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## Appeal Decisions

Inquiry Held on 5-8 and 12-15 March 2024

Site visit made on 7 March 2024

**by Thomas Hatfield BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 May 2024

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### **Appeal A Ref: APP/T0355/W/23/3333834 Spencer's Farm, North of Lutman Lane, Maidenhead**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by IM Land 1 Limited and Summerlease Limited (Summerlease) against the decision of Council of the Royal Borough of Windsor and Maidenhead.
  - The application Ref 22/01537, dated 30 May 2022, was refused by notice dated 26 July 2023.
  - The development proposed is described as "*Outline planning application for of up to 330 dwellings and land for a primary school of up to three forms of entry with associated landscaping, open space, car parking, drainage and associated works (means of access only to be considered at this stage with all other matters to be reserved)*".
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### **Appeal B Ref: APP/T0355/W/23/3333831 Spencer's Farm, North of Lutman Lane, Maidenhead**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by IM Land 1 Limited and Summerlease Limited against the decision of Council of the Royal Borough of Windsor and Maidenhead.
  - The application Ref 22/01540, dated 30 May 2022, was refused by notice dated 26 July 2023.
  - The development proposed is described as "*full planning application for enabling works comprising the provision of construction access, site preparation and earthworks (in connection with outline planning application for of up to 330 dwellings and land for a primary school of up to three forms of entry with associated landscaping, open space, car parking, drainage and associated works)*".
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## Decisions

### Appeal A

1. The appeal is allowed and planning permission is granted for 330 dwellings and land for a primary school of up to three forms of entry with associated landscaping, open space, car parking, drainage and associated works at Spencer's Farm, North of Lutman Lane, Maidenhead in accordance with the terms of the application, Ref 22/01537, dated 30 May 2022, subject to the conditions set out in the attached schedule.

### Appeal B

2. The appeal is allowed and planning permission is granted for enabling works comprising the provision of construction access, site preparation and

earthworks at Spencer's Farm, North of Lutman Lane, Maidenhead in accordance with the terms of the application, Ref 22/01540, dated 30 May 2022, subject to the conditions set out in the attached schedule.

### **Application for Costs**

3. At the Inquiry an application for costs was made by IM Land 1 Limited and Summerleaze Limited against the Royal Borough of Windsor and Maidenhead ('RBWM'). This application is the subject of a separate decision.

### **Procedural Matters**

4. Appeal A is in outline. In this regard, the means of access is to be considered at this stage, whereas appearance, landscaping, layout and scale are reserved for future consideration. Plans showing an indicative layout have been submitted, and I have had regard to these in determining this appeal.
5. No site address is provided in either planning application form. The addresses given above are therefore taken from the Appeal Forms, which provide an accurate description of the site location.
6. The descriptions of development given in my formal decisions omit some of the text from the descriptions provided on the planning application forms. For Appeal A, the omitted text simply states that it is an outline application with certain matters reserved. For Appeal B, the omitted text states that the proposals are connected to the Appeal A application. In both cases, the omitted text does not describe acts of development.
7. In respect of Appeal B, the Council's Decision Notice identified 4 reasons for refusal. The fourth of these states that "*the application fails to demonstrate that the proposed works would have an acceptable impact on environmental quality in the surrounding area*". However, the Council subsequently withdrew this objection to the development, subject to the imposition of conditions. I have therefore determined Appeal B on that basis.

### **Main Issues**

8. The main issues are:
  - (a) Whether the developments would be consistent with local and national policy in relation to flood risk and would be safe for their lifetimes without increasing flood risk elsewhere;
  - (b) Whether the developments would prejudice highway safety; and
  - (c) In respect of Appeal B, the effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance.

### **Reasons**

#### *Flood risk*

9. The appeal site comprises a large area of open land on the northern edge of Maidenhead. It adjoins the existing urban area to both the south and west, and its eastern boundary is formed by the Maidenhead Ditch. Beyond this, the River Thames is located approximately 1 kilometre to the east.

10. The site is located partly within Flood Zones 2 and 3 for river flooding according to the Environment Agency's flood map for planning. In this regard, the areas of the site where new housing is proposed are partly in Flood Zone 2, whereas the proposed open space and emergency access leading to Westmead are in Flood Zone 3. However, the site was found to pass the Sequential Test (as set out at paragraph 168 of the National Planning Policy Framework [the Framework]) and was allocated for housing development and open space through the RBWM Borough Local Plan (adopted in 2022). The development of the site for these purposes is therefore acceptable in principle.
11. The Appeal B proposal for enabling works would raise the height of the land so that the housing and school proposed under Appeal A would effectively be in Flood Zone 1. However, the proposed open space and the pedestrian/emergency access route would remain in Flood Zone 3 post-development. In this regard, flood mapping produced by the appellant shows that this land would be inundated in a 1 in 100 year event plus a 35% allowance for climate change. In such an event, the adjacent football pitch and the vast majority of the proposed open space would also be flooded and so would not be in use at these times. Similarly, Westmead and parts of Aldebury Road would also be affected by flood waters. The likelihood that an emergency vehicle would need, or choose, to make use of this route during a flood event is therefore minimal. In any case, the main access into the site from Cookham Road would be in Flood Zone 1 and so would allow for safe access. This would also be the most direct route to take in order to attend an emergency at either the proposed dwellings or the school.
12. At the Inquiry, a number of potential scenarios were discussed that could result in the main access being blocked during a flood event. In this regard, there are a small number of retained trees that would be near to the proposed access route. However, none of these are in a poor condition such that they are at risk of falling over. In the unlikely event that one of these trees did fall onto the road, the Fire Brigade have equipment that would be able to cut through and remove such a blockage. In addition, no evidence has been provided that the area is susceptible to sinkholes, and given the 30 mph speed limit, it is highly unlikely that a lorry would jackknife along this route. Moreover, even if the main access to the development were temporarily blocked during a flood event, emergency vehicles would be able to use the proposed 3 metre wide cycleway and adjacent 2 metre wide footway to gain access into the site.
13. The probability that the site would simultaneously experience a 1 in 100 year flood event, that an emergency would occur, and that the main access and cycleway/footway were blocked, is very small. In this regard, the appellant has calculated that the risk of a fire coinciding with both a flood event and a blockage to the main access to be in 1 in 70,215,068,295, using assumptions that appear to be conservative. Accordingly, no significant safety risk would arise from the location of the proposed pedestrian/emergency access route in my view. I further note that the Fire and Rescue Service do not object to the proposed access arrangements on safety grounds. In this regard, they state that a depth of 800mm of water would not prevent a fire engine proceeding to a call, and that a specialised 4x4 vehicle is stationed at Maidenhead Fire Station that is capable of moving through flood waters. The ability of a fire engine to get close to a fire is particularly important given the water and heavy equipment that they carry. Conversely, police officers or paramedics would be

able to proceed on foot to an emergency even if the main access road were blocked.

14. Accordingly, I do not consider it necessary to raise the height of the pedestrian/emergency access route so that it would be above the height of a flood event. In this regard, it would simply be used as a pedestrian and cycle route through the open space for the vast majority of the time, and during a flood event, the surrounding open space would not be in use in any case. Moreover, an alternative pedestrian, cycle and emergency access would be available via the main access from Cookham Road. The installation of signage on the approaches to the pedestrian/emergency access could also be secured by condition to that ensure that users of this route would be aware of the depth of waters during a flood event.
15. Table 2 in the Planning Practice Guidance ('PPG') sets out when an Exception Test is required and the approach that should be taken. The notes to Table 2 state that "*some developments may contain different elements of vulnerability and the highest vulnerability category should be used, unless the development is considered in its component parts*". In this regard, Annex 3 of the Framework identifies buildings for dwelling houses and educational establishments as 'more vulnerable' uses in flood risk terms, whereas outdoors sports and recreation facilities are considered to be 'water compatible'.
16. The Appeal A proposals include housing in the central and western parts of the site, a primary school to the south, and woodland and open space to the north and east. Whilst layout is a reserved matter, these uses would inevitably occupy distinct areas within the site. The site is also subject to 2 separate Local Plan allocations (AL25 and AL28) for housing and a school, and open space, respectively. Given this arrangement and policy context, I consider that the development should be considered in its component parts for the purposes of the Exception Test. In this regard, the pedestrian/emergency access should be considered separately from the proposed housing, school and open space.
17. The proposed pedestrian/emergency access does not feature in the list of examples given at Annex 3 of the Framework. However, the closest match is the example of a car park which is stated to be 'less vulnerable' development in flood risk terms. This is because the access would also be constructed in hardstanding and would be used by pedestrians and cyclists, and occasionally by vehicles. Table 2 of the PPG confirms that 'less vulnerable' uses are not required to pass the Exception Test when located in Flood Zone 3. Whilst it is argued that the pedestrian/emergency access should be considered as an integral part of the housing development, Annex 3 refers to "*buildings used for dwelling houses*" (my emphasis), which does not apply here.
18. Policy AL25 of the RBWM Local Plan (2022) states that any application would need to demonstrate that the Exception Test can be passed. However, Policy AL25 was drafted before an application had been submitted and simply reflects the fact that part of the AL25 allocation is in Flood Zone 3. In any case, even if I had taken a different view regarding the applicability of the Exception Test, I consider that it would be passed. In this regard, the development would provide a number of wider sustainability benefits to the community, including the provision of 330 new dwellings, 40% of which would be affordable. This would be a significant benefit, particularly in the context of the Borough's affordability issues, high affordable housing need, and deficient housing land

supply position. The provision of land for a new school, and the creation of a large area of public open space would also be significant benefits. In addition, the development would make a significant contribution to the local economy through construction jobs, and future residents would support local shops, services, and facilities. Taken together, these wider sustainability benefits would outweigh the flood risk in this case. Moreover, for the reasons set out above, I consider that the development would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.

19. The Council has drawn my attention to a number of appeal decisions that relate to flood risk and the application of the Exception Test. With regard to the Needham Market decision<sup>1</sup>, that Inspector concluded that it was not appropriate to disaggregate the site access route from the housing development in applying the Exception Test. However, that proposal was solely for housing, rather than for the mix of uses that is proposed here, and flood risk affected the main vehicular access rather than a secondary access. With regard to the Mirfield decision<sup>2</sup>, there was a dispute in that case as to whether part of the site should be in Flood Zone 2 or 3. Such a dispute does not exist here. The main access into that proposal was also in Flood Zone 3. The Paddock Wood decision<sup>3</sup> related to a small scheme for 2 dwellings that was entirely within Flood Zone 3. The Inspector's comments regarding the needs and vulnerabilities of future occupiers were in the context of a scheme where the sole access point would have been inundated in a flood event, which is not the case here. The Northmoor decision<sup>4</sup> also relates to a small scheme (for a single dwelling) that was entirely within Flood Zone 3. That Inspector expressed concerns about the accuracy of the existing ground levels in the FRA, and the partial nature of the topographical data, which are not matters under dispute here. I have therefore reached my own view on the appeal proposals rather than relying on the approach taken by my colleagues elsewhere, in different circumstances.
20. At the Inquiry, the appellant proposed adjusting the height of the pedestrian/emergency access route to achieve the 1:20 gradient recommended by the Department for Transport's 'Inclusive Mobility' guidance. This adjustment would be very minor, and I am satisfied that it would not involve a fundamental change to the proposals, nor would it result in procedural unfairness to any party. Whilst it would involve some land raising within the flood plain, this would be modest in scale and there is ample scope to provide compensatory flood storage within the site at the same level. Accordingly, this matter is capable of being dealt with by way of a planning condition.
21. It is argued that the pedestrian/emergency access would constitute a mass evacuation route for the school in the event of a fire or other emergency. However, there is sufficient space within the land identified as a school to provide a car park that could act as a fire assembly point. Moreover, should it be necessary to move pupils further away from the school, the cycleway/footway leading to Cookham Road is the obvious route to take. In any case, the term 'mass evacuation' implies a scale that would far exceed that associated with a single primary school. Accordingly, I do not accept that the pedestrian/emergency access should be regarded as a mass evacuation route.

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<sup>1</sup> Ref APP/W3520/W/22/3308189

<sup>2</sup> Ref APP/Z4718/W/21/3279040

<sup>3</sup> Ref APP/U2235/W/21/3277959

<sup>4</sup> Ref APP/D3125/W/23/3314206

22. It is proposed that surface water runoff would be attenuated to greenfield rates on site and then discharged to the Maidenhead Ditch. In this regard, it is argued that the assumed greenfield run-off rates incorrectly include surface water flows from the west of the site, which currently drain to a man made depression and discharge via infiltration and evaporation. However, the greenfield run-off rate has been calculated using a standard approach. The submitted Land Quality Assessment also identifies that groundwater flows in this location are from west to east and so infiltrated water would be conveyed towards the Maidenhead Ditch in any event. The submitted drainage strategy also demonstrates that the worst case scenario of discharging all surface water to the Maidenhead Ditch without infiltration can be accommodated by the site. Full details of the drainage arrangements are capable of being secured at reserved matters stage, and I note that the Lead Local Flood Authority were content with that approach. In these circumstances, I am satisfied that the proposed arrangements would not increase flood risk elsewhere.
23. The peak events for river and surface water flooding have been considered separately in the modelling. However, given the respective catchment areas these peaks are highly unlikely to coincide. In this regard, flood waters from the Thames catchment of 8,000 km<sup>2</sup> could take days to reach the Maidenhead Ditch, whereas surface water flows would drain much more quickly to the site from a catchment of just over 1 km<sup>2</sup>. Accordingly, this approach does not undermine the robustness of the submitted flood risk assessments.
24. Local residents have described the existing flooding issues that occur in and around Westmead. This is corroborated by the Environment Agency's flood map for planning which shows many of these properties as being in Flood Zone 3 for river flooding. However, the development has been designed to ensure that it does not increase flood risk elsewhere, including to neighbouring properties. As set out above, I consider the submitted flood risk assessments to be robust. I further note that neither the Environment Agency nor the Lead Local Flood Authority have objected to the development on these grounds.
25. For the above reasons, I conclude that the developments would be consistent with local and national policy in relation to flood risk and would be safe for their lifetimes without increasing flood risk elsewhere. They would therefore accord with Policy NR1 of the RBWM Borough Local Plan (2022) and guidance contained in the Framework relating to flood risk. This policy and guidance seek to ensure, amongst other things, that development is safe in relation to flood risk and meets the Sequential and Exception Tests where necessary.

#### *Highway safety*

26. The Appeal A proposal would involve the re-alignment of the existing route of Aldebury Road so that it would form a T-junction with the new access road. In addition, the existing junction between Aldebury Road and Cookham Road would be closed off. This arrangement would displace some existing on-street parking spaces around the bend in Aldebury Road leading to the junction. However, the number of spaces that would be lost is relatively small, particularly in the context of the wider Aldebury Road estate. Whilst the Council argued that up to 10 spaces would be displaced, that appears to be an over-estimate given that much of the kerbside along the bend is taken up by cross overs and driveways. That is also the case for the kerbside opposite the proposed turning area in what would become the cul-de-sac. In my view, the

- number of spaces that would be displaced would be closer to the appellant's estimate of 4, which is at a level that would not significantly affect parking stress in the area. I further note that the houses positioned around the bend appear to benefit from driveways and/or off-street parking spaces and so on-street parking in this location is likely to originate from further afield.
27. During my site visits, I observed cars parked around nearby junctions within the Aldebury Road estate, and the Council has also referred to this in its evidence. However, there is no record of any accident problem along Aldebury Road despite the presence of car parking in the vicinity that contravenes the Highway Code. Accordingly, I consider that any risk of sideswipe collisions as cars emerge from the proposed cul-de-sac to be minimal, given this is a low speed traffic environment and the cul-de-sac would serve just 8 properties. In terms of parking arising from the new school, there would be sufficient space within the site to accommodate parking for both staff and parents at drop-off times, as is accepted by the Highway Authority. Whilst it is asserted that traffic and parking generated by the development could block Aldebury Road, I consider that to be highly unlikely. In any case, Aldebury Road forms a loop and benefits from a second access onto Cookham Road to the south.
28. New footpaths would be created to the west of the proposed main access. These would follow the routes of both the existing footpath and the informal route along the edge of Cookham Road. It has been highlighted that both footpaths would be significantly in excess of the 1:20 gradient recommended by the Inclusive Mobility guidance. This would make them difficult to navigate for wheelchair users and could have safety implications, particularly along sections where the gradient is in excess of 1:12. However, there is sufficient land available in this location to provide a route that complies with the Inclusive Mobility standards. Accordingly, this matter is capable of being dealt with by condition.
29. A drawing has been submitted (Ref ITB4215-GA-035 Rev A) that shows indicative waste collection arrangements for properties along the new cul-de-sac that would be formed. This shows areas of hardstanding for new bin collection points, and the precise location and details of these could be secured by condition. Whilst this could lead to some inconvenience for existing occupiers compared to the present situation, I do not consider that it would raise significant highway safety concerns. In this regard, the creation of one or more bin collection points would avoid the need for lengthy reversing by waste collection vehicles down the cul-de-sac. Plan Ref ITB4215-GA-035 Rev A also shows that the bin carry distances set out in the Building Regulations could be met if the measurement is taken from the curtilage of the property. Moreover, whilst that Plan shows refuse vehicles stopping close to the entrance of Brookdene Close, any resulting blockage would be brief and such occurrences are not uncommon on residential estates on bin collection day. Accordingly, I do not consider that any significant highway safety issue would arise from this.
30. Both the Appeal A and appeal B proposals would be served by access points that would be positioned on a bend in Cookham Road in close proximity to a humpback bridge over the railway line. However, it has been demonstrated that these would have adequate visibility in both directions and that they would be safe and suitable access points. Neither the Council nor the Highway Authority object to the proposed access points on highway safety grounds, and I see no reason to take a different view.

31. The proposed route via Westmead would only be used in emergency situations. At all other times it would be a pedestrian route only and vehicular access would be prevented by collapsible bollards. Accordingly, this route would not give rise to any increase in vehicular traffic along Westmead.
32. It is argued that the development could have significant traffic implications for Cookham given the appeal site's proximity to Maidenhead Road and the B4447. In this regard, traffic moving north from the site through Cookham would utilise the roundabout connecting Maidenhead Road, Station Hill, and The Pound. To the east of this roundabout the road narrows significantly and leads towards Cookham Bridge, which is a busy route across the River Thames. A short distance to the west of the roundabout is Cookham Station, as well as local shops and other facilities.
33. The Transport Assessment submitted in support of the development is underpinned by modelling that was accepted by the Highway Authority. At the Inquiry, the appellant's highways witness stated that this modelling indicated that the development would result in up to 15 two-way movements at the Maidenhead Road/Station Hill/The Pound roundabout during the weekday morning peak hour. This equates to an average of 1 vehicle every 4 minutes. At the junction leading towards Cookham Bridge, the development would result in an increase of up to 5 two-way movements during the weekday morning peak hour. This equates to an average of just 1 vehicle every 12 minutes. At that level, such an increase would not be perceptible, nor would it give rise to any significant rise in emissions or disturbance during peak periods.
34. The assumed traffic flows reflect the 2011 Census Journey to Work data, which indicates that only a small proportion of residents in the vicinity of the appeal site work in settlements to the north east, such as Beaconsfield, Amersham, Gerrards Cross, or Bourne End. In addition, both Cliveden View shopping centre and Furze Platt railway station are in walking distance of the appeal site, and so future residents would be unlikely to travel to Cookham to access such facilities. Whilst it is asserted that the Transport Assessments supporting other nearby developments at Cannondown Road (Local Plan Ref AL37) and Hollands Farm, Bourne End indicate a different pattern of vehicle movements, those documents are not before me. In any case, those sites are in very different locations relative to Cookham. Moreover, given that the appeal site and the Cannondown Road site are both allocations in the RBWM Borough Local Plan (2022), their combined impact on the road network will have already been assessed through that process. The Framework states (at paragraph 115) that development should only be refused on highway capacity grounds where the residual cumulative impacts on the road network would be "severe". In my view, the impact on Cookham would fall below that threshold.
35. The additional traffic that the development would generate along Cookham Road has also been modelled. This analysis concludes that any increase to journey times along the Cookham Road corridor would be limited, and below the level that would justify refusal. That view is accepted by the Highway Authority. Moreover, whilst the applications were initially supported by traffic survey data collected in 2017, new surveys undertaken in November 2023 show overall reductions in traffic flows compared to 2017. This demonstrates that the original survey data underpinning the Transport Assessment remains robust.

36. For the above reasons, I conclude that the developments would not prejudice highway safety. They would therefore accord with Policy IF2 of the RBWM Borough Local Plan (2022), and guidance contained in the Framework relating to highways matters. This policy and guidance seek to ensure, amongst other things, that development is served by a safe and suitable access.

*Living conditions – noise and disturbance*

37. The Appeal B proposal would involve the importation of significant volumes of material in order to raise levels across most of the site by 1-2 metres. This would be transported using lorries that would enter the site along the proposed 6 metre wide haul road. It is currently assumed that an average of 42 deliveries of material would take place each weekday across a 10-month construction period.
38. Both the Council and the appellant have produced assessments of the noise that would be generated by vehicles using the haul road. However, the principal contractor who would undertake these works has not yet been appointed and so these assessments rely on assumptions that may be subject to change. A key point of contention is the speed at which vehicles using the haul road would be travelling at, as this significantly affects the noise that would be generated. The Council has assumed that such vehicles will be travelling at 8 km/h, based on details in the submitted Construction Environmental Management Plan. However, this document states that it is provisional in nature, and that *"it is not yet possible to estimate in detail the number and types of construction vehicles, which will be generated by construction activities"* (para 3.11.3). Accordingly, it is not definitive with regard to likely vehicle speeds along the haul road. An assumed speed of 8 km/h also appears to be low given that deliveries will be undertaken by road lorries along a route constructed to base course level. In my view, a speed of around 25 km/h, as is assumed in the appellant's analysis, is more realistic. I further note that F.2.7.2.1 of British Standard 5228-1 gives the example of a dump truck travelling at 25 km/h along a haul road. Whilst an example of a grader travelling at 7 km/h is also given, that is a very different type of vehicle to those that would be used here.
39. With regard to the method that should be used to calculate the impact of construction noise, the appellant's assessment is based on the limit set out in the 'ABC method' at Annex E.3.2 of British Standard 5228-1. This is a standard approach to assessing the impact of construction noise, and it sets a threshold of 65 dB for a potential significant effect to occur at nearby dwellings in the daytime. Annex E.5 of British Standard 5228-1 also sets out a lower daytime threshold of 55 dB for *"construction works involving long-term substantial earth moving"* that are *"more akin to surface mineral extraction"*. However, I consider the 'ABC' method to be more appropriate here despite the likely construction period exceeding 6 months. In this regard, the proposed earthworks are not more akin to surface mineral extraction in either scale, depth of extraction, or the plant and equipment that would be used. I further note that the precedent for this lower threshold was set by appeal decisions relating to the construction of ports, which are of a different scale to the current proposal.
40. As the haul road would be used for the importation of material, the vehicles that would bring this material to the site would need to travel on public roads.

They would therefore be road lorries rather than the dump trucks that are assumed in the submissions. Accordingly, it is unnecessary to include an additional allowance in the assessment for the noise generated by an empty dump truck moving along the haul road.

41. Applying a vehicle speed of 25 km/h, it is clear that noise from the haul road would be capable of meeting the 65 dB threshold set out in the ABC method. That is the case regardless of which source term is used. Whilst the ABC method does not factor in the duration of the works or the character of the noise unless the threshold limit is exceeded, that is a feature of the assessment method and is standard practice. With regard to noise generated by onsite construction activities, the evidence submitted by the appellant demonstrates that this can be adequately mitigated. Such activities would also move away from the southern edge of the site over the duration of the construction period. Moreover, there is sufficient space next to the proposed haul road, and along the southern boundary of the site, to install any necessary mitigation measures. Accordingly, I consider that no significant adverse impacts would occur and that this matter is capable of being dealt with by condition.
42. For the above reasons, I conclude that the Appeal B proposal would not significantly harm the living conditions of neighbouring occupiers with regard to noise and disturbance. It would therefore accord with Policy EP4 of the RBWM Borough Local Plan (2022), and guidance in the Framework relating to noise. This policy and guidance seek to ensure, amongst other things, that development does not generate unacceptable levels of noise that gives rise to significant adverse impacts on health and quality of life.

## **Other Matters**

### *Housing land supply*

43. It is common ground that the Council is unable to demonstrate a 5 year supply of deliverable housing sites, as is required by the Framework. In this regard, the Council acknowledges that it can only demonstrate a 4.7 year supply, whereas the appellant contends that the supply is in fact lower at just 3.7 years. However, I have found that the developments accord with the RBWM Borough Local Plan, which has only recently been adopted. In these circumstances, the Framework advises at Paragraph 11 that development should be approved "*without delay*". It is therefore unnecessary for me to reach a finding on the precise extent of the shortfall, as it would not affect the outcome of these appeals.

### *Planning obligation*

44. A signed and dated s106 agreement has been submitted in relation to Appeal A that provides for onsite affordable housing, land for a new primary school, and provisions relating to the proposed public open space. It also contains provisions relating to a Travel Plan, car club, self and custom-build housing, biodiversity, contaminated land, carbon offsetting, and a highways contribution.
45. With regard to affordable housing, this is clearly necessary to deliver the affordable units in order to meet local need and to comply with Policy HO3 of the RBWM Borough Local Plan (2022). The provisions relating to the primary school are necessary to comply with Local Plan Policy AL25, which requires that

- this be provided. Similarly, the open space provisions are necessary to comply with Local Plan Policy AL28, and to ensure that the open space is publicly accessible and appropriately managed.
46. Provisions relating to a Travel Plan and car club are necessary to minimise the need to travel using a private car, and to comply with Local Plan policies IF2 and AL25. The provisions relating to self and custom-build housing are necessary in order to meet the requirements of Local Plan Policy HO2. Biodiversity provisions are necessary to secure biodiversity net gain in line with the mandatory national requirement. With regard to financial contributions towards monitoring of the Travel Plan and Biodiversity Onsite Compensation Scheme, these are based on a standard calculation that is agreed by both main parties. Further provisions relating to contaminated land are necessary to ensure that the land that is earmarked for a new primary school is appropriately remediated. I am satisfied that each of these contributions are fairly and reasonably related to the development in scale and kind.
47. With regard to the Highways Contribution, this includes measures to improve the accessibility of the development to public transport and to mitigate its impact on the highway network. These measures are necessary to make the development acceptable in planning terms. However, for the reasons set out above, I do not consider the Traffic Regulation Order Contribution to be necessary for the purposes of highway safety. I further note that the Highway Authority did not consider this to be necessary at application stage. Accordingly, the Traffic Regulation Order Contribution does not meet the first test at Regulation 122 of the Community Infrastructure Levy Regulations, which is "*necessary to make the development acceptable in planning terms*". I have therefore not given any weight to it in granting planning permission for the scheme.
48. The ninth schedule of the s106 agreement relates to carbon offsetting provisions, which are intended to ensure that the development achieves net zero emissions. It requires the submission of an Energy Statement that models carbon emissions from the development, and based on the findings of this, payment of a Building Emissions Contribution and Lifestyle Contribution. In this regard, the Building Emissions Contribution seeks to offset regulated and unregulated emissions arising from the use of buildings, whereas the Lifestyle Contribution relates to the other activities of residents that generate emissions, such as aviation, agriculture, transport, waste, etc. The s106 agreement also requires that a Performance Review be carried out post-development and that a Shortfall Contribution be paid if necessary.
49. These contributions are not required by an adopted Local Plan policy but are instead set out in an Interim Sustainability Position Statement ('ISPS') that was published by the Council in 2021. I understand that the ISPS has not been subject to any public consultation, and it has not been independently examined. In this regard, I note that the PPG states: "*policies for planning obligations should be set out in plans and examined in public*"<sup>5</sup>. Moreover, PPG requires that any such policies be informed by a proportionate assessment of viability, which the Council accepts has not been undertaken in relation to the ISPS.

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<sup>5</sup> Paragraph ID: 23b-004-20190901

50. A Written Ministerial Statement was issued on 13 December 2023 in relation to local energy efficiency standards. This states that:

*"... the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations. The proliferation of multiple, local standards by local authority area can add further costs to building new homes by adding complexity and undermining economies of scale. Any planning policies that propose local energy efficiency standards for buildings that go beyond current or planned buildings regulation should be rejected at examination if they do not have a well-reasoned and robustly costed rationale that ensures:*

- That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework.*
- The additional requirement is expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP)."*

51. The approach taken in the ISPS is contrary to this, and the Written Ministerial Statement strongly implies that any such requirements should be set out in a Local Plan. It further states that a change to the building regulations is planned for 2025, which will mean that homes built to that standard will be net zero ready in any event.

52. Whilst it was put to me that other appeal Inspectors have found the requirements set out in the ISPS to be acceptable, no such examples are before me. It is therefore unclear whether the ISPS requirements were contested in those appeals, or whether they were issued before the Written Ministerial Statement of 13 December 2023. Consequently, whilst I appreciate that the Framework indicates that the planning system should support the transition to a low carbon future, I cannot be assured that in this particular instance the Building Emissions Contribution, Lifestyle Contribution, and Shortfall Contribution are necessary to make the development acceptable in planning terms. Therefore, I have not given weight to these provisions in granting planning permission for the scheme.

#### *Other considerations*

53. The site was removed from the Green Belt through the RBWM Borough Local Plan, which was adopted in February 2022. It is now a housing allocation where residential development is acceptable in principle. The accessibility of the site to local services and facilities, the need for new housing in the area, and the availability of brownfield sites in the Borough were considered in detail through the Local Plan process and I do not intend to revisit those matters here. The Local Plan also identifies the site as being suitable for around 330 dwellings and a primary school, as is currently proposed.

54. Whilst it is argued that vacant homes could be brought back into use instead of developing the appeal site, there is no evidence before me that such properties represent a genuine source of additional supply. In this regard, it is normal for a proportion of the housing stock to be vacant at any one time due to circumstances such as where the occupier has recently died, where a tenant

- has recently moved out, homes in the process of being sold/let, where the owner is working abroad, second homes, etc.
55. It is asserted that there is an existing oversupply of apartments in Maidenhead town centre, which these proposals would exacerbate. However, the appeal site is not in a town centre location, and there is no substantive evidence before me of an oversupply of apartments in this location. In any case, Appeal A is in outline and so the precise mix of apartments and houses are not for consideration at this stage.
56. The applications were accompanied by an Air Quality Assessment which details that subject to mitigation measures, the effect of the construction process on dust and air quality would be acceptable. The Council's Environmental Protection department did not object to the development on these grounds, and I see no reason to take a different view.
57. The site is not of high ecological value and is capable of delivering a biodiversity net gain of at least 10%, which is a mandatory requirement. Whilst it is asserted that a nearby Local Wildlife Site has not been surveyed for over 10 years, that does not imply that the development would have any negative effect on that site. In this regard, detailed Ecological Impact Assessments have been undertaken for both the Appeal A and Appeal B proposals. These recommended a series of mitigation and enhancement measures that are capable of being secured by condition. I further note that the Council's ecologist has not objected to the developments on these grounds.
58. The proposals would not undermine climate change objectives. In this regard, the properties would be built to modern energy efficiency standards and would be well served by public transport. I further note that the Council has not identified any conflict with the Local Plan policies that relate to climate change, and nor does any such conflict appear to exist.
59. The submitted Travel Plan assumes that up to 3.2 km (around 2 miles) is an acceptable regular walking distance. This is based on data from the National Travel Survey (2019) which found that walking accounts for 31% of journeys of between 1 and 2 miles. In any case, a convenience store, primary school, bus stops, and a railway station are all located within 1 km of the appeal site.
60. The development would not alter the existing footpath that runs along the southern boundary of the site between Westmead and the footbridge over the Maidenhead Ditch, and this would remain in situ.
61. Noise from the existing railway line is capable of being mitigated through appropriate design measures. These details are capable of being secured by way of a planning condition.
62. It is highlighted that the nearby Cookham Road bridge across the railway line has a weight limit that may preclude its use by HGVs carrying material to the site. However, other routes to the site are available that avoid this bridge.
63. In terms of sewerage, Thames Water were consulted at application stage and did not raise any objections to the development on capacity grounds.

## Conditions

64. Lists of conditions were initially agreed between the Council and the appellant in relation to both Appeal A and Appeal B, and a number of further conditions were subsequently put forward during the Inquiry. I have edited a number of these conditions for clarity and enforceability. As required by Section 100ZA(5) of the Town and Country Planning Act 1990, the appellant has agreed to all of the attached pre-commencement conditions in writing.

### *Appeal A*

65. In addition to the standard outline conditions, I have imposed a condition that requires the development to accord with the approved plans. This is necessary in the interest of certainty. Whilst the appeal is in outline, conditions requiring the development to accord with the principles set out in the Parameter Plan and Design Code are necessary in the interests of character and appearance and to ensure a high quality development.

66. I have imposed conditions requiring the submission and approval of a Construction Method Statement, and a timetable for the implementation of the Remediation Specification. These are necessary in the interests of highway safety and residential amenity, and to ensure that the site is appropriately remediated. A condition requiring the submission and approval of a phasing plan is necessary to ensure that infrastructure is delivered across the site in a coordinated way. Further conditions relating to a Construction Environmental Management Plan, a Landscape and Ecological Management Plan, and reptile translocation are necessary to protect biodiversity and to ensure new habitats are appropriately designed, managed and maintained. A condition requiring the submission and approval of a Written Scheme of Investigation is also necessary to ensure any archaeological remains are analysed and recorded. Another condition requiring the submission and approval of a surface water drainage scheme is necessary to ensure that the site is appropriately drained and is safe for its lifetime without increasing flood risk elsewhere. These conditions are pre-commencement in nature as they will inform the construction process and/or relate to works below ground level.

67. A condition requiring the submission and approval of a Noise Study is necessary to ensure that appropriate mitigation is secured in relation to noise and disturbance. Conditions relating to Categories M4(2) and M4(3) of the Building Regulations, and requiring the submission of an updated Energy and Sustainability Statement, are necessary to accord with the requirements of Local Plan Policies HO1 and SP2. Further conditions requiring the submission and approval of a Flood Management Plan and relating to flood risk mitigation measures and surface water drainage, are necessary in the interests of managing flood risk and ensuring that the development is safe. Other conditions relating to trees and hedgerows are necessary to ensure that retained trees are not damaged during construction works. A condition requiring the vehicular access to be in place prior to first occupation is also necessary to ensure that the site benefits from a safe and suitable access.

68. A condition requiring samples of the external materials to be submitted and approved is necessary in the interests of creating a high quality development. Conditions relating to an updated biodiversity net gain calculation, and biodiversity enhancements, are necessary to ensure the site delivers biodiversity improvements in line with national and local policy. A further

condition requiring the implementation of the mitigation measures in the Air Quality Assessment is necessary in the interests of residential amenity. Another condition relating to unanticipated contamination is necessary to ensure the site is appropriately remediated. Conditions relating to the proposed footpaths, emergency access gradient, and waste collection arrangements for Nos 226-234 Aldebury Road are also necessary in the interests of inclusive mobility, flood risk management, and highway safety.

### *Appeal B*

69. In addition to the standard time limit condition, I have imposed a condition that requires the development to accord with the approved plans. This is necessary in the interest of certainty. I have also imposed conditions requiring the submission and approval of a Construction Method Statement, a Construction Noise Assessment, and in relation to the proposed temporary access. These are necessary in the interest of highway safety and residential amenity. A condition requiring the submission and approval of phasing and surface water management details is necessary in the interests of residential amenity and flood risk. A further condition requiring the submission and approval of a Written Scheme of Investigation is necessary to ensure that any archaeological remains are analysed and recorded. Conditions requiring the submission and approval of a Construction Environmental Management Plan, a timetable for the implementation of the Remediation Specification, and relating to reptile translocation are necessary to protect biodiversity and to ensure the site is appropriately remediated. These conditions are pre-commencement in nature as they will inform the construction process and/or relate to works below ground level.
70. A condition relating to unanticipated contamination is necessary to ensure the site is appropriately remediated. Conditions relating to trees and hedgerows are also necessary to ensure that retained trees are not damaged during the works. Further conditions relating to delivery hours, and requiring that the mitigation measures in the Air Quality Assessment be implemented, are necessary in the interests of residential amenity. Finally, conditions relating to flood risk mitigation and drainage are necessary to ensure that the site is safe for its lifetime without increasing flood risk elsewhere.

### **Conclusion**

71. For the reasons given above I conclude that both Appeal A and Appeal B should be allowed.

*Thomas Hatfield*

INSPECTOR

## **SCHEDULE OF CONDITIONS - APPEAL A**

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called the 'reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any part of the development is commenced.
- 2) An application for the approval of the reserved matters shall be made to the Local Planning Authority within three years of the date of this permission.
- 3) The Development shall commence within two years from the date of approval of the last of the reserved matters.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - RG-M-25
  - RG-M-19 Rev C
  - ITB4215-GA-009 Rev E
  - ITB4215-GA-042 Rev A
- 5) The reserved matters application(s) shall be submitted in accordance with the principles set out within the Parameter Plan (Ref RG-M-14 Rev F).
- 6) The reserved matters application(s) shall be submitted in accordance with the principles set out within the Design Code Rev H (Stantec, May 2023).

### *Pre-commencement conditions*

- 7) No phase of the development subject to an approved reserved matters application shall take place until a site specific Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall include:
  - i) Procedures for complaint management, public consultation and liaison;
  - ii) Delivery and construction working hours. These shall only take place between 08:00 and 18:00 Monday to Friday, 08:00 and 13:00 on a Saturday, and at no time on a Sunday or Bank Holiday;
  - iii) Procedures for emergency deviation from the agreed working hours;
  - iv) Provision of a Dust Management Plan; and
  - v) Measures to control the use of site lighting in the interests of residential amenity.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 8) No phase of the development subject to an approved reserved matters application (including vegetation clearance) shall take place until a Construction Environmental Management Plan ('CEMP') has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:
  - i) A risk assessment of potentially damaging construction activities;
  - ii) Identification of biodiversity protection zones;

- iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction. This should include all mitigation measures outlined in the Ecological Impact Assessment (Grassroots Ecology, May 2022);
- iv) Reasonable avoidance measures during site clearance works for reptiles, nesting birds, and hedgehogs (including measures which would be undertaken should any individuals of these species be found), removal of the identified potential roost features under the supervision of a suitably qualified ecologist, and protection of the river and any vegetation to be retained;
- v) A lighting plan detailing the specification, location and orientation of the proposed external lighting to avoid disturbance or adverse effects on light-sensitive species, including bats;
- vi) The location and timing of sensitive works to avoid harm to biodiversity features;
- vii) An Invasive Species Method Statement;
- viii) Times during construction when a specialist ecologist needs to be present on site to oversee works;
- ix) The role and responsibilities on site of an ecological clerk of works or similarly competent person; and
- x) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to throughout the construction period for the development.

- 9) No development shall take place until a timetable for the implementation of the Remediation Specification (Campbell Reith, May 2022) has been submitted to and approved in writing by the Local Planning Authority. The Remediation Specification shall thereafter be implemented in accordance with the approved timetable. Upon completion of the identified measures, a verification report demonstrating the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved timetable.
- 10) No development shall take place until a phasing plan to demonstrate how different phases of the development shall come forward in sequence has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing plan.
- 11) Other than site clearance, earthworks, and any remaining reptile translocation works, no development shall take place until a Landscape and Ecological Management Plan ('LEMP') has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include details of the following:
  - i) A Habitat Management Plan;
  - ii) Long term aims and objectives for habitats and species;
  - iii) Detailed management prescriptions and operations for newly created species specific habitats, locations, timings, frequency, durations, methods, specialist expertise (if required), specialist tools/machinery or equipment and personnel as required to meet the stated aims and objectives;

- iv) A detailed prescription and specification for the management of the new habitats;
- v) An annual work schedule for at least a 30 year period;
- vi) A detailed monitoring strategy for habitats and species and methods of measuring progress towards achievement of stated objectives;
- vii) Details of proposed reporting to the council and proposed review and remediation mechanisms;
- viii) Proposed costs and resourcing and legal responsibilities;
- ix) Hedge, tree and grassland planting which will provide further habitat for bats;
- x) Details of external lighting levels;
- xi) Description and evaluation of features to be managed, as well as biodiversity enhancements including native species planting, installation of bird and bat boxes onto the new buildings and retained trees, provision of hibernacula and the provision of gaps in any boundary fencing for wildlife to travel across the site; and
- xii) Ecological constraints on site that might influence management.

The LEMP shall be implemented as approved, unless any subsequent changes to management as a result of findings from the monitoring reports is first agreed in writing with the Local Planning Authority.

- 12) The remaining elements of the reptile translocation shall follow the methodology set out in the Ecological Impact Assessment (Grassroots Ecology, May 2022) and the Reptile Translocation report (Grassroots Ecology, November 2022). A report detailing the final reptile translocation results, details of the protection of reptiles during and following development and the management and maintenance of the receptor site in perpetuity, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.
- 13) No development shall take place until a Written Scheme of Investigation ('WSI') has submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions, and:
- i) The programme and methodology of site investigation and recording;
  - ii) The programme for post investigation assessment;
  - iii) The provision to be made for analysis of the site investigation and recording;
  - iv) The provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v) The provision to be made for archive deposition of the analysis and records of the site investigation; and
  - vi) The nomination of a competent person or persons/organization to undertake the works set out within the WSI.

Development shall take place in accordance with the approved WSI.

- 14) No development shall take place until a surface water drainage scheme for the development, based on the submitted sustainable drainage

strategy, has been submitted to and approved in writing by the Local Planning Authority. This shall include:

- i) A detailed strategy for the management of surface water flows from areas off-site including an assessment of the hazard to people classification to ensure the development is safe for its lifetime without increasing flood risk elsewhere;
- ii) A surface water management plan;
- iii) Calculations to include development runoff rates, volumes (attenuation and long-term storage) and topographic details, and any consents required from Thames Water;
- iv) Full details of all components of the proposed surface water drainage system including dimensions, locations, gradients, invert levels, cover levels, long sections, cross section and relevant construction details of all individual components;
- v) Evidence that discharge from the site would be of sufficient water quality that it would not result in detriment to any receiving water course; and
- vi) Details of the proposed maintenance arrangements and responsibilities relating to the surface water drainage system.

The surface water drainage system shall be implemented and maintained in accordance with the approved details and shall thereafter be retained.

*Prior to development above ground level conditions*

- 15) No phase of the development subject to an approved reserved matters application shall take place above slab level until a Noise Study has been submitted to and approved in writing by the Local Planning Authority. This shall include details of how the proposed dwellings are designed so that cumulative noise from surrounding uses does not harm residential amenity. This shall include any appropriate mitigation measures. The development shall be carried out in accordance with the approved details which shall thereafter be retained.
- 16) No phase of the development subject to an approved reserved matters application shall take place above slab level until details of how the units will be designed to meet Categories M4(2) and M4(3) of Approved Document Part M of the Building Regulations 2010 (as amended), in accordance with Policy HO 2, have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details.

*Pre-occupation conditions*

- 17) Prior to the first occupation of the development, the Cookham Road access shall be constructed in accordance with drawing Ref ITB4215-GA-042 Rev A. The access shall thereafter be retained as approved.
- 18) Prior to the first occupation of the development, a Flood Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include measures, including signage, to manage the impacts of flooding on the emergency access route leading to Westmead.

*Other conditions*

- 19) Prior to any equipment, machinery or materials being brought onto the site, details of the measures to protect the trees shown as being retained

- in the submitted Arboricultural Impact Assessment (FLAC, February 2024) during the construction period, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to any equipment, machinery or materials being brought onto the site, and thereafter maintained until the completion of all construction work and all equipment, machinery and surplus materials have been permanently removed from the site. These measures shall include fencing in accordance with British Standard 5837. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made.
- 20) No tree or hedgerow shown to be retained in the submitted Arboricultural Impact Assessment (FLAC, February 2024) shall be cut down, uprooted or destroyed, nor shall any retained tree be lopped or topped other than in accordance with the approved plans and particulars within 5 years from the date of the first occupation of the development. Any approved topping or lopping shall be carried out in accordance with British Standard 3998 Tree work.
  - 21) No development involving the use of any facing or roofing materials shall take place until samples of the materials to be used on the external surfaces of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
  - 22) An updated biodiversity net gain calculation and associated plan and timetable for onsite delivery and associated monitoring shall be submitted with each reserved matters application. This shall provide details of the biodiversity net gain which will be delivered as part of the development (including a clear demonstration through the use of an appropriate biodiversity calculator such as the Defra Metric 4.0 that a net gain would be achieved). Each approved plan shall be implemented in accordance with the approved timetable.
  - 23) All biodiversity enhancements shall be carried out in accordance with the details included within the submitted Ecological Impact Assessment (Grassroots Ecology, May 2022); or an alternative scheme that has been submitted to and approved in writing by the Local Planning Authority.
  - 24) The development shall be carried out in complete accordance with the mitigation measures set out in Section 6 of the Air Quality Assessment (WSP, May 2022).
  - 25) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the relevant phase of development is resumed or continued.
  - 26) The development shall be carried out in accordance with the flood mitigation measures set out in the Flood Risk Assessment and Outline

Drainage Strategy (WSP, May 2022) and Flood Risk Assessment Addendum 2 (Overland Flow) (WSP, October 2022).

- 27) An updated Energy and Sustainability Statement shall be submitted with each reserved matters application to provide details of sustainable design and construction measures to be incorporated into the development. The approved details shall be implemented in accordance with the approved measures, and thereafter maintained.
- 28) No infiltration of surface water drainage into the ground shall be permitted from sustainable drainage systems.
- 29) Prior to the closing of the existing junction opposite 232 Aldebury Road to create a turning head (as shown in plan ITB4215-GA-042 Rev. A), and notwithstanding drawing ITBA4215-GA-035, details of a strategy for the collection of waste storage bins for 226-234 Aldebury Road, and an implementation timetable, shall be submitted and approved in writing by the Local Planning Authority. Any proposed bin collection points shall thereafter be installed prior to the closing of the existing junction opposite 232 Aldebury Road.
- 30) Notwithstanding the details shown in drawing Ref ITB4215-GA-042 Rev A, prior to the commencement of construction of the main vehicular access, details of the pedestrian routes in the area shown on that plan, and an implementation timetable, shall be submitted to and approved in writing by the Local Planning Authority. These details shall include proposed path gradients, surface materials, signage and any other measures necessary for pedestrian safety. The approved details shall thereafter be implemented in accordance with the approved timetable.
- 31) Notwithstanding the details shown in drawing Ref ITB4215-GA-009 Rev. E, prior to the commencement of construction of the pedestrian / emergency access, details of the height and gradient of that access shall be submitted to and approved in writing by the Local Planning Authority. These details shall ensure a maximum gradient of 1 in 20 to meet Inclusive Mobility requirements. These details shall also include any proposed compensatory flood storage required as a result of any change in levels within the 1%AEP plus 35% climate change defended floodplain. Flood Storage Compensation will be provided outside of the flood plain on a level for level basis plus a minimum increase in storage volume of 5% when compared with the existing volume that would be displaced by the proposed works. The approved details shall be implemented prior to the first occupation of the development.

## **SCHEDULE OF CONDITIONS - APPEAL B**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - RG-M-26 Rev. A
  - RG-M-20 Rev. B
  - ITB4215-GA-031 Rev. A
  - 70063905-WSP-XX-XX-DR-C-0019 Rev P01 (insofar as it relates to proposed land contours)

### *Pre-commencement conditions*

- 3) No development shall take place until a site specific Construction Method Statement has been submitted to and been approved in writing by the Local Planning Authority. The Statement shall include:
  - i) Procedures for complaint management, public consultation and liaison;
  - ii) Delivery and construction working hours. These shall only take place between 08:00 and 18:00 Monday to Friday, 08:00 and 13:00 on a Saturday, and at no time on a Sunday or Bank Holiday;
  - iii) Procedures for emergency deviation from the agreed working hours;
  - iv) Provision of a Dust Management Plan; and
  - v) Measures to control the use of site lighting in the interests of residential amenity.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No development shall take place until the temporary access has been constructed in complete accordance with drawing ITB4215-GA-031 Rev A. Within 12 months of the completion of the enabling works, if work has not begun on a new permanent access then the land accommodating the temporary access shall be restored to its previous condition.
- 5) No development shall take place until a Construction Noise Assessment (in accordance with BS5228-1:2009+A1:2014) has been submitted to and approved in writing by the Local Planning Authority. The assessment shall include details of any mitigation and monitoring procedures to protect adjacent residential properties.

Mitigation measures shall be installed on site prior to any HGV deliveries being made to the site and shall be maintained for the duration of the works thereafter. This excludes HGV movements associated with the construction of mitigation measures.

Subject to the use of Best Practicable Means, no works other than for the installation of noise mitigation, shall exceed 65 dB(A) LAeq, T as measured in the rear gardens of any residential property.

- 6) No development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:

- i) A detailed plan to confirm the phasing of the earthworks;
- ii) A detailed strategy for the management of surface water flows from areas offsite to ensure the development is safe for its lifetime without increasing flood risk elsewhere; and
- iii) A surface water management phasing plan.

The development shall thereafter be implemented in accordance with the approved details.

- 7) No development shall take place until a Written Scheme of Investigation ('WSI') has submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions, and:

- i) The programme and methodology of site investigation and recording;
- ii) The programme for post investigation assessment;
- iii) The provision to be made for analysis of the site investigation and recording;
- iv) The provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v) The provision to be made for archive deposition of the analysis and records of the site investigation; and
- vi) The nomination of a competent person or persons/organization to undertake the works set out within the WSI.

Development shall take place in accordance with the approved WSI.

- 8) No development shall take place (including vegetation clearance) until a Construction Environmental Management Plan ('CEMP') has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:

- i) A risk assessment of potentially damaging construction activities;
- ii) Identification of biodiversity protection zones;
- iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction. This should include all mitigation measures outlined in the Ecological Impact Assessment (Grassroots Ecology, May 2022);
- iv) Reasonable avoidance measures during site clearance works for reptiles, nesting birds, and hedgehogs (including measures which would be undertaken should any individuals of these species be found), removal of the identified potential roost features under the supervision of a suitably qualified ecologist, and protection of the river and any vegetation to be retained;
- v) A lighting plan detailing the specification, location and orientation of the proposed external lighting to avoid disturbance or adverse effects on light-sensitive species, including bats;
- vi) The location and timing of sensitive works to avoid harm to biodiversity features;
- vii) An Invasive Species Method Statement;
- viii) Times during construction when a specialist ecologist needs to be present on site to oversee works;

- ix) The role and responsibilities on site of an ecological clerk of works or similarly competent person; and
- x) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to throughout the construction period for the development.

- 9) The remaining elements of the reptile translocation shall follow the methodology set out in the Ecological Impact Assessment (Grassroots Ecology, May 2022) and the Reptile Translocation report (Grassroots Ecology, November 2022). A report detailing the final reptile translocation results, details of the protection of reptiles during and following development and the management and maintenance of the receptor site in perpetuity, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.
- 10) No development shall take place until a timetable for the implementation of the Remediation Specification (Campbell Reith, May 2022) has been submitted to and approved in writing by the Local Planning Authority. The Remediation Specification shall thereafter be implemented in accordance with the approved timetable. Upon completion of the identified measures, a verification report demonstrating the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved timetable.

*Other conditions*

- 11) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the relevant phase of development is resumed or continued.
- 12) Prior to any equipment, machinery or materials being brought onto the site, details of the measures to protect the trees shown as being retained in the submitted Arboricultural Impact Assessment (FLAC, February 2024) during the construction period, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to any equipment, machinery or materials being brought onto the site, and thereafter maintained until the completion of all construction work and all equipment, machinery and surplus materials have been permanently removed from the site. These measures shall include fencing in accordance with British Standard 5837. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made.
- 13) No tree or hedgerow shown to be retained in the submitted Arboricultural Impact Assessment (FLAC, February 2024) shall be cut down, uprooted or destroyed, nor shall any retained tree be lopped or topped other than

in accordance with the approved plans and particulars within 5 years from the date of the first occupation of the development. Any approved topping or lopping shall be carried out in accordance with British Standard 3998 Tree work.

- 14) No deliveries in connection with the enabling works shall be taken or dispatched from the site between 08:00 and 09:00 hours and 14:45 and 15:45 hours.
- 15) The development shall be carried out in complete accordance with the mitigation measures set out in Section 6 of the Air Quality Assessment (WSP, May 2022).
- 16) The development shall be carried out in accordance with the flood mitigation measures set out in the Flood Risk Assessment and Outline Drainage Strategy (WSP, November 2022).
- 17) No infiltration of surface water drainage into the ground shall be permitted from sustainable drainage systems.

## APPEARANCES

### FOR THE APPELLANT:

Christopher Young KC, No. 5 Chambers	instructed by Stantec
He called:	
Louise Beamish BSc (Hons), MIOA	Director, WSP
Jamie Roberts MPlan, MRTPI	Associate, Tetlow King
Ben Thomas BSc (Hons), MSc, CTPP, MCIHT, CMILT	Associate Partner, i-Transport
Andrew Wilkinson BEng (Hons), MSc, CEng, MICE	Technical Director, WSP
Nicholas Paterson-Neild BA(Hons), MPhil, MRTPI	Director, Stantec
Kathryn Ventham BSc (Hons), MSc, MRTPI	Director, Stantec

### FOR THE LOCAL PLANNING AUTHORITY:

Guy Williams KC, Landmark Chambers	instructed by the Royal Borough of Windsor and Maidenhead
He called:	
Philip Owen BSc (Hons) MIOA	Head of Acoustics, Trium Environmental
Chris Gent MEng (Hons), CEng, MICE, MCIHT	Director, Velocity TP
Ryan Saul BEng (Hons), IEng, MICE, MCIWEM, MCIHT	Partner, Odyssey Consult
Ian Manktelow BSc (Hons), MPhil, MRTPI	Principal Planning Officer, RBWM
Nigel Jarvis BA (Hons), MPhil, MRTPI	Director, Luken Beck
Adrien Waite	Assistant Director of Planning, RBWM
Helena Stevenson	Principle Lawyer, RBWM

### INTERESTED PARTIES:

Hari Sharma Ann Darracott BSc, MSc Paul Strzelecki Jean Sutherland Sasha Lakovic Andrew Hill LLB (Hons)	Maidenhead Civic Society
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## **INQUIRY DOCUMENTS**

- ID1 List of appearances for the Council
- ID2 Opening submissions made on behalf of the appellant
- ID3 Opening submissions made on behalf of the Council
- ID4 The Millenium Walk leaflet (submitted as a visual aid)
- ID5 Written statement covering items presented by Paul Strzelecki
- ID6 Extract from Procedural Guide: Planning appeals – England (2024)
- ID7 WSP Addendum Noise Assessment (appendix F to the Appellant’s Statement of Case)
- ID8 Photographs of Lutman Lane (submitted as a visual aid)
- ID9 Photographs of Westmead and Aldebury Road (submitted as a visual aid)
- ID10 Photograph of the existing informal pedestrian route along Cookham Road (submitted as a visual aid)
- ID11 Photograph of existing surfaced pedestrian route between Aldebury Road and Cookham Road (submitted as a visual aid)
- ID12 Photograph of existing surfaced pedestrian route between Aldebury Road and Cookham Road (submitted as a visual aid)
- ID13 Photograph of delivery vehicle parked on Aldebury Road (submitted as a visual aid)
- ID14 CIL Compliance Statement prepared by the Council
- ID15 Flood risk note submitted by the appellant
- ID16 Email sent by the appellant to the Fire Service dated 12 September 2023
- ID17 Draft Noise Condition
- ID18 Speaking note submitted by Sasha Lakovic
- ID19 Noise modelling clarification note prepared by the Council
- ID20 Further draft conditions prepared by the appellant
- ID21 Costs application submitted by the appellant
- ID22 Council’s costs application response

ID23 Appellant's costs application final comments

ID24 Council's closing submissions

ID25 Appellant's closing submissions