

Item No. 7**SCHEDULE B**

APPLICATION NUMBER	CB/11/02380/OUT
LOCATION	Dukeminster Estate, Church Street, Dunstable, LU5 4HU
PROPOSAL	Demolition of all existing buildings and redevelopment for up to 172 residential dwellings together with 300sqm (gfa) of Class A1 retail space and 513sqm (gfa) of Class D1 accommodation
PARISH	Dunstable
WARD	Dunstable Icknield
WARD COUNCILLORS	Cllrs McVicar & Young
CASE OFFICER	Mr J Spurgeon
DATE REGISTERED	16 August 2011
EXPIRY DATE	15 November 2011
APPLICANT	Lionsgate Properties
AGENT	Planning Works Ltd
REASON FOR COMMITTEE TO DETERMINE	Departure from Development Plan and unresolved objections from Town Council.
RECOMMENDED DECISION	Outline Application - Granted

Site Location:

The 6.8ha. Dukeminster Estate is a commercial enclave on a rectangle of land with a long history of industrial use having 2 boundaries to more recent residential development. The estate sits off the northern side of Church Street, just east of the Town Centre, and the land was levelled in the past by forming embankments up to 5m high to part of the north and west sides. Because these were planted the estate therefore presents a mature wooded bank on these frontages to flats and houses in The Mall, Kingsway and Bernards Close. However, there are presently no fences at the top or bottom of the bank (except where it abuts private gardens, where a close boarded fence exists). The eastern boundary is to the formation of the former railway, now cleared for construction of the Luton to Dunstable Busway, with White Lion Retail Park and Sainsburys beyond. There will be a landscaped margin to the Busway incorporating any existing woodland/scrub within its limits. The southern boundary is to Church Street which has been upgraded to a multi-lane highway in readiness for the busway. A central spine road runs through the estate from Church Street and many of the low-rise commercial buildings have now been demolished to slab level. About 7 businesses continue to trade from the estate, including the Plumb Center. The southern frontage was redeveloped in recent decades in the form of brick office blocks ranging from 3 to 6 stories, most now being vacant.

The application site comprises 5.4ha. and covers the whole estate except for the southern office blocks and their associated land. The southern site boundary is therefore irregular. Although the office blocks south of the site abut the Dunstable Conservation Area (taking the form locally of the grassed sward north of Church

Street extending to Marshe Almshouses and beyond), the site does not. The 1973 Tree Preservation Orders protect (a) trees in an Area which included the bank towards the NW corner of the site and (b) individual trees at the foot of the bank to the rear of Scotts Court and Earls Court.

The Application:

It is proposed effectively to renew the outline permission granted on appeal but on the basis of the lower number of dwellings approved through the subsequent Reserved Matters. The reason for the application is that the time period for implementation will elapse on 11th November in view of delays associated with Anglian Water drainage matters. All matters except access are reserved for subsequent approval.

The remaining commercial buildings within the site would be demolished leaving, as before, the office blocks to the south. The total former floorspace (both demolished or still standing) to be replaced is 22,176m². The submitted indicative layout takes the form of the approved Reserved Matters layout. This retains the existing spine road for a distance into the site before describing the letter 'P' in plan form. Both the road and shared surfaces off this road serve frontaging short and medium length terraces (2 to 4-bed dwellings) with 2 small open space areas. Most would be 2-storey with small elements of 3-storey mainly well within the site, where the larger accommodation would be located. A 1 - 5 storey block, housing the commercial elements, would be sited just behind the tallest existing office blocks, again well within the estate.

The development would be modern in character designed to achieve Code 4 being low energy and using sustainable materials reflecting local vernacular up to the introduction of natural slate. Insulation would produce an emission rate of at least 10% below targeted rates in the current Building Regulations. Provision would be made where possible for photo-voltaic and solar energy panels. The principles of Lifetime Homes would be incorporated through the intention that internal walls would not be loadbearing. 2 play areas are indicated and part of the housing would be affordable. The rate would be 30% (up to 18 units) by including 65% social rented. Existing hedgerows and tree belts would be enhanced to ensure longevity and value to biodiversity and ecology; planting within the layout would increase overall greenery on the site, especially with the main roads being tree-lined.

The following documents have been submitted:
Phase I detailed desk-top study (contamination)
Flood risk assessment
Sewer network note
Design and Access Statement
Building for Life appraisal
Energy statement
Affordable housing statement
Economic statement
Transport statement
Landscape strategy document
Planning Obligations statement (including draft UU)

RELEVANT POLICIES:

National Policies (PPG & PPS)

PPS1 - Delivering Sustainable Development; PPS3 - Housing; PPS4 - Planning for Sustainable Economic Growth; PPS5 - Planning for the Historic Environment; PPS6 - Planning for Town Centres; PPS9 - Biodiversity and Geological Conservation; PPG13 - Transport; PPG17 - Planning for Open Space, Sport & Recreation; PPS23 - Planning and Pollution Control; PPG24 - Planning & Noise

Regional Spatial Strategy

East of England Plan (May 2008)

SS1 Achieving Sustainable Development
SS3 Key Centres for Development and Change
SS5 Priority Areas for Regeneration
E2 Provision of Land for Employment
H1 Regional Housing Provision 2001 to 2021
H2 Affordable Housing
T2 Changing Travel Behaviour
T6 Strategic and Regional Road Networks
T14 Parking
ENV3 Biodiversity and Earth Heritage
ENV6 The Historic Environment
ENV7 Quality in the Built Environment
ENG1 Carbon Dioxide Emissions and Energy Performance
WAT4 Flood Risk Management
WM6 Waste Management in Development

Draft Luton and South Central Bedfordshire Core Strategy: Pre Submission 2011 - 2026 (November 2010 as amended)

CS1 Development Strategy
CS3 Developer contributions for infrastructure
CS5 Linking places
CS6 Housing for all needs
CS7 Increasing access to quality social and community infrastructure
CS8 Quality of design
CS9 Delivering economic prosperity
CS11 Resource efficiency
CS12 Adapting to and mitigating flood risk.

Bedfordshire Structure Plan 2011

25 Infrastructure

South Bedfordshire Local Plan Review Policies

BE8 Design Considerations
E1 Main Employment Areas
H2 Fall-In Sites
H3 Local Housing Needs
H4 Affordable Housing
R10 Play Area Standards
R11 New Urban Open Space
T1 Location & Traffic Impact
SD1 Keynote Policy

T10 Parking - New Development
T4 Translink Project

Luton to Dunstable Railway CWS
Borough of Dunstable Tree Preservation Order No.1/1973
Borough of Dunstable Tree Preservation Order No.2/1973

Supplementary Planning Guidance

Design in Central Bedfordshire - Guide for development
CBC Planning Obligations SPD (South)

Planning History (key recent decisions)

SB/OUT/06/0884	Residential development for up to a maximum of 458 dwellings (85 dwellings per hectare maximum) with associated parking and open space and up to a maximum of 300 sq.metres of Class A1 floorspace and up to a maximum of 520 sq.metres of Class D1 floorspace. Refused but allowed at appeal. Valid until 10/11/11.
CB/09/06759/REN CB/09/06766/RM	Similar proposal - renewal. Refused (not appealed). Erection of 172 dwellings, 300 sq.metres of Class A1 retail and 513 sq.metres of Class D1 accommodation (Reserved Matters). Approved 10/11/10 and valid to 10/11/11.

Representations: (Town & Neighbours)

Dunstable Town Council (14/9/11)	Object as the proposal would result in the loss of one of the last major employment sites in the town. The Town Council would welcome the development of light industrial units on this site which could be used for start up businesses. The Council are also concerned that with the number of large residential developments in the town and the loss of such employment sites there will be few opportunities for employment, leading to Dunstable becoming a dormitory town. In addition, the Council are concerned that the access and egress arrangements proposed for the new development are inappropriate and insufficient.
Neighbours	Objectors: The Mall no.85 (7/9/11), 86 (8/9/11); Princes Court no.10 (29/8/11) Reasons: <ol style="list-style-type: none">1. detrimental effect on level of traffic with potentially another 200 vehicles travelling into Dunstable;2. noise; and3. 'emergency access' makes The Mall a through road, losing the closed community feel, affecting children who play outside and general quality and safety - would not only be used in emergency. Should be provided nearer White Lion Retail Park.

Consultations/Publicity responses

Environmental Health Officer (23/8/11)	No objections but asks for contamination and, in view of the proposed busway and nearby retail stores, noise conditions. The proposed D1 unit and play space should be enclosed by an acoustic fence. Advises on impact of construction phase works.
Environment Agency (8/9/11)	Planning permission should only be granted subject to specified conditions, otherwise the development would pose an unacceptable risk to the environment. Gives informative.
Anglian Water	Comments will be reported.
Highways Agency (13/9/11)	No objection.
Highways Officer	Comments will be reported.
Trees and Landscape Officer (16/9/11)	Indicative layout may need to be adjusted to have a right relationship between buffer trees and plots on the W corner. The emergency access would likely impact a large number of trees which a no-dig form of construction is unlikely to mitigate. It is recommended that this is carefully considered as part of a future tree survey and engineering solution.
Play and Open Spaces Officer (13/9/11)	Provides requirement for indoor sport/leisure and outdoor sport facilities. On-site play facilities match those previously agreed.
School Places (14/9/11)	Provides requirement for contributions.
Sustainable Travel Officer (9/9/11)	Satisfied for the Travel Plan agreed by the Inspector to be revised and to form part of the 'renewal' permission.
Strategic Housing Officer	Although 35% affordable housing would be sought, a combination of delivery problems in the current climate and intentions of the applicant to provide a higher percentage of 3 and 4 bed houses would make the proposed 30% acceptable.
Waste Recycling Officer (19/9/11)	A bring bank should be provided to encourage recycling. The layout should include details of collection points, size and location of communal bins stores for flats, and vehicle tracking information. The applicant would be required to procure private bins. A full Site waste management plan is required by condition.

Determining Issues

The main considerations of the application are;

1. Planning history.
2. Policy position
3. Access and layout
4. Sewerage
5. Unilateral Undertaking
6. Conservation Area and protected habitats
7. Comments on objections

Considerations

1. Planning history

A simplified background to the current application is given under 'The Application' above. Whereas the applicant would take the view that there should be no issues of contention, the planning authority must nevertheless review the earlier permission having regard to policy changes in the meantime and any other material considerations. It is also helpful to trace the events which have brought us to where we are.

The site, and the office blocks to the south outside the site, are on land allocated in the Local Plan as a Main Employment Area; relevant Policy E1 is still saved. Outline application SB/OUT/06/0884 for up to 458 dwellings (and 300m² retail/520m² Class D1) was recommended to Planning Committee in 2006 for refusal on grounds of loss of employment land, inadequate recreation provision, lack of Flood risk Assessment, lack of Waste Audit, dominant relationship to existing residential properties/overdevelopment, risk to protected trees with proposed footpath link, inadequate affordable housing provision, inadequate Transport assessment. At the subsequent appeal, after satisfying himself that all matters were fully considered, the Inspector was minded to allow the appeal. The Secretary of State, in allowing the appeal (4th December 2007), agreed with the inspector and noted that the proposal would provide new and additional housing in a sustainable location including a good quantity of affordable housing, and that there was evidence of sufficient employment land elsewhere. She also considered that the development would be compatible with local character, highway issues were overcome, infrastructure contributions were justified, no flood risk objections remained, conditions could overcome tree and waste concerns, and there need not be harm to residential amenity.

The Reserved Matters relating to this permission, but reduced to 172 dwellings, (CB/09/06766) were approved on 11th November 2010 and the permission as a whole will expire on 11th November this year because of the time limits set by the Secretary of State and an outstanding impediment to commencement in the form of the Anglian Water study underway. Shortly before the submission of these RMs a further outline application (CB/09/06759) was lodged for the full 458 dwellings etc, in case there were delays. Members were not happy with this submission because, since the appeal decision 2 and a half years earlier, traffic and foul water drainage conditions had again deteriorated and there was now a big difference between the number sought in the RMs and that sought in the

new outline. The refusal was not appealed because the approval of RMs kept the permission alive for a while.

It is critical to the applicant that there remains in place at any time a valid permission to develop this site. With this in place it is expected that redevelopment of the Estate as a whole can be considered, with issues being revisited and updated so that this part of Dunstable can fully take its place within the Dunstable Masterplan area.

2. Policy position

The most recent treatment of policy relating to this form of development on this site was set out in the report to Development Management Committee on 24th March 2010 (under CB/09/6759). Importantly, the East of England Plan policies were considered, which are still in place as a result of the *Cala* decisions. The planning authority is therefore expected to take a strategic cue from the EEP although, following the CBC Executive decision on 23rd August, the *draft Luton and South Bedfordshire Core Strategy: Pre Submission* will be taken as guidance for development management decisions. Since March 2010 the government has also published a 3rd edition of PPS3 (*Housing*) and a new PPS4 (*Planning for sustainable economic growth*).

EEP/SBLP

In March 2010 the main issues were loss of Main Employment Area, impact on local character, highway safety, foul water drainage and infrastructure contributions. Treating these separately and summarising the EEP/SBLP policy position today:

- (a) The acceptability of the loss of the greater part of the employment area has been established at appeal. The subsequent 2008 *Luton and South Bedfordshire Employment Land Review* (ELR) formed part of the evidence base for the CS and identified the site as 'red', which is considered suitable to be released from employment use. Indeed, the residential permission has also been included in the *Strategic Housing Land Availability Assessment*.
- (b) The scheme for 172 dwellings would still be compatible with the character of this part of Dunstable from the point of view of visual impact, density, traffic.
- (c) The scheme would not unacceptably impact residential properties off-site.
- (d) Following the appeal decision, the lack of a highways objection was conditional on the adoption of a residential travel plan and the creation of a pedestrian/cycle link with existing roads to the north, which are again proposed.
- (e) A Grampian condition was imposed to accommodate the Anglian Water foul sewerage concerns.
- (f) An identical UU has been provided to that submitted at the appeal. This covers contributions towards outdoor sport, affordable housing at 30% with 65% social housing, public art, residential travel plan/contribution to cycleway, and education contribution.

There are considered to be no new areas for discussion since that date. It would therefore be unnecessary to re-visit the employment situation or, since the current application seeks the lower number of dwellings and accords with the approved RMs, the local character/residential impact. Highways and foul water drainage comments will be the subject of separate headings below. It will be necessary to review the UU which will also be given a separate heading below.

Draft Core Strategy

There remains a requirement to deliver a high number of dwellings with Dunstable as part of the focus for new development. Policy CS9 applies a sequential approach to redevelopment of employment land and accommodates the possibility of non-B use class uses. Policy CS3 refers to a new SPD setting out a structure for developer infrastructure contributions; there is a provisional structure in place with the status of SPD. This will be considered below. CS7 makes clear that this applies also to community and social infrastructure. Policy CS5 (linking places) supports the assessment of access requirements and CS6 (housing for all needs) sets the rate for affordable housing at 35% and expects consideration of Lifetime Homes standards.

While the weight to be accorded to this document remains to be established in places of higher authority, we consider that this policy statement does not generally introduce matters which the scheme does not or cannot embrace.

PPS3 and PPS4

The important update to PPS3 is the removal of minimum density standards, to be replaced by local density policies (which have yet to be introduced in CB). The density now proposed has already been accepted by this Council through the approval of the RMs. Although the site would result in the loss of employment opportunities (although the applicant estimates that 26 fte jobs could be created beyond the construction jobs) PPS4 mainly concerns new 'town centre uses' which includes the proposed retail element. An assessment of new retail uses outside an existing centre is not required below 2,500m². This reading of the PPS was recently (September 2011) supported by the inspector in the Sainsburys appeal in High Street South (a new 471m² store) where he wrote "*Government policy in the form of PPS4 expects a positive and constructive approach in the consideration of new economic development. The PPS also sets out the requirements with regard to main town centre uses outwith the existing centre; the assessment of sequential sites; and the impact on town centres. In brief the local planning authority considers the principle of the developments acceptable in this location having regard to Policy TCS6 of the SBLPR. I agree with this conclusion*". (Policy TCS6 refers to major new retail development outside town centres - ie being over 2,500m² and is therefore not applicable to the proposal).

Draft National Planning Policy Framework

In the Sainsburys appeal decision (referred to above) the inspector stated, in relation to the draft *National Planning Policy Framework*:

"I have had regard to the Draft National Planning Policy Framework document which was issued for consultation on 25th July. However, as this document is in draft form and subject to change I have accorded its policies little weight."

But it is appropriate to refer to the document as an indicator of whether the proposal would be in line with current government aspirations and it is a material consideration (guidance to Planning Inspectors). The keyword is sustainability and the proposal would guide development to a sustainable solution [11]. The proposal is also a form of mixed development which takes account of its environmental implications [19, 91] to produce a quality outcome [54]. The intention to include a travel plan would accord with [90] and opportunities to increase biodiversity on what is a bleak site interior with [169].

The site lies within the area covered by the Dunstable Town Centre Masterplan (adopted March 2011) which seeks the retention of an element of the site's original employment function on redevelopment. While it is unclear what 'an element' should be, there would remain substantial office floorspace within the estate to the south, outside the application site.

In conclusion, the proposal accords with the recent approval of reserved matters and, provided the original outline conditions and obligations are reviewed and applied as appropriate, the proposal continues to satisfy the present state of national and local planning policy. In terms of physical impact the scheme would indeed have far less impact on local roads and to local residents than the approved scheme which has double the number of dwellings. This reduction would make the scheme more in tune with present market conditions and thus make it more deliverable.

3. Access and layout

Being based on the approved reserved matters layout, the indicative layout accompanying this application needs only a review. The comments of the Highways Officer will be provided at the meeting. However, we are still looking to incorporate improvements even at this stage and are well aware that detailed work needs to be done at some stage on the 'emergency access' to The Mall to safeguard as many trees as possible. Similar attention could be given to the relationship of new housing and the bank in the same area. Conditions have therefore been amended as we prepare for taking the redevelopment forward in continued discussions. We are in ongoing discussions with the Busway Project with a view to improving connections to the north of the site. While these are aimed at improvements to materialise in the next phase of masterplanning, any benefits that can be built into this scheme will be reported at the meeting.

4. Sewerage

During the RM stage Anglian Water (AW) were still maintaining that the foul water system could not accommodate flows from the proposed development, although this problem did not extend to the Treatment Works. This particularly affected the NW part of the site. They would carry out an appraisal study and were consequently satisfied for a 'Grampian -style' condition to be imposed requiring the implementation of necessary works before the development is brought into use. Surface water drains to sewers (S) and soakaways (N) and SUDs would be expected. We will report at the meeting on the response from AW.

5. Unilateral Undertaking

We have inherited a UU which has its origins in the 2007 appeal decision. It provides 30% affordable housing (including 65% social rent), recreation facilities (outdoor sports, built sports, maintenance), travel plan, education, public art, pedestrian/cycleway, public transport.

Reviewing this undertaking we now require, in line with the current SPD calculator, the following:

- Affordable housing - previous discussions for 30% with a weighting towards larger units, together with the current climate, makes the proposed 30% acceptable,
- Recreation - the calculator arrives at a figure through the conventional elements of formal/informal indoor/outdoor facilities, and we will report at the meeting on the appropriate destination for these funds,
- Health - a sum is now required,
- Travel plan - this has been updated,
- Education - this has been updated,
- Public art - this sum would be added to the recreation sum for onward allocation,
- Community - a sum is now required,
- Sustainable transport - a sum will be required and we will report at the meeting as to its likely allocation,
- Waste - a sum is now required,
- Emergency - a sum is now required.

Due to the unusually tight committee time frame for this application (closing date for reports only 6 weeks into the 13 week period), subject to the Committee's wishes, we propose to use the period after decision to negotiate the details of the Agreement, prior to release.

6. Conservation Area and protected habitats

The eastern limit of the Dunstable Conservation Area abuts the office development to the south of the site, taking the form of a greensward beside the main road. The proposal would not have an effect on the setting and character of the CA. Similarly the proposal would not have a material impact on the CWS along the former railway line. As indicated above, we recognise the approved status of the layout and have amended conditions to improve the protection of trees where possible.

7. Comments on objections

The Town Council has objected on precisely the same grounds as it did to the reserved matters application. The officer report gave a response which is here summarised:

(a) The SBDC originally objected to the loss of employment land but its concerns were dismissed by the appeal Inspector. The background to that decision has not changed materially and the Council would be ill-advised to rebut that decision. There would in fact be employment in the D1 and A1 floorspace.

(b) The SBDC, on rejecting a renewal application did so only on highway safety and sewerage grounds, not employment.

(c) The Luton and South Bedfordshire Employment Land Review (2008), published after the appeal decision and subsequently made part of the Core Strategy evidence base, upheld the downgrading of the employment site and gave it a 'red' status. This would be land which is suitable for release from employment use.

(d) Since 2007 the site has been included in the Luton and Central Southern Bedfordshire housing trajectory as a housing site. The loss of such sites would

significantly undermine the Council's case at future appeals where a supply of land needs to be demonstrated.

(e) The access to the site was accepted on a highway engineering basis and the comments of the Highways Officer will be reported at the meeting.

Three objections have been received from local residents. Matters relating to traffic have been considered above. The detailed design of the emergency access is subject to a condition but it is not intended that this be a full vehicular access with associated issues of traffic noise to residents of The Mall.

Recommendation

To refer the application to the Secretary of State as a departure from the approved Development Plan and, subject to it not being called in by him for his decision, to authorise the Assistant Director Planning or Head of Development Management to issue the grant of PERMISSION subject to the submission of a satisfactory Unilateral Undertaking or Agreement under S106 of the Planning Acts to secure the following:

- affordable housing
- recreation provision
- contribution towards health services
- travel plan
- contribution towards education services
- contribution towards public art
- contribution towards community facilities
- contribution towards sustainable travel
- contribution towards waste services
- contribution towards emergency services

and to the following conditions:

- 1 **Before development begins, the approval of the Local Planning Authority shall be obtained in respect of all the reserved matters, namely the**
 - **appearance**
 - **landscaping**
 - **layout; and**
 - **scale, within the upper and lower limit for the height, width and length of each building stated in the application for planning permission in accordance with Article 4.**

Reason: To comply with Article 4 of the Town and Country Planning (Development Management Procedure) (England) Order 2010.

- 2 Application for the approval of the reserved matters shall be made to the Local Planning Authority within three years from the date of this permission. The development shall begin not later than two years from the final approval of the reserved matters or, if approved on different dates, the final approval of the last such matter to be approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 3 **Before development begins, a landscaping scheme to include any hard surfaces and earth mounding shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented by the end of the full planting season immediately following the completion and/or first use of any separate part of the development (a full planting season means the period from October to March). The trees, shrubs and grass shall subsequently be maintained for a period of five years from the date of planting and any which die or are destroyed during this period shall be replaced during the next planting season and maintained for a period of five years until fully established.**

**Reason: To ensure a satisfactory standard of landscaping.
(Policies ENV7 RSS; BE8, S.B.L.P.R).**

- 4 **The plans and particulars to be submitted in accordance with Condition 3 above shall include:**

(a) a plan, to a scale and level of accuracy appropriate to the proposal, showing the position of every tree on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating which trees are to be removed;

(b) and in relation to every tree identified a schedule listing:

- information as specified in Paragraph 4.2.6 of British Standard BS 5837 : 2005 (*Trees in Relation to Construction - Recommendations*);**
- any proposed pruning, felling or other work;**

(c) and in relation to every existing tree identified to be retained on the plan referred to in (a) above, details of:

- any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area (see Paragraph 5.2.2 of BS 5837 : 2005);**
- all appropriate tree protection measures required before and during the course of development (see Condition 2 below);**

(d) areas of existing landscaping to be protected from construction operations and the method of protection (see Condition 2 below).

**Reason: To safeguard the existing trees on the site in the interests of visual amenity.
(Policies ENV7 RSS; BE8, S.B.L.P.R.).**

- 5 **Development shall not commence until a tree protection plan, which clearly shows the position and build specification of tree protection, with the purpose of enclosing an area around the canopy spread of all**

retained trees, has been submitted to and approved in writing by the Local Planning Authority. The fencing shall form a construction exclusion zone (as specified in Section 9 of BS 5837 : 2005) which shall be demarcated by protective barriers (as specified by Figure 2 of BS 5837 : 2005). These measures shall be for the purpose of avoiding localised compaction of the rooting medium and preventing damage to the natural canopy spread by avoiding branch encroachment by plant and machinery.

Reason: To safeguard the rooting medium, natural canopy spread and health of trees marked for retention on the site layout plan and which are considered to be strategically important.
(Policies ENV7 RSS; BE8, S.B.L.P.R.).

6 No works or development shall take place until a scheme of supervision for the tree protection measures required by Conditions 4 and 5 above has been submitted to and approved in writing by the Local Planning Authority. This scheme of supervision shall be appropriate to the scale and duration of the works, shall be administered by a qualified arboricultural consultant instructed by the applicant/developer and approved by the Local Planning Authority and shall include details of:

- the arrangements for holding a pre-commencement site meeting to be attended by the site manager, the arboricultural consultant instructed by the applicant/developer and the Council's arboricultural officer to agree all aspects of the tree protection measures and aspects of their implementation and sequencing;
- the identification of individual responsibilities and key personnel;
- the timing and methods of site visiting and record keeping, including updates; and,
- procedures for dealing with variations and incidents.

The scheme of supervision shall be carried out as agreed.

Reason: To establish a system that will ensure that acceptable tree protection measures are implemented and maintained thereafter.
(Policies ENV7 RSS; BE8, S.B.L.P.R.).

7 If any underground services are required to be routed through the root protection areas of retained trees, such works shall be carried out in strict accordance with the guidance set out in the National Joint Utilities Group's publication "*Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees*".

Reason: To safeguard the integrity of the rooting medium within the root protection areas of retained trees.
(Policies ENV7 RSS; BE8, S.B.L.P.R.).

- 8 The low brick wall on the north-eastern side of the tree belt adjacent the western boundary of the site shall be retained in its existing position and at its existing height and length. There shall be no reduction in its height or length and no sections of the wall shall be removed without the prior written approval of the Local Planning Authority.

Reason: To safeguard existing trees on the site.
(Policies ENV7 RSS; BE8, S.B.L.P.R.).

- 9 All excavations and trenches required in connection with the construction of the outer footpath/cycleway route shall, where they pass under the canopy of any tree, be hand dug so as to minimise damage to its root system; a minimum of 10 days notice shall be given in writing to the Local Planning Authority of an intention to commence such excavations or trenching.

Reason: To safeguard trees screening the site.
(Policies ENV7 RSS; BE8 S.B.L.P.R.).

- 10 Prior to the submission of any reserved matters a Design Code shall be submitted to and approved in writing by the Local Planning Authority. The Code shall address and codify the following matters:

- (a) Spatial arrangement of dwellings and roads
- (b) Scale
- (c) Building form and height
- (d) Architectural composition
- (e) Private amenity space, arrangements for storage and collection of refuse and recyclables and arrangements for cycle parking
- (f) Public realm including public art
- (g) Privacy.

Reserved matters applications and the implementation of the development shall thereafter accord with the approved Design Code details.

Reason: To ensure a satisfactory quality of urban design in this significant site.

- 11 The detailed layout to be submitted shall include the provision of a 'Bring-bank' site.

Reason: To provide a satisfactory scale of recycling opportunities within the development.

- 12 **Prior to the commencement of any phase of development approved by this planning permission, the developer shall submit to the Local Planning Authority, in both paper and electronic form where possible:**

- (a) A Phase 1 desk study incorporating a site walkover, site history, maps and all further features of industry best practice relating to potential contamination.**
- (b) Where shown to be necessary by the Phase 1 desk study, a Phase 2 site investigation report further documenting the ground conditions of the site with regard to potential contamination, incorporating appropriate soils and gas sampling.**
- (c) Where shown to be necessary by the Phase 2 site investigation, a Phase 3 detailed scheme for the remedial works and measures to be**

taken to mitigate any risks to human health, groundwater and the wider environment.

- (d) On completion of the development, the developer shall provide written confirmation that any and all works have been completed in accordance with the agreed remediation scheme in the form of a Phase 4 validation report to incorporate photographs, material transport tickets and sampling.

Any remediation scheme and any variations shall be agreed in writing by the Local Planning Authority prior to the commencement of works. This should include responses to any unexpected contamination discovered during works.

The British Standard for Topsoil, BS 3882:2007, specifies requirements for topsoils that are moved or traded and shall be adhered to.

**Reason: To protect human health and the environment.
(Policies ENV7 RSS; BE8, S.B.L.P.R.).**

- 13 Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall include details of how the scheme shall be maintained and managed after completion.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, to improve habitat and amenity, and to ensure future maintenance of the surface water drainage system. Environment Agency condition.

- 14 **Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by that Authority:**

- 1) **A preliminary risk assessment which has identified:**
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
- 2) **A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.**
- 3) **The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation**

strategy giving full details of the remediation measures required and how they are to be undertaken.

- 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.**

Any changes to these components require the express consent of the Local Planning Authority. The scheme shall be implemented as approved.

Reason: The preliminary risk assessment report indicates that contamination may be present at the site as a result of historical activities. Site investigation and detailed risk assessment is required to determine if contamination is present at levels that a pose a risk of polluting the groundwater (which is used to provide drinking water to the public). Environment Agency condition.

- 15 Prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to that Authority.

Reason: To confirm that any remediation (if required) is completed to an acceptable standard. This is to ensure that the groundwater below the site (which is used to provide drinking water to the public) is not polluted. Environment Agency condition.

- 16 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To confirm that any contamination identified during the development works is dealt with appropriately. This is to ensure that the groundwater below the site (which is used to provide drinking water to the public) is not polluted. Environment Agency condition.

- 17 No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reason: To ensure that the groundwater (which is used to provide drinking water to the public) below the site is not polluted. Environment Agency condition.

- 18 No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reason: To ensure that the groundwater (which is used to provide drinking water to the public) below the site is not polluted. Environment Agency condition.

- 19 The development hereby permitted shall not be commenced until such time as a scheme to dispose of foul and surface water (Drainage plan) has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented as approved.

Reason: To prevent pollution to watercourse and to improve water quality. Environment Agency condition.

- 20 To protect against intrusive externally generated noise, sound insulation and absorbent materials shall be applied to the building envelope of the houses and flats hereby permitted as is necessary to achieve as a minimum standard an internal noise level of 30dB LAeq (23.00 to 07.00) and 45dB LAmax (23.00 to 07.00) for bedrooms and 35dB LAeq (07.00 to 23.00) for habitable rooms. External noise levels from road traffic noise sources shall not exceed 55dB LAeq, 1hr in outdoor amenity areas. Unless otherwise agreed in writing, the effectiveness of the noise attenuation measures shall be demonstrated through validation noise monitoring with the results submitted to and approved in writing by the Local Planning Authority before any dwelling is occupied. Furthermore, the applicant/developer shall identify any windows that need to remain closed in order for the internal noise environment to meet the required standards. Such windows shall be fixed closed and be non-openable with alternative means of ventilation provided for those rooms affected.

Reason: To protect occupants from externally generated noise. (Policies ENV7 RSS; BE8, S.B.L.P.R.).

- 21 Fixed plant associated with the proposed development must be designed to a level which is at least 5dB(A) below the existing LA90 background noise level as measured during the relevant time period. Any tonal, impulsive and/or irregular noise shall be addressed by imposing a further 5dB penalty as per the methodology set out in BS 4142:1997. Noise limits for new plant are to apply at a position 1m from the closest affected window of the relevant noise sensitive property.

Reason: To prevent nuisance from noise and to safeguard the amenities of the area. (Policies ENV7 RSS; BE8, S.B.L.P.R.).

22 **No development approved by this permission shall be commenced until a scheme for the improvement and/or extension of the existing sewerage system has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full. No occupation of dwellings approved by this permission shall take place until the scheme for improvement of the existing sewerage system has been completed.**

Reason: To ensure that improvements to the sewerage system are carried out to prevent exacerbation of an existing problem with combined sewer outflows, to ensure that the additional discharge would not result in a contravention of the discharge consent and to ensure that the additional discharge would not result in a failure to meet a statutory or non-statutory water quality objective.

23 **Development shall not commence until a detailed waste audit addressing issues in respect of waste generated by the construction phase and subsequent occupation phase of the development has been submitted to and approved in writing by the Local Planning Authority. The waste audit shall include details of:**

- 1. The anticipated nature and volumes of waste that the development will generate;**
- 2. Measures to maximise the re-use on-site of waste arising from demolition, engineering and landscaping;**
- 3. Steps to be taken to ensure effective segregation of wastes at source during demolition and subsequent construction of the development including, as appropriate, the provision of waste sorting storage and recovery and recycling facilities;**
- 4. Any other steps to be taken to minimise the generation of waste throughout any required demolition and during construction of the development;**
- 5. Provision within the proposed development to encourage occupiers to manage their waste effectively and sustainably. This may include provision for waste and recycling storage areas, road and development layouts which allow waste and recyclables to be collected effectively, and provision of community recycling facilities;**
- 6. Provision for monitoring the implementation of steps 1 to 5 above; and,**
- 7. A timetable for implementing steps 1 to 6.**

Reason: To ensure that waste is managed sustainably during the lifetime of the development in accordance with the objectives of Policy WM6 of the East of England Plan and Policies W5 and W6 of the Bedfordshire and Luton Waste Local Plan 2005.

24 **The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 2429/222A and 224A. This permission does not extend to the details shown on drawing 2429/100C.**

Reason: For the avoidance of doubt.

Reasons for Granting

A similar scheme but with more than double the number of dwellings was approved at appeal in 2007, the inspector having determined that there was not an overriding need to retain the land in employment use having regard to the benefits of residential development and the availability of existing and proposed employment land elsewhere. This situation has not changed materially in the meantime, the residential potential of the site having now secured it a place in the Council's list of deliverable sites, and there would still be some employment floorspace in the proposal. The lower number of dwellings makes the highway position acceptable although there is still a delay while foul sewerage requirements are assessed and built into the scheme. This can be accommodated by use of a planning condition. The application effectively renews the extant outline appeal permission and is based on the approved Reserved Matters layout. Excluding this indicative layout at this stage therefore provides the option of reviewing the layout (apart from access) at a future stage. The policy situation has been reviewed and there appear to be no material changes to make a permission inappropriate. On the other hand, policy changes deliver a more up to date list of infrastructure contributions including towards local recreation projects. Finally, the proposal would enable a timely regeneration of this large site near to Dunstable town centre and deliver affordable housing.

Notes to Applicant

1. In accordance with Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the Council hereby certify that the proposal as hereby approved conforms with the relevant policies of the Development Plan comprising of the Regional Spatial Strategy for the East of England (the East of England Plan and the Milton Keynes and South Midlands Sub-Regional Strategy), Bedfordshire Structure Plan 2011 and the South Bedfordshire Local Plan Review and material considerations do not indicate otherwise. The policies which refer are as follows:

East of England Plan (May 2008)

SS1 Achieving sustainable development

SS3 Key centres for development and change

SS5 priority areas for regeneration

E2 provision of land for employment

H1 Regional housing provision 2001 to 2021

H2 Affordable housing

T2 Changing travel behaviour

T6 Strategic and regional road networks

T14 Parking

ENV3 Biodiversity and earth heritage

ENV6 The historic environment

ENV7 Quality in the built environment

ENG1 Carbon dioxide emissions and energy performance

WAT4 Flood risk management

WM6 Waste management in development

Bedfordshire Structure Plan 2011

25 Infrastructure

South Bedfordshire Local Plan Review

BE8 Design considerations

E1 Main employment areas

H Fall-in sites

H3 Local housing needs

H4 Affordable housing

R10 Play area standards

R11 New urban open space

T1 Location and traffic impact

SD1 Keynote policy

T10 Parking in new development

T4 Translink project

2. In accordance with Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the reason for any condition above relates to the Policies as referred to in the Regional Spatial Strategy (RSS), Bedfordshire Structure Plan 2011 (BSP) and the South Bedfordshire Local Plan Review (SBLPR).
3. This permission relates only to that required under the Town & Country Planning Acts and does not include any consent or approval under any other enactment or under the Building Regulations. Any other consent or approval which is necessary must be obtained from the appropriate authority.
4. Contamination Assessment The Environment Agency recommends that groundwater monitoring wells are installed and sampled as part of the proposed site investigation. They also recommend that developers should:
 1. Follow the risk management framework provided in CLR11, '[Model Procedures for the Management of Land Contamination](#)', when dealing with land potentially affected by contamination;
 2. Refer to their '[Guiding Principles for Land Contamination](#)' documents for the type of information that should be included in a site investigation report;
 3. Refer to their '[Groundwater Protection: policy and practice \(GP3\)](#)' documents.

Site Drainage

Of the drainage options for a site, infiltration techniques (primarily soakaways) pose the highest risk of polluting the groundwater. Any drainage design must be protective of the groundwater and in line with our '[Groundwater Protection: policy and practice \(GP3\)](#)' for the use of infiltration techniques to be approved. Some general information is provided below in relation to the use of infiltration techniques.

- If contamination is present in areas proposed for infiltration, they will require the removal of all contaminated material and provision

- of satisfactory evidence of its removal;
- The point of discharge should be kept as shallow as possible. Deep bored infiltration techniques are not acceptable;
- The distance between the point of discharge and the groundwater table should be a minimum of five metres;
- Only clean, uncontaminated water should be discharged into the ground.

5. With respect to the construction phase it is recommended that reference be made to the Mayor of London's Best Practice Guidance (BPG) *The control of dust and emissions from construction and demolition*. The impacts upon air quality are likely to be in the "High Risk" category and mitigation measures will be required, which should also include solid barriers to the site boundary.

Normal working hours should be 08:00-18:00 Monday to Friday, 08:00-13:00 Saturday and no working on Sunday, Bank Holidays and Public Holidays.

The Council does not specify permitted noise levels, instead contractors shall employ the "best practicable means" as defined in the Control of Pollution Act 1974 to minimise noise and vibration resulting from their operations and shall have regard to British Standard BS 5228:2009 Code of Practice for Noise Control on Construction and Open Sites.

Measures would include contractors taking all reasonable steps to minimise noise and be reasonable in the timing of any high noise level activities. These steps would include noise mitigation measures such as temporary screening or at source insulation may have to be utilised, all vehicles, plant and machinery used during the operations are fitted with effective exhaust silencers and that all parts of such vehicles, plant or machinery are maintained in good repair and in accordance with the manufacturer's instructions and are so operated and orientated so as to minimise noise emissions. Where possible the use of generators should be avoided and mains electricity used. All compressors used shall be "noise reduced" models fitted with properly lined and sealed acoustic covers which shall be kept closed when the machines are in use. Where other alternatives are proposed these should be approved by the Local Authority. All ancillary pneumatic percussive tools should be fitted with approved mufflers or silencers of the type recommended by the manufacturers. All of these items must be kept in good repair and any machinery used intermittently should be shut down when not in use or, where this is impracticable, should be throttled back to a minimum.

DECISION

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