

6. APPEALS UPDATE

A. LODGED

4/00394/19/FHA

Gray
INSTALLATION OF 12 SOLAR PANELS TO ROOF
LONGCROFT, 3 HASTOE FARM BARNES, BROWNS LANE, HASTOE,
TRING, HP23 6QD
[View online application](#)

B. WITHDRAWN

None

C. FORTHCOMING INQUIRIES

None

D. FORTHCOMING HEARINGS

None

E. DISMISSED

4/00282/18/FUL

Mr. B Sterling
CONSTRUCTION OF TWO 3-BED SEMI-DETACHED DWELLINGS
AND REPLACE GARAGE WITH GATES (AMENDED SCHEME)
GREYMANTLE, HEMPSTEAD ROAD, BOVINGDON, HEMEL
HEMPSTEAD, HP3 0HF
[View online application](#)

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ben Sterling against Dacorum Borough Council. This application will be the subject of a separate decision.

Main Issues

3. The main issues are:

- The effect of the proposal on the character and appearance of the area;
- Whether or not the scheme's internal layout would provide safe and convenient access; and
- The effect of the proposal on the living conditions at Ivydene, with particular regard to outlook.

Reasons

Character and appearance

4. The dwellings close to the appeal site along this side of Hempstead Road lie at the edge of Bovingdon village. They are varied in terms of their style and form, but are fairly uniformly laid out in a linear pattern, with their primary elevations set back slightly from, but facing, the road. In the streetscene, there are glimpses between many of the dwellings, or above their fences and single storey sections, to landscaped rear gardens, or to trees and hedgerows around their rear boundaries. Notwithstanding a few outbuildings or annexes in their rear gardens, this layout ensures a smooth transition to the countryside beyond.

5. Greymantle sits on a particularly large 'L' shaped plot, which partially wraps around the shorter rear gardens of Ivydene and Rose Cottage. It has trees and other landscaping along its rear boundary. The proposed semi-detached pair of dwellings would be located towards the rear of the site, leaving Greymantle with a shortened rear garden. However, all three of the proposed gardens would be of an appropriate size, and of a depth broadly similar to those at Ivydene and Rose Cottage. The proposed hard surfaced parking area would not generally be seen in public views, and would only have a limited impact in private views.

6. The appellant states that only the building's reclaimed tile roof would be visible from the road, particularly given the proposed entry gates and pleached trees along the driveway. He maintains that it 'would blend into the trees behind the site'.

7. However, this would be a tall building, sited on ground which rises up from the road. Notwithstanding the submitted section, in my view, the appellant's stance significantly understates the building's visual impact in the streetscene, from where it would be clearly visible, including from the opposite side of Hempstead Road, and looking across the gap to the side of Ivydene. Set so far back behind the row of dwellings along this stretch of Hempstead Road, the siting of the proposed pair would be wholly at odds with the prevailing pattern of development.

8. Additionally, there would be only a very short gap between the proposed building and trees and landscaping along the site's rear boundary. The scheme was not accompanied by a Tree Survey but, given the proximity of the building to those features, including their root systems, it is highly likely that they would be significantly damaged during construction. Even if they survived, given their location, future occupants may seek their removal due to, amongst other things, concerns regarding their physical impacts on the building and its foundations. For those reasons, the scheme would result in a very abrupt interface to the countryside.

9. Other than two doors and high level windows, the elevation facing towards the road would be a brick wall, largely devoid of architectural interest. In contrast to nearby principal elevations facing the road, it would have a very stark and unalleviated appearance. As a result, even if that elevation could be partially obscured from the streetscene, it would still appear visually incongruous and unattractive to the adjacent occupants of Ivydene and other nearby properties.

10. The appellant has referred me to an approved scheme at Duckhall Farm (Ref: 4/00023/18/FUL). However, that scheme involved the redevelopment of a site which is not within a row of buildings, and by reference to the site plan provided by the appellant, it has many existing buildings scattered across it, some of which are hard up against its boundaries. It also appears that there would be a greater distance from the proposed replacement buildings to that site's rear boundary than would be the case here.

11. The Mount Prison, on a former airfield to the north-west, has perimeter walls and structures adjacent to the countryside. However, that type of development, for which security and containment are likely to be a special consideration, does not justify no soft edge to the village for this development in this location.

12. The approved schemes at 22A Hyde Lane are some distance from this site, but do involve development to the rear of frontage buildings. However, that site's context is wholly different from this one, as it is well within the village, the buildings facing the road are largely terraces, and in occasional streetscene views looking between them to the land beyond, there are sometimes glimpses of other dwellings.

13. I have limited details of the appellant's proposed 'fallback' involving the retention of Greymantle's garage with a roof extension, and a driveway through to provide access to the rear. In any event, that suggestion appears to me to be wholly contrived, and could raise other concerns regarding access (including by larger vehicles). I therefore give that very little weight.

14. The appellant notes that the siting and scale of this proposed building is the same compared to a scheme which was dismissed at appeal in January 2019 (ref: APP/A1910/W/18/3195119) ('dismissed appeal'). In my view its design is also very similar. That Inspector concluded that the proposal would harm the character and appearance of the area. For the reasons I have given, I have reached the same conclusion for this scheme.

15. I have had regard to other elements of the site's planning history, including appeal Ref: APP/A1910/W/18/3211726, and to the various documents submitted by the appellant. However, fundamentally, this scheme has a poor design and layout, and its siting would be markedly at odds with the prevailing pattern of development on this side of Hempstead Road.

16. As it would significantly harm the character and appearance of the area, the scheme would conflict with Policies CS10, CS11 and CS12 of the Dacorum Core Strategy 2013 ('DCS'). Amongst other things, and in general terms, they require that development should reinforce the soft edges of villages; respect the character of settlements and adjoining properties with regard to matters including layout; and integrate with the streetscape.

17. It would also conflict with National Planning Policy Framework ('Framework') paragraphs 124, 127 and 130, which set out the need for high quality development, which is visually attractive as a result of good architecture, layout and appropriate landscaping; and which is sympathetic to local character. Additionally, whilst it would make an effective use of land, the scheme would not protect and enhance the environment, and it would thereby conflict with the Framework's environmental objective at paragraph 8.

Access

18. Compared to the dismissed appeal, drivers accessing the proposed two separate parking areas within the site could reverse in or out by way of fairly straight manoeuvres, and would need to pass fewer parked cars to do so. Those vehicles would therefore be fairly visible to other drivers, and to pedestrians accessing the proposed dwellings' front doors. Although visibility where the driveway meets the hammerhead would be restricted, two dwellings would typically generate a limited number of vehicular movements.

19. The proposed drawings demonstrate how cars could pass one another on the access driveway, which would be 4.3m wide in places; and where emergency, refuse and delivery vehicles could stop at a point within 40m of the proposed building. Vehicles stopped there would temporarily block the driveway, and they may need to reverse to or from Hempstead Road. However, for this small scale development such parking and manoeuvres would typically be infrequent. In its latest consultation response, Hertfordshire Highways Department did not object to the proposal, and I have no cogent evidence that it would significantly harm highway safety.

20. The scheme would provide an adequately safe and convenient internal layout, and it would not conflict with those parts of DCS Policies CS8 and CS12 which require the provision of safe and convenient parking, space for servicing, and a safe and satisfactory means of access.

Living conditions

21. In its fourth reason for refusal the Council states that the scheme would appear visually intrusive to the occupants of Ivydene. For the reasons I have set out under 'character and appearance', I agree that it would appear visually incongruous from that dwelling and its garden.

22. However, given the absence of habitable room windows in the proposed building's south-eastern elevation, and its distance to the rear face of Ivydene, the scheme would not significantly harm those occupiers' living conditions due to overlooking, nor would it result in significant overbearance or loss of light. I have no reason to disagree with the Inspector in the dismissed appeal that vehicular movements associated with the use of the driveway would not result in harmful noise and disturbance to those occupants.

23. Whilst the appellant refers to the 'Deaconsfield Brief', as that relates to a residential area of Hemel Hempstead, it is of very little relevance to this scheme. Nevertheless, I conclude that the scheme would not impact the living conditions at Ivydene to a harmful degree, and in that regard it would not conflict with DCS Policy CS12.

Other matters

24. The Framework seeks to boost the supply of housing, and sets out the importance of small sites, such as this, to meeting housing requirements. The scheme would make a small contribution of two houses towards housing supply. That in a large village close to services and amenities. There would be a modest economic boost during construction, from the New Homes Bonus, and from subsequent occupation. In those regards there would be social, as well as economic, benefits. These carry limited weight in the scheme's favour.

25. However, as contributions to the Community Infrastructure Levy are required to mitigate the effects of development, that matter is neutral in the planning balance.

26. The appellant alleges that the Council and various objectors did not understand his proposal, and have not taken account of revisions compared to the dismissed appeal. He is dissatisfied with the Council's handling of his application, and maintains that its decision is at odds with the pre-application advice that he received. The Council states that this advice was based on limited information, and I note that it was caveated as such.

27. The Framework encourages pre-application engagement. However, notwithstanding the advice that he received in 2017, which is a material consideration, having assessed this scheme on its merits, it raises very similar concerns regarding its impact on the character and appearance of the area compared to the much more recently dismissed appeal.

Planning Balance and Conclusion

28. I have found that the scheme would significantly harm the character and appearance of the area, including in private views from nearby properties. It would significantly conflict with the environmental objective and design policies of the Framework. On the other hand, its benefits would be modest.

29. The appellant maintains that the Council's five year housing land supply figures are very optimistic, or that it does not currently have such a supply. Evidence he has provided, including an email dated 10 July 2018, indicates that the Council believes that it can demonstrate such a supply.

30. However, taking the appellant's position, even if the Council cannot demonstrate a five year supply of housing, applying Framework paragraph 11, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The scheme would not therefore benefit from its presumption in favour of sustainable development.

31. Whilst I have considered other matters raised by interested parties, and issues raised in the dismissed appeal, given my findings above, it has not been necessary for me to address them further. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. At ID: 16-049-20140306 it provides examples of types of behaviour that may give rise to a substantive award of costs against a local planning authority.

3. These include unreasonably refusing an application having regard to the development plan, national guidance and any other material considerations; making vague or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; persisting in objections to a scheme or elements of it, which an Inspector has previously indicated to be acceptable; and not determining similar cases in a consistent manner.

4. The applicant states that the Council demonstrated a poor understanding of the proposal, misrepresented the facts, and that it issued its decision predominantly based on a previously dismissed appeal without considering the alterations that had been made. In particular, he maintains that the Council introduced new reasons for refusal relating to the impact on neighbours and the impact on the highway which were contrary to expert opinion and the previous appeal decision.

5. For my part, I see nothing in the Council's decision or delegated report to suggest that it misunderstood the proposal. There are also significant material differences between it and the developments cited by the appellant elsewhere.

6. A scheme on this site was dismissed at appeal on 28 January 2019 (ref: APP/A1910/W/18/3195119) ('previous appeal'). However, the proposal I have dealt with was refused by the Council on 18 June 2018, long before that decision, and the Council could not therefore have taken it into account.

7. Notwithstanding that, with regards its siting, scale and design, the proposed building in this scheme would be very similar compared to the previous appeal. For the reasons set out in my decision, I have agreed entirely with the Council, and consistent with the findings in the previous appeal, that this proposal would significantly harm the character and appearance of the area.

8. The applicant alleges that the Council's objections regarding the safety and convenience of the access in its third reason for refusal, were contrary to the expert advice it received from Hertfordshire Highways Department ('HHD'). However, HHD did initially object to the scheme, before subsequently indicating that it did not wish to restrict the grant of permission, having regard to the impact of additional trips on the capacity and safety of the local road network.

9. For my part, I note that the Council's delegated report refers to the HDD advice, but concludes

that whilst the scheme would not result in a severe impact on the road network, the internal layout within the site, including parking provision (which HDD made clear was a matter for the planning authority), would be cramped with unsatisfactory turning/manoeuvring space.

10. Dacorum Core Strategy 2013 Policies CS8 and CS12, which were cited in the Council's decision and its delegated report, refer to the need for safe and satisfactory parking and access arrangements, and it is not unreasonable that the Council should exercise its judgement in this regard.

11. The Council's fourth reason for refusal states that the proposed building would appear visually intrusive to the occupants of Ivydene, to the detriment of their living conditions. In the previous appeal the Inspector found that the living conditions at Ivydene would not be harmfully impacted by the proposed parking and access.

12. Whilst I found that the proposed building would be visually discordant viewed from Ivydene, I was not persuaded that it would result in a significantly harmful effect on those occupants' living conditions. However, this is a matter of judgement having regard to the particular circumstances; and, as I have indicated, the previous appeal decision had not been published at the time the Council made its decision on this scheme.

13. Although I have not agreed with the Council on all its reasons for refusal, these are matters of planning judgement. Its reasoning was clearly articulated in its decision notice and in its delegated report, with appropriate reference to the development plan, and other material considerations, including the National Planning Policy Framework.

14. I conclude that the Council did not unreasonably refuse the application; make inaccurate assertions about the scheme's impact; persist in objections contrary to a previous Inspector's findings; or fail to determine similar applications in a consistent manner.

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

4/01311/18/FHA Friend
TWO STOREY FRONT EXTENSION
4 ROSEHILL, BERKHAMSTED, HP4 3EW
[View online application](#)

The appeal is dismissed.

The Inspector agreed that the condition requiring the side facing first floor window be obscured and fixed shut was necessary and reasonable to safeguard the privacy of the adjacent property. Whilst the appellants suggested a landscaping scheme could have the same effect, the inspector noted the trees would take a long time to establish to an adequate height and could be removed by future occupants of No. 4 Rosehill without control. As such it was not an acceptable alternative.

F. ALLOWED

4/01871/18/ROC McCarthy & Stone Retirement Lifestyles Ltd
VARIATION OF CONDITION 2 (APPROVED PLANS) OF PLANNING
PERMISSION 403698/15/MFA (CONSTRUCTION OF 34 UNITS OF
RETIREMENT LIVING APARTMENTS FOR THE ELDERLY WITH
ASSOCIATED COMMUNAL FACILITIES, PARKING AND
LANDSCAPING)

MOUNTBATTEN HOUSE, HEMPSTEAD ROAD, BOVINGDON

[View online application](#)

The appeal related to the retention of a Flue. The appeal has been allowed the Inspector only finding very limited harm, which could be mitigated by a condition requiring it to be painted black. Please see full decision on Anite for full discussion and conditions.

4/02726/18/ROC

WINGROVE

VARIATION OF CONDITION 2 (APPROVED PLANS) ATTACHED TO PLANNING PERMISSION 4/00726/17/FUL (TWO THREE BED DETACHED DWELLINGS (AMENDED SCHEME)).

LAND R/O 76-78, BELSWAINS LANE, HEMEL HEMPSTEAD, HP3 9PP

[View online application](#)

Decision

1. The appeal is allowed and planning permission is granted for two three bed detached dwellings (amended scheme) at Land R/O 76-78 Belswains Lane, Hemel Hempstead HP3 9PP, in accordance with the application Ref 4/02726/18/ROC made on the 14 September 2018 without complying with condition No 2 set out in planning permission Ref 4/00726/17/FUL granted on 24 August 2017 by Dacorum Borough Council, but otherwise subject to the conditions set out in the schedule attached at the end of this decision.

Procedural Matter

2. The address and description of development used in the banner heading above are those which appear on the decision notice issued in relation to planning permission 4/00726/17/FUL (the approved scheme). Though the phrase 'amended scheme' is superfluous, as it is not an act of development, I have nonetheless included it in my decision above for sake of consistency.

Main Issues

3. The main issues are the effect of the development:

- the living conditions of occupants of neighbouring dwellings with regard to privacy and outlook; and
- the character and appearance of the area.

Reasons

Living Conditions

4. Part A3.6(iii) of saved Appendix 3 of the Dacorum Borough Local Plan 1991-2011 (2004) (the Local Plan) sets a minimum distance of 23 metres between the main rear wall of a dwelling and the main front/rear wall of another in order to ensure privacy. It nonetheless provides flexibility in its recommendation that spacing between dwellings should be provided at a distance which is consistent with the surrounding area, and with reference to the Supplementary Planning Guidance: Development in Residential Areas 2004 (the SPG). The SPG places the site in character area HCA18: Belswains, within which new infilling is expected to be compatible with adjacent dwellings in terms of height, general size and spacing.

5. Within character area HCA18 the spacing between dwellings varies. This is apparent in the tapering size of the gap between the rear elevations of dwellings fronting Belswains Lane and those facing Ebbens Road, which is at its widest on the appeal site. In this context the approved scheme has already established both the acceptability of development on the site, and consequent reduction in the current level of spacing between existing dwellings.

6. The footprint, external dimensions and overall mass of each of the proposed dwellings would be moderately increased relative to the approved scheme. Each dwelling would similarly provide accommodation over 2-storeys.

7. In common with the approved scheme, the dwelling on Plot 1 (hereafter 'Plot 1') would comply with the minimum 23 metres separation distance between it and opposing front/rear elevations of adjacent dwellings set out in the Local Plan, and reasonable gaps would also exist between it and the boundaries of neighbouring gardens.

8. Though interested parties draw additional attention to the distance between Plot 1 and both

209/211 Ebbens Road and 74 Belswains Lane, in neither case would the elevations directly face those of Plot 1. Given the relative positioning of the dwellings, views between would be oblique, and would be further disrupted by changing levels. These points would, in combination, minimise to an acceptable level any mutual reduction of privacy or of the quality of outlook which may arise.

9. The dwelling on Plot 2 (hereafter 'Plot 2') would not achieve separation distances of 23 metres. This is however similarly true of the approved scheme, which achieved separation distances 22 metres between the front elevation of Plot 2 and rear elevation of 78 Belswains Lane, and between the rear elevation of Plot 2 and the rear elevation of Nos 209/211.

10. The distance between Plot 2 and No 211 would remain the same as within the approved scheme, albeit the moderately increased ridge height and mass of Plot 2 would provide it with additional prominence. Any similarly modest potential for additional overlooking would be minimised by the presence of a belt of tall trees along the boundary. In leaf these trees are effective in screening the rear elevation of Nos 209/211, and it is reasonable to consider that they would thus also be effective in screening views between Nos 209/211 and Plot 2. Whilst the level screening would be diminished during autumn and winter, clear views between the Plot 2 and Nos 209/211 would nonetheless remain obscured by the network of tree branches. As such no significant additional loss of privacy would be likely to arise.

11. Nos 209/211 lie at a lower level to Plot 2. Any additional effect of on the outlook from Nos 209/211 that would result from an increase in the size of Plot 2, viewed both alone, and in combination in Plot 1, would however be similarly minimised by the belt of trees.

12. Though a closing of the gap between the plots, and creation of a 'continuous mass' of development has been identified by the Council, the gap between the plots would in fact be little different to that in the approved scheme. As such no significant additional harm to the outlook of Nos 209/211 would be likely to arise.

13. The distance between Plot 2 and No 78 would be reduced to 20.5 metres. Notwithstanding the increase in the height of Plot 2, No 78 would however still stand at a higher level. As such the reduced separation distance would appear more likely to result in moderately increased overlooking of Plot 2 from No 78, than it would of No 78 from Plot 2. In this regard however I am satisfied that the positioning of windows serving habitable rooms within the front elevation of Plot 2, relative to those within the rear elevation of No 78 would act to minimise scope for any direct overlooking between the 2 dwellings. As such no significant additional loss of privacy for the occupants of No 78 would be likely to arise.

14. The separation distance set out in the Local Plan does not directly relate to side-front elevation relationships. In this context the distance between the side elevation of Plot 2 and 2 Belswains Cottages would be reduced from 13 metres within the approved scheme, to 11.5 metres within the appeal scheme. A dense row of tall leylandii-type trees however stand along the site boundary, immediately opposite No 2. These dominate the outlook, and significantly limit views into the site. Furthermore, they clearly perform this function all year round. As such and given that there would be no windows in the side elevation of Plot 2, no significant additional loss of privacy or outlook for occupants at No 2 would be likely to arise.

15. Notwithstanding the appellant's submitted 25° drawings, interested parties raise concern regarding the possible loss of light to Belswains Cottages. Even if slight obstruction occurred however, the existing row of trees, and the north-westerly orientation of the front elevation, would each limit the extent to which any additional effects on No 2 were perceived. 1 Belswains Cottages would not be directly affected. As such I am satisfied that no unacceptable loss of light would be likely to arise for the occupants of Belswains Cottages.

16. For the reasons outlined above I conclude that the proposed development would not give rise to any unacceptable harm to the living conditions of occupants of neighbouring dwellings. It would therefore comply with Policy CS12 of the Core Strategy 2006-2031 (2013) (the CS), which amongst other things states that development should avoid visual intrusion, loss of sunlight and daylight, and loss of privacy to surrounding properties; saved Appendix 3 of the Local Plan, considered with regard to context and in combination with the SPG; and relevant policy set out with paragraph 127(f) of the National Planning Policy Framework (the Framework).

Character and Appearance

17. As outlined above, the site lies between dwellings which front Belswains Lane and Ebbens

Road. Though the Council appears to object to development that would be visible in this location, including from the adjacent footpath, the dwellings within the appeal scheme would be little more visible than those within the approved scheme.

18. Given that the dwellings would each stand well below the level of those along Belswains Road, and would each appear no greater in scale, no visual competition between proposed and existing dwellings would be likely to arise within the general streetscene.

19. Belswains Lane and Ebborns Road each feature street facing dwellings, a high proportion of which match one another. Along Belswains Lane dwellings are closely spaced, and along Ebborns Road, tightly spaced. The proposed close spacing of the dwellings, which is again little different to that in the approved scheme, would not therefore appear atypical in this context. The proposed arrangement of 2 matching dwellings 'in tandem' would itself be more consistent with the established pattern than the approved scheme, regardless of whether or not they were precisely aligned with one another. For both reasons, and given that the proposed dwellings would each fall well within the size range of those along Belswains Lane and Ebborns Road, they would not appear unduly 'bulky' in combination.

20. The proposed plot sizes would not be dissimilar to those of the larger, 3-storey dwellings along Ebborns Road. Viewed in context therefore, the proposed dwellings would not appear cramped within in their plots, or the site 'overdeveloped'. Indeed the site density would fall below the range quoted within the SPG for the character area. Consequently, and relative to the approved scheme, the increased size of the dwellings would little additional effect on the perceived 'spaciousness' of the area.

21. The Council has drawn attention to an appeal at 5 Tring Road. I do not have full details of the scheme in question though note that it was located within a different character area where site specific considerations are therefore likely to have differed. As such this appeal has not affected my assessment of the merits of the current appeal scheme.

22. For the reasons outlined above I conclude that the proposed development would not cause unacceptable harm to the character and appearance of the area. It would therefore comply with Policy CS11 of the CS, which amongst other things expects development to respect the general character of an area; supporting guidance in the SPG; and relevant design policy within the Framework.

Other Matters

23. Interested parties draw attention to the site history including past planning applications and appeals. Whilst I have been provided with very limited details, I have determined the appeal on its own planning merits, with reference, as necessary, to the approved scheme.

24. It has been suggested that restrictive covenants will prevent parts of the appeal scheme from being implemented. However, this is a matter that can be separately addressed by the appellant, if necessary.

25. Whilst interested parties raise concerns regarding the safety of the site access and the practicality of parking, these details appear largely similar to those within the approved scheme. Such concerns are not otherwise shared by the Council or Highways Authority, and I see no reason to disagree.

26. Further concerns have been raised regarding the potential for adverse impacts on trees within and adjacent to the site. I am however satisfied that in combination with the foundation details provided on the site layout plan, trees can be safeguarded through the imposition of appropriate conditions, as set out below.

Conditions

27. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all that I consider remain relevant, making modifications where required as set out below. In the event that any conditions have in fact already been cleared this will be matter that can be addressed between the parties.

28. Condition 1 sets out the time limit for commencement of the development, and Condition 2 identifies the approved plans for sake of certainty.

29. Condition 3 of the approved scheme required the obscure glazing of windows within the side elevations of the dwellings. As there are no side windows in the current scheme Condition 3 is

not relevant, and therefore has not been re-imposed.

30. Condition 4 of the approved scheme, which dealt with trees and landscaping, is contradictory insofar as it allows occupation of the dwellings once details of landscaping works have been submitted, but then restrict occupation of the dwellings until such works have been completed. The condition would also be ineffective with regard to the protection of trees during works, as construction could be largely complete before the condition was discharged. I have therefore modified the condition by setting an earlier trigger point for the submission of details. I have removed reference to 'cultivation and other operations associated with plant and grass establishment' as there is no obvious need to agree such details. I have renumbered the condition 'Condition 5' in the schedule below.

31. I have incorporated the subject matter of Condition 8 of the approved scheme within Condition 5 in the schedule below, as it too deals with landscaping and trees. As originally worded, Condition 8 requires details of a no-dig construction method too late in the construction process to ensure that the root protection areas of trees would be safeguarded. Furthermore, root protection areas are not identified anywhere on the approved plans, and the condition lacks an implementation clause. Each mean that Condition 8 would be unenforceable. I have therefore addressed these points within the wording of Condition 5 in the schedule below. The parties have been consulted with regard to the proposed wording of Condition 5, which is required in order to ensure that trees within and adjacent to the site are safeguarded, ensuring that their screening function and contribution to the character of the area are sustained, and in order to ensure the provision of an attractive development.

32. Condition 5 of the approved scheme is reimposed as 'Condition 7' in the schedule below, with some minor amendment of the wording used. This condition ensures both the provision of a visibility splay and its subsequent maintenance, and is required in the interests of highways safety.

33. Conditions 6 and 7 of the approved scheme each deal with the investigation and remediation of contamination. I have limited details of these matters, though note that concern has been flagged with regard to a previous use of the land. The Conditions are reimposed as 'Condition 3' and 'Condition 4' in the schedule below, employing a revised standard wording for sake of clarity. The parties have been consulted on this change. The conditions are necessary in the interests of health and safety, and applicable at pre-commencement stage due to the possible risks which might exist during construction.

34. The Council has suggested 2 additional conditions which were not imposed on the approved scheme. These are in relation of external materials and the maintenance of landscaping over a 5 year period. Given that materials are not specified on the plans I agree that a materials condition is necessary and have imposed it as 'Condition 6' in the schedule below. The condition is not however a pre-commencement condition, as this is not demonstrably necessary. I have also not imposed a condition relating to maintenance of the landscaping scheme as this would be unnecessarily onerous with regard to wholly private domestic garden space.

Conclusion

35. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.