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## Appeal Decision

Inquiry (In-Person and Virtual) held on 12 – 14 July

Site visit made on 13 July 2022

**by Andrew McGlone BSc MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 August 2022**

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### **Appeal Ref: APP/H2265/W/22/3294498 Rear of 78 High Street, Tonbridge TN9 1EE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by McCarthy and Stone Retirement Lifestyles Ltd against the decision of Tonbridge and Malling Borough Council.
  - The application Ref TM/21/01542/FL, dated 27 May 2021, was refused by notice dated 20 September 2021.
  - The development proposed is the redevelopment of the site to provide 36 retirement living apartments for older persons, with associated communal facilities, parking and landscaping.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the redevelopment of the site to provide 36 retirement living apartments for older persons, with associated communal facilities, parking and landscaping at the rear of 78 High Street, Tonbridge TN9 1EE in accordance with the terms of the application, Ref TM/21/01542/FL, dated 27 May 2021, subject to the conditions in the attached schedule.

### **Application for costs**

2. An application for costs was made by McCarthy and Stone Retirement Lifestyles Ltd against Tonbridge and Malling Borough Council. This application is the subject of a separate decision.

### **Procedural Matters**

3. Following discussions between the appellant and the Highway Authority during the appeal, the Council withdrew its reason for refusal in relation to the proposal's effect on access for future occupants prior to the Inquiry opening.
4. At the end of cross-examination of the Council's witness dealing with flood risk the Council withdrew its reason for refusal. This position was subject to the imposition of several agreed planning conditions. I have not, therefore, considered this matter any further.
5. A signed and complete s106 planning agreement (s106 agreement) was submitted by the appellant shortly after the Inquiry closed. The s106 agreement includes contributions towards affordable housing, open space, parks and gardens, sports facilities, community learning, library bookstock, social care and waste. I will consider the s106 agreement later in my decision.

## Main Issues

6. In their Closing statement, the Council confirmed that they no longer had any outstanding objections to the proposal. However, I still have statutory responsibilities in relation to relevant contributions and to heritage matters.
7. As a result, the main issues in this case are:
  - whether the proposal would make adequate provision for affordable housing, having regard to viability; and
  - whether the proposal would make adequate provision in respect of open space, parks and gardens, sports facilities, community learning, library bookstock, social care and waste.

## Reasons

### *Viability and affordable housing*

8. Paragraphs 60 and 62 of the National Planning Policy Framework (the Framework) outline the need to address various groups with specific housing requirements. The Planning Practice Guidance (the Guidance)<sup>1</sup> also recognises that there is a critical need for the proposed type of housing. There is a pressing need for the proposed type of housing in the borough, and that need is only likely to continue to grow. Added to this, there is a significant unmet need for affordable homes in the borough. The provision of both carries equal importance, but it was accepted by both main parties that, in this case, an affordable housing contribution is necessary to make the development acceptable in planning terms.
9. To help address the unmet need, Policy CP17 of the Core Strategy (CS) outlines that affordable housing provision will be sought on all sites of 15 dwellings or above at a level of 40% of the number of dwellings in any scheme. Framework paragraph 65 expects at least 10% of the total number of homes to be available for affordable home ownership unless this would significantly prejudice the ability to meet the identified affordable housing needs of specific groups.
10. CS Policy CP17 goes on to say that in exceptional circumstances, it may be agreed that affordable housing may be provided on another site or by means of a commuted sum. The Framework in paragraph 63 expects affordable housing to be provided on-site unless an appropriate financial contribution in lieu can be robustly justified. Having regard to both, the main parties agree that, in this case, the affordable housing contribution should be provided by way of a commuted sum. I do not disagree based on the type and nature of the accommodation proposed.
11. The appellant has prepared a Financial Viability Assessment (FVA) to support the commuted sum that it says that the scheme can viably deliver having applied the residual approach set out in the Guidance. The Viability SoCG<sup>2</sup> confirms that all the inputs into the FVA were agreed between the parties, save for Gross Development Value (GDV), but the dispute on GDV has a direct influence on disposal/marketing and finance costs (albeit the percentage points are agreed) which in turn affects the monies potentially available for the affordable housing contribution.

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<sup>1</sup> Planning Practice Guidance Paragraph: 001 Reference ID: 63-001-20190626

<sup>2</sup> Core Document CD 6.5.10

12. The divergence in the parties' assessment on GDV is due to their respective assessments on sales values for the proposed apartments<sup>3</sup>. It is the appellant's case that the scheme can viability deliver £357,965 towards all the contributions sought by the Council. This would mean that £273,479 would be the affordable housing contribution. Conversely, the Council state that the scheme can deliver £1,389,000 towards the contributions. In short, the appellant says that the Council's assessment, which takes into account RICS Best Practice and the Guidance, is excessive, and its stance should be adopted. The appellant's assessment is based on the local market, the Retirement Housing Group methodology, achieved sales values at St Giles Lodge and Southborough Court, achieved sales values for market apartments along with a premium for retirement accommodation, and viability evidence from a retirement living scheme near to the appeal site.
13. The Council contends that the appellant's stance on GDV is too pessimistic. However, both parties have exercised judgments on valuations and the relevance of and interpretation of comparable evidence based on their knowledge and experience.
14. Despite this, the parties agree that a total contribution in line with the appellant's case should be payable through the s106 agreement<sup>4</sup>. This would be the affordable housing contribution that the scheme could viably afford on the appellant's case. However, given their difference on GDV, the parties agree in this case to the inclusion of a late-stage viability review mechanism in the s106 agreement<sup>5</sup>. This would allow GDV to be revisited if sales values exceed those expected by the appellant so that the maximum affordable housing contribution possible from this single-phase development is achieved. Review mechanisms are a tool to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project<sup>6</sup>. No more than 70% (25 no.) of the units could be disposed of until the review takes place, and the maximum contribution would be capped at 50% to ensure there remains an incentive to sell the units at a higher value to those anticipated by the appellant.
15. Whether there will be any additional affordable housing contribution from the development is unclear and cannot be guaranteed, but the review mechanism in the s106 agreement does strengthen the Council's ability to seek a higher order of contribution approaching the aspiration of 40% set out in CS Policy CP17 over the lifetime of the project. This would help address the unmet need for affordable homes in the borough.
16. On this basis, I consider that the affordable housing contribution would be directly related to the development and fairly and reasonably related in scale and kind to it. I conclude that the s106 agreement in respect of the affordable housing contribution would satisfy the tests in CIL Regulation 122 and Framework paragraph 57, hence, it is material in this case. While CS Policy CP17 sets out an expectation of 40% of the number of dwellings being delivered as affordable, the accompanying text is clear that this is the aim and a starting point for negotiations on a site by site basis alongside matters such as the viability of the development. On this basis, I am satisfied that the appeal scheme complies with CS Policy CP17.

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<sup>3</sup> LPA 1 Bed £360,000 2 Bed £495,000; Appellant 1 Bed £335,000 2 Bed £430,000

<sup>4</sup> Inquiry Document 5, Paragraph 1

<sup>5</sup> Inquiry Document 5, Paragraph 3

<sup>6</sup> Planning Practice Guidance, Paragraph: 009 Reference ID: 10-009-20180724

### *Other contributions*

17. The s106 agreement also contains several other provisions. The social care, community learning, waste and library bookstock contributions would mitigate the effects of the proposed development and the additional demand it would place on local services. The monies would be put towards additional equipment, accommodation, facilities and/or resources. The need for the open space, and parks and gardens, and sport facilities contributions arise from the additional demand that future occupants of the proposed development would place on existing sports and recreation facilities near to the appeal site. The contributions would be put towards new facilities along with improvements and their future maintenance.
18. All the above contributions would accord with Core Strategy Policy CP25 and Policy OS3 of the Managing Development and the Environment Development Plan Document (DPD). These policies seek to ensure service, transport and community infrastructure necessary to serve the development is either available or will be made available by the time it is needed; and financial contributions for off-site open space facilities are provided on all residential development of 5 units or above. The contributions that would be secured through the s106 agreement would meet the statutory tests in Regulation 122 of the CIL Regulations. As such, they are material considerations in this appeal.

### **Other Matters**

19. Tonbridge Castle, a Grade I listed building and Scheduled Ancient Monument, is to the north of the appeal site. The medieval Castle is situated on elevated ground next to, and above, the River Medway and the market town of Tonbridge. It has a moat and motte leading up to a stone keep and gatehouse that are significant and positive contributors to the character of the area. The appeal scheme would lie within the setting of The Castle, but that also applies to most of the development either side of the river. However, the proposed development would not compete with or dominate views of The Castle nor affect its setting. As the proposal would have a neutral effect on The Castle, its significance would be preserved.
20. Tonbridge Conservation Area (the CA) is next to the appeal site. It extends from the south and west of the site to the north of the river. This includes The Castle and the historic high street, which has a tight-knit urban grain containing a variety of building types and uses that contribute to a vibrant place which has evolved over time. This has resulted in buildings of various forms, styles and appearances along with public spaces next to the river. Whilst the appeal scheme would be next to the CA, having regard to its significance and the proposed development, I consider the appeal scheme would have a neutral effect on the CA.

### **Conditions**

21. I have imposed a plans condition in the interests of certainty. I have imposed several pre-commencement conditions. In the interests of highway safety and the living conditions of nearby residents, a construction management condition is necessary. So that the development is safe for its lifetime, I have imposed conditions to secure flood resistance and resilience measures and to ensure utilities are positioned above the design flood level. To secure satisfactory arrangements for the disposal of surface water and to prevent on/off site flood risk, I have imposed a condition for a drainage scheme.

22. In the interests of the character and appearance of the area, a condition to secure details of the external materials and boundary treatment is necessary. For the same reason, I have imposed a condition so that the approved landscaping scheme is delivered. To secure the delivery of high-quality digital infrastructure, a condition is necessary to secure the installation of fixed telecommunication infrastructure and high-speed fibre optic broadband. I have imposed conditions so that the development in respect of adequate car parking, electric vehicle charge points and a travel plan in the interests of highway safety and to encourage the use of sustainable transport modes.
23. Conditions are necessary in the interests of future occupants' living conditions, public safety and human health to secure verification reports relating to the surface water drainage system and the approved remediation strategy. To ensure that future occupants have satisfactory living conditions from noise, I have imposed a condition to achieve specific noise levels in certain areas of the development and to secure any mitigation or attenuation measures. So that safe access, escape routes and operational procedures are secured, I have imposed a condition in respect of a flood warning evacuation plan. Due to the specific nature of the appeal scheme, and the need for this type of accommodation in the borough, I have imposed a condition limiting the occupation of the development to people of a certain age.

### **Conclusion**

24. The proposed development would accord with the development plan in respect of affordable housing as it would, based on viability and the late review mechanism, provide a policy compliant level of affordable housing and accord with CS Policy CP17. The contributions found within the s106 agreement would all mitigate the effect of the development, so they do not weigh in favour or against the proposal. Even so, the s106 agreement would ensure that the proposal is compliant with CS Policy CP25 and DPD Policy OS3.
25. Aside to this, the proposal would result in several benefits. These include the provision of a specific type of housing to address an identified need; freeing up existing housing stock; and a contribution to the overall number of houses in the borough at a time when the Council is unable to demonstrate a five-year supply of deliverable housing sites. Furthermore, the proposal would make effective use of brownfield land in an accessible location in the town centre close to facilities and services. Economically, there would be jobs created and spending in the local economy during the development's construction and by future occupants. Socially, the proposal would help maintain future occupants' independence, remain within an inclusive community, and reduce pressure on health care facilities. These benefits only weigh in favour of the proposal.
26. The proposed development would accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this.
27. For the reasons given above, I conclude that the appeal should be allowed.

*Andrew McGlone*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Sarah Reid	Of Queens Counsel, instructed by Carla Fulgoni, Planning Manager, Planning Bureau Ltd
She called	
James Mackay BSc (Hons), MRICS	Partner of Alder King Property Consultants
Paul Jenkin BEng (Hons), MSc CEng, C.WEM, FCIWEM	Director of Flood Risk Management at Abley Letchford Partnership Ltd
Ian Hann MA	Principal Planning Associate of the Planning Bureau Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

John Fitzsimons	Of Counsel, instructed by the Borough Solicitor of Tonbridge and Malling Borough Council
He called	
Peter Waring BSc (Hons), MSc, CGeol	Senior Flood Risk Advisor, Environment Agency
Fraser Castle MSc, MRICS, RICS	Development Partner, Bruton Knowles
Adem Mehmet BA (Hons), PGDip MA, MRTPI	Planning Consultant acting for Tonbridge and Malling Borough Council

### INQUIRY DOCUMENTS

- 1 Appellant Opening Statement
- 2 Council Opening Statement
- 3 Additional Suggested Planning Conditions
- 4 Heads of Terms – Viability Review
- 5 Viability SoCG II
- 6 Amendments to Additional Suggested Planning Conditions
- 7 Appellant's Costs Application
- 8 Council's Response to the Costs Application
- 9 Council's Closing Statement
- 10 Appellant's Closing Statement

## CORE DOCUMENTS

CD-1	Core Drawings Document
1.1	Site Location Plan - SE-2739-03-AC-101 B
1.2	Existing and indicative Demolition Plan - SE-2739-03-AC-112 A
1.3	Proposed Site Plan - SE-2739-03-AC-102 C
1.4	Proposed Ground Floor Plan - SE-2739-03-AC-103 D
1.5	Proposed First Floor Plan - SE-2739-03-AC-104 B
1.6	Proposed Second Floor Plan - SE-2739-03-AC-105 B
1.7	Proposed Third Floor Plan - SE-2739-03-AC-106 B
1.8	Proposed Roof Plan - SE-2739-03-AC-107 B
1.9	Proposed Elevations 1 North and West - SE-2739-03-AC-108 C
1.10	Proposed Elevations 2 South and East - SE-2739-03-AC-109 C
1.11	Proposed Views SE-2739-03-AC-110 A
1.12	CGI's
1.13	Landscaping Proposals - MCS23278 09
CD-2	Documents Submitted During Course of Application
2.1	Planning Statement (with Appendices)
2.2	Design and Access Statement - SE-2739-03-AC-DASv1
2.3	Transport Statement - 047.0078/TS/1
2.4	Older Persons Housing Need Report
2.5	Drainage Strategy Report - IDL/1070/DS/001
2.6	Flood Risk Assessment AMA823
2.7	Affordable Housing / Viability Statement - AJC/95927
CD-3	Additional Documents Submitted with Second Application
3.1	Planning Statement (with Appendices)
3.2	Flood Risk Assessment - 332510921 Rev: C
3.3	Affordable Housing / Viability Statement - RJM / 95927
3.4	Affordable Housing / Viability Statement Review - Bruton Knowles Review
3.5	Affordable Housing / Viability Statement Review 21/03375/FL - Bruton Knowles Review 21/03375/FL



CD-4	Relevant Development Plan Policies
4.1	Managing Development and the Environment Development Plan Document (April 2010) – CC1, OS3
4.1.1	Local Development Framework Core Strategy (September 2007) – CP1, CP10, CP17, CP25
4.2	National Planning Policy Framework (July 2021) – Paragraphs 2, 4, 5, 6, 8, 11 and 14
4.3	National Planning Guidance - Viability, Achieving healthy and inclusive communities, Housing needs of different groups, Housing for older and disabled people, and Planning obligations
4.4	Housing Land Supply Position as at 31 March 2021
4.5	Housing Delivery Test Action Plan, July 2021
4.6	Officers Report to Planning and Transportation Advisory Board - updates to Members on the Government's Housing Delivery Test measurement for 2021
4.7	Tonbridge Central Area Action Plan (TCAAP)
CD-6	Appellants Appeal Documents
6.1	Appellants Statement of Case
6.2	Statement of Common Ground
6.3	Draft Unilateral Undertaking
6.5.4	EA Objection
6.5.5	EA Statement of Case
6.5.6	LPA Statement of Case
6.5.7	DEFRA FD2320
6.5.8	Flood Risk and Drainage SoCG
6.5.9	Reservoir Breach Map
6.5.10	Viability Statement of Common Ground



## 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 and documents: SE-2739-03-AC-101 B; MCS23278 09; SE-2739-03-AC-102 C; SE-2739-03-AC-103 D; Site Plan SE-2739-03-AC-104 B; Site Plan SE-2739-03-AC-105 B; Site Plan SE-2739-03-AC-106 B; Site Plan SE-2739-03-AC-107 B; SE-2739-03-AC-108 C; SE-2739-03-AC-109 C; SE-2739-03-AC-110 A; Site Plan SE-2739-03-AC-112 A; Archaeological Assessment; Drainage Statement; Flood Risk Assessment; Desk Study Assessment; Site Investigation; Air Quality Assessment; Air Quality update; Energy Statement; Noise Assessment; Statement of community involvement; and Transport Statement.

### *Pre-commencement*

- 3) Prior to the commencement of the development hereby permitted, arrangements for the management of all demolition and construction works shall be submitted to and approved by the local planning authority. The management arrangements to be submitted shall include (but not necessarily be limited to) the following:
  - The days of the week and hours of the day when the demolition and construction works will be limited to and measures to ensure these are adhered to;
  - Procedures for managing all traffic movements associated with the demolition and construction works including (but not limited to) the delivery of building materials to the site (including the times of the day when those deliveries will be permitted to take place and how/where materials will be offloaded into the site) and for the management of all other construction related traffic and measures to ensure these are adhered to; and
  - The specific arrangements for the parking of contractor's vehicles within or around the site during construction and any external storage of materials or plant throughout the construction phase.

The development shall be undertaken in compliance with the approved details.

- 4) Prior to the commencement of the development hereby permitted details setting out the position of utilities for water, heat and power at a suitable level above the design flood level shall be submitted to and approved in writing by the local planning authority. Development should then be carried out in accordance with the approved details.
- 5) Development shall not begin (except for demolition and ground works) until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the Drainage Report as prepared by Infrastructure Design Ltd dated 12/05/21 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented and maintained in accordance with the approved details.

*Before above ground works*

- 6) Prior to the commencement of above ground works of the development, hereby permitted, details of property flood resistance and resilience measures, in accordance with the Defra/Environment Agency document "Improving the Flood Performance of New Buildings – Flood Resilient Construction", (or any subsequent revision or amendment), shall be submitted to and approved in writing by the local planning authority. Details shall include a maintenance and deployment plan of such measures, which shall be implemented as approved and retained thereafter.
- 7) No above ground works shall take place until details of all materials to be used on the external faces of the building and any boundary treatments have been submitted to and approved by the local planning authority, and the development shall be carried out in accordance with the approved details.
- 8) Prior to the commencement of above ground works of the development, hereby permitted, details shall be submitted for the installation of fixed telecommunication infrastructure and High-Speed Fibre Optic Broadband (minimal internal speed of 1000mb) connections to multi point destinations and all buildings including residential, commercial and community. The infrastructure installed in accordance with the approved details during the construction of the development, capable of connection to commercial broadband providers and maintained in accordance with approved details.

*Before first occupation*

- 9) The development hereby permitted shall not be occupied until the areas shown on the submitted layout for vehicle parking has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved parking spaces.
- 10) Before the development hereby permitted is occupied details of the installation of electric vehicle car charging points shall be submitted to approved in writing by the local planning authority. A minimum of two car parking spaces shall be provided with an Electric Vehicle (EV) charging point. The remainder of car parking spaces shall be provided with underground ducting suitable to allow for easy implementation of EV charging points at a future time. All Electric Vehicle chargers provided must be provided to Mode 3 standard (providing up to 7kw)

and SMART (enabling Wifi connection) before first occupation of the development.

- 11) No occupation of the development hereby permitted shall occur until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the local planning authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.
- 12) Following completion of the approved remediation strategy, as found in the Site Investigation Report, dated February 2021, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted for the information of the local planning authority. The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the local planning authority for written approval and shall be fully implemented as approved. Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.
- 13) Before the development hereby permitted is occupied a noise report shall be submitted to and approved in writing by the local planning authority. The report should consider the levels cited in BS8233:2014 and how these will be achieved, namely:
  - for gardens and other outdoor spaces, in particular those in para 7.7.3.2 which states a desirable limit of 50dB LAeq,16-hour, and a maximum upper limit of 55dB LAeq,16-hour; and
  - to at least secure internal noise levels no greater than 30dB LAeq, 8-hr (night) and 35dB LAeq, 16-hr (day) in bedrooms, 35dB LAeq, 16-hr (day) in living rooms and 40dB LAeq, 16-hr (day) in dining rooms/areas. Particular attention is drawn to the notes accompanying Table 4 in para 7.7.2 and that these levels need to be achieved with windows at least partially open unless satisfactory alternative means of ventilation is to be provided.

The report should also detail any mitigation/attenuation measure needed to attain the abovementioned levels. It is important that the noise report includes specific data and details of any necessary noise insulation/attenuation requirements (e.g. acoustic glazing, acoustically screened mechanical ventilation). The approved measures must be installed prior to occupation of any unit and retained thereafter.

- 14) Prior to the occupation of the building hereby permitted a Flood Warning Evacuation Plan, shall be submitted to and approved in writing by the local

planning authority. This plan should be in general accordance with revision E of the Flood Warning Evacuation Plan [332510921/100 dated June 2022] and include the following information:

- Details of the procedure for the relocation of onsite vehicles and mobility scooters when flood warnings are issued; and
- Details of the supply and storage of emergency medical supplies on site

The approved Flood Warning Evacuation Plan shall be reviewed every year and shall be strictly adhered to for the lifetime of the development.

- 15) Prior to the occupation of the development permitted, a Travel Plan shall be submitted and approved by the local planning authority. The Travel Plan must include details of: (a) a comprehensive survey of all users of the development; (b) details of local resident involvement in the adoption and implementation of the Travel Plan; (c) targets set in the Plan to reduce car journeys to the development; (d) details of how the Travel Plan will be regularly monitored and amended, if necessary, if targets identified in the Plan are not being met over a period of 5 years from the date the development is occupied. At the end of the first and third years of the life of the Travel Plan, you must apply to the local planning authority for approval of reports monitoring the effectiveness of the Travel Plan and setting out any changes you propose to make to the Plan to overcome any identified problems. Any changes should be implemented in accordance with the approved details.

*Post occupation and management*

- 16) All planting, seeding and turfing comprised in the approved scheme of landscaping on plan Ref: MCS2327809 shall be implemented during the first planting season following first occupation of the buildings or the completion of the development, whichever is sooner. Any trees or shrubs removed, dying, being seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species.
- 17) No unit of accommodation shall be occupied at any time other than by a person aged 60 or older together with their spouse, partner or companion as appropriate, except that where a person aged at least 55 years is predeceased having resided within the development as a spouse, partner or companion, that person may continue to reside within the development.

END OF SCHEDULE