

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

**WINDSOR URBAN DEVELOPMENT CONTROL PANEL**

21 June 2017

Item: 1

<b>Application No.:</b>	17/00482/FULL
<b>Location:</b>	Street Record Shirley Avenue Windsor
<b>Proposal:</b>	Construction of a residential development comprising (Building A) a three storey block containing 7 x 1-bed, 5 x 2-bed flats, (Buildings B1 and B2) two terraces of 3 x 3-bed dwellings, (Building C) a part three/part four storey block containing 9 x 1 bed, 7 x 2-bed flats, (Building D) a part four/part five storey building containing 16 x 2 bed, 5 x 3-bed flats, (Building E) a part four/part five storey building containing 4 x 1-bed, 15 x 2-bed flats, (Block F) a four storey building containing 7 x 1-bed and 8 x 2-bed flats. Refuse and cycle stores, new road and pavements/cycleways with parking (surface and underground) and amenity/play space, hard and soft landscaping, ancillary works following demolition of existing commercial buildings.
<b>Applicant:</b>	Medina Property Development Ltd
<b>Agent:</b>	Mr Mark Carter
<b>Parish/Ward:</b>	Windsor Unparished/Clewer North Ward

**If you have a question about this report, please contact:** Claire Pugh on 01628 685739 or at [claire.pugh@rbwm.gov.uk](mailto:claire.pugh@rbwm.gov.uk)

**1. SUMMARY**

- 1.1 The site is within a protected employment site within the Adopted Local Plan. The proposed development would result in the loss of this employment site, which is contrary to Policy E5 of the Local Plan. The proposal would also conflict with paragraph 22 of the National Planning Policy Framework.
- 1.2 The proposals would result in a loss of a community facility, and it cannot be guaranteed that this can be re-provided elsewhere.
- 1.3 The site is in an area liable to flood. Further clarification has been sought from the applicant as to whether the proposed flood escape route for the residential properties outside of the application site would be safer in a flood event than their current means of escape, in terms of providing wider sustainability benefits as required by the Exceptions Test (first test), however, the scheme fails to provide a safe escape route in the event of a 1 on 100 year +35% climate change allowance and for that reason it cannot be demonstrated that the development will be safe for its lifetime, taking into account the vulnerability of its users and so the scheme fails the second part of the Exceptions Test.
- 1.4 The development would have a harmful impact upon protected trees, which make an important contribution to the character of the area.
- 1.5 Although the scheme would provide 89 residential units which would contribute to meeting the Borough's 5 year housing land supply, the adverse impacts through the loss of an allocated employment site (which has businesses operating at the site), the loss of the community facility, the concerns in terms of safeguarding future occupiers in a 1 in 100 +35% climate change event, and the adverse impact upon protected trees are significant and demonstrable adverse impacts which outweigh the benefit of providing these residential units.

**It is recommended the Panel refuses planning permission for the following summarised reasons (the full reasons are identified in Section 9 of this report):**

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| 1. | Shirley Avenue is an identified employment area allocated primarily for industrial and small scale distribution and storage uses. It has not been demonstrated that the loss of this site to the alternative use of housing would not harm industrial land supply within the |
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	Borough and the local economy.
2	The proposals would result in a loss of a community facility.
3	The scheme fails to provide a safe escape route for future occupiers in the event of a 1 in 100 year +35% climate flood event, and so the development would not be safe for its lifetime, taking into account the vulnerability of its users.
4	The scheme would have an adverse impact upon trees which are subject to Tree Preservation Order.
5	In the absence of a completed legal agreement, the provision of affordable housing can be secured.
6	In the absence of bat mitigation measures it has not been demonstrated that the scheme would have an acceptable impact on protected species.

## 2. REASON FOR PANEL DETERMINATION

- The Head of Planning considers it appropriate that the Panel determines the application as there are policies in the emerging draft Borough Local Plan that are relevant to this site.

## 3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 3.1 The application site forms the south-eastern part of the Shirley Avenue - Vale Road Industrial Area, which is a protected employment site in the RBWM Local Plan. It consists of six buildings which are located to either side of Shirley Avenue. The eastern boundary is shared with the Clewer Memorial Recreation Ground and the southern boundary with residential properties at 52 Vale Road and 36 - 60 East Crescent (even number range). To the north of the site and also within the designated employment area, there is a medical centre on the Vale Road frontage. On the opposite side of Vale Road there are residential flats, which are three stories high adjacent to the street frontage (four storeys to the rear of this development), and the Sandown Park Care Home which is largely three-storeys in height but rises to four storeys towards the corner of Hanover Way, directly opposite the junction of Shirley Avenue with Vale Road.
- 3.2 The buildings on the application site are in a mix of commercial uses, including Howden's, Windsor Vehicle Leasing Ltd, and the Medina Dairy. One building within the group, Technor House, has a D2 community use. It is understood that the other buildings on site are used by Medina Dairy for storage in association with the business.

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

- 4.1 The proposal is to demolish the existing buildings at the site and construct seven residential blocks. The buildings would be arranged along both sides of Shirley Avenue, extending from the Vale Road frontage towards the site's eastern boundary with Clewer Memorial Recreation Ground.
- 4.2 The buildings are identified as Buildings A through to F, as follows:
- 4.3 On the south side of Shirley Avenue and the public footpath to the Memorial Recreation Ground:
- Building A would be three-storey located in approximately the same position as the existing Howden's joinery building, providing twelve flats (6 x 1-bedroom and 6 x 2-bedroom). This would be located to the north of the closest existing residential neighbour, 52 Vale Road.
  - Two short terraces each of three houses would provide a total of 2 x 3-bedroom and 4 x 4-bedroom dwellings (as the smaller room identified as a study could be used as a bedroom), and are identified as 'B1' and 'B2' on the layout plan. These are located in the approximate position of the existing Technor House, and is situated to the north of the properties at 46 – 58 East Crescent (even numbers only). The terraces would be set perpendicular to Shirley Avenue in a mirrored layout pair that provides vehicular access between the two terraces, with the smaller houses to be two-storeys high adjacent to the boundary with properties in East Crescent, rising to three stories for the remaining houses.

- Building C would be located at the south-eastern corner of the site, towards the Clewer Memorial Ground boundary and to the north of 36, 38 and 40 East Crescent. The proposed building would be three stories for the more southern part of the building, adjacent to the East Crescent residential properties, rising to four storeys adjacent to the footpath. It would accommodate 9 x 1-bedroom and 7 x 2-bedroom flats.

4.4 On the north side of Shirley Avenue and the public footpath to the Memorial Recreation Ground:

- Building D would accommodate 16 x 2-bedroom and 5 x 3-bedroom flats over five storeys of accommodation, located directly north of Building C and to the north of the public footpath, in approximately the same location as the existing premises of Windsor Vehicle Leasing. The closest residential neighbours, if built, would be two detached houses in the approved but as yet unimplemented development at Vale House, 100 Vale Road (at present, this area is occupied by a paved yard with the existing employment premises).
- Building E would be further westwards on this side of Shirley Avenue on part of the existing Medina Dairy site. Accommodating 4 x 1 bed flats and 15 x 2-bedroom across five storeys.
- Building F would be located adjacent to the Vale Road frontage of the site, also on part of the existing Medina Dairy site. This 4 storey building would accommodate 8 x 2-bedroom and 7 x 1-bedroom flats.

Relevant Planning History

4.5 Planning permission was refused for the Erection of residential development of 93 dwellings including 2 x 2 bed, 4 x 3 bed houses, 25 x 1 bed, 57 x 2 bed and 5 x 3 bed flats, refuse and cycle stores, with new road and pavements/cycleways with parking (surface and underground) and amenity space, hard and soft landscaping, ancillary works following demolition of all existing commercial buildings on the 2<sup>nd</sup> August 2016 for the following reasons:

- 1) Shirley Avenue is a designated employment area, as identified in Local Plan policy E5 and the Proposal Map, allocated primarily for industrial and small scale distribution and storage uses. It has not been demonstrated that the loss of this site to the alternative use of housing would not harm industrial land supply within the Borough and the local economy. The proposal is contrary to Policies E2 and E5 of The Royal Borough of Windsor and Maidenhead Local Plan 1999 (Incorporating Alterations adopted June 2003).
- 2) The height and scale of buildings within the proposed development together with the location of windows overlooking adjacent properties result in significant and demonstrable detrimental impacts on the residential amenities of occupiers to the south of the site, in East Crescent and at 52 Vale Road, and in addition on Plots 13 and 14 within an approved but as yet unimplemented residential proposal at Vale House, to the north of the site. As such, the proposal is contrary to saved Policies H10, H11 and DG1 of the Royal Borough of Windsor and Maidenhead Local Plan and to advice in the National Planning Policy Framework.
- 3) The layout of the proposed development and the quality of the design of individual buildings is not of sufficient quality to justify a development of the density proposed, and would fail to take the opportunity available for high quality design in the proposed redevelopment. This would result in significant and demonstrable harm to the character of the area which would not be outweighed by the provision of additional housing stock to the Borough. Additional work is also required to ensure that details such as workable cycle and bin store layouts are provided, and that they are appropriately located within the development. As such, the proposal would be contrary to saved Policies H10, H11, DG1 of the Royal Borough of Windsor and Maidenhead Local Plan and to advice in the National Planning Policy Framework.
- 4) The proposals would result in a loss of a community facility at Technor House. The application has not demonstrated that the facility will be provided elsewhere, and the proposal is therefore contrary to The Royal Borough of Windsor and Maidenhead Local Plan policy CF1 and to advice in the NPPF.

- 5) By reason of the reliance on obscure glazing of habitable room windows to avoid direct overlooking of neighbouring properties from some of the habitable rooms within the development, the proposals would not provide a sufficient standard of amenities for all future occupiers of the development. In addition the provision of some single aspect flats on the north side of Building C would result in those flats receiving no sunlight. The proposal is contrary to advice in the NPPF.
- 6) In the absence of an undertaking to secure associated off-site infrastructure and amenity improvements directly related to the development in accordance with policy IMP1 of the Royal Borough of Windsor and Maidenhead Local Plan.
- 7) The proposal fails to provide a mechanism for securing affordable housing in accordance with the Policy H3 The Royal Borough of Windsor and Maidenhead Local Plan and adopted Supplementary Planning Document 'Planning Obligations and Developer Contributions' 2005 (as amended)
- 8) The applicant has failed to demonstrate that the scheme will result in wider sustainability benefits to the community that outweigh flood risk and as such the development cannot pass the Exceptions Test. The proposal is contrary to paragraph 102 of the National Planning Policy Framework.

The properties within the application site have the following relevant planning history:

Technor House:

Ref.	Description	Decision and Date
Reference	Description	Decision and Date
05/00759/COU	Change of Use of premises to Islamic education and community facility with a prayer room	Allowed on appeal on 22.11.2006
08/00908/VAR	Use as an Islamic education and community facility with a prayer room with variation of Condition 3 of appeal permission 05/00759 so that generated noise shall not exceed the background noise level by more than 5dB	Permitted, 14.07.2008

Depot on corner with Vale Road:

04/84801/COU	Change of use from warehouse and offices to children's play area (D2)	Refused, 10.03.2004
04/85471/COU	Change of use from warehouse and offices to children's play area (D2). Resubmission of 04/84801	Refused, 17.08.2004
04/01234/COU	Change of use of premises from B8 (warehouse and office) to D2 (Children's adventure play centre).	Refused, 30.11.2004

Howdens Joinery Ltd, Unit 1:

14/00652/DEM	Demolition of the Joinery showroom workshop and stores, two storey to Vale Road with rear single storey storage area off Shirley Avenue	Prior approval not required, 13.03.2014
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## 5. MAIN RELEVANT STRATEGIES AND POLICIES RELEVANT TO THE DECISION

### 5.1 National Planning Policy Framework Sections 6, 7, 8, 9, 10 and *Decision-taking*

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

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

	Loss of employment land	Design/layout	High risk of flooding	Protected Trees	Noise pollution	Highways /Parking issues
Local Plan	E5	DG1, H10, H11	F1	N6	NAP3	T5, P4

- 5.3 Supplementary planning documents adopted by the Council relevant to the proposal are:
- Interpretation of Policy F1 – Area Liable to Flood

More information on these documents can be found at:

[http://www.rbwm.gov.uk/web/pp\\_supplementary\\_planning.htm](http://www.rbwm.gov.uk/web/pp_supplementary_planning.htm)

### **Other Local Strategies or Publications**

- 5.4 Other Strategies or publications relevant to the proposal are:

- RBWM Townscape Assessment - view at:  
[http://www.rbwm.gov.uk/web\\_pp\\_supplementary\\_planning.htm](http://www.rbwm.gov.uk/web_pp_supplementary_planning.htm)
- RBWM Parking Strategy - view at:  
[http://www.rbwm.gov.uk/web\\_pp\\_supplementary\\_planning.htm](http://www.rbwm.gov.uk/web_pp_supplementary_planning.htm)
- RBWM Strategic Flood Risk Assessment - view at:  
[http://www.rbwm.gov.uk/web\\_pp\\_supplementary\\_planning.htm](http://www.rbwm.gov.uk/web_pp_supplementary_planning.htm)

## **6. EXPLANATION OF RECOMMENDATION**

- 6.1 The key issues for consideration are:

- The principle of redevelopment of the site for residential use;
- Relationships to neighbouring residents and occupiers;
- Scale, site layout, building design and landscaping;
- Flood risk issues;
- The mix of housing types and tenure, including affordable housing;
- Loss of community use;
- The amenity of future residents of the building; and
- The adequacy of car parking and the impact on highway safety in the area;
- Impact on trees

### **The principle of redevelopment of the site for residential use**

- 6.2 The application site is within the Shirley Avenue - Vale Road Industrial Area, which is a protected employment site as identified by RBWM Local plan E2. Local Plan Policy E5 seeks to resist changes of use within these areas to use classes other than B1(c), B2 and B8. The employment area as identified in the Local Plan maps is bisected by Vale Road, and all of the land within the western part of the site has been redeveloped for residential use and a care home, Sandown Park, or in the case of one site is the subject of planning permissions for residential redevelopment (the Drain Centre, Teradyne Building, Hanover Way, ref. 14/03416/FULL and 15/01079/LEG). In contrast, the whole of the employment land on eastern side of Vale Road remains in employment uses, although the Vale House site on the northern end of this area has planning permission for redevelopment with fourteen houses (RBWM ref. 14/02975/FULL and subsequent permissions).

- 6.3 In terms of emerging local planning policy, the Draft Borough Local Plan (as Regulation 18) was published in December 2016 for consultation. In this version of the draft BLP, Shirley Avenue was allocated as a housing site. In the Regulation 19 Publication Local Plan, the site is allocated for mixed use, including 80 units of housing.
- 6.4 The NPPF paragraph 216 advises that weight may be given to the relevant policies in emerging plans according to:
- The stage of preparation (the more advanced, the greater the weight that may be given).
  - The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objection, the greater the weight that may be given).
  - The degree of consistency of the relevant policies in the emerging plan to the NPPF (the closer the emerging policies to the NPPF, the greater the weight they may be given).
- 6.5 Given the early stages of the emerging BLP, only limited weight can be given to this plan at this time. On this basis, the proposal would result in the loss of an allocated employment site within the adopted local plan, and this would be contrary to Local Plan Policy E5. With regard to the emerging planning policy, this proposes a mixed use for the site. Although it can only be afforded limited weight, total loss of employment use would be contrary to Policy ED2 of the Borough Local Plan.
- 6.6 The NPPF at paragraph 22 explains that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. It advises that where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities. It is considered this paragraph is more applicable to employment sites that are vacant, however, the scheme has been considered against this paragraph of the NPPF.
- 6.7 The application contains a report titled '*report in respect of the demand for commercial industrial and warehousing of the type found at Shirley Avenue/Vale Road which is dated November 2015.*' The conclusions of this report are:
- 'When any of the subject premises have been marketed, it is fair to say this has proven to be an unsuccessful development.*
- Where interest has been shown it has been weak and not taken further despite earnest chasing by the letting agents, with exception to Howdens after a prolonged campaign.*
- It is for the reasons set out herein that I consider the owners have little choice but to pursue a change of use planning application to C3 residential purpose, in order for the estate to be put into good and beneficial use. In the absence of a successful change of use I envisage the subject estate continuing to prove problematic. The location and the specific nature of the estate have rendered its commercial use as unviable and obsolete.'*
- 6.8 It is not considered that this information points to market signals which suggest the site is no longer required for employment purposes. There is no evidence of any marketing exercises of the units over the past 2 years for the premises that are vacant or partly used for storage by Medina Dairy, and so it cannot be deduced that market signals would suggest the site is no longer required for employment purposes.
- 6.9 Medina Dairy, Howdens and Windsor Vehicle Leasing (WVL) Ltd currently operate on the site. The applicant makes the case that Howden's and WVL buildings are subject to leases which have ended; when development is permitted the occupation terminates. They further explain that that WVL has premises close by including Clarence Road, Windsor, and that Howden's has depots in adjacent towns.

- 6.10 The terms of the leases that these businesses have is not telling of whether the market signals indicate whether there is a requirement for employment land at this site. It is acknowledged that Howden's has depots in other towns, however, it is not understood that this suggests Howden's no longer require a depot in Windsor. In respect of WVL who operate out of the site, this business has objected to this planning application on the basis the redevelopment scheme does not take account of the successful business which operate out of this site, and in the case of WVL they state that their other premises on Clarence Road are occupied exclusively by the sales team, and they are not suitable or large enough to accommodate the head office staff, workshop/accident repair operations and secure the vehicle compound (which are all based at Shirley Avenue).
- 6.11 Based on the fact that businesses are operating out of the site at present, and WVL have indicated their continued requirement for the premises, it is not considered that market signals would indicate that there is no longer a requirement for this employment site. On this basis, there is not considered be evidence that would indicate a decision should be made to depart from the policy in the adopted Local Plan for the protection of this employment site.

#### **Relationships to neighbouring residents and occupiers**

- 6.12 The scheme that was refused under planning reference 15/03465/FULL is a material consideration in the determination of this proposed scheme; the application was determined in August 2016.

#### Building A

- 6.13 In the previously refused scheme it was considered that building A would be overdominant to number 52 Vale Road. It was also concluded that the windows and balconies in the eastern elevation of this building would overlook the rear gardens of East Crescent, with number 60 being the worst affected.
- 6.14 In this current scheme, the layout of building A has been altered so that the distance between the proposed building and the rear garden of number 52 Vale Road is increased from the previously refused scheme. In addition, the fenestration on the eastern elevation of this building has been altered so that Juliette balconies are not provided on part of this elevation which is closest to the boundaries with the rear gardens on East Crescent. It is considered that the changes made to this building would ensure that the building is not unduly overbearing, or would not result in unacceptable levels of overlooking to neighbouring properties.

#### Buildings B1 and B2

- 6.15 Buildings B1 and B2, the group of six houses, have been designed to step down towards the East Crescent boundaries, and are not considered to have an unacceptable impact on the properties on East Crescent which abut this part of the site.

#### Building C

- 6.16 On the previously refused scheme, this building was a part three, part 4 and part 5 storey building. The fifth storey part of the building had a height of 17.4 metres. The fourth storey element was up to 13.5 metres high. There were issues of overlooking from windows in the southern elevation of the proposed building, and the west- elevation balconies on the first, second and third floors were deemed to provide views in the rear of other East Crescent properties.
- 6.17 In this current scheme, the height to the highest point of this building is circa 13.5 metres. The section of the building that would be closest to the rear boundaries of numbers 38 and 40 East Crescent would be 3 stories in height and have a height of circa 9.8 metres. The reduction in this scale of the building overcomes issues of the building being unduly overbearing to the rear garden areas of the properties on East Crescent. Changes have been made to the fenestration on the southern elevation of the proposed building so that on the part of the building closest to the boundary with the gardens on East Crescent, the windows will either be high level or obscurely glazed. The rooms which these windows would serve have other primary windows which provide outlook and daylight. It is considered that if a condition was imposed to ensure

these windows (not high level windows) in this part of the building were obscurely glazed, it would prevent unacceptable overlooking to neighbouring properties. The balconies in the western elevation have been designed to reduce the level of views out onto rear gardens of East Crescent than in the previous scheme, and these are considered to have an acceptable impact on neighbouring properties.

#### Building D

- 6.18 Building D would be a part-three, part-four and part-five storey building. The proposed building is next to a site which benefits from planning permission for 14 dwellings (the site is to the north of the application site). In the previously refused scheme it was concluded that the gardens to plots 13 and 14 in the approved scheme at the neighbouring site would be overlooked from building D; this was from windows in the northern elevation, and from the balconies on the north eastern corner of the building. In this current scheme, building D has been amended so that the fenestration in the northern elevation of the proposed building has been reduced, with many of the windows in this elevation to be high level windows. The changes in this elevation would avoid unacceptable levels of overlooking to the rear garden areas of plots 13 and 14 in the scheme to the north of this site. Balconies are shown on the north eastern corner of the proposed building, however, privacy screens could be put in to prevent overlooking to this neighbouring site (this could be secured by planning condition).

#### Building E

- 6.19 In the previously refused scheme, it was considered that Building E (five stories) would also have a range of north-facing windows and balconies facing the Vale House site which would result in some actual and perceived over looking, particularly of the rear gardens at those properties. In this current scheme, the north elevation of building E has been changed so that Juliette balconies are removed; this elevation now has high level and obscure glazed windows, and this overcomes the previous concern on overlooking.
- 6.20 Building F would be sited next to commercial properties to the north, therefore there would not be unacceptable impact on neighbouring residential amenity from this proposed building.

#### **Scale, site layout, building design and landscaping**

- 6.21 Changes have been made to the design and layout of this scheme to overcome the reason for refusal on the previous scheme over the harmful impact on the character and appearance of the area.
- 6.22 In the previous refused scheme, concern was raised that buildings A and F (those buildings to the front of the site facing Vale Road) failed to provide an adequate street frontage with Vale Road. In the current scheme, the appearance of buildings A and F have been changed so they have a more simple appearance and have less vertical emphasis than the buildings in the previously refused scheme. The proposed buildings have also been designed to provide a stronger frontage with Vale Road.
- 6.23 On the previous scheme, there was concern over the way in which a bin/cycle store was placed in front of building F, which impacted on the relationship this building would have with Shirley Avenue. In this current scheme, the cycle/bin store has been removed from this location, which improves the relationship of the proposed building with Shirley Avenue. The elevations to buildings A and F which face Shirley Avenue are considered to create an adequate frontage to this road.
- 6.24 On the previously refused scheme, criticism was placed over the gardens to buildings B1 and B2 being located along the street frontage with Shirley Avenue. It was considered that the brick pillars and close boarded fencing on the boundaries to these plots would look at odds with the character of the area. In the current scheme, brick pillars are not shown on this boundary. The details of the boundary treatment to these plots could be secured by planning condition.



- 6.25 The dominance of car parking between building B2 and building C was an issue raised in the previously refused scheme, it is acknowledged that a large amount of car parking still existing in this location. Building C has been reduced in height from the previously refused scheme and so it is considered this overcomes the issue over the visual dominance of this building on the access to Clewer Memorial Recreation ground.
- 6.26 In the previously refused scheme it was considered that the design was devoid of architectural interest, and it was considered that the balconies looked like 'add on' features and had not been integrated in the structures of the building. In this current scheme, more definitive principal elevations have been provided, the scale of buildings have been altered so that buildings have a better relationship with the scale of buildings within the local area. The design of the buildings have been simplified, which is more in keeping with the character of other buildings in the locality.
- 6.27 There are still some concerns with the proposed layout, which include the location of the bin store of block D in a prominent location, however, the applicant considers that this is the most appropriate location for the store and the materials use for the bin enclosure would have an acceptable impact on the appearance of the scheme. Concern was also raised with the applicant over the quality of the Local Area of Play; ideally this space would not have so many parking bays surrounding it, however, provided decent landscaping is implemented to provide a buffer, it is not considered that this would be a serious concern.
- 6.28 It should be noted that the soft landscaping scheme submitted is not a realistic tree planting scheme. Some trees are shown to be positioned in close proximity to buildings, or would be placed on a small area of soft ground next to a parking space. The proposed landscaping scheme fails to take account of the location, the size of trees at the time of planting, the species characteristics, and ultimate height and spread, and so some trees would not survive. It cannot be assumed that the landscaping scheme submitted is one that would be provided in reality.

#### **Flood risk issues**

- 6.29 The site is subject to a high risk of flooding (Flood Zone 3a). Residential development is defined as a "more vulnerable" use within Planning Practice Guidance (PPG), and such development is considered appropriate in flood risk terms within Flood Zone 3 subject to satisfying other flood related criteria.
- 6.30 In line with national planning guidance, a sequential test assessment has been undertaken (this is that there are no other sites at a lower risk of flooding that could accommodate this development which are reasonably available). The area of search is borough wide and uses the SHLAA 2014 and sites put forward in the draft Borough Local Plan. The Sequential Test concludes that there are no other sequentially preferable sites, and it is agreed that the Sequential Test is passed.
- 6.31 If it is accepted that the Sequential Test can be passed, it is then a requirement for the development to pass the Exceptions Test, as the proposal is for a 'more vulnerable use' within flood zone 3A. There are two parts to the Exceptions Test, which are:
1. it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and
  2. a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
- 6.32 In the previously refused application, the application failed the Exceptions Test for the reason that the scheme failed to demonstrate that it would result in wider sustainability benefits to the community that outweigh flood risk and as such the development cannot pass the Exceptions Test, as it was not demonstrated that a safe escape for the future occupiers of the neighbouring Vale Road site or residents from Rutherford Close could be secured. The applicant is willing for this route to be secured through a S106 agreement, however, this access would only be safe in a 1 in 100 year flood event, not if the +35% climate change allowance was applied.

- 6.33 The scheme should be accompanied by a FRA which demonstrates the development will be safe for its lifetime taking into account the vulnerability of the users, without increasing flood risk elsewhere, and this FRA should take into account climate change allowance, as set out in Paragraph: 029 Reference ID: 7-029-20140306 of the National Planning Practice Guidance.
- 6.34 The FRA sets out that a flood compensation scheme demonstrating an increase in floodplain storage capacity over the site of 928 cubic metres, on a level-for-level basis up to the modelled 1 in 100 (1%) annual probability +35% allowance for climate change flood level can be provided and that proposed ground floor levels set a minimum of 300mm above the modelled 1 in 100 (1%) annual probability +35% allowance for climate change level which would mean the finished floor level is set at 21.51 metres OD. It is not known if compensation is possible when the 70% climate change allowance is applied.
- 6.35 In terms of the evacuation route for future occupiers in the event of a flood event, the FRA confirms that a continuous safe access arrangements provided at the modelled 1 in 100 (1%) annual probability event via raised elements (including natural ground, raised walkways and elevated road crossings) running through the site and onto the public footpath on Vale Road in the south-west corner of the site can be achieved. However, when +35% climate change allowance is applied a safe evacuation route cannot be achieved. The 70% climate change allowance has not been applied.
- 6.36 The applicant sets out that all dwellings would be provided with a Flood Risk Management Plan to advise occupants of the risks in a more severe flood event, the most appropriate route out of the floodplain, and the measures to take before, during and after a flood has occurred. Flood Evacuation Plans are not accepted as a way to overcome a scheme not having a safe escape route. Also this scheme is for 89 independent C3 dwellings; there is no way to manage and ensure all future occupiers follow the correct evacuation procedure in a flood event, and so an evacuation plan cannot be relied upon to ensure the safety of future occupiers in a flood event. On this basis, the scheme fails to provide a safe escape route for future occupiers in a flood event, and so it fails to comply with the second part of the Exceptions Test.
- 6.37 The NPPG requires residual flood risk to be taken into account. Residual risks are those remaining after applying the sequential approach to the location of development and taking mitigating actions. The RBWM SFRA explains that within defended areas there will always be a residual risk of flooding. This may be due to an extreme event that overtops the design 'height' of the defence, changing climatic conditions that increases the frequency and severity of extreme flooding, a structural failure of the constructed flood defence system, or flooding behind the defences due to local runoff or groundwater. The RBWM SFRA includes a map to provide an indication of areas that may be at risk as a result of catastrophic defence failure within the Borough, however, a series of 'danger envelopes' have been established using the principles of FD2320 within the SFRA. The application site is not shown to be in an area of hazard if there was catastrophic defence failure within the SFRA. The SFRA sets out that a residual risk of flooding remains, however, associated both with an event that may exceed the design capacity of the defences, and/or a structural failure. Based on this, it is imperative that this risk is interrogated, and safely mitigated through design, as part of the detailed site based Flood Risk Assessment (FRA).
- 6.38 The site specific FRA sets out that it is noted that, based on the above floor level, shallow flooding of up to 240mm would occur in the 1 in 100 annual probability +70% allowance for climate change event and that the residual risk associated with this can be addressed through the incorporation of flood resilience measures up to the 21.76m AOD flood level. The FRA states that the proposals include a surface water drainage strategy that demonstrates a significant reduction in peak runoff rates generated by the site, although comments are awaited from the LLFA in respect of the Sustainable Drainage.

### **The mix of housing types and tenure, including affordable housing**

- 6.39 Policy H3 and the SPD on Affordable Housing requires that residential development sites of 0.5 ha or more in area, and / or those that would result in a net increase of 15 units or more, should provide a proportion of affordable housing on site.

- 6.40 The proposed level of affordable housing at 27 dwellings meets the requirements of Local Plan Policy. The provision of affordable units across blocks A and F is considered to be acceptable. The applicant has agreed to provide affordable rented dwellings (up to 80% of the market value) within Block A, and within block F there would be 10 shared ownership and 5 rent to buy. The applicant has agreed for the affordable dwellings to be delivered by a local registered provider of social housing. The provision of the affordable housing within the scheme should be secured through a legal agreement.

#### **Loss of community use**

- 6.41 Technor House has an existing community use, as noted in the planning history. Local Plan policy CF1 provides that the Council will not allow the loss of community facilities to occur unless it can be demonstrated that the facility is no longer needed, or the facility is provided elsewhere. The loss of this community facility was a reason for refusal in the previous application.
- 6.42 The applicant sets out that a Grampian condition would be an appropriate method of securing another community facility, or failing this it could be incorporated into a legal agreement. They explain that the search for premises is underway and when they find something suitable they hope to agree a conditional purchase subject to their planning application being acceptable. The applicant advises they have already made a commitment that the current facility will not be closed until other suitable premises are operational. The applicant refers to guidance and case law about the use of Grampian conditions and why they feel the use of a Grampian condition would be acceptable in this case.
- 6.43 The NPPG explains that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability (of the tests for imposing planning conditions). The guidance explains that it may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) – i.e. prohibiting development authorised by the planning permission or other aspects linked to the planning permission until a specified action has been taken. However, the guidance advises that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. In this case, the applicant has not found suitable alternative premises, and as such the LPA could not be satisfied the securing of an alternative community premises could be achieved within the 3 year time frame of permission.
- 6.44 This scheme shows the complete demolition of buildings on site, and so if planning permission was granted the applicant can (following discharge of conditions) demolish all buildings on site, including Tenchor House. The application fails to comply with Policy CF1 of the Local Plan.

#### **The amenity of future residents of the building**

- 6.45 In the previously refused scheme, it was a concern that there were three single aspect flats in Building C that were north facing, which would not be capable of receiving direct sunlight other than in the early morning and evening in the summer months. The layout of this building has been changed so that habitable room windows do not only have one window in the north facing elevation.
- 6.46 A concern was raised in the previous scheme over the use of high level windows or obscure glazing to serve rooms which would create poor living conditions for future occupiers. In this current scheme, although high level windows and obscure glazing is used on certain elevations (particularly those in close proximity to neighbouring residential boundaries), the habitable rooms which they serve have other windows or balconies which provide sources of light and outlook to these rooms.

#### **The adequacy of car parking and the impact on highway safety in the area.**

- 6.47 The proposed 89 units (based on the dwellings in blocks B1 and B2 being 3 bedrooms) would require 125 car parking spaces to be provided. It is noted that some of the dwellings in blocks B1 and B2 could have a fourth bedroom (if the room marked as a study was used as a bedroom) and this would result in 129 parking spaces to be provided in accordance with the Council's parking strategy. The scheme provides for 128 parking spaces which would result in a shortfall in

parking spaces would be 1 space. If there was a deficit of 1 parking space this is considered to be acceptable, given the location of this site, and future occupiers could park on Shirley Avenue and not place unacceptable parking pressure on the surrounding road network.

- 6.48 In terms of traffic, the proposed scheme would result in a reduction in traffic when compared to that on the existing site (if operating at full capacity). Owing to the size of the development, the submission of a residential travel plan should be provided (the threshold for a residential travel plan is set out in the SPD on Planning Obligations and Development Contributions). A travel plan should be secured through a legal agreement.

### **Impact on trees**

- 6.49 T5 which is a *Carpinus betulus* (hornbeam) is a protected tree which is a prominent feature in the rear garden environment of East Crescent and within Shirley Avenue. On the previously refused scheme this tree was and is subject to a Tree Preservation Order, but this did not show on the mapping owing to a technical error. Block B1 would make a slight incursion into the Root Protection Area of this tree, and owing to the proximity of the proposed building to this tree, it is likely pruning will be required for construction related activities to take place. The habitable rooms and rear garden amenity space in block B1 closest to the southern boundary will be located within and under the canopy of this tree, and this does not take account of the future growth potential of this tree. There will be significant post development pressure from future occupiers to fell or detrimentally prune T5 as a result this relationship which would be harmful.
- 6.50 Since the consideration of the previously refused scheme, a Tree Preservation Order has been served to protect the parkland trees aligning the east boundary of the application site, and 2 hornbeam trees located in south-east corner of Goswell House. In the previously refused scheme, the trees along the boundary with the application site could have been pruned back to the boundary under common law as they were not protected at that time. However, now consent would be required from the Council to cut these trees back owing to their protected status.
- 6.51 Given the proximity of blocks C and D to the trees that align this boundary on the park, and the fact that some of the trees have not reached full maturity, this scheme would result in a pressure to prune back these trees which would erode the amenity value these trees have, and eventually it is likely to result in the removal of these trees. The pruning back or removal of these trees would have an unacceptable impact on the character of the area.

### **Ecology**

- 6.52 A detailed inspection survey of the buildings was undertaken in August and September 2015. The inspection revealed a small number of bat droppings on a door within one of the buildings. Further dusk emergence and dawn return to roost surveys were undertaken in August and September 2015 and June 2016. One common pipistrelle was recorded emerging from Building during the further surveys. No bats were recorded roosting within any of the other buildings on site.
- 6.53 One common pipistrelle bat was recorded emerging from the building during the surveys. Therefore, without mitigation, the development would be in breach of the legislation protecting bats. However, given the type of roost and the size and nature of the development, it is likely that appropriate mitigation can be included within the development proposal in order to maintain the populations of bat species at a favourable conservation status in their natural range. Mitigation should include, but not be limited to, native species planting and the installation of bat roosting opportunities within the new buildings and retained mature trees. This detail should be included within the application, and not left to planning condition.

### **Other Material Considerations**

- 6.54 The Environmental Protection officer has requested conditions to be included in any planning permission. It is considered that conditions relating to contaminated land, measures to protect against aircraft noise are considered to be necessary for the scheme. However, conditions relating to working hours and plant and equipment are not considered necessary for a residential scheme. In terms of a condition for light, this is not considered necessary in a built up area such

as this, where there is already lighting. With regard to a condition for asbestos, this is for the developer to deal with this in the appropriate way, and it is covered by different legislation. In terms of air quality, this site is not in the Air Quality Management Area, and the proposal is likely to reduce traffic movements compared to the existing use.

- 6.55 The provision of a Sustainable Drainage Scheme is a requirement for a major development. The application provides a SUDS scheme, however, the Local Lead Flood Authority has been asked to comment on further information. Comments from the LLFA will be reported in the update to Panel.

#### Housing Land Supply

- 6.56 Paragraphs 7 and 14 of the National Planning Policy Framework (NPPF) set out that there will be a presumption in favour of Sustainable Development.
- 6.57 Paragraph 49 of the NPPF states that applications for new homes 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 five-year supply of deliverable housing sites. The Borough Council cannot demonstrate a 5 year housing land supply.

- 6.58 Within Paragraph 14 of the NPPF it is set out that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. It explains that for decision-taking this means:

approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out of date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.

- 6.59 It is acknowledged that this scheme would make a contribution to the Borough's housing stock through the provision of 89 residential units and this weighs in favour of the application. However, there are several harmful impacts resulting from this proposal which include:

- the loss of employment land within an allocated employment site which has several businesses operating there,
- the issues surrounding flood risk and that future occupiers of the development cannot achieve a safe escape route in a 1 in 100 +35% climate change flood event
- the harmful impact upon protected trees which make an important contribution to the character of the area
- the loss of a community facility.
- potential harmful impact on protected species

It is considered that that the socio-economic benefits arising from the provision of 89 additional dwellings would be significantly and demonstrably outweighed by the adverse impacts listed above, contrary to the adopted local plan policies, all of which are essentially consistent with the NPPF, and to the development plan as a whole.

#### Community Infrastructure Levy

- 6.60 The development is CIL liable. The applicant has submitted the required forms including the assumption of liability for payment on the net increase in gross internal floor space. The required CIL payment for the proposed development would be £1358400 on the basis of a net increase of 5,660 square metres.

## 7. CONSULTATIONS CARRIED OUT

### Comments from interested parties

The application was advertised in the Maidenhead & Windsor Advertiser on the 23<sup>rd</sup> February 2017 and the planning officer posted a statutory notice advertising the application at the site on the 24<sup>th</sup> February 2017.

46 occupiers were notified directly of the application.

2 neighbours and interested parties have written to object to the application, summarised as:

Comment		Where in the report this is considered
1.	Note the scheme is not substantially different from the refused scheme in terms of quantum and therefore limited in its scope to address the concerns raised with layout.	6.2-6.11
2.	Concerned with the failure to provide the community facility. The application seems to acknowledge the need for this to resolved but is advocating a Grampian condition restricting development until its relocation can be secured. This would seem to be an acknowledged that the issue at present remains unresolved.	6.41-6.44
3.	There has been no change to the designation of the site since the previous application that was refused. Windsor Vehicle Leasing who operates on the site has made representations through the emerging local plan process to set out how the site and adjoining land could be developed as a mixed using scheme to meet the Council's aspirations for both additional housing and retention of employment. It would not be appropriate for the Council to allow this application ahead of proper consideration of legitimate and valid objections being heard through the Local Plan process.	6.2-6.11
4.	The scheme makes no provision for the existing and successful business which occupy the site. The scheme will have a huge impact on the business and jobs they provide, this is at odds advice in the NPPF about employment. Paragraph 22 highlights the need to consider alternative uses for employment sites where there is no realistic prospect of a site being used for the allocated employment use- this is patently not the case here. The proposal does not meet the definition of sustainable development and the presumption in favour does not apply.	6.2-6.11
5.	It is our belief that two storey buildings should be the maximum height. The development is totally out of keeping with the area and overdevelopment of the site.	6.2-6.20
6.	High traffic impact from the 89 residential units.	6.48
7.	Building C would still overlook properties on East Crescent and will dominate the skyline.	6.16-6.17
8.	Many windows in the south elevation of block C will not be obscure glazed and will result in loss of privacy to the properties on East Crescent.	6.16-6.17
9	Allowing this development would set a precedent; there is nothing of a similar height in close proximity to gardens.	6.21-6.28
9.	Believes there is bat colony in the existing building to be demolished- these are protected species.	6.52-6.53
10	Windsor Vehicle Leasing advises that a new lease was granted in February 2015.	6.2-6.11

	<p>Although the business has other premises in Clarence Road, they are occupied by the sales team and comprise a small car show room and display forecourt. They are not suitable or large enough to accommodate the head office staff, workshop/accident repair operations and secure the vehicle compound (which are at Shirley Avenue)</p> <p>Prior to the move to Shirley Avenue, the company owned premises in Alma Road, which RBWM acquired to develop the public car park.</p>	
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## Statutory consultees

Consultee	Comment	Where in the report this is considered
Environment Agency:	<p>The proposed development will only meet the requirements of the National Planning Policy Framework if the following measures as detailed in the Flood Risk Assessment Medina Shirley Avenue Development, Windsor, Flood Risk Assessment On behalf of Medina Property Ltd. Project Ref: 28032/001   Rev: A   Date: January 2017 submitted with this application are implemented and secured by way of a planning condition on any planning permission.</p> <p><b>Condition</b> The development permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment (FRA) Medina Shirley Avenue Development, Windsor, Flood Risk Assessment On behalf of Medina Property Ltd. Project Ref: 28032/001   Rev: A   Date: January 2017 and the following mitigation measures detailed within the FRA:</p> <ol style="list-style-type: none"> <li>1. There will be a betterment of 928m3 of flood storage capacity as shown in Table 5.1 on the FRA.</li> <li>2. Finished flood levels are set no lower than 21.51 meters above Ordnance Datum.</li> <li>3. The improvement/protection and maintenance of the proposed flood defenses in buildings D and E include basement areas will be provided.</li> <li>4. Any walls or fencing constructed within or around the site shall be designed to be permeable to flood water.</li> <li>5. There shall be no storage of any materials including soil within the 1% annual probability (1 in 100) flood extent with an appropriate allowance for climate change.</li> </ol> <p>The mitigation measure(s) shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.</p> <p><b>Reason</b></p> <ol style="list-style-type: none"> <li>1. To reduce the risk of flooding to the proposed development and future occupants.</li> </ol>	6.29-6.38

	<ol style="list-style-type: none"> <li>2. To prevent increased flood risk elsewhere as a result of this development by ensuring that the flow of flood water is not impeded and the proposed development does not cause a loss of flood plain storage</li> <li>3. To ensure that during a flood event there is not an unacceptable risk to the health and safety of the occupants and an increased burden is not placed on the emergency services.</li> <li>4. To ensure the structural integrity of existing proposed flood defenses thereby reducing the risk of flooding.</li> <li>5. To prevent the increased risk of flooding due to impedance of flood flows and reduction of flood storage capacity.</li> <li>6. To prevent obstruction to the flow and storage of flood water, with a consequent increased risk of flooding.</li> <li>7. To ensure that there will be no increased risk of flooding to other land/properties due to impedance of flood flows and/or reduction of flood storage capacity.</li> </ol>	
Lead Local Flood Authority	<p>Following our review of the information submitted above the following additional information is required to enable this planning application to be considered further:</p> <p>_ A revised surface water drainage strategy with supporting calculations incorporating the correct invert levels of the existing surface water sewers as stated by the Thames Water records.</p>	6.55

### Other consultees and organisations

Consultee	Comment	Where in the report this is considered
Highways:	<p>The development proposes a 3m wide shared pedestrian and cycle footway to the south of Shirley Avenue and resurfacing the new road network. The pedestrian path from the east of Shirley Avenue across the playing fields and through to Clewer Memorial Recreation Ground will be retained.</p> <p>Whilst there are no material changes proposed to the Vale Road and Shirley Avenue junction, there does appear to be a slight change in the road alignment and given that Shirley Avenue is a public highway, we would expect the road to be stopped-up and re-adopted when the works are completed. The extent of the areas of adoption will have to be agreed between RBWM and the developer and would be the subject of a S38 &amp; 278 Agreement (Highways Act 1980).</p> <p>The development provides 128 spaces set against the Borough's standard set at 125 spaces.</p> <p><b>CYCLE PARKING PROVISION</b></p>	6.47-6.48



	<p>The Transport Assessment reports that a total of 89 secure parking spaces are proposed, which would comply with the Borough standard.</p> <p><b>REFUSE PROVISION</b></p> <p>The submission includes a swept path analysis of a tracking of a typical size refuse vehicle, which is adequate.</p> <p><b>TRANSPORT ASSESSMENT</b></p> <p>The application is accompanied by a Transport Assessment (TA). Briefly, the purpose of the TA is to report on any transport issues relating to the development and, identify measures to be taken to overcome the anticipated transport impacts of the scheme.</p> <p>On the whole the TA is considered acceptable.</p> <p><b>VEHICULAR MOVEMENTS</b></p> <p>The previous proposal had the potential to generate circa 486 trips per day, compared with 742 for the existing site use. Given that this application seeks permission for a reduced number of units, there is the likelihood that the proposal would result in a further reduction in vehicular trips onto the surrounding highway network.</p> <p><b>RIGHTS OF WAY:</b> N/A</p> <p><b>RESIDENTIAL TRAVEL PLAN:</b> The size of the development warrants the submission of a Residential Travel Plan.</p> <p><b>CONCLUSION</b></p> <p>The Highway Authority raises no objection to the proposed development and considers the reduction in the number of residential units as a highway gain.</p> <p>If the Planning Authority is minded to approve the application we recommend the inclusion of conditions for-</p> <ol style="list-style-type: none"> <li>1. Construction management plan</li> <li>2. Parking and turning areas retained</li> <li>3. Details of cycle parking to be submitted</li> <li>4. Refuse storage to be provided in accordance with approved details.</li> </ol>	
Council's Housing Enabling Officer	<p>The proposed level of affordable housing at 27 dwellings is welcomed as a policy compliant provision. The provision across blocks A and F is acceptable. Properties should be provided to the nationally prescribed space standard with 1 bedroom flats achieving a minimum of 50m<sup>2</sup> and 2 bedroom flats at a minimum of 70m<sup>2</sup>.</p> <p>Affordable dwellings should be constructed in order that the development is tenure blind. We would welcome a better tenure balance of affordable tenures in this provision namely:</p> <p>Block A: Affordable rented dwellings  Block F: 10 Shared Ownership and 5 Rent to Buy dwellings (located across first floor and 1 dwelling</p>	6.39-6.40

	<p>from the ground floor)</p> <p>We would request that the affordable dwellings are delivered by a local Registered Provider of social housing and can provide further details of providers if required.</p>	
Environmental Protection:	<p>Requested conditions to be included in any planning permission for:</p> <ol style="list-style-type: none"> <li>1. Contaminated land</li> <li>2. Working hours of operation</li> <li>3. Plant, equipment, machinery and maintenance</li> <li>4. Dust emissions</li> <li>5. Aircraft noise</li> <li>6. Light pollution</li> <li>7. Asbestos and air quality</li> </ol>	6.54
Ecology:	<p>A detailed inspection survey of the buildings was undertaken in August and September 2015. The inspection revealed a small number of bat droppings on a door within one of the buildings. Further dusk emergence and dawn return to roost surveys were undertaken in August and September 2015 and June 2016. One common pipistrelle was recorded emerging from Building 5 during the further surveys. No bats were recorded roosting within any of the other buildings on site.</p> <p>All species of bat are protected under the Conservation of Habitats and Species Regulations 2010, as amended, the Countryside of Rights and Way Act 2000 and the Wildlife and Countryside Act 1981, as amended. This makes it illegal to deliberately or recklessly kill, injure, capture or disturb bats, obstruct access to bat roosts or damage or destroy bat roosts, whether occupied or not. Seven bat species are also considered Species of Principal Importance (SPI's) under Section 41 of the NERC Act 2006.</p> <p>When determining planning applications that may have an impact on bats, the LPA, in its role as competent authority, must give due regard to the full provisions of the species protection afforded under the Conservation of Habitats and Species Regulations 2010 (as amended). In particular, the LPA must be satisfied that the proposal adequately addresses the following three legal tests before making a planning decision:</p> <ol style="list-style-type: none"> <li>1.the consented operation must be for 'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'; (Regulation 53(2)(e));</li> <li>2.there must be 'no satisfactory alternative' (Regulation 53(9)(a)), and;</li> <li>3.the action authorised 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range' (Regulation 53(9)(b)).</li> </ol> <p>The first two tests are outside the scope of advice provided by myself as they do not relate to ecology. With regards to</p>	6.52-6.53

	<p>the third test, one common pipistrelle bat was recorded emerging from the building during the surveys. Therefore, without mitigation, the development would be in breach of the legislation protecting bats and would not be able to satisfy test 3. However, given the type of roost and the size and nature of the development, it is likely that appropriate mitigation can be included within the development proposal in order to maintain the populations of bat species at a favourable conservation status in their natural range. Mitigation should include, but not be limited to, native species planting and the installation of bat roosting opportunities within the new buildings and retained mature trees.</p> <p>If the local planning authority is minded to grant planning permission, it is recommended that a suitably worded planning condition is included requiring a copy of a European Protected Species Licence for bats (or conformation the site is registered under Bat Low Impact Class Licence) issued by Natural England, is provided to the Local Planning Authority prior to the commencement of site works and that the development be carried out in accordance with the details within the agreed licence.</p> <p>If planning permission is granted, suitably worded conditions should be included in regard to potential impacts on reptiles in two small areas of vegetation that would be cleared as part of the proposals, and for birds. Biodiversity Enhancements are also recommended in any acceptable application.</p>	
Berkshire Archaeology	<p>This proposal is for a reasonable scale of development in suburban Windsor within a site of over one hectare in area. However Berkshire Archaeology's Historic Environment Record (HER) notes very few known archaeological monuments or finds spots within 500m of Shirley Avenue. This site has also been substantially developed and there is currently little, if any, areas of the site that have not been impacted by the construction of buildings, roads and hard standings.</p> <p>On the basis of the above, Berkshire Archaeology is content that the archaeological potential of this site is limited and therefore no mitigation of the archaeological impacts are sought in relation to this proposal. No further action is therefore required as regards the buried archaeological heritage. This is consistent with Berkshire Archaeology's advice for the previous, similar proposal 15/03465/FULL.</p>	Noted.
Tree Officer	<p>My main concern is that trees do not appear to have been fully considered at the design phase; this would help to ensure that all tree related constraints and implications (current and future growth potential, root morphology etc.) are recognised and the site layout planned, in accord with the above, to ensure successful tree retention and without adversely affecting the character and appearance of the area.</p> <p>The root protection areas of all on/off site trees that could</p>	6.49-6.51

	<p>be directly affected by the proposed development have not been annotated upon the Tree Protection Plan (TPP) therefore the overall impact of the proposed development can therefore not be accurately assessed.</p> <p>The current British Standard 5837:2012 Trees in relation to design, demolition and construction– Recommendations (BS5837:2012) provides specific guidance within sections 5.2.3 (design layout, potential incompatibilities between the site layout and proposed trees for retention), 5.3.4 (characteristics, condition of trees, shading of buildings/open spaces, current and future growth potential, future pressure for removal and seasonal nuisances) and 6.3 (shade, relationship of windows to trees, damage, apprehension, seasonal nuisances).</p> <p>A realistic shade assessment taking into account current tree height and width, and ultimate height and width has not been undertaken, or submitted to justify the proposed site layout. Current and future shading issues are disused below for individual housing blocks directly affecting boundary trees and vice versa.</p> <p>If structures (including hard surfacing) are proposed within the root protection area of a retained tree it will require an overriding justification (5.3.1 of BS5837). The project arboriculturist will also need to demonstrate that the tree can remain viable, the area lost to encroachment can be compensated for elsewhere contiguous with the RPA and mitigation measures to improve the soil environment of the tree can be implemented. No overriding justifications have been provided by the project arboriculturist.</p> <p>Block A</p> <p>The Lawson cypress hedge (G1) located adjacent to the southern boundary of the site within the rear garden of Vale Lodge 52 Vale Road is currently 8m tall, 19.98m long. The northern canopy of G1 will be located 3.45m from the south elevation block A.</p> <p>The current height of G1 will restrict a) sunlight and daylight to the block A southern ground floor residential plots and b) sunlight and daylight to the limited amenity space between the southern elevation of block A and the southern boundary of the application site.</p> <p>The BRE Guide for Hedge Height and Light Loss would suggest that the off-site hedge would need to be reduced to a height of 2.7m (3m) to avoid causing significant loss of daylight and sunlight to these plots.</p>	
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There will be certain post development pressure to significantly prune these trees to increase light levels, and there is a high probability future occupiers issuing a High Hedge complaint to the Local Authority to abate this perceived nuisance.

#### Block B1

Block B's footprint lies significantly outside the existing footprint of the building it replaces. The south west corner of the new residential building is planned to be sited directly within the canopy and root protection area of T5 Carpinus betulus protected hornbeam tree.

T5 is prominent feature in the rear garden environment of East Crescent and within Shirley Avenue, and contributes positively to local landscape in terms of amenity.

According to the submitted tree schedule T5 is currently 12m tall and has on average 6.5m wide. Taking into account the future growth potential of T5 (ultimate height of 20m and radial crown spread of 7.5m), there are significant concerns about possible threats to the T5's continued good health and longevity, arising from :

- A. The need to laterally tip reduce the north, north-east and eastern sectors of the trees canopy by at least 2.5m away from the building to provide adequate space for construction related activities and temporary structures such as scaffolding. The removal of such branch material would result in extensive leaf loss and the creation of multiple large pruning wounds. This would impair the trees' ability to photosynthesise and produce carbohydrates (food to sustain themselves), and make the trees more susceptible to disease and decay. It will also make T5 look unattractive, spoiling its natural shape and thus detrimentally affecting its amenity value.
- B. The planned Incursion (foundations) of block B and to lesser extent, but nether less important cycle area in to the root protection area of T5 will lead to the loss of roots and rooting environment for the tree essential for maintaining tree health and vitality. This will have a long term detrimental impact upon tree health expediting its demise. The ability of a tree to tolerate some disturbance and alteration of its growing conditions is dependent on specific circumstances and site conditions. In general the older the tree the less successfully it will adapt to the new conditions. In this instance due to the age of the tree and the already restricted rooting area I would not anticipate that it would be possible to provide suitable compensation or mitigation for encroachment into the root protection area

of T5.

C. The habitable rooms and 2/3 of the rear garden amenity space for plot closest to the southern boundary will be located within and under the canopy (existing – not taking into account future growth potential) protected tree T5. There will be significant post development pressure from future occupiers to fell or detrimentally prune T5 as a result of real householder concerns relating to restriction of light, dominance, and perceived and actual danger from falling limbs. The cramped juxtaposition between Block 'B' and the Hornbeam tree would serve to highlight the actual and perceived risks. This is notwithstanding any other potential issues which may arise in terms of falling debris or branches, blocked gutters, shading of a large part of the small allocated gardens, or simply in relation to its overbearing presence as the trees reach full maturity.

Whilst protection afforded by the TPO 003/2007 would enable the Council to control any future tree work, it would be more difficult for it to refuse an application to cut-back or even remove a tree that was threatening the safety of the occupiers, or having a harmful effect on their enjoyment of the property. There can be no certainty that such pressures could be reasonably resisted. Trees protected by a TPO merit special care, and this tree is no exception. If its appearance were to be stunted by pruning, its amenity value would be diminished and this would unacceptably harm the sylvan character of the Shirley Avenue and East Crescent.

#### Block B2

The footprint/foundations of block B1 will incur directly into the RPA of T7. Its impact upon the Lawson cypress group G2 cannot be assessed due to the fact the RPA's of this hedge have not been plotted onto the Tree Constraints and Tree Protection plan.

G2 is located just beyond the southern boundary of the application site and its height is recorded at 4.5m with a total length of 9m. Its canopy is located less than 1.3m from the southern edge of block B2.

The current height (not taking into account future growth potential 20-25m tall by 10m wide, of G2 will restrict sunlight and daylight to the southern block B ground floor residential plot.

The BRE Guide for Hedge Height and Light Loss would suggest that the off-site hedge would need to be reduced to a height of 2 (3m) to avoid causing significant loss of daylight and sunlight to flats 3 and 8 in the new

development.

The early mature parkland trees aligning the eastern boundary of the application site, are as a collective group are categorised as A2 under the cascade chart of the current British Standard 5837:2012 Trees in relation to design, demolition and construction– Recommendations (BS5837:2012). They are principle landscape features within the local and wider landscape and positively contribute to the character and appearance of the area. They additionally help soften the built form of the light industrial area within Shirley Avenue.

#### Block C

It is important to note that whilst T20 and T21 will not be considered a constraint due to their limited landscape contribution, the footprint of the proposals is within their Notional Root Protection Areas and tree canopies. Whilst the applicant has the common law right to cut back any encroaching roots or branches to the boundary line to facilitate an approved development, this may cause the neighbouring trees to become unstable and have a negative impact on their health and appearance. Should the tree(s) fail or die as a result of these operations the applicant may be deemed responsible for damage/injury that occurs. It is therefore recommended that the applicant contact a suitably qualified Arboriculturist to obtain the appropriate advice in this instance.

The western elevation of block C has been positioned 2m from the current canopy extent of T27 acer platanoides The recorded height is 16m with an average radial canopy spread of 7m (5.8w). T27 has the potential to grow to 20-25m with a radial canopy spread upto10m). Plots on the eastern elevation are shown to be allocated balconies. T26 Tilia cordata is currently 15m tall with an average canopy spread of 5.5m (potential height of 25m and radial crown spread of 7.5m) T27 and T26, both parkland trees will cause significant shading issues for plots located on the south and east elevation of block C. As these trees mature the shading issue will be further compounded.

The north east elevation/foundation of block C are located within the RPA of T22 Carpinus betulus. There is currently a 2.35m canopy clearance from this building; however there will be future canopy conflicts as the tree matures (potential to grow to 25m with a radial canopy spread up to 7.5m)

There will be significant post development pressure from future occupiers to fell or detrimentally prune T22, T26 and T27 as a result of real householder concerns relating to

restriction of light, dominance, and perceived and actual danger from falling limbs. The cramped juxtaposition between Block 'C' and these trees would serve to highlight the actual and perceived risks. This is notwithstanding any other potential issues which may arise in terms of falling debris or branches, blocked gutters, shading of a large part of the small amenity space, or simply in relation to their overbearing presence as the trees reach full maturity.

Block D

The eastern elevation of block D is shown to be positioned directly on the western canopies of T29, T30 and T31 (acer pseduoplatanus). These trees have the potential to grow to 25m tall with a potential radial crown spread of 12.5m) It is noted plots of this elevation will have balconies.

The position of block D to T22, T28 T29, T30 and T31 will give rise to the same post development pressures as those trees In similar proximity to block C. The inappropriate juxtaposition of the block D (and C)to boundary trees in Clewer Memorial Park, is highlighted by the applicants arboriculturist in section 2.6 of the supporting Tree Condition Survey, Tree Constraints And Protection Arboricultural Report With Recommendations 'Trees T29-31 will be pruned back to the site boundary although their eventual removal is recommended as they will be very tight to Block D'.

Landscaping

As per the previous application, the proposed site layout and existing established boundary vegetation leaves little room for any meaningful tree planting. Such is the future conflict with the proposed tree species (disruption to paved surfaces, branch contact with the building, fruit fall, shade cast/obstruction of light in to habitable parts of the plots) to be planted around blocks A-F they are unlikely to be retained beyond a 5 year landscaping condition.

The proposed tree planting needs to be revised to take into account and not limit to: a) Location b) size of trees at the time of planting, c) species characteristics (fruit fall, disruption to paved surfaces, epicormic growth etc.) d) ultimate height and spread and e) underground and overhead conflicts (branch contact with the building lining, shade cast etc) as the trees establish and, f) likelihood of reaching maturity.

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RECOMMENDATIONS

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	Given the above, the scheme fails to adequately secure the protection of important protected trees which contribute to the character and appearance of the area; I therefore recommend refusal of the application under N6, DG1 and H11.	
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## 8. APPENDICES TO THIS REPORT

- Appendix A - Site location plan and layout drawing
- Appendix B - elevation drawings and floor plans
- Appendix C - site layout at Vale House (14/02975/FULL)

This recommendation is made following careful consideration of all the issues raised through the application process and thorough discussion with the applicants. 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 not been successfully resolved.

## 9. REASONS RECOMMENDED FOR REFUSAL IF PERMISSION IS NOT GRANTED

- 1 Shirley Avenue is a designated employment area, as identified in Local Plan policy E5 and the Proposal Map, allocated primarily for industrial and small scale distribution and storage uses. It has not been demonstrated that the loss of this site to the alternative use of housing would not harm industrial land supply within the Borough and the local economy. The proposal is contrary to Policies E2 and E5 of The Royal Borough of Windsor and Maidenhead Local Plan 1999 (Incorporating Alterations adopted June 2003).
- 2 The proposals would result in a loss of a community facility at Technor House. The application has not demonstrated that the facility will be provided elsewhere, and the proposal is therefore contrary to Local Plan policy CF1 and to advice in the NPFF.
- 3 The applicant has failed to demonstrate that the scheme would be safe for its lifetime, taking into account the vulnerability of its users so fails the Exceptions Test. The proposal is contrary to paragraph 102 of the National Planning Policy Framework.
- 4 The development would cause harm to T5 a *Carpinus betulus* hornbeam which is covered by Tree Preservation Order, owing to the proximity and relationship with the dwelling in Block B1 and its garden to this tree. The development would also cause harm to trees covered by Tree Preservation Order 17/008/G1 next to the application site boundary within Clewer Memorial Recreation Ground, owing to the proximity of block C and D, and the positioning of habitable room windows within the eastern elevations in Blocks C and D. The scheme conflicts with policies DG1(6) and N6 of The Royal Borough of Windsor and Maidenhead Local Plan 1999 (Incorporating Alterations adopted June 2003).
- 5 The proposal fails to provide a mechanism for securing affordable housing in accordance with the Policy H3 The Royal Borough of Windsor and Maidenhead Local Plan 1999 (Incorporating Alterations adopted June 2003) and the Affordable Housing Planning Guidance Document December 2016.
- 6 It has not been demonstrated that adequate mitigation for the impact on bats as a result of the development can be provided. The scheme therefore fails to accord with paragraphs 109 and 118 of the National Planning Policy Framework and