

**ITEM NUMBER: 5b**

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| <b>4/02204/18/MFA</b>         | <b>Demolition of existing buildings. Construction of extra care scheme comprising 41 no. Apartments with associated landscaping and Parking.</b>   |                      |
| <b>Site Address:</b>          | <b>Old Silk Mill Brook Street Tring HP235EF</b>  |                      |
| <b>Applicant/Agent:</b>       |  | <b>Miss Lowe</b>     |
| <b>Case Officer:</b>          | <b>Andrew Parrish</b>  |                      |
| <b>Parish/Ward:</b>           | <b>Tring Town Council</b>  | <b>Tring Central</b> |
| <b>Referral to Committee:</b> | <b>Application first reported to Committee in May 2019. The decision has not been issued and in the mean-time there has been a material change in circumstances that needs to be considered.</b> |                      |

**1. RECOMMENDATION**

1.1 That planning permission be REFUSED.

**2. SUMMARY**

2.1 The application is recommended for refusal. The application is for the demolition of a semi-detached pair of houses and the erection of 41 extra care apartments within a 3 storey block with undercroft car parking and access from Brook Street. The site is part of a General Employment area, the majority of which is a vacant, undeveloped site. Together with the two residential properties, it comprises a generally rectangular site which sits substantially below the level of dwellings immediately to the west at Kingsley Walk. The intervening land comprises a steep earth embankment which will be cut back and supported by a retaining wall to enable the development to take place. Landscape margins are proposed to the Brook Street and northern frontages with tree planting at podium level on the western boundary.

2.2 In principle, the loss of the employment land is considered acceptable as the majority is not currently in active employment use whilst the loss of the small commercial unit would not have a significant impact on the functionality or viability of the business park or GEA, and should be balanced against a more efficient use of the land for residential purposes, the use for which is considered appropriate given the dwellings at 21 and 22 Brook Street and the siting adjacent to existing housing.

2.3 The loss of the two semi-detached dwellings of 21 and 22 Brook Street is considered to have a low level of significance in conservation terms and is not objectionable. There would be no harm to the setting of The Old Silk Mill Grade II listed buildings and in design terms, subject to details by condition, the Conservation Officer has raised no objection to the height and appearance of the development which would reflect the scale, mass and form of the Silk Mill buildings whilst respecting the design and materials of the terraced dwellings opposite.

2.4 Car parking is acceptable and there would be no material detriment to highway safety. The impact on adjoining residential amenity in terms of privacy, light and visual appearance is acceptable.

2.5 Since the resolution to grant planning permission in May 2019, which was subject to the completion of an s106 agreement, there have been a number of material changes in

circumstance. In particular, following the recent publication of the South West Herts Strategic Flood Risk Assessment, part of the site now lies within Flood Risk Zone 3b, land with the highest risk of flooding, and comprising the functional floodplain. The classification of residential development as being “more vulnerable” means that on this basis alone, in accordance with the NPPF and the associated Planning Practice Guidance on flood risk, the development should not be permitted. The Environment Agency recommend refusal on this ground and advise that the layout should be amended to avoid it.

2.6 The addition of objections from the Lead Local Flood Authority on the grounds of building over the culverted Long Marston Brook, contrary to its policy and advice, and harm to the water environment and sustainable drainage principles, only serves to exacerbate the environmental harm from this development, contrary to NPPF guidance.

2.7 The Council's Environmental Health Officer also raises objections on grounds of potential harm to the occupants of the development as a result of exposure to road traffic noise and air pollution. However, given that these were not points of objection raised previously by Environmental Health and there have been no material changes since May 2019 which impact on this, refusal on these grounds is not be advised, although we would recommend informatives be attached to any decision to refuse, or conditions should permission be granted.

2.8 The layout has not been amended to resolve the LLFA and EA objections, nor has additional information been provided to address legitimate concerns with the proposal concerning flood risk.

2.9 The Council is currently unable to demonstrate a five-year supply of deliverable housing sites. As local planning authority, it is therefore required to apply the “tilted balance” in favour of granting planning permission in accordance with Paragraph 11 (d) of the NPPF. This requires that housing applications are determined against the NPPF and the balance is consequently tilted towards the presumption in favour of sustainable development.

2.10 Despite applying the tilted balance in this case, and weighing up the benefits of the proposal, in particular the delivery of much needed housing, it is considered that sustainable development would not be achieved through this development.

2.11 When assessed against the policies in the Framework taken as a whole, it is concluded that the adverse impacts of the development would significantly and demonstrably outweigh the benefits and the conflict with the development plan is not outweighed by other considerations including the Framework.

2.12 The proposal would be contrary to Policies CS31 and 32 and to relevant guidance within the NPPF. In view of the above the application is recommended for refusal.

### **3. BACKGROUND**

3.1 Members may recall that in May 2019, it was resolved to delegate the application to the Group Manager Development Management and Planning with a view to approval subject to:

- agreement of pre-commencement conditions with the applicant, and
- completion of a s106 agreement with the following Heads of Terms - 55 years minimum age restriction, meeting medical or health criteria that justify the extra care accommodation categorisation, provision of fire hydrants, financial contribution towards improvements to the two nearest bus stops to provide easy access kerbing of £16,000

3.2 The report that was considered is attached at Appendix C.

3.3 Although to date there has been progress on the drafting of the s106 agreement, due to a number of issues, the completion of the agreement has been delayed and remains outstanding.

3.4 In the mean-time, triggered by the submission of a subsequent similar application on the site (19/02794/MFA) in November 2019, and technical consultee responses to this, a number of material changes in circumstances have come to light as follows:

1. The flood zone has been reclassified as Zone 3b from the previous Zones 2 and 3 (which the applicant had further analysed through their FRA should be flood Zone 1) following publication of the new Strategic Flood Risk Assessment. The Environment Agency now object in principle to the application, unless the layout is redesigned so that it is located outside of Flood Zone 3b, or the applicant undertakes their own modelling work which demonstrates that the site should not be classified as Flood Zone 3b.
2. Updated LFRMS2 (Hertfordshire Local Flood Risk Management Strategy 2) policy does not now consent to building over a culvert and the Lead Local Flood Authority (LLFA) object to the application on this ground. In addition, the LLFA object to the runoff rate of 5l/s which is not equivalent to the greenfield runoff rate for the site and to the absence of half drain down times having been provided for the surface water attenuation storage.
3. The Environmental Health Officer has revised his comments and now raises objection on grounds of exposure to road traffic noise harmful to living conditions and to potential breach of an air quality objective due to exposure to traffic fumes, both contrary to NPPF guidance.
4. The policies which are most important for determining the application are now out-of-date and the Council is unable to demonstrate a five year supply of deliverable housing sites (with appropriate buffer). In accordance with Para 11(d) of the NPPF, it must now apply the 'tilted balance' in favour of granting planning permission.

3.5 The applicant requested and officers agreed an extension of time (initially to 14<sup>th</sup> August 2020) to try and address these concerns and in particular to provide updated flood modelling data and to review the potential of moving of the culvert. Despite several further extensions of time, the applicant has advised that they are still not yet in a position to provide the flood modelling and other details to address these concerns.

3.6 A decision on the application therefore remains outstanding and it is necessary to reach a final decision.

3.7 Due to the materiality of these changes, which impact on the officer's recommendation, it is necessary to return the application to the Development Management Committee for its further resolution.

## **5. PLANNING HISTORY**

5.1 As per Appendix C

## **6. CONSTRAINTS**

6.1 As per Appendix C

## **7. REPRESENTATIONS**

### Consultation responses

7.1 These are reproduced in full at Appendix A. See Appendix C for original comments

### Neighbour notification/site notice responses

7.2 These are reproduced in full at Appendix B. See Appendix C for original comments

## **8. PLANNING POLICIES**

8.1 As per Appendix C

8.2 Since consideration of the application in May 2019, the Council has adopted the Parking Standards SPD (Nov 2020) that supersedes saved Policy 58 and Appendix 5 of the Dacorum Borough Local Plan 1991-2011.

## **9. CONSIDERATIONS**

9.1 The technical consultees have provided their comments in respect of the current outstanding application 4/02204/18/MFA currently before the committee and these are annexed at Appendix A.

9.2 The applicant has previously been made aware of these material changes and the resulting objections from technical consultees through the concurrent application 19/02794/MFA (now withdrawn). The applicant provide a rebuttal / further information in response to these objections from their drainage consultant BWB Consulting Ltd dated 22/01/20 and from the applicant's agent dated 11/02/20. However, the technical consultees remain steadfast in their objections. Due to the similarity of these applications, the responses are considered equally applicable to the current proposal.

### Flood Risk

9.3 The Environment Agency (EA) has two objections. The first objection is an objection in principal because the site falls within Flood Zone 3b (the functional floodplain). The second objection relates to the absence of a Flood Risk Assessment (FRA) in relation to the 3b classification. It has stated that this should not be addressed unless the first objection can be resolved.

9.4 The EA recommended conditions to this application in December 2018, based on the applicant's further analysis that the site fell within Flood Zone 1 (rather than 2 and 3). Since then Dacorum, in conjunction with neighbouring authorities, has published the South West Herts Strategic Flood Risk Assessment (SFRA) where Flood Zone 3b has been updated based on the most up to date information available. This has meant that more of the application site now lies within Flood Zone 3b.

9.5 Flood Zone 3b is the 'functional floodplain' and is defined as an area of land where water has to flow or must be stored in times of flood.

9.6 Planning Policy Guidance (PPG) makes clear that residential development is classed as "more vulnerable" and should not be permitted within Flood Zone 3b which is land with the

highest probability of flooding. The NPPF sets out a sequential approach to site selection, with the aim of steering new development to areas with the lowest risk of flooding. At Para 158 it states:

*“Development should not be permitted if there are reasonable available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.”*

9.7 The EA has said that the objection can be overcome by redesigning the layout so that none of the development falls within Flood Zone 3b or, at the very minimum, not have any additional footprint within the flood zones than was there previously, in order to avoid increasing flood risk elsewhere. Alternatively, if this can't be done it would be necessary for the applicant to undertake their own modelling work to demonstrate that the site should not be classified as Flood Zone 3b.

9.8 The EA has advised that as Dacorum through its SFRA has undertaken modelling for the Flood Zone 3b designation, which has been allocated by the 1 in 20 year flood risk, it is unlikely to be able to be successfully challenged by any modelling undertaken by the applicants. The EA therefore recommend that the easiest way to resolve the issue is to re-arrange the site layout to avoid this zone.

9.9 The applicant has not revised the layout so that it avoids Flood Zone 3b, nor has it submitted any modelling analysis to show that the site should not be classified as Flood Zone 3b. Instead the applicant maintains that permission should be granted on the basis that the EA previously did not object and because the Committee resolution was supportive.

9.10 In accordance with the NPPF and Table 3 of the PPG on Flood Risk and Coastal Change, “more vulnerable” development should not be permitted in Flood Zone 3b. The NPPF (Para 159) sets out provisions for applying an “exception test” if it is not possible to locate development in zones of lower flood risk. However, there is no provision in Table 3 for applying the “exception test” to “more vulnerable” development with Flood Zone 3b.

9.11 Given the absence of any material changes to the layout or modelling, the EA maintain their recommendation that the application be refused on grounds of its Flood Risk Zone 3b classification.

9.12 With regards to the EA's second objection, an updated FRA has not been submitted to take account of the site now falling within Flood Zone 3b. This of course cannot be done, in accordance with EA advice, unless and until the first objection is overcome.

9.13 Accordingly, the EA maintain their objection to the absence of a FRA, and recommend that permission be refused.

### Surface Water Drainage

9.14 The Lead Local Flood Authority (LLFA) has reviewed and updated its response to the application since its comments in March 2019. It has raised a key objection to the application together with two further objections. The key objection relates to building over the culverted Long Marston Brook that runs through the site. The other two objections relate to the surface water runoff rate which is noted as not being the greenfield runoff rate for the site, and the lack of half drain-down times for the surface water attenuation storage.

9.15 The LLFA acknowledge its previous comment to the applicant that opening up / diverting the culvert would be difficult due to the size of the site and levels but that it still had concerns regarding building over the culvert and that the preference was for the layout to avoid building over the culvert, noting that it was soon to enact a policy to avoid any building over a culvert. However, in the absence of an adopted policy, it did not raise an outright objection.

9.16 Since its consultation response to the application in March 2019, Hertfordshire County Council as LLFA has adopted new policy that now does not consent to building over a culvert. Policy 8 of LFRMS2 (Hertfordshire Local Flood Risk Management Strategy 2) states that:

*“In principle, no construction works should occur on the top of a culvert.”*

The latest formal response of the LLFA to this application is that:

*“the applicant will need to explore opportunities to divert the culvert away from/around the building, to ensure that there are no buildings on top of the culvert.”*

9.17 The LLFA has further advised that:

*“The proposed building is for residential apartments and if there was a need to access the culvert this could create severe disruption to a residential area. In addition to the potential impact if there were any problems with the culvert.”*

9.18 It is worth noting in this respect that the LLFA has recently highlighted to us that they have a potential enforcement case at Silk Mill Business Park relating to a potential blockage in the watercourse that could be preventing water from reaching the main river (Long Marston Tring Bourne) and therefore exacerbating flood risk to the surrounding area. It is understood that the watercourse runs through the underground culvert the subject of which this application is looking to build over and therefore indicates the potential for disruption in future.

9.19 The applicant has not revised the layout so that it avoids building over the Long Marston Brook culvert through the site. Nor has it proposed to divert / de-culvert the Long Marston Brook to avoid the building altogether. In the circumstances, there remains an in principle objection to the development from the LLFA on grounds of being contrary to its policy of not building over culverted watercourses.

9.20 With regard to the LLFAs objection to the applicant’s proposed runoff rate from the site of 5 litres per second, it is LLFA policy that previously developed sites should aim to discharge at the original pre-development greenfield rate. The LLFA has said that the high rate of 5l/s requires strong technical justification and that a runoff rate around 1l/s would be acceptable as a maximum. This is still 10 times higher than the calculated greenfield runoff rate for the site of 0.1l/s. The LLFA has already objected to the applicant’s amended rate of 3l/s in relation to the recently withdrawn scheme.

9.21 The applicant has not updated the submitted Sustainable Drainage Statement in relation to this application either to a proposed lower rate of 1l/s or by way of justifying the proposed 5l/s runoff rate. Accordingly there remains an outstanding objection from the LLFA in relation to runoff rates.

9.22 In relation to the LLFA objection to the lack of half drain-down times for the surface water attenuation storage, although this has been provided in relation to the recently withdrawn scheme, which confirms that this would be achieved in a timeframe of 9 hours 15

minutes (based on a discharge rate of 3l/s), which would meet the 24hr stipulation, this information has not been provided in relation to the current application. Moreover, half drain-down times would need to be calculated in relation to a maximum discharge rate of 1l/s, not 3l/s. In the circumstances there remains an outstanding objection from the LLFA in relation to this aspect.

### Noise Impact and Air Quality

9.23 The Environmental Health Officer (EHO) Environmental and Community Protection raised objections in relation to the recent application 19/02794/MFA (now withdrawn) on grounds of noise and air quality impact. In view of the great similarity of the current application with that scheme, we should be taking a consistent approach. His objections represent a material change in circumstances that need to be taken into account. The EHO has confirmed that if the current application remains undetermined and is now being reconsidered, he would expect the applicant to demonstrate no adverse effect in terms of noise and air quality, and in the case of noise that appropriate mitigation can be incorporated into the development.

9.24 The EHO has reviewed the comments previously provided by the Scientific Officer and now raises objections in relation to noise and air quality impact. Noise is a material consideration under the NPPF (Para 170 and 180) and the EHO has noted the proximity of the development to Brook Street with the potential for exposure to road traffic noise which may be detrimental to living conditions, especially given facing windows and the need for purge ventilation. This will be of particular concern given climate change and increasing potential for overheating risk. Mitigating the potential for overheating as a result of climate change is noted in the NPPF (Para 149) as an area which Plans and decisions should be targeting when determining planning applications in order to minimise carbon dioxide emissions in new development. Policies in the Core Strategy support this. However opening windows would not be compatible with limiting noise exposure and he has therefore advised that an alternative scheme for ventilation will be required before determination of the application.

9.25 The EHO has also requested that the applicant provide information regarding businesses at Silk Mill Way Business Park so that he can determine whether an assessment of noise on future occupiers can be scoped out of any noise assessment.

9.26 The EHO notes that the applicant has not provided a noise assessment in support of the current application that either demonstrates that there would be no adverse noise impact on residential occupiers or that appropriate mitigation will be put in place including an alternative scheme for ventilation of the apartments concerned. In the circumstances, the impact of traffic noise remains as an outstanding issue and the EHO is therefore unable to support the application.

9.27 With regards to air quality, the NPPF (Para 181) states that *“Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants”*. Core Strategy Policy CS32 requires development to help maintain air quality standards throughout the area. This would include air quality experienced by residential occupiers of new development.

9.28 The EHO has noted that the new apartments would front onto Brook Street which is a pinch point in terms of traffic being confined to a single running lane adjacent to the development site. He has also noted that due to queuing traffic, there is the propensity for higher noxious emissions as vehicles stand stationary and move off in lower gears. Given the need for purge ventilation through the opening of windows, there is the potential for residents to be exposed to high levels of poor air quality each time they open their windows.

This would be a particular concern in summer when the risk of overheating will be high. Accordingly, the EHO has said that in order to consider the suitability of the development, an assessment of local air quality, supported by suitable monitoring, preferably over a period of 6 months from January to June, should be submitted.

9.29 The applicant has not submitted an air quality assessment in support of the development. It follows that the impact of poor air quality on new residents is an outstanding issue and therefore the EHO is unable to support the application.

9.30 Whilst the objections of the Environmental Health Officer are noted and appreciated, we do not recommend that the application be refused on noise and air quality grounds in this case. This is because nothing has changed materially to the scheme to worsen the air quality and noise environment since it was considered at DMC in May 2019 and at which meeting no objections were raised on these grounds by Environmental Health. To now refuse it on these grounds would risk the Council being accused of unreasonable behaviour at appeal by changing the goal posts and putting the applicant to unexpected extra cost after a resolution to grant had already been given without this being raised as an issue.

### Planning Obligations

9.31 The resolution in May 2019 was to grant development subject to the completion of an s106 agreement to secure the following heads of terms:

- 55 years minimum age restriction;
- meeting medical or health criteria that justify the extra care accommodation categorisation;
- provision of fire hydrants, financial contribution towards improvements to the two nearest bus stops to provide easy access kerbing of £16,000.

9.32 These provisions are considered necessary to mitigate the impacts of the development, directly related to the development and fairly and reasonably related in scale and kind to the development. Whilst a draft has been circulated, a section 106 agreement has not been completed by the parties. As such, there is no mechanism in place to secure the above planning obligations, and the proposal is therefore contrary to saved Policy 13 of the Local Plan and Policy CS35 of the Core Strategy.

9.33 It is recommended that the application be refused due to the lack of a mechanism to secure the above heads of terms.

### Other Material Planning Considerations

9.34 Car parking standards have recently been revised with the adoption of the Parking Standards SPD (Nov 2020). However, the standards in relation to Use Class C2 Residential Institutions have not changed from those adopted under Appendix 5. We therefore consider that the provision of 45 parking spaces, which is well above the theoretical provision for C2(a) *residential institutions / homes with care staff* and C2(b) *elderly persons residential* at 23 and 19 spaces respectively, remains sufficient to serve this *extra care* development for which there is no specific standard in the SPD.

### Planning Balance

9.35 Whilst Officers previously supported the application, the representations received from technical consultees represent fundamental issues of flood risk and site drainage at the site. These are significant new material planning considerations which need to be weighed in the



balance in reaching a decision. They go to the heart of matters which the NPPF considers as important aspects of sustainable development.

9.36 The Council is currently unable to demonstrate a five-year supply of deliverable housing sites. Therefore, it should take the 'tilted balance' in favour of granting planning permission in accordance with Paragraph 11 (d) of the NPPF.

9.37 General policies not related to housing supply will continue to have the full weight of S38(6) of the Planning and Compulsory Purchase Act 2004, and planning decisions are to be made "*in accordance with the plan, unless material considerations indicate otherwise.*"

9.38 The tilted balance requires that any applications for housing are determined against the NPPF. The balance is consequently tilted in favour of the presumption in favour of sustainable development except where:

- The application of policies in the Framework that protect areas or assets of particular importance provides clear reason for refusing the development proposed. These areas relate to habitat sites, SSSI, Green Belt, Green Space, AONB, National Park, Heritage Coast, irreplaceable habitats, designated heritage assets and areas at risk of flooding or coastal change (see NPPF, footnote 6); or
- Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.

9.39 The application of the tilted balance does not imply that planning permission should be granted in all cases. The presumption in favour of sustainable development is not an unconstrained approach. For example, the NPPF gives full weight to the Green Belt, Chilterns AONB, other historic and environmental assets, and to flood risk. Applications that do not constitute sustainable development should normally be refused. Adverse impacts are to be assessed against the full scope of guidance in NPPF.

9.40 The benefits of the scheme should clearly be shown to outweigh the negatives for any scheme to be considered as sustainable development.

9.41 It is acknowledged that there are some clear benefits associated with the proposal in terms of the provision of much needed housing catering for a special need – extra care, in this case. There will also be support for local trades and employment during the construction of the site itself and benefits to the local economy through ongoing support of local shops, services and facilities. It is also acknowledged that the site, being within an urban area, is in a sustainable location.

9.42 However, importantly, based on the most recent comments of the technical consultees as discussed above, there are significant negatives. Of particular significance is the fact that the Environment Agency object in principle to the development on the grounds that the site falls within an area at risk of flooding, being with Flood Risk Zone 3b. This constitutes part of the functional flood plain, and the proposed development comprises a flood risk vulnerability category that is inappropriate to this flood zone. The EA will only remove its objection if the layout is revised so that it avoids Flood Zone 3b, or extends no further than the previous built development or further modelling analysis demonstrates that the site should not be classified as Flood Zone 3b.

9.43 Part of the site comprises land with a lower probability of flooding where development could be located – Flood Zones 1 and 2. The development has not been amended accordingly to be only located within these zones. Nor has it been demonstrated to the satisfaction of the EA that the Flood Zone has been incorrectly classified. In accordance with

the NPPF, and the associated Planning Practice Guidance, on this basis alone the development should not therefore be permitted. A related issue is that the FRA has not been updated to account for the Flood Zone 3b classification, contrary to NPPF (Para 163). Very significant weight should be attributed to these concerns.

9.44 A further significant negative is that the Lead Local Flood Authority object to the development on grounds of building over the culverted Long Marston Brook. This is contrary to Policy 8 of LFRMS2 and the LLFA is concerned that, for whatever reason, if it was necessary to access the culverted watercourse, this could create severe disruption to residents. The LLFA has consistently advised in discussions and advice to the applicant that the development should not build over the culvert but should look to open it up. However, it is only with the adoption of recent policy supporting this principle that it has been able to raise formal objection on this ground. Plans have not been amended and the proposal in this respect would be contrary to the NPPF's overarching social objective to achieving sustainable development of fostering a well-designed and safe built environment. It would potentially increase vulnerability of residents, both existing and proposed, to flood risk, particularly if the culvert were to become blocked for whatever reason and stream flows were to back up. Great weight should therefore be given to this.

9.45 The NPPF (Para 165) states that major developments should incorporate sustainable drainage systems (SUDS). The LLFA is a key consultee in terms of providing advice to the local planning authority in this respect. The LLFA's objections in relation to surface water runoff rates and lack of drain-down times for the surface water storage system are pertinent in terms of limiting the potential for flooding downstream, particularly with the added future propensity due to climate change effects. Minimising the risk of flooding through appropriate SUDS is a key material planning consideration within chapter 14 of the NPPF and is also part of the overarching environmental objective to achieving sustainable development. These aspects therefore bear significant planning weight.

9.46 The absence of a noise or air quality assessment in support of the application, with design changes or mitigation as necessary, raises further concerns from the Council's Environmental and Community Protection team in relation to the potential adverse impact of road traffic noise and poor air quality on the living conditions of the new occupants. However, given there has been no material change in the noise or air quality environment since the previous resolution to grant this scheme in May 2019, little material weight can be given to these concerns despite the fact that the extra care scheme will potentially place more vulnerable individuals at greater risk of pollutants harmful to their health.

9.47 The Council's policies for the protection of development from flood risk, for the management of the water environment and for the protection of residents from pollution are consistent with the NPPF approach.

9.48 Although there are recognisable benefits from the development, in particular the provision of much needed housing for special needs, nevertheless the harm to interests of acknowledged importance as identified by the technical consultees would be significant.

9.49 The location of the development within Flood Risk Zone 3b and the classification of residential development as being "more vulnerable" means that on this basis alone, in accordance with the NPPF and the associated Planning Practice Guidance, the development should not be permitted.

9.50 The addition of objections from the LLFA on the grounds of harm to the water environment, only exacerbates the environmental harm.

9.51 Accordingly it is considered, despite applying the tilted balance, that sustainable development would not be achieved through this development.

9.52 When assessed against the policies in the Framework taken as a whole, it is concluded that the adverse impacts of the development would significantly and demonstrably outweigh the benefits and the conflict with the development plan is not outweighed by other considerations including the Framework.

## **10. CONCLUSION**

10.1 In May 2019, it was resolved to delegate the application to the Group Manager Development Management and Planning with a view to approval subject to the completion of a s106 agreement.

10.2 The completion of the agreement remains outstanding.

10.3 In the mean-time, a number of material changes in circumstance have come to light as follows:

1. The flood zone has been reclassified as Zone 3b and the Environment Agency (EA) now object in principle to the application, unless the layout is redesigned so that it falls outside Flood Zone 3b, or the applicant undertakes their own modelling work which demonstrates that the site should not be classified as Flood Zone 3b. In addition an updated Flood Risk Assessment (FRA) to take account of the revised flood zone classification has not been submitted.

The layout has not been amended, nor has it been satisfactorily demonstrated that the flood zone has been incorrectly classified. Neither has the FRA been updated. The EA therefore maintains its objection in principle.

2. Policy 8 of the now updated Hertfordshire Local Flood Risk Management Strategy 2 does not now consent to building over a culvert and the Lead Local Flood Authority (LLFA) object to the application on this ground. In addition, the LLFA object to the runoff rate of 5l/s for the site and to the absence of half drain down times having been provided for the surface water attenuation storage.

The layout has not been amended to avoid the culverted Long Marston Brook, and the applicant has not updated the Sustainable Drainage Statement either to a proposed lower rate of 1l/s or by way of justifying the proposed 5l/s runoff rate, nor have satisfactory half drain-down times been provided. The LLFA therefore maintains its objection.

3. The Environmental Health Officer (EHO) has revised his comments and now raises objection on grounds of exposure to road traffic noise harmful to living conditions and to potential breach of an air quality objective due to exposure to traffic fumes, both contrary to NPPF guidance.

Neither a Noise Assessment or an Air Quality Survey and Assessment with proposals as necessary for mitigation / redesign has been submitted. The EHO therefore maintains his objection.

10.4 The Council is currently unable to demonstrate a five-year supply of deliverable housing sites. Therefore, it should take the 'tilted balance' in favour of granting planning permission in accordance with Paragraph 11 (d) of the NPPF.

10.5 The tilted balance requires that any applications are determined against the NPPF. The balance is consequently tilted in favour of the presumption in favour of sustainable development except in certain circumstances, including flood risk and when adverse effects would demonstrably outweigh the benefits when assessed against the NPPF as a whole.

10.6 Although there are recognisable benefits from the development, in particular the provision of housing, nevertheless the harm to interests of acknowledged importance as identified above would be significant and as a result sustainable development would not be achieved through this development. When assessed against the policies in the Framework taken as a whole, it is concluded that the adverse impacts would significantly and demonstrably outweigh the benefits and the conflict with the development plan and national guidance is not outweighed by other considerations including the Framework.

## 11. RECOMMENDATION

11.1 That planning permission be **REFUSED** for the following reasons:

1. The site lies within Flood Zone 3b (functional floodplain) which is defined by the South West Hertfordshire Level 1 Strategic Flood Risk Assessment March 2019 as having the highest probability of flooding. The development is classed as “more vulnerable” in accordance with table 2 of the Flood Zones and flood risk tables of the Planning Practice Guidance (PPG) Flood Risk and Coastal Change. Tables 1 and 3 make it clear that this type of development is not compatible with this Flood Zone and therefore should not be permitted. In accordance with the sequential approach of the National Planning Policy Framework, the development should be relocated to land with a lower risk of flooding. In accordance with the PPG, there is no case for an exception. The proposal is therefore contrary to National Planning Policy Framework and Policy CS31 of the Dacorum Core Strategy September 2013.
2. The Flood Risk Assessment (FRA) submitted in support of the application is not based on the most up to date available data, namely the South West Hertfordshire Strategic Flood Risk Assessment (SFRA) and its flood zone 3b allocation. An FRA is vital to making informed planning decisions. In the absence of an acceptable FRA, the flood risks posed by the development are not fully known and understood. The proposal is therefore contrary to the National Planning Policy Framework and Policy CS31 of the Dacorum Core Strategy September 2013.
3. The proposal would result in buildings being constructed over the culverted Long Marston Brook. The proposed building is for residential apartments and if there was a need to access the culvert this could create severe disruption to a residential area, and furthermore could result in flooding or other impacts in the area if for any reason the culvert were to become blocked and access could not be gained. The proposal is contrary to Policy 8 of the Hertfordshire Local Flood Risk Management Strategy 2 which states that “*In principle, no construction works should occur on the top of a culvert*”. The proposal would therefore be contrary to the National Planning Policy Framework which states that advice should be taken from the Lead Local Flood Authority on sustainable drainage systems. The proposal is also contrary to Policy CS31 of the Dacorum Core Strategy September 2013.
4. The application proposes a surface water runoff rate of 5l/s that is not the greenfield runoff rate for the site nor a rate which the Lead Local Flood Authority might otherwise be willing to accept. Nor have half drain-down times been provided for the surface water attenuation storage. In the absence of strong technical justification / additional information having been submitted and accepted, the proposal does not accord with sustainable drainage principles

and is therefore contrary to the National Planning Policy Framework and Policy CS31 of the Dacorum Core Strategy September 2013.

5. There is no mechanism in place to secure the Heads of Terms for a planning obligation agreed by the Development Management Committee in May 2019. These provisions are considered necessary to mitigate the impacts of the development, are directly related to the development and are fairly and reasonably related in scale and kind to the development. The proposal is therefore contrary to saved Policy 13 of the Dacorum Borough Local Plan 1991-2011 and Policy CS35 of the Dacorum Core Strategy September 2013.

## APPENDIX A: CONSULTEE RESPONSES

| Consultee          | Comments  |
|--------------------|---|
| Environment Agency | <p>Please note that we always provide our comments on the most up to date information at the time of our consultation. We previously recommended conditions on this application however since our previous response on this application Dacorum, in conjunction with neighbouring local authorities, have published the South West Herts Joint Strategic Flood Risk Assessment (SFRA) where Dacorum's Flood Zone 3b has been updated based on the most up to date information available. This has meant that more of the application site now lies within Flood Zone 3b.</p> <p>We therefore have <b>two objections</b> to the proposed development. <b>The first objection is an objection in principal.</b> The site falls within Flood Zone 3b (the functional floodplain). The second objection is for an inadequate Flood Risk Assessment (FRA) and should not be addressed unless the first can be resolved.</p> <p><b>Objection 1 - Development Within Flood Zone 3b Functional Floodplain (incompatible development)</b><br/> We object to the proposed development as it falls within a flood risk vulnerability category that is inappropriate to the Flood Zone (Flood zone 3b) in which the application site is located. The application is therefore contrary to the National Planning Policy Framework (NPPF) and its associated planning practice guidance. We recommend that planning permission is refused on this basis.</p> <p><b>Reason</b><br/> The PPG classifies development types according to their vulnerability to flood risk and provides guidance on which developments are appropriate within each Flood Zone. This site lies within Flood Zone 3b functional floodplain, which is land defined by your Strategic Flood Risk Assessment as having the highest probability of flooding.<br/> The development is classed as more vulnerable in accordance with table 2 of the Flood Zones and flood risk tables of the Planning Practice Guidance (PPG). Tables 1 and 3 make it clear that this type of development is not compatible with this Flood Zone and therefore should not be permitted.</p> |

**Overcoming our objection**

The applicant notes (within a letter from BWB dated 22 January 2020 submitted in support of application 19/02794/MFA) that the current flood risk is based on JFLOW data which has been used in the local authorities SFRA for the designation of Flood Zone 3b. However this is currently the best available data for this site. If the applicant believes that the site should not be classified as Flood Zone 3b then they will need to **undertake their own modelling** work which would demonstrate the level of flood risk at the site. Depending on the results of this modelling the applicant may then be able to challenge the LPA as to the 3b designation. Please be aware that the results of the modelling might not show this to be the case, and may result in the flood risk being worse than what we currently believe it to be.

**Alternatively** the applicant can overcome this objection by redesigning the layout so that the proposed development is located outside of Flood Zone 3b. The proposed development is currently increasing the built footprint within the Flood zones which will increase flood risk elsewhere. The development should at the very minimum not have any additional footprint within the flood zones than what was there previously.

As previously advised, if the layout is not able to be changed then there is no resolution to this objection whilst the site is classified as functional floodplain by the local authority.

**Objection 2 – Inadequate Flood Risk Assessment (FRA)**

In the absence of an acceptable FRA, we object to this application and recommend that planning permission is refused.

**Reason**

The application site lies within Flood Zone 3b, which is land defined by the planning practice guidance as having a high probability of flooding. An FRA is vital to making informed planning decisions. In the absence of an acceptable FRA, the flood risks posed by the development are not fully known and understood. This is sufficient reason for refusing planning permission.

The FRA submitted in support of this application is not based on the most up to date available data, namely the South West Herts Joint Strategic Flood Risk Assessment (SFRA) and its flood zone 3b allocation.

**Overcoming our objection**

As previously advised the first objection is an objection in principle and that this objection cannot be resolved until the first has been addressed.

If the first objection is overcome due to new modelling the FRA will need to be updated to include the updated data. If the first objection is overcome because the site layout has changed then

the FRA will need to be amended to reflect this. The FRA will need to demonstrate that the development is safe without increasing risk elsewhere. Where possible, it should reduce flood risk overall. If this cannot be achieved, we are likely to maintain our objection.

**Advice to LPA  
Sequential Test**

In accordance with the NPPF (paragraph 158), development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. It is for the local planning authority to determine if the sequential test has to be applied and whether or not there are other sites available at lower flood risk. Our flood risk standing advice reminds you of this and provides advice on how to apply the test.

**Flood Risk - Safe Access and Egress**

In accordance with paragraph 163 of the NPPF, you must ensure that the 'development is appropriately flood resilient and resistant, including safe access and escape routes where required...' This is on the understanding that you have concluded that the proposed development has passed the flood risk sequential test. Within the application documents the applicant should clearly demonstrate to you that a satisfactory route of safe access and egress is achievable. It is for you to assess and determine if this is acceptable. Please note we have not assessed the proposed access and egress route.

**Call-in Directive**

We would also like to remind you that if you are minded to approve this application contrary to our objection on flood risk grounds, as it is a major development, you are required to notify the Secretary of State through the Department for Communities and Local Government's National Planning Casework Unit (NPCU), as outlined in The Town and Country Planning (Consultation) (England) Direction 2009: circular 02/2009.

**Advice to applicant  
Water Resources**

Increased water efficiency for all new developments potentially enables more growth with the same water resources. Developers can highlight positive corporate social responsibility messages and the use of technology to help sell their homes. For the homeowner lower water usage also reduces water and energy bills.

We endorse the use of water efficiency measures especially in new developments. Use of technology that ensures efficient use of natural resources could support the environmental benefits of future proposals and could help attract investment to the area. Therefore, water efficient technology, fixtures and fittings should be considered as part of new developments.

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|                            | <p>All new residential development are required to achieve a water consumption limit of a maximum of 125 litres per person per day as set out within the Building Regulations &amp;c. (Amendment) Regulations 2015.</p> <p>However, we recommend that in areas of serious water stress (as identified in our report Water stressed areas - final classification) a higher standard of a maximum of 110 litres per person per day is applied. This standard or higher may already be a requirement of the local planning authority.</p> <p><b>Insurance eligibility</b><br/>New homes built in flood risk areas after 1 January 2009 are not covered by the Flood Re-insurance scheme and may not be eligible for home insurance. We advise contacting an insurance provider to discuss whether your development would qualify for insurance.</p> <p><b>Flood Risk Management Scheme Funding eligibility</b><br/>New properties and buildings converted to housings within areas of flood risk after 1 January 2012 will not be counted towards the outcome measures of any proposed future flood alleviation scheme. This is to avoid inappropriate development in flood risk areas. Further information can be found at <a href="https://www.gov.uk/government/publications/calculate-grant-in-aid-funding-flood-risk-management-authorities">https://www.gov.uk/government/publications/calculate-grant-in-aid-funding-flood-risk-management-authorities</a></p> <p><b>Final comments</b><br/><b>If you are minded to approve the application contrary to our objection, I would be grateful if you could re-notify the Environment Agency to explain why, and to give us the opportunity to make further representations.</b></p> |
| Lead Local Flood Authority | <p>This letter is the LLFA updating our consultation response to 4/02204/18/MFA. This letter supersedes our letter dated 05 March 2019. Following our consultation response on 19/02794/MFA – Land North Of Old Silk Mill, Tring, Hertfordshire, HP23 5EF, which was an application for the proposed residential scheme comprising 42 No. apartments with associated landscaping and parking, following demolition of existing buildings, the LLFA was made aware that application 4/02204/18/MFA had not yet been approved, and we would therefore like to formally update our response.</p> <p>The applicant has provided the Flood Risk Assessment carried out by BWB reference BST-BWB-ZZ-XX-RP-YE-0001-FRA dated September 2018 and Sustainable Drainage Statement carried out by BWB reference BST-BWB-ZZ-XX-RP-YE-0001-SDS dated September 2018 to support the application.</p> <p>We have reviewed the information provided in support of the application. However, unfortunately the information provided does not provide a suitable basis for an assessment to be made of the</p>   |



flood risk arising from the proposed development. Therefore we object to the grant of planning permission. In order for the Lead Local Flood Authority to advise the relevant Local Planning Authority that the site will not increase flood risk to the site and elsewhere and can provide appropriate sustainable drainage techniques the following information is required as part of the surface water drainage assessment.

As Lead Local Flood Authority, our Local Flood Risk Management Strategy has been reviewed and updated since our consultation response dated 05 March 2019. LFRMS2 contains our LLFA policies, which have been ratified by the council. In light of this we would make the following comments in order for the applicant to overcome our objection.

#### 1. Building over the culverted ordinary watercourse

It is acknowledged that the LLFA case officer who provided previous comments on application 4/02204/18/MFA visited the site and acknowledged the potential difficulties of opening up the culvert. In email correspondence with BWB (not formally submitted as information for this application) the LLFA also mentioned how:

*“Following our site visit and inspection of the watercourse we can confirm that trying open-up/divert would be difficult due the size of the site and levels. However, we still have concerns regarding building over the culvert, any future risk of damage to the culvert would put the building at risk. We would prefer for the layout to avoid any building over the culvert, the LLFA are due to enact a policy to avoid any building over a culvert.”*

This policy has now been implemented so we would be unable to provide land drainage consent for building over the culvert.

The applicant has stated regarding the difficulties of opening up the culvert. Whilst it is acknowledged that opening up the culvert is difficult, the applicant will still need to explore opportunities to divert the culverted watercourse around the proposed residential apartment building. Apartments should not be built on top of the culvert.

Unfortunately, since our consultation response dated 05 March 2019, LLFA policy would now not consent building over a culvert. It is acknowledged that the layout of the proposed building is positioned on the top of the culverted Long Marston Brook. It is acknowledged that there are space constraints on site. However, it is LLFA policy that no building should occur over an ordinary watercourse. Policy 8 of LFRMS2 states that “In principle, no construction works should occur on the top of a culvert.” Therefore the applicant will need to explore opportunities to divert the culvert away from/around the building, to ensure that there are no buildings on top of the culvert.

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|---|---|
|   | <p>The proposed building is for residential apartments and if there was a need to access the culvert this could create severe disruption to a residential area. In addition to the potential impact if there were any problems with the culvert.</p> <p>Any proposed diversion and new outfall connections would require land drainage consent from the LLFA, this is regardless of any planning permission. Any works proposed to be carried out that may affect the flow within an ordinary watercourse will require the prior written consent from the Lead Local Flood Authority under Section 23 of the Land Drainage Act 1991. This includes any permanent and or temporary works regardless of any planning permission.</p> <p>2. Provision of greenfield runoff rates</p> <p>The applicant is proposing a rate of 5l/s. As this is not the Greenfield runoff rate for the site, strong technical justification needs to be provided. It is acknowledged that the QBAR greenfield runoff rate is exceptionally low (0.1l/s), however, we have seen discharge rates as low as 2l/s or 1l/s, the lower of these would be acceptable to the LLFA any higher discharge rate would require strong technical justification.</p> <p>All calculations and volumes for storage will need to be updated accordingly.</p> <p>3. Half drain down times</p> <p>The applicant should provide the half drain down times of the surface water attenuation storage; half drain down time should be achieved within 24 hours.</p> <p>For further advice on what we expect to be contained within the surface water drainage assessment to support a planning application, please refer to our Developers Guide and Checklist on our surface water drainage webpage:<br/> <a href="https://www.hertfordshire.gov.uk/services/recycling-waste-and-environment/water/surface-water-drainage/surface-water-drainage.aspx#">https://www.hertfordshire.gov.uk/services/recycling-waste-and-environment/water/surface-water-drainage/surface-water-drainage.aspx#</a></p> <p><b>Informative to the LPA</b><br/> We note that Long Marston Brook runs in culvert below properties on Brook Street. Should any future planning application for the wider Old Silk Mill site comes forward; the LLFA will seek for the culverted watercourse to be opened up where possible and diverted away from / around buildings.</p> |
| Environmental Health<br>Environmental and | I refer to the above application which remains undetermined.<br>ECP have concerns on noise and air quality grounds noting that the  |

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| Community Protection | <p>more recent application 4/02794/19/MFA was withdrawn. My concerns relate to noise from road traffic noise, activity from Silk Mill Industrial Estate, noting single aspect living proposed for flats and ensuring adequate protection for future occupiers from noise, and the local site circumstances related to the narrowing of Brook Street caused by the presence of on-street parking.</p> <p>The attached email has addressed points raised by the applicant in relation to their most recent application. In order to demonstrate appropriate conditions for living can be achieved the applicant will need to provide supporting evidence that adequate conditions for resting / sleeping in terms of road traffic noise can be achieved, and by that siting the façade of this building close to the road it will not lead to the creation of new air quality management areas. The NPPF (para 181), outlines that planning policies and decisions should sustain and contribute towards compliance with relevant limit values and national objectives.</p> <p>Noting this development is for an extra care scheme it is potentially placing more vulnerable individuals to pollutants harmful to health.</p> |
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## APPENDIX B: NEIGHBOUR RESPONSES

### Number of Neighbour Comments

| Neighbour Consultations | Contributors | Neutral | Objections | Support |
|-------------------------|--------------|---------|------------|---------|
| 106                     | 0            | 0       | 27         | 4       |

### Neighbour Responses

No further comments since DMC 28/05/19 – See Appendix C for comments received.

## APPENDIX C: OLD SILK MILL COMMITTEE REPORT 28 MAY 2019