

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

**MAIDENHEAD DEVELOPMENT CONTROL PANEL**

17 November 2021

**Item: 3**

<b>Application No.:</b>	21/02866/FULL
<b>Location:</b>	Land To The South of 18 To 20 And Open Space To The South of Ray Mill Road East Maidenhead
<b>Proposal:</b>	Erection of 80 dwellings together with landscaping, the provision of open space and related facilities, associated engineering works and access to Ray Mill Road East.
<b>Applicant:</b>	Cala Homes (Thames) Ltd And RBWM
<b>Agent:</b>	Mr Douglas Bond
<b>Parish/Ward:</b>	Maidenhead Unparished/Riverside
<b>If you have a question about this report, please contact:</b> Tony Franklin on 01628 796155 or at <a href="mailto:tony.franklin@rbwm.gov.uk">tony.franklin@rbwm.gov.uk</a>	

**1. SUMMARY**

**This application is identical to planning application 20/03450/FULL, which was due to be heard at the 18<sup>th</sup> August 2021 Maidenhead Planning Committee Meeting. Prior to it being considered by Members planning application 20/03450/FULL was withdrawn by the applicants. The report on this previous application is copied below with section 8 updated to reflect the responses received on this current application and section 9 updated in relation to Sustainability.**

- 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 167 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 The site is within 5.6km of the Burnham Beeches Special Area of Conservation (SAC). 20 of the proposed dwellings come within 5.6km of the SAC. An Appropriate Assessment has been undertaken, and it is considered that without mitigation the proposal would likely have an impact upon the integrity of the Burnham Beeches SAC as a result of additional recreational pressure. However, it is considered that improvements to local green spaces within Maidenhead, close to the application site (Maidenhead Town Moor and North Town moor) would be adequate mitigation to divert recreational pressures (from the increase in housing) away from the Burnham Beeches SAC. The applicant is willing to enter into a legal agreement to secure this mitigation, however, at the time of writing a legal agreement has not been signed, and so the impact of the proposed development on the Burnham Beeches SAC is added as a reason for refusal.

- 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.

<b>It is recommended the Panel REFUSES planning permission for the following summarised reasons (the full reasons are identified in Section 13 of this report):</b>	
<b>1.</b>	<b>The scheme conflicts with Policy F1 of the Adopted Local Plan. It also fails to comply with Paragraph 164 (Exceptions Test) and 167 of the NPPF which relates to flood risk.</b>
<b>2</b>	<b>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.</b>
<b>3</b>	<b>In the absence of a signed legal agreement, the scheme fails to secure open space as required by paragraph 99 of the NPPF.</b>
<b>4</b>	<b>In the absence of a signed legal agreement, the scheme without mitigation would likely impact upon the integrity of the Burnham Beeches SAC.</b>

## **2. REASON FOR PANEL DETERMINATION**

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

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

- 3.1 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 20<sup>th</sup> 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 across 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.

#### Planning History

- 5.8 Planning application 19/01140/FULL which was for the '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.' was refused on the 20<sup>th</sup> February 2020 for the following reasons:
- 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 therefore fails to comply with paragraphs 155, 160 and 163 of the National Planning Policy Framework (2019).*
  - 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).*
  - 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. Without a parking survey of the existing car park associated with the family centre on Ray Mill Road East, it is not known what impact the loss of this car parking area would have on parking or the safe free flow of traffic in the area. The scheme therefore fails to accord with Policies P4 and T5 of the Adopted Local Plan, and with paragraph 108 of the NPPF.*
- 5.9 Planning application ref. No. 20/03450/FULL. Construction of 16 x one bedroom dwellings; 19 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. Application withdrawn.
- 5.10 Adjacent to the application site (numbers 18-20 Ray Mill Road East), planning permission was granted on the 19th May 2021 to change the use from D1 (family centre) to C3 (residential) to form 2 dwellings (planning reference 21/00544). The approved plans for this scheme did not include the former car park associated with the family centre within the application site.

## **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	R3, R4, R5
Pollution	NAP3
Archaeology	ARCH4

## 7. MATERIAL PLANNING CONSIDERATIONS

### National Planning Policy Framework Sections (NPPF) (2021)

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

### 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
Climate Change	SP2
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	IF4
Nature Conservation and Biodiversity	NR2
Trees, Woodlands and Hedgerows	NR3
Archaeology	HE1

7.1 Paragraph 48 of the NPPF sets out that decision-makers may give weight to relevant policies in emerging plans according to:

*“a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);  
b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and  
c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).”*

7.2 The Borough Local Plan Submission Document was published in June 2017. Public consultation ran from 30 June to 27 September 2017. The plan and its supporting documents, including all representations received, was submitted to the Secretary of State for independent examination in January 2018. 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. Public consultation ran from 1 November to 15 December 2019. All representations received were reviewed by the Council before the Proposed Changes were submitted to the Inspector. The Examination was resumed in late 2020 and the Inspector’s post hearings advice letter was received in March 2021. The consultation on the proposed Main Modifications to the BLPSV ran from 19<sup>th</sup> July to 5<sup>th</sup> September 2021.

7.3 The BLPSV together with the Proposed Changes are material considerations for decision-making. The weight to be given to each of the emerging policies and allocations will depend on an assessment against the criteria set out in paragraph 48 of the NPPF. This assessment is set out in detail, where relevant, in Section 9 of this report.

### **Supplementary Planning Documents**

- RBWM Interpretation of Policy F1
- Interpretation of Policies R2, R3, R4, R5 and R6.
- Borough Design Guide (Adopted)

### **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
- Interim Sustainability Position Statement

## **8. CONSULTATIONS CARRIED OUT**

### **Comments from interested parties**

141 occupiers were notified directly of the application.

The planning officer posted a notice advertising the application at the site on 9<sup>th</sup> October 2021 and the application was advertised in the Local Press on the 7<sup>th</sup> October 2021.

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

	<b>Comment</b>	<b>Where in report this is considered.</b>
1	Application site is located in Flood Zone 3 and was removed from the BLP as a housing allocation site for this very reason. What has changed to reverse this decision? What has changed since previous application was refused? The possible risk of flooding will exacerbate the risk of existing neighbouring residents and their properties. This has been exacerbated by the large number of properties that were built at Boulters Meadow 8 years ago.	i
2	The EA has advised that planning permission should not be granted. The new EA modelling maps place the entire site within Flood Zone 3 and granting planning permission would knowingly endanger properties and residents	i
3	All properties in Riverside are at risk of flooding due to climate change and it is important to keep as much open space as possible. Ray Mill Road West has flooded in the recent past.	i
4	The proposed evacuation route would not be safe in the event of a flood. It evacuates directly into Flood Zone 3 and across the water course. The allotments in Ray Mill Road West have suffered extensive flooding in recent times, as has Blackamoor Lane.	i
5	There is still a failure to demonstrate that the application would not reduce the capacity of the site to store water in the event of a flood and not displace that flood water outside of the site, further increasing risk to lives and properties. The development would not be safe over its lifetime.	i
6	The scheme still fails to pass the Exceptions Test as required by the NPPF and fails to comply with paragraphs 155, 160 and 163 of the NPPF (2019). Now paragraphs 159, 164 and 167 of the NPPF (2021).	i
7	Planning permission has been refused for several other properties in the area with flooding being cited as a reason for refusal in each case.	i
8	The modelling used within the flood risk assessment contained in the supporting documents is now outdated in as much as it takes no account of the UK Climate Change Committee (IPPC) and the UK Met Office data which shows the inevitable amount of future change due to the changing heavy rainfall patterns. The heavy rainfall figures under most global emission pathways show that a 20% rise is inevitable by the end of the century. It is even now commonplace to have as much as a month's rainfall over a period of just 24 -48 hours. These new levels of heavy rain render the SUD's design solutions totally inadequate to prevent heavy flooding events in this area. The notion that developments on any designated flood plain at this point in time is anything but foolhardy fails to reflect current science.	i
9	Lack of rigour in resubmitted FRA. This is a 'high risk' flood area, not low-moderate'. There are gaps in historical records of recent flood incidents by type, with no mention of 2014. Focus is on the site and not the surrounding area, which would be impacted negatively by increased surface water flow. Safe access/egress is in the words of the report, not possible.	i
10	A proposed culvert under the access road would increase flooding risk to neighbouring properties. Concern over future management and maintenance of the culvert.	i

11	All available space in Riverside is being built on, leading to further urban sprawl and increasing the risk of flooding.	i
12	Would result in destruction of mature trees, needlessly cut down to construct the proposed drainage ditch. More trees should be planted in this area.	vi
13	The site currently plays an important part in the biodiversity of the area. It is home to and is a breeding ground for the Deerswood toads, lots of small mammals and is a hunting ground for a pair of Red Kites. It is a valuable recreation space for residents which would be significantly diminished by the proposed development.	vii
14	The toads currently have a lush green safe space to go to; however, if plans go ahead they will have a brick wall and a concrete jungle.	vii
15	Ray Mill Road East is narrow, access to site is difficult and additional housing will increase congestion and road noise. The increase in traffic is likely to be around 160 cars. Vehicles speed along Ray Mill Road East making the access into the site a dangerous junction, which is bound to result in an increase in accidents unless speed bumps are constructed and the speed limit reduced to 20MPH. It is already used as a 'rat-run'. Increase in homes will exacerbate these problems.	ix
16	The road safety audit by Gateway TSP refers to potential for road traffic accidents in regard to the junction of Ray Mill Road East and with the new on-site access road. The report was unable to determine the status of a nearby nursery school and stated if this were active then they would have real concerns and anticipated localised gridlock and accidents. The report also states that the width of the new on site road is inadequate for two HGV's to pass and anticipates issues with traffic backing back and blocking Ray Mill Road East with resultant chaos. We believe that the proposed off and on site road infrastructure has not been designed with safety considerations as a first priority as the comments in the Gateway report infer.	This safety audit was submitted with the originally refused application. Highways raised no objections to the previous scheme on that basis, and do not object to this scheme.
17	Ray Road will become a bottle neck and a road safety issue.	ix
18	Proposal is at odds with the RBWM Cycling Action Plan. There should be more green space and provision for cycling not more building and less green space.	ix
19	There should be at least two parking spaces provided per dwelling. The insufficient parking provision may lead to visitors parking on Ray Mill Road East, which is another potential source of accidents	ix
20	18-20 Ray Mill Road East have been redeveloped and No. 20 has no private driveway. If the access road and parking area to the rear is removed then the occupants will park outside the property and will cause a visual obstruction to the entrance/exit of the site.	ix
21	Ray Mill Road East is popular with cyclists and walkers to the riverside and the increase in traffic will make this experience unpleasant for these users	ix
22	Proposed development would put further strain on local schools, NHS services and the emergency services, which are already at full stretch.	The development is liable to the Community Infrastructure Levy. The money raised from this would go towards the provision of infrastructure.

23	The location of the foul sewage pumping station adjacent to Sutherland House would have a huge detrimental impact on neighbouring properties from foul smelling odour emitted from the vent pipe (as confirmed by a Cala Homes representative). If the pumping station is to be adopted by Thames Water it would need to be positioned a minimum of 15m from the nearest habitable building and also not located where it might be susceptible to flooding. Although it is not planned to be adopted it would stand less than 1.0m from the nearest new property and less than 10m from the nearest existing property. It would not be acceptable to allow people to suffer the constant odour of human waste/raw sewage in their homes. The fact that the system will not be publicly adopted does not negate the need for it to adhere to the Thames Water guidelines. The risk to public health should this system fail is too high. Any repairs and future maintenance would be the responsibility of unknown future management companies.	iv
24	The sewer on Ray Mill Road East gets blocked during flash floods. There is no capacity to cope with 80 additional dwellings.	iv
25	There are a number of empty office blocks in Maidenhead and if further residential development is required these blocks should be regenerated rather than building on ever decreasing green space. These have not been included in the Sequential Test.	Noted.
26	The site was rejected as a housing site in 2019 because of the loss of urban open space and former playing fields and due to its significant ecological value. There is no reason to reverse this decision.	The relevant emerging policies are set out above.
27	The withdrawal of the application before the last Council meeting was frustrating and left many questions unanswered. Concern regarding the moral way in which the meeting progressed. In light of this would question whether the process and any future planning meetings in relation to this development can be considered fair and independent given Councillors not entitled to vote were sitting on the panel for the meeting and when removed, CALA Homes withdrew their application immediately.	The previous application was withdrawn and correct process has been followed in the assessment of the current application.
28	Any current or future planning applications to redevelop this site should be rejected or put on hold pending a full review of the overall sustainability of the site in light of current climate change data.	The application cannot be put on hold.
29	The application is not materially different from the previous refusal (19/01140/FULL) and therefore the decision should be the same	Noted
30	Cover letter submitted with the application states that consultation has been carried out with Natural England who have agreed a mitigation strategy in the form of a financial contribution to improve open spaces in Maidenhead. How is offering financial incentives in other areas seen as either appropriate or in some way to be addressing the very real flooding risks and concerns of residents.	Flood risk and ecological mitigation are separate considerations and should not be conflated.

## Consultees

Consultee	Comment	Where in the report this is considered
Environment Agency	<p>The Flood Risk Assessment and Surface Water Drainage Strategy were not initially uploaded with this application and consequently the EA comments remain outstanding on the current application; however, the submitted details (now uploaded) are the same as those submitted in support of the previous application (20/03450/FULL) and the EA comments were as follows:</p> <p>Object, on the following grounds:</p> <ol style="list-style-type: none"> <li>1. The 2019 Thames 'Hurley to Teddington' model was published in January 2020, and it is this data that the FRA and flood compensation should be based upon. The applicant will need to update the proposed floodplain compensation scheme, including level for level compensation, voids, and the proposed culvert design.</li> </ol> <p>If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us in line with the Town and Country Planning (Consultation) (England) Direction 2009.</p>	<p>i</p> <p>It should be noted that given the objection of the Environment Agency, a resolution to approve would have to be referred to the Secretary of State.</p>
Lead Local Flood Authority	<p>The Flood Risk Assessment and Surface Water Drainage Strategy were not initially uploaded with this application and consequently the LLFA comments remain outstanding on the current application; however, the submitted details (now uploaded) are the same as those submitted in support of the previous application (20/03450/FULL) and the LLFA commented as follows:</p> <p>No objection, subject to a planning condition being imposed.</p>	<p>i</p>
Highway Authority	<p>Offers no objection, provided that a travel plan and S106 contributions are secured. They also recommend planning conditions for:</p> <ul style="list-style-type: none"> <li>• Access</li> <li>• CMP</li> <li>• Parking layout to be approved</li> <li>• Cycle parking to be approved.</li> <li>• Travel plan</li> </ul>	<p>See ix. If planning permission was being granted then a travel plan could be secured by planning condition.</p> <p>It is not considered</p>

		necessary to secure S106 contributions on highways grounds.
Council's Ecologist	Comments are still awaited on current application; however, the Ecologist commented as follows on the previous identical application (20/03450/FULL): No Objections, subject to conditions.	vii
Tree Officer	When consulted on the previous application (20/03450/FULL), raised concerns over the level of tree planting/landscaping proposed.	vi
Environmental Protection	Recommend the imposition of conditions requiring: - a) A site-specific Construction Environmental Management Plan. b) Control of vehicle collections/deliveries including to the building site. And Informatives covering dust control, smoke control and contaminated land.  Confirmed – no air quality management issues.	xii
Natural England	Having considered the Shadow HRA prepared by Hankinson Duckett Associates (June 2021) and subsequent Appropriate Assessment prepared by RBWM (received 15 <sup>th</sup> June 2021).  Are in agreement with the conclusions reached within both assessments. Provided that the applicant is prepared to make the discussed financial contribution towards the costs of SAC avoidance and mitigation measures at the local greenspaces of Maidenhead Town Moor and North Town Moor, and that this is secured via an appropriate legal agreement, the application will comply with the Habitats Regulations and Likely Significant Effect on Burnham Beeches SAC can be ruled out.	See vii
Housing Enabling officer	<u>Issues to be Clarified</u> <ul style="list-style-type: none"> <li>• For a social rent tenure, there will be many households in priority housing need who are not key workers.</li> <li>• Build to Rent – it is not clear what this entails and how it is delivered.</li> <li>• Nominating suitable households should be via the Housing Options Team and the Council's Housing Register.</li> </ul>	xi
Council's Emergency	When consulted on the previous application	See i

Planner	(20/03450/FULL), objected to the lack of a low hazard escape route in a flood event and had concerns over the proposed flood evacuation plan.	
Berkshire Archaeology	Recommends the imposition of conditions	

## 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 for new residential development
- vi Trees;
- vii Ecology;
- ix Transport
- x Archaeology
- xi Provision of Affordable Housing
- xii Air Quality
- xiii Sustainability measures
- xiv 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 Within the submitted Planning Statement, it is stated that the previous officers report referred to the use of the Lower Thames Flood Model as more up-to-date than the Council's strategic flood risk assessment and should be used for the purposes of determining the previous planning application. The Planning Statement sets out that since then, the Council's response to the emerging local plan Examination in Public has questioned the model's robustness and reliability, and that this clearly raises doubts over any reliance upon the Lower Thames Flood Model for determining the current application.

9.4 It should be noted that as part of the Stage 2 Examination Hearings of the BLP, an action agreed was that the Council would consider the latest flood modelling and mapping information published by the Environment Agency and its implications for the Plan, to ascertain whether: (a) the sites proposed to be allocated in the proposed changes version remain deliverable from a flood risk perspective, both in terms of the approximate dwelling capacity, and the long term safety of development proposed, with no increase of flood risk elsewhere; (b) the BLPSV housing site

allocations proposed to be removed from the Plan on flood risk grounds were now not sequentially preferable to those proposed to be allocated in the proposed changes version. This demonstrates that the emerging BLP has taken into account the most recent flood data in considering allocations. It is considered that the 2019 Lower Thames Flood Model should be used to assess flood risk issues for this planning application.

- 9.5 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.
- 9.6 The NPPF and PPG are material considerations of significant weight in 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.
- 9.7 Paragraph 167 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, such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
  - 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

- 9.8 As the proposed development is located within the flood zone, it is a requirement of the NPPF (paragraph 162) 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 from any source. 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.
- 9.9 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. The applicant has submitted a flood risk sequential test with the application.
- 9.10 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.
- 9.11 A site in Windsor (Shirley Avenue) has been discounted as being sequentially preferable for the reason of *'the lack of availability and alongside the position that the addition of the 87 dwellings envisaged through application 19/01657 would be unable to address the very significant shortfall in the Borough's housing land supply confirms that this site is not sequentially preferable to the application site.'* It is not agreed that an alternative site should be discounted even if with its development it would not meet the shortfall in the 5 year housing land supply. This is not the purpose of the flood risk sequential test. Notwithstanding this, the density of development is

higher at this site in Windsor (the scheme consists of multi-storey flats) and is not comparable to the type and density of housing proposed in this scheme. As such it is agreed that this site can be discounted. There is also another alternative site (Grove Park, White Waltham). This site is not situated in the flood zone and was granted outline planning permission for up to 79 dwellings and a nursery. The agent makes several points as to why this site is not sequentially preferable. Whilst officer's do not agree with all of the points made, the one point that they do agree on is that for the scheme granted outline planning permission at Grove Park, four affordable units would be provided on-site (this was what was considered to be viable at this site), whereas this scheme would deliver 38 affordable units, which is a significant amount more. As such, it is not considered that this scheme could be provided at the Grove Park site.

- 9.12 Sites have been considered that are proposed for housing development within the emerging Borough Local Plan, however, some of the larger sites allocated within the housing allocations are within the Green Belt at the current time. It is not until the Borough Local Plan is adopted that these sites will be removed from the Green Belt.
- 9.13 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.
- 9.14 Some objectors have questioned why vacant office spaces within Maidenhead Town centre cannot be redeveloped to provide the housing. However, it is not known if a residential development would be acceptable on such sites, and within the town centre a higher density of development would likely be provided. As such, offices within the town centre would not be considered as appropriate alternative sites that are reasonably available.

#### Exceptions Test

- 9.15 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*

- 9.16 With regard to the first part of the Exceptions Test, the applicant has set these out at pages 94-96 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 desire for 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.

- 9.17 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.
- 9.18 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.
- 9.19 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
- 9.20 The Flood Risk Assessment refers to 2007 modelled flood data.
- 9.21 In January 2020, the 2019 Thames 'Hurley to Teddington' model was published, and the Environment Agency advises that it is this flood model that should be used to inform the flood risk assessment. The 2019 Thames flood model is a 1D/ 2D flood model, that has a range of flood levels across the site from 24.74m AOD to 24.91m AOD. The applicant questions why there is a range of flood levels across the site and have stated they propose to use the lower range of flood levels between 24.74mAOD and 24.76mAOD for the entire site.
- 9.22 As such, the application fails to demonstrate that adequate flood compensation (based on the 2019 flood model) with appropriate allowance for climate change can be provided.
- 9.23 Correspondence from the applicant to the Environment Agency explains that the voids will be constructed with the opening up to the 1% AEP 'plus additional relevant climate change allowance' and be 1 metre wide with an opening every five metres. The plan referenced in Appendix C of the addendum letter (drawing number ZZ-SE-DR-A-XX-003, revision P1, dated 29 August 2019) shows the typical section through the void and references the 1% AEP plus a 35% allowance for climate change flood level to be 24.56 m AOD. This is not the correct 1% AEP with a 35% allowance for climate change flood level/s. As the correct climate change flood level/s is higher than 24.56 m AOD, the voids would not provide sufficient mitigation and there would be a loss of floodplain storage as a result of the proposed development. Further, the voids would not be providing direct mitigation for the loss of floodplain storage in the higher order flood events not mitigated for through level for level compensation.
- 9.24 Notwithstanding the fact that the proposed flood compensation scheme 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:
- 1.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.
  2. The use of voids in the construction of the dwellings.

- 9.25 The FRA, and response from the applicant to the EA comments are set out below:
- 1 They would expect a planning condition/legal agreement/maintenance plan to ensure the voids remain open for the lifetime of the development.
  1. They would suggest a planning condition and Article 4 direction was used to ensure ground levels in private gardens are not altered. They also state rights of access would be reserved in favour of the management company within each plot transfer, and that regular inspections of the garden levels would be carried out by the management company to ensure that homeowners are complying with the terms of the transfer.
  2. Permeable fencing will be installed across the site. Rights of access would be reserved in favour of the management company within each plot transfer. It is asserted that regular inspections of the permeable fencing would be carried out by the management company to ensure homeowners were complying with the terms of their plot transfer.
- 9.26 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.
- 9.27 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.
- 9.28 The applicant has proposed to include a culvert through the road for hydraulic connectivity to the compensation area on the other side of the access road. The Environment Agency advises that the updated Thames model should be used to assess whether the structure would increase the risk of off-site flooding up to the 1% AEP with a 35% allowance for a climate change flood event. It has not been demonstrated that the proposed raised road would allow for the free flow of flood water through the raised road, which is required to prevent an increase in flood risk elsewhere.
- 9.29 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.
- 9.30 To summarise, the proposed flood compensation is not based upon the most up to date flood data. As more recent 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 more recent flood data increases the predicted flood levels across the site compared to the previous flood 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

- 9.31 Based on the 2007 flood model, the application fails to demonstrate that future occupiers would have a low hazard escape route.

- 9.32 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.
- 9.33 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).
- 9.34 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.
- 9.35 The applicant submitted a route, and what the flood depths would be during a 1 in 100 year flood event (with 20% 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 0.05-0.49 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 some and a danger for most (danger for most presents a danger to the general public).
- 9.36 The Environment Agency advise that they have compared the deepest level along the access route shown on the Off Site Safe Access drawing (deepest flood depth is shown to be 1.14 metres) to the flood level from the 2019 Thames model in the same location, which increases the flood depths. The deepest floodwater 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. There is no plan showing flood depths across the escape route using the 2019 flood model, and so the flood depths along this route are likely to be higher than indicated in the Flood Risk Assessment.
- 9.37 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.
- 9.38 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.
- 9.39 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.

- 9.40 The applicant sets out that the Management Company will take an active role in the flood management of this site, ensuring that residents are aware of the measures that are in place to protect them. CALA Homes can covenant that all new residents sign up to alerts through the management company to ensure that there is a clear and transparent line of communication. They explain that the management company will take on an active role within the site and with new and neighbouring residents. The role will be an educating and informing role to ensure people understand how/when they should respond to the unlikely event of a flood warning. Part of the role would be to give residents the necessary warnings of a flood event and the literature to ensure they know how to understand. This active role with residents and the local community should result in less pressure on emergency services in the unlikely occurrence of a flood event. The proposition that the management company takes an active role in educating neighbouring properties about flood risk, is not something that could be enforced by the LPA, also there would be no obligation for occupiers to engage with the management company about flood risk and evacuation. Whilst the management plan could set up measures for when future occupiers of the development should leave their homes in a flood event, there is no way to enforce future occupiers to leave their homes, the management company could only strongly advise.
- 9.41 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**

- 9.42 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**

- 9.43 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.
- 9.44 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.
- 9.45 Therefore it is not considered that the scheme passes the Exceptions Test, as it has not been demonstrated that the development would be safe for future residents, and that it would not increase flood risk elsewhere. The scheme also fails to comply with paragraph 167 of the NPPF.

### **ii Important Urban Open Space**

- 9.46 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.
- 9.47 Policy IF4 of the Borough Local Plan Proposed Modifications identifies this land as open space, and allocates it as a green infrastructure site providing a local 'pocket park', a habitat area, and for flood attenuation.
- 9.48 Policy IF4 of the BLP (proposed modifications) sets out that development involving the loss of open space will only be granted permission where:
- *There is clear evidence, for example from the latest published Open Space Study, that the*

*existing facility is no longer required to meet current or projected needs, including for biodiversity*

*improvements/off-setting; or*

- The existing facility would be replaced by equivalent or improved provision in terms of quality and quantity in a suitable location within walking distance of the existing facility, or*
- The development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.*

9.49 Policy IF4 of the Borough Local Plan (PC) is given significant weight. The criteria of this policy for assessing the loss of open space is broadly in line with that of Paragraph 99 of the NPPF, and as such the assessment and conclusion of the loss of open space remains the same as in the previously refused application. Policy IF4 also designates this site as open space. The site was not designated in the Borough Local Plan as upgraded open space to address any identified open space/biodiversity deficits in the area but was designated to provide positive planning.

9.50 The NPPF at paragraph 99 sets out that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- 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
- the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

9.51 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.

9.52 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).

9.53 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.'*

- 9.54 The proposed development does not seek to remove all of the public open space, and so it should be assessed against paragraph 99 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 99 (b) of the NPPF.
- 9.55 Given the comments above, the scheme would only be in compliance with paragraph 99 (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**

- 9.56 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.
- 9.57 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.
- 9.58 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).
- 9.59 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.
- 9.60 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.
- 9.61 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.
- 9.62 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.

- 9.63 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 this is not considered to be harmful to the surrounding street scenes, this site will have its own character, and it is important that the scheme exhibits good design.
- 9.64 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.
- 9.65 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.
- 9.66 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 street scenes. This weighs against the scheme and is considered in the planning balance.

#### **iv Residential Amenity**

- 9.67 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 130 (f) of the NPPF. The Borough Design Guide SPD (adopted) also provides guidance on residential amenity.

#### Daylight and Sunlight.

##### **Neighbouring properties**

- 9.68 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**

- 9.69 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.
- 9.70 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 21<sup>st</sup> 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 <sup>st</sup> March 2019.	Recommended % of the garden area that would receive more than 2 hours of sunlight on the 21 <sup>st</sup> 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	

9.71 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 21<sup>st</sup> 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

9.72 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.

9.73 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

9.74 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 25 metres between the rear elevations, which is just short of the 26 metres recommended in the Borough Design Guide.

9.75 The scheme proposes a relatively high density of housing on this part of the site.

9.76 The proposed flats over garages (labelled 47 and 48) would not have any form of outdoor amenity space for future occupiers.

9.77 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. The amenity space for the proposed flats in this block would fail to accord with principles 8.5 and 8.6 of the Borough Design

Guide SPD, as it provides no balconies for the flats, and the outdoor communal space around this block measures circa 197 square metres, which falls short of the standard required by principle 8.6 of the SPD, which requires 320 square metres for the 32 flats in this block.

- 9.78 The lack of outdoor amenity space for a number of the future occupiers, particularly those who would occupy the flats is not a positive aspect of the scheme. The provision of outdoor amenity space is considered in the planning balance.

#### Location of the proposed pumping station and impact on residential amenity

- 9.79 In the previous application (19/01140/FULL) the applicant advised that the pumping station will not be adopted by (transferred to) Thames Water, in part because there is inadequate space for the parking of vehicles to meet Thames Water's standard. The pumping station will remain the responsibility of the residents. Environmental Protection advise that historically this has been a problematic arrangement. Maintenance has not always been adequate causing the pumping stations to fail leading to flooding with sewage and odours. Environmental Protection strongly recommends that the pumping station is built to Thames Water's standard and is adopted by them. There is still a query about where the residents' contractor vehicle will park to service the pumping station. The applicant has confirmed that there isn't a specific parking space for the contractor due to the limited maintenance required for the pumping station. Small pumping stations similar to that proposed serving small/medium sized developments are not particularly complex, and require only routine maintenance, generally on an annual basis, modern pumping stations are controlled by telemetry whereby the pump station manufacturer/installer is made aware immediately upon a fault developing, which in some cases can be reset remotely without attendance being required. In the event that the contractor needs to come to site, they pull into the area around the FOG.
- 9.80 However, the foul drainage including the pumping station will have to meet building control requirements and as such it is not considered that this could constitute a reason to refuse the planning application.

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

- 9.81 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.
- 9.82 Under Policy R5, new developments for a site of this size should provide a Local Equipped Area of Play. 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**

- 9.83 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.
- 9.84 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.
- 9.85 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. The tree officer advises that part of G4 will also be lost due to the SUDS drainage feature.
- 9.86 None of the trees on site are protected by a Tree Preservation Order, and there is no objection to their loss.

- 9.87 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.
- 9.88 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**

- 9.89 Paragraph 180 of the NPPF sets out that when determining planning applications, local planning authorities should apply the following principles:
- 1 *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.*
  - 2 *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.*
  - 3 *development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.*

Paragraphs 181 and 182 of the NPPF sets out that:

*The following should be given the same protection as habitats sites:*

- a) *potential Special Protection Areas and possible Special Areas of Conservation;*
- b) *listed or proposed Ramsar sites; and*
- c) *sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.*

*The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.*

### **Chiltern Beechwoods SAC**

- 9.90 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 (as amended) requires an appropriate assessment to be made in view of that site's conservation objectives. Paragraphs 180 and 181 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 main threats to the SAC, and the distance of the proposal from the SAC and therefore an Appropriate Assessment is not required.

### Burnham Beeches SAC

- 9.91 The proposed development is located approximately 5.5 km to the south-west of the site at its closest point to the Burnham Beeches SAC, which is a European Designated site. The SAC is designated for supporting an extensive area of former Beech wood-pasture and is one of the richest sites for saproxylic invertebrates in the UK, including 14 Red Data Book species. It also supports nationally important epiphytic communities.
- 9.92 The main threats to this area are problematic native species, other ecosystem modifications, changes in biotic conditions, Outdoor sports and leisure activities, recreational activities, and Air pollution, air-borne pollutants.
- 9.93 The impacts of recreational and urban growth at Burnham Beeches SAC carried out by Footprint Ecology in 2019 as part of the evidence base for the Chiltern and South Bucks' Local Development Plan recognises that new housing within 5.6km of the Burnham Beeches SAC can be expected to result in an increase in recreational pressure.

These impacts, which have the potential to adversely affects its interest features, include:

- Increased fire risk
  - Contamination (from dog fouling and litter)
  - Trampling/wear (e.g. loss of vegetation, soil compaction, erosion, damage to trees from climbing); Harvesting (e.g. fungi, wood);
  - Difficulties in managing the site (e.g. maintaining the grazing regime);
  - Disturbance (e.g. affecting the distribution of livestock and deer).
- 9.94 In light of this evidence relating to the recreation impact zone of influence, the competent authority (the LPA) must apply the requirements of Regulation 61 of The Conservation of Habitats and Species Regulations 2017 (as amended), to this proposed development. The authority must decide whether a particular proposal, alone or in combination with other plans or projects, would be likely to have a significant effect on the SAC.
- 9.95 The screening exercise undertaken means that the Council cannot rule out likely significant effects on the SAC, and as such an Appropriate Assessment was undertaken. It is concluded that without appropriate avoidance and mitigation that the development would adversely affect the integrity of the SAC. However, with mitigation (in the form of financial contributions to make enhancements to Maidenhead Town Moor and North Town Moor), it is considered that this would divert recreational pressure from arising from the proposal, and as such with mitigation in place the scheme would not have an adverse impact on the integrity of the SAC. The applicant has agreed to providing this mitigation, but this would need to be secured by a legal agreement if planning permission was to be forthcoming. Natural England have advised that they are satisfied with the proposed mitigation.
- 9.96 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.
- 9.97 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.

- 9.98 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.
- 9.99 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.
- 9.100 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.
- 9.101 As well as the ecology reports submitted with the previous application, the applicant has submitted an updated Phase 1 Ecology Survey technical note (Austin Foot Ecology, December 2020), updated reptile survey report (Austin Foot Ecology, October 2020), and, an ecology technical note regarding the proposed SUDS ponds (Austin Foot Ecology, February 2021).
- 9.102 The updated ecology and reptile reports state that during walkover surveys of the site in 2020, a single slow worm and several common toads were found within the fenced off area. It is thought these may be remnants of the original population which eluded capture during the 2016 translocation. It is considered that adopting precautionary methods during site clearance works should be sufficient to protect any remaining individuals, and these should be included as part of a Construction Environmental Management Plan (CEMP).
- 9.103 An Ecological Mitigation and Management Plan (EMMP) outlines the further mitigation with regards to slow worms and toads during the construction 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.
- 9.104 The technical note regarding the SUDS features states these will be created to enhance biodiversity on the site. In accordance with paragraph 180 of the NPPF, which states that "*opportunities to improve biodiversity in and around developments should be integrated as part of their design*", other biodiversity enhancements, including integral bird and bat boxes on the new houses, and native and wildlife friendly landscaping, should also be incorporated into the scheme design. The recommendations given in the EMMP and updated ecology documents, and further biodiversity enhancements (including their ongoing management), should be incorporated into a Landscape Ecological Management Plan (LEMP) which could be secured by planning condition, if planning permission was to be given.
- 9.105 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 any adverse impact.

## **Viii Transport**

9.106 Paragraph 111 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 110 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) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance including the National Design Guide and the National Model Design Code.

### Traffic movements

9.107 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:

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

9.108 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.

9.109 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”).

9.110 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.

9.111 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.

- 9.112 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

- 9.113 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.
- 9.114 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 172 car parking spaces are required. The scheme provides for a total of 161 car parking spaces. Although there would be a shortfall of 11 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.
- 9.115 The proposed scheme would also result in the loss of an existing parking area which was used in association with the family centre on Ray Mill Road East. As set out in section 5, planning permission was recently granted for the change of use of the family centre to the 2 dwellings. The former parking area to the family centre was not included within the application site for this scheme, and does not rely on this area for car parking for the dwellings. As such, the loss of this parking area is considered to be acceptable.

#### Cycle parking

- 9.116 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 part of the development plan, 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**

- 9.117 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**

- 9.118 Local Plan policy H3 requires the provision of 30% of the total units provided on site as Affordable Housing. As a material consideration, paragraph 64 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.
- 9.119 The NPPF 2021 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). 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.
- 9.120 The Council's housing enabling officer advises if the proposed social rented housing is to be restricted to occupation by 'key workers', as is suggested in the planning statement, then there needs to be clarity on the definition and the nominations process to identify suitable households, and that local housing demand via the Housing register and rent levels will also need to be assessed.
- 9.121 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**

- 9.122 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.

## **Other considerations**

### **Sustainability**

- 9.123 The Council has published an interim sustainability position statement. This is a material consideration. Whilst the earlier application for this scheme was submitted prior to this position statement being published, the statement is a material consideration in the determination of this application.
- 9.124 The NPPF advises that Local Planning Authorities should expect new development to take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption. The Borough Wide Design Guide includes advice on Solar Design and Climate Change and minimising energy consumption through the promotion of dual aspect living accommodation.
- 9.125 The Sustainable Design and Construction SPD, Requirement 3 - On-Site Renewable Energy Generation sets out that all developments involving 10 or more dwellings or 1,000m<sup>2</sup> or more gross non-residential floorspace will be expected to secure at least 10% of their expected energy demand from on-site renewable or low carbon sources.
- 9.126 The applicant has submitted an energy statement. It sets out that in order to meet the 10% Energy from renewables requirement, a further 57856 kWh will need to be offset. A full assessment of appropriate technologies has been undertaken, concluding Solar PV, Showersave Waste Water Heat Recovery (WWHR) the most suitable for this development, providing a 58631.2kWh energy and 13938 kgCO<sub>2</sub> carbon reduction. If planning permission was being recommended for approval, the details of the renewable energy technologies to be used or other

measures to meet the Interim Sustainability Position Statement . The applicant has agreed that in the event of permission being granted, an updated energy statement would be required to be submitted by condition and an offset contribution would also be secured.

### Local Financial Considerations

9.127 The planning statement sets out that the New Homes Bonus is a material consideration to the application that should be afforded moderate weight. It is stated that £810,000 would be generated. The New Homes Bonus qualifies as a local finance consideration, but it has to be considered if it is material to the determination of this application. No information has been provided by the applicant which sets out how the money would be spent in the area subject to this application and it is not considered that the money is necessary to make the development acceptable in planning terms. It is therefore not considered that the New Homes Bonus is a material consideration to the determination of this application.

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

10.1 The development is CIL liable. The proposed floorspace of the dwellings is circa 8,446 square metres. The applicant sets out the development would generate CIL contributions, and this should be afforded moderate weight as a material consideration. It is recognised that this is a Local Finance Consideration for the purposes of Section 70 of the Town and Country Planning Act 1990. However, the planning statement does not set out how much CIL would be generated from the proposal, or what local infrastructure improvements the money would go towards. This is not given weight as a material consideration.

## **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:*

- *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*
- *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 8 of the NPPF (2021) 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 BLPPC 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 (5hr hls) is the 'standard method' as set out in the NPPF (2021). The Council is unable to demonstrate a five year housing land supply.

11.4 However footnote 7 of the NPPF further clarifies that section d(i) of paragraph 11 of the NPPF (2021) 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, and habitats sites (the SAC).

- 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 policies in the NPPF provide a clear reason for refusing the development proposed. In addition, without a legal agreement securing the mitigation to off-set the impact of the development on the Burnham Beeches SAC, this also means paragraph 11 d(i) is engaged.
- 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; this conflicts with guidance contained in the Adopted Borough Design Guide SPD. In this instance the harm to residential amenity to some of the future occupiers is not considered to constitute a reason for refusal, as there are open spaces within walking distance of the site.
- 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;
  - 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.
  - Providing a range of housing types, sizes and mix in response to identified local needs. This scheme would provide a mix of affordable and market housing, and would provide a range of 1, 2, 3 and 4 bedrooms dwellings. With regard to the market housing, the largest proportion of this type of housing would be 4 bedroom dwellings. The Local Housing Needs Assessment (2019) sets out that based on the evidence it is expected that the focus of market housing provision will be on 2 and 3 bedroom properties. With regard to the mix of affordable housing, most would be 1 and 2 bed units that would be affordable, with only 4 dwellings (3 bed) to be affordable. This would not meet the recommended mix set within the Local Housing Needs Assessment. Whilst a range of housing types and mix would be provided, it is given moderate weight as a benefit.
- 11.9 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.
- 11.10 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. It is therefore recommended that planning permission is refused for the reasons set out in Section 13 of this report.

## **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. 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 therefore fails to comply with paragraphs 163, 164, 165 and 167 of the National Planning Policy Framework (2021).

- 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 65 of the National Planning Policy Framework (2021).
- 3 In the absence of a legal agreement, the scheme fails to provide a sufficient open space as required by paragraph 99(b) of the National Planning Policy Framework 2021.
- 4 In the absence of a signed legal agreement, the scheme without mitigation would likely impact upon the integrity of the Burnham Beeches Special Area of Conservation Area (SAC).