



Appeal Decision

Site visit made on 5 December 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/V1260/W/23/3322869

10-12 Lorne Park Road, Bournemouth BH1 1JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Calendula Assets Limited against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 7-2022-11888-F, dated 21 January 2022, was refused by notice dated 31 January 2023.
 - The development proposed is demolish existing building and erect a block of 10 flats.
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Decision

1. The appeal is allowed and outline planning permission is granted to demolish existing building and erect a block of 10 flats at 10-12 Lorne Park Road, Bournemouth BH1 1JN in accordance with the terms of the application, Ref 7-2022-11888-F, dated 21 January 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. My formal decision uses the description of development as set out on the application form as neither party has provided written confirmation that the revised description on the Decision Notice has been agreed.
3. The application was submitted in outline with approval being sought for those matters related to Access, Appearance, Layout and Scale.
4. Despite forming a reason for refusal in the Delegated Report, the Decision Notice does not contain a reason for refusal related to the effect of the proposal on the character and appearance of the area. The Council's Statement of Case references this stating that its omission from the Decision Notice was an error but clarifies that it does not seek to introduce a new reason for refusal relative to character and appearance. However, given my findings below, I will cover this as an additional main issue.
5. The appeal is accompanied by an amended Site, Block and Location Plans¹, amended Proposed Floor Plans², amended Proposed Elevations³, amended Drainage Plan⁴ and amended Indicative Street Scene⁵. These plans show the internal reconfiguration of unit numbers 5 and 8 and provision of two oriel windows to the side of the proposed building. These plans have not been

¹ Drawing number 8808/400 Rev G

² Drawing number 8808/401 Rev E

³ Drawing number 8808/402 Rev F

⁴ Drawing number 8808/404 Rev F

⁵ Drawing number 8808/406 Rev E

subject to public consultation or considered in the Council's decision. The amended plans relate to two main issues with which the Council raise concerns. Given the minor nature of the amendments, that seek to improve the relationship with adjacent properties to which no third parties have raised concerns, I am satisfied that no party would be prejudiced by my consideration of these amended plans. Therefore, having regard to the principles of Holborn⁶, acceptance of the plans would not be procedurally unfair and as a result I have considered them in determining this appeal.

6. During the course of the appeal a signed legal agreement was submitted under Section 106 of the Town and Country Planning Act 1990 to mitigate the impacts from future occupiers on the 'Dorset Heathlands' which comprises the Dorset Heathlands Special Protection Area (SPA), Dorset Heathlands Ramsar Site, Dorset Heaths Special Area of Conservation (SAC) and Dorset Heaths Special Area of Conservation (Purbeck and Wareham) and Studland Dunes. The Council have had an opportunity to comment on the legal agreement and this is a matter I will return to later.

Main Issues

7. The main issues are:

- the effect of the proposal on the living conditions of neighbouring occupiers at No's 8 and 14-16 Lorne Park Road with regard to overlooking and outlook,
- whether the living conditions of future occupiers of the proposed development would be acceptable, with particular regard to outlook and the provision of outdoor space,
- the effect of the proposal on highway safety with particular regard to the provision of footways and the encouragement of walking,
- the effect of the proposal on flood risk with particular regard to surface water drainage,
- the effect on nationally and internationally protected sites, and
- the effect of the proposal on the character and appearance of the area.

Reasons

Living conditions of neighbouring occupiers

8. The existing building on the appeal site is positioned between No's 8 and 14-16 Lorne Park Road. These neighbouring properties are located fairly close to the boundary of the appeal site containing windows that face the existing building.
9. The windows in the side elevation of No.8 Lorne Park Road facing the appeal site comprise obscure glazed bathroom windows and clear glazed kitchen windows. These windows already face towards the appeal site having a relationship with the windows to the side of the existing building. As a result, there is already a degree of mutual overlooking.
10. While the proposal would increase the number of windows in the side elevation facing No.8, with a taller building proposed, the distance between the two

⁶ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

buildings would be similar to that already existing. In light of this, given the existing mutual overlooking, given that the main outlook to the units within No.8 are to the front and rear, and subject to obscure glazing and fixing shut of the proposed windows facing No.8 at ground, first and second floor, there would be no unacceptable loss of privacy to the occupiers of No.8 and no adverse perception of being overlooked.

11. Turning to No's 14-16 Lorne Park Road, this building comprises a block of apartments with a number of windows close to the appeal site boundary directly facing the site. These windows mainly serve bedrooms and kitchens. In light of the presence of these windows, their close relationship to the site, and given the presence of windows in the side elevation of the existing property on the appeal site facing No's 14-16, there is already a degree of mutual overlooking.
12. The proposed building would be taller than the existing building on the appeal site, be positioned slightly closer to No's 14-16 and comprise more windows. However, the appeal building would still be set in from the site boundary and side of No's 14-16, with the upper floor recessed and the rear stepped back to ensure that the proposal would not result in an overbearing impact upon the apartments forming No's 14-16.
13. With the reconfiguration of the internal layout to units 5 and 8 to the appeal proposal, provision of the oriel windows, and subject to the obscure glazing and fixing shut of the ground, first and second floor windows directly facing No's 14-16, there would be no detrimental increase in the levels of overlooking between these properties. The recessed nature of the units on the upper floor, combined with the distance to the neighbouring properties would adequately mitigate any harm from noise.
14. For the above reasons, I conclude that the living conditions of neighbouring occupiers at No's 8 and 14-16 Lorne Park Road would be acceptable with regard to overlooking and outlook. Accordingly, the proposals comply with Policies CS5, CS6, CS21 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012) (CS), Policy 6.10 of the Bournemouth District Wide Local Plan (February 2002) (LP), Policies D4 and U2 of the Bournemouth Local Plan: Town Centre Area Action Plan (March 2013) (AAP) and the Residential Development A Design Guide (September 2008) (SPD) and the Framework. Amongst other things, these seek to ensure that development is well designed and of a high quality, respect residents' amenities and the living conditions of the occupiers of buildings in the vicinity and provides a high standard of amenity to meet the day-to-day requirements of existing and future occupiers and users.

Living conditions of future occupiers

15. The existing building on the appeal site, and the other buildings on this side of Lorne Park Road back onto a steep tree-lined bank. It is characteristic of this part of Lorne Park Road that the buildings extend back into their respective sites such that the rear of the buildings are positioned in fairly close proximity to the bank. As a result, the units to the rear of the buildings have close range views out onto the trees and bank.
16. The rear elevation of the proposed building would be in a very similar position to the existing building with the rear of the ground floor occupied by a cycle store partly constructed into the bank. The rear of the upper floor of the

proposed building comprises unit 10 with windows to the side and rear. Combined with the upper floor being set back from the rear elevation affording a greater distance to the bank that slopes away from the site, this would provide unit 10 with a suitable outlook.

17. The proposed units with the closest outlook towards the rear of the site would be No's 5 and 8. While any light received to the rear openings of these units would be reduced by their close location to the bank, the units would benefit from a number of full-height doors and windows to aid the lighting of the living space. Furthermore, the units would benefit from light afforded by additional openings to the side of the units that occupy the full width of the rear of the building.
18. In addition, the outlook from unit No's 5 and 8 would be similar to the outlook to apartments to the other sites on this side of the road and would be private. Given the above, and with the units comprising two bedrooms of a reasonable size, the proposal would not result in harmful living conditions for future occupiers with regard to outlook.
19. While the windows to the side of the proposed building facing neighbouring properties would be obscure glazed and fixed shut, given that the proposed units also benefit from outlook to the front and rear of the site, this would not harmfully compromise the living conditions of future occupiers.
20. With regard to outdoor space, in light of the existing site coverage of the building and associated hard surfacing, there is limited existing on-site usable outdoor space. This is not uncommon in this location where the re-development of sites to provide flats results in the provision of limited usable outdoor space around the buildings. The development for flats restricts the possibility for the provision of private gardens, although balconies are proposed.
21. The appeal proposal would result in access to some external space, particularly to the side and front of the building, but given its location and size, it would have limited usability. However, the appeal site is located in close proximity to open space provided off Madeira Road at Horseshoe Common that occupiers could make use of. This space is easily accessible from the appeal site along with Bournemouth Gardens and the seafront. In light of the above, I find that the occupiers of the units would have suitable access to outdoor space.
22. For the above reasons, I conclude that the living conditions of future occupiers of the proposed development would be acceptable with particular regard to outlook and provision of outdoor space. Accordingly, the proposals comply with Policies CS5, CS6, CS21 and CS41 of the CS, Policy 6.10 of the LP, Policies D4 and U2 of the AAP, the SPD and the Framework. Amongst other things, these seek to ensure that development is well designed and of a high quality, respect residents' amenities and the living conditions of the occupiers of buildings in the vicinity and provides a high standard of amenity to meet the day-to-day requirements of existing and future occupiers and users.

Highway safety

23. At my site visit I saw that the footpath to the front of the site is narrow, comprises a streetlight and dropped kerbs.

24. I acknowledge the widening of other footpaths in the area, the desire of the Council to improve the existing footpath conditions, and Policies CS18 and CS41 of the CS, Policy T2 of the AAP and the aims of the Framework, which amongst other things, seek to improve opportunities for safe walking and alternatives to the car and contribute positively to the safety of the public realm. However, I have not been provided with a specific scheme or wider plan or proposal seeking improvements to the width of the footway to the front of the appeal site.
25. In light of this and given that the adjoining sites have been developed without any widened footways for the appeal site to link to, I do not find the widening of the footway to the front of the site in isolation to be justified or necessary in this instance.
26. I have taken into account the likely increased pedestrian use of the footway due to the increase in the number of dwellings and lack of on-site car parking provision. Nonetheless, and given the small increase in the number of dwellings on the site, I do not find that this in itself justifies the provision of a wider footway to the site frontage, particularly as it would not link to wider adjoining footways. My view on this is unchanged by the pavement being busy at times with pedestrians partly due to its location close to Landsdown Academy and town centre. Moreover, it is not the role of this appeal proposal to mitigate existing usage unrelated to the development proposed.
27. I do however find that the small increase in the number of dwellings, justifies the need to move the existing streetlight to the front of the site to a position that does not occupy the centre of the pavement. Its relocation would enable occupiers of the proposed development with restricted mobility, pushchairs or children to use the pavement without needing to use the road. I am satisfied that the removal of the dropped kerbs and relocation of the lamppost to facilitate the safer use of the pavement by occupiers of the additional dwellings, could be adequately ensured by condition should I be minded to allow the appeal.
28. In conclusion on this matter, subject to a condition, the proposal would not harm highway safety with particular regard to the provision of footways and the encouragement of walking. As such, the proposal would not conflict with Policies CS18 and CS41 of the CS, Policy T2 of the AAP or the Framework.

Flood Risk

29. The appeal is accompanied by a drainage plan⁷ detailing the collection of surface water connecting to a proposed attenuation tank that would connect to the existing drainage services to be negotiated with Wessex Water. The plan states that such agreement would be prior to construction with the SUDs strategies, method statement and maintenance programme to be approved by the Local Authority SUDs approval body prior to any demolition or construction on site. The written evidence from the appellant further advises that the detailed design of the drainage system would be formulated at the detailed construction stage and can be adequately dealt with by way of a condition if needed.

⁷ Drawing number 8808/404 Rev F

30. I note that the proposal would result in less hard surfacing than the existing site with some soft landscaped areas and that the SUDS hierarchy would be followed. While Policy CS4 of the CS states that details of the proposed SUDS and suitable provision for maintenance will be submitted as part of any planning application, I see no reason in this instance why such details could not be secured by condition.
31. Accordingly, I conclude that subject to an appropriate condition, the proposal would not cause harm to flood risk with particular regard to the management of surface water. As such, the proposal is not contrary to Policy CS4 of the CS and the Framework that state that major development should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate.

Effect on nationally and internationally protected sites

32. The appeal site falls within the 5km zone of influence around the Dorset Heathlands which overlap with various other environmental designations. The Heathlands are extensive areas of land including lowland heathland, wetlands and dunes. The Dorset Heathlands are protected via the Habitats Directive, which is incorporated into domestic statute via the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). I am statutorily required to take appropriate steps to conserve biodiversity.
33. The Dorset Heathlands are designated in order to safeguard ecology and the habitat upon which various species are reliant, notably in this instance Dartford warblers, nightjars, woodlark, hen harriers, merlin, sand lizards and smooth snakes. Ecology can be disturbed by recreational activities, predation from domestic pets, and from habitats being unavailable from time to time by consequence.
34. Whilst not a precise correlation, the potential for adverse effects increases with the number of dwellings nearby, including within a wide zone of influence (and therefore the aggregate, or in-combination, implications of a number of smaller developments may be significant). Habitats Regulation 63(1) states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. I have sought to apply that requirement reasonably and proportionately relative to the nature and context of the development proposed.
35. The avoidance or mitigation of effects resulting from increased residential development would be achieved by the provision of alternative greenspace, to redirect those who would have made use of the Dorset Heathlands recreationally, and via associated monitoring and management arrangements. The contributions that individual schemes are expected to make in that context are established at a strategic level, such that a proportionate contribution is made in each instance (the former being funded by Community Infrastructure Levy receipts). A signed Unilateral Undertaking has been submitted by the appellant and accepted by the Council. This would provide a financial contribution of £1,986, plus a £99.30 administration fee towards ecological monitoring and management arrangements in that context, consistent with the Council's approach. I have consulted with Natural England which has confirmed that the payment is sufficient to avoid adverse impacts on the integrity of the European Sites and their features.

36. Chapter 4 of The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document April 2020 (DHPF) indicates the approach that it establishes towards ecological mitigation has been arrived at in conjunction between Dorset Council, Bournemouth Christchurch and Poole Council with Natural England, the appropriate nature conservation body under Regulation 63(3). Consequently, subject to appropriate financial contributions being made, I am satisfied that likely significant effects to the ecological integrity of the Dorset Heathlands would be avoided.
37. Paragraph 76 of the Framework and Regulation 122 of the CIL Regulations sets out three tests that planning obligations must meet. Firstly, they must be necessary to make the development acceptable in planning terms, secondly, they must be directly related to the development and thirdly they must be fairly and reasonably related in scale and kind to the development.
38. I am satisfied that the financial contribution is necessary to make the proposed development acceptable in planning terms. The obligation would contribute towards the provision of mitigation towards wardening, raising awareness and monitoring. Given the location of the appeal site within 5km of the protected sites, I consider that the contribution is directly related to the appeal scheme. In addition, as it relates to a standard charge based on the scale and type of residential development proposed, I consider it to be fairly and reasonably related to the proposal in scale and kind.
39. For the above reasons, I am satisfied that the planning obligation would meet the requirements of the Framework and the CIL Regulations. I therefore give it significant weight in the determination of this appeal.
40. In conclusion, I am satisfied that with the proposed avoidance and mitigation measures in place, secured through the CIL Regulations and planning obligation, the development would not have an adverse effect on the integrity of the nationally and internationally protected sites. The development would therefore comply with the Conservation of Habitats and Species Regulations 2017. It would also accord with CS Policy CS33 and the DHPF which, amongst other things, seek to ensure that development will not lead to an adverse effect on the integrity, directly or individually, of the Dorset Heathlands international designations.

Character and appearance

41. The site is located within the Bournemouth Town Centre area fronting a road that is residential in character. Historically the built character of the immediate area comprised detached or semi-detached pairs of period villas within good sized plots. However, more recently, the majority of the villas have either been converted to apartments or replaced with purpose-built apartment blocks as is the case with the developments immediately adjoining the appeal site.
42. Lorne Park Road is characterised by buildings of varying architectural styles, character and materials. The existing property currently provides four flats with associated parking on the hard surfacing around the building. The scale of development reduces along Lorne Park Road to the appeal site that is located between a four-storey building comprising apartments at No.8 Lorne Park Road and the two-storey building comprising apartments, but with a third floor within a pitched roof, forming No's 14-16 Lorne Park Road.

43. The site itself has a tired appearance at odds with the more recently developed adjoining sites and wider area where other re-development of sites is taking place.
44. The proposal has a similar site coverage to the existing and adjoining buildings with the top floor set back and in from the side elevations of the building to reduce its bulk and to ensure it is sub-servient in appearance from street level. The use of glazing and stepped frontage adds interest to the appearance of the building and further breaks up its bulk. The stepped frontage and recessed upper floor provide a suitable transition between the taller and larger scaled development at No.8 Lorne Park Road and the lower development form at No's 14-16 Lorne Park Road.
45. In light of the mixed design and appearance of buildings on this part of Lorne Park Road, that include the use of render and full height glazed openings and recessed upper floors, the proposal would be compatible with the established built form and would enhance the character and appearance of the area. Underground bin storage is proposed to reduce any visual impact upon the street.
46. Adequate space would be left for landscaping to ensure that the proposal does not overdevelop the site whilst complementing the adjoining sites with regard to the provision of soft landscaping.
47. It follows from the above that the proposal would have an acceptable effect on the character and appearance of the area. As such, it complies with Policies CS21 and CS41 of the CS, Policy 6.10 of the LP, Policy D4 of the AAP and the SPD. Amongst other things, these seek to ensure that development is of a good design, of a high quality, respects or enhances the character and appearance of the area, and are of an appropriate scale, height mass and built form.

Other Considerations

48. I note that the appeal is accompanied by an Economic Viability Assessment that has been assessed by the District Valuer Service and that as a result the parties agree that the proposed development is not sufficiently viable to make a contribution towards the provision of affordable housing. I have no reason to disagree.

Conditions

49. I have had regard to the tests in the Framework in relation to conditions, and the planning conditions suggested by the Council. In addition to the standard reserve matters details and time conditions, it is necessary for a condition to confirm the approved plans in the interests of certainty.
50. A pre-commencement condition is necessary to ensure that a demolition and construction environment management plan is submitted to protect the living conditions of nearby occupiers during construction. Alongside this, a condition is required to control the hours of construction in the interest of protecting the living conditions of nearby occupiers.
51. A condition is required to ensure the submission and approval of materials in the interests of protecting the character and appearance of the area.

52. A condition is necessary to ensure the provision of adequate surface water drainage in the interests of preventing the risk of flooding. In light of this condition requiring the submission of drainage details, an additional condition ensuring that all hard surfacing is porous is not required.
53. A condition is necessary to ensure that the windows to the side elevations of the building at ground, first and second floor are obscure glazed and fixed shut in order to protect the living conditions of neighbouring occupiers. A condition is required to ensure the submission of a refuse management plan in the interests of highway safety and to protect the living conditions of nearby and future occupiers.
54. A condition is necessary to ensure that the redundant vehicular cross-overs are removed and the existing street-light relocated out of the centre of the pavement in the interests of pedestrian and highway safety.
55. A condition is necessary to ensure that the cycle store is provided prior to first occupation of the building in the interests of promoting sustainable means of travel.
56. Conditions are necessary to ensure that the ecological enhancement and tree protection measures proposed are carried out in the interests of enhancing biodiversity and to protect the character and appearance of the area.
57. A condition to ensure the submission of details of the retaining wall to the rear of the site as suggested by the Council is not necessary given that the retaining wall is proposed to be retained or replaced on a like for like basis. A further condition suggested by the Council to ensure that any vegetation on the site is cleared at the appropriate time of year is not necessary as this is suitably covered by other legislation. Conditions related to landscaping are not necessary as landscaping is not a matter forming part of this outline application.
58. I have slightly amended the wording of some of the conditions in the interest of brevity and clarity.

Conclusion

59. For the reasons given I conclude that the appeal should succeed.

C Rose

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing number 8808 / 400 Rev. G Site, Block and Location Plans, drawing number 8808 / 401 Rev. E Proposed Floor Plans, drawing number 8808 / 402 Rev. F Proposed Elevations, drawing number 8808 / 404 Rev. F Drainage Plan, drawing number 8808 / 405 Rev. B Underground Bin Section, and drawing number 8808 / 406 Rev. E Indicative Street Scene.
- 5) Prior to the commencement of development, including demolition, a Demolition and Construction Environmental Management Plan (DCEMP) shall be submitted to and approved in writing by the Local Planning Authority. The DCEMP shall include:
 - a) Construction Environmental Management Plan that identifies the steps and procedures that will be implemented to minimise the creation and impact of, but not limited to, noise, vibration, waste management, dust and other emissions to air, land or water resulting from the site preparation, demolition, and groundwork and construction phases of the development.
 - b) Construction Logistics Plan that identifies the steps that will be taken to minimise the impacts of deliveries and waste transport.

The development shall not be implemented other than following the approved scheme.

- 6) All on-site working, including demolition and deliveries to and from the site, associated with the implementation of this planning permission shall only be carried out between the hours of 8am and 6pm Monday - Friday, 8am and 1pm Saturday and not at all on Sunday, Public and Bank Holidays.
- 7) Details/samples of the bricks, render and tiles to be used on the external surfaces of the proposed development shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any superstructure works on site. Development shall be carried out in accordance with the approved details.
- 8) The building hereby permitted shall not be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to and agreed in writing by the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures

taken to prevent pollution of the receiving groundwater and/or surface waters; include a timetable for its implementation; and, provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

- 9) Notwithstanding the approved drawings, the proposed side facing windows serving flats Nos. 1, 2, 3, 4, 5, 6, 7 and 8 shall be fixed shut and glazed with obscure glass to a level equivalent to Pilkington Level 3 or above (or the nearest equivalent standard) and shall be permanently retained as such.
- 10) The development hereby permitted shall not be occupied until a Refuse Management Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in full accordance with the approved details.
- 11) The development hereby permitted shall not be occupied until the existing sections of vehicular crossover to the site, off Lorne Park Road, have been reinstatement with full height kerbs and the street light to the front of the site has been relocated away from the centre of the footpath in full accordance with details submitted to and approved in writing by the Local Planning Authority.
- 12) Prior to occupation of the development hereby permitted, the cycle store shall be installed as shown on the approved plans and thereafter retained, maintained and kept available for the occupants of the development at all times.
- 13) The ecological enhancement as given in section 5 Conclusions and ecological enhancement and Appendix 5 in 'Update Preliminary Roost Appraisal (PRA) & Bat Activity Survey Report', 22/11/21 by ABR Ecology Ltd of a swift box shall be provided before first occupation and thereafter retained.
- 14) The tree protection measures and compliance with the required arboricultural supervision as detailed in the Arboricultural Impact Assessment & Method Statement prepared by Treecall Consulting Ltd ref. DS/11/321/AC and dated 2 December 2021, as well as the submitted Tree Protection Plan & Arboricultural Method Statement ref. DS.11321.AC dated 2 December 2021, shall be implemented in full and in accordance with the approved timetable and maintained and supervised until completion of the development.

*****END OF SCHEDULE*****