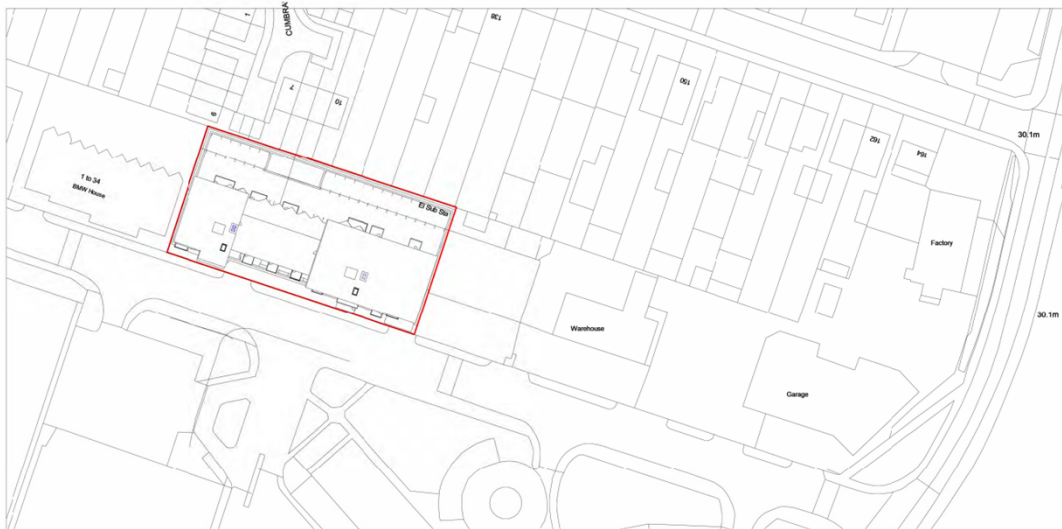


Registration Date:	03-Dec-2024	Application No:	P/19642/002
Officer:	Alex Harrison	Ward:	Central
Applicant:	Mr. Subhraj Sidhu	Application Type:	Major
		13 Week Date:	4 March 2025
Agent:	Mr. Sukh Bal, Landmark Architectural Services Ltd The Pillars, Slade Oak Lane, Gerrards Cross, SL9 0QE		
Location:	Grace House, Petersfield Avenue, Slough, SL2 5EA		
Proposal:	Variation of condition 2 (approved drawings) of planning permission P/19642/000 dated 22/05/2024 (Reducing the number of flats from 50 to 47)		

Summary of recommendation: Delegate to the Planning Manager to refuse



① Site Plan
1:500

1.0 SUMMARY OF RECOMMENDATION

- 1.1 Having considered the relevant policies of the Development Plan set out below, and all other material considerations, it is recommended the application be delegated to the Planning Manager to refuse planning permission as the proposals amount to a material change to the previously approved scheme.
- 1.2 Under the current constitution, this application is to be determined at Planning Committee, as it is an application for the variation of a previously approved major development comprising more than 10 dwellings.

PART A: BACKGROUND

2.0 Proposal

- 2.1 This application is submitted under Section 73 of the Town and Country Planning Act 1990 as amended. Section 73 allows for applications to be made for permission to develop without complying with a condition or vary conditions previously imposed on a planning permission. The Council can grant such a permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original conditions should remain.
- 2.2 In this instance the applicant has sought to apply for permission under Section 73 to vary a previously approved scheme at the site which was granted by Members under reference: P/19642/000 following a resolution to approve at the Committee meeting of September 2022 with the decision notice issued on 22 May 2024.

The original approval granted consent at the site for:

Demolition of the existing B8 commercial building, and the construction of a 5 storey building, with semi-basement parking to provide 50 no. residential apartments.

The proposed variation is to rearrange the internal layout of the building, resulting in the loss of three units to 47 in total with a number of other associated works. The other works include balconies to the rear elevation and an increase in the overall height due to the inclusion of new roof structures.

- 2.4 The application was submitted with the following technical content:

- Application form
- Plans

No details have been provided in respect of documenting the changes or providing any robust or details justification or reasoning.

3.0 Application Site

- 3.1 The application site is an existing employment site located on the northern side of Petersfield Avenue. It contains a single commercial building and associated curtilage. The building is not detached and is physically attached to a neighbouring building to the immediate east of the site. The application building and neighbouring building read as one unit.
- 3.2 The building is a steel framed structure with steel cladding that creates a horizontal emphasis to the elevations. The roof takes the form of multiple shallow pitches which is hidden from view by a parapet created by the cladding, giving it the appearance of a flat roof structure. The western part of the site is a yard area enclosed by a mixture of timber fencing and steel palisade fencing. There are 2 existing vehicle access points off Petersfield Avenue to the site.
- 3.3 The building is currently occupied and is in commercial use. The applicant advises that the building is being used as an office use and the yard area is being used for car sales. The photographs submitted with the application show there is also some element of storage taking place in the building. It is therefore clear that the site is in full use and fully occupied.
- 3.4 The site sits as part of a wider industrial area with a mix of commercial uses operating. To the immediate west of the site is a completed residential redevelopment known as BMW House. Other than this, sites to the east, west and south of the site are generally in industrial/employment use.
- 3.5 To the north of the site are existing residential units which form part of the predominant character to the north. Also noteworthy is that approximately 130m to the east of the site lies the former Akzo Nobel site which is currently undergoing redevelopment for uses.

4.0 Site History

- 4.1 P/19642/000
Demolition of the existing B8 commercial building, and the construction of a 5 storey building, with semi-basement parking to provide 50 no. residential apartments.
Approved with conditions and section 106 agreement 22/05/2024
- P/19642/001
Submission of details pursuant to condition 3 (External Materials), 5 (Boundary Treatment), 13 (Phase 1 Contamination Desk Top Study) & 23 (Cycle Parking) of planning permission P/19642/000 dated 22/05/2024
Approved 03/05/2025
- P/19642/003
Submission of details pursuant to condition 21 (Construction Management Plan) of planning permission P/19642/000 dated 22/05/2024

Under Consideration.

P/19642/004

Submission of details pursuant to condition 13 (Contamination Desk Top) 14 (Intrusive Investigations) of planning permission P/19642/000 dated 22/05/2024

Approved 03/02/2025

P/19642/005

Submission of details pursuant to condition 10 (Foul Water Drainage) 15 (Quantitative Risk Assessment and Remediation Strategy) of planning permission P/19642/000 dated 22/05/2024

Under consideration

- 4.2 In the wider area a number of schemes adjacent to or close to the site have gained consent in recent years, these are reference below:

BMW House (Immediately Adjacent to the West)

P/00988/015

Demolition of the existing B8 and B1 office and warehouse and the construction of a part 4, part 3 and part 2 no. storey residential building comprising of 24 no apartments, with a semi basement car park.

Approved with conditions: 14 March 2018.

P/00988/016

Construction of an additional storey on top of existing apartment building. New floor to provide 4no. additional apartments comprising 3no. 1 bed apartments and 1no. 2 bed apartment, and associated parking.

Approved with conditions: 2 May 2019.

Thomas House (further to the west)

P/02028/008

Demolition of the existing building (Use Class B2) and construction of a 5 storey building with lower ground parking, to accommodate 18 residential units (Use Class C3) with associated works.

Approve subject to Section 106

Former Akzo Nobel site (to the east)

P/00072/108

Approval of reserved matters following the outline approval reference P/00072/096 dated 19th November 2020 for the mixed use development of land at the former Akzonobel Decorative Paints facility, Wexham Road, Slough SL2 5DB. Reserved matters application for full details of access (internal site arrangements), appearance, layout, scale, and landscaping for the first phase of the approved commercial floorspace, comprising data centre use (including ancillary office space and associated plant and

infrastructure provision); car parking, landscaping and vehicular and pedestrian access.

Approved with conditions and section 106 agreement 12/10/2021

P/00072/096

Outline planning application (to include matter of principal points of access), to be implemented in phases, for mixed use development comprising:

- a) Demolition of existing buildings and structures and preparatory works (including remediation) and access from Wexham Road;
- b) up to 1,000 residential dwellings (Use Class C3); along with flexible commercial uses including all or some of the following use classes A1 (Shops), A2 (Financial and Professional Services), A3 (Food and Drink), D1 (Non-residential Institutions) and D2 (Assembly and Leisure); car parking; new public spaces, landscaping; vehicular and pedestrian access; and
- c) the provision of commercial floorspace including all or some of the following use classes B2 (General Industry), B8 (Storage or Distribution) and sui generis data centre (including ancillary office space and associated plant and infrastructure provision); car parking, landscaping and vehicular and pedestrian access.

(Matters of Scale, Layout, Appearance, and Landscaping to be dealt with by reserved matters).

Approved with conditions and section 106 agreement 19/11/2020

5.0 Neighbour Notification

5.1 Due to the development being a major application, in accordance with Article 15 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), site notices were displayed outside the site on 18/12/2024 The application was advertised in the 20/12/2024 edition of The Slough Express.

5.2 No letters from neighbouring residents have been received.

6.0 Consultations

6.1 Highways

No comments received at the time of drafting, Members will be updated. .

7.0 Policy Background

7.1 Slough Local Development Plan and the National Planning Policy Framework (NPPF)

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission are determined in accordance with

the development plan unless material considerations indicate otherwise. Annex 1 to the National Planning Policy Framework advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The current version of the National Planning Policy Framework (NPPF) was published in December 2024. Significant weight should be attached to the policies and guidance contained within the NPPF particularly where the policies and guidance within the Development Plan are out-of-date or silent on a particular matter. Relevant Sections of the NPPF are outlined below as are the relevant policies in the Development Plan, which is the starting point of an assessment of the application, which is consistent with the statutory test in Section 38(6) as above. The weight to be attached to the key Development Plan policies, and an assessment of the proposal against them, is set out within this report.

7.2 National Planning Policy Framework 2024:

- Chapter 2. Achieving sustainable development
- Chapter 4. Decision-making
- Chapter 5. Delivering a sufficient supply of homes
- Chapter 6: Building a Strong Competitive Economy
- Chapter 8. Promoting healthy and safe communities
- Chapter 9. Promoting sustainable transport
- Chapter 11. Making effective use of land
- Chapter 12. Achieving well-designed places
- Chapter 14: Meeting the challenge of climate change, flooding and coastal change

Slough Local Development Framework Core Strategy 2006-2026

Development Plan Document policies, December 2008:

- Core Policy 1 (Spatial Strategy)
- Core Policy 3 (Housing Distribution)
- Core Policy 4 (Type of Housing)
- Core Policy 5 (Employment)
- Core Policy 7 (Transport)
- Core Policy 8 (Sustainability and the Environment)
- Core Policy 9 (Natural, Built and Historic Environment)
- Core Policy 10 (Infrastructure)
- Core Policy 12 (Community Safety)

Local Plan for Slough March 2004 policies (saved policies 2010):

- Policy H14 (Amenity space)
- EN1 (Standards of Design)
- EN3 (Landscaping Requirements)
- EN5 (Design and Crime Prevention)
- EN17 (Locally Listed Buildings)

- H13 (Backland/Infill Development)
- H14 (Amenity Space)
- T2 (Parking Restraint)
- T8 (Cycling Network and Facilities)
- T9 (Bus Network and Facilities)
- OSC17 (Loss of Community, Leisure or Religious Facilities)

Other Relevant Documents/Statements

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

7.3 The Proposed Spatial Strategy (Nov 2020)

Under Regulation 18, the Proposed Spatial Strategy for the Local Plan for Slough was the subject of public consultation in November 2020. This sets out a vision and objectives along with proposals for what the pattern, scale and quality of development will be in Slough.

The consultation document contained a revised Local Plan Vision which supports the Council's vision for Slough as a place where people want to "work, rest, play and stay."

It should be noted that the consultation document for the Proposed Spatial Strategy does not contain any specific planning policies or allocate any sites. It made it clear that the existing planning policy framework for Slough would remain in force until replaced by new Local Plan policies in the future. Nevertheless, it sets out the most up to date statement of the Council's position with regards to strategic planning issues.

7.4 National Planning Practice Guidance (NPPG)

The NPPG was first published in 2014 and is an iterative web-based guidance that is designed to complement the NPPF across a range of topics.

7.5 Fire Safety Provisions - DLUHC Guidance - Fire safety and high-rise residential buildings (from 1 August 2023)

The Department for Levelling Up, Homes and Communities (DLUHC) has brought in changes to the planning system whereby HSE Gateway One are a statutory consultee on specified planning applications. The DLUHC Guidance states that the changes are intended to help ensure that applicants

and decision-makers consider planning issues relevant to fire safety, bringing forward thinking on fire safety matters as they relate to land use planning to the earliest possible stage in the development process and result in better schemes which fully integrate thinking on fire safety.

7.6 Equality Act

In addition, Section 149 of the Equality Act (2010) which sets a Public Sector Equality Duty (PSED) came into force in April 2011 and requires the Council to consider the equality impacts on all protected groups when exercising its functions. In the case of planning, equalities considerations are factored into the planning process at various stages. The first stage relates to the adoption of planning policies (national, strategic and local) and any relevant supplementary guidance. In coming to a recommendation, officers have considered the equalities impacts on protected groups in the context of the development proposals as set out in Section 24 of this report.

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

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

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

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

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

7.8 Biodiversity Net Gain

In England, Biodiversity Net Gain (BNG) is now mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Under the statutory framework for biodiversity net gain, subject to some exceptions. One of which is if the application was submitted under S73 of the Act and the original planning permission was either applied for, or granted, before 12 February 2024, the original application having been validated in September 2021. Notwithstanding the above given the extent of hardsurfacing the site is also below the 25m² threshold for requiring BNG. Therefore, this proposal is exempt from the mandatory 10% net gain requirement.

8.0 **Planning Considerations**

8.1 The planning considerations for this proposal are:

- Principle of Development
- Supply of housing
- Design and impact on the character and appearance of the area
- Landscape
- Impacts on neighbouring residential amenity
- Impacts on amenity of future occupiers of the development
- Transport, highways and parking
- Drainage
- Energy and sustainability
- Air quality
- Crime prevention
- Affordable housing and infrastructure
- Habitat impacts
- Fire Safety
- Equalities considerations
- Neighbour representations
- Presumption in favour of sustainable development

9.0 **Principle of Development**

9.1 As outlined in Section 2 of this report an application can be made under Section 73 (S73) of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission.

9.2 The principle of development was established through the original granting of planning permission under ref P/19642/000. The applicant can apply for an amendment to the extant scheme permission, under S73 of the Town and Country Planning Act (As Amended). Section 73 of the Act can be used, amongst other things, to approve amendments to an existing

planning permission by amending a condition (or conditions) upon which the permission was granted. In law, a Section 73 application results in the grant of a new planning permission affecting the same site that is subject to the relevant amended conditions.

- 9.3 This material amendment procedure was confirmed by the Government as appropriate in 2009 when it streamlined the procedure for Section 73 applications and issued accompanying guidance on how best to achieve flexibility with planning permissions by allowing material amendments to planning permissions without the need for the submission of entirely new planning applications. The overriding purpose of the streamlined procedure and guidance was to avoid the burden that would fall on both planning authorities and developers if a fresh planning application had to be submitted every time that a development is materially amended.
- 9.4 The guidance is now contained in the Department for Levelling Up, Housing and Communities' National Planning Practice Guidance. Amongst other things the guidance states that a material amendment is likely to include any amendment whose scale and/or nature results in a development which is not substantially different from the one which has been approved. Relevant and recent case law on this matter indicates that the Section 73 route can be applied to determine amendments which do not result in a "fundamental" change to an approved development. It should also be noted that the proposals seek to amend the description of development, which cannot be secured by way of an application under Section 73.
- 9.6 The submission of the Section 73 application does not give an opportunity to reassess the previously determined proposal.
- 9.7 In this instance the proposed amendments are considered to amount to a fundamental change to the approved development. The reduction in the number of units would, be anticipated to have a lesser impact than the original, but, in practical terms, it would result in a proposal that does not align to the description of development which states there would be 50 units. Therefore, while a lesser number of units, the development would be fundamentally different to the original approval and would not be within the scope of S73 of the 1990 Act.
- 9.8 Furthermore, the proposal includes the provision of rear balconies that would create an overlooking impact to neighbouring residents to the north. As part of the negotiations on the original approval, the Council secured the removal of the rear balconies due to this impact only for this current application to propose them again. In addition to this, some of the windows were designed to have a splay feature given the close relationship with the properties to the rear of the site to prevent issues of overlooking and loss of privacy. There is no justification for their inclusion of rear balconies included with the application and the adverse impacts that are likely to be apparent would result in a proposal that is fundamentally different from the original approval. Officers worked proactively with regards to the original scheme to balance a

design to optimise the site but at the same time to respect the relationship with neighbouring properties and assessed other new residential developments, for example BMW House (adjacent to the site) in a similar manner.

- 9.9 In respect of the increase in height there is again no justification for this part of the proposal, and it would appear the increase is proposed to accommodate the lift overrun within the building. The increase in height is not apparent throughout the development but does introduce new taller elements that were not considered previously.
- 9.10 On the basis of these consideration are part of the proposal, taken either in isolation or cumulatively, that result in the proposal being fundamentally different to the originally approved development and therefore they would not fall within the scope of what should be allowed under S73 of the 1990 Act and is unacceptable in principle. The proposed reduction in the number of residential units results in a materially different proposal that does not align to the originally approved description of development and subsequently amounts to a proposal outside the scope of what is considered acceptable under Section 73 of the Town and Country Planning Act 1990, (as amended).

10.0 Supply of Housing

10.1 The development was originally approved with the following housing mix:

- 22no – 1 bed flats – 44%
- 28no – 2 bed flats – 56%

10.2 The removal of three units results in the following revised mix:

- 21no – 1 bed flats - 45%
- 26no – 2 bed flats - 55%

10.3 The change in housing mix has a negligible impact in respect of planning considerations, irrespective of whether or not the proposal is acceptable as a Section 73 amendment.

11.0 Design and Impact on Appearance and Character of the area

11.1 Policy EN1 of the Local Plan outlines that development proposals are required to reflect a high standard of design and must be compatible with and/or improve their surroundings in terms of scale, height, massing, layout, siting, building form and design, architectural style, materials, access points, visual impact, relationship to nearby properties, relationship to mature trees, and relationship to water course. Poor designs which are not in keeping with their surroundings and schemes that overdevelop the site will not be permitted.

- 11.2 The proposed amendments result in wholesale change to the elevation treatments of the building. There are alterations to the locations of windows, balconies and the designs of these openings as shown in the comparison below:



PROPOSED FRONT ELEVATION (south)

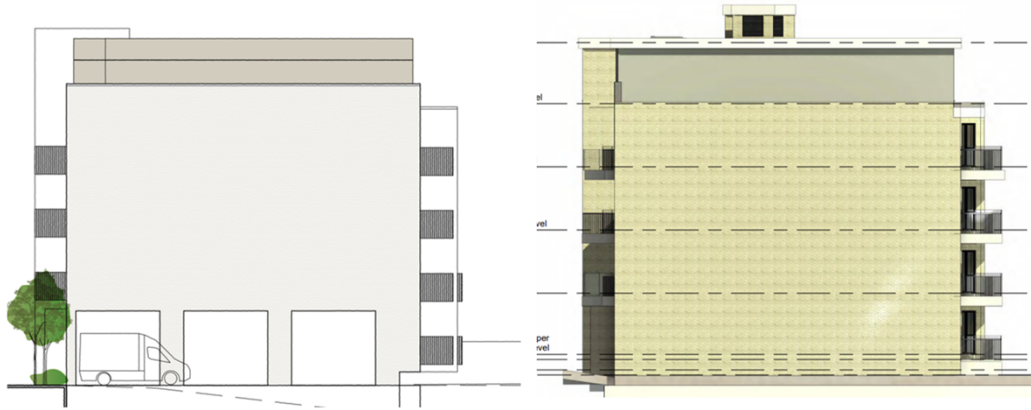
Original approval



Amended proposal

- 11.3 The proposed changes also show that there appears to be an increase in bulk with the amended proposal and a reduction in the gap between the 5 storey elements. No details have been provided that show the differences between the original and proposed. The increase in bulk results in a larger development that is considered to contribute towards the proposal being fundamentally different to the original approval.

- 11.4 The original scheme had successfully secured a notable set back in the top floor of the building to reduce bulk and this is effectively removed through the amended proposal which exacerbates the concerns over the increase in bulk of the current proposal. The side elevations below emphasise this:



The set back was secured on development across Petersfield Avenue and the effective removal of this would be out of character with the area.

- 11.5 On the basis of the considerations above the scheme is considered to propose changes that cumulatively amount to a materially different proposal that would increase the impact of bulk and massing in the streetscene and would be harmful in light of policies EN1 and EN2 of the Local Plan for Slough March 2004 and Core Policy 8 of the Local Development Framework Core Strategy 2008 and the requirements of the NPPF. The impact will be appropriately weighted as part of the planning balance.

12.0 Landscaping

- 12.1 No details on landscaping have been submitted with the proposal and there is no site layout submitted. It is therefore assumed that the previous details are still pertinent and would be secured if the proposal were to have been acceptable.

13.0 Impact on neighbouring amenity

- 13.1 The National Planning Policy Framework encourages new developments to be of a high-quality design that should provide a high quality of amenity for all existing and future occupiers of land and buildings. This is reflected in Core Policy 8 of the Core Strategy and Local Plan Polies EN1 and EN2.
- 13.2 The proposed amendments include the re-introduction of rear projecting balconies private amenity space for the proposed flats. These were proposed as part of the original scheme but removed from the proposal due to concerns relating to overlooking impacts to existing residents to the north of the site.
- 13.3 The considerations of the original application in respect of neighbours to the north are outlined below:

The north facing windows on the proposal will look out towards the gardens of dwellings on St Pauls Avenue and Cumbrae Close. The design of the proposal is such that there is a distance of 14 metres from the north facing

windows to the northern boundary. For the neighbouring dwellings to the north it means there would be some degree of overlooking to the rear gardens. The nature of the scheme is such that there would be no impacts from ground or first floor windows. Considerations are therefore had from second floor upwards. The initial concerns were raised over the design of the scheme and overlooking impacts to the north and the plans have been amended to address these. In general terms windows on the northern elevation have been angled so that the outlook is not direct to the north. This design as adopted at BMW house to the immediate west. It serves to significantly reduce overlooking impacts to the north, forcing outlook away from the nearest affected gardens. Most of these windows also serve bedrooms which have less occupancy rates than living rooms which means there is lesser frequency of potential outlooks as well. The result of this is that there is considered to be lesser impacts of overlooking to gardens to the north. In any case the dwellings on St Pauls Avenue are largely screened by planting on the neighbouring side which, if retained screen any perceived impacts and any outlooks are to the end of what are larger burgage style garden plots. There are smaller gardens to the dwellings on Cumbrae Close and windows have been amended to not directly look to these. Furthermore there is soft landscaping proposed at this common boundary area to establish a screen.

13.4 The assessment drew this conclusion on the basis that the rear balconies were removed and their reintroduction with this current proposal results in overlooking impacts to the north with a separation gap of circa 14metres which is not sufficient to negate adverse impacts.

13.5 As a result of the above assessment, the proposal is not considered to be acceptable as a S73 amendment and, on its merits, is not acceptable in light of Core Policy 8 of the Local Development Framework Core Strategy and Policies EN1 and EN2 of the Adopted Local Plan. This will be considered as part of the planning balance.

14.0 Living conditions for future occupiers of the development

14.1 The NPPF states that planning should always seek to secure a quality design and a good standard of amenity for all existing and future occupants of land and buildings. The alterations internally result in new layouts to the units but the plans show that all of these would met the required space standards for their unit types.

15.0 Highways and Parking

15.1 The National Planning Policy Framework states that planning should seek to locate development where the need to travel will be minimised and the use of sustainable transport modes can be maximised. Development should be located and designed where practical to create safe and secure layouts which minimise conflicts between traffic and pedestrians. Where appropriate local parking standards should be applied to secure appropriate

levels of parking. This is reflected in Core Policy 7 and Local Plan Policies T2 and T8. Paragraph 115 of the National Planning Policy Framework states that *'Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe'*.

15.2 The proposed amendments shows a basement car park of 42 spaces which is a reduction of 5 spaces from the original approval which showed 47 spaces. This creates a new ratio of 0.93 as opposed to 0.96 as previously approved.

15.3 The reduction in parking ratio is negligible between the original approval and current proposal. However, there is an identified issue in the fact that the original approval (P/19642/000) proposed parking levels that would be able to ensure this amended scheme would benefit from 1 parking space per dwelling; but this has been reduced. The reduction in parking is a further reduction of spaces that were already proposed as a shortfall in parking standards. The further reduction and revised layout arrangement contributes to the cumulative impact of the scheme being fundamentally different to the original approval and is therefore not within the allowable scope of a Section 73 application.

16.0 Drainage

16.1 There is no change to drainage arrangements as a result of this proposal, drainage details have been approved via Condition 25 on application ref: P/19642/000.

17.0 Energy and Sustainability

17.1 Core Policy 8 combined with the Developers Guide Part 2 and 4 requires both renewable energy generation on site and BREEAM/Code for Sustainable Homes. The Developer's Guide is due to be updated to take account of recent changes and changing practice. In the interim to take account of the withdrawal of Code for Sustainable Homes new residential buildings should be designed and constructed to be better than Building Regulations (Part L1a 2013) in terms of carbon emissions. Specifically designed to achieve 15% lower than the Target Emission Rate (TER) of Building Regulations in terms of carbon emissions.

17.3 This requirement was secured by Condition 8 on the original decision notice P/19642/000 and the ability to comply with it is not affected by the current application.

18.0 Air Quality

18.1 Core Policy 8 of the Core Strategy seeks development to be located away from areas affected by air pollution unless the development incorporates appropriate mitigation measures to limit the adverse effects on occupiers and other appropriate receptors. The proposal should not result in

unacceptable levels of air pollution. This is reflected in the National Planning Policy Framework which also goes on to require any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.

18.3 The application site is not situated within an Air Quality Management Area (AQMA), therefore there will not be an unacceptable exposure to air pollution for future occupiers of the development. No objection was originally raised by Environmental Quality subject to conditions which are not affected by this application.

19.0 **Crime Prevention**

19.1 Policy EN5 of the adopted Local Plan states all development schemes should be designed so as to reduce the potential for criminal activity and anti-social behaviour.

19.2 The previous application was approved with a condition requiring an SBD accreditation be achieved and this new proposal does not affect this.

20.0 **Affordable Housing and Infrastructure**

20.1 Core Policy 1 of the Slough Local Development Framework Core Strategy states that for all sites of 15 or more dwellings (gross) will be required to provide between 30% and 40% of the dwellings as social rented along with other forms of affordable housing.

20.2 Core Policy 10 states that where existing infrastructure is insufficient to serve the needs of new development, the developer will be required to supply all reasonable and necessary on-site and off-site infrastructure improvements.

20.3 The original application was approved on the basis that the development was unviable and could not provide any contributions or affordable housing and was subject to the standard review mechanisms secured by S106 agreement. The viability was calculated on the basis of the specifics of that development and the proposal here alters this. It would therefore be necessary to review and reappraise site viability on the basis of this revised development to see if contributions and affordable housing can be secured.

20.4 No viability information was submitted with the proposal and therefore the applicant has failed to demonstrate that it cannot provide the full requirement of contributions as set out in the Developer's Guide and is therefore contrary to policies 1 and 10 of the Core Strategy.

21.0 Habitat Impacts

21.1 There is a reduction in units proposed and the site lies within the 5.6km radius of the Burnham Beeches Special Area of Conservation. Mitigation was originally secured through Section 106 agreement on the basis of a scheme for 50 units. The reduction in units means that the S106 would need to be amended via a deed of variation to reflect the new payment. No deed of variation was submitted with the application to account for the new payment figure and the proposal is therefore contrary to Core Policy 10 and the advice of the NPPF.

22.0 Fire Safety

22.1 The scale of the building is not of such a height that it requires considerations into fire safety or require a statement in accordance with Planning Gateway One.

23.0 Neighbour Representations

23.1 No neighbour objections have been received through the course of this application. The report has specifically addressed impacts on neighbouring residents as part of considerations.

24.0 Equalities Considerations

24.1 The Council is subject to the Public Sector Equality Duty in Section 149 of the Equality Act 2010, which (amongst other things) requires the Council to have due regard to the need to eliminate discrimination/harassment/victimisation, advance equality of opportunity between people who share (and do not share) a protected characteristic and foster good relations between people who share (and do not share) a protected characteristic.

24.2 Having due regard to the need to advance equality of opportunity between persons who share (and do not share) a relevant protected characteristic involves having due regard, in particular, to the need to: (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and (iii) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

24.3 Having due regard to the need to foster good relations between persons who share (and do not share) a relevant protected characteristic involves

having due regard, in particular, to the need to: (i) tackle prejudice; and (ii) promote understanding.

- 24.4 The protected characteristics referred to in the Act are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The PSED is a continuing duty to have regard to the objectives identified in the Act as opposed to requiring the Council to achieve any particular outcome.
- 24.5 Throughout the report associated with the original grant of planning permission, regard was had to the needs of individuals with these protected characteristics, as required by the Act in order to understand the likely impact of the development proposal on them. These have been rolled forward into this S73 application. Given that the duty is an ongoing one the Council will continue to have regard to it throughout the detailed design stage of this development proposal in due course.
- 24.6 The proposal would provide new residential accommodation. Given the size of the scheme, the local development plan does not require any wheelchair user dwellings and none have been proposed. Access from the public footway to the building is considered appropriate and units can be safely access directly from the disabled parking spaces at the basement via lifts.
- 24.7 In relation to the car parking provisions, the proposal shows that 42 spaces are provided at basement level. This is a decrease of 5 spaces from the original consent. Eight spaces (an increase from 4 originally approved) are proposed as disabled spaces and should as allocated for those requiring an accessible space which is considered appropriate.
- 24.8 If it is considered that there would be temporary (but limited) adverse impacts upon all individuals with protected characteristics, whilst the development is under construction, by virtue of the construction works taking place. People with the following characteristics have the potential to be disadvantaged as a result of the construction works associated with the development eg: people with disabilities, maternity and pregnancy and younger children, older children and elderly residents/visitors. It is also considered that noise and dust from construction would have the potential to cause nuisances to people sensitive to noise or dust. However, measures can be incorporated into the construction management plan to mitigate the impact and minimise the extent of the effects. This could be secured by condition should the scheme be acceptable.

24.9 In conclusion, it is considered that the needs of individuals with protected characteristics have been fully considered by the Local Planning Authority exercising its public duty of care, in accordance with the 2010 Equality Act.

25.0 Presumption in favour of sustainable development

25.1 The Council is currently unable to demonstrate a deliverable 5 year housing land supply. As a result, Paragraph 11 of the NPPF is engaged. This means that sustainable development proposals should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

25.2 In consideration of whether or not development is sustainable, para 8 of the NPPF set out 3 objectives that should be met in order for a scheme to be considered sustainable development; the economic, social and environmental objective.

25.3 The original planning balance consideration is set out below:

“In the application of the appropriate balance, it is considered that there are significant benefits from

- *The provision of 50 residential units in a sustainable location should be given significant weight.*
- *As confirmed through viability assessment, issues with the site means that the applicant is unable to demonstrate a benefit of affordable housing. While this is not an adverse impact, it is not one that is considered to be positive either.*
- *The mitigation payment towards Upton Court Park improvements is a positive aspect that can be given moderate weight due to the payment being a legislative requirement.*
- *The shortfall of parking provision is considered to be a neutral impact.*
- *The impact on habitats is noted as being significant but mitigation proposals have been agreed with and therefore this is considered to be a neutral impact.”*

25.4 The planning balance has changed through a reduction of units and the amended designs and has been reassessed below:

- The provision of 47 residential units in a sustainable location should be given significant positive weight.
- The revised proposal has not considered whether or not it can now provide affordable housing or infrastructure contributions and failure to do so results in an adverse impact that should be given significant negative weight.
- The introduction of rear facing balconies will result in overlooking to dwellings to the north of the site which is an impact that is given significant adverse weight.

- The design changes have results in increased bulk and massing of the development which is an adverse impact that is given moderate adverse weight.
- The mitigation payment already secured towards Upton Court Park improvements is now an overpayment and fails to meet the tests of para 58 of the NPPF which is an impact that should be given significant adverse weight.
- The shortfall of parking provision is considered to be an impact that is given moderate adverse weight given that it could, in accordance with the original approval, provide an improved ratio.

25.4 The reconsidered planning balance is now considered to result in adverse impacts that would render the proposal unacceptable in planning terms. The adverse impacts result in an amendment to the proposal that fails to make effective use of this previously developed land and is not sustainable development in the eyes of the NPPF.

27.0 PART C: RECOMMENDATION

27.1 Having considered the relevant policies of the Development Plan set out below, it is recommended the application be delegated to the Planning Manager to refuse planning permission.

28.0 PART D: REASONS

1. The amended development as proposed is fundamentally different from the approved plans. The proposed reduction in the number of residential units results in a materially different proposal that does not align to the originally approved description of development and subsequently amounts to a proposal outside the scope of what is considered acceptable under Section 73 of the Town and Country Planning Act 1990, (as amended).
2. Notwithstanding the first reason for refusal, the amended plans proposed changes to layout, appearance, scale, bulk and parking provision that cumulatively amount to a fundamentally different proposal to the original approval and a materially different form of development. As a result, the proposed amendments, as a matter of principle are considered to be unacceptable and contrary to Section 73 of the Town and Country Planning Act 1990, as amended and National Planning Practice guidance.
3. Notwithstanding the first reason for refusal, the proposed amendments, by virtue of the addition of roof extension that increase the height of the building, the proposal results in a building with features that are out of character with the area to its detriment. The impact is considered to be significant adverse and the proposal is therefore contrary to Core Policy 8 of the Core Strategy 2006-2026 and saved policy EN1 of the Slough Local Plan 1994 and the National Planning Policy Framework.
4. Notwithstanding the first reason for refusal, the proposed amendments, by virtue of including private balconies on the rear elevation, will result in

overlooking impact to the rear gardens and houses of neighbouring residents on St Pauls Avenue and Cumbrae Close to the detriment of the amenity of those neighbouring occupiers. The impact is considered to cause significant harm and the proposal is therefore contrary to Core Policy 8 of the Core Strategy 2006-2026 and saved policy EN1 of the Slough Local Plan and the National Planning Policy Framework.

5. Notwithstanding the first reason for refusal, the proposed amendments result in a revised parking layout that decreases parking provision at the development and provides a decrease in parking spaces per dwelling ratio. The reduction in parking provision will likely result in pressure for parking on street and would have an adverse impact on highways safety and convenience. The proposal is contrary to Policy 7 of the Core Strategy 2006-2026 and Slough Borough Council Local Plan Policy T2 which requires that: new development is sustainable and located in the most accessible locations, thereby reducing the need to travel and residential development will be required to provide a level of parking appropriate to its location and which will overcome road safety problems, protect the amenities of adjoining residents.
6. Notwithstanding the first reason for refusal, the applicant has failed to demonstrate that the amended proposal would not be able to provide affordable housing and infrastructure contributions in accordance with the adopted Developer Guide December 2017. In the absence of a new or deed of variation to the legal agreement securing financial obligations and the provision of affordable housing, the development would have an unmitigated and unacceptable impact on existing local infrastructure, would fail to make an acceptable contribution towards, local affordable housing stock and would fail to provide appropriate mitigation against impacts on Burnham Beeches Special Area of Conservation. As such, the application is contrary to policies 4, 7, 9 and 10 The Slough Local Development Framework, Core Strategy 2006 – 2026, Development Plan Document, December 2008, Slough Borough Council's Developers Guide Part 2 Developer Contributions and Affordable Housing (Section 106), advice in the National Planning Policy Framework 2024 and to the requirements of Regulation 61 of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

Informatives:

1. It is the view of the Local Planning Authority that the proposed development does not improve the economic, social and environmental conditions of the area for the reasons given in this notice and it is not in accordance with the National Planning Policy Framework.
2. For the avoidance of doubt this decision was made on the basis of the following plans:
 - a) Drawing Number A100, Dated 07/10/2024, Received 03/12/2024
 - b) Drawing Number A101, Dated 07/10/2024, Received 03/12/2024
 - c) Drawing Number A102, Dated 07/10/2024, Received 03/12/2024
 - d) Drawing Number A103, Dated 07/10/2024, Received 03/12/2024

- e) Drawing Number A104, Dated 07/10/2024, Received 03/12/2024
- f) Drawing Number A105, Dated 07/10/2024, Received 03/12/2024
- g) Drawing Number A106, Dated 07/10/2024, Received 03/12/2024
- h) Drawing Number A107, Dated 07/10/2024, Received 03/12/2024
- i) Drawing Number A108, Dated 07/10/2024, Received 03/12/2024
- j) Drawing Number A109, Dated 07/10/2024, Received 03/12/2024
- k) Drawing Number A110, Dated 07/10/2024, Received 03/12/2024
- l) Drawing Number A111, Dated 08/10/2024, Received 03/12/2024
- m) Drawing Number A112, Dated 08/10/2024, Received 03/12/2024
- n) Drawing Number A113, Dated 08/10/2024, Received 03/12/2024
- o) Drawing Number A114, Dated 08/10/2024, Received 03/12/2024
- p) Drawing Number A115, Dated 08/10/2024, Received 03/12/2024
-) Drawing Number A116, Dated 08/10/2024, Received 03/12/2024