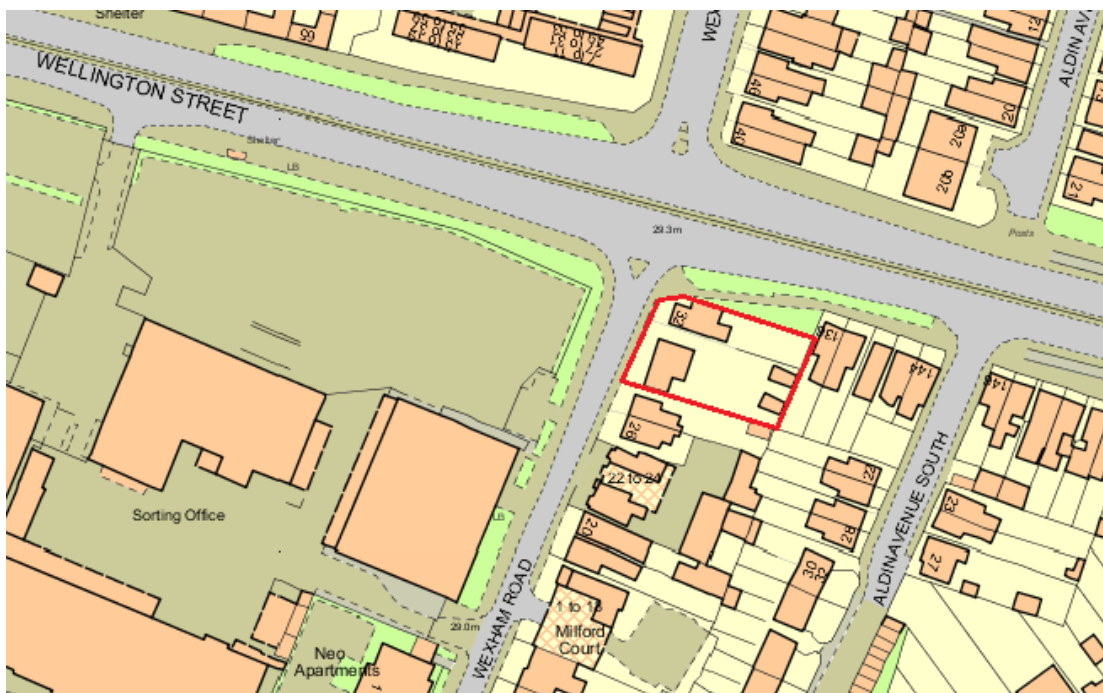


Registration Date:	23-Jan-2023	Application No:	P/19443/009
Officer:	Martin Cowie	Ward:	Central
Applicant:	Wexham Construction Ltd.	Application Type:	Major
		13 Week Date:	24 April 2023 [EoT 09 June 2023]
Agent:	GA&A Design, Suite 1, First Floor, Aquasulis, 10-14 Bath Road, Slough, SL1 3SA		
Location:	30-32 Wexham Road, Slough, SL1 1UA		
Proposal:	Demolition of the existing buildings and redevelopment of the site at 30-32 Wexham Road, Slough, SL1 1UA to create 27 new residential units (11no. 1 beds, 14no. 2 beds and 2no. 3 beds) with associated parking and landscaping.		

Recommendation: Delegate to the Planning Group Manager for Refusal



P/19443/009 - 30-32 Wexham Road

1.0 **SUMMARY OF RECOMMENDATION**

1.1 Having considered the relevant policies set out below, the representations received from all consultees and residents; as well as all other relevant material considerations, it is recommended that the application be refused for the following reasons:-

1. No legal agreement has been entered into by the applicant, by way of a Section 106 agreement, for section 278 highways works to provide a speed table to reduce vehicle speeds on Wexham Road and a 'build out' to ensure appropriate setback for visibility, and for off-site infrastructure made necessary by the development including funding for education, affordable housing, the mitigation of impacts on Burnham Beeches Special Area of Conservation. As such, the application is contrary to policies 4, 7, 9 and 10 The Slough Local Development Framework, Core Strategy 2006 – 2026, Development Plan Document, December 2008, Slough Borough Council's Developers Guide Part 2 Developer Contributions and Affordable Housing (Section 106), advice in the National Planning Policy Framework 2023 and to the requirements of Regulation 61 of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
2. Having assessed the partially constructed scheme in situ, the proposed scheme by reason of its scale, height and massing would fail to respect or respond to the established character and appearance of the area and would constitute the overdevelopment of the site. The proposed scale and massing in close proximity to the neighbouring dwellings, in particular, at no's. 28 Wexham Road and 136 Wellington Street, would result in an overwhelming sense of enclosure and overlooking. As a result, the proposed development would significantly harm the character and appearance of the area and the wider street scene, as well as, the amenities of the neighbouring occupiers. The proposal is considered to be contrary to the provisions of the National Planning Policy Framework (2023); Core Policy 8 of The Slough Local Development Framework, Core Strategy 2006 – 2026, Development Plan Document, December 2008 and Policies EN1 and H13 of Slough Local Plan, 2004.

1.2 Under the current constitution and in line with the original resolution of Planning Committee where if planning conditions and Section 106

had not been agreed, the application should return to Planning Committee for further consideration. In addition, in line with the scheme of delegation as it is an application for a major development comprising more than 10 dwellings the application should be determined by way of Planning Committee in any case.

PART A: BACKGROUND

2.0 Proposal

2.1 This is a full planning application for:

- Demolition of the existing residential accommodation comprising one family home (no.30) and four self-contained flats in the other property (no. 32).
- Construction of a part six/part five/part three-storey building.
- Provision of 27 self-contained residential units with a mix of:
 - 11no. 1-bedroom,
 - 14no. 2-bedroom
 - 2no. 3-bedroom flats
- Surface car parking providing 8 spaces (of which one would be designated for accessible use) – each to be provided with electric charging facilities.
- The provision of cycle parking facilities for future residents and visitors.
- Secure bin and recycling storage facilities.
- Redesigned and widened use of the vehicular access to the site from Wexham Road.

It should be noted that works for the development have commenced on site.

3.0 Application Site

3.1 The application site lies on the south-eastern corner of Wellington Street and Wexham Road. There are currently two detached residential buildings – no.30: a two-storey double fronted Victorian property comprises 4 self-contained flats; and no. 32: a two-storey bay-fronted Victorian property in use as a single-family dwellinghouse. Each has forecourt parking and its own rear garden space.

3.2 There are no particular changes in ground levels across the overall application site or between it and the adjacent sites.

- 3.3 To the south, between the site and the High Street are a series of two-storey dwellings, together with a three-storey block of flats at Milford Court and a four-storey block of flats at Neo Apartments.
- 3.4 Opposite to the west across Wexham Road, lies land used by Royal Mail for parking, which comprises part of much larger area identified in the Local Plan for future comprehensive residential development as Site SSA16.
- 3.5 To the east lies a series of two-storey domestic properties facing Wellington Street. The western boundary of no. 136 abuts the eastern side of the application site.
- 3.6 Wellington Street (A4) is a significant arterial route separating the residential areas to the north from the application site, as such, the character and layout of that area affords little material consideration of these proposals.
- 3.7 Access for proposed development site would be taken from Wexham Road in a similar but redesigned position to that serving no.30.
- 3.8 For completeness, it should be noted: the site adjoins the boundary of the designated Slough Town Centre; does not lie in a conservation area and there are no heritage assets nearby; and it does lie in a Flood Zone. As the site is located in Flood Zone 1, the proposals do not require a Flood Risk Assessment.
- 3.9 Since July 2023 where the application was last considered at Planning Committee, the scheme considered as been partially been built out and therefore the land is materially different to when it was last considered. In addition, the description of development is now incorrect whereby it should now be “part retrospective”. Officers have not sought the change of description due to the unacceptable nature of the development in any case, as described within the original and updated report for Members consideration.

4.0 **Relevant Site History**

- 4.1 The most relevant planning history for the site is presented below:

P/19443/000 Demolition of the existing buildings and redevelopment of the site at 30-32 Wexham Road, Slough, SL1 1UA to create 18 new residential units with associated parking and landscaping – Approved 06/01/2022.

- P/19443/001 Submission of details pursuant to condition 5 (Construction Environmental Management Plan) of planning permission P/19443/000 dated 06/01/2022. Condition complied with - 07/10/2022
- P/19443/002 Submission of details pursuant to condition 6 (Tree protection measures) of planning permission P/19443/000 dated 06/01/2022. Condition complied with - 22/09/2022
- P/19443/003 Non material amendment to application P/19443/000 dated 06/01/2022 involving the reconfiguration of internal layouts of flats, cycle storage and plant room areas. Approved 22/08/2022
- P/19443/004 Submission of details pursuant to condition 9 (new surface treatments), 10 (landscaping) and 11 (boundary treatment) of planning permission P/19443/000 dated 06/01/2022. Approved 01/11/2022
- P/19443/005 – Unregistered application for Demolition of the existing buildings at (30-32 Wexham Road, Slough, SL1 1UA) and, redevelopment of the site to construct 18 no. new residential units with associated parking and landscaping.
- P/19443/006 Submission of details pursuant to condition 3 (New finishes to building works) of planning permission P/19443/000 dated 06/01/2022. Condition complied with - 23/01/2023
- P/19443/007 Submission of details pursuant to condition 4 (Drainage (SuDS)) of planning permission P/19443/000 dated 06/01/2022. Condition complied with - 23/01/2023
- P/19443/008 Submission of details pursuant to condition 7 (Sound attenuation and ventilation) of planning permission P/19443/000 dated 06/01/2022. Condition complied with - 23/02/2023

5.0 Neighbour Notification

5.1 In accordance with Article 15 of The Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020 two site notices were displayed – each on lampposts in the immediate vicinity of the site’s location on Wellington Street and Wexham Road respectively on 08/02/2023. The application was advertised as a major application in the 17/02/2023 edition of The Slough Express.

At the time of writing this report no representations have been received.

6.0 Consultations

6.1 Slough Borough Council, Education

The table below sets out the calculations required towards education provision for early years, primary and SEND.

The method to calculate the contribution is as pre the Developer’s Guide:

Houses	mix	No of primary pupils	No of secondary pupils	Post-16	Early Years	SEND	Totals
1							£0
2	0	0	0	0	0	0	£0
3	0	0	0	0	0	0	£0
4+		0	0	0	0	0	£0
Flats							
1	11	0	0	0	2	1	£9,927
2+	16	3	0	0	4	5	£77,258
		3	0	0	5	6	£87,185
		£51,179	£12,134	£12,134	£6,139	£5,598	
Contributions requested		£51,179	£12,134	£12,134	£6,139	£5,598	£87,185

6.2 Natural England

No response has been received at the time of writing this report, Members will be updated on the Amendment Sheet should any comments be received.

SBC Highways & Transport (Local Highway Authority)

6.3

Introduction

This document provides Slough Borough Council's (SBC) final consultation response regarding Highways and Transport for

application P/19443/009 at 30 – 32 Wexham Road. A Transport Statement (TS) has been produced by Patrick Parsons, dated January 2023.

Vehicular Access

SBC Highways and Transport have no objection to the proposed access arrangements for the site.

SBC Highways and Transport require the applicant to enter into a Section 278 agreement with Slough Borough Council to provide a speed table to reduce vehicle speeds on Wexham Road and a 'build out' to ensure appropriate setback for visibility. This is due to the proximity of the site access to the A4 Bath Road.

SBC Highways and Transport agreed the provision of a speed table as part of the previously approved planning application (Planning Ref: P/19443/000).

The speed table was required because the applicant was unable to demonstrate visibility splays of 2.4 metres x 43 metres in accordance with the Manual for Streets (MfS) requirements for a 30mph speed limit. Visibility had been measured from a setback of 1.8m, which did not accord with the minimum setback of 2.4m required by MfS.

Drawing No. 10229-101-Rev-P2, dated January 2023 demonstrates visibility splays of 2.4m x 33m to the left and 2.4m x 26m to the right. These visibility splays can only be achieved from an appropriate set back with the proposed build out and carriageway narrowing.

A speed survey was completed which recorded an 85th percentile speed of 24.9mph in the northbound direction and 14mph in the southbound direction. The required visibility based on the MfS standards for these speeds would be 2.4m x 16m to the right and 2.4m x 33m to the left. Therefore, the visibility splays are accepted only on the basis of the highway works the developer must deliver under a Section 278 agreement.

The NPPF requires that in assessing applications for development, it should be ensured that: *'Safe and suitable access to the site can be achieved for all users'* and that: *'Applications for development should create places that are safe...which minimise the scope for conflicts between pedestrians, cyclists, and vehicles'*.

Access by Sustainable Travel Modes

The site can be considered an accessible location by sustainable travel modes. The nearest bus stops are 130m (2 minutes' walk) from the site

on Wellington Street. The site is located approximately 900m (11 minutes' walk) from Slough Railway Station.

The Town Centre is 200m from the proposed development where a range of facilities and shops are available.

Due to the site's accessibility by sustainable travel modes, SBC Highways and Transport are willing to accept the provision of parking spaces below the adopted Slough Parking Standards.

Trip Generation

SBC Highways and Transport do not wish to raise an objection to the proposed development based on trip generation. The trip generation is not expected to have a severe impact on the capacity of the surrounding road network.

The NPPF para 111 states that: *'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'*.

A Transport Note produced by Patrick Parsons dated 11th August 2021 provides an updated forecast of the site's potential trip generation using TRICS, the National Trip Generation Database which holds trip survey data. The TS states that the 27 units would generate 8 two-way vehicle trips during the AM Peak Hour (0800 – 0900), including arrivals and departures. 9 two-way vehicle trips are forecast during the PM Peak Hour (1700 – 1800) and 79 two-way vehicle trips over a full day.

Car Parking

Planning permission P/19443/000 granted planning permission for 18 residential flats with 9 car parking spaces which would provide a ratio of 0.5 car parking spaces per dwelling.

A total of 8 parking spaces are proposed for 27 flats, at a ratio of 0.30 car parking spaces per dwelling. One accessible parking space for disabled use is shown on the Proposed Site Plan (Doc. Number 19061-GAA-ZZ-XX-DR-T-2028-Rev-P02, dated 10/01/23).

Slough's Car parking standards allow for nil parking provision in the highly accessible town centre area to encourage low car use in close proximity to town centre facilities. The parking restrictions on surrounding roads make it unlikely that parked vehicles will overspill onto the surrounding roads.

Wexham Road is subject to parking restrictions between the A4 Bath Road and the High Street to the south. The eastern side is subject to a single yellow restriction which limits parking between 8am – 9pm,

whilst the western side has double yellow parking restrictions and permit controlled parking bays.

The roads listed below also form part of a controlled parking zone with double yellow lines and permit controlled bays for residents only:

- A4 Bath Road;
- Wexham Road;
- Wellesley Road;
- Stratfield Road;
- Aldin Avenue North; and
- Princes Street.

The development is unlikely to cause overspill of parked vehicles onto the surrounding roads and cause residual cumulative impacts on the road network which could be considered severe as required by the NPPF. SBC Highways and Transport accept the low parking ratio.

EV Charging

SBC Highways and Transport require the provision of electric charging points for all 8 car parking spaces and for the chargers to be connected to an appropriate power supply.

The Slough Low Emissions Strategy (2018 – 2025) requires the provision of 1 EV Charger per dwelling where parking spaces are allocated/dedicated to each dwelling.

The National Planning Policy Framework Paragraph 112 requires applications for development to: *'Be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible, and convenient locations'*. In addition, updated UK Building Regulations came into effect on 15th June 2022 which require the provision of an Electric Vehicle Charging Point for each new dwelling.

Cycle Parking

40 secure and covered cycle parking spaces are proposed in the form of a two bike stores containing two-tier bike racks and 5 provided within bike cages. This is considered compliant with the requirements for residents cycle parking. The SBC Developer's Guide requires the provision of 1 secure and covered cycle parking space per dwelling.

SBC request further details are submitted showing Sheffield stands as short-stay cycle parking for visitors.

The Slough Developer's Guide – Part 3: Highways and Transport requires the provision of visitor cycle parking for flatted developments larger than 10 dwellings. The visitor cycle stand should be provided in

close proximity to the main entrance lobby for convenience and to enable surveillance of the short-stay cycle rack.

Deliveries, Servicing and Refuse Collection

The site layout remains unchanged from the previously approved layout. Swept path analysis was submitted which demonstrated a 4.6t light van can ingress and egress the site in a forward gear. The applicant has provided a dedicated area for deliveries only which delivery vehicles will be able to turn in.

The NPPF Paragraph 112 states that applications for development should '*Allow for the efficient delivery of goods, and access by service and emergency vehicles*'. SBC Highways and Transport have no objection to the development based on deliveries and servicing provision.

Summary and Conclusions

I confirm that I have no objection to this application from a transport and highway perspective, subject to a number of condition(s)/informative(s) as part of any consent that you may issue.

6.4 Thames Water

On the basis of information provided, Thames Water would advise that with regard to water network and water treatment infrastructure capacity, we would not have any objection to the above planning application. Thames Water recommends a number of conditions and informatives be attached to this planning permission.

6.5 Lead Local Flood Authority

We would advise that there is sufficient information available to comment on the acceptability of the proposed surface water drainage scheme for the proposed development.

We consider that if [the scheme is recommended for approval that] ... planning conditions are included as ..., the impacts of surface water drainage will have been adequately addressed at this stage. Without these conditions, the proposed development on this site may pose an unacceptable risk of flooding.

6.6 SBC Environmental Officer

The following observations were received under P/19433/000, which are equally applicable in this current form of the proposals:

Air Quality Background

Slough Borough Council (SBC) has designated 5 Air Quality Management Areas (AQMA) due to elevated concentrations of Nitrogen Dioxide (NO₂, annual average), including:

- Slough Town Centre
- M4
- Tuns lane
- Brands Hill
- Bath Road

While particulate matter concentrations do not breach EU Limit Values, levels in Slough are higher than both the national and regional averages and it is estimated that 1 in 19 deaths are attributable to PM2.5 in Slough (PHE).

SBC adopted the Slough Low Emission Strategy 2018-25 on the 17th September 2018. This application has been assessed in relation to air quality considerations in line with the Slough Low Emission Strategy Technical Report: 'Land-Use planning and Development Management' Guidance (Section 3.3). The LES Technical Report can be found on the SBC Low Emission Strategy web page - <http://www.slough.gov.uk/pests-pollution-and-food-hygiene/low-emission-strategy-2018-2025.aspx>

Where mitigation is required and refers to the 'Slough Electric Vehicle Plan' this can be found in Section 4.3 of the LES Technical Report.

The Slough Low Emission Strategy also includes a Low Emission Programme. Again, details can be found on the SBC LES web page.

Air Quality

In line with the Low Emission Strategy Technical Guidance, the development is classified as having a minor air quality impact as the development consists of six additional parking spaces. However, as the development is within AQMA 4, an air quality assessment (AQA) has been prepared.

The AQA indicates that during the construction phase, there is a medium risk of dust soiling during the demolition phase. All other elements of the construction phase are considered low risk. For impacts to be considered not significant, the mitigation measures outlined in Table 12 of the AQA must be implemented as part of the CEMP.

Operational phase impacts have been predicted for a future 2023 opening year. Due to the low parking provision and predicted AADT from the Transport Assessment, the impact is low. This is accepted.

There was concern that due to the proximity of the development to Wellington Street, there was potential for exposure of future residents to high concentrations of NO₂. However, data taken from passive and continuous sites near the development indicate that air quality at the building façade is acceptable. As with all minor impact developments, the scheme requires the integration of Type 1 measures contained in the LES Planning Guidance, outlined below under Noise Comments.

Mitigation Requirements – secured via condition for the following:

- Electric vehicle re-charging infrastructure should be provided in line with table 7 of the LES Technical Report. As the scheme includes 9 parking spaces (6 additional to existing spaces), 10% must have access to electric charging infrastructure.
- A Construction Environmental Management Plan (CEMP) shall be produced and submitted to SBC for approval prior to commencement of works. It must include details of noise and dust mitigation, inclusive of those highlighted in Table 12 of the AQA.
- The CEMP shall include non-road mobile machinery (NRMM) controls in line with table 10 of the LES Technical Report.
- All construction vehicles shall meet a minimum Euro 6/VI Emission Standard.
- All heating systems shall meet the emission standards laid out in Table 7 of the LES Technical Report

Environmental Noise

The noise survey which has informed the assessment was undertaken during the pandemic (18th – 19th February 2021). The report acknowledges the impact that the pandemic has had on noise levels due to reduced traffic, therefore the noise levels have been cross-referenced with strategic noise mapping software to inform a conservative assessment. It is noted that a lane closure on the roundabout where the A4 intersects the A412 may have also influenced traffic flows which further supports the need to utilise noise mapping data.

The noise survey was conducted in two locations, representative of the north and west façade to measure road traffic noise from Wellington Street (A4) and Wexham Road, respectively. The survey at Monitoring Position 1 (northern façade) considered of a 24 hour monitoring period, and the survey at Monitoring Position 2 (western façade) consisted of a 3 hour period, for the purpose of informing a CRTN shortened measurement calculation.

Results from Monitoring Position 1 indicate a daytime noise level of 64.8dB LAeq16h and a night time noise level of 62.3dB LAeq8h, representative of the northern façade. The CRTN shortened method was utilised to calculate road traffic noise incident on the western façade, resulting in 64.0dB LAeq16h and 59.3dB LAeq8h.

Comparing to the Extrium noise maps, daytime noise levels are typically higher than the recorded noise levels at this location, with the north-eastern façade experiencing 70.0 – 74.9dB. Therefore, a noise level of 70dB LAeq16h has been used to assess façade insulation for the northeast section of the site. Although this is a higher noise level than the measured value, using the upper range value would support a more conservative approach.

The map presented in the report suggests that the north-western and eastern facades typically experience between 65.0 – 69.9dB, therefore it is not clear why the measured value of 64.0dB had been used to assess the façade insulation for these areas, as this does not support a worst case scenario approach.

The night time noise level on the Extrium noise maps is between 60.0 – 64.9dB and 55.0-59.9 dB, for the north and south of the site, respectively. The measured values fall within these ranges therefore using the measured values for the night time noise assessment is acceptable.

Regarding LAmax levels, WHO guidelines allow for exceedances of 45dB up to 10-15 times per night. The maximum measured LAmax level at Monitoring Position 1 was 99.6dB and it is agreed that mitigating up to this noise level is unrealistic. The 4th highest noise event of 88.5dB has been chosen to use in the assessment. The graphs presented in the Appendix suggest that the typical LAmax level is <80dB therefore providing insulation to mitigate up to 88.5dB would provide a high level of noise protection.

As no night time monitoring was conducted at Monitoring Position 2, the LAmax levels recorded during the 3 hour daytime period were used for the assessment of night time noise. In this case, the second highest LAmax noise level of 80.7dB was carried forward for the assessment, as the highest noise level was influenced by passing pedestrians. This approach is accepted.

For acceptable internal noise levels to be achieved, the following glazing specifications are recommended in the noise report:

- *Specification 1: Applicable to northern, eastern and western facades*
 - *Bedroom: double glazed unit and secondary glazing with 10mm glass / 20mm void / 6mm glass / 150mm void / 4mm glass, able to achieve 52dB Rw.*
 - *Living room: double glazed unit with 10mm glass / 12mm void / 6mm glass, able to achieve 36dB Rw.*

- *Specification 2: Applicable to all other facades*
 - *Bedrooms and living rooms: double glazed unit with 10mm glass / 12mm void / 6mm glass, able to achieve 36dB Rw.*

This glazing arrangement would provide a high level of sound protection for future occupants, however the internal noise levels would only be achievable if windows were closed. To allow future occupants to adequately ventilate their property without compromising compliance with internal noise levels, it is recommended that a ventilation system is implemented. This should be secured via condition should the LPA be mindful to approve the application.

A specific ventilation strategy has not yet been produced for this application. In regard to noise transmission, the noise report recommends a mechanical system or acoustic wall vent such as Greenwoods MA3051 for all facades. However, no comment has been provided on overheating. As mechanical ventilation allows for temperature control, it is recommended that a mechanical ventilation system is installed. If an alternative ventilation system such as acoustic wall venting is used, an overheating assessment must be produced and submitted to the LPA and only installed if risk of overheating is low.

External amenity space is provided on this development in the form of winter gardens overlooking Wellington Street and Wexham Road. As the external noise levels are much higher than the external amenity guideline value of 55dB, balconies would not have been suitable. The report states that rooftop amenity space has been set back to provide 10dB attenuation provided by the structure of the building, although the expected noise level has not been specified. Nevertheless, due to the height of the building and that external amenity space can be used at the occupant's discretion, this is accepted.

Summary:

The noise assessment has been completed in reference to survey results and noise mapping software. Although a worst case approach had not been fully followed in the methodology, the recommended mitigation has been selected with the aim to protect against the L_{max} noise levels and therefore would also protect from the upper range L_{Aeq} noise levels.

As internal noise levels can only be achieved with windows closed, the submission of a ventilation strategy is required. It is recommended that a mechanical ventilation system is installed to mitigate against overheating. If an alternative ventilation system is used, an overheating assessment must be submitted to the LPA for approval.

A number of conditions relating to air quality and noise would be required to mitigate the impacts of the proposed development during construction and operation.

PART B: PLANNING APPRAISAL

7.0 **Policy Background**

7.1 **National Planning Policy Framework 2023 and National Planning Policy Guidance:**

Section 2: Achieving sustainable development

Section 4: Decision-making

Section 5: Delivering a sufficient supply of homes

Section 8: Promoting healthy communities

Section 9: Promoting sustainable transport

Section 11: Making effective use of land

Section 12: Achieving well-designed places

Section 14: Meeting the challenge of climate change, flooding and coastal change

Section 16: Conserving and enhancing the historic environment

7.2 **The Slough Local Development Framework, Core Strategy 2006 – 2026, Development Plan Document, December 2008:**

Core Policy 1 – Spatial Strategy

Core Policy 3 – Housing Distribution

Core Policy 4 – Type of Housing

Core Policy 7 - Transport

Core Policy 8 – Sustainability and the Environment

Core Policy 9 – Natural, built and historic environment

Core Policy 10 – Infrastructure

Core Policy 11 - Social cohesiveness

Core Policy 12 – Community Safety

7.3 **The Adopted Local Plan for Slough 2004 (Saved Policies):**

EN1 – Standard of Design

EN3 – Landscaping Requirements

EN5 – Design and Crime Prevention

EN22 - Protection of Sites with Nature Conservation Interest

H9 – Comprehensive Planning

H13 – Backland/Infill Development

H14 – Amenity Space

T2 – Parking Restraint

T8 – Cycle Network and Facilities

T9 – Bus Network and Facilities

OSC15 – Provision of Facilities in new Residential Developments

Other Relevant Documents/Statements:

- Slough Borough Council Developer's Guide Parts 1-4
- Slough Local Development Framework Proposals Map (2010)
- Technical Housing Standards – nationally described space standards.
- ProPG: Planning & Noise: Professional Practice Guidance on Planning & Noise. New Residential Development. May 2017

7.4 Slough Local Development Framework Site Allocations DPD (2010)

The Site Allocations DPD (2010) includes a number of Site Specific Allocations with detailed development proposals for selected sites. One of these sites is SSA14, the Queensmere and Observatory Shopping Centres.

- The proposed uses for the site are “Mixed: retail, leisure, restaurants/bars, car parking, residential and community.”

The stated Reasons for Allocation are:

- To establish the principles for the comprehensive redevelopment and/or reconfiguration of the Queensmere and Observatory shopping centres.
- To ensure that the future development of the shopping centres positively contributes to the wider regeneration proposals for the town centre particularly the Heart of Slough.
- To support development proposals that will encourage further retail investment in the town centre.

The Site Planning Requirements in the DPD are:

Redevelopment and/or reconfiguration proposals should:

- Improve the retail and leisure offer around the Town Square through change of use of key units and improved retail offer
- Link to the Heart of Slough through provision of a western entrance to the shopping centre and access to residential units above the centre.
- Create active frontages along the A4 Wellington Street and St Ethelbert's Church frontage.
- Remove the service ramp to the Prudential yard in coordination with the Heart of Slough proposals in the area.
- Improve pedestrian links to the bus and railway stations via Wellington Street.
- Rationalise multi-storey car parking provision and its links to the centres and Wellington House.
- Redevelopment of the western end of the Queensmere Centre adjacent to St Ethelbert's church, including improved

- retail units, residential accommodation above the centre and removing the toilet block.
- Transform Wellington Street frontage to create an urban boulevard with tree planting, improved north-south route connection to the town centre, active retail frontages and access to residential above the retail units.
 - Aim to reduce the negative impacts of construction upon existing businesses and the quality of life for residents and users of the town centre by appropriate phasing and implementation.

7.5 Centre for Slough Interim Planning Framework (2019)

The Interim Planning Framework was intended to demonstrate how comprehensive redevelopment and regeneration could take place within the Centre of Slough. It recognised that the town centre was failing as a shopping centre and so promoted an “activity” led strategy which sought to maximise the opportunities for everyone to use the centre for a range of cultural, social, leisure and employment activities which are unique to Slough. In order to do this it promoted it as a major transport hub, identified the potential for it to be a thriving business area which could accommodate a large amount of new housing and recognised the aspiration to create a new cultural centre in Slough.

The Framework defined a “central area” within the centre of Slough which consisted of the High Street, Queensmere and Observatory shopping centres which together perform many of the traditional town centre functions. Within the context of a declining number of visitors to the town centre and a significant number of shop closures, the preferred strategy was to keep the High Street as the primary shopping area and redevelop the southern part of the Queensmere and Observatory centres as integral parts of the new High Street. This would then allow the Wellington High Street to be redeveloped for a mix of other uses including high rise residential.

7.6 The Proposed Spatial Strategy (November 2020)

Under Regulation 18, the Proposed Spatial Strategy for the Local Plan for Slough was the subject of public consultation in November 2020. This sets out a vision and objectives along with proposals for what the pattern, scale and quality of development will be in Slough. The consultation document contained a revised Local Plan Vision which supports the Council’s vision for Slough as a place where people want to “work, rest, play and stay.”

It should be noted that the consultation document for the Proposed Spatial Strategy does not contain any specific planning policies or allocate any sites. It made it clear that the existing planning policy framework for Slough would remain in force until replaced by new

Local Plan policies in the future. Nevertheless, it sets out the most up to date statement of the Council's position with regards to strategic planning issues. As a result, it is relevant for the consideration of this application (but only very limited weight can be afforded to the specific and strategic guidance therein).

7.7 Habitats Regulations Assessment of Projects, Natura 2000 and European Sites

Natura 2000 is the cornerstone of European nature conservation policy; it is an EU-wide network of Special Protection Areas (SPA) classified under the 1979 Birds Directive and Special Areas of Conservation (SAC) designated under the 1992 Habitats Directive.

Since 31st December 2020, the UK requirements for Habitat Regulations Assessments (HRA) is set out in the Conservation of Habitats and Species Regulations 2017 (as amended by the Conservation of Habitats and Species Amendment (EU Exit) Regulations 2019). Together, the National Site Network of the UK comprises over 25,500 sites and safeguards the most valuable and threatened habitats and species across Europe and the UK; it represents the largest, coordinated network of protected areas in the world.

HRA employs the precautionary principle and Regulation 102 ensures that where a project is 'likely to have a significant effect' (LSE), it can only be approved if it can be ascertained that it 'will not adversely affect the integrity of the European site'. Burnham Beeches is designated a SAC under this Directive which is located to the north of Slough.

The development 'project' has been screened (as part of the Habitat Regulations Assessment) and it has been identified that LSE cannot be ruled out at this stage. An Appropriate Assessment is therefore required to determine whether mitigation measures are required to ensure the project will not adversely affect the integrity of the European Site (Burnham Beeches SAC).

Footprint Ecology Report (2019)

This document sets out the evidence base for damage to biodiversity and the sensitive environment because of the number of visitors to the Burnham Beeches Special Conservation Area.

Slough Mitigation Strategy re new residential development and protection of Burnham Beeches – October 2022:

Sets out a mitigation strategy to reduce visitor pressure on sensitive natural habitat the Burnham Beeches Special Conservation Area, as a result of new residential development. The mitigation strategy has

been agreed by Natural England and has been agreed by Cabinet 17th October 2022.

7.8 Slough Local Development Plan and the NPPF

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise. Annex 1 to the National Planning Policy Framework advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The revised version of the National Planning Policy Framework (NPPF) was published in July 2021.

The National Planning Policy Framework 2021 states that decision-makers at every level should seek to approve applications for sustainable development where possible and planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

Following the application of the updated Housing Delivery Test set out in the National Planning Policy Framework 2021, the Local Planning Authority cannot demonstrate a Five Year Land Supply. Therefore, when applying Development Plan Policies in relation to the development of new housing, the presumption in favour of sustainable development will be applied, which comprises a tilted balance in favour of the development as set out in Paragraph 11(d) (ii) of the National Planning Policy Framework 2021 and refined in case law. The 'tilted balance' as set out in the NPPF paragraph 11 requires local planning authorities to apply the presumption in favour of sustainable development (in applications which relate to the supply of housing) unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Planning Officers have considered the revised National Planning Policy Framework 2021 which has been used together with other material planning considerations to assess this planning application.

8.0 **The planning considerations for this proposal are:**

- 8.1 It should be noted that the principle of development and all other planning matters were noted in the previous committee report which led to a resolution to approve the application, subject to completion of the section 106 agreement and planning conditions having been

applied, otherwise the application should return to Planning Committee for further consideration.

- 8.2 Ordinarily, where there has been a resolution to grant planning consent, an extension of time to the resolution is often extended to allow further time for negotiation and completing legal agreements rather than leading directly to refusing an application. A Local Planning Authority (LPA), which includes the Planning Committee would anticipate an applicant will engage positively with the Council following a resolution to grant in order to negotiate and complete the Section 106 Agreement so that the Council can proceed to issue a planning consent prior to development commencing.
- 8.3 If a resolution to grant remains “extant” for some time and if there are material changes that might affect that resolution, such as a requirement to re-balance the planning merits due to changes to national or local Planning Policy or indeed a significant physical and material change has occurred that may bring into question the validity of the resolution to grant planning permission, the application would be expected to be reconsidered at Planning Committee to ensure the decision is Lawful and in accordance with Planning Policy and the correct planning balances have taken place. Case law supports this approach.
- 8.4 As such, the background for the previous decision is outlined in the following section of this report.
- 8.5 Caselaw is clear (*In R (Goesa) Ltd v Eastleigh BC (2022) EWHC 1221 (Admin) Holgate J.*) regarding the statutory framework for decision making. James Goudie KC has helpfully summarised Holgate’s decision in a Local Government Law article. I have included some extracts below:
- (1) A mere resolution to grant planning permission by a LPA does not itself constitute a planning permission for the purposes of Sections 58(1)(b) and 70(1)(a) of the TCPA 1990.*
- (2) Planning permission is not granted until a decision notice is given to the applicant;*
- (3) It follows that the LPA is free to revisit its resolution to grant planning permission and to change its mind about the terms of the permission, or even to revoke that resolution, at any time before the decision notice is issued, the LPA may become under a legal obligation to reconsider its resolution to grant;*
- (5) The same principles apply where a LPA passes a resolution to grant permission subject to the prior execution of a Section 106 obligation to secure specified objectives: it may often be necessary for*

the terms of an obligation to be negotiated and drafted in some detail after the passing of that resolution;

(6) If no such obligation is entered into in accordance with the terms of the resolution, it would be unlawful for the LPA to proceed to grant planning permission unless the authority resolved to alter those terms appropriately;

8.6 It is in this context that the application returns to Planning Committee for further consideration.

8.7 **Background:**

8.8 At the planning committee meeting held on 28th June 2023 the Committee had deferred this application for a site visit. The site visit had taken place on 24th July 2023 and the application was re-presented to the Committee for determination on 26th July 2023.

8.9 At the Planning Committee of 26th July 2023, the Officer's recommendation was to 'Delegate to the Planning Group Manager for Refusal' and this was put to the vote by Members (noting an amendment to reason for refusal 1 to remove the contravention with Core Policy 7). Following a member vote, the Officer's recommendation was not carried. For completeness, the original officer report, amendment sheet and minutes of Planning Committee 26th July 2023 are appendix to this report. The Committee deliberated and the following proposal was put to the meeting:

8.10 "On the basis that the harm identified by the officers in relation to height, scale and massing in relation to the character of the area and the impact on neighbours is not so significant as that it warrants refusal. The benefits associated with the development outweigh any negative. Therefore the Chief Planning Officer be authorised, in consultation with the chair and the Monitoring Officer, to approve the application subject to agreed conditions and the Section 106 agreement to secure affordable housing, education and all other infrastructure that is required to mitigate the impact of development on Burnham Beeches and that the Section 106 agreement be concluded within 6 months otherwise it shall return to the Planning Committee for further consideration."

8.11 For clarity the Committee resolved with the following decision:

8.12 That the Chief Planning Officer be authorised, in consultation with the chair and the Monitoring Officer, to approve the application subject to agreed conditions and the Section 106 agreement to secure affordable housing, education and all other infrastructure that is required to mitigate the impact of development on Burnham Beeches and that the Section 106 agreement be concluded within 6 months otherwise it shall return to the Planning Committee for further consideration.

- 8.13 Since the resolution of the Committee meeting, the case officer at the time, agreed the financial contributions that would be payable towards off-site affordable, education and Burnham Beeches, the details of which is set out further below. The agent was emailed the financial contributions and the case officer accordingly instructed the Council's legal function, HB Law.
- 8.14 HB Law have confirmed that they have made several attempts to engage with the applicant's solicitor to undertake the section 106 agreement and within the timeframe required, they were unable to secure the fees. HB Law require fees (undertaking) payable to commence work on drafting of the legal agreement (these fees are set by HB Law) and this is standard practice, without the undertaking, the drafting of the legal agreement cannot commence.
- 8.15 This means that the Local Planning Authority is unable to secure appropriate contributions to make the development acceptable in planning terms and would be contrary to the resolution of Committee. Given the passage of time, whereby reasonable steps by HB Law have been undertaken to secure the necessary undertaking for the legal agreement, yet this has not been forthcoming. The Local Planning Authority is unable to hold this application in abeyance and as six months have passed, in accordance with the Committee recommendation, the application is being returned back to the Planning Committee for further consideration to refuse the application.
- 8.16 It has been noted that works on the site have commenced for this scheme without formal planning consent as no decision notice has been issued given that the section 106 has not been completed, an investigation via the Council's Enforcement function will be required to understand the planning breaches and appropriate course of action will be taken. Below sets out the impact of not entering into a section 106 agreement, as explained above the time period has lapsed and the HB Law have sought to engage without any response within the timeframe required by the Planning Committee resolution.

9.0 **Infrastructure and Section 106 requirements:**

- 9.1 Core Policy 10 of the Core Strategy states that development will only be allowed where there is sufficient existing, planned or committed infrastructure. All new infrastructures must be sustainable. Where existing infrastructure is insufficient to serve the needs of new development, the developer will be required to supply all reasonable and necessary on-site and off-site infrastructure improvements.
- 9.2 Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) provide the three tests for planning obligations, which are repeated by the National Planning Policy Framework. It

provides that a planning obligation may only constitute a reason for granting planning permission for development if the obligation is:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development.

The tables below outline how each of the obligations would meet the three test listed above and relevant legislation and policies.

9.3 The proposals entail the introduction of 27 new residential units in place of the five existing units of accommodation (resulting in a net increase of 22 residential units). As such, the scheme would trigger off-site affordable housing, Burnham Beeches and educational contributions under the Council’s policies, as set out in the Developer’s Guide.

9.4 The following Section 106 financial contributions were being required:

Financial contributions	
Burnham Beeches Special Area of Conservation	£12,540
Education	£87,185
Affordable Housing	£311,078

9.5 Burnham Beeches Special Area of Conservation

REQUIRED OBLIGATION	OBJECTIVE	DETAILED PROVISIONS/INITIATIVES	POLICY BACKGROUND	CIL COMPLIANCE
<p>Burnham Beeches SAC</p> <p>Natural England would object to the proposal without appropriate mitigation being secured to reduce the footfall to the Beeches.</p>	<p>Burnham Beeches is a Special Area of Conservation; a protected site under the Habitats Regulations.</p> <p>Greater numbers of visitors to Burnham Beeches is causing damage to its sensitive habitat. New residential development in Slough can increase visitor numbers to the Beeches.</p> <p>Financial towards providing measures reducing recreational and visitor pressure on the SAC including but not limited to improvements to Upton Court Park, and/or towards management and maintenance of visitor facilities within Upton Court Park and other suitable alternative green spaces in Slough as deemed appropriate by SBC in consultation with Natural England.</p>	<p>New residential development that will trigger mitigation requirements relates to those of 10 or more homes (net) within 5.6km of Burnham Beeches.</p> <p>£570 per dwelling contribution required.</p> <p>The Council’s adopted Mitigation Strategy re new residential development and protection of Burnham Beeches (October 2022) identifies green spaces (parks) and recreational improvements in the borough of Slough.</p>	<p>Conservation of Habitats and Species Regulations 2017</p> <p>National Planning Policy Framework 2023</p> <p>Core Strategy Policy 9 and 10 of the Core Strategy 2006 – 2026, Development Plan Document 2008</p> <p>Mitigation Strategy re new residential development and protection of Burnham Beeches, October 2022</p>	<p>Necessary – to rule out adverse effects on the integrity of the SAC from the impacts of the development.</p> <p>Directly Related – appeal site is for new residential development, within 5.6km of Burnham Beeches.</p> <p>Fair and Reasonable – the Council has a duty under the Habitats Regulations to address the impact on Burnham Beeches SAC.</p>

9.6 Education

REQUIRED OBLIGATION	OBJECTIVE	DETAILED PROVISIONS/INITIATIVES	POLICY BACKGROUND	CIL COMPLIANCE
Education	<p>Residential development of 15 or more dwellings where the Council, as Education Authority, identify a shortfall in places at local schools or colleges (Early Years, Primary, Secondary, Post 16 education and Special Education Need).</p> <p>At present there is an identified shortfall across the whole Borough.</p>	<p>Slough has a pressure on places and all types of provision. This development will add to that pressure.</p> <p>Slough is currently full in 5 primary year groups in the central planning area. Full means that a particular year group in the planning area of the development has less than the target surplus required to enable that year group to reach year 6.</p> <p>Early Years – an assessment was carried out for this development and new places are required.</p> <p>SEND – Slough is short of places in all categories and needs to expand provision.</p>	<p>Developer Contributions and Affordable Housing (Section 106) Developer's Guide Part 2, September 2017</p> <p>Core Policy 10 of the Core Strategy 2006 – 2026, Development Plan Document 2008</p>	<p>Necessary – to mitigate the impact of the development, there is currently a shortfall in places for schools within the locality.</p> <p>Directly Related – to the nearest schools to the site:</p> <p>Primary School: James Elliman Academy, St Mary's CE Primary, Claycots Town Hall.</p> <p>SEND – Arbour Vale and Haybrook College.</p> <p>New Early Years provision within the town centre area.</p> <p>Fair and Reasonable – in line with the Developers Guide and to mitigate the impacts of the development in the locality.</p>

9.7 Highway works

REQUIRED OBLIGATION	OBJECTIVE	DETAILED PROVISIONS/INITIATIVES	POLICY BACKGROUND	CIL COMPLIANCE
Section 278 works	<p>To provide a speed table to reduce vehicle speeds on Wexham Road and a 'build out' to ensure appropriate setback for visibility. This is due to the proximity of the site access to the A4 Bath Road.</p> <p>This is to mitigate the impact of development and ensures the safe operation of the highway network.</p>	<p>Works via a section 278 agreement would be required, this would be secured in the section 106 agreement.</p>	<p>Core Strategy Policies 7 (Transport) and 10 of the Core Strategy 2006 – 2026, Development Plan Document 2008</p> <p>Transport and Highway Guidance Developer's Guide Part 3</p> <p>National Planning Policy Framework 2023</p>	<p>Necessary – contribution required to ensure the safe operation of the highway for all users.</p> <p>Directly related – There is low car parking provision within the development and therefore parking restrictions are required to prevent residents of the development parking inconsiderately on the surrounding road network.</p> <p>Fair and Reasonable – based on adopted SBC Guidance - Transport and Highway Guidance Developer's Guide Part 3.</p>

Affordable housing

- 9.8 The NPPF requires that planning policies should specify the type of affordable housing required, and that in most cases this need should be met on-site.
- 9.9 Core Policy 4 provides for residential developments for 15 or more dwellings to have between 30% and 40% of the dwellings as social rented units, along other forms of affordable housing, with the affordable housing should be secured by a section 106 planning obligation.
- 9.10 In the case of a net gain of 22 further units, the Developer's Guide recognises, for certain reasons, that when number of units required for affordable housing is small it may be impractical to provide this on site, and therefore, it sets out the possibility of having a financial contribution towards off-site provision of affordable housing in lieu.
- 9.11 In this case that would have equated to a sum of £311,078 in accordance with the Developers Guide, refer to para 9.8 for the calculations. As a result of the Planning Committee resolution, affordable housing was required to be secured, it is acknowledged that the Financial Viability Assessment stated that scheme would not be viable, notwithstanding this, Officers as result of the committee resolution by Members were required to secure affordable housing.
- 9.12 The affordable housing contribution has been calculated using the following method as stated in Table 3 of Developer Contributions and Affordable Housing (Section 106), Developer's Guide Part 2:
- 11 one-bedroom units equate to 40.74% of 27 units
14 two-bedroom units equate 51.85% of 27 units
2 three bedroom units equate 7.41% of 27 units
- 9.13 The above equals 100%.
- 9.14 Those percentage proportions are then taken as the factors for the calculations against a 22 unit scheme (as discussed, 27 units minus the previously existing 5 units for a net gain of 22 units).
- 9.15 This produces the sums of £105,981.44 (one bed), £172,189.18 (two bed); and, £32,907.59 (three bed) – thus £311,078.
- 9.16 **Further Consideration of the Planning Merits**
- 9.17 It is incumbent on officers to consider, in light of the legal framework for decision making (set out at para 8.5) whether there has been a material

- 9.18 change of circumstance, either in Planning Policy or physical changes to the site or surroundings that would warrant further consideration of the planning merits associated with the original resolution to grant planning consent.
- 9.19 In this instance a new iteration of the National Planning Policy Framework was published in December 2023. Key updates include a reforms to how Housing Delivery is assessed, an additional paragraph regarding the protection against “out of character” residential development, as well revisions to Green Belt, energy efficient buildings and allocation of development on agricultural land amongst others.
- 9.20 It is considered that the framework and context of the original officers report would still apply the same weighting and benefits/harms as derived originally and therefore the Committees consideration of the matter would not have been significantly different than if Committee were considering the whole development now.
- 9.17 However, there has been a significant material change to the land the subject of the development which in short, without planning permission, development has taken place which appears to reflect the development which is being sought through this application.
- 9.18 Whilst this is a clear breach of Planning Regulations and is considered unlawful, it does present the decision maker the opportunity to understand the scale, height and massing and how it is assimilated into the existing vernacular.
- 9.19 It is officers professional opinion that the harm attributed to the scale, height and massing as well as the sense of enclosure and overlooking to neighbouring properties is realised by the fact that the harm is now witnessable in situ. As such, Members are referred to the original officers report (Appendix 1) and Members are encouraged to come to their own conclusions when balancing the benefits and disbenefits associated with the proposed development.
- 9.20 In addition, the description of the development which is important in understanding what planning permission is being granted is no longer accurate. Demolition has taken place and part of the development has already been constructed and therefore the description of development is no longer accurate. It is considered that if Members find the development acceptable subject to conditions and mitigation through s106, a change of description can be agreed with the applicant which accurately reflects the development. The Local Planning Authority does

acknowledge the planning history for the site which is a material consideration, whereby a residential development was granted consent (reference: P/19443/000), however this was for a scale, mass and height appropriate for the site and did not result in overdevelopment or impact to neighbouring amenity and was acceptable in planning terms. Furthermore, the applicant in this case does not benefit from a fallback position given that the two schemes are materially different, including number of units. Therefore, given that the two schemes are not comparable, the planning history holds very limited weight.

10.0 **Presumption in favour of sustainable development/Tilted Balance**

10.1 The application has been evaluated against the Development Plan and the National Planning Policy Framework 2023 (NPPF) and the Local Planning Authority (LPA) has assessed the application against the core planning principles of the NPPF and whether the proposals deliver “sustainable development.”

10.2 The LPA cannot demonstrate a Five-Year Land Supply and therefore the presumption in favour of sustainable development tilted in favour of the supply of housing, as set out in Paragraph 11 of the NPPF and refined in case law, should be applied.

10.3 The original committee report identified that the proposal complies with some of the relevant saved policies in the Local Plan and Core Strategy, but also identified where there was conflict with the NPPF and the Local Development Plan.

10.4 It is noted that the scheme would create employment at the construction stage and subsequently the occupiers of the proposed accommodation would help to support local facilities and services; so there would be some limited economic benefits arising from the implementation of these proposals.

10.5 Officers have given due consideration to the benefits of the proposal in providing a net gain of 22 no. further dwellings towards the defined housing need at a time where there is not a Five-Year Land Supply within the Borough, as well as, some economic benefits.

10.6 However, the LPA considers that the potential significant adverse impacts of the development in terms of not being able to secure contribution required to make the development acceptable in planning terms. These are outlined below:

- **Section 278 highway works:** without these works, the development would not be safe and would result in highway safety. Without securing the works via a section 106 agreement,

there would be no obligation for the necessary works to be undertaken, therefore this results in an adverse harm.

- **Education:** The Local Authority has a statutory duty (contained in the Childcare Act 2006 and 2016) to secure sufficient funded early learning places for every eligible child in Slough. This development will result in extra and additional demand for early years, primary school and SEND provisions within the locality. The financial contribution would have been used towards providing educational facilities to cater for future demand as a result of the development. As stated within the Developer Contributions and Affordable Housing (Section 106), Developer's Guide Part 2, Updated September 2017, there is an identified shortfall within the ward/area which the site falls within. The LPA therefore considers that contribution was justified, in principle, and reasonable, in practice, as being directly related to the development, in order to meet the CIL regulations. Without securing the obligation, the proposal results in significant adverse harm.
- **Burnham Beeches:** Under the requirements of the Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations') it is necessary to consider whether the proposed project may have significant effects upon areas of nature conservation importance designated/classified under the Directives (Habitats Sites). This residential development falls within the 5.6km buffer zone around the SAC and is likely to impact on the conservation values of this designated area, without appropriate mitigation, there will be a likely significant effect as a result of the development. The mitigation measures were required to be secured via a Section 106 agreement which were considered to be necessary to rule out adverse effects on the integrity of the SAC.
- **Affordable Housing:** It is acknowledged that the scheme is not viable, notwithstanding this the agent agreed to an offsite affordable housing contribution. Given the scheme is not viable, limited adverse harm would be attracted to not securing the contribution.

10.7 Paragraph 11 of the NPPF highlights that there is a presumption in favour of sustainable development. Based on the current Local Plan and housing supply position in the SBC area, paragraph 11(d) also applies. This directs that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF, taken as a whole.

10.8 It is acknowledged that officers professional opinion was that the scheme as presented at the previous committee was unacceptable for the reasons set out in the original report, however Members of Planning Committee concluded that the scheme was acceptable in planning terms subject to conditions and appropriate section 106 mitigation. As such the

benefits and de-benefits of the scheme have been considered and planning permission would only be granted if mitigation of these impacts is provided through a completed section 106 Agreement. Therefore, Members considered that with respect to 11 (d)(ii), any adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits.

- 10.9 With respect to 11 (d)(i), there is one statutory nature conservation asset of particular importance in the general vicinity of the site, Burnham Beeches Special Areas of Conservation. Burnham Beeches Special Areas of Conservation, in particular, could be impacted by additional residents.
- 10.10 Therefore, as a section 106 was not entered into it is considered that the harm associated with the scheme as considered in July 2023 would significantly and demonstrably outweigh the benefits when assessed against the policies in the Local Development Plan and the NPPF taken as a whole. In addition, when considering the scheme as of May 2024, i.e. as part constructed where Officers and Members have the opportunity to view the scale and massing of the scheme partially constructed in situ it is incumbent on the LPA to consider the scheme again as there as a material change to the land which was not considered in July 2023.
- 10.11 When considering the proposal there has to be a balance of “fairness” to the applicant and it could well be argued that had they not partially constructed the site and had they entered into a Planning Agreement with a planning decision issued then they would have planning permission for what is now once again recommended for refusal.
- 10.12 This is accepted, however in a 2015 Written Ministerial Statement, the Government introduced a policy which makes intentional unauthorised development a material consideration when considering a planning application. It is officers opinion that the applicant knew they did not have planning permission for what is being constructed as they were well aware of the resolution of the Planning Committee and given that officers and our legal representatives had approached the applicants agents/solicitors they would have been well aware the Planning Agreement had not been completed. This therefore weighs negatively in the planning balance and the unlawful development has led to a greater understanding of the impacts of the development.
- 10.13 It is therefore the applicant’s own actions, rather than the LPA being unfair in any capacity, that has led to the re-enforcement of the planning officers original planning balance i.e. “... *the LPA considers that the potential adverse impact of the development upon the character and appearance of the area must be given substantial negative weight, to be applied to the planning balance.*” And this in combination with the lack of planning agreement and breach of planning therefore, it is considered that the current scheme would significantly and demonstrably outweigh

the benefits when assessed against the policies in the Local Development Plan and the NPPF taken as a whole.

11.0 **PART C: RECOMMENDATION**

11.1 In the absence of the applicant having engaged with the Local Planning Authority in regard to securing appropriate mitigation through a S106 Agreement, having demolished and partially constructed the proposed development without the benefit of planning consent leading to a material change of circumstance on the site allowing for further understanding of the visual impact of the development and having considered the relevant policies set out below, the representations received from all consultees and residents; as well as all other relevant material considerations, it is recommended that the application be refused for the reason set out in full at 1.1 above.

11.2 For completeness – while Officers and HB Law attempted to engage with the applicant and their solicitors within the timeframes of the resolution as well as into March, the applicants solicitors have finally confirmed on the 30th April 2024 that they are willing to agree to the legal undertaking and enter into a policy compliant Section 106. Notwithstanding this, given that the 6 month resolution expired on the 26th February 2024, and confirmation was only received in excess of 2 months from this date, Officers need to consider whether it is reasonable to seek a refusal or to extend the resolution to grant planning permission subject to conditions and a Section 106 being agreed to allow further time to make the development undertaken lawful and planning permission to potentially be granted.

11.3 Given that the development has progressed without planning consent, that the applicant failed to engage positively within the timeframes of the resolution of the July Planning Committee and that the harms outlined by planning officers have been realised without the benefit of planning consent; refusal is recommended.

12.0 **PART D: INFORMATIVES**

1. It is the view of the Local Planning Authority that the proposed development does not improve the economic, social and environmental conditions of the area for the reasons given in this notice and it is not in accordance with the National Planning Policy Framework.

2. You are advised to stop all works on site as no permission for the works has been granted by the Local Planning Authority and failure to do so, may result in enforcement action being taken by the Council.

3. The development hereby refused was submitted with the following plans and drawings:

- (a) Drawing No. 19061-GAA-ZZ-00-DR-T-0101 S2 Rev. P03; Dated 24/10/22; Recd On 23/01/2023
- (b) Drawing No. 19061-GAA-ZZ-XX-DR-T-0301 S4 Rev. P01; Dated 27/04/21; Recd On 23/01/2023
- (c) Drawing No. 19061-GAA-ZZ-XX-DR-T-0302 S4 Rev. P01; Dated 27/04/21; Recd On 23/01/2023
- (d) Drawing No. 19061-GAA-A3-GF-DR-T-2021 S4 Rev. P01; Dated 07/09/22; Recd On 23/01/2023
- (e) Drawing No. 19061-GAA-A3-01-DR-T-2022 S4 Rev. P01; Dated 07/09/22; Recd On 23/01/2023
- (f) Drawing No. 19061-GAA-A3-02-DR-T-2023 S4 Rev. P02; Dated 15/08/23; Recd On 16/08/2023
- (g) Drawing No. 19061-GAA-A3-03-DR-T-2024 S4 Rev. P01; Dated 07/09/22; Recd On 23/01/2023
- (h) Drawing No. 19061-GAA-A3-04-DR-T-2025 S4 Rev. P01; Dated 07/09/22; Recd On 23/01/2023
- (i) Drawing No. 19061-GAA-A3-05-DR-T-2026 S4 Rev. P02; Dated 12/09/22; Recd On 23/01/2023
- (j) Drawing No. 19061-GAA-A3-RF-DR-T-2027 S4 Rev. P01; Dated 07/09/22; Recd On 23/01/2023
- (k) Drawing No. 19061-GAA-ZZ-XX-DR-T-2028 S4 Rev. P02; Dated 10/01/23; Recd On 23/01/2023
- (l) Drawing No. 19061-GAA-A3-XX-DR-T-2121 S4 Rev. P02; Dated 25/01/23; Recd On 30/01/2023
- (m) Drawing No. 19061-GAA-A3-XX-DR-T-2122 S4 Rev. P03; Dated 25/01/23; Recd On 30/01/2023
- (n) Drawing No. 19061-GAA-A3-XX-DR-T-2221 S4 Rev. P01; Dated 01/11/22; Recd On 23/01/2023
- (o) Drawing No. 19061-GAA-A3-XX-DR-T-2320 S4 Rev. P03; Dated 25/01/23; Recd On 30/01/2023
- (p) Air Quality Assessment by Gem ref. no. AQ2227; Dated December 2022; Recd On 23/01/2023
- (q) Arboricultural Impact Assessment by Hallwood Associates ref. no. HWA10594_APIII Version 1.0; Dated 14/04/2021; Recd On 23/01/2023
- (r) Daylight & Sunlight Report by Jonathan Nash LLB (Hons) ref no. 1941/JN; Dated 6th September 2022; Recd On 23/01/2023
- (s) Design & Access Statement by GAA ref no. 19061-GAA-XX-XX-DA-A-0001 S4 Rev. P03; Dated 24/01/2023; Recd On 30/01/2023
- (t) Drainage Strategy by Patrick Parsons Limited ref: no. A20303; Dated 09.01.2023; Recd On 23/01/2023
- (u) Environmental Noise Impact Report by Sound Testing ref. no. 14420 version 4; Dated 31/10/22; Recd On 23/01/2023
- (v) Financial Viability Assessment by Aspinall Verdi ref. no. Report 230316 V2; Dated 16th March 2023; Recd On 23/01/2023
- (w) Unnumbered Habitat Regulations Assessment by The Ecology Partnership; Dated May 2021; Recd On 23/01/2023

- (x) Undated Landscape Masterplan by Studio Loci ref. no. 10374-GA-01 rev. P3; Recd On 23/01/2023
- (y) Undated landscape Maintenance Plan document no. 10374-MP-01A by Studio Loci; Rec'd 23/01/2023
- (z) Phase 1 Site Appraisal by Patrick Parsons Limited ref: no. A20303/DTS/Rev. 0; Dated 21/04/21; Recd On 23/01/2023
- (aa) Planning Statement by KR Planning ref: no. 10229 v1.0; Dated January 2023; Recd On 30/01/2023
- (bb) Surface Water Drainage Pro-forma completed by Patrick Parsons Limited; Dated 27/04/21; Recd On 23/01/2023
- (cc) Transport Statement by Patrick Parsons Limited ref: no. 10229 v1.0; Dated 09/01/2023; Recd On 23/01/2023