

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

MAIDENHEAD DEVELOPMENT CONTROL PANEL

19 February 2020

Item: 1

Application No.:	19/01140/FULL
Location:	Land To The South of 18 To 20 And Open Space To The South of Ray Mill Road East Maidenhead
Proposal:	Construction of 17 x one bedroom dwellings; 18 x two bedroom dwellings; 17 x three bedroom dwellings; 28 x four bedroom dwellings, bin storage associated landscaping and parking, new access from Ray Mill Road East and public open space.
Applicant:	Cala Homes (Thames) Ltd And RBWM
Agent:	Mr Douglas Bond
Parish/Ward:	Maidenhead Unparished/Maidenhead Riverside Ward
If you have a question about this report, please contact: Claire Pugh on 01628 685739 or at claire.pugh@rbwm.gov.uk	

1. SUMMARY

- 1.1 The scheme proposes 80 residential units on land that is allocated as an important urban open space within the Adopted Local Plan. The site is located within the settlement of Maidenhead, and is located within a reasonably sustainable location.
- 1.2 The reduction in open space as a result of the proposed development is considered to be acceptable, provided that the proposed enhancements to the open space are secured; this would need to be achieved through the signing of a legal agreement. The site had a slow worm and toad population, but these were re-located from the site in 2016. Subject to the Ecological Mitigation and Management Plan, the impacts on ecology are considered to be acceptable.
- 1.3 The site is located within flood zone 3 (high risk flooding). Whilst the scheme is considered to pass the Sequential Test, it is not considered that the Exceptions Test or paragraph 163 of the NPPF (which relates to flood risk) is passed. The scheme also conflicts with Policy F1 of the Adopted Local Plan.
- 1.4 The scheme has several benefits including the contribution it would make to the Council's 5 year housing land supply, the provision of affordable homes (in excess of the Local Plan Policy requirement) which is much needed in the Borough, and the economic benefits that would arise from the scheme. However, it is not considered that these benefits would outweigh the serious concerns over flood risk.
- 1.5 There are matters relating to transport, that the Highway Authority need to address relating to parking, and this will be reported in the Update to Panel. In addition, comments are awaited from Environmental Protection over the proposed location of the sewage pumping station and the impact this would have on residential amenity, which will also be addressed in the Update to Panel.
- 1.6 A legal agreement has not been entered into to secure the affordable units, or the retention, enhancement and management of the resultant open space; however, the applicant has indicated their willingness to enter into an agreement to secure these matters. Irrespective of this, in the absence of a signed legal agreement, the failure to provide affordable housing and the open space also constitute reasons for refusal.

It is recommended the Panel REFUSES planning permission for the following summarised reasons (the full reasons are identified in Section 13 of this report):

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| 1. | The scheme conflicts with Policy F1 of the Adopted Local Plan. It also fails to |
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	comply with Paragraph 160 (Exceptions Test) and 163 of the NPPF which relates to flood risk.
2	In the absence of a signed legal agreement to secure the provision of on-site affordable housing, the scheme fails to comply with Policy H3 of the Adopted Local Plan.
3	In the absence of a signed legal agreement, the scheme fails to secure open space as required by paragraph 97 of the NPPF.

2. REASON FOR PANEL DETERMINATION

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

3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 3.1 The site is designated as a protected urban open space in the Adopted Local Plan. The site is square in shape and measures circa 2.3 hectares. It comprises overgrown grassland, scrub and scattered trees. Informal paths (created through the cutting of grass) have been created in the eastern half of the site. A Public Right of Way runs to the south (along the southern boundary) and partially along the eastern boundary of the site. The Public Right of Way connects Blackamoor Lane to the Deerswood.
- 3.2 The site is situated to the south of Ray Mill Road East, and to the east of Blackamoor Lane. It is approximately 1 km from Maidenhead town centre. The site is surrounded by residential development on all sides, which comprises predominantly detached and semi-detached dwellings, but also includes flatted development.
- 3.3 The character of the area is mixed, and the site is located next to the Townscapes of late 20th Century suburbs (1960s onwards), Interwar suburbs, and Edwardian and Victorian suburbs according to the Council's townscape assessment
- 3.4 To the north, east and west of the application site, the dwellings are predominantly two storeys in height. To the south of the application site, the scale of the buildings tends to be larger; there are two storey buildings, but also large buildings which accommodate flats that are up to 4 to 5 storeys in height.
- 3.5 According to the Environment Agency Flood map for planning the site is situated within flood zone 3 (high risk of flooding)

4. KEY CONSTRAINTS

- 4.1 -Flood Zone
-Important Urban Open Space
-Ecology
-Public Right of Way

5. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY

- 5.1 The application site measures circa 2.3 hectares. Approximately 1.3 hectares of the site is proposed to be developed for housing, with the remaining 1 hectare shown to be public open space.
- 5.2 The western part of the site is shown to be developed. Within this part of the site, residential units would vary in type and scale. Generally, buildings of a smaller scale are shown to be located to the northern part of the application site, and the scale of the buildings increases throughout the central and southern part of the application site. A breakdown of the housing proposed is set out in the table below.

Reference	House type	Number of bedrooms	Maximum height in metres (approximate)	Number of units within scheme
A.1	Detached	4-5	10.2	3
A.2	Detached	4-5	9.8	1
A.3	Detached	4-5	10	1
A.4	Detached	4-5	9.7	1
A.5	Detached	4-5	9.6	1
B.1	Semi-detached	4	12	2
B.2	Semi-detached	4	12	2
B.3	Semi-detached	4	11.7	2
B.4	Semi-detached	4	11.6	2
B.5	Semi-detached	4	11.6	2
B.6	Semi-detached	4	11.8	2
C.1	Semi-detached	4	11	2
C.2	Semi-detached	4	11	2
C.3	Semi-detached	4	10.3	2
C.4	Semi-detached	4	10.7	2
C.5	Detached	4	11.3	1
D.1	Semi-detached	3	10.8	2
D.2	Semi-detached	3	10.5	2
D.3	Semi-detached	3	10.8	2
D.4	Semi-detached	3	10.7	4
D.5	Terrace	3	11.2	3
E.1	Terrace	3	10.8	4
F.1	Semi-detached	2	8.5	2
F.2	Detached	2	8.4	1
	Apartment Block	16x 2 bed 16x 1bed	15	32

- 5.3 Based on the area of the application site to be developed, the scheme would have a density of around 62 dwellings per hectare.
- 5.4 The eastern part of the application site would be used to provide Public Open Space. The submitted Design and Access Statement sets out that the open space area would comprise:
- Existing grassland
 - Meadow Area
 - Scrub Habitats
 - Existing and newly planted trees
 - SuDS provision
 - Hedgerow planting
- 5.5 The plans show that the existing ground levels on site (where the housing is proposed) would be raised and lowered across the site. The amount by which the land is to be lowered and raised varies across the site, with the maximum change to ground levels being up to 1 metre. Ground levels are proposed to be altered, as they form part of the proposed flood compensation scheme.
- 5.6 This proposed development would not impact on the Public Right of Way that runs along the southern, and part of the eastern boundary of the site.
- 5.7 The proposed vehicular access would be taken from the existing access off Ray Mill Road East.

6. DEVELOPMENT PLAN

Adopted Royal Borough Local Plan (2003)

6.1 The main Development Plan policies applying to the site are:

Issue	Adopted Local Plan Policy
Design	DG1, H10,H11
Highways	P4 and T5
Trees	N6
Flood Risk	F1
Affordable Housing	H3
Public Right of Way	R14
Making housing Accessible	H9
Protection of Urban Open space	R1
Provision of public open space in new developments	R5
Pollution	NAP3
Archeology	ARCH4

These policies can be found at

https://www3.rbwm.gov.uk/downloads/download/154/local_plan_documents_and_appendices

7. MATERIAL PLANNING CONSIDERATIONS

National Planning Policy Framework Sections (NPPF) (2019)

Section 2- Achieving sustainable development

Section 4- Decision-making

Section 5- Delivering a sufficient supply of homes

Section 8- Promoting healthy and safe communities

Section 9- Promoting Sustainable Transport

Section 11- Making effective use of land

Section 12- Achieving well-designed places

Section 14- Meeting the challenge of climate change, flooding and coastal change

Section 15- Conserving and enhancing the Natural Environment

Section 16- Conserving and Enhancing the historic environment

Borough Local Plan: Submission Version

Issue	Local Plan Policy
Design in keeping with character and appearance of area	SP2, SP3
Sustainable Transport	IF2
Housing mix and type	HO2
Affordable housing	HO3
Housing Density	HO5
Flood risk	NR1
Pollution (Noise, Air and Light)	EP1, EP2, EP3, EP4
Housing Development Site	HO1
Nature Conservation and Biodiversity	NR3
Trees, Woodlands and Hedgerows	NR2

Borough Local Plan: Submission Version Proposed Changes (2019)

Issue	Local Plan Policy
Design in keeping with character and appearance of area	QP1, QP3
Sustainable Transport	IF2
Housing mix and type	HO2
Affordable housing	HO3
Flood risk	NR1
Pollution (Noise, Air and Light)	EP1, EP2, EP3, EP4
Open Space	IF1
Nature Conservation and Biodiversity	NR2
Trees, Woodlands and Hedgerows	NR3

- 7.1 The NPPF sets out that decision-makers may give weight to relevant policies in emerging plans according to their stage of preparation. The Borough Local Plan Submission Document was published in June 2017. Public consultation ran from 30 June to 27 September 2017. Following this process the Council prepared a report summarising the issues raised in the representations and setting out its response to them. This report, together with all the representations received during the representation period, the plan and its supporting documents was submitted to the Secretary of State for independent examination in January 2018. The Submission Version of the Borough Local Plan does not form part of the statutory development plan for the Borough.
- 7.2 In December 2018, the examination process was paused to enable the Council to undertake additional work to address soundness issues raised by the Inspector. Following completion of that work, in October 2019 the Council approved a series of Proposed Changes to the BLPSV which are now out to public consultation until Sunday, 15 December 2019. All representations received will be reviewed by the Council to establish whether further changes are necessary before the Proposed Changes are submitted to the Inspector. In due course the Inspector will resume the Examination of the BLPSV. The BLPSV and the BLPSV together with the Proposed Changes are therefore material considerations for decision-making. However, given the above both should be given limited weight.
- 7.3 These documents can be found at:
<https://www3.rbwm.gov.uk/blp>

Supplementary Planning Documents

- RBWM Interpretation of Policy F1
- Interpretation of Policies R2, R3, R4, R5 and R6.

Other Local Strategies or Publications

- 7.4 Other Strategies or publications material to the proposal are:
- RBWM Townscape Assessment
 - RBWM Parking Strategy
 - Affordable Housing Planning Guidance

More information on these documents can be found at:
https://www3.rbwm.gov.uk/info/200414/local_development_framework/494/supplementary_planning

8. CONSULTATIONS CARRIED OUT

Comments from interested parties

119 occupiers were notified directly of the application.

The planning officer posted a notice advertising the application at the site on 3rd May 2019 and the application was advertised in the Local Press on the 9th May 2019.

Neighbours and contributors were consulted on additional information on the 20th December 2019 (this was done as additional flooding information was received).

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

Comment		Where in the report this is considered
1.	Concerns over the impact on flood risk, and the impact to surrounding dwellings.	i
2.	Should this application be considered before the updated flood data from the EA is released?	i
3.	Concerns over ground water flooding; comments that incidents of ground water flooding have not been reported correctly, and queries over the monitoring of ground water flooding have been raised.	i
4.	How can the Sequential Test be concluded, until the 2019 data is released.	The 2019 data supports the EA flood map for planning. The Sequential Test has considered the EA flood map for planning.
5.	Low hazard escape route for future occupiers of the units in a flood event cannot be provided.	i
6	Concerns over the impact of the development on traffic, and that not enough parking would be provided, resulting in overspill car parking onto the surrounding roads which experience on-street car parking pressures.	ix
7	The Inspector in the examination of the Borough Local Plan raised issues in the way the application of the Sequential Test had been applied in selecting sites.	The Borough Local Plan is still going through examination. Other sites that the Local Plan puts forward for housing have not been examined by the Inspector yet.
8	Concerns over the width of the access road, and likely collisions between vehicles.	ix
9	Is this scheme going to provide adequate sustainable drainage to control surface water run-off.?	i
10	Who would be responsible for ensuring the SUDs features are maintained?	i
11	It is understood that if the Environment Agency objects to an application, the Council have never gone against the advice of the EA. As such, if the EA objects to an application, the Council will knowingly put additional properties and lives at risk.	i
12	Neighbouring properties have already experienced flooding, building 80 dwellings will add to this.	i
13	Why has information relating to existing flooding to the Fallows not been included?	The applicant is responsible for preparing the FRA.

14	Queries over the proposed boundary treatment with properties, which currently all vary.	Noted.
15	The development will cause harm to the toads.	vii
16	How will immediate neighbours to the site be protected from noise and dust, and how long will the build take?	If the application was being recommended for approval, a condition could be imposed to secure a construction environment management plan.
17	If the site is open plan, how will boundaries be designated?	Details could be secured by planning condition.
18	This space plays an important role in the biodiversity of the area.	vii
19	Surface water flooding maps show flooding to east of site, with proposed flood mitigation to the east of the development how do we know this will not exacerbate surface water flooding thus increasing the risk of flooding to neighbouring properties.	i
20	The site provides valuable recreation space for local residents. It is used by dog walkers and children play in it; the built development will significantly diminish this space.	ii
21	Concerns over damage caused to neighbouring properties during the construction process, and questions how construction traffic would be managed.	Damage to neighbouring properties during the construction process is a private matter. A CEMP could be secured to manage traffic in the construction phase should permission be forthcoming.

22	Scheme breaches Human Rights Act with regard to the right to peaceful enjoyment of all their possessions, and that persons have a substantive right to respect for their private and family life.	The Human Rights Act 1998 was brought into force in this country on 2nd October 2000, and it will now, subject to certain exceptions, be directly unlawful for a public authority to act in a way which is incompatible with a Convention right. In particular, Article 8 (respect for private and family life) and Article 1 of Protocol 1 (peaceful enjoyment of property) apply to planning decisions. When a planning decision is to be made however, there is further provision that a public authority must take into account the public interest.
23	The scheme will result in overlooking from second floor windows to neighbouring dwellings.	iv
24	Believe there will be additional stress on infrastructure- schools, health care	The development is liable to the Community Infrastructure Levy. The money raised from this would go towards the provision of infrastructure.
25	Concerns over the proposed sewerage pumping station, and the odour that would come from that, which is in close proximity to residential properties, and also there are concerns over the risk of sewer flooding from this (as the site is within the flood zone).	iv
26	The proposed pond is not actually for wildlife, it is to attenuate water.	Noted.
27	Concerns over the maintenance of the culverts etc by the management company, as developers sell on the land and there is a strong risk that the maintenance regime will not be adhered to.	i

28	The site is in flood zone 3, and was removed from the emerging BLP as a site for housing in the latest version.	i
29	Harm to ecology would arise, as toads will lose their habitat.	vii
30	The development will result in loss of privacy and light to neighbouring properties.	iv
32	Increased traffic will result in additional air pollution.	Ix and xii
33	A culvert has now been added to the plans which drains to the rear of 20b Ray Mill Road East. Where is it expected water from this culvert will drain? The gardens of 20a, 20b & 22 Ray Mill Road East and No. 3 The Fallows are all lower than the point at which the water would leave the culvert.	i
34	The heavy rain just before Christmas led to flooding at the junction of Ray Mill Road East and Blackamoor Lane. The water level was across the entire road and reached above the kerb on both sides spreading onto the pavements. If the flooding were a 1 in 100 year event would this route be suitable as this is part of the 'off-site safe access route' as suggested by Cala Homes?	i
35	Three other planning applications in the area have recently been refused, flooding being cited as a reason in each case	Each application is determined on its merits.
36	The EA has released new flood data which changes the flood zones in the area.	i
37	Concerns over lack of adequate consultation with neighbours- advise not all residents received letters.	Letters were sent out.
38	It would be negligent of the Council to ignore new data published by the EA, which has classed the area as at a high risk of flooding.	i
39	The scheme proposes flood protection for the proposed properties, and not for existing dwellings.	i
40	The scheme would increase surface water flooding in the area.	i
41	The Sequential Test process is flawed.	i
42	£25,000 was spent to repair flood damage and to install a new pump, but this has not been taken into consideration in the application.	Noted.
43	Legal responsibility for any flood damage caused needs to be established before the application is determined.	The application is being recommended for refusal on flood risk grounds.
44	Concerns that flood evacuation plan would not be effective.	i
45	If the Council believes that the Sequential Test is passed, the Exceptions Test is not.	i
46	Road Safety Audit identified concerns over the width of the proposed road. Ray Mill Road East already has a lot of traffic, this scheme would add to the problems.	ix
47	Insufficient on-site car parking is proposed.	ix
48	This application was due a decision in July 2019. It is not fair that the application has been allowed to roll on.	It is not uncommon for applications to go beyond their determination date.
49	Scheme would remove green space available for recreation.	ii

Consultees

Consultee	Comment	Where in the report this is considered
Environment Agency	Object, on the following grounds: <ul style="list-style-type: none"> - The 2019 Thames 'Hurley to Teddington' model was published in January 2020. As such there is now a material change in the best available flood data. The proposed flood compensation is based upon the 2007 flood model. As there is now new published flood data information we request assurance that the proposed development will not increase flood risk up to the 1% annual exceedance probability (AEP) flood with an allowance for climate change flood level. The applicant will need to update the proposed floodplain compensation scheme, including level for level compensation, voids and the proposed culvert design. 	i
Lead Local Flood Authority	No objection, subject to a planning condition being imposed.	i
Highway Authority	Awaiting further comments, which will be reported in the Update report to Panel.	n/a
Council's Ecologist	No Objections, subject to conditions.	vii
Tree Officer	Raises concerns over the level of tree planting/landscaping proposed.	vi
Environmental Protection	Recommend conditions relating to air quality and a CEMP. Further clarification is sought over the acceptability of the proposed location of the sewage pumping station.	xii
Berkshire Archaeology	No objection, provided a planning condition to secure a programme of archaeological work including a Written Scheme of Investigation is secured.	x
Rights of Way Officer	Has no comment.	Noted.

Others

Group	Comment	Where in the report this is considered
Maidenhead Civic Society	There are many aspects of the application we welcome: <ul style="list-style-type: none"> -the mix of dwelling types and sizes -the provision of affordable homes -the car parking provision - the retention and enhancement of the eastern part of the site as open space -pedestrian access will be improved The concern is: <ul style="list-style-type: none"> -the width of the access road running from Ray Mill Road East – is it wide enough for 2 vehicles to pass? The width of the access for this size of development appears to be restricted. 	ix

Wild Maidenhead	Commends the developer for listening and taking recommendations on regarding wildlife.	Noted.
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9. EXPLANATION OF RECOMMENDATION

9.1 The key issues for consideration are:

- i Development within the flood zone;
- ii Important Urban Open Space;
- iii Design;
- iv Residential Amenity;
- v Provision of open space (required for new residential development)
- vi Trees;
- vii Ecology;
- ix Transport
- x Archaeology
- xi Provision of Affordable Housing
- xii Air Quality
- xiii Planning Balance and Conclusion.

i Development within the flood zone

- 9.2 According to the Environment Agency flood map for planning, the application site is situated within flood zone 3 (high risk flooding). It should be noted that the Council's Strategic Flood Risk Assessment which was published in 2018 shows the site to be located within flood zones 2 (medium risk flooding) and 3. The Environment Agency Flood Map for planning is more up to date than the Council's Strategic Flood Risk Assessment, and should be used for the purposes of determining this application.
- 9.3 Policy F1 of the Adopted Local Plan relates to flood risk. The key objectives of Policy F1 do not conflict with those of the National Planning Policy Framework on flood risk, although the policy criteria do not fully reflect the Sequential and Exception Tests or acknowledge the impacts of climate change. As such, Policy F1 is given weight, but not full weight.
- 9.4 The NPPF and NPPG are material considerations of significant weight to the determination of this application. This National guidance requires the application of both the Sequential Test (this aims to steer new development to areas with the lowest risk of flooding) and, for residential development in flood zone 3a, the Exceptions Test also needs to be passed.
- 9.5 Paragraph 163 of the NPPF explains that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere, and that development should only be allowed in areas at risk of flooding where, in the light of a Flood Risk Assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:
- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
 - b) the development is appropriately flood resistant and resilient;
 - c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
 - d) any residual risk can be safely managed; and

e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

Sequential Test

- 9.6 As the proposed development is located within the flood zone, it is a requirement of the NPPF (paragraph 158) for the Sequential Test to be applied. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. The NPPF explains that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. According to the Environment Agency Flood Maps for planning, the entire site is located within flood zone 3, as such, alternative sites located in flood zones 1 and 2 (as shown on the Environment Agency Flood Maps for Planning) would be sequentially preferable to this application site.
- 9.7 The NPPG provides further information on how to undertake the Sequential Test, but it is for the applicant to undertake the assessment, and then it lies with the LPA to assess whether there are reasonably available sites at a lower risk of flooding that could accommodate the development.
- 9.8 During the course of the application, the agent submitted a revised Sequential Test to consider alternative sites located in flood zones 1 and 2 (sequentially preferable than the application site) throughout the Borough that could accommodate the proposed development. Alternative sites that could accommodate between 50 and 100 dwellings or which cover a net site area of between 1.2 and 1.6ha were considered as comparable for the purposes of the Sequential Test. Sites at a lower risk of flooding that are situated within the Green Belt (where the land had no development on) were discounted, as a development scheme such as this would be inappropriate within the Green Belt.
- 9.9 The applicant has included letters that they sent to agents or landowners asking if they would be willing to sell their site, but all of those written to did not respond to confirm that they would be interested in selling the land. This means those sites can be regarded as not available.
- 9.10 The only site that officer's disagree with the reason given for the applicant discounting the site is Clivemont House in Maidenhead (see pages 65 and 66 in the updated Sequential Test document). This site is situated within flood zone 1. The applicant has not enquired with the land owner if the site is available, and discounts the site for the reason that even when the site (which has consent for 80 flats) is included in calculating the Council's 5 year housing land supply the Council is unable to demonstrate a five year housing land supply. Officers do not agree that this is a reason to discount the site for the purposes of the Sequential Test. However, the site area for Clivemont House is 0.4 hectares, which is a considerably smaller area than the part of the application site at Ray Mill Road East to be developed, which is around 1.3 hectares. It is not considered that the type and density of housing proposed at the Ray Mill Road East application site could be accommodated at the Clivemont House site.
- 9.11 Sites have been considered that are proposed for housing development within the emerging Borough Local Plan, however, at the time of writing the Borough Local Plan is given limited weight, and as such the sites allocated for development in the development plan would not be considered as reasonably available.
- 9.12 It is considered that at the time of writing, there are no other reasonably available sites at a lower risk of flooding that could accommodate the proposed development.

Exceptions Test

- 9.13 As it is considered that the Sequential Test is passed, it is then necessary to consider whether the Exceptions Test is passed as the scheme is for more vulnerable development in flood zone 3. For the Exceptions Test to be passed, it should be demonstrated that:
- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

b) 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.

Whether the development would provide wider sustainability benefits to the community that outweigh the flood risk

9.14 With regard to the first part of the Exceptions Test, the applicant has set these out at pages 84 and 85 of the Housing Need and Flood Sequential and Exception Test Statement, and these are summarised below.

- The scheme is located on an under-utilised site in a highly sustainable location; the scheme is inherently sustainable and therefore contributes towards the sustainable development enshrined in the NPPF.
- The scheme would generate a net increase of 80 residential dwellings on a site inside the settlement boundary. The scheme will make a material contribution towards to the local housing need
- The scheme will contribute to the Council's lack of a 5 year housing land supply.
- The proposal will provide much needed affordable homes. This will exceed the 30% requirement, and will target local needs.
- It will provide significant growth within Maidenhead, which is an objective within the emerging Local Plan.
- The existing site makes no contribution towards the area. The opportunity exists to make a high quality open space on the eastern part of the site which will provide significant benefits to the local community.
- The scheme will provide economic benefits during the construction phase, and when the new residents move in.

9.15 It is considered that the development of 80 residential units would make a reasonable contribution to the Council's 5 year housing land supply. The scheme (subject to the signing of a legal agreement) would provide affordable housing in excess of the Council's Local Plan policy requirements, and the scheme would provide economic benefits during the construction phase, and when future occupiers move into the properties.

9.16 It is not agreed that the existing site makes no contribution towards the area. The other benefits listed are considered to be wider sustainability benefits. However, part b of the Exceptions Test must also be passed.

b) 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.

9.17 The NPPG explains that for the second part of the Exceptions Test to be met, the proposed development must show that the development will be safe, and that any residual risk can be overcome. It sets out that the site specific FRA should cover the following:

- the design of any flood defence infrastructure;
- access and egress;
- operation and maintenance;
- design of development to manage and reduce flood risk wherever possible;
- resident awareness;
- flood warning and evacuation procedures; and
- any funding arrangements necessary for implementing the measures

9.18 The Flood Risk Assessment and proposed flood compensation was updated during the course of the planning application to address comments from the Environment Agency. The flood compensation proposed is based upon the Thames Reach 1 and 2 flood model (2007) to extrapolate flood levels to calculate the 35% allowance for climate change.

- 9.19 In January 2020, the 2019 Thames 'Hurley to Teddington' model was published. This is a material change in the flood data that is available. The applicant's Flood Risk Assessment (addendum) sets out that the 1 in 100 year plus 35% climate change flood level would be 24.56mAOD and this figure has been used for the floodplain compensation calculations. The 2019 Thames flood model is a 1D/ 2D flood model, has a range of flood levels across the site from 24.74m AOD to 24.91m AOD. This change in flood levels is considered to be a material change that should be taken into account in the assessment of this planning application.
- 9.20 As such, the application fails to demonstrate that adequate flood compensation (based on the 2019 flood model) can be provided. Even based on the 2007 flood model, the EA advised that the scheme did not provide adequate flood compensation, as the EA have concerns over the design of one of the culverts. The flood compensation scheme also incorporates voids as part of the flood compensation scheme, which officers do not consider should form part of the flood compensation scheme (the reason for this is explained below).
- 9.21 Notwithstanding the fact that the proposed compensation fails to take account of the 2019 flood model, and so is inadequate on this ground, Officers are also concerned about the measures that form part of the proposed flood compensation scheme. The proposed compensation scheme comprises:
- Changes to ground levels across the part of the site proposed for development, including land that would be within the private garden areas of the proposed dwellings
 - The use of voids in the construction of the dwellings.
- 9.22 The FRA, and subsequent e-mails from the applicant's flood risk consultant confirm that the appointed management company would be responsible for:
- Regular inspections of the garden levels to ensure that future occupiers who purchase the plots do not alter ground levels.
 - Regular inspections of the permeable fencing will be carried out by the management company to ensure homeowners are complying with the terms of their plot transfer, which will prevent them from replacing the fence with anything but a like-for-like product.
 - The maintenance and clearance of the culverts which would form part of their routine maintenance regime.
- 9.23 Any future changes to ground levels within private gardens is likely to affect the flood storage capacity. The applicant states that the management company would be responsible for checking ground levels are not altered within the gardens, however, ensuring the management company would undertake sufficient checks on this for the lifetime of the development is considered to be very difficult to secure and difficult for the LPA to monitor and enforce.
- 9.24 The applicant proposes that any solid fencing erected on the boundaries of future gardens would not be permitted, as this could impact on the operation of the flood compensation scheme. The applicant has indicated that all fencing could be designed to be permeable, and this could be secured through a legal undertaking, with the appointed management company charged with ensuring appropriate checks are made. Similar to checking ground levels in private gardens, officers consider that it would be difficult for the LPA to ensure that these checks were being undertaken (and enforced upon if necessary) for the lifetime of the development, particularly in relation to fencing located within private residential gardens.
- 9.25 Two box culverts are proposed in the north eastern part of the proposed residential development. These culverts are proposed in order to connect part of the proposed floodplain compensation scheme to the floodplain, which is disconnected due to the proposed raised road. The culvert to the north east of the site has two 90 degree bends and emerges in the floodplain compensation area at a different level to where it begins in the floodplain. It is also significantly longer than the other culvert. These factors increase the likelihood of blockages within the culvert, which would restrict flood flows and so increase flood risk elsewhere. The design of the culverts is likely to present challenges with inspection and maintenance because, as blockages may not be visible from outside the culvert and would be difficult to clear. The Environment Agency states that this

culvert is not suitable for its intended use. Officers also have doubts over whether the operation of the culvert would be effective, due to difficulties around its maintenance.

- 9.26 32 of the proposed dwellings within the development are designed with voids which form part of the proposed flood compensation scheme. The supporting text for Local Plan policy F1 indicates that flood compensation schemes must be carried out on a level for level basis (paragraph 2.4.10). Level for level compensation is the matching of volumes lost by lowering of ground levels on land connected to the floodplain and above the 1% annual probability flood level plus an appropriate allowance for climate change, whereas voids are considered to be mitigation of risk by design rather than a direct replacement for the loss of storage volume and there is no guarantee that the floodplain will be retained in the same way as the effectiveness of voids would depend on keeping the voids open and on proper maintenance for the lifetime of the development.
- 9.27 To summarise, the proposed flood compensation is based on the 2007 flood model. As new flood data held by the Environment Agency is now publicly available, it is considered the Flood Risk Assessment and flood compensation should be based on this data. The new flood data increases the predicted flood levels across the site compared to the 2007 data, and as such the compensation proposed would not adequately compensate for the loss of the floodplain storage as a result of this development based on the 2019 flood model. Notwithstanding the foregoing there remain the concerns expressed above regarding the likelihood of the various measures of flood compensation and mitigation being properly managed and maintained in the future.

Access and Egress

- 9.28 Based on the 2007 flood model, the application **fails to demonstrate that future occupiers would have a low hazard escape route**.
- 9.29 In the event that there is a 1 in 100 year flood event, the FRA acknowledges that in such a flood event, there is **not** a low hazard escape route from the site to an area wholly outside the flood zone.
- 9.30 The FRA sets out that the route for future occupiers to leave the site and travel to an area outside of the floodplain would be:
- users would need to travel for approximately 500m along the following route to the west of the site:
 - Turn left (west) out of the site entrance, following Ray Mill Road East for 130m;
 - Turn left (south) along Blackamoor Lane for 100m; and
 - Turn right (west) along Ray Mill Road West for 270m (crossing the Strand Water).
- 9.31 The guidance document 'FD2320 Flood Risk Assessment Guidance for New Developments' which is used to assess the safety of escape routes, sets out that generally, assuming a very low velocity of floodwater, floodwater depths need to be 250mm or less to demonstrate that they can be regarded as '**safe**' to all users.
- 9.32 The applicant submitted a route, and what the flood depths would be during a 1 in 100 year flood event (with 35% climate change allowance added). For the most part, the flood depths along the route on Ray Mill Road East and Blackamoor Lane would vary between 0.27-0.52 metres. Along Ray Mill Road West, the flood depths would vary between 0.45- 1.14 metres. It is considered reasonable to assume the flood flow velocities would be 0.00m/s, and so for the most part of Ray Mill Road East and Blackamoor Lane, according to the guidance document, there would be a danger to some (danger to some presents a danger to children, the elderly and the infirm). The danger would increase as occupiers walked along Ray Mill Road West, the velocity of the flood waters would probably be at 0.00m/s, but by the Strande Water, the velocity may be higher at 0.25 m/s. Taking into account the predicted flood depths and velocities, this part of the route would present a danger for most (danger for most presents a danger to the general public).

- 9.33 However, there has now been a change in flood data. The Environment Agency advise that they have compared the deepest level along the access route shown on the Off Site Safe Access drawing (1.14 metres) to the flood level from the 2019 Thames model in the same location, which increases the flood depths. The deepest depth along the route when considering the 2019 Thames flood data is 1.58 metres. Depths of 1.58m with a zero or low velocity would be considered 'danger for most' or 'danger for all' according to Defra document FD2320. The applicant has not submitted an updated plan to show the flood depths across the escape route using the 2019 flood model.
- 9.34 Future occupiers of the proposed dwellings would not have a low hazard escape route in a serious flood event from the site to an area outside of the floodplain. As such, occupiers would either remain on site within their homes, or as the application proposes, a flood evacuation plan would be used to manage how future occupiers respond to flood events. Flood evacuation plans are normally secured by a legal agreement if found to be an acceptable way to manage the safety of future occupiers on the site.
- 9.35 The aim of the Flood Evacuation Plan is to provide a site-wide system for monitoring and disseminating flood warnings, and to subsequently identify safe route(s) into and out of the site to an appropriate safe refuge area in the event of an extreme flood event. The Flood Evacuation plan sets out that the plan would become a 'live' document, to provide advice and guidance to occupants in the event of an extreme flood. However, there are serious concerns over how effective this flood evacuation plan would be when used in practice.
- 9.36 The dwellings would be occupied by independent households, and so managing what residents do in a serious flood event would be more difficult to control compared to a managed facility. The evacuation plan makes statements about when residents should evacuate in a flood event and that the residents should follow instructions, but it does not state whose responsibility it would be to give such instructions. The plan also states if residents become trapped in a serious flood event, they should wait on site and contact the management company, however, in a serious flood event members of the management company would not be permitted to enter the site, and the responsibility to rescue future occupiers would likely fall on the emergency services.
- 9.37 The evacuation plan refers to liaising with the Emergency Planning Team (in the Council) and relying on their advice on what to do in a serious flood event, which is what a flood evacuation plan should be avoiding as there would already be existing pressures on the emergency planners in the Council if a serious flood event were to occur. In addition, there is doubt over how the management company appointed could ensure that all residents' sign up to the EA flood warnings, and how they could ensure residents followed the evacuation procedure. It is not considered the flood evacuation plan would be effective in getting future occupiers to leave the site before a serious flood event occurred. If the flood evacuation plan is not effective, it is likely that many future occupiers of the dwellings would remain in their dwellings, and would not leave in time in advance of a serious flood event occurring, and as a result this would place a burden on the emergency services who may need to rescue occupiers if stranded in their homes during such an event.
- 9.38 The NPPG states that the emergency services are unlikely to regard developments that increase the burden and risk to emergency staff as being safe. Therefore, it is considered that due to the failure to provide a safe route of access and egress and reliance on a Flood Emergency Plan that the proposed development would not be considered safe for its lifetime.

Sustainable Drainage

- 9.39 The Lead Local Flood Authority comment on Sustainable Drainage, and raise no objection to the Sustainable Drainage Scheme proposed, provided a condition is imposed to get the further detailed design.

Residual Risk

- 9.40 Residual risk is defined in the NPPG as those risks remaining after applying the sequential approach to the location of development and taking mitigating actions.
- 9.41 There is no substantive assessment of residual risk submitted with the application or information on how residual risk would be safely managed. However, as the proposal fails to demonstrate that flood risk can be safely managed during a 1 in 100 flood event plus climate change then it follows that the proposal would not be safe when considering any additional residual risk.
- 9.42 Therefore it is not considered that the scheme passes the Exceptions Test, as it has not been demonstrated that the development would be safe, and that it would not increase flood risk elsewhere. The scheme also fails to comply with paragraph 163 of the NPPF.

ii Important Urban Open Space

- 9.43 The site is designated as an Important Urban Open Space within the Adopted Local Plan. Policy R1 of the Adopted Local Plan sets out that the Council will not approve proposals that would result in the loss of existing areas of important urban open land, unless it is replaced by new provision which is at least comparable in terms of facilities, amenity and location, or they can be retained and enhanced through redevelopment of a small part of the site. This policy has different tests on open space from the NPPF. The policy also affects housing land supply matters and as such it is given reduced weight in the determination of this application.
- 9.43 The NPPF at paragraph 97 sets out that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:
- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
 - b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
 - c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.
- 9.44 In this case, the proposed development would reduce the amount of open space. 1.3 hectares of the site is proposed for housing development, with the remainder of the site being retained for public open space. The planning statement sets out what is proposed for the public open space and this is summarised below:
- Softening of existing boundary fencing with mixed hedgerows;
 - Existing hoggin path retained and extended around the site to improve public access;
 - Retention and enhancement of existing woodland copse;
 - Existing varied grassland to be retained and enhanced to create a diverse sward;
 - Perennial and annual wildflower areas to be provided to act as a buffer to the built development;
 - Provision of interpretation boards with site information;
 - Retention and tidying up of habitat piles, including brush and fallen logs; and Specimen hazel retained with scrub understorey to provide cover for nesting birds and invertebrates.
- 9.45 It is important to consider how the existing open space is currently used. Although the site was historically a playing field, this is clearly not the case anymore. The site now comprises overgrown grassland, scrub and scattered trees, with pathways. Part of the site is currently fenced off (for wildlife/ecology reasons).
- 9.46 The site has not been identified by the Council in the Open Space Audit (2019), which is an audit that covers all forms of open space. The reason it has not been included within this audit is due to its limited public use. In terms of the types of open space it would be categorised within the Open Space Audit within the Natural and Semi-natural Greenspace category. The Open Space Audit sets out that Maidenhead is well served by this type of open space.
- 9.47 It has been established through case law, that the interpretation of the NPPF does not necessarily mean that all open space should be retained in a development scheme. In this case.

The applicant provided a copy of this judgement within their planning statement. The judgement relates to a case where a redevelopment scheme would have resulted in less open space than existed. At Paragraph 37 of the judgement it is set out that:

'The claimant submits that the natural and so correct meaning of paragraph 74 requires any development to provide open space which is at least equivalent to that lost both in quantity and quality. It is not a correct interpretation to allow a smaller quantity because of enhanced quality. The claimant has referred to observations of a MP who was making particular reference to allotments saying that it meant that open spaces were not to be lost. However, I think that that is an over mechanistic approach. No doubt when spaces are fully used such as allotments or playing fields or entirely accessible recreation areas it will be difficult if not impossible to justify a loss of quantity. But it is in my view appropriate in a case such as this to consider the reality which is that the existing spaces were largely unused by the general public. The requirement in such circumstances for equivalent quantity is too restrictive and would, if applied to the letter, prevent sensible development when in reality there has been no overall loss. Accordingly, I do not think the inspector erred in dealing with open space.'

9.48 The proposed development does not seek to remove all of the public open space, and so it should be assessed against paragraph 97 of the NPPF (paragraph b). The amount of open space will be reduced, however, the size of the space to be retained largely matches the area of the open space that is currently accessible to the public. With regard to the quality of the public open space, the proposal is to enhance the retained area of open space, through making ecological enhancements and managing the space for the public and also providing visitor information. Taking into account the current use of the site, and considering the enhancements proposed to the open space, it is considered that the scheme would meet the requirements of paragraph 97 (b) of the NPPF.

9.49 Given the comments above, the scheme would only be in compliance with paragraph 97 (b) of the NPPF, on the basis that the quality of the open space would be enhanced. A legal undertaking to secure the provision, enhancement and maintenance of the open space would need to be entered into if planning permission was being recommended.

iii Design

9.50 As set out within section 3 of this report, the built character of the area is varied and there are a range of densities and scale of buildings surrounding the application site. As such, it is considered that there is some scope to consider a varied scale and density of the development at this site. It is also considered that the application site is quite self-contained, and so rather than the scheme being read within the streetscene of properties on surrounding roads, the scheme would create its own character.

9.51 Adopted Local Plan policies DG1 (Design), H10 (housing layout and design) and H11 (Housing design) are large largely consistent with the aims of the NPPF.

9.52 The NPPF at Section 11 sets out that the effective use of land should be encouraged. Based on the area proposed to be developed for housing, this would provide a density of circa 62 dwellings per hectare, which is a relatively high density of development, in comparison to the dwellings to the east, west and north of the application site which ranges from 14-21 dwellings per hectare. However, the land to the south, which gained planning permission in 2007, has a density of circa 71 dwellings per hectare (based on the number of dwellings and site area permitted under application 07/01239).

9.53 The proposed dwellings are relatively tall, as they have been designed to incorporate flood resilience and resistance measures. Even the smaller scale dwellings in this scheme are taller than a typical two storey dwelling with accommodation in the roof.

9.54 However, there is no objection to the dwellings being taller, given that this scheme would create its own character. The larger scale buildings in the south of the site would respond to the larger scale buildings situated beyond the southern boundary of the application site.

- 9.55 Looking at the relationship of the dwellings between plots 4 and 5, the rear elevation of the dwelling on plot 4 would face the side elevation of the dwelling on plot 5, with a gap of around 1 metre between these two elevations, which is very limited spacing, and creates a cramped and poor relationship between these two dwellings. In addition, owing to this poor relationship, the rear elevation on plot 4 has been designed to have limited fenestration with only two windows proposed which would serve non-habitable spaces in this dwelling, and this is a symptom of the cramped relationship, as a rear elevation is a primary elevation where main windows should be located. Plots 10 and 11 have a similarly poor arrangement.
- 9.56 With regard to the car parking, policy DG1 (6) sets out that landscaping proposals should form an integral part of a development's overall layout, and criterion 7 of DG1 sets out that developments should provide adequate car parking, and such provision should be well landscaped and lend itself to a reasonable degree of surveillance. In this scheme, plots 22 through to plot 30 would be dominated by hardstanding to accommodate car parking, as would plots 12 through to 20. In these areas, it is not considered that meaningful landscaping would be provided in some parts of the site.
- 9.57 Although in principle, a higher density of development is accepted on this site, because of the density of development on the land to the south, for the reasons set out above, which include close and awkward relationships between several of the dwellings, a dominance of hardstanding in parts of the site, and a lack of meaningful landscaping across certain parts of the site, this proposal is considered to represent poor design. Although it is not considered to be harmful to the surrounding streetscenes, this site will have its own character, and it is important that the scheme exhibits good design.
- 9.58 The dwellings would have pitched roofs, which is a common roof form within the locality. All of the dwellings would be in brick, but some will be partly finished in cladding and tile hanging, which adds variation to the appearance of the dwellings, and avoids a monotonous appearance.
- 9.59 The scheme has positives in that it creates active frontages, and corner buildings are designed to create interest. Parking areas, generally have good natural surveillance from residential properties.
- 9.60 It is considered that there would be a limited level of harm from the scheme being cramped. This harm would be contained within the site, and not impact on the wider character of the area or adjacent streetscenes. This weighs against the scheme, and is considered in the planning balance.

iv Residential Amenity

- 9.61 It must be considered whether the proposed development would provide an adequate standard of amenity for future occupiers of the residential units, and also for neighbouring properties to the site, this is required by paragraph 127 (f) of the NPPF.

Daylight and Sunlight.

Neighbouring properties

- 9.62 A Daylight & Sunlight Report has been submitted with this planning application. The assessment was conducted in accordance with the guidelines set out in the 2011 Building Research Establishment report 'Site layout planning for daylight and sunlight - A guide to good practice'. This report concludes that the proposed development will have no material impact on the daylight or sunlight amenity to any property surrounding the site and is fully compliant with the BRE guidelines. The impact on daylight and sunlight to neighbouring properties is considered to be acceptable.

Future occupiers of the proposed dwellings

- 9.63 The report sets out that in relation to sunlight, the BRE guidelines state that sunlight to kitchens and bedrooms is less important. The results show that the living rooms served by windows with a

southerly aspect will have access to very good sunlight levels. As would be expected, those with a northerly aspect will experience lower levels of sunlight, however, for the houses that have north-facing living rooms at first floor level, they also have large south-facing ground floor kitchen/dining rooms that will have access to very good sunlight levels, compliant with the BRE guidelines.

- 9.64 The Assessment shows the sunlighting to the garden areas for the proposed dwellings. The BRE guidelines set out that it is recommended that gardens (this usually includes the main back garden of a house) **at least half of the amenity area** (i.e. the garden) should receive at least 2 hours of sunlight on the 21st March. The following plots do not comply with this recommendation:

Plot number	% of the garden area that would receive more than 2 hours of sunlight on the 21 st March 2019.	Recommended % of the garden area that would receive more than 2 hours of sunlight on the 21 st March 2019.
5	22.4	50
8	0.2	
9	5.9	
10	25	
11	9.1	
31	25.7	
32	25.5	
33	17.6	
34	13.2	
35	23.2	
37	7.6	
39	29.3	
41	9	

- 9.65 It is accepted that in June the gardens will receive more sunlight, however, the BRE guidelines set out that the assessment should be based on March 21st and a number of these plots would fail to meet this test within the BRE guidelines. In particular plots 8, 9, 11, 33, 34, 37 and 41 would have a low level of sunlighting to their rear garden areas. This does not create a very good standard of amenity for future occupiers of these plots. This weighs against the scheme and is considered in the planning balance.

Impact on privacy of existing neighbouring properties

- 9.66 Given the relatively deep gardens that neighbouring properties have to the north, east and west of the application site, and the distance that the proposed dwellings would be sited off these boundaries, it is not considered that unacceptable overlooking to these neighbouring properties would arise.
- 9.67 The proposed flats in the southern part of the application site would overlook a car parking area to the south, and beyond the car parking area are rear gardens. There would be a distance of circa 18 metres from the rear elevation of the proposed flats to the boundaries of these rear gardens (numbers 11-29 Kingfisher Drive). Owing to the scale of the proposed flats, there would be some views towards the rear gardens of these properties, but it is not considered to constitute a level of overlooking that would warrant the refusal of this application.

Standard of amenity for future occupiers

- 9.68 House type B are proposed town houses. They are 3 storeys high, with heights ranging from 11.5-12 metres. Some of these house types are situated within the centre of the site (plots 32,

33, 34, 35, 42, 43, 44, and 45) would have a back to back relationship, with a distance of 20 metres between the rear elevations, which is a relatively short distance for buildings of this scale.

- 9.69 The scheme proposes a relatively high density of housing on this part of the site; a number of the rear gardens are small relative to the size of the dwellings proposed.
- 9.70 The proposed flats over garages (labelled 47 and 48) would not have any form of outdoor amenity space for future occupiers.
- 9.71 The proposed apartment block to the south of the site, labelled 49-80 would have extremely limited outdoor amenity space around it, and no balcony areas.
- 9.72 The lack of outdoor amenity space for a number of the future occupiers, particularly those who would occupy the flats is not a positive of the scheme. However, the Council does not have any adopted standards with regard to amenity space that this residential scheme would be required to adhere to. The provision of outdoor amenity space is considered in the planning balance.

Location of the proposed pumping station and impact on residential amenity

- 9.73 Comments have been sought from the Environmental Protection Team in relation to the location of the proposed sewerage pumping station, and the impacts on neighbouring residential amenity. Comments from the Environmental Protection Officer will be reported in the Update report to Panel.

V Provision of open space (required for new residential development)

- 9.74 Policy R4 of the Adopted Local Plan sets out that for new housing developments on sites over 1 hectare in size, 15% of the site should be in the form of open space. This scheme complies, as the amount of the site allocated for public open space exceeds this percentage.
- 9.75 Under Policy R5, new developments for a site of this size should provide a Local Equipped Area of Play. In this case, a Local Equipped Area will not be provided as part of the development scheme, however, as the Public Open Space needs to be designed to be sensitive to the ecological constraints of this site, a Local Equipped Area of Play is not proposed in this case.

Vi Trees

- 9.76 Policy N6 of the Adopted Local Plan provides guidance on development and trees. The Policy is considered to be broadly in compliance with the aims of the NPPF.
- 9.77 The trees within G2 (labelled on the tree survey) are located on the southern part of the application site and comprise a scattered group of young trees, predominately Common Ash with a few Pedunculate Oak which are shown to be removed to make way for the proposed flats and car parking area.
- 9.78 Tree groups G4 (Common Ash), and G1 (Aspen) are shown for retention. Tree group G3 (Common Ash) would need to be removed because of the proximity to the proposed SUDS basin.
- 9.79 None of the trees on site are protected by a Tree Preservation Order, and there is no objection to their loss.
- 9.80 Replacement tree planting is shown to be provided within the application site, although there are concerns that the soft landscaping in the proposed developed part of the site would not be successful. The Council's tree officer advises that the soil volumes within the proposed developed area would be insufficient, and that the soil volumes are likely to be reduced further due to haunching for kerbs and utilities/drainage runs.
- 9.81 It is considered that the soft landscaping within the proposed developed part of the site would be limited. This is connected to the concerns over the cramped form of development. This is discussed in the planning balance.

Vii Ecology

- 9.82 The site lies within 5km and within the zone of influence of the Chiltern Beechwoods Special Area of Conservation (SAC), which is a European Designated site. The primary reason for designation is the Semi-natural dry grasslands and scrubland facies: on calcareous substrates (Festuco-Brometalia); Dry grasslands and scrublands on chalk or limestone Asperulo-Fagetum beech forests; Beech forests on neutral to rich soils *Lucanus cervus*; Stag beetle beetle) . The Natura 2000 data form for the SAC reports that the main threats relate to Forest and Plantation management & use, invasive non-native species, problematic native species, Interspecific floral relations and modification of cultivation practices. Where any proposal is likely to have a significant effect on a European site either alone or in combination with other plans or projects, the Conservation of Habitats and Species Regulations 2017 requires an appropriate assessment to be made in view of that site's conservation objectives. Paragraphs 175 and 176 of the NPPF state that development resulting in the loss or deterioration of Special Areas of Conservation should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. In this case the proposed development, along and in combination with the linked proposals, is not considered to have a significant effect on the Chiltern Beechwood SAC, due to the distance of the proposal from the SAC and therefore an appropriate assessment is not required.
- 9.83 The site does not contain any "priority habitats" as defined in the NPPF, and other than slowworms and toads is unlikely to support any protected or priority species.
- 9.84 All native species of reptile and most amphibians are protected from killing or injury under the Wildlife and Countryside Act (1981) as amended. In addition, all common native species of reptile, and common toads (which are in large-scale decline across the UK), are Species of Principal Importance under Section 41 of the NERC Act 2006, i.e. they are "Priority Species" as per the NPPF, and receive further protection through national planning policy.
- 9.85 The site hosts a population of toads which are known to breed in Summerhill Lake approximately 100m to the north and is likely to be of importance for this species during its terrestrial life stages.
- 9.86 The site prior to a translocation exercise contained a low population of slow worms and a population of toads. In 2016, a translocation of the slow worms and toads was undertaken at the site. The slow worms and toads were translocated to the eastern section of the site following the enhancement of this area for slow worms (construction of log piles and hibernacula, planting of scrub and appropriate management of the grassland). This receptor area will not be built on and will remain open space managed for wildlife.
- 9.87 A translocation of slow worms and toads from the development area to the adjacent open space was undertaken in 2016 and since then a reptile proof fencing has been installed and maintained around the development site. The open space area was enhanced prior to the translocation and included scrub planting, incorporation of log piles and hibernacula and grassland management in order to enhance the area for these species. Since then, the toad population has been monitored (using data from the Deerswood toad patrol) and the applicant's ecologist has concluded that the population of toads at the site has remained relatively consistent following the exclusion from a proportion of the site.
- 9.88 Paragraph 175 of the NPPF sets out that when determining planning applications, local planning authorities should apply the following principles:
- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
 - b) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

- 9.89 A swale and drainage basin has been incorporated into the design of the wildlife area which is likely to provide additional foraging and sheltering resources for toads and reptiles and potentially a breeding opportunity in wet springs.
- 9.90 An Ecological Mitigation and Management Plan (EMMP) outlines the further mitigation with regards to slow worms and toads during the development and operational phases of the development and includes a precautionary working method in order to avoid killing or injuring slow worms and toads, sensitive timing of works, gaps under new fencing to allow wildlife movement across the site, permeable paving, wildlife friendly curbs, incorporation of amphibian ladders into all drains (which will be monitored on an annual basis) and monitoring of the population of slow worms every 2-3 years. In addition, details of the management of the open space area for wildlife is detailed within the EMMP and includes the creation of a wildflower area, continued grassland management, newly planted trees, creation of a swale/ drainage basin and hedgerow planting. It is considered that with the proposed enhancements to the open space with the measures detailed in the EMMP that adequate compensation can be provided. A condition would need to be imposed to secure the EMMP. The number and species of trees proposed would need to be sensitive to the ecological sensitivities of the site. A final scheme for the open space would need to be submitted for approval by the LPA.
- 9.91 The site did not have the potential to support roosting bats. However, there was some foraging and commuting habitat on site, particularly around the boundaries of the site. Lighting, without appropriate mitigation could have a detrimental effect on bat species by disturbing foraging and commuting lines and discouraging bats from roost sites. It is considered that a condition could be imposed to secure a sensitive external lighting strategy to avoid an adverse impact.

Viii Transport

- 9.92 Paragraph 109 of the NPPF sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 108 (c) of the NPPF sets out that for specific applications for development, it should be ensured that: a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; and c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Traffic movements

- 9.93 The Transport Assessment sets out that during the morning peak hour a total of 80 two-way trips are expected to be made by all modes and for all journey purposes. During the evening peak hour this reduces to 70 two-way trips. During the 07:00-19:00 period, a total of 653 trips by all modes would be expected to arise from the proposed development.

Junction Assessments were undertaken on the following:

- Ray Mill Road West / Blackamoor Lane;
- Ray Mill Road East / Blackamoor Lane; and
- Ray Mill Road East / Ray Park Avenue.
-

Junctions have been assessed during the following time periods:

- AM weekday peak (08:00 to 09:00 hours); and
- PM weekday peak (17:00 to 18:00 hours).

- 9.94 In considering the impact of development on junction operation, the ratio of flow to capacity (RFC) value has been used as the basis for assessing junction performance and determining which junctions should be considered for mitigation works. In considering junction performance, the following tests have been applied as a starting point:
- Where appropriate, the RFC or DoS value on approaches is maintained below 0.90, although it is acknowledged that values of up to 1.00 are considered acceptable in certain circumstances where, for example, queues can be safely stored within the highway; or
 - Where baseline RFC or DoS values are already greater than 0.90, development does not result in a material worsening of the existing performance of the junction.
- 9.95 The following scenarios were assessed:
- 2024 assessment year traffic flows (“2024 Assessment Year”).
 - 2024 assessment year plus Proposed Development traffic forecasts (“Assessment Year plus Proposed Development”).
- 9.96 The junction capacity assessments indicate that the assessed junctions (with the proposed development) would not reach beyond a Ratio to Flow Capacity (RFC) of 0.66, which is below the limit of 0.90.
- 9.97 The Transport Assessment sets out that the existing highway network currently operates within capacity during the observed peak hours, with minimal queuing noted on the highway network, and that this situation is predicted to continue with the proposed development traffic added to the network. The Highway Authority therefore raises no objection on this ground.
- 9.98 A swept path analysis has been submitted with the Transport Assessment which shows that a refuse vehicle can manoeuvre within the site, and can enter and leave Ray Mill Road East in a forward gear.

Car Parking

- 9.99 Policy P4 of the Adopted Local Plan requires developments to provide car parking in accordance with the Council’s Adopted Standards. The parking standards are set out in the Council’s Parking Strategy 2004. However, the Council’s parking standards include maximum parking standards, which the NPPF sets out should only be imposed if there is clear and compelling justification that they are necessary for managing the local road network. Policy P4 of the Adopted Local Plan is therefore not given full weight.
- 9.100 The application site is located within a reasonably sustainable location, within a 15 minute walking distance to Maidenhead Town centre. The site is also around a 3-4 minute walk to bus stops. However, when assessed against the Council’s Parking Strategy 2004, the site is not considered to be in an area of good accessibility, as it is not within 800 metres of a train station with a regular train service. As such, according to the Parking Strategy 2004, assessed against the maximum parking standards a total of 171 car parking spaces are required. The scheme provides for a total of 161 car parking spaces. Although there would be a shortfall of 10 car parking spaces, when assessed against the Council’s Parking Strategy, the NPPF is clear that maximum standards should only be imposed when there is compelling justification to do so. In this case, it is not considered to be a compelling justification to impose the maximum parking standards. It is not considered that the parking provision proposed, would result in an overspill of car parking onto the road network that would subsequently result in a danger to highway safety.
- 9.101 The proposed scheme would also result in the loss of an existing parking area which is used in association with the family centre on Ray Mill Road East. The Transport Assessment does not account for the loss of this parking area. The Highway Authority has advised that the applicant should do further surveys to assess the capacity of on-street car parking in Ray Mill Road East to determine if there is capacity in the road to accommodate this. Advice from the Highway Authority is awaited as to whether they would recommend refusal of the application for failing to comply with paragraph 108 (c) or 109 of the NPPF.

Cycle parking

9.102 The Transport Assessment sets out that cycle parking will be provided as part of the proposed development. For houses and flats above garage (FOG), space will be provided within the curtilage. For apartments, 1 space will be provided per apartment resulting in a total of 32 cycle parking spaces. Cycle parking for apartments will be provided in covered and secure locations. It should be noted that any structures in the gardens of private dwellings would not be acceptable within the flood zone. Final details of the external cycle storage have not been agreed for the apartments. Depending on the final design, the external cycle stores may further increase the built footprint within the flood zone. In terms of the number of cycle stores, the Council's Sustainable Design and Construction SPD requires 1 cycle space per residential unit. Whether the number of cycle parking spaces could be provided in accordance with the requirements of this SPD is questionable, however, given the SPD is not Adopted Policy, it is not considered that the scheme could be refused on this ground. Certainly a proportion of secure cycle storage could be provided, and this final design would need to be secured by planning condition.

Ix Archaeology

9.103 The site lies within the Thames valley. It therefore lies over the floodplain and gravel terraces which have been a focus of settlement, agriculture and burial from the earlier prehistoric period to the present day. If planning permission was to be granted, a condition would need to be imposed to secure a written scheme of investigation.

X Provision of Affordable Housing

9.104 Local Plan policy H3 requires the provision of 30% of the total units provided on site as Affordable Housing. As a material consideration, paragraph 63 of the NPPF states that where major development involving housing is proposed, at least 10% of the homes are expected to be available for affordable home ownership, as part of the overall affordable housing contribution from the site unless this would exceed the level of affordable housing required in the area or prejudice the ability to meet the identified affordable housing need within the Borough.

9.105 The NPPF 2019 provides a definition of affordable housing in the glossary. The application proposes that there would be 18 shared ownership units and 20 affordable rented properties (this would meet the definition of Affordable rent in the NPPF, and would be a build for rent product). The number of affordable units proposed would exceed the 30% required by Policy H3 of the Adopted Local Plan. The scheme would provide 47% on site affordable units. The provision of affordable housing would need to be secured by a suitably worded legal agreement. It is acknowledged that the Council has undelivered on affordable units within the Borough. The provision of affordable housing is considered to be a significant benefit of the scheme. It is considered further in the planning balance.

Xii Air Quality

9.106 Local air quality conditions and the impacts from vehicle exhaust emissions were assessed and the results indicated that predicted annual mean nitrogen dioxide, PM10 and PM2.5 concentrations at receptor points were below the relevant air quality objectives in both the base year 2019 and 2024 scenario. The findings and conclusion of the air quality assessment that the development construction and operational impact on air quality is considered to be not significant is accepted. A condition would need to be imposed to secure a dust management plan for the construction period should permission be forthcoming.

10. COMMUNITY INFRASTRUCTURE LEVY (CIL)

10.1 The development is CIL liable. The proposed floorspace of the dwellings is circa 8,446 square metres.

Xi Planning Balance and Conclusion

11. Housing Land Supply

11.1 Paragraphs 10 and 11 of the NPPF set out that there will be a presumption in favour of Sustainable Development. The latter paragraph states that:

For decision-taking this means: approving development proposals that accord with an up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. 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.*

11.2 Footnote 7 of the NPPF (2019) clarifies that:

'out-of-date policies include, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer..).'

11.3 The BLPSV is not yet adopted planning policy and the Council's adopted Local Plan is more than five years old. Therefore, for the purposes of decision making, currently the starting point for calculating the 5 year housing land supply (5hyr hls) is the 'standard method' as set out in the NPPF (2019).

11.4 However footnote 6 of the NPPF further clarifies that section d(i) of paragraph 11 of the NPPF (2019) is not applied where 'policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed'. This includes areas at risk of flooding.

11.5 Where there are such restrictive policies in play, and their requirements are not satisfied by the development proposal, the "tilted balance" does not apply, and the planning balance is to be carried out having regard to the statutory test in section 38(6) of the 2004 Act. In this instance, subsection d(i) of paragraph 11 is engaged as flood risk polices in the NPPF provides a clear reason for refusing the development proposed.

11.6 It is considered that the proposed scheme causes some level of harm to the character of the area, through being cramped, however, given the site is well contained and would create its own character, and given the density of development to the south, it is not considered that the scheme would be of such a poor design to warrant refusal on this ground.

11.7 The scheme also does not provide a high standard of amenity for all future occupiers of the site, which is mainly because of the lack of amenity space for future occupiers of the proposed flats; however, the Council does not have adopted amenity standards. In this instance the harm to residential amenity to some of the future occupiers is not considered to constitute a reason for refusal.

11.8 There are benefits that weigh in favour of supporting the scheme, which include the contribution the new dwellings would make to the supply of housing within the Royal Borough, which would make a reasonable contribution to the Council's 5 year housing land supply, this is afforded significant weight; the provision of affordable homes (which exceeds the percentage required by the Local Plan Policy) and which is needed within this Borough this is given significant weight as a benefit; and the economic benefits that would arise from the scheme, which is given moderate weight, as it is not considered 80 households would make a significant contribution to the economy, and the construction jobs associated with the development would only be temporary. In addition, the applicant has advised that they would provide electrical vehicle charging points for each of the dwellings, and would make a contribution towards improved cycling links which are also considered to benefits. However, it is not considered that these benefits would outweigh the significant flood risk concerns, which is that the development would not be safe for its lifetime and would increase flood risk elsewhere. This is given greatest weight. The scheme fails to accord

with Policy F1 of the Adopted Local Plan, and there are not considered to be material considerations which would indicate planning permission should be approved.

- 11.9 Overall, taking account of the Framework and the above considerations, including the benefits of the development, it is considered that material considerations do not indicate that planning permission should be granted for the development, which conflicts with the development plan.

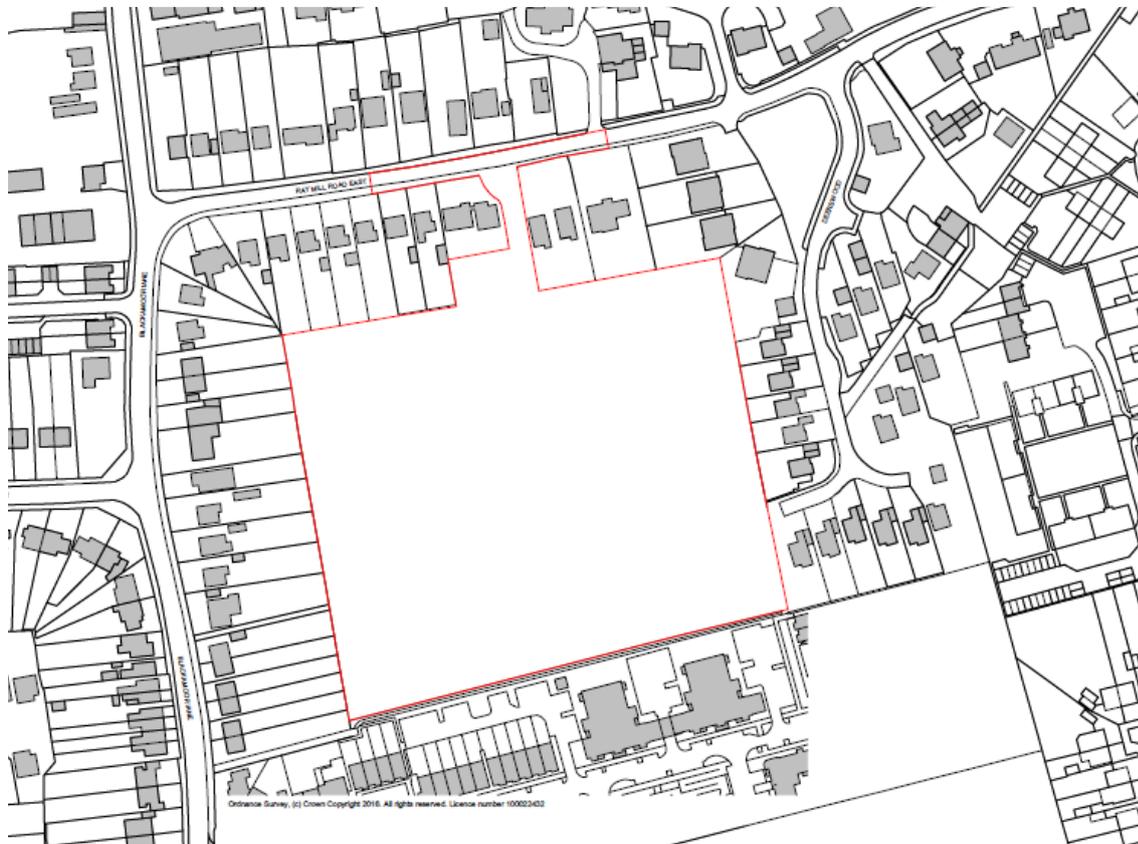
12. APPENDICES TO THIS REPORT

- Appendix A - Site location
- Appendix B – Proposed Block Plan
- Appendix C – Elevations

13. REASONS RECOMMENDED FOR REFUSAL IF PERMISSION IS NOT GRANTED

- 1 The application site is located in Flood Zone 3 where there is a high risk of flooding and the proposal is for a more vulnerable type of use, as identified in the National Planning Policy Guidance. The application has failed to demonstrate that safe escape from the site and safe access to the site could be achieved in the event of a flood, resulting in lives and properties being put at risk. In addition, the application has failed to demonstrate that it would not reduce the capacity of the site to store water in the event of a flood and not displace that flood water outside the site further increasing risk to lives and properties. Accordingly, the application has failed to demonstrate that the proposal would be safe over its lifetime and that it would not increase flood risk elsewhere. The proposal is contrary to Policy F1 of the Adopted Local Plan. The scheme also fails to pass the Exceptions Test as required by the National Planning Policy Framework. The scheme fails to comply with paragraphs 155, 160 and 163 of the National Planning Policy Framework (2019).
- 2 In the absence of a legal agreement the proposed development fails to secure a satisfactory level of affordable housing. The proposal is therefore contrary to policy H3 of the Windsor and Maidenhead Local Plan, 1999 (including Adopted Alterations 2003), and paragraph 64 of the National Planning Policy Framework (2019).
- 3 In the absence of a legal agreement, the scheme fails to provide a sufficient open space as required by paragraph 97(b) of the National Planning Policy Framework 2019.

Appendix A- Site location



Appendix B- Proposed layout



Appendix C- Elevations

Example of house type A



Example of house type B



Example of house type C

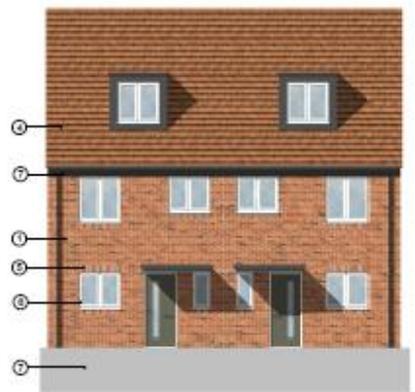


Front Elevation
1 : 100



Left Side Elevation
1 : 100

Example of house type D



Front Elevation
1 : 100



Left Side Elevation
1 : 100

Example of House type E



Front Elevation
1 : 100



Left Side Elevation
1 : 100

Example of house type F



Front Elevation
1 : 100



Right Side Elevation
1 : 100

Proposed apartment block



Front Elevation
1:100



Right Side Elevation
1:100