

Missanda, Wells Lane

Statement in support of a Certificate of Lawfulness of existing Development

1. The Application

- a. This statement has been prepared to support the application for a certificate of lawful development made to the local planning authority, the Royal Borough of Windsor and Maidenhead (“RBWM”) in respect of development pursuant to planning permission for the construction of 2 detached dwellings following the demolition of the existing dwelling and outbuildings, planning permission reference 16/03736 dated 21 February 2017.
- b. This application is seeking a certificate of lawfulness of proposed development under section 191 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”).
- c. Section 191(1) states:  
  
“(1) If any person wishes to ascertain whether—  
(a) any existing use of buildings or other land is lawful;  
(b) any operations which have been carried out in, on, over or under land are lawful;  
or  
(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,  
he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.”
- d. The development is the construction of 2 detached dwellings following demolition of existing dwelling and outbuildings under planning permission reference 16/03736 dated 21 February 2017.
- e. The operations for which the certificate is sought are the construction 2 detached dwellings following demolition of existing dwelling and outbuildings under planning permission reference 16/03736 dated 21 February 2017.

2. The Land

- a. The land is shown edged red on the location plan (Appendix 1) being land at Missanda, Wells Lane, Ascot SL5 7DY.

3. Background

- a. Planning permission was granted by RBWM for the construction of 2 detached dwellings following demolition of existing dwelling and outbuildings on 4 February 2016, reference 15/02893 (Appendix 2).
- b. An application was made under section 73 of the Town and Country Planning Act 1990 to RBWM to vary condition 20 (approved plans). That application was granted

and a new planning permission reference 16/03736 was issued by RBWM on 21 February 2017 (Appendix 3).

- c. Applications were made to discharge conditions under both planning permissions 15/02893 and 16/03736 (respectively references 18/03634 and 18/03705). These applications were refused and were subject to appeals against that refusal (respectively PINs references APP/T0355/W/19/3235880 and APP/T0355/W/19/3235884) Those appeals were allowed by a decision dated 26 February 2020, a copy of the decision letter is at Appendix 4.

#### 4. The Operations

- a. Paragraph 6 of the appeal decision (Appendix 4) states (added emphasis):

“6. The original planning permission was granted on 4 February 2016. The Section 73 decision was subsequently granted on 21 February 2017. The applications now subject to the appeals were made in December 2018, prior to the expiry of the time limit for commencement of both permissions on 4 February 2019. Following the submission of these applications, and in the days before the expiry of the permissions, the appellant notified the Council that it intended to commence development on site by digging a trench. A site record notice was submitted to confirm what works had taken place. The Council acknowledges that these works are sufficient to constitute a material start to the development”.

- b. As set out above and acknowledged by RBWM in the appeal the operations being the digging of a trench on 29 January 2019 (see paragraphs 3.2 and 4.16 to 4.19 of the statement of common ground submitted with the appeals and included as an additional document with this application) were sufficient to constitute a material start to the development. That is, they comprised a material operation for the purpose of section 56(3) of the Town and Country Planning Act 1990.
- c. Paragraphs 11 to 13 of the appeal decision are also relevant and are quoted below:

“11. Both parties refer to the ‘Whitley Principle’, which arises from a 1992 decision of the Court of Appeal. That decision laid down a general rule that operations carried out in contravention of conditions cannot be described as commencing the development authorised by the permission, and therefore constitute a breach of planning control, so that they are unauthorised and unlawful.

12. However, the same decision outlined an exception to the rule, whereby later approval of details for which approval had been sought prior to the unauthorised commencement would mean that works carried out could be taken as having validly commenced within the time limit. The timeline of events in this case aligns with this exception.

13. On my reading of the evidence, the Council does not appear to have taken account of the original exception in the Whitley case, which expressly allows for the potential later approval of details submitted in advance of an unauthorised start,

and for the later approval of the details to render the commencement of development lawful.”

5. Lawful Commencement?

- a. Planning permission reference 16/03736 (Appendix 3) is subject to 21 conditions. Condition 1 requires the development to commence by 4 February 2019, as stated above it has been acknowledged by RBWM that the operations carried out were sufficient to commence the development by this date.
- b. The planning permission is also subject to 9 conditions that were required to be discharged before development commenced being conditions, 2, 3, 4, 6, 7, 8, 9, 10, and 12 with condition 16 requiring details to be approved before any works of demolition and construction commenced.
- c. The inspector in determining the appeal concluded that the details submitted were acceptable and discharged these conditions.
- d. The appeal decision summarises the representations that were made with regard to the legal position, specifically with reference to the case of *FG Whitley & Sons v Secretary of State for Wales* (1992) 64 P&CR 296 and the exception to the principles set out in that case (see quoted passages from the appeal decision above).
- e. The inspector determined that one of these exceptions applied, namely, that where details in respect of the discharge of any condition precedents were submitted prior to the date that the development could lawfully commence, approval of those details is sufficient to render any operation carried out prior to the cut-off date for lawfully commencing development lawful.
- f. The inspector clearly determined that this exception to the ‘Whitley principle’ applied. As a result, any works carried out before the ‘cut-off date’ of 4 February 2019 were, upon the discharge of these conditions, lawful. Whilst RBWM stated at the appeal (see footnote 1) that they considered condition 2 as the only condition precedent this condition and the remaining conditions listed above were discharged.
- g. It has been accepted by RBWM that the operations undertaken in digging a trench were carried out before the last date of the lawful commencement of the development. The appeal decision determined that all conditions stated to be required to be approved before development commenced<sup>1</sup> were discharged. As such the operations that were undertaken are sufficient to lawfully commence development under planning permission reference 16/03736.

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<sup>1</sup> Noting here that as stated at paragraph 14 of the appeal decision “[t]he Council stated at the Hearing that it only considered Condition 2 of the original permission to be a condition precedent”. Condition 2 required a scheme for the mitigation of the effects of the development on the Thames Basin Heath Special Protection Area to be submitted to and approved in writing by the Local Planning Authority. A completed agreement under section 106 of the Town and Country Planning Act 1990 Act was agreed between the appellant and RBWM that provided for this in respect of both the original permission and the section 73 permission.

h. Section 191(2) of the 1990 Act states:

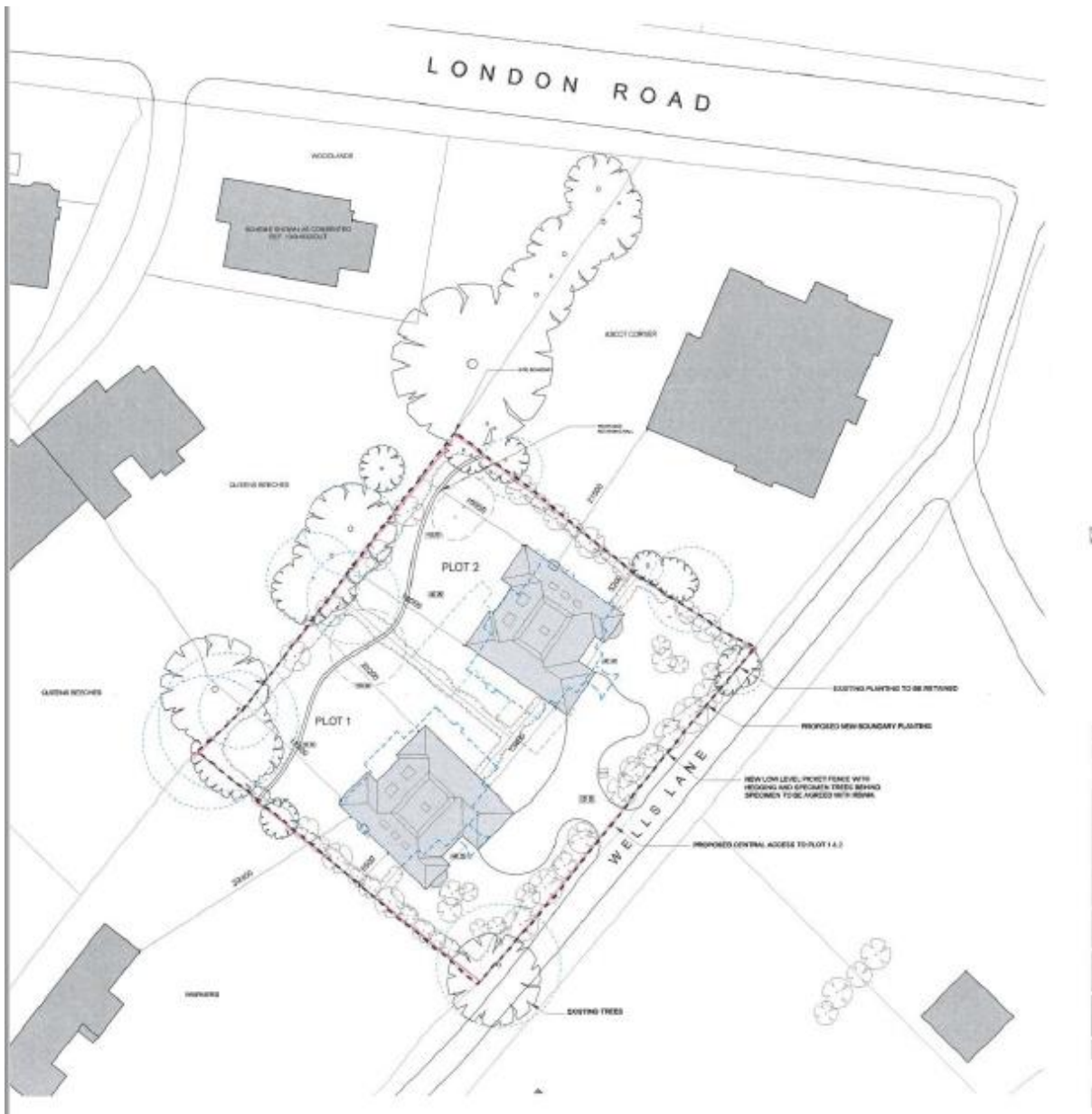
“(2) For the purposes of this Act uses and operations are lawful at any time if—  
(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and  
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.”

i. No enforcement notice has been issued in respect of the development and no enforcement action can be taken as the operations carried out were not, for the reasons stated above, unlawful, that is they were not in breach of planning control. As such the operations lawfully commenced the development under planning permission reference 16/03736.

## 6. Conclusion

- a. The works undertaken in 2019, prior to the date that development had to commence were sufficient to lawfully commence the development under planning permission reference 16/03736. RBWM stated at the appeal hearing that the only condition precedent was condition 2, that was discharged by inspector (see footnote 1). Irrespective of this all of the remaining conditions stated to be required to be discharged before development commenced, albeit not considered by RBWM to be condition precedents, were discharged at appeal. The exception the ‘Whitley principle’ outlined above applies and those works lawfully commenced the development.
- b. By lawfully commencing the development under planning permission reference 16/03736 further operations to complete the construction of 2 detached dwellings following demolition of existing dwelling and outbuildings under that permission are lawful.
- c. For the reason stated above a certificate of lawfulness of proposed development on the basis that the works comprising of the digging of a trench lawfully commenced the development granted planning permission reference 16/03736 should be granted.

Appendix 1  
Site Location



Appendix 2  
Planning Permission Reference 15/02893



Development & Regeneration  
Town Hall  
St Ives Road  
Maidenhead  
Berkshire  
SL6 1RF

Mr Warren Joseph  
Ascot Design Partnership  
Second Floor  
Berkshire House  
39 - 51 High Street  
Ascot  
SL5 7HY

Town and Country Planning Act 1990 (as amended)

Notice of Decision

Appn. Date: 3rd September 2015                      Appn. No.: 15/02893  
Type: Full  
Proposal: Construction of 2 detached dwellings following demolition of existing dwelling and outbuildings  
Location: Missanda Wells Lane Ascot SL5 7DY  
Parish/Ward: Sunninghill And Ascot Parish

The Council of the Royal Borough of Windsor and Maidenhead GRANTS PERMISSION for the above development to be carried out in accordance with the application submitted by you on the above date, subject to the following conditions:

- 1 The development hereby permitted shall be commenced within three years from the date of this permission.  
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 No development shall take place until a scheme for the mitigation of the effects of the development on the Thames Basin Heaths Special Protection Area has been submitted to and approved in writing by the Local Planning Authority. The scheme shall make provision for the delivery of Suitable Alternative Natural Greenspace (SANG) and for provision towards Strategic Access Management and Monitoring (SAMM). In the event that the proposal is for the physical provision of SANG, the SANG shall be provided in accordance with the approved scheme before any dwelling is occupied.  
Reason: To ensure that the development, either on its own or in combination with other plans or projects, does not have a significant adverse effect on a European site within the Conservation of Habitats and Species Regulations 2010.
- 3 No development shall take place until samples of the materials to be used on the external surfaces of the development (including harsurfacing) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.

Reason: In the interests of the visual amenities of the area. Relevant Policy - Local Plan DG1, H11. This detail is required prior to commencement since it needs to be considered as part of the overall design.

- 4 No development shall commence until details of all finished slab and finished floor levels in relation to ground level (against OD Newlyn) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.

Reason: In the interest of the visual amenities of the area. Relevant Policy Local Plan DG1.

- 5 Prior to any equipment, machinery or materials being brought onto the site, details of the measures to protect, during construction, the trees shown to be retained on the approved plan, 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 5737:2012. 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, without the prior written approval of the Local Planning Authority.

Reason: To protect trees which contribute to the visual amenities of the site and surrounding area. Relevant Policies - Local Plan DG1, N6. The tree protection details area required prior to commencement since trees need to be protected during the demolition and construction phase.

- 6 Prior to the commencement of development on the site and irrespective of any indications on the approved plans, full details of the design, appearance, siting of the proposed retaining wall and including a method statement shall be submitted to and approved in writing by the Local Planning Authority. The retaining wall shall not extend into the tree root protection areas and the retaining wall in the northern corner of the site shall be at least 6 metres from the rear boundary of the site. The retaining wall shall be built strictly in accordance with the approved details and shall be permanently retained.

Reason: To ensure that the retaining wall has a satisfactory appearance and to ensure that there is no adverse impact on mature trees (on and off site). Relevant Policies - Local Plan N6 and Neighbourhood Plan NP/EN3. This detail is required prior to commencement since it needs to be considered as part of the overall design.

- 7 No development shall commence until details of the siting and design of all walls, fencing or any other means of enclosure (other than the retaining wall which is covered by a separate condition) have been submitted to and approved in writing by the Local Planning Authority. Such walls, fencing or other means of enclosure as may be approved shall be erected before first occupation of the development unless the prior written approval of the Local Planning Authority to any variation has been obtained.

Reason: To ensure the satisfactory resultant appearance and standard of amenity of the site and the surrounding area. Relevant Policy - Local Plan DG1. This detail is required prior to commencement as it needs to be considered as part of the overall design and landscaping of the site.

- 8 Prior to the commencement of development full details of the proposed underground utilities shall be submitted to and approved in writing by the Local Planning Authority. Any new utilities need to be directed out underneath the driveway to ensure the new planting is not compromised. The development shall be carried out and maintained in accordance with the approved details.

Reason: To ensure that the any new planting is not compromised and in the interests of the visual amenities of the area. Relevant Policies - Local Plan DG1, H10, H11 and Neighbourhood Plan Policies NP/DG1, NP/DG3. This detail is required prior to commencement as it needs to be considered as part of the overall design of the scheme.



- 9 Irrespective of the details on the approved plans no development shall take place until full details of both hard and soft landscape works, have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. The landscaping scheme shall be a good quality landscaping scheme and include robust tree planting along the frontage and comprise the planting of native trees which form part of the character of the area [including English oak (*Quercus robur*), Scots pine (*Pinus sylvestris*), Silver birch (*Betula pendula*), Rowan (*Sorbus aucuparia*) and Holly (*Ilex aquifolium*)]. If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity, unless the Local Planning Authority gives its prior written consent to any variation.  
Reason: To ensure a form of development that maintains, and contributes positively to, the character and appearance of the area and given that a number of trees and other vegetation have been removed from the site prior to the submission of an earlier planning application. This detail is required prior to commencement since it needs to be considered as part of the design of the scheme. Relevant Policies - Local Plan DG1 and Neighbourhood Plan NP/EN2.
- 10 Prior to the commencement of development (including demolition), a construction environmental management plan/ measures detailing how the developer will minimise the impact of pollution, dust, smoke, (from the application site) to nearby local wildlife sites, shall be submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.  
Reason: In the interests of protecting biodiversity. Relevant Policy - Neighbourhood Plan NP/EN4.
- 11 The mitigation measures set out in the applicant's ecology report (prepared by AA Environmental Limited dated 18 December 2014) shall be carried out in accordance with the recommendations contained in the report. Prior to the initial occupation of the dwellings hereby approved full details of the location and design of bird/bat boxes to be installed at the application site, shall be submitted to and approved by the Local Planning Authority. The bird/bat boxes shall be installed and retained in accordance with the approved details.  
Reason: In the interests of enhancing biodiversity. Relevant Policies - Neighbourhood Plan NP/EN4.
- 12 No development shall take place until details of sustainability measures have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate how the development would be efficient in the use of energy, water and materials in accordance with the Royal Borough of Windsor & Maidenhead Sustainable Design & Construction Supplementary Planning Document. The development shall be carried out and subsequently retained and maintained in accordance with the approved details.  
Reason: To ensure that measures to make the development sustainable and efficient in the use of energy, water and materials are included in the development and to comply with the Royal Borough of Windsor & Maidenhead Sustainable Design & Construction Supplementary Planning Document.
- 13 No dwelling shall be occupied until details of the location of a water butt of at least 120L internal capacity to be installed to intercept rainwater draining from the roof of each dwelling has been submitted to and approved in writing by the Local Planning Authority and subsequently provided at each dwelling. The approved facilities shall be retained.  
Reason: To reduce the risk of flooding and demand for water, increase the level of sustainability of the development and to comply with Requirement 4 of the Royal Borough of Windsor & Maidenhead Sustainable Design & Construction Supplementary Planning Document.
- 14 No further window(s) shall be inserted at first floor level or above in the side elevations of the dwellings hereby approved without the prior written approval of the Local Planning Authority.  
Reason: To prevent overlooking and loss of privacy to neighbouring occupiers. Relevant Policies - NPPF paragraph 17 bullet point 4.

- 15 Irrespective of any indications to the contrary on the approved plans, the first floor bathroom/ensuite windows in the side elevations of the dwellings hereby approved shall be of a permanently fixed, non-opening design, with the exception of an opening toplight that is a minimum of 1.7m above the finished internal floor level, and fitted with obscure glass and the window shall not be altered without the prior written approval of the Local Planning Authority.  
Reason: To prevent overlooking and loss of privacy to neighbouring occupiers. Relevant Policies - NPPF paragraph 17 bullet point 4.
- 16 Prior to the commencement of any works of demolition or construction a management plan showing how demolition and construction traffic, (including cranes), materials storage, facilities for operatives and vehicle parking and manoeuvring will be accommodated during the works period shall be submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented as approved and maintained for the duration of the works or as may be agreed in writing by the Local Planning Authority.  
Reason: In the interests of highway safety and the free flow of traffic. Relevant Policies - Local Plan T5. This detail is required prior to commencement as it needs to be considered for the demolition phase.
- 17 No part of the development shall be occupied until the access has been constructed in accordance with the approved drawing 14-1089-300 Rev B dated 3 December 2015.. The access shall thereafter be retained in accordance with the approved details.  
Reason: In the interests of highway safety and the free flow of traffic. Relevant Policies - Local Plan T5, DG1.
- 18 No part of the development shall be occupied until vehicle parking and turning space has been provided in accordance with the approved drawing 14-1089-300 Rev B dated 3 December 2015. The space approved shall be retained for parking and turning in association with the development.  
Reason: To ensure that the development is provided with adequate parking facilities in order to reduce the likelihood of roadside parking which could be detrimental to the free flow of traffic and to highway safety. Relevant Policies - Local Plan P4, DG1.
- 19 The hard surfaces shall be made of porous/permeable materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.  
Reason: To reduce the risk of flooding and pollution and increase the level of sustainability of the development and to comply with Requirement 5 of the Royal Borough of Windsor & Maidenhead Sustainable Design & Construction Supplementary Planning Document.
- 20 The development hereby permitted shall be carried out in accordance with the approved plans listed below.  
Reason: To ensure that the development is carried out in accordance with the approved particulars and plans.

**Approved Plan Reference Number(s):**

14-P1089-LP 300, version no.: Rev B, received on 3 December 2015  
14-P1089-300, version no.: Rev B, received on 3 December 2015  
14-P1089-301, version no.: Rev B, received on 3 December 2015  
14-P1089-302, version no.: Rev B, received on 3 December 2015  
14-P1089-303, version no.: Rev B, received on 3 December 2015  
14-P1089-304, version no.: Rev B, received on 3 December 2015  
14-P1089-305, version no.: Rev B, received on 3 December 2015

**Informative**

1. This decision has been made in accordance with the requirements of the National Planning Policy Framework. The Local Planning Authority has sought all reasonable measures to resolve issues and found solutions when coming to its decision. For further details please see the Officer's report and the Council's decision by following this link [R.B.W.M. | Planning - Public Access Module](#) and entering the application number, or contact the Council's Customer Service Centre on 01628 683800 and quoting the application number.
2. Any incidental works such as the new front boundary treatment affecting the adjoining by-way shall be agreed in writing with the Public Rights of Way Team, RBWM, Town Hall, St Ives Road, Maidenhead, SL6 1RF tel: 01628 796180 at least 4 weeks before any development is due to commence.
3. The attention of the applicant is drawn to the Berkshire Act 1986, Part II, Clause 9, which enables the Highway Authority to recover the costs of repairing damage to the footway or grass verge arising during building operations.
4. The attention of the applicant is drawn to Section 59 of the Highways Act 1980 which enables the Highway Authority to recover expenses due to extraordinary traffic.
5. All site operatives should be made aware of current legislation protecting bats and their roosts and that in the unlikely event that any bats are encountered then works must cease and Natural England contacted to agree appropriate measures.
6. The recommended permitted hours of construction working in the Authority are as follows: Monday to Friday 08.00 until 18.00; Saturday 08.00 until 13.00. No working on Sundays or Bank Holidays.
7. The applicant and their contractor should take all practicable steps to minimise dust deposition, which is a major cause of nuisance to residents living near to construction and demolition sites. The applicant and their contractor should ensure that all loose materials are covered up or damped down by a suitable water device, to ensure that all cutting/breaking is appropriately damped down, to ensure that the haul route is paved or tarmac before works commence, is regularly swept and damped down, and to ensure the site is appropriately screened to prevent dust nuisance to neighbouring properties. The applicant is advised to follow guidance with respect to dust control and these are available on the Internet: London working group on Air Pollution Planning and the Environment (APPLE); London Code of Practice, Part 1: The Control of Dust from Construction; and the Building Research Establishment: Control of dust from construction and demolition activities
8. The Royal Borough receives a large number of complaints relating to construction burning activities. The applicant should be aware that any burning that gives rise to a smoke nuisance is actionable under the Environmental Protection Act 1990. Further that any burning that gives rise to dark smoke is considered an offence under the Clean Air Act 1993. It is the Environmental Protection Team policy that there should be no fires on construction or demolition sites. All construction and demolition waste should be taken off site for disposal. The only exceptions relate to knotweed and in some cases infected timber where burning may be considered the best practicable environmental option. In these rare cases we would expect the contractor to inform the Environmental Protection Team before burning on 01628 683538 and follow good practice.

#### **Justifications**

1. The reason planning permission has been granted is that the development complies with the relevant provisions of the development plan. The relevant policies/proposals of the development plan are Local Plan DG1, H10, H11, P4, T5, N6 ; Neighbourhood Plans Np/DG1, NP/DG2, NP/DG3, NP/T1, NP/EN2, NP/EN3, NP/EN4.

**This permission does not relieve the applicant from responsibility for obtaining any necessary approval which may be required under building control legislation or Section 32 Berkshire Act 1986**

(access for fire appliances). For advice on building control regulations, please contact the Authority's Building Control Service on 01628 796870.

The applicant is advised that all works to which this permission relates must be carried out strictly in accordance with the plans, drawing and other relevant supporting material submitted as part of this application and hereby approved as such and in full compliance with all conditions set out above. The Development Control Group must be immediately advised of any proposed variation from the approved documents and the prior approval of the Council obtained before any such works are carried out on site. Failure to comply with this advice may render the person carrying out and/or authorising the works liable to enforcement proceedings, which may involve alterations and/or demolition of any unauthorised building or structures and may also lead to the possibility of prosecution.

The applicant's attention is also drawn to the requirements of the Party Wall Act 1996, which may affect your submitted proposals. The applicant must notify all affected neighbours if work, which you are intending to carry out, falls within the Act. This may include work on an existing wall shared with another property, building on the boundary or excavating near a neighbouring property. However, the applicant is advised that this is not a matter dealt with by this Authority and it is recommended that you seek suitable professional advice.

Signed            Dated: 4th February 2016

*Jenifer Jackson*

Jenifer Jackson  
Borough Planning Manager

Appendix 3  
Planning Permissions Reference 16/03736



Planning  
Town Hall  
St Ives Road  
Maidenhead  
Berkshire  
SL6 1RF

Mr Warren Joseph  
Ascot Design Partnership  
Second Floor  
Berkshire House  
39 - 51 High Street  
Ascot

Town and Country Planning Act 1990 (as amended)

**Notice of Decision**

**Appn. Date:** 19th December 2016 **Appn. No.:** 16/03736  
**Type:** Variation Under Reg 73  
**Proposal:** Construction of 2 detached dwellings following demolition of existing dwelling and outbuildings as approved under planning permission 15/02893 without complying with condition 20 (approved plans) to replace approved plans to allow for 2 No. rear dormers and 3 No. side roof light's.  
**Location:** Former Missanda Wells Lane Ascot SL5 7DY  
**Parish/Ward:** Sunninghill And Ascot Parish Ascot And Cheapside Ward

The Council of the Royal Borough of Windsor and Maidenhead AGREES TO VARY the above condition to be carried out in accordance with the application submitted by you on the above date, subject to the following conditions:

- 1 The development hereby permitted shall be commenced within three years from the date of the original permission (15/02893/FULL) i.e. by the 4th February 2019.  
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 No development shall take place until a scheme for the mitigation of the effects of the development on the Thames Basin Heaths Special Protection Area has been submitted to and approved in writing by the Local Planning Authority. The scheme shall make provision for the delivery of Suitable Alternative Natural Greenspace (SANG) and for provision towards Strategic Access Management and Monitoring (SAMM). In the event that the proposal is for the physical provision of SANG, the SANG shall be provided in accordance with the approved scheme before any dwelling is occupied.  
Reason: To ensure that the development, either on its own or in combination with other plans or projects, does not have a significant adverse effect on a European site within the Conservation of Habitats and Species Regulations 2010.
- 3 No development shall take place until samples of the materials to be used on the external surfaces of the development (including harsurfacing) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.

Reason: In the interests of the visual amenities of the area. Relevant Policy - Local Plan DG1, H11. This detail is required prior to commencement since it needs to be considered as part of the overall design.

- 4 No development shall commence until details of all finished slab and finished floor levels in relation to ground level (against OD Newlyn) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.  
Reason: In the interest of the visual amenities of the area. Relevant Policy Local Plan DG1.
- 5 Prior to any equipment, machinery or materials being brought onto the site, details of the measures to protect, during construction, the trees shown to be retained on the approved plan, 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 the British Standard. 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, without the prior written approval of the Local Planning Authority.  
Reason: To protect trees which contribute to the visual amenities of the site and surrounding area. Relevant Policies - Local Plan DG1, N6. The tree protection details area required prior to commencement since trees need to be protected during the demolition and construction phase.
- 6 Prior to the commencement of development on the site and in respect of any indications on the approved plans, full details of the design, appearance, siting of the proposed retaining wall and including a method statement shall be submitted to and approved in writing by the Local Planning Authority. The retaining wall shall not extend into the tree root protection areas and the retaining wall in the northern corner of the site shall be at least 6 metres from the rear boundary of the site. The retaining wall shall be built strictly in accordance with the approved details and shall be permanently retained.  
Reason: To ensure that the retaining wall has a satisfactory appearance and to ensure that there is no adverse impact on mature trees (on and off site). Relevant Policies - Local Plan N6 and Neighbourhood Plan NP/EN3. This details is required prior to commencement since it needs to be considered as part of the overall design.
- 7 No development shall commence until details of the siting and design of all walls, fencing or any other means of enclosure (other than the retaining wall which is covered by a separate condition) have been submitted to and approved in writing by the Local Planning Authority. Such walls, fencing or other means of enclosure as may be approved shall be erected before first occupation of the development unless the prior written approval of the Local Planning Authority to any variation has been obtained.  
Reason: To ensure the satisfactory resultant appearance and standard of amenity of the site and the surrounding area. Relevant Policy - Local Plan DG1. This detail is required prior to commencement as it needs to be considered as part of the overall design and landscaping of the site.
- 8 Prior to the commencement of development full details of the proposed underground utilities shall be submitted to and approved in writing by the Local Planning Authority. Any new utilities need to be directed out underneath the driveway to ensure the new planting is not compromised. The development shall be carried out and maintained in accordance with the approved details.  
Reason: To ensure that the any new planting is not compromised and in the interests of the visual amenities of the area. Relevant Policies - Local Plan DG1, H10, H11 and Neighbourhood Plan Policies NP/DG1, NP/DG3. This detail is required prior to commencement as it needs to be considered as part of the overall design of the scheme.

- 9 Irrespective of the details on the approved plans no development shall take place until full details of both hard and soft landscape works, have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. The landscaping scheme shall be a good quality landscaping scheme and include robust tree planting along the frontage and comprise the planting of native trees which form part of the character of the area [ including English oak (*Quercus robur*), Scots pine (*Pinus sylvestris*), Silver birch (*Betula pendula*), Rowan (*Sorbus aucuparia*) and Holly (*Ilex aquifolium*)]. If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity, unless the Local Planning Authority gives its prior written consent to any variation.  
Reason: To ensure a form of development that maintains, and contributes positively to, the character and appearance of the area and given that a number of trees and other vegetation have been removed from the site prior to the submission of an earlier planning application. This detail is required prior to commencement since it needs to be considered as part of the design of the scheme. Relevant Policies - Local Plan DG1 and Neighbourhood Plan NP/EN2.
- 10 Prior to the commencement of development (including demolition), a construction environmental management plan/ measures detailing how the developer will minimise the impact of pollution, dust, smoke, (from the application site) to nearby local wildlife sites, shall be submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.  
Reason: In the interests of protecting biodiversity. Relevant Policy - Neighbourhood Plan NP/EN4.
- 11 The mitigation measures set out in the applicant's ecology report (prepared by AA Environmental Limited dated 18 December 2014) shall be carried out in accordance with the recommendations contained in the report. Prior to the initial occupation of the dwellings hereby approved full details of the location and design of bird/bat boxes to be installed at the application site, shall be submitted to and approved by the Local Planning Authority. The bird/bat boxes shall be installed and retained in accordance with the approved details.  
Reason: In the interests of enhancing biodiversity. Relevant Policies - Neighbourhood Plan NP/EN4.
- 12 No development shall take place until details of sustainability measures have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate how the development would be efficient in the use of energy, water and materials in accordance with the Royal Borough of Windsor & Maidenhead Sustainable Design & Construction Supplementary Planning Document. The development shall be carried out and subsequently retained and maintained in accordance with the approved details.  
Reason: To ensure that measures to make the development sustainable and efficient in the use of energy, water and materials are included in the development and to comply with the Royal Borough of Windsor & Maidenhead Sustainable Design & Construction Supplementary Planning Document.
- 13 No dwelling shall be occupied until details of the location of a water butt of at least 120L internal capacity to be installed to intercept rainwater draining from the roof of each dwelling has been submitted to and approved in writing by the Local Planning Authority and subsequently provided at each dwelling. The approved facilities shall be retained.  
Reason: To reduce the risk of flooding and demand for water, increase the level of sustainability of the development and to comply with Requirement 4 of the Royal Borough of Windsor & Maidenhead Sustainable Design & Construction Supplementary Planning Document.
- 14 No further window(s) shall be inserted at first floor level or above in the side elevations of the dwellings hereby approved without the prior written approval of the Local Planning Authority.  
Reason: To prevent overlooking and loss of privacy to neighbouring occupiers. Relevant Policies - NPPF paragraph 17 bullet point 4.



- 15 Irrespective of any indications to the contrary on the approved plans, the first floor bathroom/ensuite windows in the side elevations of the dwellings hereby approved shall be of a permanently fixed, non-opening design, with the exception of an opening toplight that is a minimum of 1.7m above the finished internal floor level, and fitted with obscure glass and the window shall not be altered without the prior written approval of the Local Planning Authority.  
Reason: To prevent overlooking and loss of privacy to neighbouring occupiers. Relevant Policies - NPPF paragraph 17 bullet point 4.
- 16 Prior to the commencement of any works of demolition or construction a management plan showing how demolition and construction traffic, (including cranes), materials storage, facilities for operatives and vehicle parking and manoeuvring will be accommodated during the works period shall be submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented as approved and maintained for the duration of the works or as may be agreed in writing by the Local Planning Authority.  
Reason: In the interests of highway safety and the free flow of traffic. Relevant Policies - Local Plan T5. This detail is required prior to commencement as it needs to be considered for the demolition phase.
- 17 No part of the development shall be occupied until the access has been constructed in accordance with the approved drawing 14-1089-300 Rev D dated 20.02.17. The access shall thereafter be retained in accordance with the approved plans.  
Reason: In the interests of highway safety and the free flow of traffic. Relevant Policies - Local Plan T5, DG1.
- 18 No part of the development shall be occupied until vehicle parking and turning space has been provided in accordance with the approved drawing 14-1089-300 Rev D dated 20.02.17. The space approved shall be retained for parking and turning in association with the development.  
Reason: To ensure that the development is provided with adequate parking facilities in order to reduce the likelihood of roadside parking which could be detrimental to the free flow of traffic and to highway safety. Relevant Policies - Local Plan P4, DG1.
- 19 The hard surfaces shall be made of porous/permeable materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.  
Reason: To reduce the risk of flooding and pollution and increase the level of sustainability of the development and to comply with Requirement 5 of the Royal Borough of Windsor & Maidenhead Sustainable Design & Construction Supplementary Planning Document.
- 20 The roof lights in the side elevations of the houses hereby approved shall be of a high level type with a cill level that is a minimum of 1.7m above the finished internal floor level and the window type shall not be altered without the prior written approval of the Local Planning Authority.  
Reason: To prevent overlooking and loss of privacy to neighbouring occupiers Relevant Policies - NPPF paragraph 17, bullet point 4.
- 21 The development hereby permitted shall be carried out in accordance with the approved plans listed below.  
Reason: To ensure that the development is carried out in accordance with the approved particulars and plans.

**Approved Plan Reference Number(s):**

14-P1089-LP 300 RED OUTLINE, version no.: REV B, received on 3 December 2015  
14-P1089-305, version no.: REV B, received on 3 December 2015  
14-P1089-300, version no.: REV D, received on 20 January 2017  
14-P1089-301, version no.: REV E, received on 20 February 2017  
14-P1089-302, version no.: REV E, received on 20 February 2017

14/16

### Informatives

1. This decision has been made in accordance with the requirements of the National Planning Policy Framework. The Local Planning Authority has sought all reasonable measures to resolve issues and found solutions when coming to its decision. For further details please see the Officer's report and the Council's decision by following this link [R.B.W.M. | Planning - Public Access Module](#) and entering the application number, or contact the Council's Customer Service Centre on 01628 683800 and quoting the application number.
2. Any incidental works such as the new front boundary treatment affecting the adjoining by-way shall be agreed in writing with the Public Rights of Way Team, RBWM, Town Hall, St Ives Road, Maidenhead, SL6 1RF tel: 01628 796180 at least 4 weeks before any development is due to commence.
3. The attention of the applicant is drawn to the Berkshire Act 1986, Part II, Clause 9, which enables the Highway Authority to recover the costs of repairing damage to the footway or grass verge arising during building operations.
4. The attention of the applicant is drawn to Section 59 of the Highways Act 1980 which enables the Highway Authority to recover expenses due to extraordinary traffic.
5. All site operatives should be made aware of current legislation protecting bats and their roosts and that in the unlikely event that any bats are encountered then works must cease and Natural England contacted to agree appropriate measures.
6. The recommended permitted hours of construction working in the Authority are as follows: Monday to Friday 08.00 until 18.00; Saturday 08.00 until 13.00. No working on Sundays or Bank Holidays.
7. The applicant and their contractor should take all practicable steps to minimise dust deposition, which is a major cause of nuisance to residents living near to construction and demolition sites. The applicant and their contractor should ensure that all loose materials are covered up or damped down by a suitable water device, to ensure that all cutting/breaking is appropriately damped down, to ensure that the haul route is paved or tarmac before works commence, is regularly swept and damped down, and to ensure the site is appropriately screened to prevent dust nuisance to neighbouring properties. The applicant is advised to follow guidance with respect to dust control and these are available on the internet: London working group on Air Pollution Planning and the Environment (APPLE): London Code of Practice, Part 1: The Control of Dust from Construction; and the Building Research Establishment: Control of dust from construction and demolition activities.
8. The Royal Borough receives a large number of complaints relating to construction burning activities. The applicant should be aware that any burning that gives rise to a smoke nuisance is actionable under the Environmental Protection Act 1990. Further that any burning that gives rise to dark smoke is considered an offence under the Clean Air Act 1993. It is the Environmental Protection Team policy that there should be no fires on construction or demolition sites. All construction and demolition waste should be taken off site for disposal. The only exceptions relate to knotweed and in some cases infected timber where burning may be considered the best practicable environmental option. In these rare cases we would expect the contractor to inform the Environmental Protection Team before burning on 01628 683538 and follow good practice.

### Justifications

1. The reason planning permission has been granted is that the development complies with the relevant provisions of the development plan. The relevant policies/proposals of the development

plan are Local Plan DG1, H10, H11, P4, T5, N6 ; Neighbourhood Plans Np/DG1, NP/DG2, NP/DG3, NP/T1, NP/EN2, NP/EN3, NP/EN4.

This permission does not relieve the applicant from responsibility for obtaining any necessary approval which may be required under building control legislation or Section 32 Berkshire Act 1986 (access for fire appliances). For advice on building control regulations, please contact the Authority's Building Control Service on 01189 746239.

The applicant is advised that all works to which this permission relates must be carried out strictly in accordance with the plans, drawing and other relevant supporting material submitted as part of this application and hereby approved as such and in full compliance with all conditions set out above. The Development Control Group must be immediately advised of any proposed variation from the approved documents and the prior approval of the Council obtained before any such works are carried out on site. Failure to comply with this advice may render the person carrying out and/or authorising the works liable to enforcement proceedings, which may involve alterations and/or demolition of any unauthorised building or structures and may also lead to the possibility of prosecution.

The applicant's attention is also drawn to the requirements of the Party Wall Act 1996, which may affect your submitted proposals. The applicant must notify all affected neighbours if work, which you are intending to carry out, falls within the Act. This may include work on an existing wall shared with another property, building on the boundary or excavating near a neighbouring property. However, the applicant is advised that this is not a matter dealt with by this Authority and it is recommended that you seek suitable professional advice.

Signed            Dated: 21st February 2017

*Jenifer Jackson*

Jenifer Jackson  
Head of Planning

Appendix 4  
Appeal Decision References  
APP/T0355/W/19/3235880 and APP/T0355/W/19/3235884

26 February 2020

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## Appeal Decisions

Hearing Held on 15 January 2020

Site visit made on 15 January 2020

by **K Savage BA MPlan MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 26 February 2020**

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### **Appeal A Ref: APP/T0355/W/19/3235880**

#### **Missanda, Wells Lane, Ascot SL5 7DY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Pipeline Worldwide SA against the decision of Council of the Royal Borough of Windsor and Maidenhead.
  - The application Ref 18/03634, dated 14 December 2018, sought approval of details pursuant to Conditions Nos 2 and 3 of planning permission Ref 15/02893, granted on 4 February 2016.
  - The application was refused by notice dated 14 June 2019.
  - The development proposed is construction of 2 detached dwellings following demolition of existing dwelling and outbuildings.
  - The details for which approval is sought are:
    - Condition No 2: Scheme for mitigation of effects of the development on the Thames Basin Heaths Special Protection Area
    - Condition No 3: Samples of external materials
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### **Appeal B Ref: APP/T0355/W/19/3235884**

#### **Missanda, Wells Lane, Ascot SL5 7DY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Pipeline Worldwide SA against the decision of Council of the Royal Borough of Windsor and Maidenhead.
  - The application Ref 18/03705, dated 19 December 2018, sought approval of details pursuant to conditions Nos 4, 5, 6, 7, 8, 9, 10, 12, 13 and 16 of planning permission Ref 16/03736, granted on 21 February 2017.
  - The application was refused by notice dated 14 June 2019.
  - The development proposed is construction of 2 detached dwellings following demolition of existing dwelling and outbuildings as approved under planning permission 15/02893 without complying with condition 20 (approved plans) to replace approved plans to allow for 2 No. rear dormers and 3 No. side roof lights.
  - The details for which approval is sought are:
    - Condition No 4: Finished slab and floor levels
    - Condition No 5: Tree protection measures
    - Condition No 6: Details and method statement for retaining wall
    - Condition No 7: Siting and design of walls, fencing and other means of enclosure
    - Condition No 8: Details of proposed underground utilities
    - Condition No 9: Details of hard and soft landscaping works
    - Condition No 10: Construction Environmental Management Plan
    - Condition No 12: Details of sustainability measures
    - Condition No 13: Location of water butt
    - Condition No 16: Construction Management Plan
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## Decisions

1. Appeal A is allowed and details are approved pursuant to Conditions 2 and 3 attached to planning permission Ref 15/02893, granted on 4 February 2016, in accordance with the application Ref 18/03634, dated 14 December 2018 and the details submitted with it.
2. Appeal B is allowed and details are approved pursuant to Conditions 4, 5, 6, 7, 8, 9, 10, 12, 13 and 16 of planning permission Ref 16/03736, granted on 21 February 2017, in accordance with the application Ref 18/03705, dated 19 December 2018 and the details submitted with it.

## Preliminary Matters

3. The application forms for each case initially sought the approval of details of conditions attached to planning permission Ref 15/02893 (the 'original' permission). However, prior to validation of application Ref 18/03705 (Appeal B), the appellant requested that the application form be amended to instead seek approval of details of conditions attached to planning permission Ref 16/03736 (the 'Section 73' decision). The Council's decision notices duly reflect the specific approval of details sought by the appellant. Whilst the Council's description of development in respect of application Ref 18/03705 also refers to the original permission, this is done in the context of identifying the Section 73 decision as deriving from that original permission and I do not infer from this any implicit assessment by the Council of 'both' sets of conditions under each application, and the Council has stated it did not do so. Accordingly, I have considered Appeal A as relating to Conditions 2 and 3 of the original permission, and Appeal B as relating to Conditions 4, 5, 6, 7, 8, 9, 10, 12, 13 and 16 of the Section 73 permission.
4. Application Ref 18/03705 (Appeal B) also initially sought approval of details of Conditions 15, 19 and 20 of planning permission Ref 16/03736, but the appellant asked that these be withdrawn from consideration during the application process. Therefore, I have not had regard to these conditions.
5. At the Hearing, the parties indicated a clear intention to agree and complete a Section 106 Agreement addressing the payment of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) contributions to address the requirements of Condition 2 under Appeal A, though this could not be completed by the close of the Hearing due to the practicalities of drafting and obtaining all necessary signatures. Accordingly, I afforded the parties the opportunity to complete an agreement, which I have subsequently received and address within my reasoning below.

## Background and Main Issues

6. The original planning permission was granted on 4 February 2016. The Section 73 decision was subsequently granted on 21 February 2017. The applications now subject to the appeals were made in December 2018, prior to the expiry of the time limit for commencement of both permissions on 4 February 2019. Following the submission of these applications, and in the days before the expiry of the permissions, the appellant notified the Council that it intended to commence development on site by digging a trench. A site record notice was submitted to confirm what works had taken place. The Council acknowledges that these works are sufficient to constitute a material start to the

development; however, it concluded that the work carried out is in breach of Condition 2, which it regards as a 'condition precedent' requiring details to be approved before commencement of development. As a consequence, the Council considers the development undertaken is unlawful.

7. The Council refused both applications in June 2019, after the expiry date of the permissions. With the exception of Condition 2 under Appeal A, which was refused on the basis that an acceptable scheme of mitigation had not been provided, the Council's decision notices confirm that all of the details submitted pursuant to the conditions are acceptable. However, each of these conditions was refused on the basis that the relevant permissions had expired and, as a result, the conditions were of no effect and so the details sought by them could not be approved.
8. Given this background, the **main issues** in both appeals are firstly, whether the details submitted can still be approved, and if so, whether the details submitted would satisfy the conditions imposed.

### Reasons

#### *Whether details can be approved*

9. The Council takes the view, informed by its interpretation of various court judgements, that development in breach of a 'condition precedent' renders the entire permission unlawful, and that later compliance with conditions would not allow the permission to be lawfully implemented.
10. The appellant argues, with similar reference to legal authorities, that the Council has misunderstood the legal principles and case law applying to breaches of 'conditions precedent' and that the acknowledged unlawful commencement of development does not prevent later approval of details sought by the conditions.
11. Both parties refer to the 'Whitley Principle', which arises from a 1992 decision of the Court of Appeal<sup>1</sup>. That decision laid down a general rule that operations carried out in contravention of conditions cannot be described as commencing the development authorised by the permission, and therefore constitute a breach of planning control, so that they are unauthorised and unlawful.
12. However, the same decision outlined an exception to the rule, whereby later approval of details for which approval had been sought *prior* to the unauthorised commencement would mean that works carried out could be taken as having validly commenced within the time limit. The timeline of events in this case aligns with this exception.
13. On my reading of the evidence, the Council does not appear to have taken account of the original exception in the *Whitley* case, which expressly allows for the potential later approval of details submitted in advance of an unauthorised start, and for the later approval of the details to render the commencement of development lawful.
14. Subsequent case law referred to by both parties has introduced further refinements to this exception, including the issue of whether a condition

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<sup>1</sup> FG Whitley & Sons v Secretary of State for Wales (1992) 64 P&CR 296

precedent 'goes to the heart of the planning permission'<sup>2</sup>. The Council stated at the Hearing that it only considered Condition 2 of the original permission to be a condition precedent. I have heard and read the extensive evidence put to me by the parties in respect of whether Condition 2 is a condition precedent and whether it is necessary for me to reach a judgement on that question.

15. The appeals have ultimately been made against refusals to grant consent, agreement or approval to details required by a condition of a planning permission. They are not related to enforcement matters or the refusal to issue lawful development certificates. On the evidence put to me, I see no legal reason why I cannot consider the details of the conditions at this stage, pre-commencement or otherwise. Should the details submitted prove to be adequate in addressing the matters covered by the relevant conditions, it would then be for the Council to decide whether approval of the details would necessarily remedy any unlawful commencement of works, or whether the permission would remain unlawfully commenced because details of any condition regarded as a condition precedent were not approved in time.
16. Therefore, on the basis of all of the evidence I have heard and read, I can see no bar in legal terms to my considering the details of the conditions now.

#### *Acceptability of details submitted*

##### *Appeal A - Condition 2*

17. Condition 2 states that no development shall take place until a scheme for the mitigation of effects of the development on the Thames Basin Heaths Special Protection Area (the SPA) has been submitted to and approved in writing by the Local Planning Authority. It adds that the scheme shall provide for the delivery of SANG and towards SAMP. A further requirement of the condition relates to the physical delivery of SANG, which is not relevant to the present case.
18. The Council's position is that the condition should be fulfilled by means of a planning obligation securing financial payments towards off-site SAMP and SANG, initially discussed in the form of a Section 111 Agreement. However, by the time the Council refused the application, a completed agreement was not before it. I heard argument from the appellant, based on principles established in *Flintshire*<sup>3</sup> that the condition was discharged 'in substance' on the basis of email correspondence from the appellant agreeing to enter into a legal agreement, and the Council sending a draft wording to the appellant. However, there was no signed agreement in place at the time the Council made its decision, nor any realistic prospect of one given the dearth of correspondence in the matter in the preceding weeks. The version of the agreement signed by the appellant is incomplete, as the Council had not signed it and thus was not bound by its terms.
19. Subsequently, the appellant has submitted a signed unilateral undertaking at the appeal stage. However, at the Hearing, the appellant conceded that there were errors in the drafting of the undertaking, such that it would not have had the intended effect of securing the payments towards SAMP and SANG. This

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<sup>2</sup> R (on the application of Hart Aggregates Ltd) v Hartlepool BC [2005] EWHC 840 (Admin) ("Hart Aggregates"); later applied in Bedford Borough Council v SSCLG and Aleksander Stanislaw Murzyn [2008] EWHC 2304 (Admin) and other cases

<sup>3</sup> R v Flintshire County Council and Another Ex Parte Somerfield Stores Limited [1998] P.L.C.R. 336



aside, the obligation submitted is unilateral and as such would not bind the Council to spend the SAMP and SANG contributions on relevant mitigation measures. That is not to suggest that the Council may not spend the contributions appropriately, however, when asked at the Hearing, the Council stated that it could not point to a published source setting out such a process. I can envisage a situation where an authority determining a planning application which is also responsible for implementing the mitigation could satisfy itself that a sufficiently robust link exists between effect and mitigation. However, I am the competent authority under the Regulations in respect of this appeal and the submitted obligation does not give me the required certainty that adverse effects on the SPA would be avoided.

20. Perhaps cognisant of this, the parties have submitted a signed Section 106 agreement following the close of the Hearing. This agreement would secure payment of the SAMP and SANG contributions sought by the Council, and binds the Council to delivering the mitigation. Having regard to the scale of the development, its location relative to the SPA, and the guidance of the Council's SPD, I am satisfied that the Section 106 agreement would provide appropriate mitigation for the effect of the proposal on the integrity of the Thames Basin Heaths Special Protection Area, and would accord with saved Policy NRM6 of the South East Plan (2009), which requires adequate measures to avoid or mitigate any potential adverse effects on the SPA. The details submitted are therefore adequate to satisfy the condition.

*Appeal A – Condition 3 & Appeal B – Conditions 4, 5, 6, 7, 8, 9, 10, 12, 13, 16*

21. Notwithstanding the Council's position regarding the expiry of the permissions, the decision notices concluded that the details of each of these conditions were acceptable in each case. The parties confirmed to me at the Hearing that this was still common ground between them. None of the evidence before me indicates that the details are unacceptable in respect of any of these conditions, and therefore I have no reasons to reach different conclusions on the acceptability of the details themselves. Accordingly, I find that the details submitted for Condition 3 of planning permission Ref 15/02893, and Conditions 4, 5, 6, 7, 8, 9, 10, 12, 13 and 16 of planning permission Ref 16/03736, are adequate to satisfy the conditions.

### **Conclusion**

22. For the reasons set out above, I conclude that there is no bar in principle to the consideration of the details submitted, but that it would be for the Council to decide whether approval of these details would necessarily remedy any unlawful commencement of works.
23. In respect of the details submitted, I conclude that the details in respect of every condition for which approval is sought, under both Appeal A and Appeal B, are acceptable and can be approved. Both appeals are therefore allowed.

*K Savage*

INSPECTOR