

**Item No. 8****SCHEDULE B**

|  |   |
|--|---|
| <b>APPLICATION NUMBER</b>                | <b>CB/11/04135/OUT</b>  |
| <b>LOCATION</b>                          | <b>Land off Kiln Way, Dunstable, Beds LU5 4GZ</b>   |
| <b>PROPOSAL</b>                          | <b>Erection of eight dwellings, access road and associated works</b>                              |
| <b>PARISH</b>                            | <b>Dunstable</b>  |
| <b>WARD</b>                              | <b>Dunstable Icknield</b>   |
| <b>WARD COUNCILLORS</b>                  | <b>Cllrs McVicar &amp; Young</b>  |
| <b>CASE OFFICER</b>                      | <b>Mr J Spurgeon</b>  |
| <b>DATE REGISTERED</b>                   | <b>28 November 2011</b>   |
| <b>EXPIRY DATE</b>                       | <b>23 January 2012</b>  |
| <b>APPLICANT</b>                         | <b>Dunmore Developments Ltd</b>   |
| <b>AGENT</b>                             | <b>R&amp;J Consultants Ltd</b>  |
| <b>REASON FOR COMMITTEE TO DETERMINE</b> | <b>Ward Member call-in on the basis of loss of amenity to a residential property in Jeansway.</b> |
| <b>RECOMMENDED DECISION</b>              | <b>Outline Application - Granted</b>  |

**Site Location:**

This is a 0.23ha 76m long strip of former railway estate land west of the recently completed Kiln Way residential development, having the rear gardens of Jeansway houses as its northern boundary and a former railway to the south. It tapers to the west and its depth varies from 43m (at the east end) to 22m. The land, and a further length to the west, also owned by the applicant, is rough and had been cleared of scrub about 18 months ago, although the strip of former railway land westwards continues in an overgrown state. The railway formation is in the process of being converted into the Luton/Dunstable (guided) Busway and there is a slight upward gradient south towards the new formation (about 1 to 2m rise), beyond which is a public right of way and then the scrubland of Blows Down rises steeply. The Busway forms the boundary with the Chilterns AONB, and, just west of the site, an SSSI. Gardens to Jeansway fall about 1.8 to 2.5m from the site boundary to their houses.

The Busway proposals include modest landscaping on the side facing the site.

**The Application:**

This application has been called-in by a Ward Councillor.

This is an outline application and appearance and landscaping are reserved for subsequent approval.

It is proposed to extend Kiln Way parallel with the Busway and to build 8 x 2-storey houses, together with associated works and landscaping. House 7 would be 3/4-bed and the remainder 3-bed. The application is in outline with only landscaping

reserved. Notwithstanding this, the scheme does not propose a landscaping belt on the full southwestern boundary. The applicant proposes to extend development to the west in the future when the precise southern boundary is known.

Kiln Way would be extended westwards into the site and would immediately take up a position alongside the busway corridor before ending in a turning head at about 60m. All of the houses, 2 detached and 6 semi-detached, would face south across this road, plot 8 being beyond the turning head. There would be 17 allocated parking spaces and 3 visitor spaces. Overall provision would thus be 2.5 spaces per dwelling. Bin and cycle stores would be provided in each garden with side access to the road. Houses are to be designed to 'Lifetime Homes' standard but no specific COSH level is yet proposed. Entrance doors would be able to accommodate wheelchairs. Covered accommodation would be provided for cycles.

The plots would back onto the long gardens behind nos. 282 - 298 Jeansway. The longest garden within the development would be 10.4m (making a total back to back (first floor) distance of 43m\*) and the shortest 6.3m (back to back distance of 38m\*), which would also be the closest relationship.

The indicative elevations (the final appearance is reserved although external dimensions are fixed) show that all houses would have half-hipped roofs with low eaves and be faced in brick and render with tiled roofs and timber effect feature panels. Most houses would only have one bedroom window and 2 bathroom rooflights to the rear.

External hard areas would be tarmac and block pavements. New wooden fencing would be provided at the rear of the site. No fencing would be provided to the Busway as noise attenuation/visual screen fencing would be provided by the developer.

The application is accompanied by a Planning/Design and Access Statement, Extended Phase 1 Habitat Survey, Arboricultural Assessment, Geotechnical/Geoenvironmental Report, and a Noise Barrier re-appraisal.

\* In some cases Jeansway properties have extended their ground floors into this zone.

## **RELEVANT POLICIES:**

### **National Policies (PPG & PPS)**

PPS1 - Delivering Sustainable Development; PPS3 - Housing; PPS9 - Biodiversity and Geological Conservation; PPS10 Planning for Sustainable Waste Management; PPG13 - Transport; PPG17 Planning for Open Space, Sport and Recreation; PPG24 Planning and Noise.

PPG24 - Planning & Noise; PPS25 - Development and Flood Risk.

### **Regional Spatial Strategy**

#### **East of England Plan (May 2008)**

SS2 Overall Spatial Strategy

SS3 Key Centres for Development and Change

T1 Regional Transport Strategy Objectives and Outcomes

T2 Changing Travel Behaviour  
T8 Local Roads  
T14 Parking  
T9 Walking, Cycling and other Non-Motorised Transport  
T13 Public Transport Accessibility  
ENV2 Landscape Conservation  
ENV3 Biodiversity and Earth Heritage  
ENV7 Quality in the Built Environment  
T4 Urban Transport  
WM7 Waste management in development

### **Luton and southern Central Bedfordshire draft Core Strategy 2011 (as amended)**

(endorsed for DM purposes)

CS6 Housing for all needs  
CS9 Quality of design  
CS11 Green Infrastructure and environmental assets  
CS12 Resource efficiency

### **Bedfordshire Structure Plan 2011**

25 Infrastructure

### **South Bedfordshire Local Plan Review Policies**

BE8 Design and environmental considerations  
H1 Provision for Housing  
H3 Local housing needs  
T4 Public transport along former railway line  
T10 Parking  
T11 Contributions - Alt parking  
R10 Play Area Standards  
R11 New Urban Open Space

### **Supplementary Planning Guidance**

Design in Central Bedfordshire

Land at Skimpot Road, Dunstable Development Brief August 2003.

### **Planning History**

|                |  |
|----------------|--|
| SB/TP/03/0433  | Outline planning permission for residential development - Phase 1 (adjacent land)  |
| SB/ARM/05/0306 | Approval of reserved matters for residential development of 110 units, car parking and landscaping (adjacent land)   |
| SB/09/00162    | Erection of 14 dwellings with access road and ancillary works. Landscaping as a reserved matter. Appeal (non-determination) dismissed on grounds of prejudice to the full and timely implementation of the busway, adverse effect on living conditions of Jeansway properties, adversely affect highway safety, inadequate education contribution. The |

CB/09/06851/OUT

Council's requirement for an open space contribution was unsupported.

Refusal - Erection of 13 dwellings with access road and ancillary works. Landscaping as a reserved matter. Appeal (against refusal) dismissed on grounds of harm to the proposed busway through encroachment, inadequate landscaping. The inspector accepted that the open space contribution was now justified, and a lower education contribution than the Council sought was justified.

**Representations:  
(Town Council & Neighbours)**

Town Council (12/1/12) No objection.

Neighbours

Jeansway nos. 280 (19/12/11), 288 (17/12/11), 290 (recd 23/12/11), 292 (21/12/11). Object:

1. the Development Brief is flawed because "the reasons given by the Planning Inspectorate for rejecting previous appeals of planning applications on this site that comply with the Planning Brief, show that two storey dwellings anywhere on the site behind houses around 288 Jeansway are not acceptable."
2. shallow roofs, and this is such, were objected to by 2010 inspector as being notably different and out of keeping
3. general objections about physical impact with rising land; a 6.5m high house 9.3m behind one objector's house would cause similar problems to scheme which was refused on appeal in 2010 as the relative heights would be the same and be unduly dominant especially from gardens
4. general objections about loss of privacy; part of one objector's garden would be adjacent to end house (plot 8) and cast a shadow for most of day and offer no privacy; would overlook patio which is 1.4m lower (while front windows are not habitable rooms); would overshadow rest of garden
5. shortest garden should not rely on length of Jeansway gardens to compensate; precedent for 2nd phase
6. roof ridge would be 9.5m above ground level at rear of objector's house, equivalent to a 3-storey building and at odds with the Brief which stipulates 2-storeys; would block view of sky above Blows Downs from house; house and garden would be permanently shaded from sunlight for 3 months of the year (loss of solar energy to house for critical part of year)
7. contravenes England and Wales Prescription Act 1832 as amended in 1959 which states that "nothing should be allowed to obstruct light from a view of the sky that has been enjoyed through any aperture for more than

20 years"

8. a person looking out of the proposed ground floor patio doors would be at eye level with first floor windows of objector's house; a 2m high intervening fence would contravene covenant on his property which stipulates 1.8m max; his fence is on land 1m below proposed ground floor level
9. Policy NE2 prevented development which detracts from views into or out of an AONB
10. existing water runs into garden from site in heavy rain, as far as house (which translink have implicitly acknowledged by providing a drain); additional sealing of site by development will not fully absorb surface water in soakaways; natural absorption will be reduced by steep gradient just into site; shed will drain directly onto objector's property
11. a brick or masonry shed would need to comply with Party Wall Act 1996 because it is within 1m of boundary; will not allow its construction within 1m; would be close to garden building and cause damp
12. complete loss of habitat for rare species of plants and animals and interfere with legally protected species of slowworms, frogs, badgers and bats that currently inhabit the site
13. loss of access to this land which has been enjoyed for 20 years; one objector will be investigating this
14. developer is acting unreasonably in 'utilising all available space' and proposing the maximum 'permitted' height in the Brief
15. noise from vehicles and residents
16. loss of property value
17. no thought given to infrastructure or impact on bypass
18. one objector would only accept lower density single storey dwellings which would permit provision of adequate drainage and also address issue of access over the land which has been "established" over 20 years; viability should not be an issue that causes inconvenience and nuisance to existing residents and should have been properly taken into account when the land was purchased.

## **Consultations/Publicity responses**

Environmental Health  
Officer (3/1/12, 6/1/12)

Contamination: Submissions adequate to deal with contaminated land but recommends informative.

Noise from busway: No objection but recommends condition to secure noise attenuation measures within the buildings. Thermal double glazing should be sufficient and windows need not be fixed closed.

|  |  |
|--|--|
| Environment Agency<br>(11/1/12)          | Permission should only be granted with imposition of conditions.   |
| Drainage Officer (4/1/12)                | Satisfied that a surface water drainage scheme can be implemented on the site which will not increase flood risk to neighbouring properties. Ground conditions are very suitable to soakaways and water falling on developed impermeable areas can easily be channelled to such soakaways. Furthermore, some overland flows will be captured by the busway linear filter drain. There may be some residual flows towards Jeansway but these should be less than currently exist.   |
| Highway Officer (3/1/12)                 | <p>Parking requirements have changed since the last appeal proposal. The proposal should therefore provide 19 spaces rather than the 16 indicated. On-street parking may be acceptable towards this total but this would need to be demonstrated.</p> <p>Using this type of highway the turning head would require enlargement and parking spaces realigned. A shared surface design would more easily overcome this problem.<br/>[Revised plan received and comments awaited]</p> |
| Luton BC - Busway<br>(10/1/12)           | Boundaries now co-incide with Busway boundary. Should not have real impact on the Busway and therefore has no objection. Furthermore, as there is no real risk that houses would be completed before Busway opens, Part 1 compensation would not be applicable and would not require associated indemnity.   |
| Transport Strategy<br>(3/1/12)           | No longer asks for indemnity against Pt1 Land Compensation Act 1973 noise claims against the Council, as partner in Busway project.  |
| Rights of Way Officer<br>(13/12/11)      | No objections.   |
| Ecologist (17/1/12)                      | The recommendations in the report should be applied through conditions.  |
| Tree and Landscape<br>Officer (20/12/11) | The tree in the NE corner justifies a condition for a Tree Protection Plan and a condition to keep underground services away from the tree. Also recommends a landscaping condition.   |
| Natural England<br>(9/12/11)             | Satisfied that potential harm through recreational pressures of new residents on nearby SSSI can be adequately mitigated through the proposed developer contribution to the Wildlife Trust. National standing advice should be consulted for protected species.  |

|   |  |
|---|--|
| School Places (11/1/12)                     | Below threshold and currently no local need.   |
| Archaeological Officer (4/1/12)             | Site lies within an archaeologically sensitive area, crossing the Icknield Way and being adjacent to 2 areas of later prehistoric and Roman settlement and a saxon cemetery (locally identified heritage assets). The proposal would have a negative and irreversible impact on such deposits. This does not provide an overriding constraint provided appropriate measures are taken to record and advance understanding of the assets. Therefore requests condition. |
| Leisure Services Project Officer (13/12/11) | Accepts the previously agreed contribution to go to the Wildlife Trust.  |
| Wildlife Trust (5/1/12)                     | Blows Downs is a CWS and SSSI designated for its unimproved grassland and managed by the Trust. Due to its urban edge location it requires additional management such as rubbish removal, monitoring stock and maintenance of fences. Welcomes the offer to contribute to this, which is vital.  |

## Determining Issues

The main considerations of the application are;

1. Basic policy background
2. The Appeal decisions - Busway matters
3. The Appeal decisions - Infrastructure matters
4. Residential amenity and character of area
5. Other matters
6. Objections
7. Conclusions

## Considerations

### 1. Basic policy framework

The site is allocated for housing purposes in the South Bedfordshire Local Plan Review 2004. It is part of the allocation which includes Kiln Way and further land to the west (saved Policy H1). A Development Brief was approved after due publicity for the whole allocation. The principle of housing development on the site cannot therefore be challenged. Details of the Brief are considered in section 5 below but the submitted layout is in broad agreement with the indicative layout in the brief (showing housing backing onto Jeansway gardens). The Brief recognises that on this part of the allocation site *new dwellings will be at a higher ground level than Jeans Way properties, therefore the detailed design should ensure that no loss of privacy and residential amenity occurs. In order to do this, buildings must be no higher than two storeys in height and the main habitable rooms should not face towards the rear of Jeans Way properties.*

The proposed houses are two storeys in height (in fact, reduced further by 'sunken' low pitch roof - see below) and the main elevation of the houses face away from the Jeansway properties.

The first submitted layout on this site was rejected on grounds of impact on the Busway, infrastructure and design grounds. The related appeal was dismissed (the 2010 appeal). A second layout was rejected on grounds of impact on the Busway and infrastructure. The related appeal was dismissed (the 2011 appeal) mainly on grounds of the Busway. Both appeal decision letters are APPENDED.

## **2. The Appeal decisions - Busway matters**

The present proposed layout is a revised version of the 2011 appeal layout. On that layout the 2011 Inspector noted that the Busway could take up any position within the defined corridor [par.6]. He concluded: *the appeal proposal would, at best, result in a reduction in the area that would be available alongside the Busway for landscaping and noise mitigation adjacent to the proposed development. At worst, the proposed pair of semi-detached houses on Plots 12 and 13 and the access road would need to be redesigned to accommodate the Busway...The proposal would have an adverse effect on the proposed Luton Dunstable Busway, and would fail to accord with South Bedfordshire Local Plan Review Policy T4, as it would not safeguard the Translink route.*[10]

The position of the Busway has now been fixed and we can better assess the relationship between the works and the housing scheme. Furthermore, the current application site has been redrawn to exclude the most sensitive part of the appeal proposal (in the vicinity of Plots 13 and 14). There being no conflict with land-take, the Busway Project therefore has no objection to the revised proposal. In view of the fact that the bus channel would be at least 15m from the nearest house we are satisfied with the relationship and there should be no harm to residential amenity by reason of proximity. The Inspector considered that he did not have enough information to show that living conditions for new residents would be adequately mitigated from Busway noise. He had been provided with evidence from the Council that there was a risk of Part 1 claims under the Land Compensation Act 1973 insofar as residents of the new houses may object to the busway so close to them. This would present a risk of claims thus jeopardising the Busway project. However, the Busway is likely to be completed well before any houses are occupied and the most sensitive part of the development is now deleted. Accordingly the Busway Project and the Council's Transport Strategy officer no longer find a need for an indemnity clause and the application may be considered on its own merits. The Council's EHO has recommended a condition to the effect that noise mitigation measures should be incorporated in each dwelling.

There would continue to be sufficient land within the Busway boundary to provide appropriate landscaping.

## **3. The Appeal decisions - Infrastructure matters**

The 2011 Inspector examined at length the LPA's request for infrastructure contributions, which were already reduced in view of the demonstrated viability



issue. He was satisfied that the Wildlife Trust had made a sound case for contributions towards management of the nearby SSSI (letter dated 30/9/10), which would be affected by increased use by new residents. This was considered to be an acceptable destination for 'open space' funding. The Inspector was only able to accept part of the education contribution (ie. excluding the lower school contribution). The LPA did not seek affordable housing contribution or a contribution towards sustainable travel. Although 8 dwellings is below the affordable housing threshold the Brief required provision over the site as a whole, including Kiln Way.

The School Places officer advises that a fresh calculation reveals no need for an education contribution. The viability of the proposal would not have improved since the 2011 appeal, especially with the continuing economic downturn, so we consider it reasonable to use the sum sought by the Inspector (had he allowed the appeal), but scaled down to the smaller current scheme. The Wildlife Trust contribution of £8,000 would be sought and the remainder could either be used as an affordable housing contribution or allocated in accordance with the Planning Obligations SPD. The remaining sum involved would be £22,747.69. We consider that the first call, especially where no education contribution is required, should be affordable housing. Should Members consider otherwise at the meeting, we will amend this allocation to go towards the SPD destinations accordingly. The applicant has agreed to this arrangement and would complete a legal Undertaking if permission is granted, with the payment due before the occupation of the 5th dwelling.

#### **4. Residential amenity and character of area**

The 2011 Inspector made no comment on the 'internal design' element of the layout before him as this was not covered by an LPA reason for refusal. The 2010 Inspector, however, made full comments on a different layout and proposal because they were objected to by the LPA. We turn to his decision letter (appended) for his assessment of the main design issues. The comments on (a) 'effect on the character and appearance of the area' and (b) 'the effect on the living conditions of the occupiers of properties in Jeansway in terms of outlook and privacy' are key.

On (a) he noted that the proposed dwellings would be visible, albeit in glimpses, from the street through the gaps between properties in Jeansway [par.15]. From the downs to the south the new dwellings would be viewed partly in the context of the recent development at Kiln Way, which incorporated gaps in the form of parking and landscaped areas. He noted that both Kiln Way and Jeansway buildings have traditional style pitched roofs. Otherwise, the development would be seen from this direction against a backcloth of traditionally styled semi-detached houses and lengthy rear gardens. The scheme before him failed because of the almost continuous run of buildings and their closeness to the rear boundary of Jeansway gardens, producing a cramped appearance.[17]

On (b) he accepted that in many cases the outlook from the rear of the properties along Jeansway was already affected by fencing, vegetation and garden structures, and that these back-to-back distances would have been adequate elsewhere [20]. But the combination of an elevated position, small rear gardens and the almost continuous run led him to conclude that the new

dwellings would be *unduly dominant and overbearing features in the outlook from the rear of properties along Jeansway, particularly from their gardens.* [21] He then opined that first floor full length doors and Juliet balconies would give rise to potential overlooking [22]. He concluded by accepting that some effect on outlook and privacy would be inevitable with the Development Brief envisaging 2-storey houses [23] (our emphasis).

Since that decision the layout has been amended several times and presented to the officers for comment, a process ongoing beyond the 2011 appeal. It is plainly impossible for 2-storey dwellings to have no "loss of amenity" to Jeansway properties in an absolute way because they would inevitably occupy part of their view towards the downs, and the gardens of the properties themselves tend to channel views between vegetation, fences and garages. The test should therefore be, in our opinion, has as much been done as possible to reduce that loss to a reasonable degree?

Firstly, there are now significant gaps in the line of proposed houses. We calculate that, looking directly down the gardens of Jeansway houses at ground floor level, an unobstructed view of the downs would be had for between 20% and 40% of the back fence length (although one would have 100% unobstructed view). Furthermore, there would be additional views to each side of the gardens. Indeed, further analysis suggests that the top third of the downs should now be unobstructed above new roofs when viewed from bedrooms. The alternative of end-on blocks would mean that some Jeansway properties would have a (taller) wall immediately flanking their gardens, which is considered less acceptable.

Secondly, the proposed houses are set as low into the site as practically possible (having regard to drainage constraints, busway foundations and Building Regulations) and their designs set the relatively shallow roof pitch into the first storey, reducing overall heights to below 6.5m above ground level. Finished floor levels would range from 2.5m to 3.3m above the equivalent heights in the Jeansway houses behind them, although at least 37m apart (about 6° elevation). However, it will still be necessary to raise the rear ground floor levels up to 1m above rear boundary level.

Thirdly, at that height a 2m boundary fence would not quite prevent intervisibility between adults in the rear ground floor room and in the corresponding rooms of Jeansway houses behind. However, provided elevated terraces are not constructed in the gardens of the new houses, a 2m fence should improve privacy of users of the end of Jeansway gardens. To this end it is recommended that a condition be attached removing 'permitted development' rights to form a terrace in the rear gardens. As existing rear fences in Jeansway are of variable quality and height it should also be required that 2m fences (or such other height as may be agreed, in order to be sensitive to Jeansway residents' wishes) are erected by the developer on or near this boundary. The applicant's proposal for a 1.8m fence is therefore not considered sufficient.

Fourthly, most garden lengths are also increased.

Finally, the combination of increased set back and the breaking up of the terrace effect reduces the impression of being overbearing, and this is further helped by removal of full-height first floor windows. There are now no rear facing bedrooms

in the detached house closest to the Jeansway houses (plot 8). This house is also placed so as to afford adjacent Jeansway houses the best views of the downs.

In view of the crucial fact that 2-storey houses were envisaged in the Brief we consider that the present layout takes matters as far as reasonably possible.

Indicative external appearance is more traditional than the 2010 scheme yet there are still opportunities to install solar panels. Materials are proposed to be brick and render/clad panels with roof tiles. Having regard to the varied character of the Kiln Way development and Jeansway, the proposal would not be out of character with the locality.

The overall impact would be a great improvement over the 2010 scheme and should now be acceptable.

## **5. Other matters**

### Biodiversity

The site is adjacent to the Luton to Dunstable Railway CWS and Blows Down SSSI commences on the far side of the railway. A Phase 1 Habitat Survey, required by the Development Brief, was submitted with the 2009 application. There was no evidence of badger activity, no suitable features for roosting bats, and sub-optimal habitats for dormice and reptiles. Conditions have since deteriorated with much disturbance due to clearance and Busway preparation. The contribution towards management of the nearby SSSI has been noted above.

### Archaeology

The archaeology officer has asked for a condition which requires investigation and recording of any archaeological remains that may be affected.

### Sustainability

Houses are orientated to maximise the effect of the sun and would have accessible entrances and offer scope for roof panels. Opportunities for renewable energy have not yet been fully explored although the development would aim to satisfy a number of standards. Proposed sourcing/construction details have satisfied preliminary SAP data calculations. It is assumed, therefore, that the 'COSH' rating would start with minimum Building Control requirements. The submissions propose a Waste Audit document and houses have been designed to 'Lifetime Homes' standard.

### Drainage

We are satisfied that the natural porosity of the chalk, just below the surface, would be sufficient to cope with occasional surface flows from the downs. The Busway formation will have altered the hydrology to an as yet unknown degree, although lateral stone filled swales are being provided beside the concrete channels. The Drainage Officer is satisfied that an effective surface water scheme can be devised so that flooding should in fact even reduce to Jeansway properties.

### Development Brief

The site is within the area allocated in the Local Plan for residential development and this allocation is a highly material consideration. Although not 'previously developed' according to PPS3, it is considered to be 'vacant land within urban areas' and thus of the first rank in the Local Plan development strategy. Otherwise it would be 2nd rank because it was allocated in the previous Local Plan. As Site 2 within Policy H2 (which includes the now completed Kiln Way development area), it is stated to be suitable for a medium/high density scheme and sets out a target figure of 100 dwellings on 1.86ha. Its proximity to the busway makes full car parking standards unnecessary and contributions would be expected towards recreation/leisure facilities. The Brief was produced in 2003 and is a material consideration except where it can be shown that its content no longer stands up to current national and regional policy. The following are still relevant and worthy of particular note, with our comment in relation to the current proposal:

- Site developed in 2 phases with a road connection,
- Parking rate is 2.5 spaces per dwelling, which is higher than the requirement (and provision in phase 1) of 1.2 :1.
- Safe and efficient internal circulation.
- Landscape assessment provided.
- The current application proposes 35dpha, being somewhat over half of the overall projected density, which we consider acceptable in view of the site constraints.
- Each phase should make a contribution of 25% affordable housing (par.2.6). Considered above.
- The applicant proposes to make a contribution which, having the agreement of Natural England and the Wildlife Trust, would be used for the management of Blows Downs CWS. The busway project will not now include an at-grade crossing.
- Education contribution no longer required.
- Highway Officer satisfied with scale of development on access to Skimpot Road (meeting 12/5/09).
- The proposal has frontage development and complies with the indicative layout.
- Drainage would be satisfactory (see above).
- Noise. Skimpot Road or Tesco should not affect these houses. Design should respond to noise from the busway and a condition as recommended by the EHO is considered sufficient (see above).
- Urban design. This is considered above.

## **6. Objections**

With a history of concern from the Town Council on this site, they no longer have an objection on the basis of this scheme.

Residential objectors have raised the following matters and one recommendation. It is necessary to deal with these, even though some have also been dealt with above.

1. (Brief flawed - 2 storey dwellings plainly unacceptable) The Brief went through appropriate consultation stages and the 2010 Inspector

acknowledged the reference to 2 storey dwellings and that some effect on outlook and privacy would be inevitable.

2. (Shallow roofs out of keeping) These are now pitched and able to bear tiles, thus being more traditional.
3. (House height dominant) The key difference is that the almost continuous run of houses played a major role in the 2010 Inspector's concerns.
4. (Plot 8) House plan has been changed so that all habitable first floor rooms face away from objector.
5. (Precedent) The 2010 Inspector was more concerned with the form of the proposed development than with the back-to-back distances [pars 20,21 of the decision].
6. (Loss of view and sunlight) The 9.5m difference in height is over a distance of 41m to the main elevation of the objector's property (about 12° elevation), which is by no means uncommon elsewhere. The view would be channelled but this is not proof of oppressiveness and it is well known that a view is not a right unless it is owned. The ridge of the downs behind the objector's house is also calculated to be about this angle viewed from the ground floor and therefore should have a similar impact on sunlight from this direction.
7. (1832 Act) This is not applied through the planning system.
8. (Intervisibility) There would be inevitable intervisibility between adults even with a 2m fence, but this is not uncommon in much shorter gardens elsewhere. The rear boundary could be landscaped if this became an issue between neighbours.
9. (Policy NE2) This policy is not saved and the Inspectors did not have a problem with impact on the AONB.
10. (Flooding) The Drainage Officer is satisfied that the risk of flooding to these properties should if anything reduce.
11. (Party Wall Act) This is not applied through the planning system. Agree that shed coincides with gap in boundary and condition could relocate this.
12. (Loss of habitat) The site is not within the CWS and appropriate measures would be taken to safeguard protected species.
13. (Access to land) Any rights to access or walk across the site have not been legally proved to the Council or in appeals and cannot be a material consideration in these circumstances; the intention of one resident to take legal advice is noted.
14. (Profiteering) The proposal cannot reasonably be criticised if it adheres to a Brief which went through due publicity and is at a lower density than was provided for (35dpha compared to 40dpha).
15. (Noise) There is no road proposed behind the objector's property; objection to noise from new neighbours at this distance would in our opinion carry minimal weight at an appeal.
16. (Loss of value) This is not capable of being a planning consideration.
17. (Infrastructure) Appropriate infrastructure contributions have been considered but the previous inspectors have accepted that development should proceed with slightly reduced contributions in order to be viable.
18. While accepting that planning potential should be considered before a party acquires land, viability is also an acknowledged consideration when there is a risk that housing cannot be delivered. The applicant had good reason to rely on the Brief at that time. However, in this case we do not consider that the quality of the proposed design has fallen to the point that our support is only given on viability grounds.

## 6. Conclusion

The site is allocated in the Development Plan for residential development and a Development Brief has been approved. Phase 1 of the allocation has been completed and is occupied. This scheme would comprise phase 2. The principal of residential development is thus established. The scheme complies with key components of the Brief, particularly in respect of layout and the provision of 2-storey housing. The density of the scheme has been reduced to reflect the development challenges of the site, and the concerns with design which failed the earlier scheme have been addressed. It is considered that the submission has done as much as possible within the Brief parameters to safeguard privacy and residential amenity. However, it must be recognised that a significant part of the concern from residents addresses the loss of a view which, although particularly attractive, is not fundamentally a planning consideration. Indeed, the most recent planning Inspector stated that some effect on outlook and privacy would be inevitable. With no longer any requirement for an education contribution the scheme can now provide a financial contribution towards affordable housing, which had been absent in previous schemes.

Final highway comments are expected and will be reported in the Late Sheet, together with conditions. Subject to this the proposal can reasonably be supported.

## Recommendation

That the Director of Sustainable Communities be delegated authority to GRANT Planning Permission subject to the completion of a satisfactory legal undertaking 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

**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, samples of the materials to be used for the external walls and roofs of all new buildings shall be submitted to and**

**approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.**

**Reason: To control the appearance of the building/s.  
(Policies ENV7 RSS; BE8 S.B.L.P.R).**

- 4 Details of a screen fence scheme shall be submitted to and approved in writing by the Local Planning Authority and the screen fences as approved shall be erected before the development is first occupied or brought into use and thereafter retained.

Reason: To ensure that privacy is adequately maintained.  
(Policy BE8 S.B.L.P.R)

- 5 **No development shall take place until the applicant or developer has secured the implementation of a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority. The said development shall only be implemented in accordance with the scheme thereby approved.**

**Reason: To record and advance understanding of the significance of the heritage assets with archaeological interest in accordance with Policy HE12.3 of PPS5: *Planning for the historical environment*.  
(Policy ENV6 RSS)**

- 6 **No clearance of vegetation shall take place between the months of March and August (inclusive) of any year, except as may be thoroughly assessed by a suitably experienced ecologist not to be in use by nesting birds. No clearance of vegetation shall take place at any time unless a phased strimming programme under the supervision of a suitably qualified ecologist (to ensure that any reptiles present can be relocated into the vegetation surrounding the survey area) has been undertaken between the months of May to September (inclusive). No clearance of the site or commencement of development shall take place unless a suitably qualified ecologist is present to check for badger setts. Any excavations deeper than 1m shall be fenced at night in order to prevent access by badgers.**

**Reason: To safeguard nesting birds.  
(Policy: ENV3 RSS)**

- 7 **Prior to the commencement of development, or such other date or stage in development as may be agreed in writing with the Local Planning Authority, a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved in writing by that Authority. That scheme shall include all of the following elements unless specifically excluded, in writing, by that Authority.**

**1. A desk study identifying:**

- 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 results of the site investigation and risk assessment (2) and a method statement based on those results giving full details of the remediation measures required and how they are to be undertaken.
  4. A verification report on completion of the works set out in (3) confirming the remediation measures that have been undertaken in accordance with the method statement and setting out measures for maintenance, further monitoring and reporting.

Any changes to these components require the express consent of the Local Planning Authority.

**Reason: Environment Agency condition. To protect and prevent pollution of controlled waters in accordance with Planning Policy Statement 23 and the Environment Agency Groundwater Protection policies (GP3).**

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

**Reason: (Environment Agency condition). To protect and prevent pollution of controlled waters in accordance with Planning Policy Statement 23 and the Environment Agency Groundwater Protection policies (GP3).**

- 9 Prior to the commencement of 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 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 the Local Planning Authority.

**Reason: Environment Agency condition. To protect the quality of controlled waters in accordance with Planning Policy Statement 23 and the EA Groundwater Protection (GP3) policies.**



- 10 Piling or any other foundation designs using penetrative methods shall not be 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 approved details.

Reason: Environment Agency condition. To protect the quality of controlled waters in accordance with Groundwater Protection Policy and Practice (GP3) P10-3 and Planning Policy Statement 23. Piling through contaminated ground can result in the pollution of controlled waters.

- 11 **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 approved details.**

Reason: Environment Agency condition. To protect the quality of inland fresh waters and groundwaters in accordance with Policies P9-6 and P4-1 to P4-12 of the Environment Agency's Groundwater Protection: Policy and Practice (GP3) document and Planning Policy Statement 23. The infiltration of surface water through land affected by contamination can result in the pollution of coastal waters, inland fresh waters and groundwaters. The EA encourages the use of sustainable drainage systems, however they must be carefully considered and controlled.

- 12 **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 also include details of how the scheme shall be maintained and managed after completion.**

Reason: Environment Agency condition. To prevent the pollution of controlled waters. The water environment is potentially vulnerable and there is an increased potential for pollution from inappropriately located and/or designed infiltration sustainable drainage systems (SuDS) such as soakaways, unsealed porous pavement systems or infiltration basins.

- 13 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), (a) no rear or side extension shall be made to the houses approved by this permission, (b) no buildings exceeding a height of 2.5m from the lowest part of the adjacent ground level within the curtilage of any plot, and (c) no raised platform or patio within any rear garden which has a height of more than 0.3m above adjacent ground level (as assessed from approved drawing S1/09105) shall be erected or

engineered without the grant of express planning permission of the Local Planning Authority.

Reason: Such structures, on rising ground and in some cases built up to the level of the main house, would add to any overdevelopment and oppressiveness of the development from the perspective of Jeansway properties.

- 14 Notwithstanding details indicated on drawing B11612/100 rev.B, before development commences on the bin/cycle store for any plot details shall be submitted to and approved in writing by the Local Planning Authority of the elevations, slab height and precise location of such building and the building shall be constructed in accordance therewith.

Reason: To safeguard the amenities of Jeansway properties to the north.

- 15 To protect against intrusive externally generated noise, sound insulation and absorbent materials shall be applied to all dwellings as is necessary to achieve as a minimum standard an internal noise level for bedrooms of 30dBAeq, 8hour (2300 - 0700h) and for living rooms of 35dBAeq, 16hour (0700 - 2300h). Any works which form part of the scheme approved by the Local Planning Authority shall be completed and the effectiveness of the scheme shall be demonstrated through validation noise monitoring, with the results reported to that Authority in writing before any permitted dwelling is occupied, unless an alternative period is approved in writing by that Authority.

Reason: To safeguard occupiers from any external noise from servicing nearby premises or the proposed Busway.

- 16 Prior to development, a Tree Protection Plan and Arboricultural Method Statement shall be submitted to the Local Planning Authority for approval, to be based on the findings of the Arboricultural Constraints Plan (Ref. D14 17 09), which forms part of Appendix 4 of the Arboricultural Impact Assessment supplied by JP Associates (Consultants) Ltd (Ref. 014 17 09 01) made in support of the application. The Tree Protection Plan and Arboricultural Method Statement shall clearly show the position and build specification of tree protection, to be erected along the edge of the calculated Root Protection Area. The protective 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 the BS 5837: 2005) and will be for the purpose of avoiding direct canopy and root damage and localised compaction of the rooting medium of the retained "off-site" tree T1 (as identified by the Tree Survey Plan), caused by plant and machinery.

Reason: To safeguard the integrity of the rooting medium, rooting system and existing canopy spread of tree T1 located "off-site" in neighbouring property, in the interests of maintaining the health and appearance of this boundary tree contributing to visual amenity and boundary screening.  
(Policies ENV7 RSS; BE8 SBLP).

## Reasons for Granting

The site is allocated in the South Bedfordshire Local Plan for residential development (Policy H1) and a Development Brief has been approved. This scheme would comprise phase 2 of the allocation, phase 1 being occupied and phase 3 remaining. The principal of residential development is thus established. The scheme complies with key components of the Brief, particularly in respect of layout and the provision of 2-storey housing. The density of the scheme has been reduced to reflect the development challenges of the site, and the concerns with design which failed the earlier scheme have been addressed. Most rear gardens have been lengthened, the houses are of lower than usual height, the slab levels are as low as the site can allow and there are gaps between the buildings. It is considered that the submission has done as much as possible within the Brief parameters to safeguard privacy and residential amenity. Part of the concern from residents addresses the loss of a view which, although particularly attractive, is not fundamentally a planning consideration. This approach to the proposal is considered to be in line with that of the planning Inspector who determined the recent appeal on this site and who stated that some effect on outlook and privacy would be inevitable. The application provides a financial contribution towards affordable housing, which had been absent in previous schemes.

## Notes to Applicant

1. 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).
2. 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)**

SS2 Overall spatial strategy

SS3 Key centres for development and change

T1 Regional transport strategy objectives and outcomes

T2 Changing travel behaviour

T4 Urban transport

T8 Local roads

T9 Walking, cycling and other non-motorised transport

T13 Public transport accessibility

T14 Parking

ENV2 Landscape conservation

ENV3 Biodiversity and earth heritage  
ENV7 Quality in the built environment  
WM Waste management in development

### **Bedfordshire Structure Plan 2011**

Policy 25 Infrastructure.

### **South Bedfordshire Local Plan Review**

BE8 Design and environmental considerations  
H1 Provision for housing  
H3 Local housing needs  
T4 Public transport along the former railway line  
T10 Parking  
T11 Contributions - alternatives to parking  
R10 Play area standards  
R11 New urban open space.

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. The applicant / developer is advised to refer to the comments made by the Environment Agency to this application (ref: AC/2012/116096/01-L01, dated 11/1/12, sent from the Huntingdon office) in which informatives are set out. Such letter may be inspected on the Council's website within the documentation relating to this application.
5. The Local Planning Authority should be notified in writing of any unexpected contamination discovered during works. The British Standard for Topsoil, BS 3882:2007 specifies requirements for topsoils that are moved or traded and should be adhered to. Contact: Andre Douglas, Public Protection Officer, Central Bedfordshire Council, 0300 300 8000.
6. Consent has being granted in recognition that no underground services are scheduled to be routed through the Root Protection Areas of the retained "off-site" tree T1 (as identified by the Tree Survey Plan). If any services are subsequently required to be routed through the designated area protected under the Tree Protection Plan, then this work shall be carried out in full accordance with the National Joint Utilities Group (NJUG) Volume 4 "Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees". Contact: Tree and Landscape Officer, Central Bedfordshire Council.
7. Further to condition 1, the landscaping scheme to be submitted should show the species, sizes, position and planting specification of new trees, shrubs, climbers and hedging, to be planted during the planting season following completion of development. During each subsequent August for the first five years following initial planting, any losses of plants should be checked and recorded and losses be replaced using the same species, planting size and planting specification in the following growing season (a growing season shall be deemed to be between 1st November to 31st March). Contact: Tree

and Landscape Officer, Central Bedfordshire Council.

8. The following recommendations of the Extended Phase 1 Habitat survey should be noted:
- care to avoid works which may have a negative impact on the Dunstable to Luton disused railway CWS
  - all excavations over 1m in depth should be fenced overnight to prevent fatal access by badgers
  - undertake a Japanese knotweed survey and carry out appropriate remedial works
- before the site is cleared but within the months of May to September to undertake a phased strimming programme to the semi-improved grassland in the centre of the site, under the supervision of a suitably qualified ecologist, to enable relocation of reptiles.

**DECISION**

.....

.....