

Appeal Decision

Site visit made on 14 February 2023

by David Spencer BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15th May 2023

Appeal Ref: APP/Q0505/W/22/3301628

Land Off Sandy Lane, Cambridge.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Sandy Lane 2021 Limited against Cambridge City Council.
 - The application Ref 21/01065/FUL, is dated 5 March 2021
 - The development proposed is construction of 26 new private homes (and delivery of a further 9 affordable apartments on adjoining land owned by the applicant and to be secured by legal agreement).
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Decision

1. The appeal is allowed, and planning permission is granted for the construction of 26 new private homes (and delivery of a further 9 affordable apartments on adjoining land owned by the applicant and to be secured by legal agreement) on land off Sandy Lane, Cambridge, in accordance with the terms of application Ref 21/01065/FUL and the conditions set out in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Cambridge City Council against Sandy Lane 2021 Limited. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal follows the non-determination of the application by the Local Planning Authority (LPA) within the prescribed time period. The appeal was submitted in June 2022. The LPA's officer report on the proposal was considered by the Council's Planning Committee on 5 October 2022. The officer recommendation for refusal was upheld and the putative reasons for refusal are reflected in the main issues for this appeal identified below.
4. Following my site visit on 14 February 2023 the appellant submitted a Unilateral Undertaking (UU) under the provisions of Section 106 (S106) of the Town and Country Planning Act 1990 containing planning obligations to the City Council in relation to a commuted sum payment for the delivery of affordable housing and the rolling forward (index linked) of various contributions for sports, open space and education considered at the time of previous planning consents granted on the Sandy Lane appeal site. Following this, the Inspectorate received on 9 March 2023 a signed and dated agreement between the City Council and the appellant (the S106 agreement) which contains a mechanism to secure affordable housing on adjacent land at Nos.51-55 Elizabeth Way as a form of 'on-site' provision and as an agreed preference to

the commuted sum in the UU, together with embedding the other obligations and provisions of the UU at Schedule 6 of the agreement. I deal with the proposed planning obligations below.

Context and Main Issues

5. The appeal site is previously developed land (former garages and workshops) within the city in a highly sustainable location. The site benefits from a number of separate planning permissions which extend across the site and cumulatively could deliver 29 homes. This includes two larger consents (refs C/03/0406 and C/03/1241) covering most the site and separate smaller consents for 1 dwelling (ref 06/0544/FUL) and 5 dwellings (ref 18/1193/FUL) in the south-east corner of the site. The latter permission relies on a separate access via the demolition of No.57 Elizabeth Way.
6. The Sandy Lane site has been cleared and there is very little before me to find that the various permissions have expired despite their age¹. The LPA queried whether the permission for the 5 dwellings approved under reference 18/1193/FUL had lapsed but the appellant has provided evidence, including building control inspection, that drainage works on this part of the site had been implemented as of 1 February 2022. I deal with these existing permissions and what weight they have as a 'fallback' in my decision below.
7. The appeal site adjoins on part of its eastern boundary Nos. 51-55 Elizabeth Way, a site under the appellant's ownership and control, which benefits from a separate planning permission for 9 apartments. A reserved matters application under reference 22/03584/REM for these units was approved on 3 November 2022. These units are proposed to provide for affordable housing associated with the Sandy Lane appeal site, to be secured through the S106 agreement.
8. Accordingly, the main issues in this appeal are as follows:
 - (i) Whether the proposal makes adequate provision for affordable housing and whether it would secure an appropriate mix of housing;
 - (ii) Whether the proposed development would provide acceptable living conditions for future occupiers, with regard to outlook, daylight, provision of private amenity space and an inclusive design including accessibility;
 - (iii) Whether the proposal would make appropriate provision for cycle and car parking provision having regard to the sustainable location;
 - (iv) Whether the proposal would provide adequate public open space and quality of public realm; and
 - (v) The extent to which any fallback position comprises a material consideration sufficient to outweigh any conflict the appeal proposal may have with the development plan on the main issues above.

¹ Paragraph 1.2 of the LPA Officer Report states that consents C/03/0406, C/03/1241 and 06/0544/FUL are extant by virtue of implementation of an access road.

Reasons

Affordable Housing and Housing Mix

9. The planning application for the appeal was submitted on the basis that 9 apartments granted planning permission (under Ref 19/0819/OUT and subsequently under Ref 22/03584/REM) could comprise the affordable housing element of a wider scheme at the appeal location. A mechanism to secure this has been presented in the S106 agreement with a cascade that were a registered housing provider not secured then a significant in-lieu financial payment would be presented to the Council. As a starting point, I have considered the appeal proposal on the basis of the planning obligation offered in the S106 over the financial contributions secured on the extant permissions and re-presented in the submitted UU. In taking into account the planning obligation presented in the S106, I consider it of particular note that it would give the Council recognised controls in terms of agreeing the details of the affordable housing scheme, which is offered at 100% affordable rent, and the approved provider. The obligation would also bestow to the Council recognised nomination rights in terms of future occupants of the affordable units.
10. Policy 45 of the Cambridge Local Plan 2018 (the CLP) states that on schemes of 15 units or more, the minimum percentage of affordable housing required is 40%. Policy 45 also expresses a clear preference for provision on site. The Policy also allows for exceptional circumstances to be demonstrated where 40% on site is not being offered.
11. The appellant invites an approach of assessing affordable housing provision on the 20 units of the larger extant permissions and to discount the smaller permissions of 1 and 5 units. As such the appellant submits that the 9 dwellings offered on Elizabeth Way would exceed 40% on the 20 units. Alternatively, the LPA invites an approach of looking at the scale of AH on the wider basis of 35 units across the two sites such that 9 units would amount to only a 26% provision.
12. In terms of what is the site, matters are blurred in that there are two distinct but adjoining sites capable of separate implementation. Whilst the Elizabeth Way site directly adjoins the Sandy Lane site, it has a separate character and a stronger relationship to the linear form of development along Elizabeth Way rather than the distinct character and depth of the appeal site in the quieter, backland Sandy Lane area. Accordingly, I split the difference between the two main parties and consider the application of CLP Policy 45 should be on the basis of the entire, contiguous Sandy Lane site including the smaller parcels within it that have planning permission for 1 and 5 units. On this basis, the 9 units offered 'on site' at the adjacent Elizabeth Way site would be moderately short of the 40% 'on site' provision required for 26 units on the Sandy Lane site in accordance with CLP Policy 45. The viability evidence undertaken for the LPA does not indicate any particular impediment to providing 40% affordable housing on site at the appeal site. The failure to provide the full 40% would result in an appreciable social harm.
13. The proposed affordable housing of nine one-bed apartments would not be interspersed within the wider Sandy Lane development which comprises four 4-bed houses and twenty-two 5-bed houses. There would be two distinct

developments such that the proposed affordable housing offer would not be “well integrated” as required by CLP Policy 45. Overall, the housing mix proposed, both the affordable and the general market, would not be particularly balanced, resulting in large, high value market housing at one end of the spectrum and small apartments adjacent to the busy ring road at the other end. There would be no variety to the affordable units, including larger homes. An opportunity to secure a good mix and balance of housing across the Sandy Lane site has been missed. This would be a further moderate harm arising from the appeal proposal.

14. I therefore conclude that the appeal proposal would be contrary to CLP Policy 45 in failing to provide the full 40% affordable housing ‘on-site’ in absence of any exceptional circumstances relating to viability to justify a lower figure. It would also fail to appropriately integrate the affordable housing provision with the proposed market housing to help create balanced communities and the social interaction encouraged at paragraph 92 a) of the National Planning Policy Framework (NPPF). The general approach to the type and mix of housing proposed would also be contrary to the objectives of the Greater Cambridge Housing Strategy 2019-2023.

Living Conditions

15. The majority of the proposed dwellings would comprise accommodation on a lower ground floor level including kitchen/breakfast rooms and dining rooms. The general arrangement would be for the kitchens to have an outlook to the rear which would be generally towards tall enclosing boundary treatments for the sunken small rear patio areas. In some instances, the distance from the kitchen openings to the rear wall would be very shallow, notably at plot 13. Overall, the outlook from and levels of natural light into the kitchens in plots 5-13, 16-17 and 19-24 would be poor, resulting in gloomy spaces.
16. The outlook from the below ground level dining rooms would be worse with plots facing directly onto the retaining wall for the basement parking level. The proximity of the basement wall to these dining room openings would be particularly overbearing. Notwithstanding the use of bay windows, generally, the outlook from the dining rooms would be oppressively subterranean, including when accounting for the proposed steps over to the front entrance and the dividing basement boundary walls between plots. It would not be unreasonable in such large sized family housing to expect the dining room to be used for other activities such as study or as a second, occasional living room, where adequate outlook and natural light levels would be a reasonable expectation. Accordingly, I find the outlook and daylight levels to these habitable rooms would be poor and detrimental to the living conditions of future occupiers.
17. The homes proposed in the scheme are 4 or 5 bedrooms and as such they are capable of functioning as family homes. The private amenity spaces for some of these dwellings would be modest, generally comprising of a set-down small patio zone immediately to the rear before a split-level and steps up to a small rear garden area. The consequence of this split arrangement is a loss of functionality resulting in two small areas, neither suitably large enough for practical children’s play, drying out clothes or comfortably socialising. The split levels would also potentially inhibit the full use and enjoyment of these spaces for those with mobility issues. Due to site boundaries some of the rear private

garden spaces would be impractical, odd, angular shaped areas notably at plots 11, 13 19 and 20, further reducing the usefulness of these spaces. Overall, I find the private amenity space provision at plots 2, 3, 4, 5, 8, 11, 14, 15, 18, 19, 20, 21, 22, 23 and 24 to be parsimonious for the size of the host dwelling. Consequently, this would be detrimental to the living conditions of future occupiers of these properties. This harm would be exacerbated by a lack of any usable communal open space for activities such as children's play within the wider appeal scheme.

18. Additionally, the garden areas to plots 20, 21, 25 and 26 would be dominated by the tall, protected deciduous trees to the south-west of the appeal site. This would result in significant overshadowing of these spaces in the summer months further reducing their attractiveness and functionality as private amenity spaces to the detriment of the living conditions of the future occupiers of these dwellings.
19. The LPA raises concerns that the proposal would not be able to meet the requirements of the M4(2) standard for accessible and adaptable homes given all plots, bar Nos.25 and 26, require stepped access to reach the main front door and have split level private garden areas. Whilst I note the ramp down access to the basement level and proposed lift from the basement to ground floor, the overall design of the scheme is not particularly inclusive in terms of its limited accessibility for all users. Accordingly, I find there would be a conflict with the general design principles in the development plan which seek to secure inclusive and accessible environments. Overall, there would be harm to the living conditions of those future occupiers with limited or impaired mobility.
20. I therefore conclude that on the various plots for the different reasons identified above, the proposed development would not provide acceptable living conditions for future occupiers, with regard to outlook, daylight, provision of private amenity space and an inclusive design, including accessibility. The appeal proposal would be contrary to Policies 50, 51, 56 and 57 of the CLP. These policies require amongst other things for all housing to secure inclusive, usable and enjoyable private amenity spaces and for developments to otherwise be accessible for all users. The proposal would also fail to accord with the NPPF on achieving well-designed places and in particular paragraph 130(f) in terms of creating places with a high standard of amenity for future users.

Cycle and Car Parking

21. The proposal would provide most of the cycle parking within the basement level which would be accessed from Sandy Lane via a shared ramp with vehicular traffic. The ramp would be sufficiently wide for a vehicle and bicycle to safely pass, and vehicle speeds suitably low, such that there would be no inherent safety issue for cyclists from the shared access arrangement to the basement level. The proposed parking layout on the basement level would give dominance to vehicle parking with cycle parking generally distributed to peripheral locations that would be on the whole poorly related to the thresholds of the dwellings. Overall, the layout and convenience of the proposed cycle parking at the basement level would be of a low-grade and not conducive to encouraging cycle use. Further cycle parking is provided for some units at ground floor level but not for all units. As such there would not be alternative

provision at ground floor level for less able users and non-standard cycles for approximately two-thirds of the proposed units. Overall, the proposed approach to cycle parking provision would be poor in such a sustainable location, close to good quality cycle infrastructure on Chesterton Road and across to Midsummer Common and into the city centre.

22. The appeal proposal would provide for 52 off-street parking spaces split with 48 spaces at the basement level and 4 spaces at ground level. 3 of the proposed spaces would be dedicated for parking for disabled people. The proposed level of parking generally equates to two parking spaces per property. Appendix L to the CLP sets out what are stated as 'maximum' standards (consistent with NPPF paragraphs 107 and 108). The appeal site is located within a controlled parking zone. Even allowing for one visitor space per four properties the appeal proposal would significantly exceed the maximum parking standard of 1 space per dwelling. The appeal site is in a highly sustainable location being within a short walk of both the neighbourhood centre on Hawthorn Way and the district centre at Mitchams Corner. The wider city centre is within easy cycle distance on flat routes and with extensive dedicated cycle infrastructure. There are bus stops nearby on Chesterton Road including in the city centre direction at the corner of DeFreville Avenue with bus shelter and real time information. Accordingly, there are ample, attractive alternative modes of transport to the car for future occupiers of the appeal proposal. There is no locational justification for such an extensive over-provision of car parking at the appeal site. Given surrounding streets are covered by controlled parking zones the appeal proposal would not exacerbate any existing pressure for existing on-street parking to justify the over-provision, noting paragraph L.8 of Appendix L to the CLP in that new developments will not qualify for residents' parking permits within an existing on-street parking scheme.
23. I therefore conclude that the appeal proposal would fail to make appropriate provision for cycle and car parking provision having regard to the sustainability of the appeal location. The scheme would inappropriately give dominance to car parking, including to the detriment of the quality and layout of cycle parking provision. Accordingly, the appeal proposal would be contrary to Policies 80 and 82 of the CLP in that it would fail to give high prioritisation to the needs of cyclists and that it would not comply with the parking standards at Appendix L of the Plan as a consequence of exceeding the maximum car parking standards and failing to provide sufficient alternative cycle parking at ground floor level given the proposed reliance on the basement provision. On this basis I find the appeal proposal would fail to accord with various dimensions of the NPPF, including paragraph 92 regarding layouts encouraging cycling as part of healthier lifestyles, and paragraphs 104, 106 and 108 in terms of promoting sustainable transport including encouraging cycling and the justified use of maximum parking standards in sustainable locations.

Open Space and Public Realm

24. Due to the proposed layout, open space within the scheme would be modest and generally dispersed into small areas that would primarily function as landscaping and visual amenity owing to their limited size and formal format including their raised nature, a water feature and dissection by paths and seating areas. There would be no particular flow or cohesiveness to the layout of these open spaces with an awkward arrangement to the north-east of plot

16 and the corresponding communal bins area significantly limiting the legibility and movement within the site and the scope to create a larger, meaningful area of public open space. As such the appeal proposal would result in a disjointed scattering of open spaces that would serve little than to separate dwellings and provide some limited scope for sitting outside. As such I share the assessment of the Council's landscape officer that these would be somewhat sterile and gentrified areas. These public areas would provide limited opportunity or space for social gathering or community cohesion within the wider development, particularly given most of the open space is set in the south-east part of the site and laid out almost as a private square to plots 7-16 given the awkward layout described above.

25. The LPA submits that a scheme of this scale should provide at least 75sqm of Local Area of Play (LAP). I note that in Appendix I of the CLP that the minimum activity area for a LAP is 100sqm (plus buffering) such that I am unsure that the appeal scheme would generate demand for such a facility. That said the layout of open space within the proposal would not provide for any meaningful, coherent area of a sufficient size for young children to informally play. I observed that there is a play area at the Chesterton Recreation Ground to the east of Elizabeth Way. Whilst there is an opening to the recreation ground directly opposite the end of Sandy Lane, this requires crossing Elizabeth Way which forms part of the busy inner ring road for Cambridge. There is a signalised crossing to the north on Chesterton Road which would require a small detour along a busy road with no railings or barrier to the flow of traffic. I also observed the play area at the Chestnut Grove recreation ground, a little further to the north which would require crossing the busy Chesterton Road via the signalised crossing close to Hawthorn Way. Both play areas are within a reasonable distance of the appeal site but they are not in locations where children would be likely to go on an unattended basis given the intervening highway network. As such the lack of meaningful area for play on the appeal site would harm the amenities and well-being of future occupants with young children.
26. I therefore conclude that the appeal proposal would fail to provide adequate public open space and quality of public realm. It would be contrary to Policies 56, 57, 59 and 68 of the CLP. These require the design of new development to be inclusive, high quality and accessible including amongst other things creating clearly defined public amenity spaces that are designed to be inclusive, usable and enjoyable and create public realm, open space and landscaped areas that respond to the development as a whole and are designed to be an integral part of the scheme. Additionally, Policy 56 requires development proposals to have an inclusive design to meet the needs of, amongst others, those with young children and Policy 59 echoes this by stating that the design of public realm and landscaping should consider the needs of all users and adopt the principles of inclusive design.

Assessment of the Fallback position

27. As stated above the Sandy Lane appeal site has been subject to a patchwork of planning consents for residential development as land has become available. These permissions are extant and capable of implementation. As such there is an alternative option to the appeal proposal to bring the Sandy Lane site forward for residential development.

28. In terms of a real prospect of the extant permissions being implemented the appropriate test is one of the chances of it occurring being more than theoretical. In this regard I am referred to the parties of the decision in *Mansell v. Tonbridge & Malling District Council*. Accordingly, I have taken account of the evidence that the appellant is a developer and has the freehold of the site, in contrast to a housebuilder who may only have a time-limited option and could walk away. The appeal site has had a reasonably active planning history, with the most recent extant permission being granted in 2019, indicating an interest in delivery. The appellant submits that the LPA count the appeal site, with its extant permissions, towards its deliverable housing land supply and this is confirmed at paragraph 10.159 of the LPA officer report (the wider 35 units across all sites). Consequently, the LPA cannot have it both ways in giving the fallback only limited weight whilst simultaneously counting the extant permissions towards its deliverable housing land supply.
29. Importantly, the appellant's viability evidence, prepared by Savills and reviewed for the LPA by BNP Paribas, shows a very positive assessment of the extant permitted scheme against the site's benchmark land value. As such there is an existing viable scheme, which would incentivise a developer to bring it forward as an alternative to the appeal scheme. In my assessment, the evidence before me demonstrates a real prospect of the fallback being implemented were the appeal proposal not allowed. Accordingly, I give the availability of the fallback position significant weight.
30. In assessing the available fallback, there would be aspects of the extant scheme which would result in significant harm and conflict with current CLP policies. This is unsurprising given the passage of time and that the core permissions significantly predate both the current CLP and the NPPF. The harms arising from the extant scheme, include, significantly, the absence of any built affordable housing delivery and the reliance on antiquated commuted sum payments (c.£1 million²) that would transfer the risk of delivery to the Council. The extant scheme, if it were to come forward, would be fundamentally at odds with CLP Policy 45 and NPPF paragraph 63. Furthermore, the extant scheme is not required to achieve improvements in CO₂ emissions as now required by CLP Policy 28 and the extant scheme would not deliver a sustainable drainage scheme as per CLP Policy 32. These would be significant environmental deficiencies given the increasing need to meet the challenges of climate change and to contribute to radically reducing greenhouse gas emissions as sought by NPPF paragraphs 152, 153 and 169.
31. Turning to the above main issues in this appeal, the extant scheme would give rise to similar issues, with a comparable, and possibly greater, degree of harm and conflict with relevant current development plan policies. This would largely be a consequence of the extant scheme being designed to respond to incremental land availability rather than on a comprehensive basis. Consequently, the extant scheme would not make optimal use of the wider site and would result in the undesirable demolition of No.57 Elizabeth Way to achieve a separate vehicular access to the south-east corner of the site. The proposed layout in the extant scheme would also have a poorer relationship to existing housing on Montague Road. There are a comparable number of plots on the extant scheme with limited private amenity space provision split over

² Taken from paragraph 10.140 of the LPA officer report

two levels and similar issues regarding outlook and light levels to rooms at basement level. The extant scheme would also provide for less cycle parking provision compared to the appeal scheme. The extant scheme would also provide a smaller area of amenity open space, albeit focused in one part of the site, and similarly to the appeal proposal it would not offer any suitable area for informal children's play.

32. Bringing this altogether, the extant scheme is a realistic 'fallback' for the appellant. I consider it to be a material consideration of significant weight in any planning balance. Were it to be implemented it would be unequivocally of greater harm and conflict with the current development plan compared to the appeal proposal. I return to this in the planning balance below.

Other Matters

33. Various representations raise concern regarding the design of the scheme and its impact on the character of the area. Having regard to the appellant's 'Heritage, Townscape and Visual Appraisal' the appeal proposal would add to the overall quality of the area, be sympathetic to local character and the surrounding built environment and maintain a strong sense of place. The design of the proposed houses, albeit at a slighter larger 3 storey above ground scale, nonetheless generally echoes the scale, massing and grain of the Victorian townhouses found to the south and west of the site. The site in its current moribund, part-implemented condition significantly detracts from the pleasant residential character in this part of the city. The proposal would create an active frontage to Sandy Lane, making it a more welcoming, safe and attractive thoroughfare. I note the concerns regarding the proposed parallel points of access onto Sandy Lane but given the general pattern of accesses, yards, wide mews garages and off-street parking bays on Sandy Lane I do not consider this aspect of the appeal proposal to be harmful to the local character. Overall, the appeal proposal would make efficient use of a very sustainably located site in a way that would be broadly consistent with paragraphs 119 and 124 of the NPPF.
34. It is noted that one tree within the protected group order is proposed to be removed (Tree T28). The appellant's arboricultural impact assessment states that this category B tree is in poor condition (structural defect) and so its removal would be warranted for safety reasons in a residential scheme. Subject to the proposed landscaping and a replacement native specimen for T28 there would be no significant harm to local character or environment. The imposition of various conditions during the construction phase would provide appropriate protection for the trees to the south-west corner of the site.
35. The site adjoins the De Freville Conservation Area (DFCA) but is not visible from within it and the appeal proposal once constructed would not be highly perceptible from within Montague Road or De Freville Avenue due to the layout and height of the existing, intervening town houses. Elements of the scheme may be glimpsed in the narrow gaps between houses on Montague Road and at the Sandy Lane / De Freville Avenue junction but in both cases the appeal scheme would be at distance with some filtering from boundary vegetation. As a residential scheme of town houses, it would be of consistent with the character of those parts of DFCA closest to the appeal site. Overall, there would be no harm to the setting or heritage significance of the DFCA.

36. My attention has been drawn to matters of highway safety and increased vehicle movements on both Sandy Lane and at the junction of Sandy Lane with DeFreville Avenue. Sandy Lane, which I understand is not an adopted highway, is of sufficient width to avoid significant conflict between highway users as a consequence of movements generated by the appeal proposal. It is not a busy thoroughfare and as indicated above, the appeal location lends itself to a good prospect of future residents of the appeal scheme walking, cycling or taking public transport. The junction of Sandy Lane with De Freville Avenue is reasonably broad with wide pavements on either side assisting visibility when exiting. Parking is restricted at the junction with double yellow lines around the junction mouth and the junction itself is just within the 20mph speed limit. As such there is reasonable visibility for vehicles exiting and limited scope for any harmful conflict with pedestrians or cyclists. I note the Highway Authority have raised no objection subject to the imposition of conditions, and I attach significant weight to this. Overall, I find the appeal proposal would not conflict with CLP Policy 81 and should not be prevented or refused on highway grounds as set out at paragraph 111 of the NPPF.
37. With regards to the amenities of adjoining properties, including properties that back onto the appeal site along the north side of Montague Road, the appeal proposal would be clearly visible in the outlook albeit at a moderate distance over corresponding gardens and in many instances filtered through existing mature garden vegetation and boundary trees in the properties on Montagu Road. I note that proposed plots 12, 13, 19 and 20 would be reasonably close to the rear garden boundaries of corresponding properties in Montague Road. Similar would apply in respect of the extant consented scheme with regards to plots 14 and 15 of the C/03/0406 scheme and plots 3-5 of the 18/1193/FUL scheme. Given the distances between dwellings and the angled orientation of those plots closest to the rear of Montague Road, I am satisfied that there would be no harmful loss of privacy for existing residents. Given the depth of the rear gardens in this part of Montague Road, those nearest dwellings in the appeal scheme would not appear particularly dominant or overbearing in the outlook from inside the houses on Montague Road. This is an urban location where development is to be expected in the outlook. When in the rear gardens I accept that plots 12, 13, 19 and 20 would appear close, but the integral east-west openness of the rear gardens on Montague Road would continue to prevail such that the proximity of the new dwellings would not be oppressive. The appeal site is to the north of Montague Road and as such would not adversely affect daylight or sunlight levels in the existing rear gardens. Overall, the appeal proposal would not significantly harm the living conditions of neighbouring households in Montague Road.
38. As set out above both a UU and a S106 agreement have been provided for this appeal. I understand the reasoning for the sequence of the submission of these documents. As the S106 Agreement is signed by both the appellant and the LPA and would contain the mechanism to secure the nine units at Nos.51-55 Elizabeth Way as affordable housing that better aligns to CLP Policy 45, the S106 agreement is to be preferred and contains the other provisions of the UU in any event. For the avoidance of doubt, in finding the affordable housing obligations in the S106 agreement would meet the relevant tests, I cannot find similar in relation to the affordable housing commuted sum amounts in the UU. Accordingly, I have not taken the affordable housing provisions in Schedule 1 of the UU into account.

39. The embedded UU within the S106 carries forward, index-linked, various financial contributions towards education provision, community infrastructure and off-site sport and play provision. The rationale for these contributions is set out in the comments from the Council's S106 officer and the response to the planning application from Cambridgeshire County Council, both of which were considered in the LPA officer report to the Planning Committee. On this basis and given the lack of on-site provision, I have taken these obligations into account.

Planning Balance and Conclusion

40. The appeal proposal would be contrary to the provisions of the development plan in relation to the first four main issues in this appeal. Section 38(6) of the Planning & Compulsory Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The appeal site has various extant planning permissions, which I have assessed as having a realistic prospect of being implemented. As such the fallback is a material consideration.
41. Matters are finely balanced given the various and notable shortcomings I have found with the appeal scheme. The harm arising from the appeal proposal in terms of the identified individual conflicts with the development plan in relation to the extent of the affordable housing shortfall and limited housing mix, living conditions for future occupiers, quality of cycle parking and quality of public realm and open space would each comprise harm of moderate weight. That said, similar or worse harms would arise from the extant scheme on these main issues. In my assessment the main additional harm from the appeal proposal, compared to the extant scheme, would be the level of over-provision of vehicle parking³. The degree of proposed car dominance at such a sustainable location is inimical to the need to respond to climate change and encourage healthier travel choices. However, this additional appreciable environmental and social harm would be outweighed by the significant social benefit, following the submission of the S106 agreement, of securing an amount of built affordable housing at the appeal location close to the 40% now required by development plan policy and in stark contrast to the commuted sum available through the extant scheme. Other environmental benefits would accrue from the appeal proposal that do not extend to the fallback scheme, including a sustainable drainage solution and enhanced environmental performance in relation to CO² emissions associated with the construction of the dwellings. These would be benefits of moderate weight.
42. Taking this altogether, the level of harm arising from the appeal proposal would be appreciable, but it would not generate greater harm than the extant scheme. Accordingly, the availability and real prospect of the extant scheme being implemented were the appeal proposal not to succeed is a significant material consideration, which in this case indicates that a decision should be made other than in accordance with the development plan, notwithstanding the degree of conflict with the development plan and attendant harm identified.
43. I have taken all other matters raised into consideration but ultimately conclude that the appeal should be allowed for the reasons given.

³ An uplift of 1.375 spaces to 2 spaces per dwelling on the LPAs assessment

44. The LPA provided on 28 April 2023, without prejudice, a schedule of suggested conditions in the event that the appeal was allowed. The appellant has been given the opportunity to comment on the proposed conditions and I have taken their response into account. I have considered the suggested conditions having regard to the Planning Practice Guidance (PPG) on the use of conditions and paragraphs 55 and 56 of the NPPF.
45. In addition to the standard time limit condition (1), a condition (2) requiring the development is carried out in accordance with approved plans is needed in the interests of proper planning and for the avoidance of doubt. I have taken the approved plans to be those provided by the appellant on submission of the appeal and which were before the LPA when it considered the appeal proposal, none of which have been amended or revised during the appeal process. Notwithstanding the approved plans, to achieve a well-designed place and ensure a satisfactory appearance various conditions (9, 10 & 29) requiring details and samples of external materials and the detailed positioning of joinery are all necessary. Given the presence of valued trees and the need to assimilate the development into its context a condition (12) requiring details of soft and hard landscaping and conditions (22, 23 & 24) securing tree protection measures are all necessary. I have amended the wording of condition 12 to remove boundary treatments given those important details would be separately and necessarily secured by condition 20.
46. Given the previous uses on the site conditions (3 & 5) dealing with remediation and potential contamination risks are necessary to protect public health. For similar reasons, a condition (4) controlling the quality of the importation or reuse of materials on the site is also necessary. Conditions (7 & 8) are also necessary to manage flood risk and water quality including sustainable drainage requirements in accordance with development plan policy. A further condition (16) requiring the development is constructed in accordance with optional technical standards on water efficiency is also necessary to meet development plan policy and the Greater Cambridge Sustainable Design and Construction SPD (2020). In relation to transitioning to a low carbon future, a condition (15) requiring the scheme secures improvements beyond Part L of the Building Regulations in accordance with development plan policy is necessary. I have amended the suggested condition to remove the specificity to air source heat pumps and their ongoing retention as neither reasonable or enforceable. In terms of the wider environment, a condition (13) requiring biodiversity net gain is also necessary to meet development plan policy and the Greater Cambridge Biodiversity SPD 2022.
47. To protect the amenities of adjoining residents and ensure highway safety various conditions (6, 14, 17, 18, 19 & 26) are required during the construction phase to manage issues such as noise, dust, air quality, vibration and vehicle movements. Unavoidably, most of these conditions would need to be discharged at the pre-commencement stage. To protect the amenity of both existing residents at the appeal location and future occupiers of the scheme, a condition (27) requiring a noise assessment before the implementation of any plant, machinery and equipment and a separate condition (28) controlling external lighting are both necessary. In respect of securing a good standard of accommodation for future occupants, condition 21 requiring the new homes to be built to optional technical standard M4(2) is necessary to meet development plan policy on accessible homes in the city.

48. To secure modal shift in what is a highly sustainable location, and notwithstanding the approved plans, a condition (11) requiring details of parking provision for bicycles is necessary. To ensure highway safety a condition (25) requiring further details of internal arrangements is necessary. I have amended the wording of the condition so that it accurately refers to the proposed service driveway rather than a wider concept of 'streets'. I also find that a condition (31) requiring final implementation of the proposed standard of access via Sandy Lane is necessary for highway safety. I observed on site that the access arrangements have largely been implemented as a consequence of the extant consents and so I have amended the wording of the suggested condition to more precisely reflect what remains to be required.
49. Whilst the PPG advises on taking a precautionary approach to removing permitted development (PD) rights, given the density of the proposed development and the harm I have separately identified in my decision above arising from the scale and layout of private amenity spaces, I consider a condition (30) removing certain PD rights is necessary in the interest of preventing further deterioration of the standard of amenity for future occupiers of the appeal proposal.
50. In terms of the need to transition to a low carbon future, I am mindful that the new Part S of the Building Regulations now governs the installation of electric vehicle charging points in new housing developments and so I have not imposed the Council's suggested condition on this matter. Finally, a suggested condition requiring details of children's play area and equipment would not be necessary as none is proposed and a planning obligation would secure appropriate off-site provision.

David Spencer

Inspector.

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan

SL/068/20/01 Rev 02 Block Plan

SL/068/20/02 Rev 2 Site and Ground Floor Plan

SL/068/20/03 Rev 1 Lower Ground Floor and Parking Plan

SL/068/20/04 House Type A

SL/068/20/05 House Type B

SL/068/20/06 House Type B.1

SL/068/20/07 House Type C

SL/068/20/08 House Type C.1

SL/068/20/09 House Type C.2

SL/068/20/10 House Type D

SL/068/20/11 House Type E

SL/068/20/12 House Type F
SL/068/20/13 House Type G
SL/068/20/14 Rev 1 House Type H
SL/068/20/15 House Type I
SL/068/20/16 Ancillary Buildings
SL/068/20/17 Rev 1 Street Scenes and Sections
SL/068/20/18 Rev 1 Street Scenes and Sections
SL/068/20/19 Elevation Materials and Details
SL/068/20/20 Lower Ground Floor Access

3. The development (or each phase of the development where phased) shall not be occupied until a Verification/Validation Report demonstrating full compliance with the approved 'Remediation Strategy and Verification Plan' (Ref 777252-MLM-ZZ-XX-RP-J-0003; Revision C02, MLM Consulting Engineers Ltd, 04/03/2021) has been submitted to and approved in writing by the Local Planning Authority.
4. Prior to importation or reuse of material for the development (or phase of) a Materials Management Plan (MMP) shall be submitted to and approved in writing by the Local Planning Authority. The MMP shall:
 - a) Include details of the volumes and types of material proposed to be imported or reused on site
 - b) Include details of the proposed source(s) of the imported or reused material
 - c) Include details of the chemical testing for ALL material to be undertaken before placement onto the site.
 - d) Include the results of the chemical testing which must show the material is suitable for use on the development
 - e) Include confirmation of the chain of evidence to be kept during the materials movement, including material importation, reuse placement and removal from and to the development.

All works will be undertaken in accordance with the approved document.

5. If unexpected contamination is encountered during the development works which has not previously been identified, all works shall cease immediately until the Local Planning Authority has been notified in writing. Thereafter, works shall only restart with the written approval of the Local Planning Authority following the submission and approval of a Phase 2 Intrusive Site Investigation Report and a Phase 3 Remediation Strategy specific to the newly discovered contamination. The development shall thereafter be carried out in accordance with the approved Intrusive Site Investigation Report and Remediation Strategy.
6. No demolition or construction works shall commence on site until a traffic management plan has been submitted to and agreed in writing by the Local Planning Authority. The principal areas of concern that should be addressed are:
 - i) Movement and control of muck away vehicles (all loading and unloading should be undertaken where possible off the adopted public highway).

- ii) Contractor parking, with all such parking to be within the curtilage of the site where possible.
- iii) Movements and control of all deliveries (all loading and unloading should be undertaken off the adopted public highway where possible).
- iv) Control of dust, mud and debris, and the means to prevent mud or debris being deposited onto the adopted public highway.

The development shall be carried out in accordance with the approved details.

7. No above ground works shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before development is completed. Those elements of the surface water drainage system not adopted by a statutory undertaker shall thereafter be maintained and managed in accordance with the approved management and maintenance plan.

The scheme shall be based upon the principles within the agreed Flood Risk Assessment and Sustainable Drainage Strategy prepared by MTC Engineering (Cambridge) Ltd (ref: 2589-FRA&DS Rev A) dated February 2021 and shall also include:

- a) Full results of the proposed drainage system modelling in the QBAR, 3.3% Annual Exceedance Probability (AEP) (1 in 30) and 1% AEP (1 in 100) storm events (as well as 1% AEP plus climate change), inclusive of all collection, conveyance, storage, flow control and disposal elements and including an allowance for urban creep, together with an assessment of system performance;
- b) Detailed drawings of the entire proposed surface water drainage system, attenuation and flow control measures, including levels, gradients, dimensions and pipe reference numbers, designed to accord with the CIRIA C753 SuDS Manual (or any equivalent guidance that may supersede or replace it);
- c) Full detail on SuDS proposals (including location, type, size, depths, side slopes and cross sections);
- d) Details of overland flood flow routes in the event of system exceedance, with demonstration that such flows can be appropriately managed on site without increasing flood risk to occupants;
- e) Demonstration that the surface water drainage of the site is in accordance with DEFRA nonstatutory technical standards for sustainable drainage systems;
- f) Full details of the maintenance/adoption of the surface water drainage system;

The drainage scheme must adhere to the hierarchy of drainage options as outlined in the NPPF and PPG.

8. No development, including preparatory works, shall commence until details of measures indicating how additional surface water run-off from the site will be avoided during the construction works have been submitted to and

approved in writing by the Local Planning Authority. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved measures and systems shall be brought into operation before any works to create buildings or hard surfaces commence.

9. Prior to the commencement of the development hereby approved, with the exception of below ground works, full details including samples of all the materials to be used in the construction of the external surfaces of buildings, which includes external features such as brickwork, non-masonry walling systems (standing seam zinc), roofing, windows and reveals, dormers, horizontal timber battens, balconies, rain water goods and coping, shall be submitted to and approved in writing by the local planning authority. This may consist of a materials schedule, large-scale drawings and/or samples. Development shall be carried out in accordance with the approved details.
10. Prior to the commencement of any brickwork, brick sample panels of the facing materials to be used shall be erected on site and shall be at least 1m x 1m to establish the detailing of bonding, any special brick patterning, coursing and colour, type of jointing, shall be agreed in writing with the local planning authority. The quality and finish and materials incorporated in any approved sample panel(s), which shall not be demolished prior to completion of development, shall be maintained throughout the development.
11. No development above ground level, other than demolition, shall commence until details of facilities for the covered, secured parking of bicycles for use in connection with the development hereby permitted shall be submitted to and approved by the local planning authority in writing. The approved facilities shall be provided in accordance with the approved details before use of the development commences.
12. No development above ground level, other than demolition, shall commence until details of a hard and soft landscaping scheme have been submitted to and approved in writing by the Local Planning Authority. These details shall include:
 - a) proposed finished levels or contours; car parking layouts, other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. Street furniture, artwork, play equipment, refuse or other storage units, signs, lighting, CCTV installations and water features); proposed (these need to be coordinated with the landscape plans prior to being installed) and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines indicating lines, manholes, supports); retained historic landscape features and proposals for restoration, where relevant;
 - b) planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and an implementation programme; If within a period of five years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same

place as soon as is reasonably practicable, unless the Local Planning Authority gives its written consent to any variation.

c) boundary treatments indicating the type, positions, design, and materials of boundary treatments to be erected.

d) details of podium planting areas showing depth and volume of rooting areas, any specialist soil specifications, drainage and irrigation details

e) a landscape maintenance and management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas.

The development shall be implemented in accordance with the approved landscaping details.

13. No development shall commence, apart from below ground works and demolition, until a Biodiversity Net Gain (BNG) Plan has been submitted to and approved in writing by the local planning authority. The BNG Plan shall target how a minimum net gain in biodiversity will be achieved through a combination of on-site and / or off-site mitigation. The BNG Plan shall include:
- i) A hierarchical approach to BNG focussing first on maximising on-site BNG, second delivering off-site BNG at a site(s) of strategic biodiversity importance, and third delivering off-site BNG locally to the application site;
 - ii) Full details of the respective on and off-site BNG requirements and proposals resulting from the loss of habitats on the development site utilising the appropriate DEFRA metric in force at the time of application for discharge;
 - iii) Identification of the existing habitats and their condition on-site and within receptor site(s);
 - iv) Habitat enhancement and creation proposals on the application site and /or receptor site(s) utilising the appropriate DEFRA metric in force at the time of application for discharge;
 - v) An implementation, management and monitoring plan (including identified responsible bodies) for a period of 30 years for on and off-site proposals as appropriate.

The BNG Plan shall be implemented in full and subsequently managed and monitored in accordance with the approved details. Monitoring data as appropriate to criterion v) shall be submitted to the local planning authority in accordance with DEFRA guidance and the approved monitoring period / intervals.

14. No development shall commence (including any pre-construction, demolition, enabling works or piling), until a written report, regarding the demolition / construction noise and vibration impact associated with this development, has been submitted to and approved in writing by the Local Planning Authority. The report shall be in accordance with the provisions of BS 5228:2009 Code of Practice for noise and vibration control on construction and open sites and include full details of any piling and mitigation measures to be taken to protect local residents from noise and or

vibration. The development shall be carried out in accordance with the approved details only.

Due to the proximity of this site to existing residential premises and other noise sensitive premises, impact pile driving is not recommended.

15. The development hereby permitted shall not be used or occupied until the approved approach to meeting a 19% reduction in carbon emissions compared to Part L 2013 has been fully implemented.

Where grid capacity issues subsequently arise, written evidence from the District Network Operator confirming the detail of grid capacity and a revised approach to meeting a 19% reduction in carbon emissions shall be submitted to and approved in writing by the local planning authority. The approved revised approach shall be implemented and thereafter maintained in accordance with the approved details.

16. No dwelling(s) shall be occupied until a water efficiency specification for each dwelling type, based on the Water Efficiency Calculator Methodology or the Fitting Approach set out in Part G of the Building Regulations 2010 (2015 edition) has been submitted to and approved in writing by the local planning authority. This shall demonstrate that all dwellings are able to achieve a design standard of water use of no more than 110 litres/person/day and the development shall be carried out in accordance with the agreed details.

17. No development shall commence until a scheme to minimise the spread of airborne dust from the site including subsequent dust monitoring during the period of demolition and construction, has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved scheme.

18. No construction work or demolition work shall be carried out or plant operated other than between the following hours: 0800 hours and 1800 hours on Monday to Friday, 0800 hours and 1300 hours on Saturday and at no time on Sundays, Bank or Public Holidays.

19. There should be no collections from or deliveries to the site during the demolition and construction stages outside the hours of 0800 hours and 1800 hours on Monday to Friday, 0800 hours to 1300 hours on Saturday and at no time on Sundays, Bank or Public Holidays unless otherwise previously agreed in writing with the Local Planning Authority.

20. No development above ground level, other than demolition, shall commence until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatments to be erected. The boundary treatment shall be completed before the use hereby permitted is commenced and retained thereafter. Development shall be carried out in accordance with the approved details.

21. Notwithstanding the approved plans, the development hereby permitted, shall be constructed to meet the requirements of Part M4(2) 'accessible and adaptable dwellings' of the Building Regulations 2010 (as amended 2016).

22. Prior to commencement and in accordance with BS5837 2012, a phased tree protection methodology in the form of an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP) shall be submitted to the local planning authority for its written approval, before any tree works are carried and before equipment, machinery or materials are brought onto the site for the purpose of development (including demolition). In a logical sequence the AMS and TPP will consider all phases of construction in relation to the potential impact on trees and detail tree works, the specification and position of protection barriers and ground protection and all measures to be taken for the protection of any trees from damage during the course of any activity related to the development, including supervision, demolition, foundation design, storage of materials, ground works, installation of services, erection of scaffolding and landscaping.
23. The approved tree protection methodology will be implemented throughout the development and the agreed means of protection shall be retained on site until all equipment, and surplus materials have been removed from the site. Nothing shall be stored or placed in any area protected in accordance with approved tree protection plans, and the ground levels within those areas shall not be altered nor shall any excavation be made without the prior written approval of the local planning authority. If any tree shown to be retained is damaged, remedial works as may be specified in writing by the local planning authority will be carried out.
24. If any tree shown to be retained on the approved tree protection methodology is removed, uprooted, destroyed or dies within five years of project completion, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
25. Prior to the first occupation of the development details of the proposed arrangements for future management and maintenance of the proposed service driveway within the development shall be submitted to and approved in writing by the Local Planning Authority. The service driveway shall thereafter be maintained in accordance with the approved details until such time a Private Management and Maintenance Company has been established.
26. Demolition or construction vehicles with a gross weight in excess of 3.5 tonnes shall only enter or leave the site between the hours of 09.30hrs - 15.30hrs, seven days a week.
27. No operational plant, machinery or equipment both internal and external shall be installed until a noise assessment and any noise insulation / mitigation scheme as required to mitigate and reduce to a minimum potential adverse impacts has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved and retained as such.
28. No external lighting shall be provided or installed until an artificial lighting impact assessment and mitigation scheme as required has been

submitted to and approved in writing by the local planning authority. The assessment shall include the following:

- (i) the method of lighting (including luminaire type / profiles, mounting location / height, aiming angles / orientation, angle of glare, operational controls, horizontal / vertical isolux contour light levels and calculated glare levels to both on and off site receptors)
- (ii) the extent/levels of illumination over the site and on adjacent land and predicted lighting levels at the nearest light sensitive receptors

All artificial lighting must meet the Obtrusive Light Limitations for Exterior Lighting Installations contained within the 'Institute of Lighting Professionals - Guidance Notices for the Reduction of Obtrusive Light – GN01/20 (or as superseded)'.

The scheme shall be carried out as approved and shall be retained as such.

29. All new joinery, including window frames, shall be recessed at least 50 mm back from the face of the wall/façade of the building. Details of the means of finishing of the 'reveal' are to be submitted to and approved in writing by the Local Planning Authority prior to installation of new joinery. The works shall be carried out in accordance with the approved details.
30. Notwithstanding the provisions of Schedule 2, Part 1, Class A, B, D and E of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that order with or without modification), the erection of an extensions or additions to the dwellinghouses or provision within the curtilage of the dwelling house(s) of any building or enclosure, swimming or other pool shall not be allowed without the granting of specific planning permission.
31. No development shall commence until full details of the block paving surfacing finish to Sandy Lane have been submitted and approved by the Local Planning Authority in writing, including an agreed timetable for its implementation. None of the dwellings shall be occupied until the block paving surface finish has been completed in accordance with the agreed details.

Schedule Ends.