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## Appeal Decision

Hearing held on 15-17 September and 4 November 2020

Site visit made on 23 September 2020

**by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 December 2020

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**Appeal Ref: APP/F0114/W/20/3244862**

**Plumb Center, Locksbrook Road, Newbridge, Bath BA1 3EU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Summix LRB Developments Ltd against the decision of Bath & North East Somerset Council (B&NES).
  - The application No.18/05047/FUL, dated 6 November 2018, was refused by notice dated 14 August 2019.
  - The development proposed is the demolition of the former Plumb Center and Genesis Lifestyle Centre and the erection of a 3 storey (plus mezzanine) mixed use building for 1,354 m<sup>2</sup> of B1c Light Industrial, 364 m<sup>2</sup> of D2 Assembly and Leisure, 52 student studios and 28 student en suite rooms in cluster flats.
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### Decision

1. The appeal is allowed and planning permission granted for the demolition of the former Plumb Center and Genesis Lifestyle Centre and the erection of a 3 storey (plus mezzanine) mixed use building for 1,354 m<sup>2</sup> of B1c Light Industrial, 364 m<sup>2</sup> of D2 Assembly and Leisure, 52 student studios and 28 student en suite rooms in cluster flats at the Plumb Center, Locksbrook Road, Newbridge, Bath BA1 3EU, in accordance with the terms of the application No.18/05047/FUL, dated 6 November 2018, as amended, subject to the conditions set out in the Schedule of Conditions attached to this decision.

### Preliminary matters

2. The development description on the application form is; "The demolition of the former Plumb Center and Genesis Lifestyle Centre and the erection of a 4 storey (plus mezzanine) mixed use building for 1354 m<sup>2</sup> of B1c Light Industrial, 364 m<sup>2</sup> of D2 Assembly and Leisure, 61 student studios and 42 student en suite rooms in cluster flats". In February 2019 B&NES agreed to amend the description and, following consultation, considered a revised scheme from that originally submitted with the application. The revised scheme reduced the height of the proposed building and the number of student studios and en suite rooms in cluster flats. The agreed revised description is set out in the above bullet points.
3. Further amendments were submitted at the appeal stage. These propose revision of the quantity and location of cycle parking. The plans as determined by B&NES showed a total of 90 cycle parking spaces located along the northern side of the building. New plans were submitted with a total of 76 cycle parking spaces split between the north, east and southern sides of the building, along

with associated changes to the proposed landscaping. The plans as determined by B&NES included a total of 23 car parking spaces. The proposed revised scheme would reduce car parking to 18 spaces. Hard landscaping along the southern building frontage was proposed in the scheme as determined by B&NES. The scheme now proposed includes several ivy plants within 500 mm raised planters positioned along the south façade of the building. The plans as determined by B&NES indicated that the eastern first floor roof terrace would be entirely accessible. The scheme submitted for the appeal proposes a reduction in the size of the accessible area so that it would no longer run directly adjacent to the windows of studio rooms 13 and 14, with this area proposed for landscape planting.

4. I consider these to be minor changes that would not substantially alter the proposal. Those attending the Hearing had the opportunity to comment on the request to deal with the appeal on the basis of the further revisions to the scheme. No objections were raised. Objectors at the application and appeal stages raised concerns about the adequacy of car parking. This is, therefore, already an issue to be dealt with in determining the appeal and the proposed further reduction of five spaces would be unlikely to be prejudicial to the interests of those opposing the scheme by reason of parking provision. B&NES took a pragmatic approach to the appellant's multiple amendments to the proposed development during the appeal process and has no objection to these alterations. Determining the appeal on the basis of these further amendments to the scheme would not be prejudicial to the interests of any other party. I have, therefore, determined the appeal on the basis of the amended scheme as shown on the plans and drawings listed in the Schedule of Plans attached to this decision.
5. A unilateral planning obligation, dated 17 September 2020, provides for financial contributions towards a traffic regulation order, a residents' parking scheme and green space.<sup>1</sup> It also includes targeted recruitment provisions.
6. During the discussion about biodiversity on the second day of the Hearing, the appellant volunteered to submit information to enable an Appropriate Assessment (AA) to be undertaken in accordance with The Conservation of Habitats and Species Regulations 2017 (as amended). The Hearing was adjourned to enable this to take place and for Natural England (NE) to be consulted.<sup>2</sup> This matter was discussed at the resumption of the Hearing on 4 November 2020. A unilateral undertaking of the same date provides for payment of an off-site ecological contribution (£5,000) before commencement of development.<sup>3</sup> B&NES submitted a revised Community Infrastructure Levy Compliance Statement at the Hearing.<sup>4</sup>

### **Planning policy**

7. The development plan for the area includes the Bath and North East Somerset Core Strategy and Placemaking Plan adopted in July 2017. All the Policy references in this decision are to this Plan.
8. Policy B1 provides that the Bath Spatial Strategy for Higher Education is to enable provision of additional on-campus student bed spaces and new off-campus student accommodation subject to Policy B5, thereby facilitating

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<sup>1</sup> HD18.

<sup>2</sup> HD16, HD20, HD21, HD22, HD23 and HD27.

<sup>3</sup> HD24.

<sup>4</sup> HD25.

- growth in the overall number of students whilst avoiding growth of the student lettings market.
9. Policy B5 provides, among other things, that proposals for off-campus student accommodation will be refused within the Enterprise Zone where this would adversely affect the realisation of other aspects of the vision and spatial strategy for the City in relation to delivering housing, and economic development (in respect of office, industrial, retail and hotel space). Other Policies are cited in this decision where relevant.
  10. I have also taken account of the *National Planning Policy Framework* (hereinafter the *Framework*) and the *Planning Practice Guidance* (hereinafter the *Guidance*).

### **Main issues**

11. The main issues in this appeal are:
  - (a) The effects of the proposed development on employment provision.
  - (b) The effects on the living conditions of future occupiers of the proposed development by reason of privacy, outlook and light.
  - (c) The effects of the proposal on biodiversity.
  - (d) Whether parking provision would be adequate.
  - (e) The effects of the proposed development on heritage assets.
  - (f) The need for student accommodation.
  - (g) Whether there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding and the application of the sequential test.
  - (h) The effects of the proposed development on the vision and spatial strategy for the City.

### **Reasons**

#### *The site and surroundings*

12. The 0.2245 ha appeal site lies within an industrial estate in the Newbridge area of Bath. The building currently on the appeal site comprises two units; a trade counter (1,085 m<sup>2</sup>), which is a B8 use with ancillary A1, and a gymnasium (285 m<sup>2</sup>), which is a D2 use, along with associated parking. It is immediately opposite the grade II listed Herman Miller industrial building, which was designed by Sir Nicholas Grimshaw and constructed in 1976/77. The listed building is now the Locksbrook Campus for the Bath School of Art and Design, Bath Spa University. Beyond the appeal site's northern boundary is a disused railway embankment with mature trees. To the east of the site is a B&NES Transport Services depot, and to the west there is a veterinary surgery and a welding business, along with residential properties on the other side of this part of Station Road. The appeal site lies within Bath Conservation Area, Bath World Heritage Site, Bath's defined Enterprise Zone and the Newbridge Riverside Strategic Industrial Estate.

*Employment provision*

13. The current B8 with ancillary A1 use (1,085 m<sup>2</sup>) provides for five full time equivalent jobs. The appellant estimates that the proposed light industrial use (1,354 m<sup>2</sup>) would provide for up to 28 full time equivalent employees. Policy B3 states that Newbridge Riverside will function as Bath's primary location for industrial enterprise, providing for a range of activities including advanced manufacturing. There is a presumption in favour of retaining land and premises in the B1, B2 and B8 use classes. This policy identifies the risk of an excessive loss of industrial space harming Bath's mixed economic profile, and highlights conflict between industrial activity and residential areas – particularly with regard to movement of heavy goods vehicles (HGV).
14. The proposal for light industrial use is, in accordance with Policy ED2A, acceptable in principle within Newbridge Riverside. The replacement gymnasium and purpose-built student accommodation (PBSA) would be 'other uses', which the policy states would be inappropriate because of the economic significance of Newbridge Riverside. Policy ED2A sets out the evidence that would be necessary to show that there is no reasonable prospect of land or premises being used for the allocated purpose. But that does not apply to the circumstances here, where the scheme would provide a net increase in business space, as advocated by the Development Requirement for Newbridge Riverside in Policy B3.3.1. However, Policy ED2A.3 is relevant and requires demonstration that non-industrial uses would not have an adverse impact on the sustainability of the provision of services from industrial premises that remained around the site.
15. The existing gymnasium (285 m<sup>2</sup>) has been in operation since 1997 without any apparent adverse impact on nearby industrial uses. Its replacement within larger premises (364 m<sup>2</sup>) would not be likely to materially alter this situation. The proposed PBSA would complement the university use of the converted Herman Miller building on the opposite side of Locksbrook Road. To the east, beyond a proposed covered cycle storage area, the PBSA would face towards the rear of a transport depot building. Activity and any related noise and disturbance would be more likely to arise at the front of this depot building and near to its access onto the road. This access would be separated from the PBSA by the large depot building. Given this relationship, the proximity of student accommodation would not be likely to impair the sustainability of the existing depot use.
16. Similar considerations apply to the specialist manufacturing business operated by Horstman from a large industrial building located to the east of the transport depot building and on the opposite side of the road. Vehicular access from Locksbrook Road to this property is at the western end of the Horstman site, but at a sufficient distance from the proposed PBSA so that any noise from activities such as loading/unloading would not be likely to result in any significant conflict between the uses. The proposed PBSA would add to pedestrian/cycle movements along and across Locksbrook Road, but the Highway Authority raises no issues regarding highway safety. The proposal would not materially exacerbate any existing conflict between industrial activity and residential development due to HGV movements in Newbridge Riverside. The proposed PBSA would not unduly constrain the use or redevelopment of the existing uses to the west of the appeal site any more so than currently exists due to the proximity of residential dwellings in Station Road.

17. The proposal would result in an increase in business floorspace of 260 m<sup>2</sup>. It would provide modern flexible premises suitable for high tech or advanced manufacturing with the potential to provide for significantly more jobs than the existing use. Subject to reasonable planning conditions with respect to hours of operation/deliveries and noise emissions, the proximity of the PBSA would not unduly constrain a light industrial use at ground and mezzanine level. I find no conflict with Policies B3.1 or ED2A. The proposed development would have a positive effect on employment provision and gains support from Policy B1.2 because it would contribute to an increase in jobs in the business services sector. This is a consideration that weighs in favour of the proposal.

#### *Living conditions*

18. The windows in the north facing elevation of the proposed PBSA would face towards the belt of trees on the adjoining land. These rooms would have a single aspect from one north facing window. Students might, at times, need to spend long periods of the day in these rooms, but I consider that the outlook would not impair the residential amenity of the accommodation. The proposed building would be set back from the embankment and line of trees. New planting and landscaping within the appeal site could be designed and managed to maintain an appropriate outlook. The view in summer would be towards attractive vegetation. The deciduous trees in winter would enable adequate light to these windows. Measures would be necessary to limit the emission of artificial light from north facing windows for biodiversity reasons, but that need not be at the expense of these rooms receiving adequate natural daylight.
19. The revisions to the scheme shown on drawing number AP 0 35A, along with the appellant's suggestion that the approved windows to studios 13 and 14 should be one-way glazing, would reasonably address B&NES's concerns about the use of the roof terraces potentially compromising privacy.
20. Potential noise and disturbance from a light industrial use on the ground and mezzanine floors impacting upon the student accommodation could be addressed by the imposition of conditions dealing with the level and character of noise emissions. The suggested conditions provide for an approved Sound Insulation Plan to include monitoring to ensure that the agreed internal ambient noise level performance for the proposed PBSA was not breached by any future occupation of the employment part of the building.
21. Subject to the imposition of appropriate planning conditions, the scheme would not result in unacceptable living conditions for the occupiers of the student accommodation. The scheme would comply with Policy D6 with respect to appropriate levels of privacy, outlook and natural light.

#### *Biodiversity*

22. There is reasonable evidence to assume that the belt of trees to the north of the appeal site forms part of a network of habitat features used by horseshoe bats in the River Avon corridor. These trees are about 3 km from the nearest part of the Bath and Bradford-on-Avon Bats Special Area of Conservation (SAC). Tree pruning necessary to facilitate the appeal scheme would not be likely to have a significant effect on bats, which are a European protected species. However, in the absence of appropriate mitigation, artificial lighting would have the potential to result in the degradation of supporting habitat for bats. Future development of the site to the north of the appeal site could also potentially affect the trees within this corridor. It cannot be excluded on the

basis of objective information that the proposal, alone or in combination with other plans and projects, would have a significant effect on the conservation objectives of the SAC.

23. Evidence was submitted at the Hearing to enable me to undertake an AA and NE was consulted. With the imposition of a planning condition to control artificial lighting NE concluded, beyond reasonable scientific doubt, that the proposed development would not adversely affect the integrity of the SAC. The suggested condition would, among other things, require an assessment to demonstrate levels of light spill onto the tree line no greater than 0.37 lux. With appropriate planning conditions the scheme would retain a dark corridor for bats to the north of the appeal site, which is a matter included in the Placemaking Principles for Newbridge Riverside in Policy B3. I have considered the conservation objectives for the SAC and I am satisfied that with the avoidance and mitigation measures proposed the appeal scheme would not adversely affect the integrity of the SAC.
24. Other nature conservation interests could be safeguarded by the imposition of appropriate conditions. There are no reasons to find against the proposal on the grounds of an adverse impact on biodiversity. I find no conflict with Policies NE3 and NE5 concerning protected species/habitats and ecological networks. Subject to appropriate conditions lighting would not have a detrimental impact on local ecology and so the proposal would comply with Policy D8. The scheme would not result in the fragmentation of existing habitats (Policy CP6.4), and would not be at odds with Policies NE1 and CP7 regarding green infrastructure.

#### *Parking provision*

25. Local residents object to the proposed development because of inadequate car parking provision, but this is not a matter raised by B&NES. The appeal site lies within a reasonably accessible location within the City, where 18 car parking spaces would be appropriate for the proposed industrial and gymnasium uses. There is no policy requirement for car parking provision to serve the proposed PBSA. This is of particular concern to the local community, where there is considerable demand for on-street parking in an area that contains residential and industrial development, along with a university campus.
26. However, the suggested condition for an approved student management plan includes parking restrictions and enforcement measures, which the appellant stated would be included within the students' tenancy agreements. This condition would be necessary and reasonable in the circumstances. The imposition of this condition would enable B&NES to approve appropriate mechanisms to manage student car parking, without the need to impose a residents' parking scheme. I am satisfied that this would be a sensible and effective approach to addressing local concerns about on-street parking congestion. The provision of 76 cycle parking spaces would be enough to encourage occupiers of the proposed development to use a sustainable travel mode.
27. In the circumstances that apply here both the proposed car parking and cycle storage provision would be adequate. There are no grounds to find against the proposal because of its likely effect on parking congestion in the local area.

*Design and heritage assets*

28. Submissions at the application and appeal stages included criticism of the modern building design and its effect on heritage assets, but these are not matters included in B&NES's reasons for refusing the application. The proposed building's exposed structure and modern materials, with dark metal panelling, are of particular concern to some objectors. However, the listed Herman Miller factory building was an innovative 'high tech' style for the 1970s, with its exterior comprising an aluminium cladding frame holding moulded glass reinforced GRP panels. The appeal scheme would continue this trend of high-quality and innovative industrial architecture.
29. In terms of bulk, the proposed building would be slightly higher than the listed building, but its mass would be broken up by the roof terraces above the mezzanine level. In addition, the listed building has a much longer street frontage than the proposed building. The proportions of the proposed building would not be out of scale in this context. Its innovative design takes appropriate clues from the industrial heritage of the area. The overall design and materials would result in a high-quality contemporary building for this part of the Enterprise Zone. The design approach responds appropriately to the Key Development Opportunities in Policy B3, which acknowledge that the varied context provides for a range of building typologies and scope for architectural freedom in Newbridge Riverside.
30. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of Bath Conservation Area. The site lies within the Brassmill Lane, Locksbrook and Western Riverside character area of Bath Conservation Area. In the 2015 appraisal for this area, the Plumb Center building was identified as a "negative building and townscape feature". Key characteristics of the area include a long history of industrial and commercial use associated with the river, with mixed commercial and light industry with urban/suburban residential buildings and post-industrial redevelopment transforming parts of the character area. Given this local context, I consider that the proposed development would preserve the character and appearance of the Conservation Area.
31. I am required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of a listed building. The grade II listed former Herman Miller building has a long frontage to Locksbrook Road, which is part of its setting. However, little of its heritage significance derives from its relationship with its setting. Its architectural importance is more significant, and this would not be diminished by the appeal scheme. The replacement of the existing Plumb Center building with a contemporary 'high tech' structure would enhance the setting of Sir Nicholas Grimshaw's listed industrial building.
32. The Outstanding Universal Value of Bath World Heritage Site concerns its Roman and Georgian architecture, the hot springs, along with the green setting of the City. It is only the latter that could potentially be affected by the appeal scheme. However, the limited tree pruning proposed would not impact on Bath's green setting. The proposal would not harm the authenticity, integrity or cultural value of the World Heritage Site, and so would not conflict with Policy B4.

33. The siting and design of the building would accord with Policy NE6 concerning trees. I find that the proposed development would be of high-quality design consistent with Policy CP6.1.a. It would preserve the character and appearance of Bath Conservation Area and would enhance the setting of the listed building. The appeal scheme complies with Policies CP6.2 and HE1. There are no reasons to find against the proposal on design or heritage grounds.

*Need for student accommodation*

34. B&NES acknowledges the benefits that PBSA can bring but gives this minor weight. The appellant considers that the proposal could “free-up” in excess of twenty dwellings for the local private rented sector. B&NES argues that there is no evidence that previous PBSA schemes have had this effect and that the proposed accommodation would be unlikely to be a comparable alternative to shared accommodation in Houses in Multiple Occupation (HMO), because it would be more expensive. However, it seems to me that this ‘freeing-up’ effect may not have been apparent in the past because of the increasing numbers of students needing accommodation, along with the dominant role of the private rented sector in Bath.

35. There is evidence that between 2014/15 and 2018/19 combined student numbers at Bath and Bath Spa Universities increased by 908 per annum, and that currently it is estimated that 60% of the total full-time student population of 23,142 students lives in HMOs. The universities currently provide accommodation for about 5,811 students. The 13 existing private PBSA schemes have 1,713 bed spaces, with some 879 bed spaces under construction or in the pipeline. An estimated 1,630 students live at home with parents. It is difficult to be precise about the number of PBSA bed spaces that are likely to be needed, but I prefer the appellant’s more up to date analysis, which points to only 0.36 purpose-built bed spaces per student. Even if student numbers in Bath remain at the present level there is evidence of a substantial shortfall in available purpose-built student bed spaces and a heavy reliance on the private rented sector.

36. It is difficult to predict what effect the COVID-19 pandemic might have on the number of international students attending the universities in Bath in the future, and on the overall need for PBSA. However, it is a reasonable assumption that in the lifetime of the appeal scheme, there will be strong demand for student accommodation. There are some advantages to both the students and to the local community in meeting this demand in dedicated student accommodation, rather than it being met by the private rented sector. There is some support for this in the *Guidance*, which states that all student accommodation can, in principle, count towards an authority’s housing land supply, and can allow existing properties to return to general residential use or to remain in such use rather than being converted to student accommodation.<sup>5</sup> This is a concern reflected in Policy B5, which provides for monitoring of conversions from C3 dwellings to C4 HMOs, and for compensatory provision if achieving Bath and North East Somerset Core Strategy and Placemaking Plan’s housing requirement is at risk.

37. It seems to me that making significant inroads into reducing the dominance of the private rented sector in meeting the demand for student accommodation in Bath would be likely to result in a substantial future demand for PBSA. The

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<sup>5</sup> *Guidance* paragraph 034 Ref ID:68-034-20190722.

likely demand for dedicated student accommodation is a consideration that weighs heavily in favour of the appeal scheme. I consider that the proposal would gain support from Policy B1 by facilitating growth in the overall number of students whilst avoiding growth of the student lettings market, but only if it complies with Policy B5, a matter I consider later in this decision.

### *Flood policy*

38. *Framework* paragraph 158 states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding. It adds that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Policy CP5, concerning flood risk management, follows the sequential approach set out in the *Framework*. The *Guidance* advises that when applying the sequential test, a pragmatic approach on the availability of alternatives should be taken.<sup>6</sup>
39. Most of the appeal site lies within Flood Zone 2, with sections along its northern boundary located within Zone 1. There is a medium probability of flooding in Zone 2, which the appellant acknowledges only concerns the proposed PBSA, and not the light industrial or gymnasium elements of the appeal scheme. The proposed employment use would be located within a site allocated for that purpose in the development plan through the sequential test. Therefore, the test for this use does not need to be applied again.<sup>7</sup> The increase in the floorspace of the gymnasium from 285 m<sup>2</sup> to 364 m<sup>2</sup> would be a minor development that should not be subject to the sequential test.<sup>8</sup>
40. In my Pre-Hearing Note, the parties were invited to indicate whether the 'proposed development' and associated catchment for a sequential test assessment should comprise a mixed use building for B1c, D2 and student accommodation, or a disaggregation of these as separate buildings that could occur on different sites. I have taken the submissions from the parties into account in applying national policy to the particular circumstances that apply here.
41. I was not referred to any specific policy or guidance about disaggregating schemes for the purposes of applying the sequential test. It is not ruled out by policy/guidance. On the contrary, the reference in the *Guidance* to defining the catchment area to apply to the sequential test is to the "type of development" and not specifically to the actual scheme that is proposed.<sup>9</sup> The parties agree that it is a matter of planning judgement as to whether or not a scheme should be disaggregated. It seems to me that this turns on the strength of any nexus between the constituent parts of a composite scheme.
42. The appellant argues that the nexus here is a cross-funding link between the PBSA and the re-provision and improvement of the employment space and gymnasium. However, no convincing evidence was submitted about the significance of any cross-funding in this regard. The proposal is described as a "mixed use building", but there are no physical connections between the proposed uses. Furthermore, there are no functional or operational reasons why there should be. I was not referred to any other commercial, legal or management mechanisms linking the different uses. Any common use of the

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<sup>6</sup> *Guidance* paragraph 033 Ref ID:7-033-20140306.

<sup>7</sup> *Framework* paragraph 162.

<sup>8</sup> *Framework* paragraph 164 and *Guidance* paragraph 033 Ref ID:7-033-20140306.

<sup>9</sup> *Guidance* paragraph 033 Ref ID:7-033-20140306.

- access, parking and landscaping would fall far short of amounting to a nexus that results in a meaningful bond between the proposed uses. The appellant has advanced no sound reasons why the PBSA and the employment/gymnasium uses could not be in separate buildings on separate sites within appropriate catchment areas for the respective uses.
43. The *Guidance* distinguishes between the uses for the purposes of applying flood risk policy, with PBSA included as 'more vulnerable', and the replacement employment and gymnasium as 'less vulnerable'.<sup>10</sup> My judgement here is that the proposed PBSA and the employment/gymnasium uses should be disaggregated for the purposes of applying the sequential test. The 'type of development' for defining the appropriate catchment area and applying the sequential test comprises 52 student studios and 28 student en suite rooms in cluster flats. The appellant disputes the appropriateness and availability of the four sites in Flood Zone 1 identified by B&NES as being sequentially preferable to the appeal site. These sites are located at Claverton campus, Burlington, Jews Lane and Shaftesbury Road.
44. The strategy in Policy B5 seeks development of about 2,000 study bedrooms at the Claverton campus, but the Hearing was advised that only 1,000 have been provided so far. An area within the University of Bath at Claverton is allocated by Policy SB19 for additional student residential accommodation. However, this is an area of pre-existing development where redevelopment or new development for student accommodation would be supported in principle. The University's emerging Development Framework indicated a potential capacity of up to 930 beds of student accommodation on the campus. But the evidence adduced at the Hearing is that a new masterplan remains to be developed, with no current opportunities to expand the campus. Moreover, it is not clear to what extent areas identified in the emerging masterplan are currently required for car parking or playing fields. The Hearing was advised that the University is considering replacement parking and artificial pitches, but there is no indication of progress or likely timing. Claverton campus is likely to provide additional student accommodation in the longer term, but the evidence does not demonstrate that it is currently a reasonably available site for the student accommodation proposed in the appeal scheme.
45. With disaggregation of the proposed development and flexibility in the design of 52 student studios and 28 student en suite rooms in cluster flats, the 0.13 ha Burlington site would not be inappropriate by reason of its size. Policy SB16 includes residential development, which can include student accommodation, in the Development Requirements and Design Principles for this site. With disaggregation of the appeal scheme there is no evidence to show that the Burlington site is not reasonably available for PBSA.
46. Similar considerations apply to the 0.18 ha Old Bakery site in Jews Lane. This site has planning permission for a student accommodation building with 63 bedrooms and a flexible employment building (Class B1). The appellant argues that the site has not been marketed, but that need not rule out the possibility that it could be reasonably available to provide PBSA. No other convincing reasons have been advanced to demonstrate that this site is not reasonably available for the development of 52 student studios and 28 student en suite rooms in cluster flats.

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<sup>10</sup> *Guidance* Table 2 paragraph 066 Ref ID:7-066-20140306.

47. The 0.445 ha Scala site on Shaftesbury Road is the subject of a planning application for a mixed development that includes the erection of student accommodation, including 96 student bedrooms and associated ancillary space. B&NES recognises the potential of this site for development, although it is not allocated or included in housing land availability assessments. At the time of the Hearing, the application had not been determined and there were objections to the proposal. Nevertheless, for the purposes of applying national flood policy, and taking a pragmatic approach, it seems to me that this is a site that can be considered reasonably available for the PBSA element of the appeal scheme. Again, any absence of active marketing is not determinative of availability.
48. The appellant's case is that even if another site in Flood Zone 1 was appropriate and reasonably available, that would not warrant refusal of the appeal scheme as all material considerations have to be weighed in the planning balance. It is argued that this would be particularly so if it was necessary, in order to meet the need, for all the currently appropriate and available sites to be developed. Prior to the masterplan for the Claverton campus bringing forward sites for student accommodation there are only three sites in Flood Zone 1 that can reasonably be considered available for PBSA. It is unlikely, in my view, that these three sites, even if all were developed, would make much of an inroad into meeting the likely future demand for student accommodation identified above. This is particularly so if B&NES's aims are to be achieved with respect to facilitating growth in the overall number of students whilst avoiding growth of the student lettings market and not adding to concentrations of HMOs (Policies B1 and B5).
49. The *Framework* states that the sequential test aims to steer new development to areas with the lowest risk of flooding. But it seems to me that this policy acknowledges that it might not be possible to do so in all circumstances. The wording of the policy, which aims to 'steer' development, and indicates that development 'should' not be permitted if there are reasonably available sites appropriate for the development, admits of some discretion rather than requiring a mandatory refusal. Meeting the current need for PBSA is likely to require more than the totality of the three sites I have found to be appropriate and available. In the particular circumstances that apply in this case, regarding the need for PBSA and the limited availability of appropriate sites in Flood Zone 1, I consider that the sequential test is met. If I am wrong about that and applying the sequential test indicates that the development should not be permitted, then the proposal would be at odds with flood risk policy in the *Framework* and would also conflict with Policy CP5. I deal with this in the planning balance section of this decision.
50. Leaving aside matters concerning the sequential test, the proposed habitable accommodation would be on the upper floors of the building where electrical infrastructure could be designed to be above flood levels. A safe escape route could be provided to higher ground. The proposed development would minimise its contribution to flood risks elsewhere and, subject to the imposition of appropriate planning conditions, could be made safe throughout its lifetime by incorporating mitigation measures. In this regard the appeal scheme would comply with the requirements of Policy CP5.

*Vision and spatial strategy for the City*

51. B&NES is concerned about the proposed PBSA adding to an overconcentration of student accommodation in this part of the City. The site lies within an area with a recorded HMO concentration of 10%-14%. There are two PBSA developments nearby, on the opposite side of the river to the appeal site that are within the Policy B3 boundary. Others are promoted further to both the east and west of the appeal site, outside, but adjoining, the Policy B3 boundary. B&NES's views about an overconcentration of student accommodation are not convincing. It seems to me that the acknowledged demand for student accommodation would either be met in PBSA or in HMOs. In the absence of the appeal scheme, the likelihood would be that more of the private rented sector housing would be occupied by students, thereby adding to any overconcentration of HMOs. If, as some submissions suggest, students are associated with anti-social behaviour and parking congestion, it would be preferable to accommodate them in a limited number of sites rather than in HMOs dispersed throughout residential areas. This would provide better opportunities to manage occupation of the accommodation and car parking. On the appellant's evidence, the appeal scheme could potentially free-up more than 20 HMOs, whereas dismissing the appeal could lead to more than 20 dwellings being converted to student accommodation.
52. The proposal would not be at odds with the vision set out in the Bath and North East Somerset Core Strategy and Placemaking Plan, which seeks to conserve and enhance Bath's unique sense of place of international significance to maintain its key competitive advantage as a high-quality environment. The vision adds that the realisation of a range of development opportunities within the Enterprise Zone would greatly improve the City aesthetically and as a business-friendly place. The appeal scheme is consistent with these aims. The proposed development would also accord with the vision in delivering new housing and enabling regeneration in a more energy and resource efficient manner.
53. In terms of the spatial strategy for the District, the proposal would accord with five of the matters included in Policy DW1, by which the overarching strategy to promote sustainable development would be achieved. These are: 1. Focussing new housing, jobs and community facilities in Bath; 2. Making provision to accommodate a net increase in jobs and the supply of housing; 3. Prioritising the use of brownfield opportunities for new development; 5. Designing development in a way that is resilient to the impacts of climate change; and 7. Protecting the biodiversity resource.
54. Policy B1 sets out Bath's spatial strategy for the City. The appeal scheme would contribute to a net increase in jobs, and would assist in countering B&NES's concern about too rapid a rate in the contraction of industrial floorspace.<sup>11</sup> The proposal would not conflict with the spatial strategy's aim to sustain a mixed economy to support Bath's multi-skilled workforce and multi-faceted economic base by retaining a presumption in favour of industrial land in the Newbridge Riverside area. It would regenerate a part of the Enterprise Zone to create a new area of attractive and productive townscape in accordance with Policy B1.5.a. The proposed rooftop solar panels would accord with Policy B1.11.a by enabling renewable energy generation. The 52 student

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<sup>11</sup> The strategy for Bath in Policy B1.2.e includes planning "for a contraction in the demand of industrial floor space from about 167,000 m<sup>2</sup> in 2011 to about 127,000 m<sup>2</sup> in 2029".

studios and 28 student en suite rooms in cluster flats would contribute to the choice in tenure and housing type in Bath. I find no conflict with Policy CP10 concerning housing mix.

55. The appeal site lies within the Enterprise Zone. However, the proposed development would not adversely affect the realisation of other aspects of the vision and spatial strategy for the City in relation to housing and economic development. I find no conflict with Policy B5, and so the proposal would accord with Policy B1.7.a.

*Planning balance and policy*

56. The starting point for the determination of this appeal is the development plan. I am required to make my determination in accordance with it, unless material considerations indicate otherwise. The proposed development gains support from Policy B1, since it would contribute to an increase in jobs in the business services sector, regenerate a part of the Enterprise Zone and provide off-campus student accommodation in accordance with Policy B5, so assisting to avoid growth of the student lettings market. Even if I had concluded differently about applying the sequential test, such that conflict with Policy CP5 is a policy consideration that pulls in the opposite direction, my judgement is that this conflict would be outweighed by the support the scheme gains from Policy B1, and so, overall, the proposal would accord with the development plan as a whole.
57. If the proposed development were to be at odds with the *Framework's* sequential test, it would, nevertheless, contribute towards meeting the needs of a group with specific housing requirements. Allowing the appeal would also gain some support from the *Guidance* insofar as the dedicated student accommodation would assist in taking pressure off the private rented sector.<sup>12</sup> Thus, even if I am wrong about the sequential test, my judgement is that, taken overall, and having regard to the specific circumstances that apply in this case, the proposal would reasonably comply with national policy and guidance.
58. Nevertheless, if the proposal fails to meet the sequential test that would bring it into conflict with a key element of national and local flood risk policy. This would weigh heavily against the proposal. However, in my judgement, the contribution the proposed development would make to meeting the current need in Bath for PBSA, along with the provision of improved employment space, outweighs any harm resulting from conflict with national and local flood risk policy. I find that the planning balance falls in favour of the proposal.

*Other matters*

59. I have taken into account all the other matters raised in the evidence, including the objection from the occupier of the Plumb Center drawing attention to the fact that the existing premises are currently being used productively as a builders' merchants in accordance with relevant policy for the industrial estate. Neither this, nor any of the other matters raised, are sufficient to outweigh my conclusions on the main issues, which have led to my decision on this appeal.

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<sup>12</sup> *Guidance* paragraph 004 Ref ID:67-004-20190722.

## Conditions and obligations

60. The parties have suggested conditions that would be acceptable if the appeal were to be allowed, including pre-commencement conditions. I have considered the need for these and their wording in the light of the advice contained in the *Guidance*. Where necessary minor changes to the suggested wording would be required so that conditions would be precise and enforceable.
61. The standard commencement period would be appropriate (Condition 1). Otherwise than as set out in this decision and conditions, it would be necessary that the development be carried out in accordance with the approved plans discussed at the Hearing, to provide certainty for all parties (Condition 2). An approved Construction Management Plan would be required to safeguard the amenity of the area in accordance with Policies D6 and ST7 (Condition 3). External materials would need to be approved in the interests of the appearance of the area and to comply with Policy CP6 (Condition 4). To accord with Policy PCS5 measures to deal with any land contamination would be necessary given the past use of the site (Conditions 5-8).
62. Flood management measures would need to be approved and implemented before the first occupation of the development given that part of the site lies within Flood Zone 2 (Condition 9). Measures to protect trees would be necessary for townscape and biodiversity reasons in accordance with Policy NE6 (Condition 10). More details about landscaping would be required for similar reasons (Condition 11). To comply with Policies CP6 and NE3 potential light pollution would need to be controlled to safeguard the bat corridor (Condition 12). Construction of the revised vehicular access would be required, and the existing access closed, for highway safety reasons in accordance with Policy ST7 (Conditions 13 and 17). The amenity of the area would need to be safeguarded by an approved student management plan (Condition 14).
63. An approved Travel Plan compliant with Policy ST1 would assist in maximizing the sustainable transport advantages of the development (Condition 15). To comply with Policy ST7 spaces for the parking of vehicles would need to be kept available for that purpose, and cycle storage provided (Conditions 16 and 22). An approved detailed drainage strategy would be required for amenity reasons in accordance with Policy CP5 (Condition 18). A Sound Insulation Plan would need to be approved, implemented and verified to limit noise between the light industrial use and the PBSA (Conditions 19 and 20). Measures would be necessary to comply with Policy SCR1 and B&NES's Sustainable Construction Supplementary Planning Document (Condition 21).
64. Hours of operation for the permitted uses would be required to safeguard the amenity of the occupiers of the PBSA (Conditions 23 and 24). Rights under the Use Classes Order and permitted development rights for the industrial and gymnasium uses would need to be restricted to maintain the strategic objectives of the industrial estate and to safeguard the amenity of the occupiers of the PBSA (Conditions 25 and 26). A Wildlife Protection and Enhancement Scheme would need to be approved and implemented in the interests of biodiversity (Condition 27). Approval of proposed ground levels would be necessary for flood risk reasons and in the interests of the amenity of the area (Condition 28). Insufficient details are available about the proposed rooftop solar panels and so approval (Condition 29) would be necessary prior to implementation, and retention thereafter, in accordance with Policy SCR1.

65. The targeted recruitment and financial contributions towards a traffic regulation order and green space provided for in the unilateral planning obligation dated 17 September 2020 would be necessary to enable the development to proceed for the reasons set out in HD25. However, the contribution towards a residents' parking scheme would not be reasonable given that the student management plan required by Condition 14 would include provisions for student parking restrictions that would be enforced by means of tenancy agreements. I am satisfied that the development would be acceptable without the need for a contribution towards a residents' parking scheme. The respective obligation is therefore unnecessary, and I have not taken it into account in determining this appeal.
66. The off-site ecological contribution of £5,000 included in the 4 November 2020 unilateral undertaking would be necessary and reasonable to allow enhancement and management of trees and vegetation to the north of the appeal site given that the proposed development would require some canopy and crown reduction of trees that overhang the boundary.

### **Conclusions**

67. The planning balance falls in favour of the proposed development. While relevant policies may pull in different directions, overall, the appeal scheme would comply with the development plan. It would also reasonably accord with national policy and guidance when taken as a whole. There are no material considerations here to indicate that the appeal should be determined other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

*John Woolcock*  
Inspector

## SCHEDULE OF PLANS

SITE LOCATION PLAN AP 0 01B  
EXISTING PLAN SITE AP 0 02B  
EXISTING PLAN GROUND AP 0 04B  
EXISTING ELEVATIONS AP 0 05B  
EXISTING ELEVATIONS SECTION A AP 0 06B  
PROPOSED PLAN SITE AP 0 10L  
PROPOSED PLAN GROUND AP 0 11T  
PROPOSED PLAN MEZZANINE AP 0 12M  
PROPOSED PLAN FIRST AP 0 13J  
PROPOSED PLAN SECOND AP 0 14J  
PROPOSED PLAN ROOF AP 0 16H  
PROPOSED ELEVATION SOUTH EAST AP 0 20H  
PROPOSED ELEVATION NORTH WEST AL 0 21J  
PROPOSED ELEVATIONS COURTYARDS/TERRACES AP 0 22E  
PROPOSED SOUTH INNER AL 0 23B  
PROPOSED ELEVATIONS BAY AP 0 27D  
PROPOSED SECTION AA AP 0 30G/J  
PROPOSED VISUAL ONE AP 0 32C  
PROPOSED VISUAL TWO AP 0 33C  
PROPOSED AERIAL VIEW AP 0 34C  
ROOF TERRACE AMENITY AREAS AP 0 35A  
PROPOSED PLAN GROUND ZONES AP 0 51H  
PROPOSED PLAN MEZZANINE ZONES AP 0 52F  
PROPOSED PLAN FIRST ZONES AP 0 53D  
PROPOSED PLAN SECOND ZONES AP 0 54D  
LANDSCAPE PLAN – GROUND LEVEL AGM-LOC-LS-001E  
LANDSCAPE PLAN – ROOF AND TERRACES AGM-LOC-LS-002B

## SCHEDULE OF CONDITIONS (1-29)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - SITE LOCATION PLAN AP 0 01B
  - EXISTING PLAN SITE AP 0 02B
  - EXISTING PLAN GROUND AP 0 04B
  - EXISTING ELEVATIONS AP 0 05B
  - EXISTING ELEVATIONS SECTION A AP 0 06B
  - PROPOSED PLAN SITE AP 0 10L
  - PROPOSED PLAN GROUND AP 0 11T
  - PROPOSED PLAN MEZZANINE AP 0 12M
  - PROPOSED PLAN FIRST AP 0 13J
  - PROPOSED PLAN SECOND AP 0 14J
  - PROPOSED PLAN ROOF AP 0 16H
  - PROPOSED ELEVATION SOUTH EAST AP 0 20H
  - PROPOSED ELEVATION NORTH WEST AL 0 21J
  - PROPOSED ELEVATIONS COURTYARDS/TERRACES AP 0 22E
  - PROPOSED SOUTH INNER AL 0 23B
  - PROPOSED ELEVATIONS BAY AP 0 27D
  - PROPOSED SECTION AA AP 0 30G/J
  - PROPOSED VISUAL ONE AP 0 32C
  - PROPOSED VISUAL TWO AP 0 33C
  - PROPOSED AERIAL VIEW AP 0 34C
  - ROOF TERRACE AMENITY AREAS AP 0 35A
  - PROPOSED PLAN GROUND ZONES AP 0 51H
  - PROPOSED PLAN MEZZANINE ZONES AP 0 52F
  - PROPOSED PLAN FIRST ZONES AP 0 53D
  - PROPOSED PLAN SECOND ZONES AP 0 54D
  - LANDSCAPE PLAN – GROUND LEVEL AGM-LOC-LS-001E
  - LANDSCAPE PLAN – ROOF AND TERRACES AGM-LOC-LS-002B
- 3) No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details of the following: 1. Deliveries (including storage arrangements and timings); 2. Contractor parking; 3. Traffic management; 4. Working hours; 5. Site opening times; 6. Wheel wash facilities; 7. Site compound arrangements; and 8. Measures for the control of dust. The construction of the development shall thereafter be undertaken in accordance with the approved details.
- 4) No construction of the external walls of the development shall commence until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including windows and roofs, have been submitted to and approved in writing by the Local Planning Authority. The schedule shall include: 1. Detailed specification of the proposed materials (including type, size, colour, brand and quarry location); 2. Photographs of all of the proposed materials; 3. An annotated drawing showing the parts of the development using each material. The approved windows to studios 13 and 14 shall have one-

way glazing to prevent visibility into these units from the roof terrace. The development shall thereafter be carried out only in accordance with the approved details.

- 5) No development shall commence, except for ground investigations and demolition, required to undertake such investigations, until an investigation and risk assessment of the nature and extent of contamination on site and its findings has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. The assessment must be conducted in accordance with DEFRA and the Environment Agency's *Model Procedures for the Management of Land Contamination, CLR 11* and shall include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments; and (iii) an appraisal of remedial options, and proposal of the preferred option(s).
- 6) No development shall commence, except for ground investigations and demolition required to undertake such investigations, until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment has confirmed that a remediation scheme is not required. The scheme shall include; (i) all works to be undertaken; (ii) proposed remediation objectives and remediation criteria; (iii) timetable of works and site management procedures; and (iv) where required, a monitoring and maintenance scheme to monitor the long-term effectiveness of the proposed remediation and a timetable for the submission of reports that demonstrate the effectiveness of the monitoring and maintenance carried out. The remediation scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out prior to the commencement of development, other than that required to carry out remediation, or in accordance with the approved timetable of works.
- 7) No occupation shall commence until a verification report that demonstrates the effectiveness of the remediation carried out has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment has confirmed that a remediation scheme is not required.
- 8) In the event that contamination that was not previously identified is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. Thereafter an investigation and risk assessment shall be undertaken, and where remediation is necessary, a remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation

- scheme, a verification report (that demonstrates the effectiveness of the remediation carried out) must be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development.
- 9) No development shall commence, except ground investigations, until details of the proposed flood management measures (as outlined in Flood Risk Assessment, Premier Water Solutions Ltd, May 2018, and Flood Risk Addendum by SLR dated December 2019, but also specifying details about a safe egress evacuation route) are submitted to and approved in writing by the Local Planning Authority. The approved flood management measures shall be implemented before the first occupation of the development hereby permitted and shall thereafter be retained.
  - 10) The development hereby permitted shall be carried out in accordance with the Arboricultural Method Statement and Tree Protection Plan (Furse Landscape Architects, dated 31 October 2018). No occupation of the development hereby permitted shall commence until a signed certificate of compliance by the appointed Arboriculturalist has been submitted to and approved in writing by the Local Planning Authority.
  - 11) No occupation of the development shall commence until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority showing details of the following: 1. All trees, hedgerows and other planting to be retained; 2. A planting specification to include numbers, size, species and positions of all new trees and shrubs; 3. Details of existing and proposed walls, fences, other boundary treatment and surface treatments of the open parts of the site; 4. Details and specification of the green roof; 5. Details of wildlife measures and ecological enhancements; 6. A programme of implementation for the landscaping scheme. All hard and soft landscape works shall be carried out in accordance with the approved details and programme of implementation. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.
  - 12) The development shall be constructed in accordance with the details and recommendations within the submitted Lighting Impact Assessment (Hydrock, dated 1 July 2020). No occupation of the development shall occur until the mitigation measures outlined in paragraph 6.4 of the Lighting Impact Assessment have been implemented and an 'as built' lighting assessment (by a suitably qualified person) demonstrating that the light spill is no greater than the predicted light levels within appendices C, E and G of the Lighting Impact Assessment (Hydrock, dated 1 July 2020) has been submitted to and approved in writing by the Local Planning Authority. The lighting shall thereafter be maintained in accordance with the approved lighting design and at the approved levels of light spill onto the tree line.
  - 13) No occupation of the development shall commence until the vehicular access has been constructed with a bound and compacted surfacing material (not loose stone or gravel).

- 14) The student accommodation hereby permitted shall not be occupied until a student management plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include the following: 1. The arrangements for student drop off / pick up at the start and end of each university semester; 2. Details of refuse storage, management and collection; 3. Details of site security and access arrangements; 4. Contact information for site management including information for third parties wishing to make complaints; 5. Details of student parking restrictions and enforcement measures; 6. Details of a scheme for monitoring the effectiveness of the parking restrictions and enforcement measures under point 5 including any necessary remedial measures; 7. Details of the management of the first floor outdoor amenity areas (as shown on drawing number AP 0 35A), including hours of use and arrangements to prevent access outside of these hours. The student accommodation use shall thereafter operate only in accordance with the approved student management plan.
- 15) No occupation of the development shall commence until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be operated in accordance with the approved Travel Plan.
- 16) The areas allocated for parking and turning on the Proposed Site Plan (drawing number AP 0 10L) shall include the provision of two disabled parking spaces and shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
- 17) The new accesses hereby permitted shall not be brought into use until the existing vehicular access has been permanently closed and a footway crossing constructed, including the raising of dropped kerbs, in accordance with details that have been submitted to and approved in writing by the Local Planning Authority.
- 18) No development shall commence, except ground investigations and remediation, until a detailed drainage strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include plans, calculations (demonstrating performance at the critical 1:1, 1:30 & 1:100+40% events), confirmation that the discharge is acceptable to Wessex water (rate and location) together with an operation and maintenance document detailing how the system will be maintained for the life of the development. The development hereby permitted shall thereafter be completed and operated in accordance with the approved drainage strategy.
- 19) No development shall commence until a scheme of sound insulation measures (the Sound Insulation Plan) between the purpose-built student accommodation (PBSA) and the light industrial B1(c) use has been submitted to and approved in writing by the Local Planning Authority. The Sound Insulation Plan shall include the following: 1. A desktop design assessment demonstrating, by calculation, the airborne sound insulation performance of the "as built" separating floor between the employment use, hereby permitted, and habitable rooms of the PBSA at 1<sup>st</sup> floor level, can achieve a sound insulation performance of at least 75 dB DnT,w ≈ circa 95 dB Rw, using an appropriate calculation methodology, which

shall include BS EN ISO 12354-1:2017 *Building acoustics — Estimation of acoustic performance of buildings from the performance of elements — Part 1: Airborne sound insulation between rooms*. 2. A technical demonstration that the resultant noise levels within those habitable rooms within the PBSA as a result of the adjacent commercial tenant in isolation shall conform to a Noise Rating curve of NR15 and NR20 (Based on the associated  $L_{eq}$  and  $L_{Max, Fast}$  spectral characteristics). 3 The Sound Insulation Plan shall include details of ongoing monitoring and review processes to ensure that the agreed internal ambient noise level performance, as provided in (2) above is not breached by any future occupation of the employment use hereby permitted. In the event of any breach remediation measures shall be immediately taken with the guidance of a suitably qualified acoustician to ensure compliance with the performance criteria in (2) above. The development shall thereafter be undertaken in accordance with the approved Sound Insulation Plan.

- 20) Prior to the first occupation of the development hereby permitted, a summary review from a competent person of the "as built" drawings and specifications to confirm that the recommendations produced by Hydrock, within Supplementary Noise Planning Report (dated 16 December 2019) have been adhered to, inclusive of design measures in Section 10 (BS8233:2014) and Section 12 (BS4142:2014+A1:2019), shall be submitted to and approved in writing by the Local Planning Authority.
- 21) Prior to first occupation of the development hereby permitted the following tables (as set out in the Council's Sustainable Construction Supplementary Planning Document, Adopted November 2018) shall be completed in respect of the development and submitted to and approved in writing by the Local Planning Authority together with the further documentation listed below: 1. Table 2.1 Energy Strategy (including detail of renewables); 2. Table 2.2 Proposals with more than one building type (if relevant); 3. Table 2.3 (Calculations); 4. Building Regulations Part L post-completion documents for renewables; 5. Building Regulations Part L post-completion documents for energy efficiency; 6. Microgeneration Certification Scheme (MCS) Certificate/s (if renewables have been used).
- 22) No occupation of the development shall commence until secure, covered cycle storage for 76 bikes has been provided in accordance with details which have been submitted to and approved in writing by the Local Planning Authority. The cycle storage shall be retained permanently thereafter.
- 23) The gymnasium use hereby permitted shall not be carried on and no customer shall be served or remain on the premises outside the hours of 0700 - 2100 hours Monday to Fridays; 0800 - 1600 hours Saturdays and 0900 - 1300 hours Sunday.
- 24) No machinery shall be operated, no process shall be carried out and no deliveries shall arrive, be received or despatched from the light industrial use hereby permitted outside the hours 0700 - 2130 hours Monday to Fridays; 0900 - 1700 hours Saturdays and 1000 - 1400 hours Sunday.
- 25) Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (as amended) or the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking

and re-enacting those Orders with or without modification), the employment spaces shown on the Proposed Ground Floor (AP 0 11T) and Proposed Mezzanine Floor (AP 0 12M) shall be used for light industrial use only.

- 26) Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (as amended) or the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking and re-enacting those Orders with or without modification), the gymnasium use hereby permitted shall only be used as a gymnasium.
- 27) No development shall take place until full details of a Wildlife Protection and Enhancement Scheme, that shall be in accordance with the recommendations of Section 3.2 of the approved Ecological Report by Seasons Ecology dated November 2019 have been submitted to and approved in writing by the Local Planning Authority. These details shall include: 1. Method statement for pre-construction and construction phases to provide full details of all necessary protection and mitigation measures, including, where applicable, proposed pre-commencement checks and update surveys, for the avoidance of harm to bats, reptiles, nesting birds and other wildlife, and proposed reporting of findings to the Local Planning Authority prior to commencement of works; 2. Badger Protection and Mitigation Strategy to include updated pre-commencement checks of badger activity. All works within the scheme shall be carried out in accordance with the approved details and completed in accordance with specified timescales and prior to the occupation of the development.
- 28) No development shall commence until details of the existing and proposed ground levels have been submitted to and approved in writing by the Local Planning Authority. These details shall include: 1. A topographical plan of the site including spot levels; 2. The approved site plan including spot levels ;3. Site sections showing existing and proposed ground/finished floor levels in relation to the land adjoining the site. The development shall thereafter be undertaken in accordance with the approved details.
- 29) Prior to the installation of the solar panels (PV array shown on drawing number AP 0 16H) details of the proposed solar panels shall be submitted to and approved in writing by the Local Planning Authority. The solar panels shall be installed in accordance with the approved details prior to the occupation of the building and thereafter retained.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY (B&NES):

Christopher Griggs-Trevarthen MSc MRTPI	Senior Planning Officer
Kaoru Jacques MSc MRTPI	Principal Planning Policy Officer
Byron Hammond MSc MRICS	Associate Director Lambert Smith Hampton
Colm O'Kelly BSc(Hons) MPhil CMLI MBA PGDip	Tree and Landscape Officer
Lucy Corner BSc PGDip	Ecologist

### FOR THE APPELLANT:

Paul G Tucker QC	Kings Chambers
Philip Robson Junior Counsel	Kings Chambers
Patrick Marks	Senior Planner AGM Ltd
Stuart Black	Summix LRB Developments Ltd
Matthew Bowen FRSA	Partner Knight Frank
Colin Scragg FRICS	Partner Carter Jonas
Trevor Furse CMLI MCI Hort ISA	Director Furse Landscape Architects Ltd
John Blanchard	Director Hydrock
Joanna Freyther	Associate Planner SLR Consulting
Jacob Hepworth-Bell BSc(Hons)	Associate Director Ecology Solutions Ltd
Alex Robinson	Director Pegasus Group
Vince Taylor	Senior Acoustic Consultant Hydrock

### INTERESTED PERSONS:

Patricia Spencer-Barclay	Local resident
Thomas Mills	On behalf of the site occupier

DOCUMENTS SUBMITTED AT THE HEARING

HD1	Bath and North East Somerset Annual Monitoring Report March 2019 – Industrial Floorspace
HD2	Statement of Case Carter Jonas August 2020
HD3	Bath Demand Study Locksbrook Road Knight Frank
HD4	Planning permission for Horstman site at Locksbrook Road for the erection of engineering workshop dated 1 June 1954
HD5	Email dated 15 September 2020 from B&NES providing operational times of Horstman site
HD6.1	Suggested planning conditions 15 September 2020
HD6.2	Suggested planning conditions 17 September 2020
HD6.3	Suggested planning conditions 25 September 2020
HD7	Revised Community Infrastructure Levy Compliance Statement
HD8	St Austell appeal Ref:APP/D0840/W/16/3158466
HD9	Sandtoft appeal Ref:APP/Y2003/A/08/2081677
HD10	Extracts from Local Plan 2016-36 Options Consultation Winter 2018
HD11	Badgers and Development Interim Guidance Document Natural England
HD12	Interpretation of 'Disturbance' in relation to badgers occupying a sett Natural England
HD13	Supplementary lighting note Hydrock 17 September 2020
HD14	Site visit itinerary
HD15	Points from appeal Hearing by Patricia Spencer-Barclay
HD16	Information to enable a Habitats Regulations Assessment (HRA) September 2020 Ecology Solutions
HD17	Council's Closing Statement
HD18	Certified copy of unilateral undertaking dated 17 September 2020
HD19	Closing submissions on behalf of the appellant
HD20	Email dated 12 October 2020 from Natural England providing comments on HD16
HD21	Email from appellant dated 15 October 2020 in response to HD20
HD22	B&NES comments on appellant's shadow HRA received on 23 October 2020
HD23	Appellant's Addendum Information dated October 2020 re Habitats Regulations Assessment
HD24	Certified copy of unilateral undertaking dated 4 November 2020 for Offsite Ecological Contribution
HD25	Community Infrastructure Levy Compliance Statement
HD26	Email from B&NES dated 2 November 2020 setting out the Council's position in respect of £5,000 contribution towards Ecological Enhancement
HD27	Email from Natural England dated 3 November 2020