SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

OAKHILL GROUP LIMITED

FORMER HARTWELL'S GARAGE SITE, NEWBRIDGE ROAD, BATH

PUBLIC INQUIRY - 16-26 FEBRUARY 2021

THE CLOSING SPEECH ON BEHALF OF THE APPELLANT

---

1. Introduction

1.1. In introduction we wish to make the following points:

1.1.1. Point 1 – The starting point is the development plan.

1.1.2. Point 2 – The Planning Officer's Report ("**POR**") is a weighty consideration.

1.1.3. Point 3 – What will happen if the proposal is refused.

1.1.4. Point 4 – The approach of the LPA is deeply disappointing.

1.1.5. Point 5 – Think about who will occupy the development.

1.1.6. Point 6 – There is a national crisis in the delivery of housing.

1.1.7. Point 7 – The LPA closing is a case study in why there is a national crisis.

1.2. Point 1 – The starting point is the development plan.

1.2.1. The tramlines for determining such appeals could not be clearer in law and policy – the starting point must be the development plan and the presumption is in favour of the development plan, particularly as here when the development plan is up to date and should be given full weight.

1.2.2. This is a site which has gone through detailed examination and has been allocated in the development plan of this local planning authority. It is a key component of the local planning authority's housing trajectory.

1.2.3. This development proposal should come forward in accordance with the plan unless there are material considerations which justify a different approach.

1.2.4. There are none.

1.2.5. In accordance with paragraph 11(c) of the National Planning Policy Framework ("**NPPF**"), it should be approved without delay.

1.2.6. Compliance with the development plan will be demonstrated in the following sections after the introduction namely:

1.2.6.1. The acceptability of student accommodation as part of the scheme;

1.2.6.2. The design of the scheme;

1.2.6.3. The housing mix;

1.2.6.4. The provision of open space;

1.2.6.5. Overall position.

1.3. Point 2 – The POR is a weighty consideration.

1.3.1. The POR of March 2020 provides the most powerful corroboration for the Appellant's case in support of the grant of planning permission because:

1.3.1.1. It is the objective, fair and reasoned planning judgment of professionally qualified planning officers who are senior to Ms Hampden [(her boss, Chris Gomm, and the Deputy Head of Planning at Committee endorsed it).

1.3.1.2. It is the result of many years of consideration of the proposal. This scheme has literally been years in the making, with five pre-application meetings taking place in 2016-2019.

1.3.1.3. It is the result of 11 months of thorough dialogue post-submission that secured the officers' recommendation for approval.

1.3.1.4. As Mr Krassowski explained in XIC, the constraints on this site are substantial, and it has been a significant challenge over the years to create a scheme that is viable, deliverable, and well-designed. This has been done with dialogue and negotiation with the officers.

1.3.1.5. There is no change in planning circumstances since March 2020 that alter any of the conclusions. The new housing figures in the Housing Supply Topic papers (January 2021) instead make the need for housing delivery even more acute.

1.3.1.6. The report is comprehensive and reasoned.

1.3.1.7. There is nothing in the report that is missed out.

1.3.1.8. Its conclusions particularly in relation to the development plan are fair in considering 43 relevant policies (XX Hampden).

1.4. Point 3 – What will happen if the proposal is refused?

1.4.1. The scheme that has come out at the end of this process is considered by the Appellant to be the optimum use of the land. It would provide well-designed residential flats and student accommodation to Bath, with an appropriate housing

mix and sufficient open space provision (including an important sustainable transport route).

1.4.2. The Appellant is the only party to this inquiry with a positive and constructive vision for this site which will result in homes, investment and so many benefits.

1.4.3. The LPA members' vision is thoroughly depressing – condemn this site to more dialogue and constant wrangling. The consequence of a refusal would only result in one effect: stagnation.

1.4.4. The site will sit undeveloped until pragmatism about this site is realised. The whole of the opposition to this appeal is predicated on a falsehood that there can be a better scheme which will not cause the harm alleged to be caused by this one.

1.4.5. However, that proposition is made without any consideration of a key element: viability. Viability is the key to the unlocking of this site because this developer and any developer would not commence a development which will lose money. Who in their right mind spends £39 million pounds knowing that it would result in a loss?

1.4.6. Therefore, do not be seduced by this empty vision that if you refuse this application then a better proposal will come forward – it will not.

1.4.7. Do not be seduced by the empty vision that a non-student development will come forward – it will not.

1.4.8. Do not be seduced that much more open space will come forward – it will not.

1.4.9. This is the only scheme which has been shown to be viable to the satisfaction of the developer and owner, as Mr Krassowski articulated.

1.4.10. The owner is not looking to sell and will not sell if refused permission. It will hold onto the site and the residents will be deprived of any improvement on its existing state. The LPA will have a hole of 80-100 units in its HLS trajectory which will necessitate green field release.

1.5. <u>Point 4 – The approach of the LPA is deeply disappointing.</u>

1.5.1. This LPA are completely at war between members and officers.

1.5.2. The Policy Team want this site developed.

1.5.3. The Development Management Team want this site developed and accept after 4 years that this is the right scheme without harm.

1.5.4. The members utterly reject that professional judgment.

1.5.5. The only consequence of this planning chaos is the non-delivery of much needed housing.

1.6. <u>Point 5 – Think about who will occupy the development</u>

1.6.1. In a national housing crisis, it is extraordinary how much resistance has been received to the proposal to deliver an allocated site that will make a crucial contribution to delivering Bath's housing supply.

1.6.2. Additionally it is worth reflecting on who will benefit if planning permission is granted. This is not some academic proposal. It will provide actual homes for 104 people and couples and many students who need accommodation.

1.6.3. The LPA estimate the proposal will house 425 residents [186 students and 239 other residents.

1.6.4. Therefore, think throughout your determination that by providing this accommodation you will give 425 people security and comfort which are the two most fundamental desires of the human race.

1.6.5. 425 people is also far greater than the 275 existing residents who seek to object.

1.6.6. In contrast the objectors all have their homes.

1.6.7. They are defined by seeking to protect what they have at the expense of others.

1.6.8. It is one of the saddest ironies of modern life that those with homes repeatedly try and stop others enjoying the benefits which they are fighting so hard to protect.

1.6.9. In addition the truth is that housing developments are benign once built and those that occupy them seek to contribute and assist the community of which they become part.

1.7. <u>Point 6 – There is a national crisis in the provision of housing.</u>

1.7.1. This is an important opportunity to bring forward high quality and much needed residential development on a highly sustainable site that has been repeatedly identified as being suitable for housing development by the LPA.

1.7.2. The proposal will provide 104 new homes – 13 of which will be affordable – together with significant public open space and 186 units for students.

1.7.3. The Secretary of State's Written Ministerial Statement of 16 December 2020 re-emphasises the Government's target to *"increase housebuilding towards 300,000 new homes a year"*.

1.7.4. The Government have taken every opportunity to stress that there is a national housing crisis in this country.

1.7.5. This is further reflected in Chapter 5 of the NPPF which sets out national policies to support the objective *"of significantly boosting the supply of homes"* which of course is not

1.8. <u>Point 7 – The LPA closing is a case study in why there is a national crisis.</u>

1.8.1. Mr Darby's closing epitomises to a tee why there is a national housing crisis.

1.8.2. A forensic, legalistic, academic encyclopaedic series of freshly made criticisms founded on the principle that the Appellant must provide a perfect scheme. An complete identification of many allegations of criticisms of the scheme which only saw the light of day 4 weeks before this inquiry in Ms Kemal's proof of evidence.

1.8.3. 10 pages on BfL12 when the first time the LPA addressed it was on Day 4 of this inquiry in Ms Kemal's EiC – 4 and a half years after first discussing this site and its design!! 10 pages of the most turgid and detailed criticisms which simply did not take up one line in her proof of evidence.

1.8.4. But these criticisms are not based in the real world where nationally there is a housing crisis and in an authority which has to provide 13,000 houses by 2033 and 7,000 units in the City of Bath.

1.8.5. If Mr Darby was the planning authority there would be not one house delivered yet alone 7,000.

1.8.6. It is instructive that his closing dealing with just 4 concerns is double the size [28 pages v his closing at 54 pages] of the Planning Officer's Report.

1.8.7. 54 pages of criticism when not one part of his Closing was endorsed by the professional judgment of Officers in March 2020.

1.8.8. 54 pages to deal with an allocated housing site.

1.8.9. If it was a greenfield windfall site one can only imagine the length!

1.8.10. This is a unique case – try and find corroboration of one paragraph of Mr Darby's closing in the planning officer's report and you know the answer. This is a completely manufactured case which relies on concerns which were utterly unarticulated prior to April 2020.

1.8.11. Not one point Mr Darby makes at great length were endorsed and considered valid at the end of the 11 months of consideration by the LPA. That is a remarkably strong indication of how flimsy and irrelevant the LPA's concerns are.

1.8.12. Additionally the closing is distinguished like Ms Hampden with a complete absence of a fair representation of the NPPF and its policy imperatives. There are just four fleeting references to this seminal piece of Government Guidance [Page 25,26,35 and 39] and again it is relied on solely to justify criticisms.

1.8.13. Finally We reject completely the allegation relating to D1 and D2 being unchallenged. They were. Additionally any barrister who makes that point simply does not understand the inevitably confines of inquiry timetables where it is not practicable or appropriate to deal with every point at great length as Mr Darby insists on doing and thinks is the correct approach. It is not.

1.9. For reasons which will be elaborated below, the Inspector is invited to allow this appeal and grant permission.

2. <u>The acceptability of student accommodation as part of the scheme</u>

2.1. Policy SB15 in the Core Strategy and Placemaking Plan ("**the Plan**") allocates the site for the following development:

"*Residential development of around 80-100 dwellings, which could include a variety of specialist older persons housing types but not student accommodation, where this would prejudice the achievement of Policy DW.1 and B1 in respect of boosting the supply of standard market and affordable housing*."

2.2. This site is therefore allocated for residential development. That is the starting point.

2.3. It is noteworthy how that starting point in the LPA closing at paragraph 13 is utterly ignored! All that Mr Darby states is "it is directly relevant to the Site". Brilliant – what a fair summary of SB 15.

2.4. What it actually does is:

2.4.1. Allocate the site for re-development.

2.4.2. Re-development by 2033.

2.4.3. Seek the use of the site for residential development.

2.4.4. Which should be around 80-100 dwellings.

2.5. Those 4 points are hugely important but completely ignored by the LPA closing.

2.6. As explained in opening and in XiC of Mr Krassowski, the correct interpretation of this policy is that it does not impose a blanket prohibition on student accommodation on this site. Ms Hampden also accepted that proposition. It appears that SLA also do [See closing at para 15].

2.7. Instead, it seeks to ensure that any student accommodation does not prejudice the boosting the supply of market and affordable housing (policies DW1 and B1).

2.8. In this case, the proposal delivers:

2.8.1. The requisite quantum of housing that the site is allocated for, thereby boosting the supply of market housing;

2.8.2. The maximum quantum of affordable housing that can viably be provided.

2.9. A point has been raised at the inquiry by third parties (including Mr Reynolds) that a different scheme with more housing (including more affordable housing) and less student accommodation could have been viable, and that this is where the prejudice arises. These are unevidenced claims, and are directly contrary to the evidence of both Mr Reynolds and Mr Krassowski (in XiC) that student accommodation is more valuable than residential housing (and is therefore a necessary element of this scheme given the constraints). These assertions therefore do not indicate "prejudice" to the housing supply by the inclusion of student accommodation in this scheme. An attempt to produce a viable scheme on this site has taken years. There are no other arguably viable schemes on the table.

2.10. If student accommodation were being sought at the expense of the required 80-100 residential homes, then the accommodation is clearly prejudicing the supply of housing. That is not what is proposed here. It cannot be right to regard the student accommodation as prejudicial to boosting the housing supply if the allocated quantum is being delivered. That is so even if a higher residential quantum were viable (which is not accepted or evidenced). The design enables the student accommodation to co-exist with the provision of 104 residential flats, thereby boosting the supply of housing and delivering the allocated provision for the site.

2.11. This accords with the approach of the Officer Report (CD34) (which also reflected consistent advice at the pre-application stage, which included committee member consultation and support in October 2018 – see CD4 and Appendix 4 to Mr Krassowski's PoE): "*the provision of 186 student bedrooms is also in accordance with Policy SB15 because this element of the scheme will not displace the 80-100 units required by the policy; … Policy SB15 requires the provision of around 80-100 non-student units but it does not preclude additional forms of residential development, including student accommodation, above and beyond that figure once that requirement has been met*."

2.12. The Appellant agrees with this approach. By contrast, RfR1 of the Council's Planning Committee, which is clearly the central and primary reason for refusing the scheme, proceeds upon a clear misinterpretation of SB15 as wholly precluding student accommodation.

2.13. Ms Hampden in XX did not commit this same error as the Council's Planning Committee. She correctly accepted that, in principle, there could be student accommodation consistent with SB15.

2.14. Instead, through Ms Hampden's evidence, the Council's case to this inquiry on why the student accommodation element prejudices the boosting of housing (see e.g. Hampden PoE paras. 5.9 and 5.18) amounts, in reality, to a more general concern about "over-development" and design harm.

2.15. As Mr Krassowski explained in XiC, this is properly an issue to be considered under RfR2 (design) below.

2.16. In that regard, the Council has confused (a) compliance with Policy SB15 specifically, and (b) compliance with other relevant policies, and the development plan as a whole.

2.17. The issue of prejudice in SB15 is limited to considering the effect on the boosting of housing, not other harms and impacts like design issues, which are dealt with elsewhere in the development plan. This is the fundamental problem with Ms Hampden's approach to SB15. It seeks to import into SB15 matters that do not belong. The Appellant does not ignore those concerns about harm, but denies that they fall to be considered under SB15. They are considered separately under the other RfRs below.

2.18. Finally, a footnote on the Certificate of Appropriate Alternative Development ("**CAAD**"). As a matter of law, the CAAD is not a material planning consideration in the determination of this planning application: see *Secretary of State for Transport v Curzon Park Ltd* [2020] UKUT 37 (LC) at para. 66. They are a tool in the determination of

compensation for compulsory acquisition, by certifying what planning permission might reasonably have been expected to be granted on the relevant valuation date in a hypothetical world where the scheme underlying the compulsory purchase doesn't exist. They do not exist in the real-world as a material consideration for real planning applications.

2.19. As Mr Krassowski explained in XIC, even if the CAAD had been material, it is clear that no weight could have been placed upon it because it was granted over a decade ago, before the NPPF and before the current development plan, and so in a totally different policy context. It was also granted before Mr Krassowski's involvement, without the benefit of the years of detailed design and viability work on the site culminating in the current proposal.

2.20. Furthermore, CAAD applications are expected to contain much less detail than an application for planning permission (see MHCLG's Guidance on Compulsory Purchase process and the Crichel Down Rules, July 2019, p.118, para. 271 – available online), so any statement of the expected quantum in a CAAD cannot be relied on in the present context.

2.21. The Council sought to clarify that they relied on the CAAD in this case only as background to the evolution of the allocation quantum in SB15, but that does not make the CAAD material and it does not affect the correct interpretation of and approach to Policy SB15.

3. <u>The design of the scheme</u>

3.1. As Mr Brown explained in XiC, the design is informed by the site being:

3.1.1. In a <u>sustainable</u> location (close to facilities and public transport options);

3.1.2. In a <u>transitional</u> location (mixed and varied character area with residential and industrial buildings);

3.1.3. In a zone with a potential for 4-6 storeys according to the Council's Building Heights Strategy (CD52, para. 3.46, p.51).

3.2. Remarkably for an urban scheme like this, there is no allegation by the Council of unacceptable amenity impact (e.g. daylight / sunlight impact, or overlooking), nor of any adverse impact on any designated or non-designated heritage assets (SoCG 5.12).

3.3. It is also relevant to the context for the design assessment that:

3.3.1. The site is allocated, and the allocated policy has site-specific design principles (which will be considered below);

3.3.2. The site is previously developed land and underutilised, where the existing buildings make no positive contribution to the character and appearance of the area, and instead detract from the existing townscape (see Kemal PoE para. 6.11);

3.3.3. The site is unusual and heavily constrained – there is a 7 metre drop in levels, and a sewer easement.

3.3.4. The application is outline only, save for means of access and layout. Appearance, landscaping, and scale are reserved matters (see draft condition 3). Many of the issues raised by the Council are matters of detail which (even if correct) could be addressed by way of conditions, including boundary treatments, cycle and bin stores, and public / private space.

3.4. In terms of local and national policies, it is critical to note that:

3.4.1. Although there is an alleged breach of the general design policies CP6, D1 and D2 (which is rebutted fully at Brown PoE paras. 5.71-5.84), it is no part of RfR2 to allege a breach of the site-specific design principles in the allocation policy SB15. As Mr Krassowski explained in XiC, the design principles in policy SB15 have been drafted to provide bespoke design priorities for the development proposal, and greater weight should be given to the specific policy over the general policies. Mr Brown said in XiC that policy SB15 was "fundamental" to assessing the scheme design, and went through paras. 2-7 of policy SB15 in detail (see also Brown PoE paras. 5.87-5.88), concluding that each of the requirements were complied with. The drafting of allocation policies is the opportunity for the Council to say what key design issues they want to be addressed on the site. It is remarkable to maintain a design reason for refusal despite accepting compliance with the design principles of the allocation policy.

3.4.2. In relation to the general design policies themselves, the Council importantly does not allege any breach of policies D3 (urban fabric), D4 (streets and spaces), D5 (building design) and D6 (amenity).

3.4.3. There is no alleged breach of the NPPF design policies. Indeed the NPPF, including policies on efficient use of land, is entirely ignored in Ms Kemal's PoE.

3.5. Turning to the development proposal itself, Mr Brown's Building for Life ("**BfL**") rebuttal statement explains in detail why he disagrees with a number of the traffic light scores under the dozen indicators. It can be noted that many of the issues set out in MfL do not directly concern RfR2 and matters of quantum and layout.

3.6. Mr Brown's evidence presents a fairer and better reasoned assessment, and should be preferred to that of Ms Kemal, whose evidence frequently conflated the different standards of "acceptability" and "perfection", and the distinction between "difference" and "harm" (without any regard to constraints and site characteristics). It is revealing that Mr Brown's conclusion that the scheme is of a high quality of design accords with the conclusions of the officers recommending the scheme for approval, following their detailed consideration of the scheme over many months. The officer report on design needs to be read in full, but the Appellant notes the clear summary of officers on design as follows:

"*In conclusion, the proposed scheme's layout together with the associated illustrative elevations (which show the scheme's potential scale and massing) satisfactorily demonstrates that a development is achievable here which successfully responds to the site's immediate surroundings as well as having an acceptable impact from more distant*

surroundings. The submission demonstrates that the site is able to accommodate 104 dwellings and 186 student bedrooms (and one cafe) as well as associated infrastructure in a manner which will have an acceptable impact in terms of the development's layout, impact on the conservation area and impact on the wider UNESCO World Heritage Site and which will not prejudice delivery of the remaining site allocation."

3.7. In respect of the specific design issues raised in RfR2, they boil down to concerns over layout and quantum, and whether the scheme will fit in with the surroundings. Picking up on some specific issues that arise in the evidence:

3.7.1. Layout and depth of plan form: There is no policy restricting plan depth. The National Design Guide (CD47, para. 43) indicates that well-designed places do not need to copy their surroundings, and it is appropriate to increase densities to reflect how we live today. The NPPF (see paras. 127c, 127e and 122) promotes this, and the general need to optimise potential and make efficient use of land. Although there is a point taken about plan depth, there is no actual identified harm that is said to arise. Flats are expressly acceptable under SB15, and are typically deeper than houses. At 14-16m, it may be a few metres deeper than some housing in the area, but the difference does not cause any material harm. Importantly, there is no correlation between plan depth and quality – and how depth is designed may give rise to harm in a given case, but that is not the situation here. Although depth may be apparent from a few limited standpoints (and not in a way to cause harm), a majority of viewpoints will not disclose the depth.

3.7.2. Surrounding space: The Council are concerned about limited space around the buildings. As Mr Brown explained in XiC, this criticism needs to be viewed in the light of the policy imperative to optimise the potential and efficient use of the site. In any event, the concern is unfounded. Of a 1.49 ha site area, only 0.36 ha is taken up by buildings (just under 25%): Brown PoE para. 5.28. Car parking / access roads also comprise about 25%, leaving just over half of the site as landscaped space, comprising four connected landscaped courtyards and 260 metres of landscaping running east-west adjoining the cycle and pedestrian link, for informal use and amenity. Access to the STR link from Newbridge Road is provided in line with SB15, indeed there are two north-south links by way of generous steps and a lift, as well as a further pedestrian and cycle route via the proposed ramp. Both routes overcome the challenging levels in different ways, offering choice. As Mr Brown also stated under XX, the route through a series of car free landscaped courtyards offers both legibility and interest, with its marker building and unfolding views, superior to a completely straight route, the focus of which would have been on the unattractive Maltings.

3.7.3. Importantly, the appeal scheme will not only fund this link between Brassmill Lane and Station Road on the site itself, but also some of the link off-site. The revised landscape plan (SoCG Appendix 1) presents generous landscaping opportunities at the reserved matters stage. As Mr Brown explained in response to XX, it is not just a question of quantity, but also quality. He explained that the quality of the

surrounding space is also high. The parking is on the periphery, which not only makes an efficient and productive use of the significant sewer constraint, but also crucially allows the heart of the scheme to be car-free. The interlocking blocks ensure courtyard views from most units and an interesting route through the scheme.

3.7.4. Quantum of development: Like plan depth, quantum is a crude measure of design quality. The quantum in this case entirely accords with the policy requirement for efficient use of land. This is exactly the type of site to be optimised: sustainable location, PDL, and underutilised. In terms of scale and context, the frontage responds appropriately to the Newbridge Road residential character with three storeys following the building line. The modern design takes cues from the context. Although it is mainly two storeys directly across Newbridge Road, these are raised up above ground level and there are 3-4 storeys nearby. Numerous recent residential and student developments up to 5 storeys have also been built in recent years within the same 'valley floor' character area as identified in the Building Heights Strategy. The lower level transitioning to the Maltings provides an appropriate context for taller blocks (4-5 storeys), but still consistent with the Building Heights Strategy zoning (see above). The usual indicators of excessive quantum, e.g. insufficient space and amenity impact, are absent.

3.8. Overall, the Inspector is invited to accept Mr Brown's evidence that there is compliance with both the general and specific design policies and there is no justification for refusing the proposed development on design grounds.

4. Housing Mix

4.1. This is the subject of RfR3 in which the Council state that the development "*fails to provide an appropriate mix of housing*".

4.2. As Ms Hampden accepted in XX, it is common ground that policy CP10 is not prescriptive about what the mix should be.

4.3. That is of fundamental importance.

4.4. As Mr Krassowski explained in XiC, many authorities do have a more prescriptive housing mix policy.

4.5. It simply states that new development "*must provide for a variety of housing types and size to accommodate a range of different households …*". In addition, "*the mix of housing should contribute to providing choice in tenure and housing type, having regard to the existing mix of dwellings in the locality and the character and accessibility of the location*".

4.6. Ms Hampden accepted in XX that the appeal scheme comprises two types of student bedspace and four types of residential flats including affordable rented accommodation. She unreasonably disagreed that this is clearly a "*variety of housing types and size*".

4.7. There is no obligation under policy CP10 to provide every type and size of housing.

4.8. Nor is there any obligation to always provide family housing in order to comply with policy CP10 (Ms Hampden disagreed with this in XX, which confirms her flawed approach to the policy).

4.9. CP10 has been found in a very recent appeal decision to be complied with by the provision of just two accommodation types (student studios and student en-suite rooms in cluster flats): see the Plumb Centre appeal decision (CD61), para. 54.

4.10. Ms Hampden acknowledged in XX that the Council's position in the present appeal takes a different approach.

4.11. A flexible approach, having regard to the locality and character of the area, is manifest in the Council's approach to other cases: see Mr Krassowski's Proof, para. 6.9.

4.12. The Officer's report for this scheme agreed with the Appellant's mix:

"*there is a significant quantum of conventional housing in the locality and it not considered necessary nor reasonable to insist that conventional housing be provided as part of the mix*"

4.13. Mr Krassowski's evidence is that the site is well suited to higher-density development with smaller units, due to physical constraints and the sustainability credentials of the site, and will contribute to the need for "starter homes" in the city: Mr Krassowski's Prof, para. 6.14 and his XiC. None of these factors were considered by Ms Hampden in her analysis of housing mix, despite her accepting that the policy requires consideration of the "character and accessibility of the location".

4.14. The Appellant also relies on the clear evidence of Bath agents Carter Jonas that the unit mix will be met with high demand in Bath (and that the same wouldn't apply for family housing): Appendix 8 to Mr Krassowski's Proof. Again, Ms Hampden did not address this evidence.

4.15. In the Officer's Report (CD34), under the section "Quantum and Capacity", just before the highway section, the officer referred to CP10 and concluded that a wide range of types and sizes is provided. He noted the significant quantum of conventional housing in the locality. Mr Krassowski in XiC totally agreed with him.

4.16. National Space Standards were considered in XX of Mr Krassowski and Ms Hampden. As Mr Krassowski explained:

4.16.1. They are guidelines, and not mandatory;

4.16.2. They are not endorsed or applied by the Council;

4.16.3. It is the "1 bed 1 person" studios (24 in total) that are below the standard, but that is because they are aimed particularly at first timers / graduates.

4.16.4. The internal layout is not fixed at this stage, and so unit sizes could change (a point also made in XX by Mr Brown).

4.17. In relation to rents, Mr Krassowski made the point that the rents will not be pitched at the 'low income' market, and for good reason: viability. The Appellant does not accept the figures quoted in Ms Hampden's evidence.

4.18. Additionally the Appellant is at a loss to understand what actual harm would be caused if the mix of housing in this development is approved. There is simply no identification of the harm that would accrue if planning permission is granted in this regard.

5. Open Space

5.1. Policy LCR6 provides that "*where new development generates a need for additional recreational open space and facilities which cannot be met on-site or by existing provision, the developer will be required to either provide for, or contribute to the provision of accessible sport and recreational open space and/or facilities to meet the need arising from the new development*".

5.2. The simple point is this policy simply does not justify refusal of the proposal. It has no operative parts that apply to a failure to have enough on site provision.

5.3. In response to a question from the Inspector, Ms Hampden accepted that the focus of the policy is on the provision of new and replacement sports and recreational facilities in the community (and not on-site space provision for new developments). The Inspector also asked about whether there was another policy looking at how much on-site open space should be provided for a development.

5.4. Ms Hampden said that the Green Space Strategy sets this out, but this document is only looking at how much of a need for communal facilities and open spaces might be generated by a development.

5.5. Ms Hampden was unable to point to a single policy in the plan itself that requires a certain standard of on-site amenity green space for a proposed development.

5.6. When the Inspector asked Ms Hampden about the proposed areas of open space in the layout of the scheme, and what was wrong with it, she was unable to provide a convincing answer. The reality is that there is plenty of outdoor space for residents both in the scheme (including balconies, the potential for roof terraces, the on-site STR and adjacent amenity space, and courtyards) and nearby (see e.g. Brassmill Lane Park and Rudmore Park). In any case, a £260,000 contribution is made to the STR's missing links off-site (the sum being the Council's calculation for what is needed to complete the links), and a further £25,000 for off-site allotments (not to mention an estimated/provisional £904,990.29 in CIL from the student element, and £555,417.78 in CIL from the residential element – these figures are estimated based on a calculation by the Appellant and will be definitively determined at a later stage).

5.7. As XX of Ms Hampden revealed, there is a clear inconsistency in the Council's case.

5.8. They rely on conflict with policy LCR6, which is premised on (and only activated by) it <u>not</u> being possible to provide open space on-site, but their justification for conflict is to point to the inadequacy of open space on-site. She eventually conceded in XX that

Policy LCR6 is not about assessing the adequacy of on-site provision, and then wrongly withdrew that concession.

5.9. Mr Krassowski in XiC explained that the Appellant has done what LCR6 requires: making contributions to off-site open space given the absence of this being possible on site.

5.10. The Officer's Report (CD34) took the correct approach and stated as follows:

"it is impractical for this development to provide sufficient quantities of these greenspace typologies on-site. Importantly it is recognised that the development can provide wider green infrastructure benefits through the delivery of the sustainable transport route. The route will provide improved access to existing green space typologies on the river corridor and beyond and has the potential to be a recreational facility that can contribute to meeting the requirements of policy LCR6."

5.11. The STR will have the important effect of providing the missing link between Bath Spa's Locksbrook campus and their main campus – a significant sustainable travel enhancement for students and local residents. The STR is a fantastic recreational resource in its own right, rather than simply a means of getting from A to B. It forms part of the West of England Combined Authority's Local Cycling and Walking Infrastructure Plan for improving cycling routes within Bath, as highlighted in section 3.2 of Mr Monachino-Ayres' PoE.

5.12. The linkage with the Bristol to Bath cycle path is also a significant material benefit. In terms of "*existing provision*", which also needs to be considered under policy LCR6, the Appellant also draws attention to Brassmill Lane Park, approximately 150 metres from the site.

5.13. As the evidence of Mr Krassowski shows, and consistent with the approach taken with other planning applications in Bath, the open space issue needs to be considered in the context of this scheme maximising the opportunity to optimise the efficient use of a previously developed site with excellent sustainability credentials.

5.14. It is very difficult to understand what the allegation of harm here is for this element of the proposal. The Council refers to figures of the demand for green space arising from the development in Ms Hampden's proof at para. 7.5. Ms Hampden in XX accepted that there was no expectation that these would be met on site, and that there was no reflection of these requirements in SB15. But she also erroneously suggested that no green space was being provided on site. This is entirely untrue. The courtyards and the STR is an obvious example of on-site open space provision, with amenity space on either side of it, which in total equates to just over half of the site area being devoted to landscaped space. The planning officer and the Parks Officer in his consultation response (CD31xvii) saw the STR's significant benefit (going beyond simply on-site improvement) as indicating that Policy LCR6 was complied with. This was clearly the correct approach. The reality is that the STR is a very special contribution which goes way beyond what other residential schemes can offer.

6. <u>Overall position on compliance with the development plan</u>

6.1. For the reasons given above, the Appellant's primary position is that there is no conflict with any policy in the development plan.

6.2. However, as Mr Krassowski explained in XiC, even if there is merit in any of the Council's concerns considered above (which is rejected), it is clear that the proposal complies with the development plan when taken as a whole. Ms Hampden accepted in XX that her PoE gave no weight to the 37 policies in the development plan which are not breached and/or positively support the proposal. She explained that her Proof of Evidence was "not a committee report" and instead focused on the reasons for refusal. This approach is contrary to the requirement under s.38(6) to consider the development plan as a whole and reach a judgment.

6.3. Even taking Council's (unfounded) concerns about design, housing mix, and open space provision at their highest, the development plan when taken overall is clearly directing permission to be granted. This is not a scheme on greenfield land outside the settlement boundary. The proposal delivers a key site allocation that is agreed to be a critical component of the Council's housing supply (in Bath itself, where 60% of the area's housing is to be provided in line with the Spatial Strategy), on previously-developed and under-utilised land in a sustainable location, where there is no dispute that the site-specific design principles in SB15 are complied with, there is no heritage harm, no residential amenity harm (whether to occupiers or neighbours), and an important sustainable infrastructure contribution is made via the STR. In these circumstances, it is no surprise that it was recommended for approval by officers.

7. The benefits of the proposal

7.1. The proposal will bring the 13 important benefits listed in section 4 of Mr Krassowski's Proof, identified by reference to the NPPF. Ms Hampden's evidence considered only those NPPF paragraphs identified in the reasons for refusal, and did not have regard to any of the policies in the NPPF that support the proposal.

7.2. Like her approach to development plan, this is a flawed and partial approach that excludes material considerations from the planning balance.

7.3. The identified benefits are as follows:

7.3.1. Benefit 1 - The re-use of previously developed brownfield land, to which the NPPF says "substantial weight" should be given: [NPPF 118c]. In XX, Ms Hampden eventually accepted that, in line with the NPPF, "substantial weight", and not her initial giving of "limited weight", was appropriate for this benefit.

7.3.2. Benefit 2 - The ending of the under-utilised and unattractive status quo following years of discussions with the Council. The NPPF says this should be promoted and supported [NPPF 118d]. It is common ground that the existing buildings are harmful and a detractor from the existing townscape character (see above). Ms Hampden gives only "limited weight" to this, on account of her view that this was not the right development proposal (on account of identified harms). This reveals her unfair approach to the balancing exercise, because she qualifies her weighting of the benefits by reference to the harm, but does not qualify her weighting of the

harm by reference to the benefits. The Appellant's approach, voiced by Mr Krassowski in XiC, is to look at the harms and benefits separately. Once that is done, it is clear that Mr Krassowski is correct in giving significant weight to the benefit of ending the unattractive status quo. As he explained in XiC, his giving of significant weight is rooted in it being common ground that the site is harmful. It must not be forgotten that the existing buildings are in the World Heritage Site.

7.3.3. Benefit 3 – The redevelopment of under-utilised land and buildings [NPPF 118d]. As Mr Krassowski explained in XiC, this is clearly being given a lot of importance by the Government, and this scheme does exactly what is required.

7.3.4. Benefit 4 - The development of a site in a sustainable location [NPPF chapter 9]. Ms Hampden's approach is to give limited weight to this benefit because any development of the site would be able to take this benefit. But simply because another scheme could also have this benefit, there is no basis for reducing the weight to be given to this benefit. It is revealing that Ms Hampden does not take the same approach with harms: she does not say, for example, that design harm should be given limited weight because other schemes might be harmful. Ms Hampden did, however, accept in XX that this benefit addresses a key objective of the NPPF. Mr Krassowski gave this significant weight in XiC, because it is again a key tenet of the NPPF.

7.3.5. Benefit 5 – The maximisation and efficient use of land [NPPF 123]. With a city surrounded by Green Belt, maximising (or making optimum use as Mr Krassowski corrected in XX) on this land is vital, and attracted significant weight for Mr Krassowski.

7.3.6. Benefit 6 - The provision of market housing [NPPF 59]. Ms Hampden again committed the same error of qualifying the weight to be attached to this by raising concerns about the mix. She maintained her weighting of "moderate" despite accepting at para. 5.6 of her PoE that the site is a "crucial component in future land supply". Indeed, it is relied on as coming forward in 2026-2027. Mr Krassowski gave this benefit "very significant" weight.

7.3.7. Benefit 7 – The provision of affordable housing (12.5% being the agreed maximum which can viably be provided) [NPPF 61]. Ms Hampden accepted in XX a "compelling" need for affordable housing, and that this scheme was giving the maximum amount that could viably be provided, rendering it policy compliant. Despite this, she maintained that only "moderate" weight should be given. Mr Krassowski's "very significant" weighting is to be preferred. He explained that the policy requirement of 40%, from the outset, could not be delivered due to the viability issues. The viability assessment by CBRE demonstrated this. Cushman and Wakefield were instructed by the Council to critically review the assessment in order to ensure it was robust, and accepted that 12.5% was the maximum.

7.3.8. Benefit 8 - The provision of purpose-built student accommodation [NPPF 61]. In the Plumb Centre decision (CD61), para. 34, the Council sought to give the

provision of PBSA as having "minor" weight. At para. 37, the Inspector totally disagreed with the Council's view:

"*It seems to me that making significant inroads into reducing the dominance of the private rented sector in meeting the demand for student accommodation in Bath would be likely to result in a substantial future demand for PBSA. The likely demand for dedicated student accommodation is a consideration that weighs heavily in favour of the appeal scheme*."

Ms Hampden said in XX she does not disagree with the appeal decision. Despite this, she maintained a view of "limited weight" to this benefit. Mr Krassowski said that, following suit with the Inspector in the Plumb Centre (an up to date decision), the provision of PBSA should weigh heavily (significant weight).

7.3.9. Benefit 9 - The provision of economic benefits [NPPF 80]. Mr Krassowski explained that this site is an investment of £39 million. Although there would be short term construction benefits, there will also be longer term benefits in the retail unit, and in the spend by the 425 future occupants in the community. This is why "significant weight" is justified.

7.3.10. Benefit 10 - The social benefits [NPPF 8]. Mr Krassowski rightly gave this significant weight. Even Ms Hampden gave this moderate weight.

7.3.11. Benefit 11 – The provision of the STR. Ms Hampden accepted in XX that this was a key aspiration in the Development Plan, and only gave it moderate weight due to it being a policy requirement. This is incoherent. It cannot be right that, simply because it is strongly supported in policy, the weight should be reduced. The exact opposite conclusion should be reached, because the proposal is securing something that has been identified in policy as important. If it were not important it would not have been included as policy. It is critical to note that the provision of the STR is not just on-site, but also involves improvements off-site (which goes beyond the policy requirement). Mr Krassowski is right to give this provision very significant weight. Had the requirement been ignored, it would have been a clear reason for refusal.

7.3.12. Benefit 12 - The landscape and biodiversity enhancement (a net gain of over 16%), [NPPF 175]. To only give "limited weight" to this, despite the significant net gain, is wholly unjustified by Ms Hampden. Mr Krassowski gave this significant weight, having regard to what is set out by the Appellant's ecologists in Appendix 6 to his PoE. The removal of the ecology RfR (RfR4) is important to note. The appendix explains the mitigation designed into the proposals, as well as planting. The benefits are significant.

7.3.13. Benefit 13 - Accessibility by alternative means of transport: [NPPF 103]. Already an accessible site, and will be made even more so by the STR. It is common ground – 2.8-2.11 of the SoCG. Mr Krassowski gave this significant weight.

7.4. These benefits are individually and cumulatively substantial.

7.5. Taken together, Ms Hampden concluded that the overall weight to given to the benefits would be "limited to moderate".

7.6. This is extraordinary for a proposal delivering the above benefits. But her approach to benefits was utterly wrong. To reduce weight because a benefit is required by policy is utterly without justification or precedent. To take such an approach to its logical conclusion, only benefits not in accordance with policy could get full weight. This is a ridiculous proposition.

7.7. Additionally, to reduce weight because any development would involve re-use of PDL for example is also absurd.

7.8. Additionally, to reduce weight because the development could have more of the benefit is also absurd.

7.9. Her weighting of benefits was outrageously destined to neuter the weighting to the benefits.

7.10. There is a tendency to partiality when giving evidence and Ms Hampden won the Olympics for an approach which made her weighing of the benefits frankly without credibility as a meaningful exercise.

7.11. Mr Krassowski instead pulled the threads together properly and regarded the cumulative benefits as "significant to very significant" overall.

7.12. They collectively indicate that, applying section 38(6) of the Planning and Compulsory Purchase Act 2004, there are no material considerations which would justify a departure from the development plan in this case. They instead reinforce the justification for granting planning permission.

7.13. If permission is refused, Mr Krassowski explained in XiC that the site will likely stand idle in the short and medium term. The requirements of SB15 and the benefits will not be delivered. It would be a missed opportunity.

8. <u>The Rule 6 Party's objection</u>

8.1. The Rule 6 Party, Standard Life Assurance Limited ("**SLA**"), own the Maltings Industrial Estate ("**the Maltings**"), which immediately adjoins the appeal site to the south.

8.2. Their objection is risible for three fundamental reasons in introduction.

8.3. Firstly, they seek to complain (at considerable volume and repetition) at the prospect of cars, MGVs and HGVs doing in future what has been done for 27 years since they purchased the site in 1994.

8.4. They complain bitterly about something which has been happening for years without so much as a complaint. For 27 years there has been harmony and contentment.

8.5. So why the fear? It is inexplicable to us frankly.

8.6. The only difference is the vehicles are going to be generated by a different use/s of the appeal site in future.

8.7. It is remarkable that SLA complain so much about the continuation of something which has happened for 27 years, and yet hearing the closing of SLA an outsider would assume that what was proposed was a deeply harmful and transformative change from what had previously happened on this right of way.

8.8. Absolute rubbish.

8.9. All that is proposed is the continued use of the right of way, albeit for a residential development instead of a car dealership. Nothing more and nothing less.

8.10. Secondly, it is worth emphasising that SLA should be given very little sympathy because they purchased their interest in the Maltings in full knowledge and understanding that a deed had been agreed by them, the rights it offered had been agreed by them and the continued use of the right of way by the very large site retained by Oakhill had been agreed by them.

8.11. No one but them agreed the terms and nature of the deed.

8.12. That does not feature once in the opening or closing of SLA.

8.13. Every single frustration expressed in closing by them is absolutely brought about by their express agreement in the conveyance in 1994.

8.14. They signed up 1 million % to this deed and they do not deserve a shred of sympathy for the predicament they now say they find themselves in, which they were utterly complicit in bringing about.

8.15. Thirdly on their own case this is no longer an industrial estate but has a sui generis use now!

8.16. Notwithstanding that SLA claim this "is a very high quality industrial estate" [Closing paragraph 55].

8.17. It is funny how when it suits them it is very high quality and then their agent goes out and gets every Tom, Dick and Harry to occupy it!

8.18. SLA have allowed many uses with trade counters [Tools, tiles, car parts, office equipment, plumbing supplies] and a brewery. It is now used in a way that seeks to and does attract hundreds and hundreds of members of the public every single day!

8.19. The double standards of SLA are remarkable in this regard – when it suits them at this inquiry it needs to be treated with almost reverence as a strategic employment/industrial estate and yet they let it out to uses which allow many members of the public to come and utilise the trade counters, they allow outside drinking and festivals in conjunction with the Brewery.

8.20. Has Mr Jones actually been to this site? Has he shared a drink on a summer night with the hundreds of other drinkers there? Has he queued to get into Toolstation, Topps Tiles, Euro Car Parts, Office Equipment and the City Plumbing trade counters?

8.21. Now let's consider what is proposed in this development.

8.22. The starting point is that, for the proposed development, access will primarily be from Newbridge Road. This will, where possible, be the main access for the development.

8.23. However, there is another access proposed from Brassmill Lane, through the Maltings.

8.24. This route under the proposed development will be limited to providing access to 9 parking spaces which will be restricted to use only by permit holders, service access for MGVs and HGVs, and emergency vehicles.

8.25. That is the extent of the proposed use.

8.26. The lawful right to use of this secondary access for the proposed vehicles falls within the right of way arising from the Deed of Grant dated 11 May 1994 ("**the 1994 Deed**"). This is common ground.

8.27. The 1994 Deed gives the Appellant a very wide right of access through the Maltings for vehicles, cyclists and pedestrians which is now common ground notwithstanding the many months when SLA disputed the rights under the 1994 deed which they have utterly capitulated on now. That capitulation is expressed in closing when SLA accept that their private law options are so limited [Closing paragraph 14].

8.28. The rights in law are wide ranging and comprehensive:

8.28.1. The right is for use "at all times", with no express limit on the number of vehicles, and an express provision for "vehicles" to include "all classes of HGV".

8.28.2. As a matter of law, the frequency or quantity of users is not limited to the frequency or quantity at the time of the grant. It is instead limited by the physical state of the way at the time of the grant. Here, it is an express requirement of the Deed that the way is "of sufficient width and classification" to accommodate all classes of HGV: see Appendix 10 to Mr Krassowski's PoE.

8.28.3. The 1994 Deed is also not limited to providing a right of way for the appeal site as a car dealership, but applies whatever the use of the appeal site may be in future.

8.29. The 1994 Deed therefore gives the Appellant the full and absolute rights they need for their proposed limited use of the access route through the Maltings as part of the scheme.

8.30. That is our overarching submission and one we seek the strongest endorsement from you on.

8.31. There is simply no need for any additional agreement, management plan or any other legally binding document for the Appellant to have in order to use the route in future.

8.32. This is said with complete conviction and absolute certainty and nothing that has been said by SLA in closing challenges that.

8.33. Then one needs to consider the concerns of SLA.

8.34. SLA are concerned about the impact of the use of this access route on occupants of the Maltings. They say there are planning harms which will arise from the Appellant's proposed use. They also have a separate complaint that the future residential occupants of the scheme will complain about noise emanating from the Maltings and therefore jeopardise the ongoing use of the Maltings by the occupants of the industrial units.

8.35. Both of these concerns are without foundation.

8.36. Taking the access issue first, there is no evidence that the proposed use of the access will have any adverse planning impacts on the Maltings. The assertion by SLA that this will be "wholly unsuitable access required across the Maltings" is not made out at all.

8.37. Where is the evidence of this? The position is that:

8.37.1. SB15 does not bar or preclude such access in any way.

8.37.2. SLA have called no evidence that the access will be unacceptable from any highway consultant.

8.37.3. There is no highway objection from the LHA. They raised issues at pre-application stage [the only comments relied on by the LHA in their closing] but they further considered such matters and were completely satisfied by the time the application was determined. Not unsurprisingly that is not stated in closing!

8.37.4. Mr Monachino-Ayres takes the view that it is acceptable.

8.37.5. The Previous Appellant's highway consultant, Mayer Brown, say it is acceptable.

8.37.6. Therefore you have 3 positive qualified conclusions that the proposed use of this access is completely acceptable in a technical manner. There is simply no substance to SLA submitting it is wholly unsuitable access. It is nothing but hot air.

8.37.7. In relation to the claim at para. 29 of SLA's Closing that the Maltings Utilisation Note at CD69 is out of date because it does not refer to MGVs, this is completely wrong, as Mr Monachino-Ayres explained in the roundtable session. The Utilisation Note does not expressly use the term "MGV" but that is only because it assesses the estimated trip generation of the proposed development by reference to the broader category of "OGV", or Ordinary Goods Vehicle – see para. 1.32. You will see from paras. 1.17 that OGV covers anything that isn't a "light goods vehicle" (LGV), i.e. including MGVs.

8.38. The access of the route has historically been used for the car dealership for many cars (an average of 57 movements per weekday), vehicle recovery trucks and transporters: see Monachino-Ayres PoE para. 7.3. There is no evidence of this ever having been an issue for the Maltings. The unchallenged evidence is that the proposed development will generate fewer vehicle movements than the previous car dealership. The proposed use is nothing remotely unusual for a residential development: access to 9 parking spaces, together with service access and emergency access (where the primary access is not feasible).

8.39. How this entirely ordinary use can cause unreasonable interference with the Maltings, or cause the claimed security concerns, is not clear. Concerns raised about very short (i.e. 2 minute) delays while gates are opened are unfounded – in any event, such delays occurred when the car dealership was in operation. There is simply nothing in the point.

8.40. Much is made by SLA of potential impacts on sensitive industrial uses, and the problem of introducing occupants of the 9 parking spaces and service vehicles to the access route, and the consequent security and health and safety issues. The reality of the Maltings is that it is very frequently visited by members of the public, because a number of the units have trade counters, and there is even a brewery that has a bar and shop that is open to the public. They have outdoor drinking events and on site food and a tap room!

8.41. There are thus 15 units of which 7 have trade counters or activities that get the public in. Of the total floorspace of 60,762 [SoCG with SLA] 36,073 sq. foot [Units 1,2,3,4,12,14 and 15] trade in a manner that invites the public to visit or 59% of the floorspace. This is simply not a traditional industrial estate but SLA have allowed users to come and completely change the nature of it.

8.42. This completely undermines the concerns raised about one of the industrial units having sensitive national security credentials.

8.43. So the suggestion that the proposed development will introduce an alien use of the access route that presents a security or health and safety risk is absurd.

8.44. SLA have played fast and loose with this estate in terms of the nature of the tenants and the consequences of that are plain to see on the ground.

8.45. However, to the extent that there are any planning issues relating to interference, security, health and safety arising from vehicles using the access, it is important to recognise that the Appellant is required by the s.106 agreement to produce a "Vehicle Management Plan" ("**VMP**") for approval by the Council: see Schedule 8, Part 1.

8.46. This is conveniently ignored by SLA.

8.47. The VMP is defined as "a document setting out Oakhill's detailed proposals for the management of vehicles in the development and for vehicles having unrestricted access to and from the development through the Maltings Industrial Estate, such Plan to follow the principles in the Framework Management Plan". The Framework Management Plan is appended to the s.106 agreement and sets out the overarching principles for the management of vehicles in the development. Paragraph 1 of Schedule 8 to the s.106 prevents the development from being commenced until the VMP has been submitted to and approved by the Council. Paragraph 3 requires that the development shall be occupied and operated in accordance with the approved plan, subject to such amendments as may be agreed by the Council. Paragraph 4 requires the Appellant to

provide the Council with such evidence that the Council reasonably requires to demonstrate compliance with the approved VMP.

8.48. As the Inspector knows, the Appellant has been seeking to resolve SLA's concerns by negotiating a private agreement (comprising a Deed of Covenant and a Management Plan) between SLA and the Appellant to govern the use of the access under the 1994 Deed for the purposes of the proposed scheme. The Appellant's consistent position is that such an agreement is not necessary due to:

8.48.1. The absence of any evidence of actual planning harm;

8.48.2. The existence of the 1994 Deed giving the Appellant the complete power in law to have the required access through the Maltings;

8.48.3. The existing private rights of SLA to restrain any unreasonable use of the right of way. Such private rights cannot be cut down or prejudiced in any way by the grant of planning permission: see para. 7 of the Eversheds Sutherland Legal Note at Appendix 2 to Mr Monachino-Ayres' Rebuttal Proof ("**the Eversheds Note**"). The law of easements provides that any right of way cannot be exercised unreasonably or excessively so as to cause an undue interference for the occupants of the servient tenement (here, the Maltings): see ***Moncrieff v Jamieson*** [2007] 1 WLR 2620 at [45] [See MAK 10 for the reference]. Were that to happen, SLA's remedy would be to seek an injunction to restrain the excessive use. All of this applies regardless of the grant of planning permission.

8.48.4. The requirement in the s.106 to seek approval for and comply with the VMP. As will be explained below, this is the vehicle through which any planning impacts can be addressed.

8.49. The Inspector has seen previously at least two drafts of the proposed Management Plan, which was considered in detail in the roundtable session on day 2 of the Inquiry.

8.50. Following this session, a draft Deed of Covenant and a revised Management Plan were provided to SLA on a without prejudice basis on Friday 19 February 2021 at 3.28pm. SLA did not respond until 8.55am on Thursday 25 February 2021, the day before the close of the inquiry. This Closing could not have referred to their comments in any event, because they were made in without prejudice correspondence. However, even if they had been made in open correspondence, the Appellant has been left with wholly insufficient time to address their comments in this Closing or in revised drafts of the documents.

8.51. Their consistent approach has been to offer only problems, not solutions.

8.52. Although Mr Welch for SLA said later in the day on 25 February 2021 that SLA were still willing to negotiate, he also undermined any serious intention to negotiate by indicating in strong terms that he would resist any application to adjourn to facilitate further negotiations.

8.53. This resistance to an adjournment was maintained even after the possibility of a 1 week adjournment was raised by the Inspector.

8.54. The mask has dropped. SLA simply have no real desire to get an agreement when just one weeks delay is not worthy of support in the attempt to get an agreement.

8.55. The Appellant on the other hand would have been willing to continue negotiations, and adjourn the inquiry to facilitate this. But in the face of the clear position of Mr Welch for SLA, it is evident that they are not.

8.56. The simple position is that one party (the Appellant) wanted to reach an amicable solution to this issue and another party (SLA) wallow in dispute, argument and procrastination. That perception of the respective sides has been endorsed in spades this morning.

8.57. Given that it has not been possible to agree privately between the two parties, the Appellant can in due course simply amend the draft Management Plan so that it is no longer a 2-way agreement, and instead turn it into a plan setting out how the Appellant will operate and police the use of the right of way through the Maltings. That plan can then be submitted as part of the VMP. As noted above, this is the proper mechanism to enable any planning impacts on the Maltings (which are denied) to be addressed, through controls on vehicle movements, security and any other relevant matters. The VMP will need to be approved by the Council, who would be free to consult SLA on their views. The Appellant would then need to comply with that VMP.

8.58. As the Inspector will see from the drafts he has seen, the reality is that a vast majority of the draft Management Plan would have dealt with matters that are within the Appellant's control (in particular the gate between the Maltings and the appeal site). That gate and any other reasonable vehicle management measures can all be secured through the VMP. The main exception is how the gate from the Maltings onto Brassmill Lane will be operated at night when the Maltings is closed and the gate is closed. But given that the Appellant has the unrestricted 24/7 right of way under the 1994 Deed, which cannot lawfully be obstructed by SLA, SLA will have no option but to agree a suitable arrangement for that gate in any event. If they don't, the Appellant can sue SLA for obstruction of the right of way.

8.59. In any case, the Inspector does not need to consider in this appeal what the VMP will contain (nor by extension what is in the draft Management Plan). That will be a matter for the future, when the VMP needs to be submitted and approved by the Council pursuant to the s.106 (in consultation with SLA if necessary) prior to commencement of the development.

8.60. The availability of the VMP control mechanism underlines why (a) the proposed private agreement between the parties, although offered by the Appellant as a good neighbour to secure SLA's objection being withdrawn, is unnecessary, and (b) SLA's concerns about impacts arising from the use of the access are unfounded. The VMP enables any identified planning impacts from the use of the access through the Maltings to be addressed and mitigated.

8.61. The VMP mechanism in the s.106 is also presumably why the Council has not considered the concerns raised by SLA to be a reason to refuse planning permission.

8.62. Overall, for the reasons given above, the concerns raised by SLA about the proposed use of the access plainly do not justify the dismissal of this appeal.

8.63. Turning to the concerns about future occupants complaining about the Maltings:

8.63.1. The starting point is that the appeal site is allocated for residential development, which indicates the Council's view that residential development adjacent to the Maltings is acceptable as a matter of principle.

8.63.2. There will be no material change to the character of the area, which is already residential. Existing adjoining houses are closer to the Maltings than the scheme will be, and there is no evidence of any noise issues.

8.63.3. The planning permission for the Maltings (Appendix 2 to Bending PoE) is for 15 "light industrial units", and condition 6 provides that "no processes being carried on or machinery installed which are not such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit". As the Inspector noted, the wording of condition 6 is very similar to the "light industrial" use which was formerly Use Class B1(c) and now falls within Class E. Given this planning restriction on the lawful use of the Maltings, it is difficult to conceive how unacceptable noise impacts could affect future residents of the scheme so as to give rise to complaints. Such impacts on residential amenity would be a breach of planning control by occupants of the Maltings.

8.63.4. In any event, proposed condition 17 for the scheme, which has been suggested as a result of the Council's Environmental Health officer's consideration of the noise assessment submitted with the planning application, will address noise impacts too.

8.63.5. In the light of these points, the Appellant rejects the contention by SLA that an easement to create noise needs to be granted to SLA (by reference to the Thorpe park example). Despite this, the Appellant was willing to agree such an easement,

but agreement has not been reached. SLA have to date not responded to this aspect of the draft Deed of Covenant provided on Friday 19 February 2021.

8.64. The Appellant therefore concludes that there is no risk that the future residents of the scheme will raise reasonable complaints about the Maltings, so as to place the use of the industrial estate in jeopardy.

8.65. For these reasons, the Appellant submits that SLA's objection should not lead the Inspector to have any concerns about planning impacts on the Maltings (a position that is consistent with the Council's absence of concern).

8.66. You can take comfort that the LPA have not got any reason of refusal relating to this element of the scheme. SLA are on their own completely. They have simply no credible case to object to the grant of planning permission when we have absolutely right to do what we propose to do.

8.67. If we do not have such a right [which is completely denied now] SLA will have remedies in private law.

8.68. There is simply no reason not to grant planning permission when the fog produced by SLA is removed.

9. Other Third Party objections

9.1. As noted in Opening, other objections and concerns have been raised by Third Parties, regarding highway safety, traffic impact, parking and management of students. These are dealt with in the Proofs of Mr Krassowski (paras. 8.13-8.23) and Mr Monachino-Ayres.

9.2. Whilst concerns about a new development are always understandable because of the effect of change, the Appellant is of the view that none of the concerns raised beyond the Council's case are justifiable grounds for refusing consent for this application because they are not endorsed by the consultation responses and all have been dealt with in great detail by the application documents which show the concerns are not made out.

10. Conclusion

10.1. There is a national, regional and local crisis in the provision of housing.

10.2. This proposal will help house 425 people in an incredibly attractive development as the illustrative material shows.

10.3. It will compliment and improve dramatically this part of Bath.

10.4. Please think of your power to transform those lives by granting consent by using this site as sought by the development plan to house people.

10.5. 425 people will have their lives transformed by the grant of planning permission.

10.6. Overall, this is a proposal which achieves compliance with all relevant development plan policies, and should be approved without delay under NPPF para. 11(c).

10.7. There are no material considerations to justify a departure from the development plan.

10.8. Instead, the material considerations including many benefits, including the optimised and efficient use of under-utilised previously developed land, reinforce the grant of planning permission.

10.9. Therefore the fundamental submission of the Appellant is that granting permission for this scheme would end the undesirable status quo, secure the much-needed delivery of a key site allocation in the Council's development plan, and optimise the effective use of this under-utilised previously developed brownfield site in Bath.

10.10. The Inspector is invited to allow this appeal.

26 February 2021.

SASHA WHITE Q.C. and MATTHEW FRASER
LANDMARK CHAMBERS.

APPENDIX 1 – CHRONOLOGY

- 19th century – Site used as a quarry. [SoCG 2.19]
- 1950s – Garage use commences on the site. [SoCG 2.19]
- Late 1960s – Concrete batching plant commences use. [SoCG 2.19]
- 8 October 2010 – Certificate for Appropriate Alternative Development issued for residential redevelopment of the site. [10/03384/CAAD]
- March 2012 – NPPF 1 published.
- 2013 – Mark Krassowski of WP instructed to provide planning advice to the Appellant with regard to this site. [MK paragraph 1.3]
- May 2014 – Screening request submitted to the LPA. [14/02229/SCREEN]
- 10 July 2014 – Core Strategy adopted. [CD37A]
- September 2014 – Planning application submitted by WP for 194 student units in three blocks on the site [14/03977/OUT].
- November 2014 – The planning application was withdrawn.
- April 2015 – BANES Planning obligation SPD adopted. [CD40]
- December 2015 – The LPA publish its submission draft Placemaking Plan.
- May 2016 – Pre-application submission made to the LPA for 100% residential scheme. [SoCG 2.22]
- June 2016 – EIP into the placemaking plan.
- 16 December 2016 – Pre-Application meeting with the LPA when principle of student accommodation accepted by officers. [MAK 2].
- 16 June 2017 – Meeting between WP and LPA [Chris Gomm]
- 28 June 2017 – Inspectors report published into placemaking plan [CD38]
- 3 July 2017 – LPA confirm the use of the site for student development is acceptable provided that the redevelopment contains at least 80 residential units [CD 3]
- 13 July 2017 – Part 2 Placemaking plan adopted. [CD37B and C]
- 15 July 2017 – Second Pre-Application meeting with the LPA when the principle of student accommodation accepted by officers [MAK 3]
- 21 July 2017 – Screening request made to the LPA by WP regarding EIA proposing development of 99 units and 170 student units. [CD 1] [17/03535/SCREEN]

- 4 August 2017 – LPA [Chris Gomm] confirm no requirement for an EIA. [CD 2]
- July 2018 – NPPF 2 published.
- 2 October 2018 – Another formal pre-application enquiry submitted.
- 16 October 2018 – Pre-application meeting between WP and LPA.
- 29 October 2018 – Formal pre-application advice provided by the LPA [Chris Gomm] [CD4] which confirms the acceptability of student accommodation.
- 29 January 2019 – Public exhibition held to show the proposals.
- 30 January 2019 – Further pre-application meeting with the LPA.
- February 2019 – NPPF 3 published.
- April 2019 – Submission of the outline planning application by the Appellant for 186 student bedrooms and 104 residential units and a retail unit of 148 square metres. [Application Ref: 19/01854/OUT] All matters reserved save for access and layout.
- 1 May 2019 – Planning application validated and the case officer is Chris Gomm.
- May 2019 – The operational use as a garage closes on site.
- February 2020 – Cushman and Wakefield provide viability assessment on behalf of the LPA confirming the Appellant's viability assessment.
- 11 March 2020 – Planning application presented to the LPA planning committee with Officer recommendation for approval [CD 34]. 274 letters of objection to the proposal. Members unanimously determine to refuse the application [10-0]. [CD35]
- 16 March 2020 – Decision Notice issued. [CD 36]
- May 2020 – LPA produce a Local Plan Partial Update ["LPPU"] with initial consultation.
- 21 August 2020 – Appeal submitted to PINS [CD56] with Statement of Case.
- 9 September 2020 – Start Letter sent by PINS.
- October 2020 – LPA statement of Case produced [CD 59]
- 16 December 2020 – CMC held.
- 22 December 2020 – LPA confirm that they are not going to defend RR 4.
- 23 December 2020 – Inspector provides CMC note.

- 30 December 2020 – Locksbrook Road Appeal decision issued granting planning permission for student scheme [CD61]

- 13 January 2021 – SoCG signed between the LPA and the Appellant.

- 19 January 2021 – Exchange of evidence by the parties.

- 20 January 2021 – PINS confirm development is not EIA development and no EIA is required.

- January 2021 – LPA produce a reg. 18 consultation on their Local Plan. Policy SB15 is no longer on the list of policies to be reviewed / altered.

- 5 February 2021 – Reason of Refusal 6 is formally withdrawn by the LPA.

- 8 February 2021 – Virtual Test event held.

- 16-26 February 2021 – Public inquiry by way of Section 78 of the TCPA 1990.

- Autumn 2021 – Anticipated date of submission of LPPU to the Secretary of State.
