

Report Title	To consider a recommendation from the Head of Planning to withdraw reasons for refusal in relation to planning application 18/00095/FULL Former Imperial House/Windsor Business Quarter 67 Alma Road Windsor which is currently at appeal
Contains Confidential or Exempt Information?	No – Part I
Member reporting:	Not Applicable
Meeting and Date:	Windsor Urban Development Management Panel 30 th January 2019
Responsible Officer:	Jenifer Jackson, Head of Planning
Wards affected:	None

1. SUMMARY

- 1.1 Following correspondence in December last year with the Planning Inspector on the Examination of the Borough Local Plan Submission Version, officers have found it necessary to review whether or not the Council's case in relation to this appeal remains robust and defensible.
- 1.2 Given the current timetable for work on the Borough Local Plan Submission Version and the pause in the Examination, officers do not consider it is not possible for the Council to robustly defend the first and second reasons for refusal. This could expose the Council to significant risk of costs.

It is recommended the Panel authorises the Head of Planning:	
1.	To write to the Planning Inspectorate and Appellant setting out that the Council will now only be pursuing the appeal on the third reason for refusal and then to prepare evidence and defend the Council's case only in relation to the third reason for refusal
2.	To finalise a Section 106 agreement with the Appellant to be submitted to the Planning Inspectorate

2. REASON FOR PANEL DETERMINATION

- The Panel resolved that it would have refused the application for three reasons and the proposed course of action would alter a previous Panel resolution.

3. BACKGROUND

- 3.1 The application reference 18/00095/FULL was submitted on 12th January 2018. The description of development is:

Demolition of the existing basement and concrete plinth above and erection of a building of between 1 and 7 storeys containing 217 residential apartments (Use Class C3), including a cafe (Use Class A3) measuring 146 sqm (GIA), car and cycle parking, plant enclosures, access improvements, service bay, drop off spaces, substation, and associated landscaping and open space; and a five storey building to provide 16,389sqm (GIA) of office floorspace (Use Class B1), together with ground level and basement car and cycle parking, service bay and associated landscaping

- 3.2 The applicant submitted an appeal against the Council's non-determination of the application on 29th May 2018. Subsequently the application was presented to the Windsor Urban Development Management Panel on 20th June 2018, which resolved that it would have refused planning permission for the following reasons:

1. To permit this planning permission would result in the loss of half of this 'Business Area'. This would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that is central to the Borough Local Plan Submissions Version

(2018) and would undermine policies ED1, ED2 and ED3 and the wider economic strategy set out in the Borough Local Plan Submissions Version (2018), which has been endorsed by Full Council. This Plan is at an advanced stage but is not yet formally part of the development plan for the area. Therefore it is considered that if planning permission were granted the development proposed would substantially undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that is central to the Borough Local Plan Submissions Version (2018). In addition, the owners and/or developers of a number of other sites designated or allocated in the Borough Local Plan Submissions Version for employment development are also promoting those sites for residential development. To allow alternative development on the application site would set a precedent for the consideration of those applications, making it difficult for the Council to resist proposals involving a change of use, or redevelopment, for residential development. The potential cumulative impact of any such planning decision would significantly undermine the plan-making process and the policies and strategy set out in the Borough Local Plan Submissions Version (2018).

2. The proposed development has also failed to justify the loss of employment land, and so would be detrimental to the future employment needs, locally available employment opportunities and the economy of the area. The proposed development is therefore contrary to the National Planning Policy Framework (2012) and its associated guidance, policy E6 of the adopted Local Plan (2003), along with emerging policies ED1, ED2 and ED3 of the Borough Local Plan Submission Version (2018).

3. The proposed development, by reason of its overall density, layout, scale, mass and bulk, is considered to have a detrimental impact on the character and appearance of the area, contrary to policies DG1, H10 and H11 of the Local Plan, emerging policies SP1, SP2 and SP3 of the Borough Local Plan Submission Version and the National Planning Policy Framework.

3.3 A Public Inquiry on the appeal is scheduled to run from 26th March until 5th April 2019.

3.4 The Borough Local Plan Submission Version (BLPSV) was submitted to the Planning Inspectorate for Examination on 30th January 2018. Hearings sessions were held from 26th – 28th June 2018. Following those Hearings, the Inspector wrote to the Council to set out her initial findings and raising a number of queries. The Council's response to the Inspector from December 2018 agrees to undertake further work on a number of key areas and that further consultation on revised documents will now be carried out later in 2019. The Examination is, in effect, paused.

4. EXPLANATION OF RECOMMENDATION

4.1 The first two reasons why the Panel resolved it would have refused planning permission were based on officer advice at the time as to the weight to be given to the emerging policies in the Borough Local Plan Submission Version. Officer advice was based on advice from Counsel.

4.2 In relation to reason for refusal 1, Officers consider that there has been a very significant change in circumstances material to this reason which undermines the prospects of successfully defending this reason for refusal. The most significant change in circumstance is the long pause in the BLPSV examination and the consequent delays to its adoption. The Council's evidence for the upcoming Public Inquiry is due at the end of February 2019. As both the submission of the Council's evidence and the Public Inquiry will occur before further work on the BLPSV has been completed and consulted on, the Council's case has to reflect the stage of the Examination that will be the background at the Inquiry.

4.3 There is a strong interrelationship between reasons 1 and 2, therefore the same significant issues are relevant to this reason for refusal as well. It would be untenable and unreasonable for the Council to now contend that relevant BLPSV policies should be accorded anything other than limited weight in the determination of the appeal. Whilst Local Plan policy E6 is also cited in the second reason for refusal, that policy is broadly supportive of the change of use of non-allocated employment sites, such as the appeal site. The supporting text to that policy requires that redevelopment of employment sites is "subject to the proposals having no adverse impact on locally available employment opportunities". It is not considered that the Council could offer

sufficiently robust evidence on this point alone to successfully defend it. The revised NPPF (July 2018) has also placed greater emphasis on flexibility when assessing applications for alternative uses on sites (para 120), such as would be the case here.

- 4.4 The third reason for refusal relates to the design and scale of the proposed scheme. Officers consider that there is still a strong case to be made in relation to this reason that can be substantiated with evidence. By pursuing the appeal only on this reason, the Council would be able to allocate more resources to focus on the defence of this reason. Officers would recommend continuing to defend this reason for refusal; consultancy support from an urban design specialist would be engaged to ensure that the Council's evidence is robust.
- 4.5 In reviewing which grounds to defend on appeal, the Council has to be conscious not only of the risk of losing the appeal but also the risk of costs being awarded against the Council if it fails to substantiate the case. In this case the costs incurred by the other side are likely to be significant given the length of the Public Inquiry, Barristers fees and professional consultants fees. If the Council was to pursue the appeal in relation to reasons for refusal 1 and 2 and failed to produce evidence to substantiate these reasons for refusal, there would be a significant risk of the Council being considered to have behaved unreasonably and an application for costs being successful.
- 4.6 The recommended approach would also be consistent with other decisions made by the Local Planning Authority, in particular application 18/01269/FULL Clean Linen Services. This application was approved, against Officer recommendation, by the Maidenhead Development Management Panel on 21st November 2018, in part because they considered only limited weight should be given to the BLPSV.
- 4.7 In the current circumstances, Officers consider it would be unreasonable for the Council to attempt to defend reasons for refusal 1 and 2 at the forthcoming Inquiry and to continue to do so would be contrary to the public interest.

5. CONCLUSION

For the reasons set out above, officers recommend that the Council no longer seeks to pursue the appeal based on reasons for refusal 1 and 2. The Council will prepare evidence and defend the reason for refusal 3.

6. APPENDICES TO THIS REPORT

- Appendix A - Site location plan and site layout

7. REASONS RECOMMENDED FOR REFUSAL TO BE BASIS FOR COUNCIL'S CASE ON APPEAL

The proposed development, by reason of its overall density, layout, scale, mass and bulk, is considered to have a detrimental impact on the character and appearance of the area, contrary to policies DG1, H10 and H11 of the Local Plan, emerging policies SP1, SP2 and SP3 of the Borough Local Plan Submission Version and the National Planning Policy Framework.

General Notes

1. All dimensions are in metres unless otherwise stated.
2. The site is shown in red on the site plan.
3. The site is bounded by Clarendon Road to the north, St Mark's Road to the east, and Arms Road to the south.
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Key Plan



Site level + 21.50



SCALE: 1:1000
 DATE: 10/10/2018
 DRAWN: J.P.
 CHECKED: J.P.

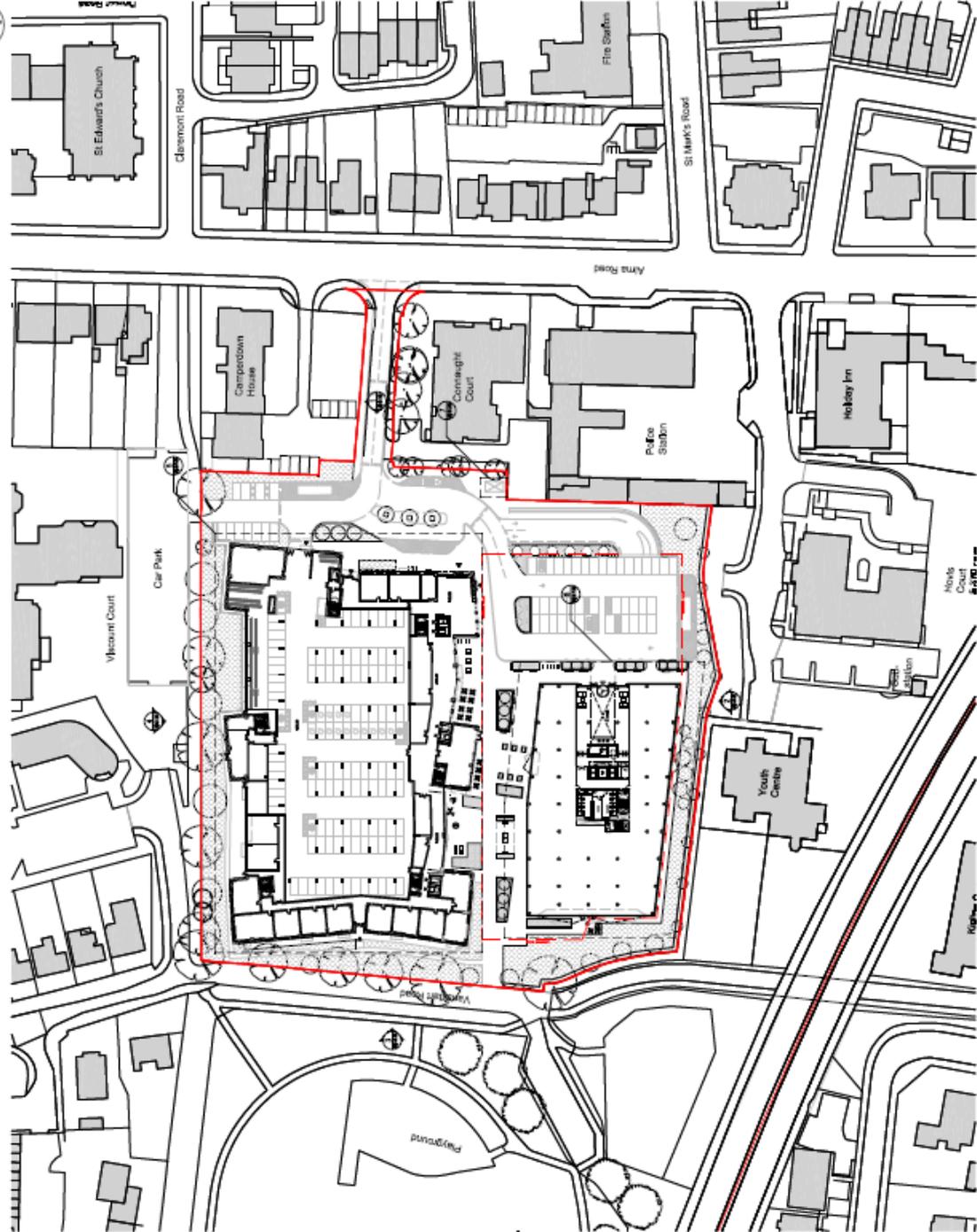
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Planning

Site	Site Consent Plan
Address	18 Broadwood Street
Postcode	W1P 1JQ
Client	18 Broadwood Street
Project	18 Broadwood Street
Date	10/10/2018
Scale	1:1000
Drawn	J.P.
Checked	J.P.
PL	PL

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 Campdown House
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