



PLANNING STATEMENT ON BEHALF OF RISETALL LIMITED

**REDEVELOPMENT OF
FOR A MIXED USE
DEVELOPMENT
CONTAINING GROUND
AND BASEMENT LEVEL
A1/A3 COMMERCIAL USE
AND FIRST TO THIRD
FLOOR STUDENT
ACCOMMODATION USE
ON THE FORMER ESSO
PETROL STATION SITE
AT 29-33 CHALK FARM
ROAD LONDON NW1 8HH**

**KR PLANNING
FEBRUARY 2012**

1. INTRODUCTION

- 1.1. This statement is prepared in support of a planning application to redevelop the property for a mixed use development containing ground and basement level A1/A3 commercial use, and first to third student floor accommodation use on the former Esso petrol station site at 29 Chalk Farm Road, London, NW1 8HH.
- 1.2. This statement is to be read in conjunction with the following documentation:
- A Design and Access Statement, which explains the design ethos behind the scheme, prepared by Contemporary Design Solutions.
 - A BRE Daylight/Sunlight Assessment, prepared by Right of Lights
 - A Sustainability & Energy Report, prepared by Richard Hodgkinson Consultancy
 - A Transport Assessment, prepared by Scott Wilson
 - A draft Travel Plan (Workplace and Student), prepared by Scott Wilson
 - A draft Construction Management Plan, prepared by Scott Wilson
 - A Noise Assessment, prepared by 24 Acoustics
 - A Basement Impact Study.
 - An Arboricultural Report prepared by Ian Keen

2. THE SITE

- 2.1. The site and its contextual surrounds are explained in greater detail in the Design and Access Statement, and the Applicant intends to rely upon that documentation.
- 2.2. The site consists of a level development plot formerly used as a petrol filling station. The site has undergone a process of soil decontamination and removal of the underground petrol storage tanks. The site is irregular shaped and fronts onto Hartland Road and Chalk Farm road. To the rear is the construction site of a 192 room student accommodation development which has a dual frontage to Chalk Farm Road and Harmood Street. No.1 Hartland Road has a direct abuttal with a flank wall that forms a boundary to the north- east of the site.
- 2.3. The site benefits from a Public Transport Accessibility Level (PTAL) of 5 and is within approximately 465m of the Chalk Farm Tube. The site is located in mixed use area, predominantly retail, leisure and residential. Surrounding development is a mix of 3 and 4 storeys along Chalk Farm Road, and 3 storey along Hartland Road.

3. THE PROPOSAL

- 3.1. The proposed development is explained in more detail within the Design and Access Statement, but in summary it is proposed to construct a four storey building with basement to house a mix of student and retail development.
- 3.2. The proposed 4 storey development has two distinct functions:
- Commercial (A1/A3 Class) - The commercial space is located on the basement and ground floor. The proposal has six commercial units with an internal area of 810.1 sqm.
 - Student Accommodation - A total of 1333.8 sqm will provide additional cycle storage, refuse and 39 units of rooms of student accommodation in the following mix:
 - Standard Rooms: 15
 - Twin Rooms: 6
 - Clusters (3 rooms): 12
 - Accessible Rooms: 6
- 3.3. The rooms are a mix of clusters with shared living/dining spaces, accessible, twin and single rooms with ensuite facilities. There will be a dedicated refuse and recycling room for each of the student and commercial developments. Green roofs and walls will be provided where applicable.
- 3.4. There is a cycle store in the basement, accessible by lift, which provides for a total of 148 Josta Cycle stands, some of which will cater for students within the approved 192 room development.

Planning History

- 3.5. The history is limited to matters pertaining to its previous sui generis use, and have no consequence on the application.

4. PLANNING POLICY

4.1. The Development Plan for the purpose of S38(6) of the Planning and Compulsory Purchase Act 2004 is the London Plan (July 2011) and the recently adopted Core Strategy and Development Plan Documents (November 2010). The only remnant of the previous UDP (LU1) is not relevant to the determination of this application.

4.2. The enactment of the Planning Act 2008 provides for an amendment to S39 of the Planning and Compulsory Purchase Act 2004, to require LPA's, when complying with their S.39 duty to achieve sustainable development, to have regard (in particular) to the desirability of achieving good design. Para 33 of PPS 1 defines good design as follows:

Good design ensures attractive usable, durable and adaptable places and is a key element in achieving sustainable development. Good design is indivisible from good planning.

4.3. National advice relevant to the scheme is taken as read in relation to providing inclusive communities that meet the needs of all sectors and achieving higher densities on sustainable sites.

Planning Policy Statement 1: Delivering Sustainable Development (2005)

4.4. Planning Policy Statement (PPS) 1 outlines the governments overarching planning policies on the delivery of sustainable development through the planning system. Planning has a key role to play in contributing to the Governments Strategy for Sustainable Development at the heart of government, which seeks to ensure a better quality of life for everyone. PPS 1 states that 'planning has a key role to play in the creation of sustainable communities: communities that will stand the test of time, where people want to live, and which will enable people to meet their aspirations and potential' (paragraph 6).

- 4.5. PPS 1 states that the government is committed to developing strong, vibrant and sustainable communities. It requires that 'development plans should promote development that creates socially inclusive communities, including suitable mixed use housing' (paragraph 16).
- 4.6. Paragraph 8 states that where the development plan contains relevant policies, applications should be determined in line with the plan, unless material considerations indicate otherwise. PPS 1 advocates the need for the planning system to operate in the public interest to ensure development and use of land results in better places for people to live.

Planning Policy Statement 3: Housing (2006)

- 4.7. In November 2006 the Department for Communities and Local Government published Planning Policy Statement 3 (PPS 3) which provides a new national policy framework for housing at local and regional levels. The framework seeks to ensure that local planning authorities deliver the right quantity of housing to address need and demand in their areas and the right quality and mix of housing for their communities.
- 4.8. There is a strong emphasis in national planning policies on housing, to ensure the delivery of good quality housing and to provide for a mix of households such as families with children, single person households such as students, and older people. It is considered that the provision of a mix of housing will assist in the delivery of mixed communities.

PPS 4: Planning for Prosperous Economies

- 4.9. PPS4 was published in December 2009. A number of themes arise from the document, most notably 'local planning authorities should actively positively and proactively encourage economic growth'.

By Design : Urban Design in the planning system (By Design: UDPS)

- 4.10. The objectives of urban design (page 15) should be to:
- Promote character in townscape by responding to and reinforcing locally distinctive patterns of development.
 - Promote the continuity of street frontages and the enclosure of space by development which clearly defines public and private areas.

- Promote public spaces that are attractive and work effectively improving the quality of the public realm.
- Promote ease of movement by creating places that connect and are easy to move through, putting people before traffic.
- Promote legibility through development that provides recognisable routes, intersections and landmarks to help people find their way around.
- Promote diversity through a mix of compatible developments and uses that work together to create viable places responding to local needs.

By Design: Better Places to Live (By Design: BPTL)

4.11. Applies the principles of By Design: UDPS to housing development, giving detailed guidance and exemplar examples. The attributes of successful housing (page 12) are stated to be:

- A movement framework which is safe, direct and attractive to all users.
- A rich mix of housing opportunities.
- A coherent structure of buildings, space, landscape and routes for movement.
- Street layout and design which is appropriate to use in context.
- Attractive and clearly defined public and private spaces.
- A safe and secure environment.
- Particular emphasis is given to the value of perimeter blocks and corners in defining townscape, allowing servicing from within the block, thus improving the appearance of the streetscape.
- The manipulation of street width and building height in order to create a sense of enclosure.
- Designing for privacy and safety, and the relationship with public, private and communal space.

Safer Places: The Planning System & Crime Prevention

4.12. The primary aim of the guide is to provide sustainable communities by the reduction of crime by influencing solutions through good planning and urban design. The seven attributes (page13) are stated to be:

- Access and movement provide places with well defined routes.

- Structure places that are structured so that different uses do not cause conflict.
- Surveillance places where all publicly accessible places are overlooked.
- Ownership places that promote a sense of ownership, respect, territorial responsibility and community.
- Physical protection places that include necessary, well-designed security features.
- Activity places where the level of human activity is appropriate to the location and creates a reduced risk of crime and a sense of safety at all times.
- Management and maintenance - places that are designed with management and maintenance in mind, to discourage crime in the present and the future.

Planning for Growth

- 4.13. In March 2011, the Minister for Decentralisation via the Chief Planner, issued a ministerial statement dealing with, amongst other things, the need for LPA's to be fully aware of viability matters. As a preamble, but relevant to the this appeal is the following paragraphs

Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy.

And

When deciding whether to grant planning permission, local planning authorities should support and facilitate housing, economic and other forms of sustainable development.

Draft NPPF

- 4.14. In July 2011 the Government published the Draft National Planning Policy Framework for consultation. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth. The consultation will close on 17 October 2011, but the Government has advised that it can be a material consideration in the determination of planning appeals.
- 4.15. The most recent news on the draft NPPF is that a Parliamentary report which acknowledged support for the Government's aspirations for a streamlined planning system and recognised there was little appetite for a wholesale rewrite of the draft National Planning Policy Framework.

- 4.16. However, the Commons Communities and Local Government Committee called for changes to some wording in the draft NPPF.
- 4.17. Clive Betts, chair of the all-party committee, said: “The way the framework is drafted currently gives the impression that greater emphasis should be given in planning decisions to economic growth. This undermines the equally important environmental and social elements of the planning system. As currently drafted the ‘default yes’ to development also carries the risk of the planning system being used to implement unsustainable development.”
- 4.18. Ministers have signalled that the report makes specific constructive suggestions including:
- an expanded definition of sustainable development
 - standardising key terms - such as weight in decision making
 - emphasising the importance of the local plan
 - clarifying the expression of policy on brownfield land, offices in town centres and windfall sites.
- 4.19. None of the above changes, if implemented, would impact upon the support for the application scheme within the draft.
- 4.20. Whilst it is a consultation document and, therefore, subject to potential amendment, nevertheless it gives a clear indication of the Government’s ‘direction of travel’ in planning policy. Therefore, the draft National Planning Policy Framework is capable of being a material consideration, although the weight to be given to it will be a matter for the decision maker’s planning judgment in each particular case. The current Planning Policy Statements, Guidance notes and Circulars remain in place until cancelled.
- 4.21. Of relevance to this application:
- A presumption in favour of sustainable development is proposed as a “golden thread” running through planning and in support of growth. This is a welcome and potentially powerful provision in support of development of all types and it could help bring forward much needed growth in all sectors.
 - Economic growth is explicitly encouraged; it is not to be equated with environmental degradation in principle and such thoughts should be “laid to rest”.
 - The priority of proactive strategies to mitigate and adapt to climate change is established.
 - This positive approach, which is to include the recognition of viability factors, is welcomed and should be a key area for change by local authorities.
 - The provision of a deliverable supply of land for housing in accordance with market based

assessments is included through a policy requirement for a five year plus 20% rolling supply of land and identification of further land into the medium and longer term; affordable housing can be provided on site or through commuted payment. The policy objective is to “boost” housing land supply.

The London Plan (July 2011)

- 4.22. The London Plan 2011 is the statutory plan for London and sets out the strategic, citywide guidance for London, to which individual boroughs’ planning policies are required to be in broad conformity. The original London Plan was published in 2004, and was revised in 2008 before being replaced this year.
- 4.23. Relevant to the application is the advice at Policy 4.5 which encourage tourist development recognizing the economic benefit, that it provides employment opportunities and enhances London’s pre-eminence as a tourist destination. Policy 4.9 is supportive of the provision of small shops.
- 4.24. In summary the London Plan sets out to:
- Support an increase in London’s development and employment with policy on: outer London, inner and central London; finding the best locations for development and regeneration, and protecting town centres; encouraging a connected economy and improving job opportunities for everyone, so that London maintains its success and competitiveness;
 - Improve the environment and tackle climate change by: reducing CO2 emissions and heat loss from new developments; increasing renewable energy; managing flood risk, ensuring water supply and quality; improving sewerage systems; improving London’s recycling performance and waste management; and protecting our open spaces making London a green and more pleasant place to live and visit;
 - Ensure that London’s transport is easy, safe and convenient for everyone and encourage cycling, walking and electric vehicles.

Camden's Local Development Framework

- 4.25. The Council adopted the key planks of its LDF on 8th November 2010. With regard to this application, CS1 of the Core Strategy sets out the overarching approach to the location of future growth and development in the borough. It states that 'the Council expects that in the order of 12,700 new homes will be provided in Camden between 2010/11 and 2024/25'.
- 4.26. With regard to the Camden Town area, this is nominated as a growth area in both the London Plan and newly adopted Core Strategy. The areas covered by policy CS3, which identifies appropriate edge of centre sites that may also be suitable locations for provision of homes, shops, office etc. However, the supporting text to the policy, at 3.6 states that *'Camden's highly accessible areas often include, or are adjacent to, residential communities and conservation areas and other heritage assets. Development in these locations must therefore take into account the full range of relevant Council policies and objectives'*.
- 4.27. Policy CS6 – 'Providing Quality Homes' states that 'the Council will aim to make full use of Camden's capacity for housing by maximising the supply of additional housing to meet or exceed Camden's target of 5,950 homes from 2007-2017, including 4,370 additional self contained homes'.
- 4.28. The Development Policies document provides detailed policies outlining how the overarching aims of the Core Strategy will be delivered. Given the close relationship between the two, these documents have been prepared in parallel. Policy DP1 encourages mixed use developments to have a residential element to the scheme, particularly in locations such as the application site.
- 4.29. Development Policy DP2 – 'Making full use of Camden's capacity for housing' seeks to maximise the supply of additional homes in the Borough to meet housing targets. This is to be achieved by 'expecting the maximum appropriate contribution to the supply of housing on sites that are underused or vacant'.

- 4.30. Policy DP5 requires that development create mixed and balanced communities by providing a mix of dwelling sizes within each development site.

Supplementary Planning Guidance (2006)

- 4.31. The Council has revised its 'Camden Planning guidance' (April 2011) which provides further advice on the application of those policies contained within the DDP. Of particular relevance is CPG2 discussed below.

5. Consideration of Application Merits

- 5.1. The site is not allocated in the 2006 UDP, nor has it been identified in the emerging Site Allocations DPD. No policy protection exists for the previous land use. The Morrison supermarket service station remains in-situ, meaning that local residents and business retain access to this facility.

Principal of Land Use - Retail

- 5.2. The site is located within an identified town centre, where the provision of retail is explicitly encouraged by Policy DP10. As the site lies north of Hawley Crescent, the introduction of the A3 use will not breach the 50% site frontage restriction.

Principal of Land Use – Hotel

- 5.3. The site is not allocated in the 2006 UDP, nor has it been identified in the emerging Site Allocations DPD. No policy protection exists for the previous land use. The Morrison supermarket service station remains in-situ, meaning that local residents and business retain access to this facility.
- 5.4. Policy DP 14, and expanded upon at para 14.3, supports small scale provision of hotels in the Camden Town area. No definition of small scale is provided, but pre-app advice from the Borough indicated an acceptance of the principle subject to resolution of policy DP1.
- 5.5. Each of the criteria set down by Policy CS6 will now be addressed in turn.
(a) the ability of the Council to meet the target for the supply of additional self contained homes
- 5.6. The London Borough of Camden has successfully exceeded its housing targets as set by the London Plan and Core Strategy, for a number of years and is on target to continue to throughout the Core Strategy plan period.
(b) the balance of uses in the area

- 5.7. Census figures indicate that there are 642 students aged 19 and over in the Haverstock ward, which represents a 5.72% of the total population. It would be difficult to characterize this as an over concentration, when compared with wards south of Euston Road.
- 5.8. CPG2 provides at para 3.18 that where student housing is already located in the area, that an extension of up to 100 students bed spaces is agreeable in principle. This application, at 63 spaces, means that the localized population will be 255 bed spaces if counted alongside the forthcoming provision fronting Harmood Street.

(c) The quality of residential amenity or the character of the surrounding area

- 5.9. As recognised the in the 'Studentification' report (Appendix 8), prepared by the University UK, student populations can bring about many benefits, as follows:
- The provision of much needed student accommodation which will make an important contribution towards London and the Borough's identified housing needs,
 - Purpose-built student accommodation reduces any further pressure to convert traditional family houses into HMOs, which can often lead to less sustainable communities and transient populations in predominantly residential areas.
- 5.10. It is set out at paragraph 3.3 of the Studentification report that the negative impacts of student accommodation tend to be narrow and clearly definable. The less desirable aspects of student populations are often only perceived and unfairly amplified. Studentification, the term coined by academia, is normally associated with student HMO's, and therefore is not considered an appropriate term to apply in this instance. A report commissioned for the DCLG established the following issues relating to students who live outside of specialised accommodation:
- Students living in a shared house in the community are susceptible to unscrupulous private landlords;
 - Have an adverse impact on the private rental market – due to the high prices they can afford to pay compared with a family;
 - This has had an increased inflationary pressure on houses which could be rented to students as private landlords target these units;
 - Cause detriment to the 'community feel' of the area – due to the temporary nature of their time in the property, and the various adverse impacts linked to HMO style of living;
 - Adverse impact in terms of numbers of cars / bins / rubbish;

- Lack of care / maintenance of front and back gardens; and
- Noise and other antisocial behaviour late at night / early mornings.

5.11. The report itself states that 'studentification' is not normally a problem in London because of the existence of mixed communities (para 3.10). As a point, it goes on to state that the issue primarily arises in traditional owner occupied family areas, a characterisation which cannot be placed on Holmes Road.

5.12. This distinction is recognised in the LPA's Student Housing document, which states:

Academics have started investigating students' impact on local communities following increasing concerns in UK's medium and small towns that high concentrations of students resulted in low-level anti-social behaviour, crime, decrease in demand for some local services (including early years, primary and secondary education), increased competition for rented housing and the development of a cyclical economy in line with university term times. Cities like Manchester, Leeds, Durham, Salford and other have raised such issues, leading university body Universities UK to publishing a best practice guide, Studentification: a Guide to Opportunities, Challenges and Practices⁴².

The issue appears however to be related to the concentration of students in non purpose-built accommodation (HMOs or share-houses). A report by ECOTEC published for DCLG in 2008, Evidence Gathering - housing in multiple occupation and possible planning responses⁴⁴ explicitly states that 'A key issue in relation to the expansion of higher education institutions in the past is that the growth in student numbers has not been met by an adequate increase in purpose-built accommodation. This has led to an increasing reliance upon the private rented sector to meet student housing needs'⁴⁵.

This stream of research is therefore not directly relevant to the issues discussed in this study in that it refers to concentrations of students living in a specific tenure rather than to student residents as a whole. It does however highlight some of the challenges and opportunities that may arise in some of Camden neighbourhoods, and it is therefore worth noting some key few points featured in the above mentioned literature

5.13. The Officer report for the Harmood Street development (2008/2981/P)is helpful in this regard. Under the heading of Land Use, the Officer opinion is that:

The proposed development is for the provision of student accommodation. Whilst student accommodation could not be classified as Class C3 permanent residential accommodation, it is

considered to be a form of residential accommodation that meets a specialist housing need. The provision of dedicated student housing would also reduce the number of students looking for housing on the open market, releasing existing market housing and thus relieves pressure on the housing market. The proposed land use therefore is considered to be an acceptable residential use in terms of Policy LU1. It should be noted that the previously refused planning application for student accommodation was also considered to be acceptable in land use terms

5.14. And under the heading of Noise

Some concern has been expressed regarding noise and disturbance from the large number of students who would reside in the new accommodation. Residents concerns are justified and it is clearly possible that this number of students could have the potential to cause additional noise and disturbance to existing residents in the area. It is considered that this would be best dealt with by securing the manner in which the accommodation is operated and managed. A student management plan which would address these issues would be secured via legal agreement.

5.15. Although there has been a material change of policy since this determination, the conclusions as to the appropriateness of land use and how prudent management can overcome potential problems remain relevant.

5.16. Purpose built Student Accommodation is the subject of its own code of conduct, as system developed when the Housing Act was last amended in 2004. The Applicant is agreeable to a S106 HoT relating to the provision of a Student Management Plan

5.17. Policy DP9 (h) requires that any student accommodation should serve institutions in Camden or adjacent Boroughs. Officer have previously interpreted this as requiring a specific institute to be identified in the S106. This is not a fair reflection of the Development Plan Policy, and would we would direct you to para 3.53 of the adopted version, which states
Student accommodation should be secured as such by planning agreement or condition relating to the use of the land or to its occupation by members of specified educational institutions.

- 5.18. This was a live issue at recent appeal at the Magnet site, but the point was conceded from the witness box by the Council's planning witness when taken to the above paragraph. For completeness the Inspector opined at para 21:

The London Plan was adopted in July 2011 after the Council's LDF and following the date the application was refused. It thus contains the most recent policies against which the proposal must be assessed. Whilst the draft London Plan did indeed have a clause that required PBSA to be linked to HEIs, this was not included in the adopted Plan, so as to enable specialist providers to use their stock efficiently, which was regarded to be of particular importance given the scale of need for such accommodation. The London Plan also notes the significant contribution HEIs make to the local economy and labour market and underlines the importance of ensuring their attractiveness and potential growth are not compromised by inadequate provision of new student accommodation. Though there is thus no longer a policy requirement to link the PBSA with an HEI, the London Plan does require the accommodation to be robustly secured for students by legal agreement or planning conditions. I am satisfied such measures are in place here.

- 5.19. My Client is agreeable to restricting occupancy of the units to students at HEFCE institutes across term time, with more flexibility provided for short term courses across the summer months. The S106 agreement for the Magnet site provides an acceptable clause in this regard.

Quality of Residential Accommodation

- 5.20. In accord with Policy DP9 (j), the scheme provides for a mix of unit size and types. The mix proposed should be considered generally accepted as an adequate mix given the constraints of the site. Each of the rooms substantially exceed the standards provided for within the Borough's HMO standards.
- 5.21. The scheme is supported by a Sunlight/Daylight study demonstrating that each of the student rooms will receive sunlight & daylight in excess of the BRE minimum guidelines.

Design Quality

- 5.22. This matter is addressed in greater detail in the Design and Access Statement, but in relation to the Development Plan, the following comments are relevant.
- 5.23. The Applicant is committed to providing a high quality design response, and has utilized both the traditional and modern idiom to respond to the site constraints. The scale, height, massing and alignment of the proposal have been designed to better enclose the street. The upper floors are a lightweight structure, which respond to advice in By Design and the Urban Design Compendium. There are also structural advantages to pursuing this design response.
- 5.24. As to the architectural language, the architect has deliberately chosen a secondary scale that allows the passerby to identify it as building in commercial use. They've responded to pre-application comments by including a solid to void ratio matching the regularity apparent in the neighbouring buildings in the side roads, but Officer desire to see a hotel that looks like terrace housing has not been adopted. There is nothing in policy terms that suggests that building types need conform to a style of building also present in the street, and none that says that a mixed use retail/C1 scheme needs to have the appearance of a terrace house, and this advice would appear contrary to the advice at para 38 of PPS1.

- 5.25. Proposed materials are of high quality and are identified in the Design and Access Statement, and are otherwise conditionable.

Amenity to neighbouring residents

- 5.26. The adjoining residents have enjoyed an open aspect for years, but this would have been balanced with the noise and smells of being located adjacent to a service station. There will be an obvious change to this outlook, with the introduction of a built form, but such is to be expected in a tight grain neighbourhood such as the application site.
- 5.27. The Architect has used particular skill in this constrained site to achieve a building that provides a viable development without adversely affecting the amenities of the neighbouring properties.
- 5.28. As explained elsewhere, the height of the building is informed by its location on an arterial route, and the need to provide appropriate enclosure to this road, and the Architect has reduced the massing to the rear by providing steps within the building. Windows are aspected away from adjoining residential properties, and those with an aspect across the rear of properties are provided with privacy screens to prevent views.

Construction Impacts

- 5.29. The application is supported by a draft Construction Management Plan, and the Applicant agrees to a S106 agreement on any planning permission. This would seek to ensure that appropriate measures are taken to minimise disturbance from construction and associated activities. Under such arrangements a community construction working group would be set up by the applicants to consult and liaise upon such matters with local representatives.

Daylight/Sunlight

- 5.30. The Application is supported by a report prepared according to the 1991 BRE Guidelines, prepared by Right of Light Consulting. The report concludes:

The results confirm that the proposed development will have a low impact on the light receivable by its neighbouring buildings. All windows satisfy the diffuse daylight and direct sunlight tests.

And on the issue of overshadowing:

One neighbouring garden falls short of the BRE recommendations. However, this garden is well

below the BRE minimum recommendation even before the development. Therefore, it is impractical to avoid this isolated area of non-compliance. We are of the opinion that the development design is acceptable when taking into account all of the material planning considerations which affect site layout design garden

Parking

- 5.31. The scheme proposes a dedicated cycle storage room for the residential users. Further detail is provided for within the Transport Assessment that accompanies the planning application. The proposed units will be car-free, and the Applicant is happy to enter into a S106 Agreement to restrict rights of residents to access the parking permit scheme.

Sustainability

- 5.32. The development has reached a number of above best practice principles in terms of sustainability. These are highlighted below:
- CHP engine will generate heat and power for the development;
 - Significant energy saving measures to be included in the new aspect of the development, with all new elements meeting the requirements of the 2010 Building Regulations. This will have the overall benefit of ensuring the new development is more energy efficient than the existing form;
 - BREEAM 'Very Good' will be achieved for the student accommodation;
 - Incorporation of a green roof and wall giving a platform for the site to enhance ecology, provide biodiversity, enable a sustainable drainage technique, increase insulation in the roof and reducing a possible link with the site and the heat island effect;
 - Provision of further high quality employment space (A1 and/or A3) and significant improvement to the existing;
 - High levels of natural daylighting throughout reducing the need for artificial lighting, increasing energy demand;
 - Cycle storage provision to promote a sustainable mode of transport and one which promotes exercise;
 - Secured by Design and Considerate Constructors will be achieved.

S106 Heads of Terms

- 5.33. Policy DP1 provides that where a commercial development is proposed, it makes a commensurate provision for permanent residential within the Borough. This provision can be by way of an on-site delivery, an alternate site within the Borough or by commuting a sum off-site in accord with the calculation of CPG8.
- 5.34. In this instance, the applicant controls a separate parcel of land at 10A Belmont Street, which has an unimplemented planning permission for residential. The Applicant is happy for a S106 trigger that requires the completion and occupation of these dwellings prior to the occupation of the hotel scheme.
- 5.35. A provisional list of S106 Heads were provided within the pre-application response. Some of the matters are addressed within the application material, including travel plans, CMP, sustainability & energy plans are therefore whether or not these are required to be listed again in the S106 is questionable. The Applicant is cognizant that SOS policy is that these matters should be the subject of conditions in preference to obligations and with the exception of the CMP, there are no off-site works proposed. The CMP itself is based on the same agreed for the adjacent student accommodation development, so it is difficult to understand why this could not be approved as part of the application process.
- 5.36. As to any cash sums to be paid, and at the risk of being trite, it is worth remembering the terms of s 106 Town and Country Planning Act 1990:
- (1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A and 106B as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—*

- (a) restricting the development or use of the land in any specified way;*
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;*
- (c) requiring the land to be used in any specified way; or*
- (d) requiring a sum or sums to be paid to the authority...*

5.37. The remainder of s 106 provides for the formalities for and enforceability of planning obligations. It is worth noting that s 106 itself does not provide any requirement that the obligation be related to a grant of planning permission. The provision effectively gives rise to a statutory means for the enforcement and transmissibility of a contractual relationship between landowner and planning authority. However, for a s 106 agreement to be relevant to the decision to grant planning permission, it must bear some relationship to the planning merits of the scheme: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759.

5.38. Further statutory regulation of planning obligations is now found in regulation 122 of the Community Infrastructure Levy Regulations 2010/948 (“the CIL Regulations”), which provides as follows:

122.— Limitation on use of planning obligations

(2) A planning obligation may only constitute a reason for granting planning permission for the 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.*

5.39. Accordingly, for a s 106 agreement to be taken into account in the determination (and, necessarily, for it to be reasonable for a local planning authority to require it prior to granting planning permission), it must be shown that obligations are (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.

- 5.40. Regulation 122 effectively places what were previously the tests imposed by ODPM Circular 05/2005 onto a statutory footing. Although part of that Circular has now been elevated to a legal requirement by virtue of the CIL Regulations, the advice remains the current statement of government policy.
- 5.41. The fact that the tests in Circular 05/05 are now on a statutory footing in regulation 122 means in practice that there each and every contribution must be subject to rigorous examination. The further policy framework for planning obligations is to be found in the Development Plan for the area, and in supplementary planning documents. However, it is worth remembering that guidance in supplementary planning documents cannot trump the regulation 122 tests.
- 5.42. Accordingly it is not enough for Officers to say that an obligation is being required because the local policy framework requires it: it must be shown that the tests are met in respect of each and every contribution. This point is of particular significance where contributions are sought on the basis of a formula, as is depicted in CPG8. Whilst such an approach is not necessarily inconsistent with regulation 122, Officers will need to justify the overall size of the “pot”, how it will be spent, and how the particular contribution demanded relates to the particular development.
- 5.43. GPA advice note 16 provides the following tests to establish if any sum sought meets the statutory tests within Reg 122:
- *the relevant development plan policy or policies, and the relevant sections of any SPD or SPG*
 - *quantified evidence of the additional demands on facilities or infrastructure which are likely to arise from the proposed development*
 - *details of existing facilities or infrastructure, and up-to-date, quantified evidence of the extent to which they are able or unable to meet those additional demands*
 - *the methodology for calculating any financial contribution which is shown to be necessary to improve existing facilities or infrastructure,*
 - *or provide new facilities or infrastructure, to meet the additional demands*
 - *details of the facilities or infrastructure on which any financial contribution will be spent.*
- 5.44. Given that no sums have been advised pre-application, it is impossible for the applicant to apply the above methodology at this stage. It is therefore hoped that Officers advise whatever sums are to be required as soon as possible during the processing of the application.

6. CONCLUSION

- 6.1. National, strategic and local planning policies all place strong emphasis on the need to re-cycle urban land in order to safeguard Greenfield sites and land in other sensitive areas. The proposed development successfully achieves a balance between the potentially competing objectives of development and the conservation of the environment, and thereby satisfies the goal of "sustainability".
- 6.2. In accord with the development plan, the LPA's priority is for the provision of residential land use, and this scheme achieves that laudable aim, whilst also improving the quality of the retail offer in the area.