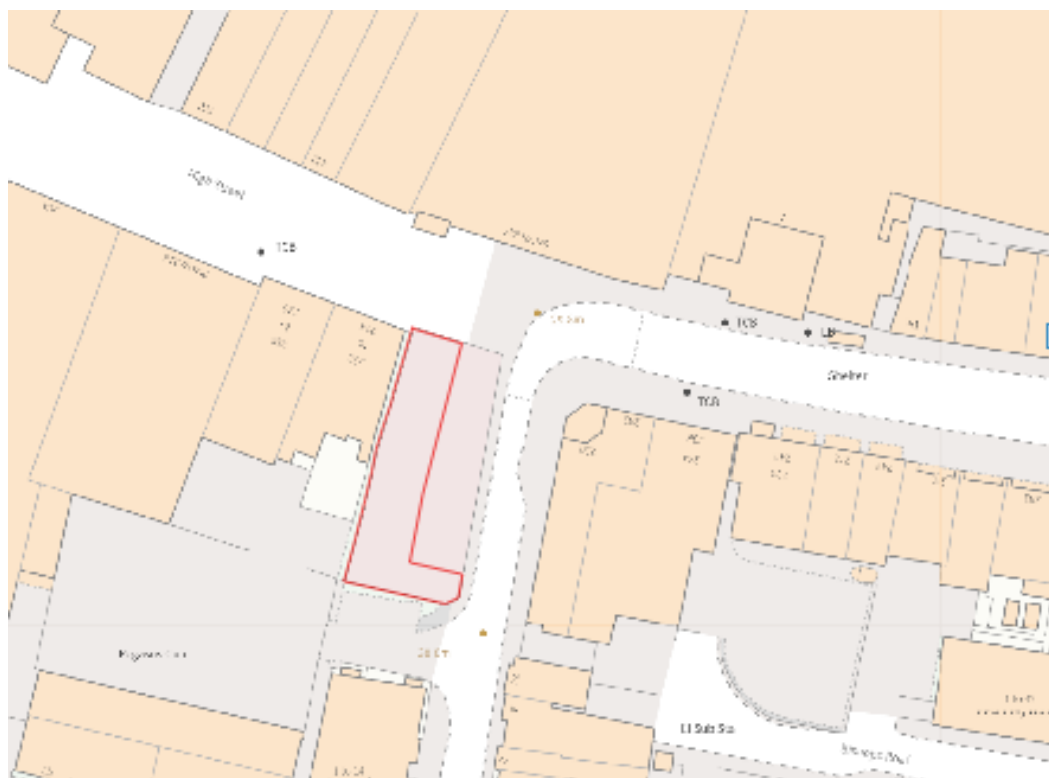


|                    |   |                   |               |
|--------------------|---|-------------------|---------------|
| Registration Date: | 26-Feb-2025   | Application No:   | P/02465/022   |
| Officer:           | Alex Harrison   | Ward:             | Herschel Park |
| Applicant:         | 226 HSS Ltd, 226 HSS Ltd  | Application Type: | Major         |
|                    |   | 13 Week Date:     | 28 May 2025   |
| Agent:             | Lotte Hirst, Ferio Planning Limited<br>Ferio Planning Limited, 85 Great Portland Street, Studham, LONDON, W1W 7LT |                   |               |
| Location:          | 226 High Street, Slough, SL1 1JS  |                   |               |
| Proposal:          | Variation of condition 2 (drawing numbers) of planning permission P/02465/013 dated 05/04/2017                    |                   |               |

**Recommendation:** Delegate to Planning Manager for Refusal



## **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 for the following reason:

The proposed amended plans show window openings that do not match the floorplans which would render the development unimplementable. The plans also do not show the full external elevations of the building which means the Local Planning Authority has been unable to review the amendments in the context of the full building. The amended plans result in development that would not comply with Conditions 18 and 19 of the decision notice. As a result the development would be unimplementable due to the discrepancies created and the Council is unable to determine that the proposal is not fundamentally different from the original approval and therefore acceptable in light of Core Policy 8 of the Adopted Local Development Framework, Core Strategy 2006 - 2026, December 2008 and saved Policy EN1 of The Adopted Local Plan for Slough 2004.

- 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/02465/013 following a resolution to approve at the Committee meeting of 7 September 2016 with the decision notice issued on 5 April 2017.

The original approval granted consent at the site for:

*Construction of four storey detached building to accommodate retail (Class A1) to the front end at ground floor level, and residential flats/ studio apartments above, (1 No. 2 bed flat; 6 No. One bed flats; 7 No Studio apartments). Bin store and cycle parking within the rear end of the ground floor..*

The proposed variation seeks to make changes to the external appearance of the building and the internal layout at ground floor level. Works at the site have lawfully commenced under the original consent.

- 2.4 The application has been amended since its original submission. The original proposal sought to make internal alterations to amalgamate the development with a neighbouring approved scheme at 228 High Street, making one development. The alterations included amendments to approved units, communal areas and the bin and cycle stores. As a result it also proposed to amend other conditions relating to the bin store and the cycle store. The applicant was advised that, for a number of reasons, their proposal was not acceptable as a S73 application and would not be supported in principle. The applicant chose to amend the proposal to remove the internal alterations and changes to the bin store and cycle store, leaving external amendment changes only.
- 2.5 Since that change, Officers again contacted the applicant as the proposed plans did not match what was being constructed on site and the proposed elevations did not align to the approved floorplans. An amended ground floor plan was received.
- 2.6 The application was submitted with the following technical content:
- Application form
  - Plans
- 2.7 A concurrent application for the adjacent site has also been submitted under ref: P/02465/023 and is also on this agenda.
- 2.8 To accommodate the change the proposal seeks permission to vary Condition 2 relating to approved plans to substitute the amended plans for the originals.

### **3.0 Application Site**

- 3.1 The site is located one plot in from the junction of High Street and Alpha Street North, and has been long-term vacant, but is now subject to construction works.
- 3.2 The neighbouring building at 219 - 224 High Street whilst not included on the Council's local list is nonetheless a building of historical and architectural interest similar in design and appearance to other blocks within the town centre. It is a three storey building with a pitched tiled roof set behind a front parapet wall. The ground floor retail unit has no particular architectural merit, but above ground floor the distinctive brickwork and fenestration create an interesting front perspective. Residential flats are provided at first and second floor levels.

- 3.3 West of the site on the opposite corner of High Street with Alpha Street North, there is a modern two storey retail unit which has a curved façade turning the corner. At the northern end of Alpha Street, the terrace of former residential properties has for the most part been converted to commercial use. To the south of the site is an access to an office car park with overspill car parking immediately abutting the application site's southern boundary. Beyond the access road is a recently development for flats on a former car park site. To the north of the site in High Street is a modern infilling two storey retail unit, constructed in brick, but with no particular architectural merit.

#### **4.0 Site History**

- 4.1 The application to which this S73 proposal directly relates is:

P/02465/013

Construction of four storey detached building to accommodate retail (Class A1) to the front end at ground floor level, and residential flats/ studio apartments above, (1 No. 2 bed flat; 6 No. One bed flats; 7 No Studio apartments). Bin store and cycle parking within the rear end of the ground floor.

Approved 05/04/2017

The following applicaiotns have been submitted pursuant to this appoval at this site:

P/02465/021

Removal of condition 12 (Surface water discharge) of planning permission P/02465/013 dated 05/04/2017

Approved 04/05/2020

P/02465/019

Submission of details pursuant to condition 9 (Surface water drainage) of planning permission P/02465/013 dated 05/04/2017

Approved 10/03/2020

P/02465/018

Submission of details pursuant to conditions 10 (Construction Management Plan) & 11 (Workng Method Statement) of planning permission P/02465/013 dated 05/04/2017

P/02465/013 dated 05/04/2017

Approved 03/03/2020

P/02465/015

Submission of details pursuant to conditions 3, 4, 5, 6 (contamination), & 7 (noise) of planning permission P/02465/013 dated 05/04/2017

Approved 05/07/2019

- 4.2 The history for the immediately adjacent site (228 High Street), by comparison, is as follows:

P/02465/014

Construction of a 4no. storey A1 retail at Ground Floor and 3no. floors of C3 residential to provide 14no. residential apartments.

Approved 11/12/2017

Following that approval, the following applications were submitted:

P/02465/020

Submission of details pursuant to condition 9 (Surface water drainage) & 12 (Surface water discharge) of planning permission P/02465/014 dated

11/12/2017

Approved 10/03/2020

P/02465/017

Submission of details pursuant to conditions 3, 4, 5 (contaminated land), 7 (materials), & 8 (noise insulation) of planning permission P/02465/014 dated 11/12/2017

Approved 03/03/2020

P/02465/016

Submission of details pursuant to conditions 3, 4, 5 (contaminated land), 7 (materials), & 8 (noise insulation) of planning permission P/02465/014 dated 11/12/2017

Approved 05/07/2019

- 4.3 Further history of the site is as follows:

P/02465/009

Application for a new planning permission to replace extant planning permission reference P/02465/008 dated 16th December 2008 for: demolition of existing building and redevelopment to provide a four storey building plus basement comprising: 3 no. Retail units (a1 and a2 use) provided at basement, ground and first floor levels and 12 no. Flats (6 no. X

two bed and 6 no. X one bed flats) at second and third floor levels in order to extend the time for implementation Approved 06-Jun-2012

P/02465/008

Demolition of existing building and redevelopment to provide a four storey building plus basement comprising: 3 retail units (a1 and a2 use) provided at basement, ground and first floor levels and 12 no flats (6 no x 2 bed and 6 no x 1 bed flats) at second and third floor levels.

Approved 16-Dec-2008

P/02465/007

Demolition of existing building and redevelopment to provide a four storey building plus basement comprising: 3 retail units (a1 and a2 use) provided at basement, ground and first floor levels and 12 no flats (6 no x 2 bed and 6 no x 1 bed flats) at second and third floor levels.

Refused 09-Nov-2007

Planning application P/02465/009 is considered to have been implemented as the foundations have been installed at the site. As such, this approved scheme is extant and can be built-out at any time.

## **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 04/03/2025. The application was advertised in the 21/03/2025 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 this report, an update will be provided for Members on the amendment sheet.

## **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, there are 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 2017. Notwithstanding the above given the extent of hardsurfacing the site is also below the 25m<sup>2</sup> 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
- Considerations on the amended elevations
- A proactive approach to 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/02465/013 dated 05/04/2017. 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.
- 9.6 The submission of the Section 73 application does not give an opportunity to reassess the previously determined proposal which is reflected in the limited number of considerations set out at 8.1.
- 9.7 Alterations to the external appearance of the building are considered amendments that can fall within the scope of a S73 application as a matter of principle. Similarly, internal alterations are also acceptable. The merits of each case determine whether or not the specific proposals can be accepted as a S73 variation or not.

## **10.0 Considerations of the amended elevations**

- 10.1 In relation to achieving well-designed places, Paragraph 131 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 10.2 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.
- 10.3 Further to this, Core Policy 8 of the Core Strategy sets out that in terms of design, all development should:
- a) Be of high quality design that is practical, attractive, safe, accessible and adaptable;*

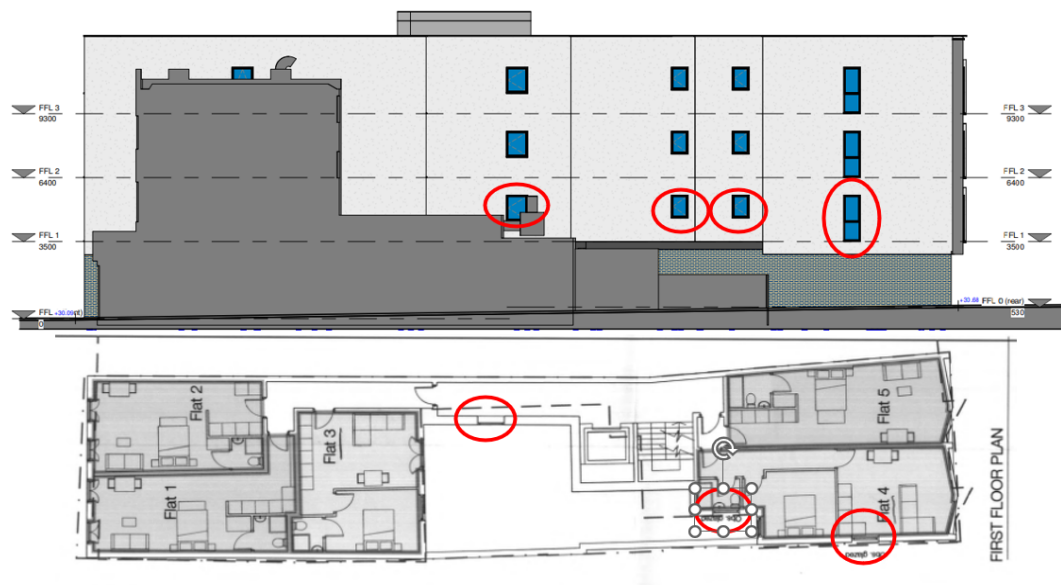
- b) *Respect its location and surroundings;*
- c) *Provide appropriate public space, amenity space and landscaping as an integral part of the design; and*
- d) *Be in accordance with the Spatial Strategy in terms of its height, scale, massing and architectural style.*

10.4 The scale of alterations to the external elevation are such that they can be considered acceptable and would not, in principle, result in a fundamental change to the original scheme.

10.5 However, this application is flawed for a number of reasons which results in an overall scheme that cannot be implemented. The issues are compounded by the fact that works have been undertaken at the site irrespective of any consent gained.

10.6 The first issue is that the proposed amendments to the elevations result in window openings that do not align to the sizes and locations of the approved windows on the original floorplans. The applicant withdrew the proposed floorplans from this application part way through considerations. The image below shows an example of this with the corresponding openings ringed:

10.7



10.8 The image above shows that an additional window has been proposed and that the positioning of at least one of the existing windows has been removed as there are 44 highlighted windows on the first floor of the elevation but only 3 corresponding on the floorplan. It is also apparent that, where windows do appear to correspond, they are not in the same location. The applicant has not provided floorplans for this as part of their amended proposal and therefore the layout would default to the original approval as

shown. Therefore, to approve as submitted would result in a scheme that is unimplementable due to blatant discrepancies. The issues apply to each of the upper floors.

10.9 The issues were brought to the applicant's attention but amended plans that were submitted only changed the ground floor and did not address the upper floors.

10.10 The second issue with the scheme as proposed is that the proposed amendments to the ground floor layout result in works that are contrary to conditions 18 (Cycle Parking) and 19 (Bin Stores) which secure the layouts for their respective subjects. The applicant had originally applied to vary these but requested their removal as the scheme was amended. The image below shows the proposed (left) against the original approval (right)



10.12 While in similar locations the provisions for bins and cycles are shown on the plans, they are different and not in accordance with the wording of the conditions 18 and 19

10.13 Condition 18 reads as follows:

*The cycle parking spaces shown on the approved plan (14/10/21A, dated May 16 and received 22/08/2016) shall be provided on site prior to occupation of the development and retained at all times in the future for cycle parking.*

*REASON To ensure that adequate on-site parking provision is available to serve the development and to protect the amenities of the area in accordance with Policy T3 of The Adopted Local Plan for Slough 2004.*

Condition 19 reads as follows:

*The bin storage shall be provided in accordance with the approved plans (14/10/21A, dated May16 and received 22/08/2016), prior to the occupation of the development and shall be retained at all times in the future for this purpose.*

*REASON To ensure that there is adequate refuse and recycling storage to serve the development.*

- 10.14 Irrespective of whether or not the amended proposal is acceptable on its merits, the layout would mean that the development would not comply with these conditions by virtue of the fact that they differ from the provision shown on the referenced plans.
- 10.15 The third issue is that the proposed details are incomplete. The proposed side elevation shown in para 10.7 is partial due to the neighbouring building having been included. The proposal is detached and should show a full elevation. The plans also do not include courtyard elevations of the development. It may be that there are no alterations to these but given the discrepancies with the rest of the development no benefit of the doubt can be given.
- 10.16 As a result, these three issues are significant to the extent that the application cannot be supported. The plans would result in a proposal that has incomplete and partial elevations that do not match the floorplans and development that is contrary to other conditions.

## **11.0 A Proactive Approach to Development**

- 11.1 Paragraph 39 of the NPPF state that '*Local planning authorities should approach decisions on proposed development in a positive and creative way.*'
- 11.2 Paragraph 42 of the NPPF states '*The more issues that can be resolved at pre-application stage, including the need to deliver improvements in infrastructure and affordable housing, the greater the benefits.*'
- 11.3 The applicant did not engage with the council prior to submitting the application. As part of the application Officers have invited amendments to

the application twice to address issues. In spite of this the application is incomplete and results in a nonsensical development. To compound matters works on site have continue regardless of whether or not they are consented.

- 11.4 In this instance Officers have not asked for a third set of amended plans and consider it reasonable to determine the application as submitted. Positive and proactive working is an emphasis for both the Local Planning Authority and applicants/developers. The Council has been proactive with this application in inviting amendments on more than one occasion and allowing a material change to the application. It is therefore considered that the Council has been positive and proactive in its approach to this application and it is not unreasonable to determine in its current guise.

## **12.0 PART C: RECOMMENDATION**

- 12.1 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.

## **13.0 PART D:**

- 13.1 The proposed amended plans show window openings that do not match the floorplans which would render the development unimplementable. The plans also do not show the full external elevations of the building which means the Local Planning Authority has been unable to review the amendments in the context of the full building. The amended plans result in development that would not comply with Conditions 18 and 19 of the decision notice. As a result the development would be unimplementable due to the discrepancies created and the Council is unable to determine that the proposal is not fundamentally different from the original approval and therefore acceptable in light of Core Policy 8 of the Adopted Local Development Framework, Core Strategy 2006 - 2026, December 2008 and saved Policy EN1 of The Adopted Local Plan for Slough 2004.