

- 5f a) 3/11/0236/SV – Modification of Section 106 Unilateral Undertaking (ref 3/07/1546/FO) to omit clause 5.1 removing the requirement to provide a Car Club at Former TXU Site, Mead Lane, Hertford, SG13 7AH for Western Homes (Housing) Ltd.
- b) 3/11/0217/FP – Construction of 12 space car park (8 spaces for Elder Court and 4 spaces for residents of Spencer Street) with access via existing access road to Spencer Street at Land at Elder Court, Mead Lane, Hertford, Herts, SG13 7GD for Weston Homes (Housing) Ltd.

Date of Receipt: 11.02.2010

Type: a) Major - S106 Variation
b) Minor

Parish: HERTFORD

Ward: HERTFORD CASTLE

RECOMMENDATION

- a) That a variation of the S106 unilateral undertaking (reference 3/11/0236/SV) dated 21st January 2008 pursuant to planning permission 3/07/1546/FO to omit Clause 5.1 removing the requirement to provide a Car Club, be **GRANTED** subject to new clauses to require the following matters:
- completion of the car park approved under reference 3/11/0217/FP within a period of 6 months of the date of signing the legal agreement;
 - the submission of details of a scheme to permanently designate 6 parking spaces to residents of Spencer Street free of charge, including details of parking enforcement measures, appropriate signage, and details of future maintenance;
 - a financial contribution of £4,000 (index linked using SPONS from 1st March 2006) towards the provision of a car club in the Mead Lane area within a defined time period, or otherwise towards sustainable transport initiatives;
- b) That subject to a variation of the legal agreement as set out above, planning permission (reference 3/11/0217/FP) be **GRANTED** subject to the following conditions:-
1. Three year time limit (1T12)
 2. Approved plans (2E10 – WH112/11/P/05.101, WH112/11/P/15.01 rev A, WH112/11/P/10.000, WH112/11/P/10.100, WH112/11/P/10.101 rev A, WH112/11/P/35.101 rev A, WH112/11/P/35.102 rev A, WH112/11/P/35.103 rev 0)

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3. Prior to any building works being commenced, details of the brick for use on the retaining wall hereby permitted shall be submitted to and approved 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,

4. Prior to the commencement of development, specification details of the lighting columns and bollards, including dimensions, levels of illumination and materials of construction, shall be submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be carried out as approved, and no further lighting shall be provided without the prior written permission of the Local Planning Authority.

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

5. Tree retention and protection (4P05)
6. Landscape design proposals (4P12 e, i, j, k)
7. Landscape works implementation (4P13)
8. No soakaways shall be constructed in contaminated land.

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

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

Reason: To protect groundwater and surface waters in accordance with policies ENV20 and ENV21 of the East Herts Local Plan Second Review April 2007.

10. The development hereby permitted shall not be commenced until such time as a scheme to provide floodplain compensation up to the 1 in 100 year plus climate change flood level has been submitted to and approved in

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writing by the Local Planning Authority. The scheme shall be fully implemented and subsequently maintained in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the Local Planning Authority

Reason: To ensure no loss of floodplain storage capacity as a result of the development which would otherwise increase flood risk, in accordance with policy ENV19 of the East Herts Local Plan Second Review April 2007 and PPS25 'Development and Flood Risk'.

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1.0 Background

- 1.1 The application site is shown on the attached OS extract and comprises a new build high density residential development of 130 flats on the former TXU site, Mead Lane – now referred to as Elder Court. The site lies to the north of Hertford East Station and backs on to the River Lea. To the east of the site lies Spencer Street which comprises 25 no. Victorian terraced two storey cottages.
- 1.2 The development was originally approved in 2005 under reference 3/05/0316/FP with 130 parking spaces, including 105 spaces in a basement car park and 25 spaces in a sub-basement car park. Condition 26 of that permission required provision and retention of the car parking spaces as per the approved plans.
- 1.3 The developer then applied in 2007 (reference 3/07/1546/FO) to vary Condition 26 to remove the sub-basement car park. Some additional parking space was agreed in the basement level but overall the application resulted in the loss of 17 parking spaces, therefore providing a total of 113 spaces for the 130 units. The application was initially deferred by Members at 19th September 2007 Committee in order to enable Officers to further negotiate the parking provision on site.
- 1.4 The developer then provided further information, and proposed a two bay car club with the offer of a further £5,000 towards the cost of making a traffic management order to restrict and enforce on-street parking in the area. This resulted in an Officer recommendation to approve the application, but it was refused by Members on 17th October 2007 for the following reason:

The proposed variation would result in inadequate parking provision for the development resulting in additional on street parking and traffic congestion in surrounding roads. It would thereby be contrary

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to policy TR7 of the East Herts Local Plan Second Review April 2007.

- 1.5 The developer appealed against this refusal, and the appeal was allowed on 3rd April 2008 subject to a legal agreement to provide a two bay car club, and pay the £5,000 contribution. The car club was due to be provided within three months of first occupancy of the site; however this never materialised and the developer is now proposing to remove this requirement entirely from the legal agreement.
- 1.6 Members may recall that a previous application to remove this obligation to provide a car club was withdrawn just before Committee on 15th December 2010 (reference 3/10/1746/SV). Officers had recommended refusal on the grounds that the removal of the car club, without acceptable alternative parking provision, would result in inadequate car parking for the development resulting in additional on street parking and traffic congestion in surrounding roads, and would fail to provide alternative transport options for users of the site contrary to policies TR1 and TR7 of the Local Plan. The applicant chose to withdraw the application to enable further discussions; however no such discussions were held with Officers or local residents.
- 1.7 The developer is now re-applying to remove this clause in the legal agreement, and the application is accompanied by a separate planning application for an additional 12 space car parking area to the northeast of the site, adjacent to the River Lea. It is proposed that 8 of these spaces be allocated to residents of Elder Court, with the remaining 4 allocated to residents of Spencer Street. A further 2 dedicated spaces are also proposed for Spencer Street residents in the spaces originally proposed for the car club.

2.0 Site History

3/10/1746/SV	Modification of Section 106 Unilateral Undertaking (ref 3/07/1546/FO) to omit clause 5.1 removing the requirement to provide a Car Club.	Withdrawn by applicant 14-Dec-2010
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3/09/1937/FO	Variation of condition 5 of permission 3/05/0316/FP - to allow 10 no. HGV movements over Spencer Street for a 3 day period (dates to be agreed) to remove containers.	Approved with Conditions 10-Feb-2010
3/07/1586/FP	Erection of single storey timber building for use by Sea Cadets (as amendment to extant scheme 3/05/0316/FP).	Approved with Conditions 05-Oct-2007
3/07/1546/FO	Vary condition 26 to remove lower basement parking area on approved scheme 3/05/0316/FP and modification to Section 106 agreement.	Refused 17-Oct-2007 Appeal Allowed 03-Apr-2008
3/05/2252/FO	Removal of condition 23 of permission 3/05/0316/FP (Construction and re-surfacing of the carriageways and footways of Spencer Street prior to the occupation of the dwellings comprising the development of the above site) and modification to S106 Agreement.	Approved 19-May-2006
3/05/0316/FP	Development providing 130 residential units and new sea cadet facility.	Approved with Conditions 28-Sep-2005

3.0 Consultation Responses

3/11/0217/FP – Proposed car park

- 3.1 The Environment Agency initially objected on the grounds that insufficient information had been submitted to demonstrate that the risk of pollution to controlled waters is acceptable. Further information and amended plans related to ground levels have been submitted and the EA have since removed their objection. They now recommend consent subject to conditions.

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- 3.2 County Highways comment that “fundamentally, given the planning history of the development and with reference to the car club issues, I have no technical grounds to oppose the application as submitted. The scheme proposes use of an existing access onto Spencer Street which is of an appropriate layout and adequate construction. My only reservation is that it is remote from the properties it is intended to serve and there is no convenient pedestrian link on the desire line.
- 3.3 He goes on to comment that he is “aware of the confusion surrounding the status of Spencer Street and can confirm, despite the recent resurfacing, it remains a highway that is not maintainable at public expense. The road has not been brought up to adoptable standards and there has never been any intention that the County Council would adopt the road and therefore be responsible for any future improvements, management or maintenance. Officers may wish to consider whether a further £6000 S106 accessibility contribution is justified based on your SPD requiring £500 per parking space.”
- 3.4 The Council’s Landscape Officer raises no objection to the proposal.
- 3.5 No response has been received from Veolia Water.

3/11/0236/SV – Removal of Car Club obligation

- 3.6 The Council’s Solicitor makes no comment.
- 3.7 County Highways comment that this application does not differ from the previous scheme recommended for refusal. The proposal makes no reference to a financial contribution toward the setting up of a general car club rather than one specifically based at this development, and as such I assume the previous report and recommendations remain applicable. They acknowledge the difficulties in providing a car club facility for this specific development, but feel it would be contrary to the objectives of the Hertford and Ware Urban Transport Plan to improve accessibility for all including non-car owners. In the longer term with the development of a masterplan for the Mead Lane area, there will potentially be an opportunity to develop a viable car club. In these circumstances they feel it would not be unreasonable to request a financial contribution toward future provision in lieu of the setting up of a specific facility within this development.

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4.0 Town Council Representations

3/11/0217/FP – Proposed car park

- 4.1 Hertford Town Council object to the application. “The Committee wished to protect the residents of Spencer Street and therefore considered that the existing boundary line/fencing between Spencer Street and Elder Court should continue in a straight line. There should be no pedestrian access into Spencer Street from Elder Court. All parking provision for residents of Elder Court should be sited within the boundary of Elder Court.
- 4.2 “The Committee would wish to see the application for the removal of the Condition regarding the Car Club to be determined prior to consideration given to this application. Right of Way into Spencer Street should be limited to utility vehicles and access to sea cadet land.”
- 4.3 In response to the submission of an amended plan, Hertford Town Council comment that “Mindful of its responsibilities towards both the new residents of Elder Court and the occupants of established houses in Mead Lane, Marshgate Drive and Spencer Street, the Council was keen to ensure the best and fairest solution to the current planning issues associated with vehicle parking in the neighbourhood. The privately maintained status of the highway called Spencer Street gives the issue a special and important element.
- 4.4 “The Council is encouraged by the obvious wish of the applicant to try to mitigate against an unfair imposition on the amenity and environment of Spencer Street. The thrust of the Council’s conclusion though is that the ‘sitting duck’ residents of Spencer Street have, on balance, a visual benefit from the Elder Court development but not a benefit in terms of vehicle parking. Dedicated spaces for Spencer Street parking were welcome, and help, but overall the Spencer Street established residents have suffered during construction works and will under this proposal continue to suffer (to be the losers) because of the present shortage of adequate parking provision within the large Elder Court development site.”

3/11/0236/SV – Removal of Car Club obligation

- 4.5 Hertford Town Council object to the application. They state that “Members expressed their disappointment that the applicant appeared to have re-submitted exactly the same proposal previously made and subsequently withdrawn last year, and therefore considered that the opportunity had been missed to address the genuine concerns of the residents of Spencer Street, Marshgate Drive and Mead Lane. The fact remained that the developer saved a substantial amount of money in offering a car club instead of the

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condition to provide sub-basement car parking and it should be remembered that the offer of a car club weighed substantially in the Planning Inspectorate's thinking when allowing the sub-basement car park condition to be removed.

- 4.6 "The removal of the car club obligation would allow Elder Court to operate with a continuing under strength car parking provision. Residents of Spencer Street would bear the brunt of this as unlike neighbouring roads it does not benefit from a residents car parking scheme. Granting this application would create a number of other uncertainties. The car club spaces are situated off Spencer Street so if then used for ordinary parking for the residents of Elder Court, the residents of Spencer Street would effectively lose two car parking spaces. There was also the possibility of other uses for the space including that of a bin store. These uncertainties are not addressed by this application. The Committee therefore remains firm in its previous objections; however should the application be granted it was considered that the reinstatement of the area into green amenity space and the return of fencing to run straight along the boundary should be provided."

5.0 Other Representations

- 5.1 The applications have been advertised by way of press notice, site notice and neighbour notification.
- 5.2 A total of 7 no. letters of representation have been received from Nos. 3, 6, 9, 12, 25 Spencer Street plus 3 unaddressed emails, which can be summarised as follows:
- Object to the car club parking area being used for bin storage. This should be landscaped and the fence-line reinstated. Bins would be unsightly, smelly and attract rodents;
 - The car club area was not on the original plans and was built without any notification to residents;
 - Weston Homes were only allowed to remove the underground parking by implementing the car club – this saved them a considerable amount of money, and now they are applying to save even more money;
 - Spencer Street is a private road and residents of the new development have no right to use it to access their parking spaces;
 - Access to Spencer Street was restricted during construction and there is no reason why this situation should now change;
 - Spencer Street has now been resurfaced, but concern that this was only done to allow its use by more vehicles, and it has not been carried out to adoption standards;

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- Spencer Street was originally included in the Residents Permit Scheme in paperwork supplied to the Inspector at the appeal, but was removed from the scheme 10 days later. It now needs to be included in the permit scheme;
- Highways have advised that Spencer Street still does not meet the criteria for adoption and that the residents are responsible for its upkeep. Elder Court residents should bear the same liability for road upkeep as residents of Spencer Street;
- Insufficient parking for the new development with 8 units to have no parking provision at all;
- Alternative land should be used instead of access through Spencer Street;
- Letter originally sent by Weston Homes to local residents contained many inaccuracies;
- Concern over safety for children playing in Spencer Street given the increase in traffic;
- Concern that if Elder Court residents are given access to parking from Spencer Street then it would encourage more people and visitors and park in Spencer Street as well;
- The two car club spaces would not give Spencer Street any additional parking as they would then have lost two on-street parking spaces.

Matthew McCormick, Castle Ward Town Councillor, objects on the following grounds:

- The application does not fully address the deficiencies of car parking capacity at Elder Court;
- Plans do not adequately protect Spencer Street residents in the long-term;
- It should be a requirement of any planning consent that Weston Homes fund a Residents Parking Permit scheme on Spencer Street;
- Concern over how Spencer Street residents will allocate the spaces available to them, and that they should be protected from having to pay a service charge for the spaces in the future;
- The car club spaces should be removed rather than re-allocated – this will enable Spencer Street residents to continue to have the fair and free right to park in front of them.

6.0 Policy

6.1 The relevant saved Local Plan policies in this application include the following:-

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| TR1 | Traffic Reduction in New Developments |
| TR2 | Access to New Developments |
| TR7 | Car Parking – Standards |

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- ENV1 Design and Environmental Quality
- ENV2 Landscaping
- ENV3 Planning Out Crime – New Development
- ENV11 Protection of Existing Hedgerows and Trees
- ENV19 Development in Areas Liable to Flood
- ENV20 Groundwater Protection
- ENV21 Surface Water Drainage

6.2 In addition to the above it is considered that Planning Policy Statement 1, (Delivering Sustainable Development), Planning Policy Guidance 13 (Transport) and Planning Policy Statement 25 (Development and Flood Risk) are considerations in determining this application.

7.0 Considerations

7.1 The main issue in this case relates to the justification and need to provide a two bay car club, having regard to the parking provision on site, the proposed additional 12 space car park, the previous Inspector's decision, and the feasibility and viability of complying with this requirement. It is important to consider, in light of S106A and the above issues, whether the obligation continues to serve a useful purpose. The planning merits of the additional car park are of course also an important consideration.

7.2 In terms of parking provision, as set out in policy TR7 and Appendix II of the Local Plan, the Elder Court development would trigger a maximum parking provision of 195 spaces (see table below).

Number of beds	Number of units	Parking Standard	Max provision
1	37	1.25	46.25
2	80	1.5	120
3	13	2.25	29.25
TOTAL	130	-	195

7.3 The original scheme (3/05/0316/FP) provided 130 parking spaces, therefore representing a 67% provision of the maximum standards and a 1.00 space per unit ratio. The later application to remove the sub-basement parking area (3/07/1546/FO) resulted in a total of 113 spaces, representing a 58% provision (a 0.87 ratio per unit), and was therefore subject to the requirement to provide the car club. The development as constructed now has 111 spaces (2 fewer due to the operational layout of the basement area). This represents a 57% of the maximum standard and a 0.85 space per unit ratio.

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- 7.4 It is now proposed to provide an additional 12 space car park accessed off Spencer Street with 8 spaces allocated for Elder Court residents, and the other spaces for Spencer Street residents. This would result in a total of 119 spaces for the 130 units - a 61% provision of the maximum standards and a 0.92 ratio per unit.
- 7.5 PPG13 requires local authorities to seek to promote sustainable transport choices in considering development proposals and “should not require developers to provide more spaces than they themselves wish, other than in exceptional circumstances which might include for example where there are significant implications for road safety which cannot be resolved through the introduction or enforcement of on-street parking controls” (PPG13: 51.2).
- 7.6 In this case the site is clearly situated in a highly sustainable location, in close proximity to Hertford East Station and local bus services, and within easy walking distance of Hertford town centre. Parking restrictions have recently been provided along Mead Lane, including double yellow lines and resident-only parking zones, and the developer has paid a further £5,000 towards restricting and enforcing on-street parking in the area. This was over and above an original payment of £68,250 (under planning reference 3/05/0316/FP) as a contribution towards sustainable transport measures.
- 7.7 In this case, it is clear that the development was approved with a shortfall of parking provision on site, which was partly to be addressed by the two bay car club. The Inspector’s decision clearly stated that “in my view, the proposed development would not be acceptable without the undertaking being completed and its terms should, therefore, be enacted as a part of this permission” (para 1). He later states that “taken together with the existing transport options, as well as the site’s inherent accessibility (which significantly reduces the necessity for car journeys), in my judgment it weighs significantly in favour of the proposal” (para 5). The need for the car club in order to ensure satisfactory parking provision therefore weighed heavily in the Inspector’s determination of the appeal. However, it is important to consider the current situation, including the proposed car park and the completed permit scheme, and determine whether the car club obligation continues to serve a useful purpose.
- 7.8 Weston Homes have confirmed in their submitted Design and Access and Planning Statement that, as of 7th February 2011, 113 units have been sold and occupied, a further 6 are currently under contract for sale, leaving 11 units to sell. A later email of 27th May 2011 confirms that 122 units have now been sold, leaving just 8 remaining to be sold. Those remaining 8 units currently have no car parking provision, and apparently potential purchasers have lost interest given this lack of parking. The planning application for 8 additional car parking spaces would therefore provide 1 space for each of these remaining residential units.

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- 7.9 Given the current levels of occupancy, the current parking situation should therefore provide an indication of whether parking problems are arising. Officers have visited the site at various times of the day and evening and have not witnessed any significant parking problems in the vicinity of the site. The lack of parking for the remaining 8 units was previously a concern for Officers in recommending refusal of application 3/10/1746/SV; however the proposed provision of 1 space per remaining flat is now considered to address this concern, subject to the planning merits of the new car park discussed in more detail below.
- 7.10 In determining the previous appeal, the Inspector witnessed “very severe parking stress in surrounding residential streets” and noted that “a wholesale review of kerbside parking in the locality is currently ongoing.” This review has now been completed and has clearly addressed many of the parking issues as Officers have not witnessed such problems. It is also important to note that the Elder Court residents are exempt from applying for residents’ on-street parking permits.
- 7.11 It is also important to consider the feasibility of providing a car club as the developer states that he has been unable to secure an operator for the scheme. The original provider who showed an interest at the time of the appeal (Streetcar) has confirmed that the scheme would not now be viable because Hertford is outside their operating area and too remote from their existing network of vehicles. They also consider the parking provision to be too high to make the scheme viable. The developer has approached other car club operators but has found no interest in this site for similar reasons. Copies of email correspondence with these companies were submitted with the previously withdrawn application, confirming this lack of interest. Officers are not aware of any change in this situation since the previous submission.
- 7.12 Officers had also researched car club providers and identified one company with some interest in the site - Commonwheels. This is a community interest company that relies on the support of a wider community and local groups in order to remain viable, and also charges a set up cost of some £40,000. Officers understand that a similar start up fee would have applied to any other car club provider, and therefore this is not accepted as a reason not to viably implement the scheme. It is acknowledged that as this is a community based scheme, it would depend on support from the wider community and Officers therefore previously suggested to the developer that they should pay a financial contribution instead, to go towards setting up a wider scheme for the Mead Lane area in the future.
- 7.13 This could also be connected with the requirement for a car club at Marshgate Drive, and the wider Hertford and Ware Urban Transport Plan which supports the provision of area wide car clubs as a smarter travel

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choice to encourage a shift towards more sustainable modes of transport. The expected source of income for car clubs is from S106 agreements where developments are approved with a shortfall in parking provision. The suggestion of a financial contribution was therefore considered by Officers to be a fair and reasonable alternative, but was not accepted by the applicant. They are now applying for an additional car park instead.

- 7.14 It is also material to note that since the submission of the previous application, the Mead Lane Urban Design Framework has been fully drafted and is available for public consultation from the 16th June 2011. This includes reference to the introduction and extension of initiatives for car sharing and car clubs via Green Travel Plans and S106 obligations. The document states that initial investment is required to start up any scheme and it is anticipated that a six car scheme could be supported by the area to serve the local community. Car club provision in the Mead Lane area is therefore a clear aspiration for the Council, and any granting of permission to remove the Elder Court car club obligation should not compromise this objective.
- 7.15 However, it is important to consider in this particular case whether the car club obligation would still continue to serve a useful purpose when combined with the proposed additional 8 parking spaces for Elder Court residents. It is your Officers opinion that given the current parking situation and the effects of the controlled parking zone and residents' permit scheme, and the level of occupancy of the new development, that the resulting parking provision would not be unacceptable in planning terms.
- 7.16 To meet the tests set out in the 2010 CIL Regulations, the obligation would have to be: 1) necessary to make the development acceptable in planning terms, 2) directly related to the development, and 3) fairly and reasonably related in scale and kind to the development. Officers no longer consider it necessary to make the development acceptable, and the obligation would therefore be unreasonable. It is also noted that as the development is now almost fully occupied, the residents' travel behaviour would most likely be well-established, and the potential for a car club would therefore be limited.
- 7.17 However, as a new 12 space car park is proposed, this in itself would normally trigger a financial payment of £500 per car parking space, index linked from 1st March 2006, in accordance with the Council's adopted Planning Obligations Supplementary Planning Document (SPD). However, this requirement is only linked to new developments and therefore Officers do not consider that this payment should extend to the spaces proposed for Spencer Street residents.

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- 7.18 The requirement would therefore relate to £500 for each of the 8 spaces proposed for Elder Court, totalling some £4,000 index linked to go towards network-related accessibility improvements. The SPD states that this could include footpath or cycle network improvements, passenger transport improvements, parking management schemes, speed reduction measures, or other transport related schemes that feature in recognised strategies where a need has been identified and relate to the new development - such as contributing to a wider car club initiative.
- 7.19 Officers consider this to be fully justified in relation to the adopted SPD on the basis that this parking is proposed in place of the car club which was approved in place of sub-basement car parking. This requirement is therefore also considered to meet the requirements of Circular 05/2005 for planning obligations in relation to this planning application, and a legal agreement is therefore recommended should Members grant consent for the car park.

Spencer Street

- 7.20 Spencer Street is located to the west of the Elder Court development and is a cul-de-sac comprising traditional Victorian terraced cottages. The status of the road has been confirmed as 'highway not maintainable at the public expense'. It is therefore not a private road, but the residents are liable for the maintenance and upkeep of the road. It is noted that access to Spencer Street was restricted during the demolition and construction process (Condition 5 of 3/05/0316/FP); however this was in order to protect residential amenity from these large vehicles. The use of the road by 8 additional private cars would not cause such a significant impact.
- 7.21 Under a deed of variation of the legal agreement for planning consent 3/05/0316/FP, it was a requirement that a contribution of £70,000 be paid for "the resurfacing of the footways and carriageways of Spencer Street". This contribution was duly paid by the developer, and the works were carried out by Hertfordshire Highways in March 2011.
- 7.22 However, the works were not required to be carried out to adoption standards, and therefore the road remains as unadopted highway. Herts County Council have confirmed that there was never any intention to adopt Spencer Street. Adoption would be formally required in order for East Herts Council to include Spencer Street within the Hertford East Resident Permit Parking Scheme, which came into effect on 31st March 2008, part funded by a Traffic Management Order Contribution of £6,508 paid through the legal agreement for 3/05/0316/FP. This work has involved the marking of single and double yellow lines along much of Mead Lane with designated resident permit parking bays.

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- 7.23 It is noted that Spencer Street was originally included within the planned residents' parking scheme based on advice at the time from Herts County Council that the street was scheduled for adoption. This formed part of the proposals put to the Inspector in determining the appeal for removal of the sub-basement parking area. 13 days after the Inspector's decision, East Herts Council's Parking Manager wrote to residents of Spencer Street stating that the street could not now be included in the resident permit scheme as it is unadopted, and this situation will continue unless and until Spencer Street is adopted.
- 7.24 This adoption has of course not taken place and therefore East Herts Council cannot now extend the Residents Parking Permit Scheme to cover Spencer Street; this has been confirmed by the Council's Parking Manager. Further, because the road is public highway, the local residents cannot implement or enforce any private parking restrictions, or mark parking bays in the road. As it currently stands, therefore, it is not possible to restrict public parking on Spencer Street while the rest of the surrounding area is covered under the resident permit scheme. Further, following the recent re-surfacing works the road may now appear to look more like any other adopted street, whereas its previous unmade condition may have deterred non-residents from parking in the road. It has been suggested by residents and local Councillors that Weston Homes should fund additional work in Spencer Street in order to bring it up to adoption standard; however Officers do not consider such a retrospective request to be reasonable or justified given the agreed contributions that have already been paid by the developer, and their obligation for re-surfacing works that has already been fulfilled.
- 7.25 Spencer Street is therefore experiencing increased parking pressures as a result of commuters and other residents/visitors parking in the street, and the situation is likely to worsen. This has understandably frustrated the residents of Spencer Street, and a number of objections have been received in relation to both these applications.
- 7.26 Although it is unfortunate that Weston Homes did not involve the Spencer Street residents in any pre-application discussions for this submission, they have since been in direct contact with the residents and local ward members to attempt to reach an appropriate solution. They now propose that 6 dedicated spaces be made available on their land free of charge for the residents of Spencer Street, and this would be secured through a legal agreement. 4 spaces are proposed within the new car park, with the other 2 spaces in place of the car club spaces with access directly onto Spencer Street.
- 7.27 By providing these spaces on private land, Weston Homes would be able to enforce any unlawful parking through their Elder Court Management

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Company. Full details of this allocation for Spencer Street residents, along with details of monitoring and enforcement, maintenance, and appropriate signage would be required through a legal agreement. It is considered that this would be justified under Circular 05/2005.

- 7.28 Weston Homes have also confirmed that they would include a clause within the deeds of the remaining 8 Elder Court units that those residents must contribute towards the upkeep and future maintenance of Spencer Street as they would be gaining access through that undopted road. This is of course fully encouraged and supported by the Council, but Officers do not consider this to meet the tests of Circular 05/2005 as it is not necessary to make the development acceptable in planning terms. The responsibility for future road maintenance unrelated to the development is not a material planning consideration.
- 7.29 Overall, Weston Homes propose that this application would benefit the residents of Spencer Street as it would provide a dedicated and enforceable parking provision of these 6 spaces. Your Officers agree that this would be a benefit to those residents; however it may do little to mitigate against the current parking pressures as the road remains unadopted and not covered by the permit scheme. However, refusal of these applications would not improve the parking situation on Spencer Street.
- 7.30 Spencer Street residents have continually objected to the two car club spaces on the grounds of access, visual amenity and concern that they would be used as bin storage. In relation to the proposal to allocate these spaces for residents of Spencer Street, they do not consider that this does will provide them with any additional car parking as it would result in the loss of 2 on-street parking spaces. However, it is important to understand that these 2 spaces would, through a legal agreement, be dedicated for use by Spencer Street residents and could therefore be privately controlled and enforced. Whereas the on-street parking cannot be enforced and could be used by the general public. These 2 spaces would therefore be guaranteed for Spencer Street residents.
- 7.31 It is acknowledged that approval of this car park would result in increased vehicular movements through Spencer Street from the 8 Elder Court parking spaces; however I do not consider this increased traffic to be significant or result in material harm to residential amenity. Further, I do not consider this increase to be significant in terms of the safety of users of the highway.
- 7.32 A number of concerns have also been raised that these two car club spaces were not shown on the original plans and were provided without neighbour consultation. Although this land was never confirmed by the Council as

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acceptable for the car club, these two car parking spaces were shown on approved landscaping and bin store/enclosure drawings and it would therefore not be possible for these spaces to now be removed through enforcement action. Officers can confirm, however, that the land has not been agreed for any form of bin storage; all refuse collection for the development is from the Mead Lane frontage.

- 7.33 A number of concerns have also been raised regarding assertions and inaccuracies in letters sent from Weston Homes to local residents. There has since been improved and extensive communication between Weston Homes, local residents, local Councillors, Herts County Council and East Herts Council, and Weston Homes have since re-written to Spencer Street residents correcting and clarifying certain points regarding the status of Spencer Street and parking controls on Spencer Street.

Proposed Car Park

- 7.34 The additional car parking area is proposed in the northern corner of the site with the River Lea to the northwest, existing commercial buildings to the northeast, the new Sea Cadets facility to the southwest, and Spencer Street to the southeast. The land currently comprises rough grassland which serves no designated function and was not identified for any purpose in the original planning consent. It is proposed to access the car park from the rear of Spencer Street from an existing secondary access that currently only serves the new Sea Cadets hut and electrical sub-station.
- 7.35 Pedestrian access from Elder Court to these car parking spaces would be achieved through existing pathways through the private amenity land of Elder Court. The distance between the residential units and the parking spaces ranges from some 60-100m and is less convenient than on-street car club bays. It is acknowledged that this is a considerable distance to walk; however there are no other suitable alternative sites for additional car parking, and given the lack of any other parking options, the new residents would be likely to make full use of these spaces. Further, these 8 residents would purchase the remaining flats in full knowledge of the location of their designated parking space.
- 7.36 The car park is proposed to be formed of permeable paving with a small area of grass bank to be infilled with a low retaining wall. Lighting is proposed in the form of 2 no. down-focused column lamps with a single lighting bollard along the access road. The existing access gates off Spencer Street are proposed to be removed with bollards provided further along the road to restrict access to the Sea Cadets' facility and car park.

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- 7.37 There are a number of trees and bushes along the northeast and northwest boundaries of the site that are not protected but are of amenity value, and a 'no dig' construction is proposed within the Root Protection Area of these trees. This is considered to be acceptable and no objection has been raised by the Council's Landscape Officer. Reinforced planting is also proposed along the tow path boundary in order to minimise views of, and access to, the car park from the tow path, and improve the visual amenity of the tow path. Full details would be required by condition.
- 7.38 The site also lies in a Floodzone 3 wherein there would be a risk to people and property; a full Flood Risk Assessment has therefore been undertaken and submitted. The Environment Agency originally objected to the proposal on the grounds of issues over contaminated land but have withdrawn their objection following the submission of further information. Amended plans have been submitted that re-design the floodplain compensation volume area, with a reduced retaining wall and open Ascot rail to prevent any impeding of flood flows. It is now considered that the proposal would comply with policy ENV19 and Government guidance PPS25, subject to conditions recommended by the EA.

8.0 Conclusions

- 8.1 Overall, it is clear that the requirement for the car club was considered necessary by the Inspector to make the development acceptable in planning terms. This was due to a shortfall of parking provision, and "a very severe parking stress in the surrounding residential streets". Officers had previously recommended refusal of application 3/10/1746/SV on the grounds that removal of the car club requirement, without acceptable alternative provision, would result in inadequate parking provision for the development resulting in additional on street parking and traffic congestion in surrounding roads, and would fail to provide alternative transport options to the private motor vehicle for users of the site.
- 8.2 This current planning application now proposes an additional 8 parking spaces for residents of Elder Court, which is now considered to be an acceptable alternative provision. This is due to the occupancy levels of the development and the fact that Officers have not witnessed any serious parking issues in the vicinity. While car club provision is being promoted for the Mead Lane area, generally in this specific case, it is no longer considered that the car club obligation continues to serve a useful purpose regarding the provision of parking for the development.
- 8.3 The planning merits of the new car park are considered to be acceptable, subject to the conditions set out above, and on this basis Officers would recommend that the car club obligation be removed. However, a financial

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contribution of £4,000 would still be required in accordance with the Council's Planning Obligations SPD and this should contribute towards the start-up costs of a wider community car club as advocated in the Mead Lane Urban Design Framework and the Hertford and Ware Urban Transport Plan, or for other sustainable transport initiatives if this does not come about.

- 8.4 The applications are therefore both recommended for approval subject to the legal obligations and conditions set out above.