

**5e 3/10/1968/FP - Erection of 76 dwellings, open space, landscaping, parking and access from Widbury Hill at the former Depot and Coachworks site, Leaside Depot, Widbury Hill, Ware, SG12 7QE for Taylor Wimpey North Thames**

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**Date of Receipt:** 05.11.2010

**Type:** Full – Major

**Parish:** WARE

**Ward:** WARE - CHRISTCHURCH

**RECOMMENDATION:**

(A) That planning permission be **GRANTED** subject to the following conditions:

1. The development hereby approved shall be carried out in accordance with the following approved plans – 061001-WIM.NT.01 B, 02 A, 03, A-E1, A-E2, A-P1, B-E1 A, B-P1, C-E1, C-E2, C-P1, D-E1, D-P1 A, E-E1 A, E-P1 A, AA-E1 A, AA-E2, AA-P1, AB-E1, AB-P1, AC-E1, AC-P1, ABS-AC-E1, ABS-P1, AD-E1, AD-P1 A, AE-P1, AE-E1, B1-E1, B1-E2, B1-P1, B1-P2, B1-P3, B2-E1, B2-E2, B2-E3, B2-E4, B2-P1, B2-P2 A, B2-P3 A, B3-E1, B3-E2, B3-P1, B3-P2, B3-P3, B4-E1, B4-E2, B4-P1, B4-P2, B4-P3, GAR1, BS1, BCS1, SHED 1, SS-AA, SS-BB, SS-CC, TWNT 17471-01, TWNT 17474-03, TWNT 174747-11 Sheet 1 B, TWNT 174747-11 Sheet 2 B, TWNT 174747-11 Sheet 3 B, TWNT 174747-12.

**Reason:** To ensure the development is carried out in accordance with the approved plans, drawings and specifications.

2. The development shall be carried out in accordance with the programme of archaeological work and the written scheme of investigation prepared by Oxford Archaeology dated January 2011.

**Reason:** To secure the protection of and proper provision for any archaeological remains in accordance with policies BH2 and BH3 of the East Herts Local Plan Second Review April 2007.

3. All boundary walls, fences or other means of enclosure shall be erected prior to the first occupation of any dwellings commensurate therewith in accordance with the details set out on SWP Site Layout Drawing Number 500201-I-221 Rev C (or such variations approved in writing by the Local Planning Authority), and shall thereafter be retained to the satisfaction of the Local Planning Authority.

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Reason: In the interests of privacy and visual amenity, in accordance with policy ENV1 of the East Herts Local Plan Second Review April 2007.

4. The external materials of construction for the buildings hereby permitted shall be in accordance with the details set out in the Elevations TW-500201-210, 211, 212, 213, 214, 215, FB1-500201-30, FB1-500201-31, FB2-500201-30, FB2-500201-31, FB3-500201-30, FB3-500201-31, FB4-500201-30, FB4-500201-31 and Material Schedule WHW-MAT-01 (or such variations agreed in writing by the Local Planning Authority).

Reason: In the interests of the appearance of the development, and in accordance with policy ENV1 of the East Herts Local Plan Second Review April 2007.

5. Any external lighting proposed in connection with the development shall be in accordance with the details set out on drawing DW Windsor Illuminance Plot Plan 09643-1-A , and no further external lighting shall be provided without the prior written consent from the Local Planning Authority.

Reason: In the interests of the visual amenities of the area, and in accordance with policy ENV23 of the East Herts Local Plan Second Review April 2007.

6. For the duration of demolition and construction works, wheel washing facilities shall be established within the site in accordance with the Health and Safety Information Plan dated February 2011. Such facilities, shall be kept in operation at all times during demolition and construction works.

Reason: To prevent the tracking out of materials onto the highway in the interests of highway safety.

7. All existing trees and hedges shall be retained, unless shown on the approved drawings as being removed. All trees and hedges on and immediately adjoining the site shall be protected from damage as a result of works on the site, to the satisfaction of the Local Planning Authority in accordance with relevant British Standards, for the duration of the works on site and until at least five years following contractual practical completion of the approved development. In the event that trees become damaged or otherwise defective during such period, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedge dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting

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season, with trees and hedges of such size, species and in such number and positions as may be agreed with the Authority.

Reason: To ensure the continuity of amenity afforded by existing trees and hedges, in accordance with policies ENV2 and ENV11 of the East Herts Local Plan Second Review April 2007.

8. All hard and soft landscape works shall be carried out in accordance with the details contained in the SWP Drainage & Levels Layout Drawing 500201-I-201, ACD Landscape Proposals Drawing TWNT-174747-11 Sheet 1 Rev C, TWNT-17474-11 Sheet 2 Rev C and TWNT-17474-11 Sheet 3 Rev C (or such other details as are approved in writing by the Local Planning Authority) and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised Codes of Good Practice. The works shall be carried out prior to the occupation of any part of the development or in accordance with the timetable agreed with the Local Planning Authority. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscaping in accordance with the approved designs, in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

9. The garage(s) shall be used for the housing of private vehicles and not as additional living accommodation or for any commercial activity.

Reason: To ensure the continued provision of off-street parking facilities in the interests of highway safety to safeguard the amenities of adjoining occupiers, and in accordance with policy ENV9 of the East Herts Local Plan Second Review April 2007.

10. The development shall be carried out in accordance with the recommendations and mitigation measures set out in the Ecological Update report dated October 2010, and prior to the construction of the footbridge further ecological surveys shall be carried out to identify the presence of any reptiles, water voles, otters or amphibians and submitted to and approved in writing by the Local Planning Authority, including details of any necessary mitigation measures.

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Reason: To protect the ecological value of the site and protected species in accordance with policies ENV14, ENV16 and ENV17 of the East Herts Local Plan Second Review April 2007.

11. The development shall be carried out in accordance with the lighting scheme and management of the public open space set out in drawings DW Windsor Illuminance Plot Plan 09643-1-A and ACD Landscape Management and Maintenance Plan TWNT 17474 dated October 2010 (or any variation approved in writing by the Local Planning Authority) before any of the dwellings hereby permitted are first occupied.

Reason: In the interests of the appearance of the development in accordance with policy ENV1 of the East Herts Local Plan Second Review April 2007.

12. The development shall be carried out in accordance with the approved noise and vibration scheme set out in AAD Noise and Vibration Assessment dated 3<sup>rd</sup> March 2011 the requirements of which shall be implemented before any of the dwellings hereby permitted are first occupied.

Reason: To ensure a satisfactory living environment for future residential occupiers in accordance with policies ENV1 and ENV25 of the East Herts Local Plan Second Review April 2007.

13. The Contamination Scheme set out in the RSK Geo-Environmental Site Assessment 23529-1(01) and SWP POS Remediation Layout Drawing Number 500201-I-405 shall be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure protection of human health and the environment in accordance with PPS23 'Planning and Pollution Control'.

14. The presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of the Local Planning Authority, and appropriate mitigation measures implemented as approved in writing.

Reason: To ensure protection of human health and the environment in accordance with PPS23 'Planning and Pollution Control'.

15. The development shall be carried out in accordance with the approved Flood Risk Assessment by Halcrow dated June 2008 and the mitigation measures contained within it, including finished floor levels set no lower than 31.94m above Ordnance Datum (AOD).

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Reason: To minimise the risk of flooding to people and property in accordance with policy ENV19 of the East Herts Local Plan Second Review April 2007.

16. No building hereby permitted shall be occupied until a sustainable urban drainage system has been implemented in accordance with details that shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall:
- a. Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - b. include a timetable for its implementation; and
  - c. provide a management and maintenance plans for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements for adoption by any public authority or statutory undertaker and any other arrangements s to secure the operation of the scheme throughout its lifetime.

Reason: To ensure satisfactory management of surface water drainage in accordance with policy ENV21 of the East Herts Local Plan Second Review April 2007.

17. Before first occupation of any of the buildings hereby permitted foul drainage works shall have been carried out in accordance with SWP Site Layout, Drainage and Levels Plan 500201-1-201 Rev M

Reason: To ensure satisfactory management of foul drainage in accordance with policy ENV20 of the East Herts Local Plan Second Review April 2007.

18. Piling or any other foundation design using penetrative methods shall not be permitted other than with the express 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 groundwater. The development shall be carried out in accordance with the approved details.

Reason: To protect groundwater on site in accordance with policy ENV20 of the East Herts Local Plan Second Review April 2007.

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19. No dwellings shall be occupied until such time as the access at the estate road junction onto Widbury Hill has been constructed in accordance with details, including visibility splays, approved by the Local Planning Authority.

Reason: To ensure satisfactory access to the site and highway safety.

20. No dwelling shall be occupied until that part of the service road which provides access to it has been constructed in accordance with the plans detailing sections, gradients and method of surface water disposal, approved by the Local Planning Authority in the SWP Drainage & Levels Layout Drawing Number 500201-I-201 (or such variation as is approved by the Local planning Authority).

Reason: To ensure satisfactory access to the site and highway safety.

21. Unless otherwise agreed in writing by the Local Planning Authority, construction vehicles movements and construction access arrangements for the construction of the development are to be in accordance with the Traffic Management Plan TW/500201/301 dated July 2011 and Health & Safety Information Plan dated February 2011.

Reason: To ensure satisfactory access to the site and highway safety.

22. Energy efficiency measures within the development to secure at least 10% of the energy supply of the development from decentralized and renewable or low-carbon sources, shall be implemented in accordance with AA Energy Consultants Accommodation Schedule with Renewables and TW-NH Plot Check Sheet 23022011.

Reason: To ensure the development assists in reducing climate change emissions in accordance with policy ENG1 of the East of England Plan May 2008 and policy SD1 of the East Herts Local Plan Second Review April 2007.

#### Directive:

1. These are unchanged from those set out in the report to the February 2011 meeting of the committee attached as an appendix to this report.

#### Summary of Reasons for Decision

These are unchanged from those set out in the report to the February 2011 meeting of the committee attached as an appendix to this report.

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- (B) That authority be delegated to the Head of Planning and Building Control, in consultation with the Chairman of the Committee and the local Ward Member to make further minor changes to the details of the conditions, directives and summary of reasons set out above as may be necessary and appropriate.

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### **1.0 Background:**

- 1.1 Members may recall that, at the meeting of the committee of 9 February 2011, the committee resolved to grant permission for this development proposal subject to the signing of a section 106 planning obligation agreement and a range of conditions.
- 1.2 The legal agreement remains unsigned to date and permission has not yet been issued. This appears primarily to be due to a delay in the completion of the agreement by the Environment Agency, one of the part owners of the site. This matter is now being resolved by the Agency transferring its land interest to Taylor Wimpey (the applicants) which will then conclude the agreement. In the interim however, development has commenced on site. A number of the properties are substantially complete and foundations have been implemented for all others. The developer has been warned of the possible consequences of proceeding with development.
- 1.3 The purpose of this report is two fold then. Firstly, from a planning enforcement perspective, it is to enable consideration to be given to the expediency of any formal action. Secondly, and depending on the position in relation to the first matter, it is to enable consideration to be given to whether any new planning issues are raised by the situation which now prevails or whether the weight assigned to issues at the time of the previous consideration should be changed. Subject to that, it sets out a revised set of controls over development (conditions) to be agreed and reassesses the provisions of the legal agreement.
- 1.4 There has been no further consultation undertaken subsequent to the consideration of this matter by the committee in February of this year. The report that was submitted to that meeting (and to the previous meeting in January 2011 from which it was deferred) are attached to this report as appendices.

### **2.0 Policy:**

- 2.1 The relevant 'saved' Local Plan policies relevant to this application this

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application include the following:-

SD1	Making Development more Sustainable
SD2	Settlement Hierarchy
HSG1	Assessment of Sites not Allocated in the Plan
HSG3	Affordable Housing
HSG4	Affordable Housing Criteria
HSG6	Lifetime Homes
TR1	Traffic Reduction in new developments
TR2	Access to new developments
TR7	Car Parking Standards
TR8	Car Parking – Accessibility Contributions
TR14	Cycling Facilities
EDE1	Employment Areas
ENV1	Design and Environmental Quality
ENV2	Landscaping
ENV3	Planning Out Crime
ENV11	Protection of Existing Hedgerows and Trees
ENV14	Local Sites
ENV19	Development in Areas Liable to Flood
ENV20	Groundwater Protection
ENV21	Surface Water Drainage
ENV25	Noise Sensitive Development
LRC3	Recreational Requirements
LRC9	Public Rights of Way
WA8	Employment Areas
WA10	Tumbling Bay
IMP1	Planning Conditions and Obligations

2.2 In addition, the following National policy guidance is relevant:-

PPS1	Delivering Sustainable Development,
PPS3	Housing
PPS4	Planning for Sustainable Economic Growth
PPS9	Biodiversity and Geological Conservation
PPG13	Transport
PPG17	Planning for open Space, Sport and Recreation
PPS23	Planning and Pollution Control
PPG24	Planning and Noise
PPS25	Development and Flood Risk

### **3.0 Enforcement Position:**

3.1 The development that has taken place on the site has been undertaken without the benefit of planning permission. Members will be aware that the approach to be taken in this situation is to consider the harm that has



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occurred as a result and whether formal enforcement is warranted.

- 3.2 In this case, the Council has resolved that permission can be granted for development at the site. That resolution was made by the committee at its meeting of February this year. It is considered that, subsequent to that resolution, there are no changes in policy or other circumstances, such that the development should not still be permitted to come forward. There is no information to suggest that the development, where it has been implemented, has not been built in accordance with the submitted plans.

#### **4.0 Planning Considerations:**

- 4.1 The purpose of the conditions and requirements of the legal agreement proposed in relation to this development are to ensure that the impact of the development is acceptable. As there are no policy reconsiderations and as the proposals can now be considered as partially retrospective, it is necessary to reassess the condition and legal agreement requirements proposed to determine whether they are still necessary and appropriate. Through this reassessment process, consideration can also be given to whether there is any additional impact as a result of the development coming forward in the way it has that should be weighed in the decision making process.
- 4.2 In relation to most of the proposed conditions, Officers consider that the matter sought to be achieved by them, or the harm to be prevented, is not jeopardised by the current situation now reached. This applies in relation to all proposed conditions apart from nos 3, 13 and 16. It is not necessarily the case that harm is caused in relation to the matters covered by these three proposed conditions, simply that they require more detailed consideration, which is set out below.
- 4.3 The implications in relation to these proposed conditions are as follows:-
- 4.4 Proposed condition 3 relates to archaeological investigation works. The purpose of the condition is to ensure that the development does not result in harm to any potential archaeological interest the site may contain.
- 4.5 A programme of work has been drawn up and assessed by the County Archaeological Officer. The Officer advises that the programme was satisfactory but two caveats remained. The first of these was for the developer to confirm that its proposed groundwork methodology remained unchanged and the second that detailed palaeoenvironmental assessment of samples retrieved should be undertaken.

- 4.6 The applicant has now confirmed that the groundwork methodology was as proposed. In relation to the second of these matters, the work has been commissioned and will take a number of months to complete. However, the commencement of the development cannot result in any harm in this respect as the samples to be tested have already been removed from the ground. It is therefore considered that, whilst development has commenced in advance of the permission being issued, this has resulted in no harm to archaeological interests.
- 4.7 Proposed condition 13 relates to ecological matters. An acceptable assessment and mitigation report had been submitted, dated October 2010, The proposed condition sought that further survey work was undertaken prior to the construction of the footbridge on the site and linking it to the Tumbling Bay area.
- 4.8 Work on the footbridge has not commenced yet and therefore the aspirations of the condition are not jeopardised. There has been no harm to ecological interests as a result.
- 4.9 Proposed condition 16 deals with land contamination. The condition requires that an investigation of any contamination on the site is undertaken and any necessary remedial measures to be put in place are identified. Environmental Health Officers have confirmed that the report that has been submitted is acceptable. A residual matter has been raised by the Environment Agency in relation to groundwater flow directions. This is being further assessed by the applicant in conjunction with the Agency.
- 4.10 Given the above, it is also considered to be the case, that, in relation to all the matters to be addressed by the proposed conditions, no additional issues are raised that need to be given weight in the decision making process.

## **5.0 Legal Agreement Requirements:**

- 5.1 It is also necessary to consider whether the matters to be dealt with by the proposed legal agreement can still be covered – and therefore the development will remain acceptable in relation to these matters.
- 5.2 In relation to the provision of affordable housing and lifetime homes the applicant has entered into a contract with a social housing provider to ensure that the number and mix of affordable housing units to be provided on the site will be forthcoming. This matter will still be satisfactorily resolved therefore.

5.3 The remaining requirements of the legal agreement and not jeopardised by the commencement of development and therefore no revision to the agreement is necessary in relation to these matters. These comprise the financial provision payable by the developer in relation to various service areas, the setting up of a management company to manage non-adopted areas of the site, the provision of fire hydrants and the provision of a footpath, bridge and play space.

**6.0 Conclusion:**

6.1 It is considered that the development that has taken place and that which is still to be constructed remains acceptable in planning terms as it did at the time the committee considered this matter in February of this year. There are no changes to policy considerations that could be weighed against the development and no harm has arisen as a result of the implementation of the development in advance of the permission.

6.2 It is not expedient therefore to undertake any formal enforcement action and it is recommended that the position of the Council remains unchanged in principle. That is, it resolves to grant permission subject to the requirements of conditions and a planning obligation agreement.

6.3 The conditions that are set out at the beginning of this report then are broadly as they appeared in February of this year, but amended to reflect the current circumstances. Authority is also sought, in consultation with the Chairman of the committee and local ward Member, for delegated authority to further amend the conditions as may be necessary as a result of further minor changes to the development at the site.