



Appeal Decisions

Inquiry held on 10, 11, 12 and 23 January 2023

Site visits made on 11 October 2022 and 16 January 2023

by Peter Rose BA MRTPI DMS MCMI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal A Ref: APP/A5270/W/22/3300120

The Ballroom, St Bernard's Hospital, Uxbridge Road, Southall UB1 3HW

- 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 Squire Estates Ltd against the decision of the Council of the London Borough of Ealing.
 - The application Ref: 220648FUL dated 26 January 2022, was refused by notice dated 13 May 2022.
 - The development proposed is conversion of a ballroom at first floor level to 9 affordable residential homes.
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Appeal B Ref: APP/A5270/Y/22/3300123

The Ballroom, St Bernard's Hospital, Uxbridge Road, Southall UB1 3HW

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Squire Estates Ltd against the decision of the Council of the London Borough of Ealing.
 - The application Ref: 220649LBC dated 26 January 2022, was refused by notice dated 13 May 2022.
 - The works proposed are conversion of a ballroom at first floor level to 9 affordable residential homes.
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Decisions

1. **Appeal A** and **Appeal B** are each dismissed.

Preliminary matters

2. The appeal proposal is supported by unilateral undertakings made by the appellant pursuant to section 106 of the Act and other powers, and dated 23 January 2023 (the undertakings).

Main issue

3. The main issue is the possible implications of the proposal for the significance of the designated heritage asset of St Bernard's Hospital, a Grade II listed building.
4. The Council has confirmed that the undertakings, together with the accompanying agreed conditions, would address the concerns set out in Reason 2 of its refusal of planning permission. I am satisfied with the form and content of the undertakings as deeds. I find the undertakings to be compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as

amended) and to be generally fit-for-purpose. Accordingly, I take into account the commitments and accompanying terms as considerations of my decision, and have no reason to give any further regard to implications for car and cycle parking, and nor to refuse storage.

Reasons

The designated heritage asset

5. The appeal site comprises the upper floor of a 2-storey building and which is not listed in itself, but which forms one element of the larger St Bernard's Hospital Grade II listed building.
6. The listed building, in turn, is part of a wider area of mixed use involving health and other services, converted and purpose-built residential buildings, and various local shops and facilities. The appeal site itself is relatively enclosed, with formal vehicular access provided through a private gated access at Hilda Road, and with pedestrian access being afforded in conjunction with the adjacent converted elements of the listed building.

The asset's significance

7. St. Bernard's Hospital was built in 1829 by William Alderson, a Quaker architect, as an institution for treatment of mental illness. The hospital was conceived as a progressive institution in which patient care was to reflect a more humane, 'non-restraint' approach. This included seeking to accommodate patients as part of a self-supporting, purpose-designed community. This philosophy is variously reflected in the hospital's design and scale, and which included a facility for possible future expansion.
8. The hospital became associated with two pioneers of this progressive approach to patient care. Its first Superintendent was Sir William Ellis, and he was succeeded by Dr John Conolly in 1839 and who retained association with the hospital until 1852.
9. In the mid-1850s, significant expansion took place in-keeping with the hospital's conception and, according to the listing description, the northern ballroom extension was added in 1854. The Inquiry heard how the building was thought to have been originally designed, at least in part, as a chapel and multi-use space. In 1880, a new chapel was built nearby, and which is now listed separately.
10. Historically, whilst the ballroom was constructed after Dr Conolly's time at the hospital, the wider listed building is clearly to be appreciated as illustrating the important nineteenth century evolution of mental health care and accompanying facilities.¹ The hospital has associative interest with the pioneering practices of Sir William Ellis and Dr Conolly, but there is little specific evidence directly linking them with the ballroom itself.
11. Architecturally, although making a consistent and complementary contribution to the original design of the extensive wider hospital complex, the ballroom is only one element of the listed building as a whole. Even so, the ballroom is integral in its presence and setting, and relatively impressive in its scale.

¹ The external elevation of the former hospital building includes a blue English Heritage plaque with the inscription 'The former Hanwell Asylum where Dr John Conolly 1794-1866 promoted the humane treatment of mental illness from 1839'

12. Externally, the architecture displays a neo-classical, Victorian design, and broadly reflective of the institutional nature of the original hospital building.
13. Tall, arched first floor windows on both its main elevations are inspiring in scale and form, although their resplendence has been partly compromised by insensitive crittall-style replacement fenestration at ground floor. The first floor windows, however, remain set within neat and refined elevations principally of London stock brick and accompanying stone dressings. The ballroom was also served by ornate external cast iron staircases as notable features.
14. Internally, the ballroom comprises a large and open space set beneath a high, arched plastered ceiling, and with a stage and decorative proscenium arch at one end. The original character and form of the ballroom survives largely intact and as a striking, but relatively sparsely detailed space. The restrained sparseness of the space is, however, again reflective of its institutional character. The stage itself is plain and was a later addition to the room. There is little of heritage interest on the ground floor.
15. The significance of the ballroom is therefore as one element of the wider listed hospital complex. Even though it is only a relatively small component, and does not form part of the original hospital and has been compromised in aspects, it is still a notably significant part. Externally, it makes an important and coherent contribution to the overall design and form of the hospital. Internally, it represents an historic feature indicative of society's then emerging trend towards more humane patient treatment. The ballroom remains a unique feature of the hospital and offers evidential value as to how such a complex has been previously developed and used in the evolution of national health care, and in a broader association with acknowledged professional pioneers.
16. The appellant suggests the ballroom lacks inherent significance and probably would not have been listed in its own right.² For the reasons set out above, I consider this judgement undervalues the importance of the first floor and of the building's external elevations. An alternative heritage assessment accompanied a recent application for residential use of the ground floor and concluded that 'the former ballroom is of significant heritage value as an integral part of the Grade II listed St. Bernard's Hospital'.³ Although its author was not available to the Inquiry to be tested and to account for that assessment, the further and more detailed evidence otherwise before the appeal does not persuade me to take issue with that same general conclusion.
17. The appeal site makes a highly sympathetic and key contribution to the significance of the wider asset. It is an impressive historic space and structure at the heart of the hospital, the character and appearance of which are integral to the heritage interest of the asset as a whole. This contrasts with those parts of the hospital dating from after the 1850's and which the listing description expressly identifies not to be of special interest.

The proposal

18. The proposal would physically sub-divide the existing open space, vertically and horizontally. The stage would be removed and the proscenium obscured. A new internal staircase would be inserted to connect to a new second floor.

² Mr Froneman page 30

³ Statement of Significance & Heritage Impact Assessment July 2021, Dr Nicholas Doggett, FSA, MICfA, IHBC, Managing Director of Asset Heritage Consulting Ltd, and accompanying application Ref: 214888FUL

19. There would be significant accompanying works of restoration and enhancement, particularly to the exterior, and including restoration of staircases and some reinstatement of the neglected northern elevation.

The implications for significance

20. Whilst the Council has referred in its decision notice to reduced public access to the first floor, the ballroom appears not to have been a public space as such, but rather served as a secure communal facility available to residents and employees within the hospital itself. I do not consider the scheme would incur any loss of formal public access beyond that facility. Possible increased public access to any future use may be a benefit, but it does not form part of the ballroom's historic significance.
21. Significance would, however, be harmed in two other specific respects.
22. Firstly, the contribution made to the wider asset by the ballroom as a conspicuous and historically relevant space would be lost, as would accompanying aspects of its architectural detailing. Decorative features, such as the proscenium and cornice, would at best only be evident in part, but not appreciated as a whole.
23. Secondly, although some existing internal obstruction of the lower panes would be removed, the new second floor would internally overlap the imposing tall, arched first floor windows and be visible externally. It would both reduce the vertical emphasis of the windows but also create a visually discordant and incongruous relationship by compromising the intended experience and appreciation of the windows from the outside. Given the importance and prominence of the east and west elevations as part of the relatively open views of this element of the wider listed building, and that each contains an ordered arrangement of 7 such windows as primary features, the wider asset would thereby be harmed. Internally, the windows similarly contribute to how the historic open character is to be appreciated and that facility would be lost.
24. Even though this scheme would not directly affect the original hospital building, the proposal would reduce the inherent interest of this important component of the complex and reduce its contribution to the wider listed asset. The appeal site has been a physically and functionally integral feature of the listed building for well over 150 years and contributes accordingly. The historic value of this space to the asset would be lost, and its fenestration, and which forms a key part of its long-established elevations, would be seriously damaged.
25. Taken together, the harm to the legibility and distinctiveness of the asset would be very significant, but appreciably less than substantial.

Summary

26. I therefore conclude that the proposal would cause very significant harm to the designated heritage asset of St Bernard's Hospital, a Grade II listed building. This would be contrary to Policy 7C of the Council's DPD⁴ and which, amongst other things, requires that development of heritage assets should conserve the significance of the asset in question, should protect and where appropriate restore original or historic fabric, and enhance or better reveal the significance of assets. Policy 7C further requires that harm to any heritage asset should be

⁴ Development Management Development Plan Document Adopted 10 December 2013 (the DPD)

avoided. It requires that proposals that seek to cause harm should be exceptional in relation to the significance of the asset, and be clearly and convincingly justified in line with national policy, a matter to which I return as part of my overall planning balances.

27. The scheme would also be contrary to Policy HC1 of the London Plan⁵ and which, amongst other things, requires that development proposals affecting heritage assets should conserve their significance by being sympathetic to the assets' significance and appreciation within their surroundings. I do not read and apply this policy as in itself imposing a 'blanket ban' on proposals which cause harm to a designated heritage asset, and nor to be inconsistent with the National Planning Policy Framework (the Framework).

Other material considerations

Viability

28. Significant evidence was presented to the Inquiry drawing upon marketing exercises undertaken between 2016 and 2019. These identified little interest in possible non-residential use, and it is common ground that neither the ballroom nor the entire host 2-storey building would in itself be viable in the current circumstances as either a gymnasium as previously proposed, and nor for other community-related purposes. The appellant cites such factors as the location and difficulties of access and parking, whilst the Council considers the condition of the building and the absence of any planning permission to have been particular disincentives. Restoration costs for the building as a whole would also be substantial.
29. A material change in circumstance since that marketing is that the Council has now formally recognised, through a resolution made in October 2021 to grant permission for 4 flats on the ground floor, that the wider building could, at least in part, accommodate a higher value residential use.⁶
30. The appellant's previous marketing refers to lower value Use Classes D1 and D2 purposes and to the possibility of other employment-generating occupation. There was no planning permission at that time beyond use as a gymnasium ancillary to a wider residential development of surrounding land and buildings as permitted in 2013.⁷ Whilst the appellant maintains market conditions have not improved in the meantime, that marketing was also several years ago and pre-dated any impact of COVID including, for example, any possible consequences for community facilities of greater home-based working and accompanying implications for personal health and lifestyles.
31. The Council has provided evidence that a development of the building involving 4 flats on the ground floor and cross-subsidising some form of lower value community use on the first floor could be viable.
32. Such a future development may or may not prove to be realistic, and the Inquiry heard questions around methodological aspects of the approach taken to viability, but such mixed-use scenarios have not been market-tested, and remain a possibility unless demonstrated otherwise. On those terms, I cannot be satisfied that a community use and/or some other form of less physically

⁵ Mayor of London's The London Plan, The Spatial Development Strategy for Greater London March 2021

⁶ Application Ref: 214888FUL

⁷ Application Refs: PP/2012/4008 and PP/2012/3827

intrusive occupation could not now be viable. This would enable a more sensitive internal treatment and so safeguard the internal and external integrity of the first floor in a manner which would preserve the listed building.

33. I also note that the Council accepts that, as an alternative, one residential unit on the first floor could physically safeguard the space itself and, whilst not affording any future benefit of public access, it now considers that would still be preferable in heritage terms to the consequences of the 9 units proposed.
34. The Framework states that heritage assets are an irreplaceable resource.⁸ It requires that, in determining applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.⁹ Given the statutory duties to have special regard to the desirability of preserving the building or any features of special architectural or historic interest which it possesses¹⁰, it is a reasonable expectation that any possibility for some form of composite development which could prevent loss of such an irreplaceable heritage resource be formally and fully explored.
35. Reference was made at the Inquiry to possibilities for grant aid. Those possibilities also do not appear to have been exhausted and would warrant further attention, particularly on the part of any community use which may now be interested in occupation.¹¹ Re-use of the adjacent chapel is proceeding supported by such funding. I also note that the ballroom sits within a growing residential community potentially available to support its future use.
36. I therefore do not consider that viability at this time represents a consideration to which I can attach any appreciable weight in favour of the scheme.

Fallback

37. Caselaw indicates that in order for a prospect of development to be a real prospect, it does not have to be probable or likely: a possibility will suffice.¹² It further indicates that, if the Secretary of State concludes as a matter of planning judgment in any particular case, that there would be significant planning advantages if a building were to be re-used in a manner contemplated in an application for permission for its retention, then there is no reason why he or she should not be entitled to say that there may well be only an outside chance of that building being re-used, but it is well worth keeping that option open at least for a period of time.
38. Two possible fallback scenarios have been identified.
39. The first involves completion of the approved 2013 scheme. This authorised conversion of the ballroom to a residents' gymnasium in connection with development of some 256 dwellings and a further element of new build. Only some 92 units have so far been delivered. The evidence is that the gymnasium

⁸ Paragraph 189

⁹ Paragraph 197

¹⁰ Sections 16 and 66, Planning (Listed Buildings and Conservation Areas) Act 1990

¹¹ This is also relevant to the tests for substantial harm cited in the appellant's reference to paragraph 201 of the Framework

¹² Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government, Selby DC and UK Coal Mining Ltd, J.P.L. 2009, 10, 1326-1335

use could become viable once funded by the greater scale of service charges accompanying further dwellings should they be provided.¹³

40. That said, there is little to conclude that further development of the scheme is to be expected. The proposed accommodation remains in health-related use and there is no formal programme to vacate. It is also relevant that, even if the remaining units were to be developed, there is no requirement of the 2013 permission, either through planning conditions or through planning obligations, for the gymnasium to be actually provided. There is also no direct or explicit policy expectation for such a facility to be retained in the proposal, and nor for the appellant to demonstrate there are no alternatives to residential use.
41. The second scenario relates to the Council's endorsement of conversion of the ground floor into 4 flats. Whilst a resolution to grant permission exists, the outstanding planning obligation has yet to be completed. Further, the appellant, whilst also suggesting that particular development to be unviable, advised the Inquiry it has no intention to proceed with the scheme and will not be completing the outstanding obligation. Without the owner's agreement, and in the absence of a completed planning permission, that particular development will not take place.
42. There is clearly at the very least a possibility that the health services will move out and free up the land so enabling the remainder of the 256 dwellings to be completed and the gymnasium to be delivered. It is also possible that the circumstances of the 4-flat scheme could progress. Although I find both scenarios to be fallback positions within the terms of the caselaw, the prospects for progress of each appear remote, and any delivery will be far from immediate. Accordingly, I find the fallback positions not to be considerations to which I can attach any appreciable weight against the scheme.

Previous appeal decisions

43. Appeal decisions dating from 2021 relate to previous refusals of planning permission and listed building consent for the conversion of the ballroom building to 7 residential flats with associated works, including mezzanine floors at second floor level.¹⁴
44. That scheme was of a similar planning character, but proposed slightly fewer dwellings. The ballroom would have been sub-divided and with an impact upon the windows. The housing and economic benefits would have been proportionately less, and there would have been some restorative works.
45. The particular conclusions I have reached in relation to harm arising from loss of the ballroom and harm to the windows are broadly consistent with those previous decisions.

Public benefits

46. The Council is unable to demonstrate a 5-year housing land supply. It offered no evidence regarding its future supply, but indicated it had met previous Housing Delivery Test targets.
47. Whilst it has also met locally set thresholds for delivery of affordable housing, these do not form part of a statutory development plan. The Council's Annual

¹³ As confirmed by Mr Coate in response to Inspector's question

¹⁴ Appeal Refs: APP/A5270/W/20/3250319 and APP/A5270/Y/20/3250321 dated 16 March 2021

Monitoring Report acknowledges a significant shortfall in provision and cites difficulties of delivering affordable housing primarily through reliance upon larger-scale housing schemes.

48. The proposal would make a much-needed contribution to local housing supply and to meeting affordable housing, albeit of a relatively modest scale. This would be consistent with the Framework¹⁵, and with the Council's Core Strategy¹⁶ which commits the authority to provide new housing, and especially affordable homes for local families. More specifically, Policy 1.2 (a) identifies that at least 50% of the housing to be developed in the borough up to 2026 should be affordable housing, as defined in the London Plan, both to achieve mixed communities with a range of housing types across the borough and to meet need. This would also be consistent with Policy GG4 of the London Plan which, amongst other things, seeks to ensure that more homes are delivered and that delivery of 50% of all new homes should be genuinely affordable.
49. Notwithstanding very significant heritage harm arising, there would still be some restoration and refurbishment of various remaining historic aspects of the building not otherwise lost or compromised through the proposal.
50. In the absence of any beneficial use, recent deterioration of the ballroom would continue. Even so, it is common ground that the building is not currently 'at risk' and urgent action is not required.
51. The economic benefits of development would include investment in construction and related employment for its duration. There would also be an increase in subsequent local household expenditure and demand for services to support the local economy. The scale of both would be relatively modest.
52. The scheme would also be consistent with various other aspects of national policy. The Framework requires that substantial weight be given to the value of using suitable brownfield land within settlements for homes and other identified needs, and supports the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained.¹⁷ This would also be consistent with Policy GG2 of the London Plan which, amongst other things, seeks to make the best use of land, including through development of brownfield sites.
53. Taken together, I regard the public benefits of the scheme, and reflecting the relatively modest scale of development, to be a matter of significant weight.

Other factors

54. I have no clear reason to conclude that, in principle, the scheme could not be designed to adequately serve the needs of persons with disabilities.

Planning balances

Heritage and public benefits

55. I have found, in relation to both **Appeal A** and **Appeal B**, that the proposal would fail to comply with the respective statutory duties to preserve the Grade II listed building at St Bernard's Hospital and features of special architectural

¹⁵ Paragraph 60

¹⁶ Development Strategy 2026 Development Plan Document Adopted 3 April 2012

¹⁷ Paragraph 120

and historic interest which the asset possesses, and would thereby be contrary to the identified development plan policies so far as relevant to the determination of each.

56. The Framework advises that heritage assets are to be conserved in a manner appropriate to their significance.¹⁸ When considering the impact of a proposed development on the significance of a designated heritage asset, it requires great weight to be given to an asset's conservation, and irrespective of the scale of harm.¹⁹
57. There follows a strong presumption against approving a scheme which would harm the significance of a listed building, not least because the desirability of preserving the heritage asset is a matter of statutory duty and is therefore a factor of considerable importance and weight.
58. Nevertheless, change to heritage assets is inevitable and is only harmful when significance is damaged. The nature and importance of the significance that is affected will dictate the proportionate response to assessing that change and its justification.²⁰ In this regard, the Framework requires that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification.²¹ Where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, as in this instance, the Framework requires such harm to be weighed against the public benefits of the proposal and including, as appropriate, securing its optimal viable use.²²
59. Whilst the public benefits arising from the scheme as described would be significant, they would not be of a scale to out-weigh the very significant harm to the asset. Accordingly, policies in the Framework that protect areas or assets of particular importance, and which include listed buildings, provide a clear reason for refusing the development proposed in heritage terms.

*Final **Appeal A** planning balance*

60. The Framework requires that plans and decisions should apply a presumption in favour of sustainable development. Whilst the balancing exercise under paragraph 11.d)ii. would otherwise be triggered by virtue of Footnote 8 and the Council's absence of a 5-year housing land supply, this requirement becomes disengaged for decision-taking purposes where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
61. The scheme does not therefore benefit from the presumption in favour of sustainable development and this is not a further material consideration.
62. I consider the development plan policies which are most important are Policy 7C of the DPD and Policy HC1 of the London Plan. I have found broad compliance with a range of other less significant development plan policies as presented in evidence, but serious conflict in relation to those most important.

¹⁸ Paragraph 189

¹⁹ Paragraph 199

²⁰ Historic England's Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning: 2

²¹ Paragraph 200

²² Paragraph 202

63. Accordingly, the proposal would conflict with the development plan as a whole, and other material considerations do not indicate a decision other than on those terms.

Conclusions

64. For the reasons given above, I conclude that **Appeal A** and **Appeal B** should each be dismissed.

Peter Rose
INSPECTOR

APPEARANCES

For the local planning authority:

Annabel Graham Paul of Counsel, instructed by Twahid Islam, Principal Regeneration Lawyer (Interim) London Borough of Ealing

She called:

Chris Maltby - Planning consultant

Nyear Yaseen - Partner, Cushman & Wakefield

Twahid Islam also contributed to roundtable discussions.

For the appellant:

Conor Fegan of Counsel, instructed by Sam Tiffin, Director, Progress Planning

He called:

Ignus Froneman - Director, Cogent Heritage

David Coate - DJC Housing Consultants

John Vokins - Partner, Vokins Chartered Surveyors

Richard Conroy - Regional Director, Progress Planning.

Interested parties:

Dr Thomas Gupta-Jessop - consultant forensic psychiatrist working at St Bernard's Hospital, and resident.²³

²³ Dr Gupta-Jessop confirmed he was addressing the Inquiry in a personal capacity and was not appearing as a representative of either other residents, and nor of the hospital

INQUIRY DOCUMENTS

The following documents were submitted and accepted during the Inquiry:

Reference	Title/subject
ID1	Council web site publicity notice (as amended)
ID2	Opening submissions by Mr Fegan on behalf of the appellant
ID3	Opening submissions by Ms Graham Paul on behalf of the Council
ID4	Extract from 'Assessing viability in planning under the National Planning Policy Framework 2019 for England', RICS, March 2021
ID5	Summary proof of evidence - Mr Vokins
ID6	Summary proof of evidence - Mr Coate
ID7	Mr Vokins' comments regarding Ms Yaseen's Table 1
ID8	Ms Yaseen's response to Mr Vokins' comments regarding Table 1
ID9	Committee report for applications Refs: PP/2012/4008 and PP/2012/3827
ID10	Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government, Selby DC and UK Coal Mining Ltd, J.P.L. 2009, 10, 1326-1335
ID11	Regina (Mansell) v Tonbridge and Malling Borough Council, Court of Appeal (Civil Division), [2017] EWCA Civ 1314 [2019] P.T.S.R. 1452
ID12	Proposed draft conditions for cycling and refuse (email from Mr Roberts dated 12 January 2023)
ID13	Inspector's note at adjournment on 12 January 2023 (email)
ID14	Copies of drawings accompanying application Ref: 214888FUL (resolution to grant 4 flats)
ID15	Copies of drawings accompanying appeals Refs: APP/A5270/W/20/3250319 and APP/A5270/Y/20/3250321 dated 16 March 2021 (7 flats)
ID16	Council web site notice of resumption for 23 January 2023
ID17	Email from Mr Tiffin dated 16 January 2023 confirming details of Mr Vokins' evidence
ID18	Council Supplementary Planning Guidance Noise and Vibration (SPG 10)
ID19	Email from Mr Maltby dated 19 January 2023 in relation to noise and the Building Regulations
ID20	Conditions as agreed and recommended by the main parties in relation to Appeal A (as amended)
ID21	Conditions as agreed and recommended by the main parties in relation to Appeal B (as amended)
ID22	Final unilateral undertakings dated 23 January 2023
ID23	Closing submissions by Ms Graham Paul on behalf of the Council dated 19 January 2023
ID24	Closing submissions by Mr Fegan on behalf of the appellant dated 20 January 2023
ID25	Email from Mr Maltby dated 24 January 2023 confirming outstanding aspects of suggested conditions