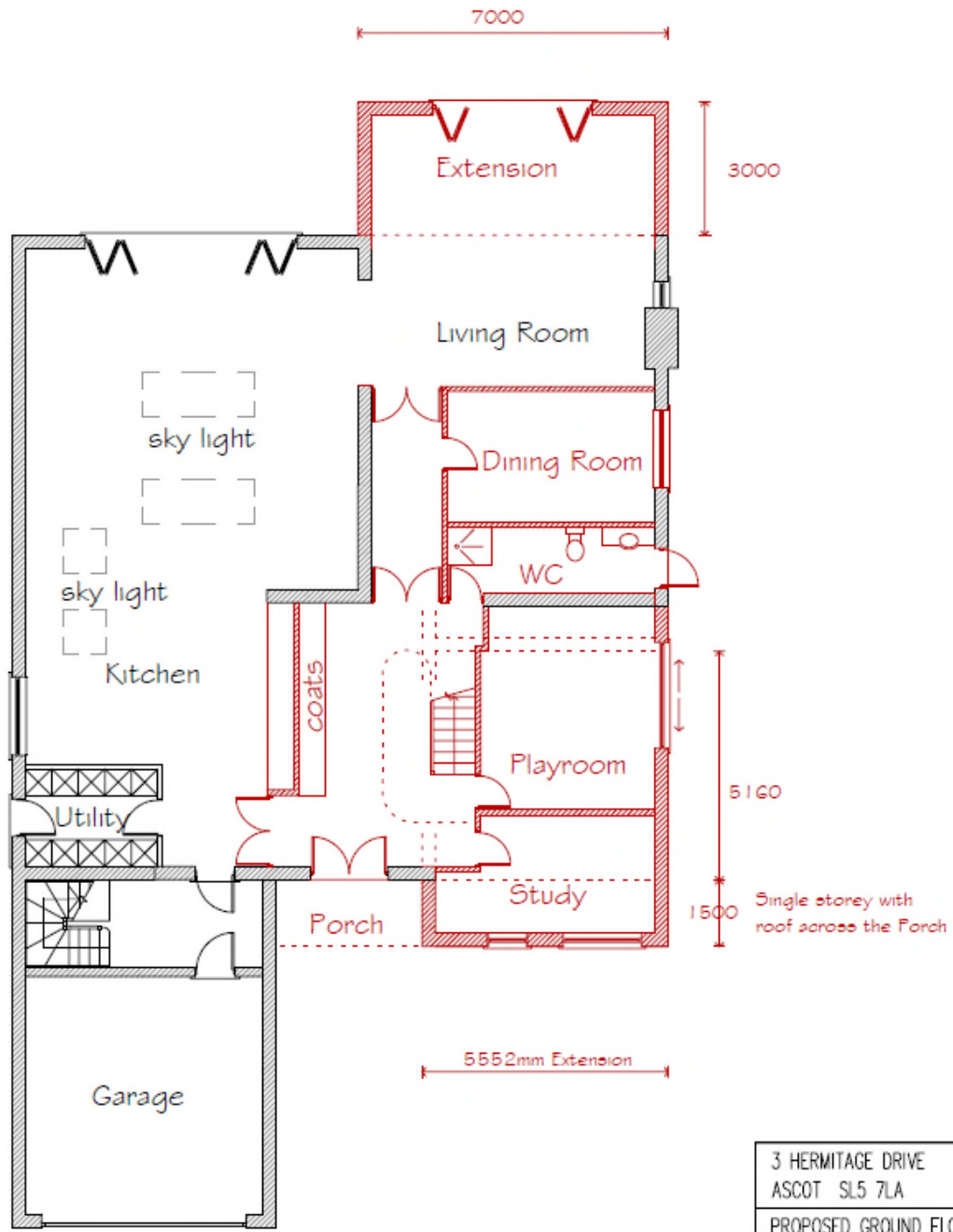


EXISTING EAST ELEVATION

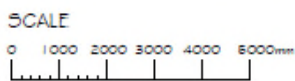


EXISTING WEST ELEVATION

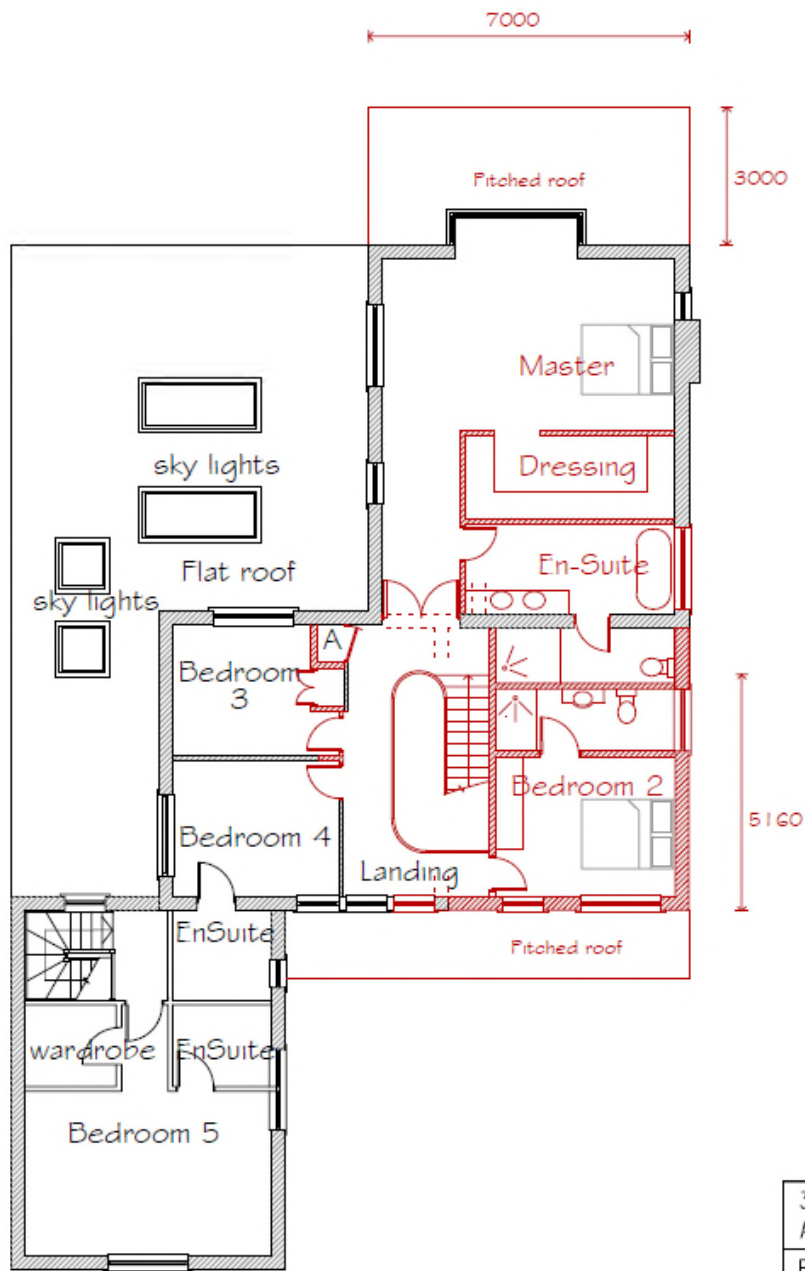
Appendix C – Proposed Plans



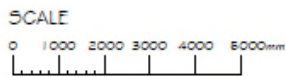
PROPOSED GROUND FLOOR



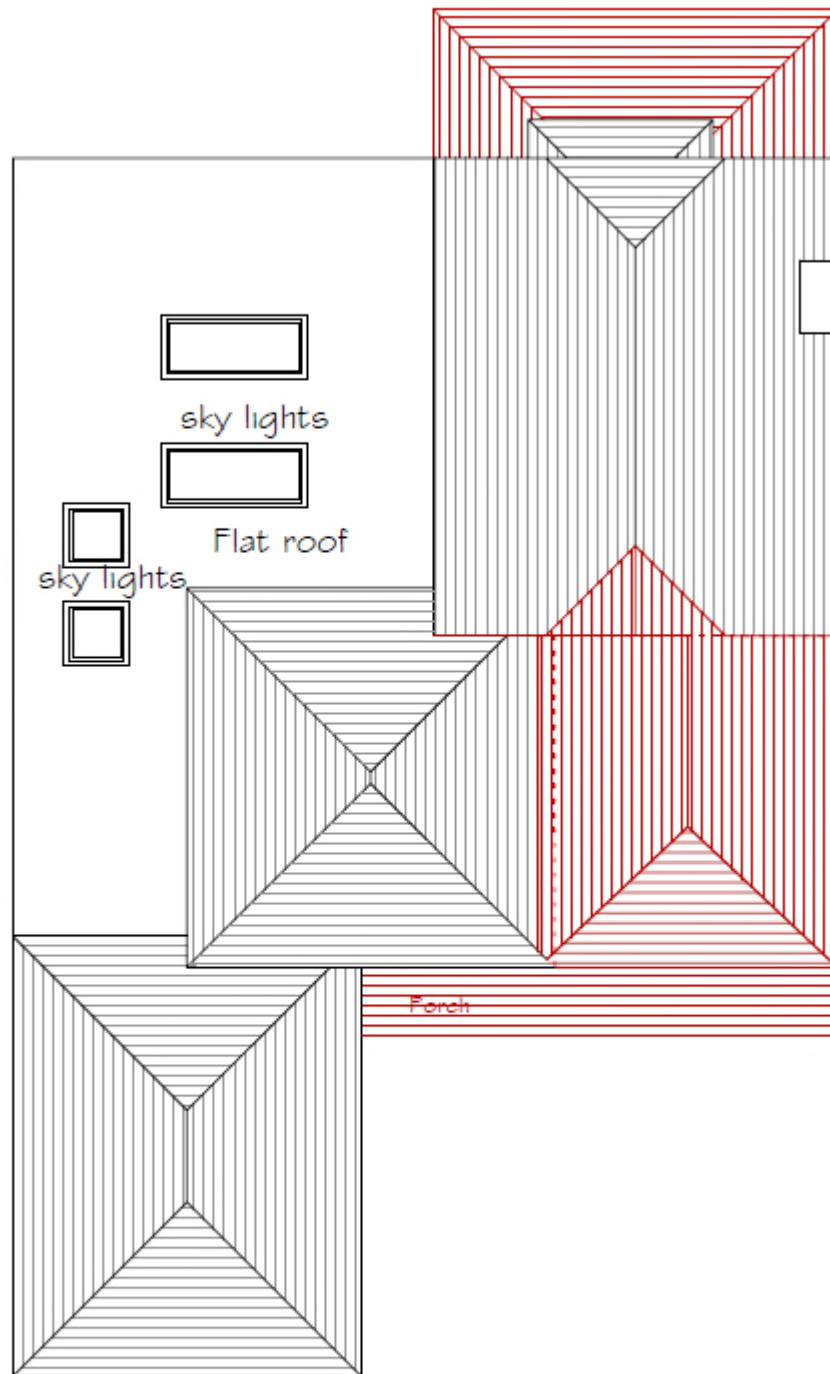
3 HERMITAGE DRIVE ASCOT SL5 7LA	
PROPOSED GROUND FLOOR	
SCALE: A3 1:100	DRG No. 3HD-05G
A RICHARDSON, ARCHITECT 07860 919562	



PROPOSED FIRST FLOOR



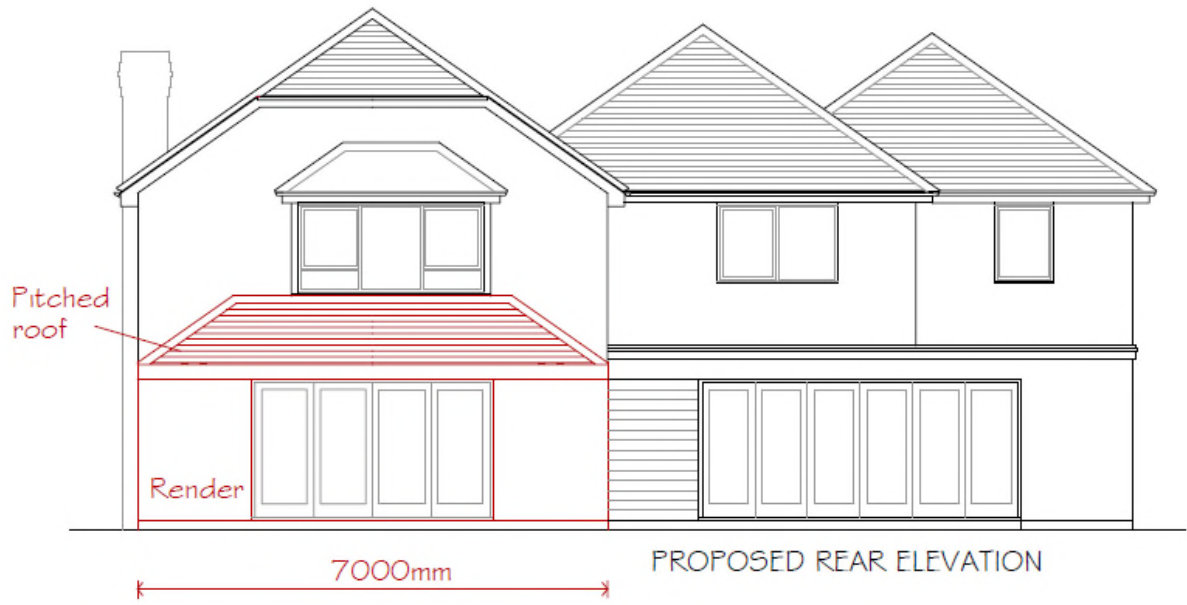
3 HERMITAGE DRIVE ASCOT SL5 7LA	
PROPOSED FIRST FLOOR	
SCALE @ A3 1:100	DRG No. 3HD-06K
A RICHARDSON, ARCHITECT 07860 919562	

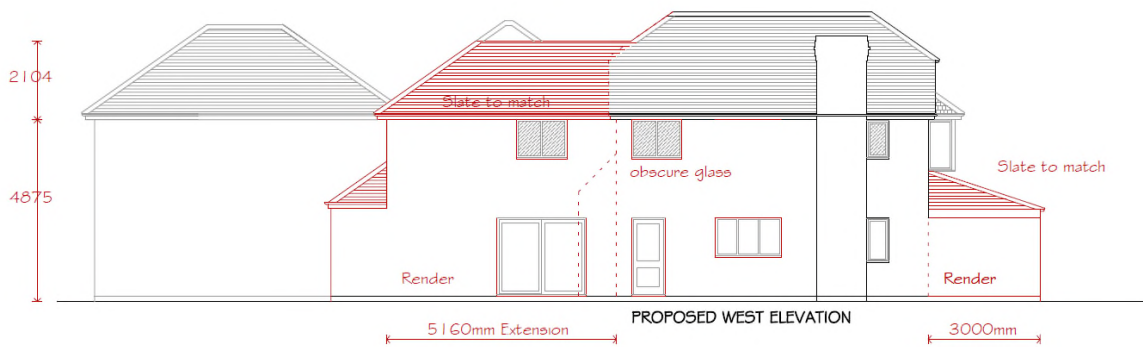


## PROPOSED ROOF

SCALE

0 1000 2000 3000 4000 5000mm





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## **Enforcement report for consideration by members**

**LAND AT HYTHE END FARM,  
HYTHE END ROAD,  
WRAYSBURY**

## **1. SUMMARY**

1.1 Following legal advice sought by the Local Planning Authority (LPA) it is now necessary to consider if lawful development certificate 97/75746 should be revoked and if it is expedient to give further consideration to the alleged intensification of the use of the site. This report sets out a detailed history of this matter and also presents the options available to the Council in respect of these matters.

## **2. RECOMMENDATION**

1. Not to pursue the revocation of the Lawful Development Certificate dated 9 September 1998 and granted under reference 97/75746
2. Not to give further consideration to the case of intensification in the use of the site and thus not to serve an Enforcement Notice in relation to that allegation

## **3. INTRODUCTION**

- 3.1 The site operates as a waste processing centre under the name of Fowles Crushed Concrete Limited (FCC) and Fowles Property Limited (FPL). It was acquired in March 2015, when FPL purchased the freehold of the entire site and FCC took exclusive possession of the planning unit under an informal tenancy agreement. It was previously occupied by Charles Morris Fertilisers (CMF) who let the inner part of the site to Carcarc Limited. Carcarc went into liquidation in 2012 and in February 2013 FCC took a lease over the same part of the site that was previously occupied by Carcarc.
- 3.2 In 1998, when the site was operated by CMF, a Certificate of Lawful Use was granted certifying that the 'storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery' on land identified in the certificate was lawful. The certificate was granted with notes attached clarifying that the certificate was issued for the purposes of s191 of the 1990 Act, that it certifies the lawfulness of the described use on the identified land, and that it is limited to the extent of the development described in the application and to the land shown on the attached plan.
- 3.3 The Hythe End Road Association, a group of residents that live in close proximity to the Land, is concerned that the Certificate was granted on evidence that was false and has sought legal advice to ascertain if there is sufficient evidence to warrant the revocation of the Certificate.
- 3.4 Residents also allege that there has been a material change of use at the site on the grounds of intensification and they would like the LPA to initiate formal enforcement action in respect of this alleged breach of planning control.
- 3.5 This report will set out the options available to the Council in respect of both of these issues. It will deal with the issues separately and incorporate the legal advice that has been sought to inform these decisions.

## 4. THE SITE AND SURROUNDINGS

- 4.1 The site covers an area of some 7.6 hectares and is located on the east side of Hythe End Road. It operates as a waste processing centre, that stores and processes waste building materials, timber and associated plant and machinery.
- 4.2 The site is almost totally enclosed by a bund and is screened in views along Hythe End Road by the bund and hedgerow trees. Additionally it is located within the Green Belt and an area liable to flood (Flood Zone 3 and 3b). The surrounding area comprises a mix of fields and residential properties. The site is accessed via a track that runs through land to the west of Hythe End Road, starting on Feathers Lane.

## 5. RELEVANT PLANNING AND ENFORCEMENT HISTORY

### Planning History

Under application 97/75746 a certificate of lawfulness was granted which detailed the *'storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery'*. The Certificate was dated 9 September 1998, and a copy is attached to this report.

### Enforcement History

**15/50341/ENF-** Formation of hardstanding and weighbridge and erection of building used to maintain plant and machinery on site.

Retrospective planning applications were submitted in 2016 in an attempt to regularise these matters. The relevant application numbers and the description of development detailed within each application is outlined below:

16/02366/FULL - Detached building for the maintenance of plant and machinery associated with the storage before and after processing and processing of waste materials which is the subject of a Certificate of Lawful Use dated 9 September 1998 (retrospective).

16/01725/FULL- Replacement concrete surfacing associated with the lawful storage and processing of waste material, with associated drainage infrastructure and access ramps (part retrospective).

These applications are pending determination as the LPA is waiting for the consultation responses from the Environment Agency before the applications can be determined. As a result the enforcement file is being held in abeyance until these applications are determined.

**16/50274/ENF-** Change of use of the land to a mixed waste transfer station and skip hire business

On the 6th September 2016 an enforcement notice was issued that alleged the material change of use of the land from storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery to a mixed use comprising the storage before and after processing and

processing of excavated/dredged/builders materials, timber with associated plant and machinery and skip hire, skip storage and skip distribution.

The enforcement notice was appealed and the planning inspectorate subsequently allowed the appeal on the 20th June 2017. The notice was based on the use described in the LDC constituting the lawful use of the land, and sought to restore that use through the requirements of the notice by ceasing the skip hire, storage and distribution element of the use.

The Secretary of State concluded that the ground (c) appeal should succeed and the notice was subsequently quashed. A ground (c) appeal is one under section 174(2)(c) of the 1990 Act where it is said that the matters stated in the enforcement notice to be a breach of planning control do not constitute a breach of planning control, that is that they are lawful. Such matters may be lawful for a range of reasons (as set out in section 191(2), because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason). In this case, the Inspector concluded that the use of the site for the business of skip hire, storage and distribution was ancillary to the primary use of the site as defined in the certificate, and that as a matter of fact and degree the use alleged in the notice has not resulted in a material change in the character of the site, which remains as a waste processing centre<sup>1</sup>.

As a result there is an up-to- date decision by the Secretary of State concerning the lawful use of the site.

This appeal decision is now an important record in the planning history of the site. It provides a record of the lawful use on the site at the time the appeal was determined. The LPA relied on the LDC in determining the base use of the site in the appeal and whilst officers disputed the level of use, the base use was not questioned. Indeed, it formed the basis of what the Council considered the lawful use of the site to be.

#### **17/50035/ENF- Raising land levels**

The LPA is awaiting data from the Environment Agency to assess if there has been a breach of planning control.

### **6. REVOCATION OF THE CERTIFICATE OF LAWFULNESS**

6.1 Section 193(7) of the Town and Country Planning act 1990 Act (the Act) details that:

“A local planning authority may revoke a certificate ... if, on the application for the certificate—

(a) a statement was made or document used which was false in a material particular;  
or

(b) any material information was withheld.”

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<sup>1</sup> See paragraph 60 of the decision which follows a lengthy analysis.

- 6.2 The Council has sought advice relating to section 193(7) which advises that a statement or document is false in a “material particular” if it is false in an important respect, in a way which affected the decision to grant the LDC. Where a local planning authority proposes to revoke an LDC on the basis that statements had been made that were false in a material particular, it should identify precisely the statements said to be false in a material particular<sup>2</sup>.
- 6.3 It is also important to keep in mind that the only bases upon which a lawful development certificate can be revoked are those set out in s193(7). There is no legal basis for a general review of the decision to issue the certificate. As Mr Green points out<sup>3</sup>, the consideration is not whether the certificate was issued in error, that inadequate enquiries were made, that vague evidence was accepted or that information obtained after the issue of the certificate casts a different light on events.
- 6.4 The Hythe End Road Association obtained advice from counsel (Mr Mark Beard), who concludes that the requirements of s193(7) of the Act- the provision empowering the LPA to revoke the LDC- are met and that the public interest in maintaining proper and effective planning control justifies commencing revocation.
- 6.5 This opinion focusses on the three statements which are identified by Mr Beard as being false in particular<sup>4</sup>.
- 6.6 The LPA instructed Counsel (Mr Robin Green) to comment on the same point i.e. ‘whether or not either (or both) of the limbs of s193(7) are satisfied by the information provided’ and ‘whether the Council is compelled to exercise its 193 (7) discretion in the way Mr Beard’s opinion indicates’.
- 6.7 In the advice received, Mr Green provides comment on the three statements referred to by Mr Beard. Specifically he states<sup>5</sup>:
- 6.8 ‘Taking all these statements together, what strikes me is how insubstantial they are. Although they are made to support the application for an LDC in respect of the land to the east of Hythe End Road, in the cold light of day they provided, in my opinion, very little evidence that that land was used in any significant way’.
- 6.9 Further to the above, in response to ‘*whether or not either (or both) of the “limbs” of s193 (7) are satisfied by the information provided*’ Mr Green states the following:

*‘Of the three statements on which Mr Beard focuses, the first two are so ambiguous that their falsity is not readily established. If understood as statements relating to land on both the east and west side of Hythe End Road, they are not (on the information available to me) demonstrably false.*

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<sup>2</sup> See paragraph 23 of the advice of Robin Green referring to *R v Epping Forest DC ex p Martin Philcox* [2000] PLCR 57 and *R v Surrey County Council ex p Bridge Court Holdings Ltd* [2000] PLCR 344

<sup>3</sup> See paragraph 25 of his Advice

<sup>4</sup> See paragraph 34 of his Advice

<sup>5</sup> See paragraph 32 of his Advice

*'As to the third statement, for the reasons given in paras 33 and 34 above it may be that the Council could conclude that it was false in a material particular. The information before me does not allow me to go further.*

*'There is no evidence before me that shows that material information was withheld in 1998, but I do not discount the possibility'.*

- 6.10 Officers share the views of Mr Green. Although there are issues of vagueness as to the intensity of the use across the wider site to east and west of Hythe End road there is no consistent body of evidence that shows the statements made to be false on the balance of probability. This is obviously a matter of judgment. However, the use of aerial photographs in particular is not a reliable basis for contradicting a sworn statement of fact because the photographs represent a moment in time, whereas the statement is addressing a much wider period. Further, photographs require interpretation and it is difficult to use them to contradict a claimed intensity or frequency of use.
- 6.11 The third statement referred to is taken from Mr Morris's second statutory declaration that "the preponderance of the activities described in the schedule of operations referred to in paragraph 6 [concerning use or movement of machinery and/or materials into or away from the site for each of the years 1987 to 1997 inclusive] relate to operations carried out on the site on the east side of Hythe End Road.
- 6.12 It is officers' view that this is the only statement that could realistically be considered against the evidence to be false in a material particular. In overall terms, officers agree with the Advice given by Mr Green. Mr Green in paragraph 31 notes the breadth of the statement, and that in reality it says no more than that over the period considered more of the activities took place on the eastern land than the western land. Further, that the extent to which the processes related to screened soil took place on the western side is ambiguous.
- 6.13 Overall, in officers' view on the evidence available, it is simply not possible to conclude that this statement is false. There is an inherent ambiguity in the evidence in respect of what activities are carried out where i.e. it is not definitively established whether operations concerning fine screened soil took place exclusively on the east side or the west side, or split between the two. Mr Morris's declaration says that the buildings on the west side are used to store fine screened soil. However, there is no clear evidence that all processes related to such soils occurred on the western side, or that the preponderance of overall activity was on the western side. The conclusion put forward by Mr Morris was that the preponderance of the activities referred to took place on land to the east of Hythe End Road. Officers find it very difficult to conclude on the evidence before us on the balance of probabilities that this statement was false. It is clearly a conclusion reached in relation to the totality of the use over a number of years. During that period there will have been, as noted by Mr Green, a range of activities taking place at different levels of intensity and in different locations and with different inter-connections. It seems to us that Mr Morris as the operator of the site was well-placed to make that assessment, and the evidence that is available does not show it to be false. As such relying on this document could leave the LPA in a vulnerable position, and it is difficult for the Council on the evidence available

to justify a conclusion that this was a statement that can be shown to be false in a material particular so as to meet the requirement of s193(7)(a).

- 6.14.1 Therefore, largely for the reasons given by Mr Green, but also following further consideration by officers in light of the information available, officers do not consider that the limbs of section 193(7) are met on the balance of probability and so it would not be expedient to instigate the process for revocation.
- 6.15 However, given that section 193(7) provides the Council with a discretion to revoke where the limbs are met, officers have gone on to consider whether it would be expedient to do so if one of the limbs was met.
- 6.16 Whilst the 1990 Act does not say what factors the Council must consider in the exercising S193 (7) Counsel has identified the points below as relevant:

- a) *The circumstances surrounding the false statement (was it deliberate or inadvertent);*

As set out above, the ambiguity of the statement in question means that to an extent the statement is one of factual judgment. The evidence does not clearly suggest that the statement was a serious, deliberate misrepresentation or that it was done for gain. Further, if the statement were false this would not mean that there was no lawful use of the land to the east of Hythe End Road. The statement was a conclusion as to whether the preponderance of the activity took place on one side or the other. It may be said that if the statement were knowingly false then it was likely to have been made to influence the outcome of the certificate application. However, as set out above, in officers' view there is no clear evidence to indicate this was the case.

- b) *The potential effect on the environment and the public of revoking the certificate or allowing it to stand;*

If the LDC was revoked the LPA would have to consider the lawful use of the land. The effect of a revocation is not to leave the land without any lawful use. The lawful use would have to be re-assessed. This would arise if a new application for a certificate was made, but also and in any event if the Council is to be able to control properly land use in its area. Officers consider it relevant to consider at this stage the likely lawful use of the land and the consequences of the revocation.

- 6.17 The recent appeal decision informs this position. As referred to above, the enforcement notice was drafted on the basis that the certified use was the lawful use of the land. The Inspector concluded that the skip uses were ancillary to the primary use defined in the certificate, and that there had not been a definable change in the character of the use. The evidence supporting the certificate application was referred to extensively in that appeal. That evidence supported the grant of the certificate at the time that it was granted, and the appeal process did not disclose any new information that showed the certified lawful use to have been unlawful as a description of the historic use of the site (that is setting aside for the moment questions of the intensity of the use).

- 6.18 The Council made extensive reference to aerial photographs and available evidence, including the application for the certificate in 1997, with a view to comparing the use that had operated under Mr Morris and the use that operates under FCC. Although the Council did not seek to go behind the certificate on this appeal, the Council did make the case that the certificate defined the use by reference to the level of activity disclosed by the material supporting the certificate application (see Note 3 on the Certificate) and that therefore if the use being undertaken at the date of the enforcement notice was materially different in character from that then the current use was unauthorised. This involved assessing the current use against the available evidence as to the use when the site was occupied by Mr Morris, including the certificate application (this is recorded in paragraph 45 of the decision letter). This argument was addressed in detail by the Inspector and he disagreed (see in particular 54, 58 and the analysis leading to these conclusions). This is certainly not a case where in the absence of the certificate the site would clearly have a different lawful use.
- 6.19 As a consequence, officers are of the view that the history of use of the site is likely to disclose a lawful waste processing use of the character considered and analysed by the Inspector as being the lawful use. That decision accepts that the levels of activity were less intense than those under FCC.
- 6.20 Further, the Inspector's decision stands as a recent planning judgment of the Secretary of State as to the lawfulness of the existing use by reference not simply to the certificate but also through comparison of the respective character of the historic use and the current use disclosed by all the evidence available.
- c) The effect on the landowner of revoking the certificate, including on his Convention rights.
- 6.21 The impact on the landowner is relevant. The LDC was granted 20 years ago and the first indication of a challenge came in December 2015. Shortly afterwards the land with the LDC in place was acquired by the current landowner at a substantial cost. If the LDC was revoked there is no obligation to pay compensation on revocation and therefore the LPA must consider if the revocation would constitute a lawful interference with the landowner's rights under article 1 of the First Protocol to the Convention, and in any event to consider the impacts on the landowner.
- 6.22 At the date of acquisition of the land the Council has no reason to believe the landowner anticipated the certificate to be challenged. Secondly, following the acquisition of the land, the Council has taken enforcement action and participated fully in the appeal process on the basis that the lawful use of the land was that certified by the certificate. The effect of the revocation would be to call into question the lawful use of the land after these two events. The consequence of the revocation exercise is either going to be very limited if the lawful use is in any event for a waste processing use of the nature described in the certificate (as is the view of officers), or substantially deleterious to the landowner, which weighs against the expediency of taking revocation action, particularly where this is contrary to the basis upon which the Council has recently enforced.



- 6.23 Further, officers are not satisfied that there is a sound basis for changing the Council's position from that which formed its case on appeal in May 2017. There is no particular new material available since the time of that inquiry. The Council through the appeal process had decided to rely on the LDC, and the Council can be expected to have good reason for changing its position.
- 6.24 It is possible that this review would provide such a basis and a good reason to change the Council's position. However, officers have concluded that there is no sound basis for taking a different view now that at the date of issue of the Enforcement Notice or the consideration of evidence at the inquiry.
- 6.25 Mr Green's advice concludes that the LPA is not compelled to revoke the certificate. In reaching this view it is important to note that the discretion afforded to an LPA under section 193(7) is intentionally broad.
- 6.26 In Mr Beard's advice he suggests an additional relevant consideration as being the public interest in maintaining proper and effective control over the Site. Officers recognise the value of proper and effective control over the site. It was for this reason that the Council took the enforcement action that it did. However, for reasons given above, there is no clear evidence of an attempt to subvert the system. Further, it would not be expedient to trigger revocation to uphold public interest in the system if it was not otherwise expedient to do so, which is officers' conclusion here.
- 6.27 Officers have also considered, in order to take into account the full range of interests, the position of affected local residents. The objective of the lawful development certificate statutory scheme is that it allows for certification of the lawful use of the land, and that the lawfulness is thereafter conclusively presumed. It follows that if the certificate is revoked such use is no longer conclusively presumed and an alternative use may be found. Understandably, an aspiration of those local residents who have sought the revocation of the certificate is that such alternative lawful use would have lesser environmental impacts than the current use. However, review of the evidence by officers has not disclosed a case on the balance of probabilities for a lawful use of a materially different character than the certificated use, or a procedural breach or abuse of process which might provide a public policy argument for intervention. Therefore, while the position of local residents may be understood, the Council does not consider that these aspirations justify instigating the revocation process.
- 6.28 It is the view of officers that even if it could be shown that the false statement referred to above had been made it would not be expedient to instigate the process for revocation of the certificate. This is based on consideration of the nature of the statement and the context in which it was made, the consequence of revocation in light of recent consideration of the history of use of the land through the recent enforcement appeal process, and the potential impacts on the landowner who has relied on the certificate.
- 6.29 **It is the recommendation of the Head of Planning that the revocation of the Lawful Development Certificate dated the 9 September 1998 and granted under reference 97/75746 is not pursued.**

## **INTENSIFICATION**

- 6.30 In planning terms a material change of use can occur when an existing use intensifies to such a degree that it brings about a definable change in the character of the use of the land. It should be noted that case law has established that intensification alone is not sufficient to constitute a material change of use if it does not change the definable character of the land<sup>6</sup>.
- 6.31 The Hythe End Road Association allege that the intensification of the use of the site has resulted in a material change of use and the LPA have been asked to pursue enforcement action to address this allegation.
- 6.32 In order to determine if there has been a material intensification in the use of the site the LPA must consider the lawful use. For present purposes, and in light of the first question addressed in this report, officers have considered this question on the basis of the lawful use as described in the certificate.
- 6.33 The lawful use set out in the Certificate does not set any parameters around the scale of the use or the quantity of materials involved or the numbers of vehicles coming to and from the site. However it does identify a waste processing centre.
- 6.34 In light of the above, the relevant question in establishing if there has been a material change of use resulting from intensification is whether the historic use of the site compared to its current use results in a change to the definable character of the site. This was reviewed in the enforcement appeal whereby the inspector came to the following conclusion:
- ‘Compared with the use of the site between 2003 and 2012, the current use of the site is more intensive. Nevertheless, having regard to the activities taking place on the site; the presence of stockpiled waste; the use and storage of sizeable pieces of plant and machinery required for the sorting and processing of waste, the clear impression that I gained from my site visits is that the appeal site as a whole has the character of a waste processing centre. In that sense, it is no different from the character of the site when CMF and Carcarc Limited occupied the site’.*
- 6.35 From the extract above it is clear that the inspector came to the conclusion that the current use of the site albeit more intensive did not change the definable character of the land. Accordingly, if the LPA chose to allege a material change of use, it would need to demonstrate that the definable character of the site has changed since this appeal decision. To date there is no evidence that this is the case.

## **7 OPTIONS AVAILABLE TO MEMBERS**

- 7.1 Members are asked to consider the Council’s position following the legal advice summarised above. Officers are available to answer any questions members may have.
- 7.2 Copies of the full opinions of Mr Mark Beard and Mr Robin Green of Counsel are appended under Part II of this report.

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<sup>6</sup> *Hertfordshire CC v SSCLG* [2012] EWCA Civ 1473

- 7.3 Once members have considered and debated the report there are four courses of action open to them:
- (1) To pursue the revocation of the Lawful Development Certificate dated 9 September 1998 and granted under reference 97/75746
  - (2) To decide not to pursue the revocation of the Lawful Development Certificate dated 9 September 1998 and granted under reference 97/75746
  - (3) To further consider the case of intensification in the use of the site with a view to serving an enforcement notice in relation to that allegation.
  - (4) Not to give further consideration to the case of intensification in the use of the site and thus not to serve an Enforcement Notice in relation to that allegation

Members should consider all four options.

**Option 1: To pursue the revocation of the Lawful Development Certificate dated 9 September 1998 and granted under reference 97/75746**

- 7.4 If the Council is minded to revoke the certificate this will trigger a process under Article 39 of the Town and Country Planning (Development Management Procedure)(England)Order 2015. In essence, notice must be given to the owner and occupiers of the land as well as any other person who will be affected by the revocation inviting representations. The Council will then have to take into account such representations before deciding whether or not to revoke the certificate.
- 7.5 Following Counsels' advice it is officers view that there is not a strong case for identifying with precision a statement that the Council can be satisfied was false in a material particular. Counsel's advice identifies one such statement as a potential candidate, although he expressed the view that the statement is relatively insubstantial. In officers' view, this is a broad statement based on the totality of activity over a number of years, and the evidence does not show it to be false.
- 7.6 In any event, officers do not consider that it would be expedient to seek revocation of the certificate on the basis of that statement (even if false) for the reasons given above. Although arguably material to the outcome of the LDC process when the statement is placed in the context of the evidence put forward through the application and considered recently through the enforcement appeal it does not negate the lawfulness of the use described in the application.
- 7.7 Recent legal advice has confirmed that revocation of the LDC will not necessarily result in the current use of the site being unauthorised. The consequence of revocation is that the use described as lawful at the date of the application is not conclusively presumed.

**Option 2: Not to pursue the revocation of the Lawful Development Certificate dated 9 September 1998 and granted under reference 97/75746**

- 7.8 This option would be consistent with action taken on the site to date. The LDC was used to establish the base use in the enforcement appeal decision and

therefore any decision to revoke the certificate would need to justify why this position has changed. To date the LPA has not challenged the use of the site as it is not disputed that a waste processing site can lawfully operate from the site.

- 7.9 The effect of this option is that the recent Inspector's report represents the last word on the lawfulness of the use. The certificate remains in force with the use described in it conclusively presumed to be lawful, and the activities taking place on the site at the date of the enforcement notice lawful as being within the primary use so described, and also not of a definably different character.

**Option 3: To further consider the case of intensification in the use of the site with a view to serving an enforcement notice in relation to that allegation.**

- 7.10 To pursue this option officers would need to build a case to demonstrate that a material change of use has occurred since the enforcement appeal decision. This is because the inspector details that the use of the site between 2003 and 2012 compared to the use in 2016 is not of a different definable character. Officers are not aware of any evidence that would substantiate such a claim.

**Option 4: Not to give further consideration to the case of intensification in the use of the site and thus not to serve an Enforcement Notice in relation to that allegation**

- 7.11 It is open to members to not give further consideration to the case of intensification if following consideration of the information in this report they consider this to be the preferred route.

## **8 RECCOMENDATION BY HEAD OF PLANNING**

- 8.1 In respect of the revocation of the LDC, the Head of Planning recommends that the LPA does not pursue the revocation of the Lawful Development Certificate dated 9 September 1998 and granted under reference 97/75746.
- 8.2 The LPA has reached this decision based on the legal advice sought in which Mr Green has advised that the Council is not obliged to propose the revocation of the LDC triggering the procedure in art 39 of the 2015 Order. In particular the LPA considers that the ambiguity of the statements in the LDC, the effect of the enforcement appeal decision and fact that revocation will not result in the waste processing use of the site being unauthorised result in revocation being ineffective.
- 8.3 In respect of pursuing a material change of use at the site, the Head of Planning recommends that the LPA does not pursue the intensification in the use of the site. This view is informed by the enforcement appeal decision which concluded that the current use of the site albeit more intensive than the former use, has not resulted in a change to the definable character of the land.



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## TOWN AND COUNTRY PLANNING ACT 1990

### CERTIFICATE OF LAWFUL USE

Appn. Date : 28.05.97 Appn. No: 97/75746  
Type : Certificate of Lawful Use  
Proposal : **Certificate of Lawfulness for storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery**  
Location : **Land East of Hythe End Road Wraysbury Staines Middlesex TW19 5AW**  
Parish : Wraysbury  
Applicant : Charles Morris (Fertilizers) Ltd  
Agent : The Jenkins Partnership St Anns House St Anns Road Chertsey Surrey KT16 9EH

The Council of the Royal Borough of Windsor and Maidenhead hereby certify, in accordance with Section 191 (as amended by Section 10 of the Planning and Compensation Act 1991) of the Town and Country Planning Act 1990 that on 19th May 1997 the development described above in respect of the land hatched black on the plan attached to this certificate was lawful within the meaning of Section 191 of the above Act for the following reason:-

#### NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development specified in the description taking place on the land was lawful, on the specified date and, thus was not liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the development described in the application and to the land shown on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

9th September 1998

Date.....

York House  
Sheet Street  
Windsor  
Berkshire SL4 1DD

Signed.....  
Director of Planning and Environment

**DELEGATED**

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## Appeal Decision Report

19 April 2018 - 17 May 2018

### WINDSOR RURAL

**Appeal Ref.:** 18/60021/NOND    **Planning Ref.:** 17/01641/FULL    **Plns Ref.:** APP/T0355/W/17/3189293  
**Appellant:** Mrs C Adriaansen **c/o Agent:** Mr Christopher Arden Christopher Arden Chartered Archts 11 Galton Road Sunningdale Ascot SL5 0BP  
**Decision Type:** Delegated    **Officer Recommendation:** Would Have Refused  
**Description:** Construction of a part two storey, part single storey side and rear extension to provide a self-contained granny annex ancillary to the main dwelling house and demolition of existing detached garage.  
**Location:** **4 Dorian Drive Ascot SL5 7QL**  
**Appeal Decision:** Dismissed    **Decision Date:** 2 May 2018  
**Main Issue:** The Inspector found that the appeal proposal would be harmful to the character and appearance of the host dwelling and surrounding area.

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**Appeal Ref.:** 18/60032/REF    **Planning Ref.:** 17/03076/FULL    **Plns Ref.:** APP/T0355/D/18/3194562  
**Appellant:** Mrs Vladiana Maris-Kowel **c/o Agent:** Mr Colin Tebb Hustings Cottage North Street Winterborne Stickland Blandford Forum Dorset DT11 0NL  
**Decision Type:** Delegated    **Officer Recommendation:** Refuse  
**Description:** First floor rear extension  
**Location:** **80 Bouldish Farm Road Ascot SL5 9EL**  
**Appeal Decision:** Dismissed    **Decision Date:** 19 April 2018  
**Main Issue:** The roof of the proposed extension would not integrate well physically with the original roof or the dormer as it would adjoin both, partially obscuring the eaves of the original roof and the bottom of part of the dormer. The addition of a crown roof would result in a complex and contrived roofscape, with flat, pitched and crown forms in close proximity. Moreover, the lack of alignment and symmetry of the fenestration would add to the overall visual effect of a lack of integration of the proposed extension and previous additions. For these reasons the proposal, in combination with existing extensions at the property, is considered to form incongruous and harmful addition to the character and appearance of the original dwelling; contrary to Local Plan Policy H14.

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**Appeal Ref.:** 18/60033/NOND    **Planning Ref.:** 17/02692/FULL    **Plns Ref.:** APP/T0355/W/17/  
ET    3187491

**Appellant:** Mr Giorgio Cefis **c/o Agent:** Mr Thomas Rumble Woolf Bond Planning The Mitfords  
Basingstoke Road Three Mile Cross Reading RG7 1AT

**Decision Type:** Delegated    **Officer Recommendation:** Refuse

**Description:** Change of use from ancillary residential accommodation to independent self-contained  
residential dwelling

**Location:** **Annexe Home Farm Broomfield Park Sunningdale Ascot SL5 0JR**

**Appeal Decision:** Allowed    **Decision Date:** 10 May 2018

**Main Issue:** The proposed change of use would result in no physical changes to the existing site layout and building. The use proposed is also compatible and consistent with existing uses in the area. Due to the size of the dwelling and nature of the works, there is unlikely to be any harmful increase in activity at the site, and furthermore the existing site access will be retained. It is therefore likely that the change of use would result in no perceivable change to the areas character and appearance. The small property would provide adequate amenity space for its future residents and a legal agreement has been secured to mitigate the potential impact of the development on Thames Basin SPA. For these reasons, and subject to the inclusion of conditions, the proposal is considered to be in compliance with all relevant material planning consideration contained within the Local Plan, NPPF and Ascot, Sunninghill and Sunningdale Neighbourhood Plan.

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## Planning Appeals Received

19 April 2018 - 17 May 2018

### WINDSOR RURAL

The appeals listed below have been received by the Council and will be considered by the Planning Inspectorate. Should you wish to make additional/new comments in connection with an appeal you can do so on the Planning Inspectorate website at <https://acp.planninginspectorate.gov.uk/> please use the PIns reference number. If you do not have access to the Internet please write to the relevant address, shown below.

**Enforcement appeals:** The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

**Other appeals:** The Planning Inspectorate Temple Quay House, 2 The Square Bristol BS1 6PN

**Ward:**

**Parish:** Old Windsor Parish

**Appeal Ref.:** 18/60049/REF

**Planning Ref.:** 17/02339/FULL

**PIns Ref.:** APP/T0355W/17/  
3190788

**Date Received:** 19 April 2018

**Comments Due:** 24 May 2018

**Type:** Refusal

**Appeal Type:** Written Representation

**Description:** End terrace house, parking and new access

**Location:** Land At 16 Orchard Road Old Windsor Windsor

**Appellant:** Mr Ben Flegg c/o **Agent:** Nigel Hartley - Chestnut Planning 33 Trinity Church Road London SW13 8ET

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# Agenda Item 8

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of the Local Government Act 1972.

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