

Roger Dudman Way Review

MAIN REPORT & EXECUTIVE SUMMARY

Report of Findings and Recommendations

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December 2013

Roger Dudman Way Review: Main Report

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FOREWORD

In February 2012 Oxford City Council approved a proposal by the University of Oxford for post-graduate student accommodation at Castle Mill, Roger Dudman Way. In December 2012 a Petition was submitted to the Council expressing the widespread concern about the environmental impacts of the development.

As a result the Council set up a Working Party to consider whether the planning processes associated with the Roger Dudman Way application complied with statutory and national policy requirements, and how they related to best practice. This Working Party is cross-party and includes representatives of key civic organisations.

As part of its considerations an independent review has been undertaken of the processes involved. Great weight has been placed in the review process upon engaging with all sectors of the planning community in Oxford (including civic and community groups, the universities and public bodies).

This report sets out the findings and recommendations arising from this independent review. Its focus has been to draw lessons and make recommendations on the procedures and policies for handling and determining major planning applications. In doing so it identifies:

- good practice that is already being applied by the Council;
- the range of actions already being taken by the Council to address the issues that have been raised; and
- the opportunities for the City Council to improve services and minimise the risk of problems in the future.

This review has been undertaken within a tight timescale. I would like to acknowledge the cooperation that I have received from all quarters in undertaking the review, the organisation of briefings and background material, and making time available. In particular I want to acknowledge the support given by Pat Jones (Senior Scrutiny Officer) and Dr. Lucy Natarajan.

Vincent Goodstadt
December 2013

ABBREVIATIONS

BIC	Building in Context by EH & CABE
CABE	The Commission for Architecture and the Built Environment
CPRE	Campaign to Protect Rural England
DAS	Design and Access Statement
DCLG	Department of Communities and Local Government
DPD	Development Plan Document
EA	Environment Agency
ED	Environment Department of Oxford City Council
EH	English Heritage
EIA	Environmental Impact Assessment
LGA	Local Government Association
MR	Main Report of the Roger Dudman Way Review
NPPF	National Planning Policy Framework
OAHS	Oxford Architectural and Historical Society
OCC	Oxford City Council
OCS	Oxford Civic Society
OPT	Oxford Preservation Trust
PAS	Planning Advisory Service
POS	Planning Officers' Society
PPS	Planning Policy Statement
RDW	Roger Dudman Way
ROQ	Royal Observatory Quarter
SAC	Special Area of Conservation under the EU's Habitats Directive
SLA	Service Level Agreement
SPM	Save Port Meadow Campaign
SSSI	Site of Special Scientific interest
WAPC	West Area Planning Committee
1990 Act	Planning (Listed Buildings and Conservation Areas) Act 1990

EXECUTIVE SUMMARY

Context

1. In February 2012 Oxford City Council approved a proposal by the University of Oxford for post-graduate student accommodation at Castle Mill, Roger Dudman Way. In December 2012 a Petition was submitted to the Council expressing the widespread concern about the environmental impacts of the development
2. As a result it established an Independent Review to assess whether in the context of this development the City Council complied with its planning processes and met statutory and National Policy requirements, how the processes compare with other Local Planning Authorities, and identification of best practice.
3. This Review addresses issues related to the planning process, consultation, visual impacts, committee reporting and the enforcement of planning conditions. It is not however an Inquiry as undertaken by the Planning Inspectorate. It therefore does not alter the decision to approve the application by Oxford City Council. Any recommendation in this report about better practices and procedures does not imply that it would, with the benefit of hindsight, have led to a different decision on the application.
4. The Review process has been substantially enhanced by the help and cooperation from a wide range of interested parties (including members, staff, supporters and objectors). This is gratefully acknowledged. The Review has also drawn on best practice advice from government or its agencies.

The Planning Context

5. Roger Dudman Way (RDW) is located on the edge of the built up area, adjoining the greenbelt and Port Meadow, an area of ancient common land, and protected as an SAC and SSSI and for the views it gives of the city.
6. A range of planning permissions have also been granted for the site. These include an outline application for up to 650 bed space units in 2000; detailed application for 354 flats in 2002. The first phase of this consent for 125 flats was built and completed around 2004. There was therefore an extant consent to build a further 229 more student flats. None of the parties to this Review dispute the use of the site for student accommodation.
7. The site however raised environmental sensitivities particularly in terms of contamination and visual impact. In addition to national guidance and policies, the key document at the time of the West Area Planning Committee (WAPC) decision was the Oxford Core Strategy 2026 and its related documents. Central to an understanding of the planning context of the RDW site is Policy CS25 and the saved heritage Policy HE10 'View Cones of Oxford'. Policy CS25 requires that the number of students attending the University of Oxford living outside college does not exceed 3000 students. Policy HE10 requires the view of the Oxford skyline to be protected.
8. The WAPC approved the application with 23 planning conditions. Nine conditions still need to be discharged of which Condition No. 16 'Ground Contamination and Conditions 5 & 7 relating to landscaping' are material to the key issues addressed in this Review.

Issue 1: Planning Procedures

9. During 2011 Oxford University carried out pre-application consultations and held a public exhibition. Following the submission of the application the City Council undertook a series of steps in processing the application including registering, validation, screening for the need for an Environmental Impact Assessment (EIA), public adverts and notices, statutory consultations and site visits. These steps were in accord with the statutory procedures required by regulations and in line with those generally used by the Council.
10. However there have been challenges, directly or implicitly, over the way the processes were carried out. The procedures therefore have been reviewed and the following conclusions drawn :
 - a. The pre-applications policy of the Council is in accord with Government advice but as implemented in this instance fell short of best practice. The application could have been more clearly documented in terms of the general liaison with applicant and the formal pre-application process;
 - b. The registration of the application was in accord with the Council's published policy on validation requirements. Although there were errors and limitations in the documents submitted by the applicant, it was within the Council's discretion to validate the application. However there is a need for a clearer auditing of the submitted documents on major applications against the requirements in the published guidance.
 - c. Although the application for judicial review was unsuccessful, there is a commitment by the applicant to prepare a voluntary Environmental Statement. This Review has focused its considerations on the lessons for best practice. In this context it has been concluded that the screening process could have set out more systematically the full basis of the evaluation and conclusions.
 - d. The review has considered whether the Planning (Listed Buildings and Conservation Areas) Act 1990 should have been taken into account. It is concluded that this is a matter that needs further clarification in terms of its relationship to the local planning policies but would not have altered fundamentally the planning issues that required to be assessed.

Recommendation 1: Planning Procedures

It is recommended that the planning processes should be strengthened by

- a. Improving the clarity of the informal and formal liaison arrangements and the documentation of the pre-application process;**
- b. Providing a clearer auditing regime of the submitted documents against the requirements in the published guidance in the registration process on major applications;**
- c. A review the EIA-related procedures in terms of:**
 - **The advice provided in pre-application discussions;**
 - **Improving the quality of the forms and documentation used; and**
 - **The training and briefing of officers in respect of EIA screening process.**

Issue 2: Consultation Processes

11. Consultation was undertaken by the applicant before it was submitted and subsequently by the council. The approach to consultation used would have been expected to have identified any major concerns. The fact is however that it did not. This is reflected in the scale of concerns that have arisen after the event and also the nature of those concerns (the impact on Port Meadow and the risks from contamination).
12. It has been a central part of the review process to try and identify the reasons for this failure in the outcome to established processes for public consultation. A number of representations have suggested that this might have been deliberate. It is therefore necessary to make it clear that the conclusion of this Review is that there is no evidence of such malpractice.
13. The pre-application processes, including voluntary steps taken by the applicant, failed because: some of those most affected were not involved or even aware of the application or processes; and because other factors combined meaning that individuals, communities and organisations were not enabled to understand or to respond to the scale and location of what was proposed.
14. It is therefore concluded that there was an inadequate consultation on the RDW planning application arising from a combination of separate and inter-related circumstances. The experience was in contrast with the standard of consultation carried out on other recent developments by the University and Colleges.

Recommendation 2: Consultation Processes.

It is recommended that:

a. Pre-application guidelines:

- Allow more time between project inception and the proposed commencement date
- Engage other appropriate parties (including members) in pre-application discussions, and not just officers;
- Provide opportunities for presentations and briefings to members;
- Encourage a two-stage consultation on major applications ; and
- Set down clearer guidelines on the desired documentation.

b. Post-application guidance on planning processes enables:

- A more structured approach to the weekly lists to enable the ready identification of major developments;
- A more effective provision of Site Notices;
- Additional means for communicating the scale and massing of major developments;
- Consultation on revised drawings;
- The provision of feedback to respondents on planning decisions; and
- The planning processes to be more integrated with other regulatory processes.

Issue 3: Visual Impacts & Quality of Design

15. This Review has considered whether the visual impact of the RDW development was properly assessed. This is inextricably linked to the issues related to the quality of design of the development in terms the impact of the development on the built environment.
16. The main impact of the scheme arose not only from the increased density of the scheme but also from the stated desire by the University's architects to have a new design concept in contrast to the earlier Castle Mill development by having "*a strong contemporary feel*" and with "*sculptural forms*". However the applicant's Design and Access Statement did not assess the scheme terms in terms of its impact on the views from Port Meadow nor on William Lucy Way residences. In addition a range of other design factors should have been assessed explicitly. The only assessment that was undertaken (an analysis of the skyline silhouette) was required after concern was expressed by officers in their evaluation of the application. The visual assessment to the planning committee was therefore limited.
17. Although Oxford City's 'View Cone Policy' has been at the forefront of planning thinking and policy it now faces specific challenges set out in paragraphs 136-139 of the Main Report. These issues have been highlighted in this Review. The joint work by the City Council, English Heritage and Oxford Preservation Trust in reviewing the policy is therefore welcomed, and needs to be expedited and, if possible, embedded in policy.
18. The experience of the RDW application highlights the expectations for higher standards of design of new development and the challenges in delivering it. The Review has therefore highlighted the important contribution of local design review panels in the evaluation of major projects and the need to increase the level of design awareness amongst staff and members, and appraisal tools available to them. The actions already being taken by the Council are therefore to be welcomed and supported, in particular the in-house training programme and the enhanced Design Review Panel within a framework discussed in the main report.

Recommendation 3: Visual Impacts & Quality of Design

It is recommended that existing initiatives to improve the design capacity of the Council should be complemented by action to enhance the use of in-house expertise and to provide members with greater support in their considerations of design issues and visual impacts by:

- a. **Developing greater technical capacity (IT and skills) to take advantage of the rapidly evolving potential for interpreting design and integration with established GIS systems;**
- b. **Improving the advice on the design evidence used to support application, in particular in the preparation of Design and Access Statements;**
- c. **Enhancing member 'training' on design and planning;**
- d. **Investigating and adopting the best new field-based approaches to assessing the visual impact of new development.**

Issue 4: Committee Reporting

19. The membership of the committee was cross party, composed of very experienced members and who individually bring a great range of additional relevant experience and skills which are relevant to planning. This Review has assessed the committee process in terms of whether all material considerations were reviewed, how effective was the presentation of material and whether it was misled in any way.
20. It has been concluded that all relevant material policy considerations were referred to in the committee report or the supporting documents. A survey of committee members has also confirmed that the members had no difficulty in accessing these documents and were all aware of their content. The presentation by officers on the visual impact on the skyline was clear for most of the members involved but the information provided to them about the design of the buildings and the impact of the height reduction offered by the applicant was not.
21. In terms of the professional position of officers there was a general acceptance that the scheme even as modified had an adverse effect of the view cone; there was a need for a balancing of the issues against the other policy objectives of the plan (namely the provision of student accommodation); and the issues raised were matters of degree relative to the impact that would otherwise arise from the implementation of the extant consent. These matters were presented in the committee report.
22. The more general concern has been whether the committee were in anyway misled in their briefing of the matters upon which they had to make a decision. It is considered that the report to committee made very clear that the choice that was required, namely, between the need for student accommodation and the visual impact, in the light of the established uses for the site in policy and extant consents. However the report could have been clearer in highlighting the new design concept proposed by the architect and in the evaluation and analysis of the weight that should be given in the assessment of these choices.
23. It is therefore considered that the form of reporting was not of itself misleading although it was not as comprehensive as it could have been. The experience and expertise on the committee made it well equipped to handle the complex of issues and the balance of judgement that was required. There is however potential for improvements in reporting that have been identified.

Recommendation 4: Committee Reporting

It recommended that the presentation of the planning issues of major applications to committee should be strengthened by

- a. **A systematic documentation of the policy evaluation including clarification of the extent and nature of any departure from policy;**
- b. **A more evidenced-based approach to the presentation of the choices before committee, and the impact of mitigation through conditions in reports; and**
- c. **The use of alternative means of addressing design considerations (e.g. in terms of visualisations and where necessary site visits).**

Issue 5: Enforcement of Planning Conditions

24. The RDW site has a level of contamination arising from its former use as railway sidings and having made-up land. This was reflected in the original planning consent in 2000, and was built into the approval of the detailed consent in 2002.
25. Although there was no pre-application discussion with the Oxford City Council's Environment Department (ED) contamination was tested for as part of the geotechnical background report in 2012 and a standard condition was placed on the consent given to the developer. The key aspect of this Condition was that it should be discharged prior to commencement of development and prior to occupation. Both of these requirements were breached by the University.
26. The breach of planning conditions was brought to the attention of planning officers sometime in mid-2012 who sought an early retrospective discharge of the condition and as a result no formal enforcement proceedings have been taken. Subsequent work has now reached a point which would allow the condition 16 to be discharged.
27. The conclusions of this Review are that:
 - a. The use of conditions was appropriate means of controlling development and securing the proper management of the contamination issues involved.
 - b. The choice of an informal procedure was a matter for the local planning authority but the local planning authority should keep a record of the action taken, including the decision itself about whether or not to take formal enforcement action.
 - c. The response by the Environment Department of the Council has been correct and prompt, which has helped significantly in bringing matters under more effective control.
 - d. A review should be undertaken of the lessons that have arisen in terms of the setting of conditions, the notification of decisions, project management, and the links to building control, planning control and environmental management.
 - e. The use of a range of media might be helpful in providing accurate and accessible information that addresses these concerns.

Recommendation 5: Planning Conditions

It is recommended that enforcement procedures and coordination should be strengthened through:

- a. An auditable process for determining the appropriate enforcement action;**
- b. A review of the use of standard planning conditions, and updating of them where necessary;**
- c. Inter-agency co-ordination to address the issues set out in the main report;**
- d. The use of a range of media should be considered to provide accurate and accessible information that addresses these concerns.**

Wider Implications

28. There is a commitment by the Council to learn and act on the experience. The recommendations in this report are not a shopping list of potential actions that could be taken but a programme of action.
29. The planning decision on the RDW development raised wider planning issues that need to be addressed in terms of promoting good consultation and sensitive design. The pre-application process is becoming a more significant part of the planning system and the need to strengthen the pre-application process on major schemes therefore is a common thread throughout this report
30. Wider concern has been raised about the commitment to the existing heritage policies and the need to bring forward the Heritage Strategy. There is much in hand but it is important that it is integrated into the assessment process and not treated just as a specialist area.
31. The available land for new development inevitably will get tighter, with an associated increased pressure for increasing density and scales of development. The longer term view of the balance between the provision of much needed accommodation, the protection of the Greenbelt and the safeguarding of Oxford's heritage now needs to be refreshed and reflected in the development plan policies for Oxford and the implications of the 1990 Act clarified.
32. In terms of meeting the needs of the Universities and Colleges, it is considered that this requires a more strategic approach to assessing their needs, and programme-based approach to development proposals. This would better manage the issues that arise from a project - based approach and would allow a better and timelier interface with the planning process. There is already a dialogue between the Council and the Universities on this issue.
33. The interdependence between the Universities, Colleges and the City cannot be underestimated. It is clear universities are increasingly defined by the City within which they are located, whilst the universities can make a major contribution to meeting the challenges the City faces in improving the quality of life and liveability for all its communities. This requires engagement with the community on an ongoing process and not just as and when projects arise, in addition to regular and strategic engagement with the City Council and stakeholders.
34. This Review has therefore identified a range of wider implications that impinge on the planning process in Oxford. The initiatives that the City Council had already put in hand to address issues that have been dealt with in this Review are to be commended, especially in terms of the need to promote high standards of design.

Recommendation 6: Wider Planning Issues

It is recommended that Oxford City Council also gives consideration to:

- a. Enhancing the planning service in terms of planning process, policy and strategy as specified in Section I of the main report; and:**
- b. Progressing and formalising a more strategic approach to the future development needs and engagement with the Universities and Colleges.**

Findings and Recommendations

35. This Review has identified issues at each stage of the planning process. These are set out in the Main Report (MR) and In summary arose from:

- A tight timescale (refer MR para. 46-47), in part created by policy requirements (refer MR para. 26-27), and a limited testing of alternative schemes (refer MR para. 115-117).
- An existing consent for the site (refer MR para. 20) and the planning policies (refer MR para.25) created a presumption in favour of the development of the site;
- Consultation arrangements which failed to reach some of those most affected by the scheme (refer MR para. 96-99); and
- The significantly different design concept refer MR (para. 130-132) and the increased scale of development compared with the original 2002 approved scheme (refer MR para.21); and
- The related lack of awareness of these differences (refer MR para.100 & 174).

These led to a series of decisions which resulted in a level of consultation and discussion that was not representative of the standards applied elsewhere in Oxford.

36. The report makes a range of recommendations in terms of the application of best practice which could help to increase the confidence of members, officers and the community in the planning process. These can be summarised under six headings:

- a. The Consultation Processes should be more proactive, especially, at the pre-application stage including the involvement of councillors (refer MR para.92-93 & 159);
- b. The practice already being applied in Oxford in the assessment of Visual Impact and Design of new development needs to be applied more generally and skills of officers and members enhanced (refer MR para 144);
- c. Planning committee papers could be clearer in setting out the implications of controversial decisions and supporting evidence base (refer MR para. 187-188);
- d. Further improvements in the processes and the coordination of issues such as EIA screening and managing land contamination which are cross cutting in their procedural requirements (refer MR para. 69-70 & 208);
- e. The implications of the RDW decision on existing planning policies needs to be reviewed (refer MR para. 215-216);
- f. The universities should consider how they could strengthen their relationships with the City and its communities on an ongoing basis (refer MR para. 217-219);.

These recommendations if implemented will enable a review of planning practice and a focus on drawing out the lessons that need to be learnt and applied.

MAIN REPORT

SECTION A: APPROACH TO THE REVIEW

Purpose of the Review

1. The purpose of this Independent Review of the Roger Dudman Way development is to assist the Council in its assessment of whether in the context of this development the City Council complied with its planning processes and met statutory and National Policy requirements, how the processes compare with other Local Planning Authorities, and best practice.
2. Specifically, the Council wishes to assess:
 - a. Whether material planning considerations were adequately assessed and described to the Planning Committee
 - b. Whether best practice was adopted in informing and consulting residents and stakeholders
 - c. Whether all the factors that could reasonably be considered by the Planning Committee were reported by officers and in a reasonable format.

In addition the Council wishes to identify best practice to maximise assurance in the planning process, promote good design and ensure that residents are consulted and listened to.

3. There are four specific issues which this Review has been asked to address:
 - a. The Extent, Form and Effectiveness of Public Consultation
 - b. The Assessment & Analysis of Visual Impact
 - c. Presentation of Analyses and Recommendations in the Officers Report
 - d. The Processes for Assessing and Analysing Ground Contamination

The terms of reference also make it clear that it is open to consider any other matters that arose in the investigations of this Review.

4. It also needs to be noted from the outset that two matters were outside the scope of the Review:
 - a. This report's purpose is to consider the effectiveness and appropriateness of the planning processes and does not evaluate any legal challenges organisations or individuals have sought to raise. As a corollary, the review has, wherever necessary, been mindful of any legal proceedings.
 - b. The Review is not an Inquiry as undertaken by the Planning Inspectorate. It therefore does not alter the decision to approve the application by Oxford City Council to approve the planning application. It is also important to understand that the Review was not charged with performing the role of a planning inspector whose job it is to determine whether an application should be approved or refused.
5. It has been asked whether, had the recommendations of this report already been adopted, the Planning Committee's decision on the RDW application would have been different. It is impossible to answer this hypothetical question because the answer would depend upon how, in that situation, each of the Councillors concerned would have weighed the evidence and decided to vote. In any case, this question is outside the Terms of Reference of this Review. Therefore any recommendation in this report

about better practices and procedures does not imply either way that they would, with the benefit of hindsight, have led to a different decision on the application.

Approach to the Review

6. The Review has not been constrained by the procedures that apply to a formal inquiry and has been substantially enhanced by an ability to engage with people. The following approach has therefore guided the conduct of the Review:
 - **Forward Looking:** The Review has been focussed on what, if anything will help councillors to have a better understanding and consideration of future sensitive complex proposals, especially where there are key design issues. The recommendations in this report therefore set out lessons that can be learnt from this experience which could help in the future considerations of development proposals;
 - **Collaborative Planning:** The focus has been on identifying how the consideration of significant development proposals can be more collaborative, drawing on the knowledge and insights of local communities, and lead to less polarised engagement between the various interest groups. The Review's recommendations therefore do not just relate to the formal planning processes but to the wider engagement process within which they take place; and
 - **Integrated Policies:** It has also been considered essential to consider the specific concerns raised about the Roger Dudman Way development within a wider context in terms of design and policy, and the extent to which the handling of the application was helped or hindered by this. This in particular relates to the National Planning Policy Framework and the approved / adopted development plan for the City, given the fact that decisions on applications should be plan-led¹.

Consultation Process on the Review

7. Great weight has been placed upon engaging with all sectors of the planning community in Oxford. Therefore the review has not been carried out as solely a desk exercise. It has sought to include a wide range of interested parties (including members, staff, supporters and objectors) in discussion and dialogue within the time and resource constraints available. It should be noted although any responses received have been taken into consideration, direct invitations were only sent to those who were who were involved at some stage in the consultation and responded to the development. This has raised criticism from some quarters but it was necessary for the Review to focus on its purpose and not to be used as a plebiscite on the public reaction to the Council's decision. A consequence of the consultation process is that people have raised a wide range of issues. Where these lie outside the formal Terms of Reference for the Review they have been identified with appropriate follow up action.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 required that decisions on planning applications are determined in accordance with the development plan unless material considerations indicated otherwise: this is referred to as a 'plan-led' system

8. A wide range of interested parties, individuals and organisations, have been contacted (see Appendix B). These contacts were made through the following mechanisms:
 - a. Roundtable sessions with the key groups of interest – the civic and community groups, the applicant, local members and its agents and council officers;
 - b. Individual face to face meetings;
 - c. Contact with all who made representations to the Council or University pre-application, at the time it was submitted or subsequently;
 - d. On-line survey to provide structured responses to the issues being addressed by the Review;
 - e. Questionnaire Survey of Councillors who were on the West Area Planning Committee or currently serve on either Planning Committee of Oxford City Council; and
 - f. Press briefings.
9. The Review has been conducted as an 'open' process. Although therefore the meetings have not been held in public their content and outcomes have been reflected in this report. This has not been problematic for the conduct of the Review since there have been very few occasions when individuals or organisations have not been prepared to speak on the public record. Communications with the Review will be made available.
10. There has also been a chain of correspondence between some key groups and the council. These have tended to be in the form of 'Question and Answer' notes about specific points of concern. These 'Q & As' are not repeated in this report.
11. The weight that is given to any representation is proportionate to the level of evidential support that lies behind the wide range of views and feelings contained within them. Equally the importance that has been given has not been dictated by the style and professionalism of the submission but by its substance.

Best Practice

12. The Review has been asked to identify best practice, in particular in relation to:
 - improving the confidence in the planning process;
 - promoting good design;
 - informing and consulting residents and other stakeholders; and
 - ensuring that residents are listened to.
13. Although the Review gives consideration to legal and administrative procedures, best practice goes beyond these. There are volumes of advice about best practice in all the above matters. The approach in this Review to the identification of 'best practice' has been based on established and emerging professional standards and not theoretical possibilities. Within the constraints of this Review, particular weight has been to the following sources:
 - Advice from government or its agencies (e.g. in previous and emerging national planning guidance);
 - The best practice guidance already promoted by Oxford City Council;
 - The best practice standards that have been used elsewhere in the City; and
 - The practice used elsewhere in some comparable situations.

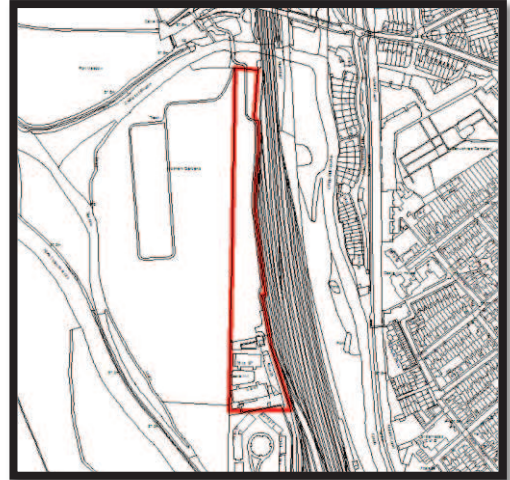
Legal Challenges

14. The Review has also had to take into account the legal proceedings that have been associated in one way or another with the RDW development. In addition the Review has been conducted as far as possible in a way that has allowed all views to be heard but where necessary, in exceptional cases, opinions have been summarised to avoid challenge to the manner in which they have been expressed.
15. The challenges relate to the assessment of environmental impact and the need for environmental protection. These are subject to different legislation through the EIA regulations and Environmental Protection Act, although these interact with the planning process in the handling of the screening of the planning application and the discharge of the planning conditions. The Review has therefore given consideration to these matters.

SECTION B: THE PLANNING CONTEXT

Context

16. Roger Dudman Way (RDW) is on the west side of the city close to the City Centre and rail station (see Appendix H). It is a 1.2ha brownfield site, adjacent to the main line railway into Oxford station to the south and is a former railway siding. Its linear form (outlined in red on diagram), adjacent to railway lines and its limited access from Botley Road, make it ill-suited to commercial development, family housing, or other uses which would generate significant levels of traffic.



17. It has however been recognised for at least 15 years as being suited to the needs of the University's graduate students because of its links by foot and cycle to the city centre, Walton Street and North Oxford. Therefore in 2002 a detailed planning consent was granted for a 3/4-storey development which was partially implemented. A subsequent planning application was made by the University of Oxford in November 2011 for 312 flats for postgraduate students on the Castle Mill site, Roger Dudman Way.
18. Its location, on the edge of the built up area, also adjoins the greenbelt and Port Meadow. Port Meadow is, inter alia, an area of ancient common land which is valued and protected for its nature conservation value and for the views it gives of the city and its historic skyline. It has been accepted that the development proposals for the RDW site affected neither the conservation value of the nature conservation designated areas to the north (the SAC and SSSI) nor the interests of the commoners. The issue that has been raised relate primarily to the visual impact of the development and need to decontaminate the site.
19. The following section outlines the history of planning applications for the Roger Dudman Way Site and summarises the key local planning policy considerations that were in force at the time of the committee's consideration, starting in February 2012. It also highlights the main national planning policies which have a bearing on the main focus of this review, although others policies had to be taken into account in determining the planning application.

Planning Applications

20. A range of planning permissions have also been granted for the site. These include an outline application for up to 650 bed space units in 2000; detailed application for 354 flats in 2002. The first phase of this consent for 125 flats was built and completed around 2004. There was therefore an extant consent to build a further 229 more student flats.

21. The University however decided that it wanted to revise the proposals to take account of the changing requirements for postgraduate accommodation as well as to build improvements into the design related to energy efficiency, noise and insulation. In doing so it also wanted to maximise the amount of accommodation it is able to provide for students on sites it developed. The 2011 application involved significant changes to the 2002 consent These differences included:

- 83 extra units and 130 extra bed spaces²
- 5741 sq. m extra floor area
- 2.5 m added in height³
- Change in materials from red brick to white render
- The loss of the central communal open space
- A new design concept⁴

Planning Permission	2002 Consent	2011 Application	Difference
Consented	125 (Built)		-
Consented	229 (Not Built)	312 (Built)	+83
TOTAL	354		

22. These changes therefore required a new planning application rather than a modification of the previous consent. This was recognised by the applicant in the supporting planning statement. This was also the opinion of the Council's planning officers. The increase in scale in the number of flats was also highlighted in the committee report. Reference has been made to an internal file note referring to the application as a 'reworking' of the earlier consent. The Review considers that whatever was intended by this phrase it did not affect the processing of the application nor how it was reported to committee. It was however right that the existing planning consent was treated as a material consideration which the committee had to take into account.

23. Even though the latest application was different from the earlier one, the earlier extant planning consent had established the principle of the development of the site for over a decade. None of the parties to this Review dispute this. It however did not remove the need to treat the latest proposals as a new application in its own right⁵. In addition the existing consent had previously identified environmental sensitivities in developing the site in terms of contamination and visual impact which would therefore need to be addressed in considering the 2011 application.

24. The West Area Planning Committee (WAPC) approved the application in February 2012. The planning approval had 23⁶ planning conditions, which in general are consistent with those conditions on the 2002 Planning permission. Most conditions are standard in nature for an application (see Appendix C). Nine conditions still need to be discharged of which Condition No. 16 'Ground Contamination and Conditions 5 & 7 relating to landscaping' are material to the issues addressed in this Review.

² The committee paper refers to 85 extra units ; 83 units is the figure provided by OCC to the Review

³ Estimated average storey height

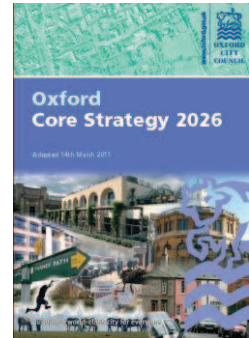
⁴ Changed from creating a 'sense of place and community' to creating contemporary feel & 'sculptural forms'

⁵ The application needed to be assessed against the development plan and national planning policies that were operative in 2012 which were different from those at the time of the earlier planning application in 2002 e.g. the Government's framework of PPSs and the new and emerging policies for student accommodation

⁶ The committee report listed 23 conditions but Condition No. 11 'Restrict delivery times' was subsumed under Conditions 21 & 22 as reflected in the Appendix C on conditions

Local Planning Context (Refer Appendix H)

25. The local planning policies which were material to the decision at the time of the Committee's decision are listed in Appendix D, together with the relevant national planning policy documents⁷ and emerging local planning policies (e.g. Sites & Allocation DPD). The key document at the time of the WAPC decision was (and still is) the Oxford Core Strategy 2026 and its related documents. These identify Roger Dudman Way site for development as Student Accommodation, reflecting the earlier planning consent and Local Plan zoning in following ways:



- a. The Core Strategy's requirement to maximise the use of previously used sites;
- b. Policy HP 26 *Land North of Roger Dudman Way* of the Sites and Housing DPD; and
- c. The evaluation of Site 5/10 (Roger Dudman Way site) in the Strategic Housing Land Availability Assessment (SHLAA).

26. Central to an understanding of the planning context of the RDW site is Policy CS25. This requires that the number of students attending the University of Oxford living outside college does not exceed 3000 students. Oxford Brookes also has a maximum allowance of 3000 students living outside its halls of residence. The Policy seeks to promote an integrated approach to the development and expansion of universities in the City. It therefore created an imperative upon both Universities in Oxford to bring forward new student accommodation to meet the needs generated by new development. Policy CS 25 does not of itself create a policy presumption in favour of new development. It should not however be used as a constraint on the provision of new dedicated student accommodation since there is a need to minimise the pressure on the general housing stock from demand for student accommodation.

27. Policy CS 25 does not identify particular sites but expects that "*Sites suitable for the development of student accommodation will be considered in the Site Allocations DPD*". The DPD⁸ was at a finalised stage at the time to the application and therefore was a material consideration. In this context it was important that it specifically identified the RDW site, and that consultation on the DPD had raised no objection in principle to the site. It was therefore appropriate to give substantial weight to the support in the DPD for the development of the RDW site.

28. The provisions of the DPD set out a range of other policy requirements which needed to be taken into account, in particular the following:

- a. There being no unacceptable impact on amenity for local residents;
- b. 10% of the total site area will be required for relaxation and quiet outdoor recreation functions unless there are exceptional circumstances; and
- a. The safeguarding of Port Meadow SSSI and the badger population.

⁷ It should be noted that the National Planning Policy Framework came into force a month later than the Planning Committee's determination of the planning application

⁸ This is referred to as the Sites and Housing Plan 2011-2026 adopted in February 2013

29. In addition there is a general requirement in the DPD's Policy HP9 'Design, Character and Context' for development to be related to their setting to strengthen, enhance and protect local character. Policy HP9 builds on Core Strategy Policies: CS12 'Biodiversity'; CS18 'Urban Design, Townscape Character and the Historic Environment'; and CS21 'Green Spaces, Leisure and Sport'. It is also related to the saved heritage policies (HE) of the Local Plan.
30. In the context of Port Meadow the following specific policies which seek to safeguard the views of the skyline and conservation areas are relevant, and are discussed in more detail in Section F:
- a. Core Strategy Policy CS18 'Urban Design, townscape character and the historic environment'
 - b. Heritage Policy HE10 'View Cones of Oxford'; and
 - c. Heritage Policy HE7 'Conservation Areas'.

Wider Planning Context

31. It is also necessary to have regard to the national policies that were operative at the time of the decision on the RDW planning application. These relevant national policies (see Appendix D) had to be taken into account. PPS5 'Planning for the Historic Environment' (and its associated Practice Guide) and PPS23 'Planning and Pollution Control' are particularly relevant to the issues that are being considered in this Review.
32. Questions have also been raised during the consultation on the Review about the implications of the 2012 National Planning Policy Framework (NPPF) and the Planning (Listed Buildings and Conservation Areas) Act 1990. Many of the Planning Policy Statements (PPSs) are now superseded by the NPPF which came into force in March 2012 (the month after the Committee decision on the application). The principles in the PPSs were however not fundamentally changed and the NPPF is relevant to what is considered best practice. The question of whether the 1990 Act was material to the consideration of the RDW planning application is discussed later in this Review in Sections D & F.
33. It is also noted that the Regional Spatial Strategy, operative at the time, promoted excellence in building design through Policy BE1 requiring local authorities to promote and support built excellence by promoting and supporting "design solutions relevant to context and which build upon local character and distinctiveness and sense of place". This was consistent with the policies of the local development plan.

SECTION C: QUESTIONS FOR THE REVIEW

Context

34. The Terms of Reference for the Review (Appendix A) are structured around the following themes:

- Public Consultation
- The Visual Impact
- The Reporting to Committee
- Ground Contamination

For each of these, key questions that the review has addressed are amplified below.

35. Public Consultation: The Council's consultation processes comprise web-based notification, adverts and consultation, site notices and written notification to amenity, community and other interest groups. In addition for major developments (refer Appendix I) there is encouragement for the applicant to undertake additional consultation, which in this case included a public exhibition and written notification to potential interest groups.

Questions:

- *Did the applicant, the University of Oxford, contact the full range of interest groups identified in their consultation statement?*
- *Was the consultation process effective in terms of communication, engagement and input to the decision making process?*
- *Was the approach adopted by the City Council in accord with its own policies and practices?*
- *How does this compare with 'best practice'?*

36. Assessment and Analysis of Visual Impact: At the time of the planning application the visual impact of the development had attracted little or no comment from amenity societies or the wider public. An assessment of the visual impact of the development was included in the committee report and was debated at the planning committee. Subsequently there has been major concern expressed when the development was built. This has led to concerns that the visual analysis used by the Council was misleading.

Questions:

- *Was the visual analysis too limited in its consideration?*
- *Were the consultants' reports misleading?*
- *What alternative forms of visual analysis could have been undertaken?*

37. Presentation of Analyses and Recommendations in Officers Report: The Head of Planning presented to the Planning Committee a single consolidated officer report and recommendations based on advice from the officers. Some objectors to the development consider that internal reports were suppressed and that the report to the planning committee failed to balance and take sufficient weight of the visual and environmental factors.

Questions:

- *Was the report to the planning committee balanced and, in particular, did it give sufficient weight of the visual and environmental factors?*
- *Were any internal reports or information suppressed?*

- *Did it provide the planning committee members with an adequate understanding of the issues?*

38. Ground Contamination and Planning Conditions: The planning application form identified that the site was not contaminated. However, the application documentation included an Environmental Review which did identify ground contamination. The planning conditions included a requirement to submit and agree a risk assessment for contamination, prior to a start on site. This assessment was however submitted after the commencement of construction, and was assessed by the Council as deficient. The Council and the Environment Agency have been working with the University to address the outstanding conditions, and there is some provision for retrospection in enforcement.

Questions

- *Could the enforcement of planning and environmental conditions have been strengthened?*
- *Were the planning conditions discharged in an appropriate manner?*
- *Were there other options available to the Council in the drafting, discharge and enforcement of the planning conditions?*

Additional Questions Raised through Consultation

39. In addition, individuals and organisations were asked to identify any particular questions that they wanted the Review to address. These were made at the face-to-face and roundtable sessions, in written or emailed form, or through an on-line survey. The representations covered a wide range of general and detailed concerns which people wanted to be addressed. They first of all reinforce the importance of the four core questions the Review has been asked to address by the City Council. They also raised related issues that the Review needs to address, including the relationship between the EIA and Planning processes. These can be considered in terms of the following four broad areas of concern:

- a. the quality and accuracy of information;
- b. the quality of the design itself;
- c. the wider planning issues raised; and
- d. concerns that are not part of the planning process itself but have a bearing on the outcomes.

40. Firstly, the quality and accuracy of information used and/or presented to WAPC was questioned in relation to a wide range of matters, including the following:

- List of persons consulted by the University
- Registering the application
- Nature of contamination
- The EIA screening
- The Mitigation Study
- Benefit of 'mitigation measures'
- Monitoring data (and expeditious provision)
- The Property Searches which did not make people aware of the 2002 consent;
- Loss of local knowledge with the current local area committees;

- The feedback process from those who commented on the application, including to statutory consultees (e.g. Environment Agency & Network Rail)

These issues represent more specific aspects of the general questions, which are the focus of the review, and are addressed as part of them.

41. The second general area of concern is the quality of the design itself, in particular the standard of architecture, the quality of the 'infrastructure' for student accommodation (e.g. public realm) and the use or otherwise the Local Design Review Panel. Although design considerations were not an explicit part of the terms of reference the quality of the design process cannot be separated from the discussion of visual impacts. It has therefore been addressed in this Review. In doing so the same principle has been used, namely that the Review does not seek to make a judgement on the quality of design but on the approach adopted to design matters in the decision making process.

42. The third group of additional issues relates to the wider planning issues raised by the decision to approve the Castle Mill development. There is a concern that the decision sets an undesirable precedent for future developments of this scale and type of urban edge location. Questions have also been asked about whether the development was contrary to the adopted Local Plan. As a corollary questions were raised about the interpretation of policy, including:

- The adequacy in the current policy framework (especially in terms of the View Cone and Student Accommodation policies);
- The need for more weight to be given to the international importance of Oxford and its university;
- The problems raised by the Castle Mill development are part of a wider concern about the heritage policy; and
- A commonly expressed concern that the relationship between the university and the City Council was imbalanced.

These matters go wider than the original brief but they are issues raised by the development. They are therefore addressed separately in Section I.

43. The fourth group of issues that has been raised, is not related to planning processes but does highlight the intensity of feelings that have arisen. These concerns relate to personal threats and distress, conflicts of interest and a sense of democratic injustice. These are matters which are not addressed explicitly in this report but if its recommendations are carried forward that they should reduce the likelihood of such concerns arising.

44. Finally, consideration was given to the matters raised through the Petition to the City Council in December 2012. These related to the consultative processes, the impact on views of Port Meadow and the contamination issues. They are being dealt with in different ways, as follows:

- A voluntary EIA by the applicant was sought – the scoping stage of this is now in hand and should report in 2014.
- Mitigation measures were sought to soften the visual impact - the applicant has agreed to undertake such a study from the perspectives both from Port Meadow and from William Lucy Way.
- Training needs for Oxford City Council - this is considered as part of this Review.

Implications for Review

45. In view of the wide range of issues that have been raised the Review addresses the six core issues in the following sections:

Section D. Planning Procedures

Section E. Consultation Processes

Section F. Visual Impact & Design Issues

Section G. Committee Reporting

Section H. Ground Contamination & Planning Conditions

Section I. Wider Planning Implications

SECTION D: PLANNING PROCEDURES

The Procedures

46. During 2011 Oxford University went through a range of pre-application stages from 2011 February onwards, to clear the path of any objections to the proposal. This involved:
- On-going meetings in accordance with the established Planning Performance Agreement between the City Council and Oxford University to agree information and documents required to support the application;
 - Meetings with immediate neighbours (e.g. allotment holders and businesses) and statutory bodies (e.g. Network Rail); and
 - Consultation meeting / exhibition on 24th October 2011 for members of the public and local councillors
47. Similarly the City Council undertook the following post-submission steps in processing the application:
- Registered 7th November 2011
 - EIA Screening November 2011
 - Site notices placed along boundary
 - Published in Weekly Lists
 - Press Notice placed in the local newspaper
 - Statutory and other interest groups notified
 - Site visit by case officer
 - Case conference by senior officers on issues to address
 - Meetings with applicant resulting in revised design (lowering the roofs)
 - Revised plans registered February 2012
 - WAPC decision 15th February 2012 approving the planning application
 - Discharge of conditions in 16th November 2012 (re. Materials, Drainage, Construction Management and Travel Plans) and 10th December 2012 (re Noise attenuation and Vibration)
 - The report was withdrawn from WAPC on the discharge of Condition 16, awaiting the outcome of the voluntary EIA being undertaken by the Applicant.

Questions Raised through Consultation

48. Amongst the objections raised were concerns about the planning processes themselves. Specific questions were asked about whether the application should have been validated when since it was considered that the application and EIA screening forms, list of consultees and grading of St Barnabas Church had errors and that the application was not accompanied by a heritage statement and photomontages.
49. Other questions about specific parts of the process and relating to wider concerns about the soundness of the judgments made in the determination of the application are summarised below, and are considered in later Sections of this report as listed:

- Section E addresses the question “Was OCC’s consultation process sound?”, and in particular:
 - Should the Freeman of Oxford and Wolvercote Commoners have been consulted?
 - Should further consultation (including with English Heritage) have taken place when the concerns on the view cone impacts were raised and new plans submitted?
- Section G addresses the question “Was the reporting to and considerations by the Committee sound?”, and in particular:
 - Should internal reports by the Heritage Officer and Tree specialist have been submitted to the committee?
 - Is Oxford University treated differently from other developers in Oxford?
 - Was the action by Oxford University to cut down trees on the proposed site a material consideration?
- Section H addresses the question “Was the post approval process sound?” and in particular:
 - What assessment of risks to public health and the environment were undertaken after the development had been started/ built?
 - Should enforcement action have been taken by the Council for the breach of planning conditions?

50. In addition the requirements for consultation were also affected by the decision that the planning proposal was considered to be in accord with the development plan. This matter is discussed further in Section I.

Assessment of Planning Processes

51. There is no obligation on applicants to undertake public consultation on a proposed development. However best practice encourages potential applicants to undertake consultation before submitting a planning application in order:
- To identify relevant planning policies and other material considerations associated with a proposed development;
 - To discuss possible mitigation of the impact of a proposed development;
 - To identify the information required to accompany a formal planning application;
 - To engage the local planning authority, statutory and non-statutory consultees; and
 - To engage elected members and local people, dependent on the nature and scale of the proposed development.

The university’s commitment to undertake pre-application consultation by the applicant was consistent in principle with these objectives, although as noted later it was not successful in achieving all these objectives.

52. The steps taken by the City Council to consult on the RDW application were also in accord with the statutory procedures required by regulations and in line with those generally used by the Council. These include its own guidance on Planning Application Procedures relating to applying, commenting, alerting and site notices. These are also

consistent with practice generally in English planning authorities and in accord with government regulation⁹.

53. Although the letter of the law in terms of the regulations was met by the applicant and City Council there have been challenges, directly or implicitly, over the judgements that were made which affected the way consultations were carried out in terms of:

- a) The Pre-application Process
- b) The Registration of the Application
- c) The Screening as an EIA development
- d) The Planning (Listed Buildings and Conservation Areas) Act 1990

These are considered in turn below.

(a) Pre-application Process

54. In accordance with government advice (most recently in the NPPF paragraphs 188-195) Oxford City Council has an established pre-application advice service level agreement (SLA) protocol. This has been the basis of a single contract to provide pre-application advice to the University of Oxford, rather than having a separate SLA for each application. Various representations have been made to the Review which have questioned the propriety of such discussions. It therefore needs to be made clear that such arrangements are not only proper but encouraged by the Government. *“Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties.”* In engaging in such discussions officers do not prejudice the decisions and do not decide policy but seek to explain and clarify policy requirements to prospective applicants.

55. Because of the number of applications by the University being dealt with each year there are not necessarily separate pre-application meetings for each development. Whilst this is understandable and is possibly expeditious, in the case of the RDW application it has resulted in a poor record of what material was presented to council officers (despite the provisions of the general protocol) and of the discussions and advice given. For example what plans and layouts and elevations were discussed is not clear. The pre-application process that was used therefore does not appear to have met the guidance, for example included in the LGA/PAS guidance on Probity in Planning which argues for a clear record of the process.

56. It is concluded that the Council’s approach to SLA for pre-application discussions with the University is sensible and should be strengthened by clearer documentation of what material has been presented and reviewed by the Council when this forms part of the formal planning application process. It is considered that this would provide greater reassurance that that pre-application discussions in no way fetter the committee’s later consideration of an application.

⁹ For example the LGA/PAS guidance on Probity in Planning 2013

(b) Registration of the Application

57. The schedule of requirements for registering a planning application is set out in the “Lists of National and Local Planning Application Validation Requirements”. Questions have been asked as to whether the application met these requirements and if not, whether it should have been validated. Appendix E compares the schedule with the list of documents submitted with the application. This confirms that documents relating to all the scheduled items were submitted or required as a condition of the approval. There were also documents which had limitations but these all related to matters over which a local planning authority has judgement to determine what it requires to make its decision.

58. It is concluded that it therefore was within the Council’s discretion to validate the application. There is however a need for a clear auditing regime of the submitted documents on major applications against the requirements in the published guidance.

59. In relation to the questions that have been raised about the validation of the application, a valid application comprises:

- Information requested on the standard application form
- Mandatory national information requirements, including a design and access statement if one is required
- Information specified on an LPA’s local list

It is concluded that the applicant met all the criteria in terms of the supporting material required to be submitted with the application.

60. It is accepted that the submitted information contained errors and was not adequate in various ways, for example, in terms of the assessment of visual impact and statements on contamination (see Sections F & H). It was open to the Council to ask for additional information and for a corrected form to be submitted. Government Guidance on information requirements and validation (CLG 2010) is clear that in circumstances where *“the supporting information may be inadequate or its quality may be a concern”* this does not form grounds for invalidating applications. In such circumstances where the authority has validated the application as is the case with the RDW application then the local planning authority would be expected to request clarification or further information during the determination process.

61. A related issue has been raised in the representations received on the Review. This relates to the question of whether any errors or limitations in the documents that were submitted in support of the planning application should have been listed in the committee report. This question is dealt with in Section G.

62. In the case of RDW, it is concluded that the Council sought to deal with the limitations in submitted material through its negotiations and conditions. A systematic audit of the submitted material would have provided to a greater clarity in demonstrating how it dealt with any limitations in submitted material.

(c) EIA Screening

63. An EIA was not undertaken by the applicant before submission. As a result the Council undertook a screening of the application which concluded that it fell within the provisions of Schedule 2 of the EIA Regulations but its potential impacts were not sufficiently significant to require an EIA. Since then although there has been an unsuccessful application for judicial review the decision not to undertake an EIA, there has been a commitment by the applicant to prepare a voluntary Environmental Statement.
64. This may provide the opportunity for the applicant and the Council to consider additional mitigation measures¹⁰. The University has already offered to extend the mitigation measures and has been in dialogue with interest groups and the Council. Beyond this general observation it is considered inappropriate for the Review to make any comment on the matters that are subject to ongoing statutory processes and potentially may be brought before the court. This applies particularly to matters that have been raised in relation to the voluntary EIA being undertaken by the University. It is however appropriate within the terms of this review to consider whether there are any immediately lessons for best practice (others may emerge from the final outcome of the current ongoing processes).
65. In this respect it is considered that the current debate may not have arisen if the decisions taken had been supported by greater clarity in the audit trail in terms of the following:
- a. Pre-application advice : it is not clear whether the need for an Environmental Statement was discussed as part of the pre-application service provided by the Council to the applicant but it is noted that the planning statement by the applicant did not address the issue
 - b. Form used for EIA Screening : the form used for the RDW application screening was limited and dated. It contrasts with the checklist used by PINS and is recommended¹¹ as a possible useful foundation for screening for EIA by local planning authorities (see Appendix F). This was updated earlier this year, but this should be reviewed further.
 - c. The Assessment: there is a requirement for assessment against all three schedules in the regulations: Schedule 3 of the regulations. Selection criteria for screening Schedule 2 development were not referred to explicitly yet were critical to the judgements of the RDW application.
 - d. The basis of the screening decision: the screening decision anticipated the benefits of potential mitigation of unassessed potential impacts. This concern has been reflected also in the later discussions about the need for EIA screening on planning conditions. There was therefore a conflation of whether the development as submitted could have potential impacts as opposed to whether they could be mitigated.

¹⁰ For example in maintenance and management regimes of the existing trees and spinney; or noise attenuation that exists whether or not this is a result of the development

¹¹ Refer Planning Portal : the UK Government's online planning and building regulations resource for England and Wales

66. It is therefore concluded in this Review that the screening process did not systematically set out the full basis of the evaluation and conclusions. Therefore whatever the outcome of the current work on the voluntary EIA, the EIA-related procedures should be reviewed in terms of:

- The advice provided in pre-application discussions;
- The quality of the forms and documentation used; and
- The training and briefing of officers in respect of EIA screening process.

(d) Planning (Listed Buildings and Conservation Areas) Act 1990

67. It has also been asked (through consultation on the Review) whether the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 should also be taken into account in the consideration of the RDW planning application. This Act sets out a range of statutory duties on Councils. Section 67 of this Act requires additional publicity and consultation to be carried out where an application for planning permission for any development of land is made to a local planning authority and the development would, in the opinion of the authority, affect the setting of a listed building.

68. The recent Barnwell Manor Case emphasises the approach that needs to be taken to the assessment of the setting and the extent to which this affects the ‘balancing’ exercise required in reaching a planning decision. This Review has not sought to evaluate the implications of this judgement but notes that Oxford City Council’s planning policies for protecting its skyline are based upon a strategic approach to the setting of heritage assets which is the spirit of the 1990 Act. These matters are addressed in the review of the View Cone Policy HE10 discussed in Section F. It is concluded however that there is a need to clarify the implications of this recent decision in light of established and emerging policy for the protected views and other views around Oxford. This is discussed later in this Report (paragraphs 161-164 & 215).

Recommendations

69. The findings of this Review are that the requirements of planning regulations were met by the applicant and City Council in the processing of the RDW application and that the Council’s approach to service level agreement for pre-application discussions is sensible.

70. However, the Review has highlighted issues that need to be addressed in terms of the pre-application negotiations, the registration of applications and the EIA screening process in the application of the statutory duties and planning policies. Therefore **Recommendation 1** sets out the action required to strengthen the planning processes. The issues concerning the application of the 1990 Act are covered in the recommendations on the wider planning implications (paragraph 215).

Recommendation 1: Planning Procedures

It is recommended that the planning processes should be strengthened by

- a. Improving the clarity of the informal and formal liaison arrangements and the documentation of the pre-application process;
- b. Providing a clearer auditing regime of the submitted documents against the requirements in the published guidance in the registration process on major applications;
- c. A review the EIA-related procedures in terms of:
 - The advice provided in pre-application discussions;
 - Improving the quality of the forms and documentation used; and
 - The training and briefing of officers in respect of EIA screening process.

SECTION E: CONSULTATION PROCESSES

Context

71. Consultation was undertaken on the RDW application by the applicant before it was submitted and subsequently by the council. A principal consideration of this Review is the level and form of public consultation that should have been undertaken on the RDW application in terms of statutory requirements and best practice.
72. Applicants are encouraged to undertake prior consultation before submitting a planning application to a local council for approval. This is not legal requirement but good practice. This is often misunderstood by members of the public who assume that an applicant has a duty to consult. However the consultative process an applicant undertakes is a material consideration in the determination of the application by the council.
73. The planning system requires Local Authorities to undertake consultation on planning applications. The form of consultation is determined by regulations depending on the application, the minimum being:
- The placing of site notices and, where necessary, adverts
 - Consultation with statutory agencies
 - Display on a website
- All of these were undertaken by Oxford City Council. Issues have been raised in respect of each of these requirements (discussed below) but in principle the Council fulfilled its statutory duties in this respect.
74. The statutory requirements for consultation would have been greater if the planning application had been considered to be:
- A departure from the provisions of the development plan;
 - An application requiring an EIA to be undertaken; or
 - Subject to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990.
75. Each of these matters has its own requirement which would have resulted in additional advertisements and/or notification to statutory authorities. In addition it would also have been appropriate, although not required, for the Council to consult on the amended plans for the roofs, which were registered after the application had been registered, and the initial consultation period ended. It should be noted that it would still have been open to the Council to approve the application in the light of other material considerations, in any of these eventualities.

Pre Application Consultation on Roger Dudman Way Proposals

76. The context to the University's decisions lay around the issue of student numbers, i.e. the 3000 rule, and the University's concern that development on the Royal Observatory Quarter (the ROQ site) should not be delayed or stopped. The University therefore held discussions between members of the City Council over planning for student numbers at the beginning of 2010. Its final decision to proceed with Castle Mill was taken in May 2011 although meetings were already being started earlier in

2011 with planning officers in accordance with the Planning Pre-application Service Protocol with the University.

77. On the basis of advice from the local authority the applicant undertook consultation as part of the pre-application process. This consisted of a series of meetings with planning officers in accordance with protocol. There was also consultation with the ward councillor, the Allotment Association and Turbo-Teds Nursery. In addition a public exhibition was held on 24 October 2011 at Castle Mill to which local residents, allotment holders, nursery staff/owners and some local community associations, were invited, and at which the finalised plans of the applicant were available for inspection. As is noted later in this report not all the intended organisations received their notice of the event (e.g. Oxford Civic Society).

78. The main areas of concern raised through the consultation by the applicant included:

- the provisions for badgers and stored surface water;
- the management of the construction phase of the development;
- the poor quality of the pedestrian access along Roger Dudman Way;
- the temporary closure of the footpath/cycle route to Walton Well Road;
- the hours of operation of the site for the delivery of materials; and
- vehicle access arrangements especially at the junction with Botley Road.

None of these issues related to the key issue that have been raised since, namely, the visual impact on Port Meadow and risks from contamination.

Post-application Consultation

79. Although the planning officers took account of the consultation undertaken by the applicant they did not rely on it, but undertook their own consultations by:

- Posting up 6 site notices along the length of the application;
- Advertisement in the local paper;
- Web-information;
- Circulation of the weekly list as requested (including to amenity societies); and
- Direct consultation with the statutory authorities – Network Rail, Environment Agency, English Nature, Thames Water, the Highway Authority and Thames Valley Police.

80. The specific concerns about who should have been consulted (refer paragraph 49) have been assessed in this Review, and it has been informed that:

- Separate consultation was undertaken on the tree planting condition that formed part of the planning approval with a wide range of interested parties;¹²
- Decisions that relate to the ownership and management of Port Meadow and Wolvercote Common, including access, works, agricultural and public activities will be subject to consultation and agreement with the Freeman and Commoners having regard to their respective rights over the Meadow and

¹² This included the Sheriff, the Freeman of Oxford, Wolvercote Commoners, the Environment Agency, Natural England, the Forest of Oxford, the Port Meadow Protection Group, Oxford City Parks Dept, Oxford City Planning Dept (Tree Officer), Local Ward Councillors and Cripsey Meadow Allotments

Common. This does however not extend to a right to be consulted on planning applications as such. Representations that this Review has received from the Wolvercote Commoners state that they did not need to be consulted since their interests were not affected by buildings that are as far removed as those of the Castle Mill blocks.

- English Heritage (EH) needs to be notified of planning applications, inter alia, for development likely to affect the setting of a Grade I or II* listed building. This is a matter of judgment for the Council to make. Therefore the Council's decision not to consult EH did not invalidate the planning process even though it may have been desirable when the heritage issues were raised by the planning officers.

81. There was no statutory objection except to ensure that contamination issues were addressed, which was done through Condition 16. There were a range of detailed points including the following comments from the public:

- Access, noise and operation during construction and longer term;
- Access along Roger Dudman Way;
- The overambitious scale with greater density of buildings and character of development; and
- Issues related to the allotments.

Feedback about Consultation

82. Hearing about the development: Respondents told this Review how they had first found out about the development. Most people who replied to the Review had become aware of the development by seeing it being constructed but there were others who had engaged with the earlier consultation processes. Some people had also heard through press or internet coverage, and through other people, including protesters, people living locally, the Save the Port Meadow Campaign and CPRE.

83. Those who had heard about it in advance included people who had heard about it from the Council directly or through the University. People who heard about it during pre-application consultation did so through site notices, or direct contact with the allotment holders association and Venneit Close residents, or through planning policy and other documentation. Some respondents had heard well in advance that there would be development, through informal channels, local word of mouth or having been told many years before that blocks similar to the ones near the station were planned.

84. Having Your Say: Most respondents told this Review that they had found out too late to make formal representations, and therefore said that they had not had the chance to 'have their say'. Some sought to give feedback on the development after the development had been approved. They wrote letters to the Council and the University, and signed a petition from the Save the Port Meadow Campaign.

85. Respondents explained that they expected to hear about developments through leafleting, through local organisations, articles in the local paper, and notices in their areas. Some people specified the areas that should have had notices about this

development, including Wolvercote, Jericho, William Lucy Way, Aristotle Land and all access paths to Port Meadow. Because this was not done, there is a feeling that the development process was somehow being hidden.

86. Those who had made representations did so through the online portal, or through direct communication with the Council. For some people this had not worked well. Problems were identified related to the national online planning notification system, which is not operated by the Council, being out of order for periods of time and arising from the fact that the City Council no longer notifies residents by letter.
87. Respondents who had attended consultation events said they had been useful in some respects. Those who had not, wished the consultation events had been publicised more heavily. People said that discussions at the events helped clarify information about the nature of the proposed development scheme. People could put views forward and negotiate some aspects of the changes, such as access routes from Venneit Close to the towpath. People raised some issues with materials around the event, as discussed in the section on information.
88. Information and materials: Respondents to this review typically said they had not seen enough materials about the development. At the pre-application stage a lack of awareness of the development was linked to a lack of available information early on. There were some positive comments in broad terms about the materials that people had seen. The Council's online information was described as 'thorough' although some respondents queried whether people really had time to go through it all. The artistic impressions were generally said to be useful for generating debate although some said that they came too late to be used. The material in support of the decision was felt to be weak.
89. Most people who responded did not find out about the development until it was under construction. The information that respondents had seen was therefore generally after the event and from the local press and radio. This included the Oxford Mail, and the Oxford Times as well as websites campaigning against the development, including the Jericho Community Association, CPRE, the Save Port Meadow Campaign literature, party literature from the Green Party and Liberal Democrats), and statements of councillors and would-be councillors before the local elections.
90. Some people said they had seen Council maps and diagrams and the West Area Planning Committee minutes. Others mentioned the architects' drawings and illustrations of the intended development. Some said these were felt to be misrepresentative in terms of the height of the building.

Best Practice

91. The generally accepted principles of best practice in consultation for planning are that to be effective engagement should be:
- Timely and Sustained – events and activities should start before any planning decisions are made and engagement should last throughout the planning processes and beyond.
 - Inclusive for all local people - those living and working in an area have a right to be involved, all parties are welcome, and processes must take account of peoples' varied needs.
 - Two Way, Open and Responsive - communication should be discursive not prescriptive, so that information can be debated and ideas exchanged.
 - A matter of public record – the processes must be documented and published.
92. There are however limitations on applying these principles of consultation once an application has been received and registered. This arises from the formal administrative nature of the procedures whereby an application has to be determined as submitted¹³ and is capable of being judicially reviewed. These limitations have been recognised as constraining the consultative process despite the best intentions of the system¹⁴. Therefore the greatest opportunity for effective consultations is at the pre-application process engaging not just the local planning authority, statutory consultees, but also elected members, non-statutory organisations and local people.
93. This is reflected in the NPPF which states: *"Applicants will be expected to work closely with those directly affected by their proposals to evolve designs that take account of the views of the community. Proposals that can demonstrate this in developing the design of the new development should be looked on more favourably."* This has a direct relevance to the Review. In addition to the involvement of members in the pre-application process it is also now recognised as being beneficial without having to prejudice the probity of the committee considerations. In particular it helps identify questions that must be addressed through the supporting material with an application.
94. Such an approach to include members has been reflected in the consultation on the Review and could strengthen the current practice of notifying members of upcoming applications. It has for example been suggested that Members could be made more aware of major projects by reporting the completion of Planning Performance Agreements at the start of a project (although Members need not be involved in the preparation of such agreements). Similarly the introduction of an interim reporting stage to members during the pre-application stage has been suggested would help identify the key planning issues, with presentations of the proposals by the design team, with officers present, to the Planning Committee and local members.

¹³ This is reflected in the following: An authority can suggest revisions but cannot require them; there are no third party rights, except for objections to be taken into account in the consideration of the application; and there is no automatic right to be heard.

¹⁴ It has always been a guiding principle of planning to promote public participation in planning decisions but the government has stated that "people have been put off from getting involved (in planning decisions) because planning policy itself has become so elaborate and forbidding " NPPF Introduction.

Assessment

95. The development was one of the larger housing developments in recent years in Oxford. The approach to consultation used would have been expected to have identified any major concerns. The fact is however that it did not. This is reflected in the scale of concerns that have arisen after the event and also the nature of those concerns (the impact on Port Meadow and the risks from contamination). These concerns in part arise from the contrast with past levels of consultation. For example in the case of the Berkeley Homes development ('Waterside') north of the RDW block consultation sought to ensure that views from Port Meadow were protected, and resulted in the developer scaling down proposals.
96. The consultative processes on the RDW development were not adequate for a combination of reasons and did not meet best practice. It has therefore been a central part of the review process to try and identify the reasons for this failure in the outcome to the established processes for public consultation. A number of representations have suggested that this might have been deliberate. It is therefore necessary to make it clear that the conclusion of this Review is that there is no evidence of such malpractice. The fact is that the significance of the impact of the development was not fully appreciated by most of those who were notified, and might have been expected to respond, for example, even where amenity societies confirmed that they had received notice of the scheme.
97. From extensive consultation undertaken in this Review it is concluded that the explanation lies in a combination of factors. Individually these factors were not critical but collectively they resulted in the scale and location of what was proposed not being understood by a wide range of individuals, communities and organisation and therefore there being little response. It is clear that if it had occurred people would have sought modification and mitigation of the scheme, which they are now seeking to do retrospectively.
98. At the pre-application stage the following factors contributed to the inadequate consultation:
- a. The range of communities who were supposed to be contacted was limited anyway and did not include the communities who use Port Meadow;
 - b. The applicant's consultants failed to invite those whom the applicant thought had been invited (most notably those from the William Lucy Way Development);
 - c. The consultation relied on a public meeting which was hosted at a distance from the main area of population affected, whilst there was only limited wider publicity and no record of who attended the events;
 - d. The consultation was on the finalised plans not on draft options;
 - e. Although it was obvious that key amenity societies had not responded there was no follow up to find out why; and
 - f. There was no pre-application briefing given to members, which might have triggered concerns (bearing in mind that at least two members had concerns when it came to committee).

99. Similarly at the post-application stage the implementation of the Council's procedures also had unintended consequences:

- a. The standard consultation was used but, given the applicant's description as an 'extension', this might have given a misleading impression on two counts: firstly, that it was an 'extension' of an existing planning consent when it was a new application; and secondly, that it was a smaller part of a larger scheme, even though the adverts and notice made it clear that the application was for 312 student flats;
- b. Similarly, the address on 'Roger Dudman Way' may not have triggered people's attention as a site adjoining Port Meadow;
- c. The location of the site notices were not in places that were high profile for those who later were to raise objections;
- d. The applicant's statements about their consultation that accompanied the application were taken at face value;
- e. The Statement of Community Involvement (SCI) was consistent with the fact that no objection or even significant observations were raised by the major organisations who receive and review the weekly lists of applications;
- f. There was no review of the consultation requirements once issues had been raised internally about the visual impacts; and
- g. The opportunity to consult on the revised drawings (related to the roof design) which sought to mitigate the visual impacts was not used.

100. As a result the consultation did not match up to the four criteria of best practice set out in paragraph 91:

- The events and activities were started after the key decisions had been made by the applicant;
- Those living and working in an area were not involved to the extent that the applicant had wanted and communication was not well tailored to non-planners;
- As a result the processes could not take account of local needs and aspirations; and
- The processes were not well documented.

101. It also needs to be recognised that some of the issues that have been confirmed by this Review were specific to the application. These include in particular those more affected by the development, namely the residents of William Lucy Way. This arose because of the organisation of pre-application consultation combined with the limitations of their property searches on house purchases (which do not extend beyond their boundary unless they choose) meant that the residents in William Lucy Way were unaware of the fact their open aspect would be curtailed by 3-4 storey developments in any event if the original consent had been implemented. The current liaison on possible mitigation should be seen as providing the opportunity to address the issues that prior consultation would have afforded the residents of William Lucy Way.

Recommendations

102. There was an inadequate consultation process on the RDW planning application which can be attributed to a combination of separate and inter-related circumstances. The experience was in stark contrast with the standard of consultation carried out on other developments by the University and colleges (e.g. the consultation on the Wolvercote Paper Mill development). There are lessons which can be learnt that have more general application in the consultative arrangements on major and/or sensitive development proposals which are reflected in ***Recommendation 2.***

Recommendation 2: Consultation Processes.

It is recommended that:

a. Pre-application guidelines:

- Allow more time between project inception and the proposed commencement date
- Engage other appropriate parties (including members) in pre-application discussions, and not just officers;
- Provide opportunities for presentations and briefings to members;
- Encourage a two-stage consultation on major applications ; and
- Set down clearer guidelines on the desired documentation.

b. Post-application guidance on planning processes enables;

- A more structured approach to the weekly lists to enable the ready identification of major developments;
- A more effective provision of Site Notices;
- Additional means for communicating the scale and massing of major developments;
- Consultation on revised drawings;
- The provision of feedback to respondents on planning decisions; and
- The planning processes to be more integrated with other regulatory processes.

SECTION F: VISUAL IMPACT AND DESIGN ISSUES

Context

103. This Review has been asked to look at whether the visual impact of the RDW development was properly assessed. This is inextricably linked to the issues that have been raised through consultation about the quality of design of the development. The following assessment therefore also considers: the approach to design and its assessment through the planning process; whether these had sufficient regard to the context of the development; and as a result to its visual impact. It does not therefore seek to evaluate the overall architectural merits of the scheme which would be beyond the remit of the Review. It focuses on practical evaluations of the effects of the development on the built environment, rather than stylistic or aesthetic concerns.
104. In assessing what is acceptable it is important to recognise that the reactions to any development are as much related to the fact it brings change people's lives as a response to intrinsic quality of the scheme. However a badly designed scheme will produce permanent adverse impacts as opposed to the temporary ones associated with coping with change. In addition it needs to be recognised that ex-ante visual assessments do not always match the actual impact of developments when built.
105. The policy context for the review of design issues including is well established nationally and locally. At a national level, a 'Key Principle' of the planning system is the promotion of high quality design. Government policy in 2011 as set out in PPS1, made it clear that *"Design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area and the way it functions, should not be accepted."* (para 34) This policy in PPS1 has been strengthened in national policy more recently in the NPPF which superseded the PPS1 in 2012. One of the 12 Core Principles of the NPPF is to *"always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings"*.
106. These national policy requirements were reflected in local planning policies in Oxford, which seek to *"Preserve and enhance Oxford's exceptional historic legacy of archaeology and monuments, buildings, designated landscapes, important views and setting, and the distinctive townscape characteristics is a core objective of planning for Oxford"*. As a result the Core strategy seeks *"to achieve a standard of architecture and urban design that upholds Oxford's worldwide reputation"*. This was also expressed in the general requirements of the draft Sites and Housing DPD Policy HP9 'Design, Character and Context' for development to be related to their setting to strengthen, enhance and protect local character.

107. There are therefore a wide range of policies that address design and character.¹⁵ In the context of Port Meadow there are additional specific policies which seek to safeguard the views of the skyline. These include:

- a. Policy CS18 'Urban Design, townscape character and the historic environment', which states that *"Planning permission will only be granted for development that demonstrates high-quality urban design through"*, inter alia, *"responding appropriately to the site and its surroundings"*. CS18 also states in relation to the protection of the skyline, that *"Views of the skyline of the historic centre will be protected."*; and
- b. Policy HE10 'View Cones of Oxford' states that *"The City Council will seek to retain significant views both within Oxford and from outside and protect the green backcloth from any adverse impact. Planning permission will not be granted for buildings or structures proposed within or close to the areas that are of special importance for the preservation of views of Oxford (the view cones) or buildings that are of a height which would detract from these views"*.

108. In addition a Design and Access Statement (DAS) is required which explains how a proposed development is a suitable response to the site and its setting, and demonstrates that it can be adequately accessed by prospective users. A DAS must explain the design principles and concepts that have been applied to the development in terms of the amount of development, layout, scale, landscaping and appearance in relation to its context. Appendix G sets out the approach that should be adopted to the evaluation of the context for design.

Visual and Design Considerations Submitted with the Application

109. The following extracts set out the core design statements in the DAS that accompanied the application.

- a. Design statement: *"A full planning permission already exists for this site from 2002. But due to new constraints including the need to provide a badger run with a new sett and foraging area on the West boundary and dimensional changes needed to achieve the latest higher thermal and acoustic requirements it was found that the original design was now not appropriate and a new scheme developed."*
- b. Constraints, Setting and General Description: *"There are good views across the allotments to Port Meadow towards the west but trees on the allotments west boundary screen the allotments and hence the site as viewed from the west / Port Meadow. Views on the east side overlook the railway lines and central Oxford beyond. The whole of the site can be viewed from the elevated position of the Walton Well road bridge situated to the north east"*

¹⁵ These include Core Strategy Policies CS18, CS19, CS12, CS13, CS21, CS23 and Local Plan Policies CP1, CP6, CP8, CP9, CP10, CP11, CP13, CP20, CP21, CP22, CP23 in addition to all the policies involved in protecting the Historic Environment (the HE Policies).

- c. Architecture: *“The client preference is for a strong, clean lined, contemporary feel to the buildings achieved by the use of sculptural forms in off white colouring set on a dark plinth throughout the scheme. It was concluded that phase 1 is of its time and that the new scheme should stand in its own right as a timeless contemporary design. The off white ‘render’ colouring links visually to a certain extent to the ‘Khuja’ flats building to the south shown in the photographs”.*

110. The Planning Statement that also accompanied the application had the following key statements Extract from Planning Statement:

2.1 *“The site lies beyond the boundary of Policy HE9, the high building area or Carfax height control. However, the northern end of the site falls within the Port Meadow view cone (Policy HE10).*

2.7 *The proposed development will be clearly visible from the allotments which are in the Oxford green belt. However, the re-orientation of most of the blocks from the previously approved design, means that the likely visual impact will be reduced compared with that scheme, notwithstanding the additional storey on six of the blocks. Careful assessment has been carried out of the visibility of the site, and the proposed development from Port Meadow. The northern most part of the site, which is within the defined ‘view cone’ is and will remain, undeveloped. An artificial badger sett has been constructed on this piece of the site. The first block adjoining the badger sett is proposed to be 4 storeys high, which is similar to the approved scheme. It has been concluded, following careful assessment, that the site will not be visible from the majority of Port Meadow.*

2.9 *The Core Strategy contains other policies concerned with urban design, townscape character and community safety. It is considered that the current proposals will comply with these policies (CS18 and CS19).*

4.1 *The current application will represent a significant improvement over the currently approved scheme both in terms of its energy performance and sustainability, but also its appearance and most importantly its efficient use of land.*

4.2 *The impact of the scheme in visual terms, will be little greater than the approved permission, because the re-orientation of the blocks will create a more interesting and articulated massing and form.”*

111. The accuracy of some of the statements included in the above extracts has been challenged by those who have raised concern about the proposal. For example, the statement that *“the site will not be visible from the majority of Port Meadow”* and *“represent a significant improvement over the currently approved scheme”*. No analysis was presented in support of these statements. The question of whether should have been part of the report to committee is considered in Section G,



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113. In addition the architect did undertake visualisations but again they were not part of the planning application. These were expressed as 'bird's-eye perspectives (see Diagram 2). Although this perspective is not the most relevant one it does communicate the scale and some of its relationships *(e.g. to William Lucy Way)



Diagram 2: Architect's visualisation of Scheme

114. The preferred scheme which forms the basis of the planning application was also shown in the context of the existing location mainly in relation to the allotments. There are views of the site but not of the relationship to Port Meadow (see diagram 3). Again, it is noted that these views are not those from which the scheme would be seen. They do however demonstrate that the technical capacity to visualise the scheme which could have been applied to other more relevant vantage points.

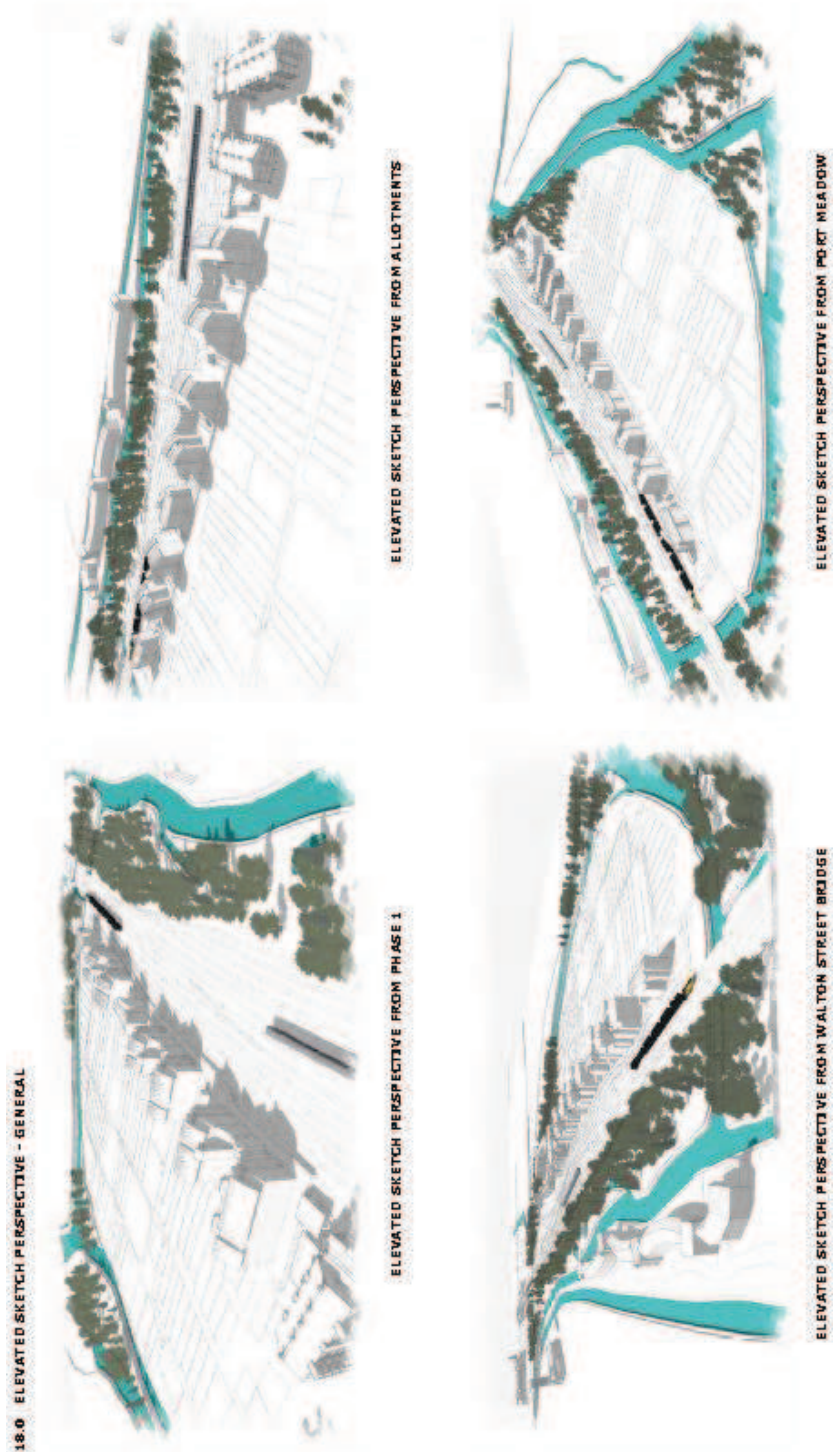


Diagram 3: Architect's visualisation of Setting

115. Whilst neither the DAS nor the Planning statement was accompanied by illustrations of the visual impact of the development within its context of Port Meadow, there was a range of options for the design and massing of the buildings tested by the architect but which were not included in the DAS (see Diagram 4 below which illustrates some initial options by the architects).

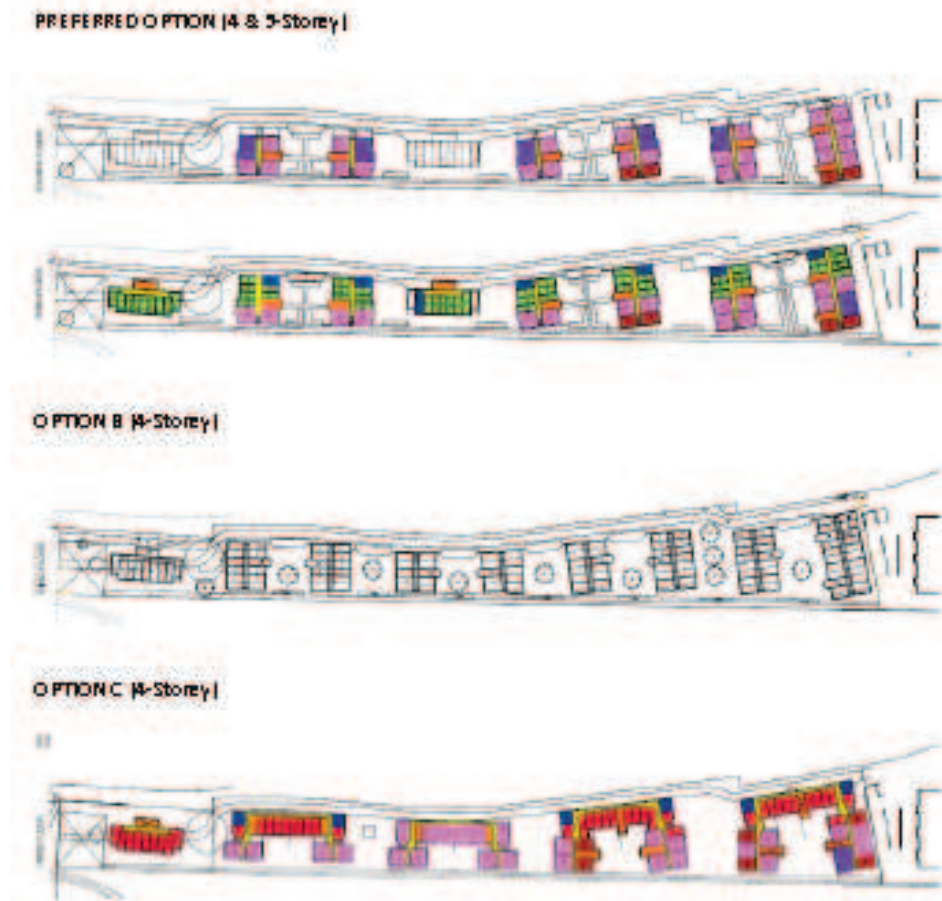


Diagram 4: Initial options by Architect

116. These options were used in the preparation of an earlier feasibility report. The architects were working from an extant permission. The studies at that stage were developments of that earlier scheme and did not necessarily go back to first principles. Various options were put forward to the planning officers and dismissed as moving too far away from the previous approval. Although the final proposal added a storey it was thought that the benefit of moving the blocks further apart, thereby gaining greater space and landscaping between them, outweighed this.
117. The assessment of the planning officers of the application did not raise any concerns, nor was further information sought, about the design concepts in the DAS or the Planning Statement. Concerns were however raised by planning officers about the potential impact on the skyline as viewed from and within the View Cone that is defined in Policy HE10. The scope for illustrating how the buildings would fit into the backdrop through verifiable views was therefore considered but the applicant decided to produce photomontages, which were shown to and discussed with the planning officer.

118. Ultimately the visualisation of impacts focussed on demonstrating through wireline drawings the height of development against the backdrop of the View Cone Skyline and the comparison of that height with that of the extant planning permission (see Diagram 6 below) which the applicant described in the Planning Statement that accompanied the application as *"the fall back" position as far as planning is concerned"*.



Diagram 5: Wireline drawings

Feedback from Consultation

119. The principal concern in most responses to consultation was the perceived damage to the views of Port Meadow. This also underpinned the earlier Petition to Oxford Council:

“The historic ‘dreaming spire’ view from the Meadow of the grade 2 listed St Barnabas Church tower has been all but obliterated from sight. Previously, when Waterways was developed close to the perimeter of Port Meadow, care was specifically taken to protect the view from Port Meadow from this destructive type of massing. The current build (the RDW development) completely changes the character of the Meadow”.*

The following photograph (diagram 6) is typical of the information that has been supplied to support this review, showing the relationship between the development and St. Barnabas Tower.



Diagram 6: Typical photograph supplied to the review

120. Feedback on the visual impacts during the consultation on this Review has not only confirmed these concerns relating to the wider visual impacts of the views of Oxford from Port Meadow, but also in relation to the more local impact on the amenity of residents, particularly in William Lucy Way and the experience of Port Meadow itself as a major recreational ‘lung’ of the city.
121. In addition to the above, collective views of civic and amenity interest groups were reflected also in the individual responses received through the consultations during this review. People typically said that the development had obscured valuable views, e.g. of St Barnabas Tower and changed rural, open vistas, with a more urban scheme visible especially nearer the meadow, the Thames and canal towpaths, but also from further away where they are still visible due to their height.
122. Other visual concerns were a loss of iconic beauty, local assets and the introduction of light pollution and the impact on the sense of place and character of Port Meadow as a place to visit and recreate. This particularly applied to the Walton Well Rd end of the Meadow, a principal point of access to the Meadows.

123. Respondents described the architecture as out-of-place, domineering and disruptive, and did not see any positive or mitigating features in the building itself. Also height was a central concern. The architecture was described as ugly, lacking in sensitivity to context and symbolizing a decline in the normal aesthetic standards of the university. Particular concern has been expressed about the roof, which is seen as a compromise, built with materials that reflect light.

Best Practice

124. The NPPF sets the context for determining best practice. Paragraph 59 in particular highlights the matters that local planning authorities should address:

“..., design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally”.

“...planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.”

125. The Sites and Housing Background Paper 7 (Design Character and Context) by Oxford City Council already sets out the local planning authority’s view on what should be considered best practice in the assessment of design, character and setting. The advice within it has been confirmed as appropriate as part of this Review.

126. Amongst the wide range of advice that is available the *Building in Context (BIC)*, pg 37 and *Views in Their Context Toolkit* are especially relevant. BIC sets out key considerations when assessing the impact of critical views and vistas including the following questions:

- a. Does it make a positive or negative impact?
- b. Does it form an harmonious group or composition with existing buildings or features in the landscape?
- c. Does it distract the eye from the focus of the view and if so does it provide something better to look at?

Similarly ‘Seeing History in the View’ presents a method for understanding and assessing heritage significance within views. The method can be used to supplement understanding of views that are already recognised as being important and worth protecting, including: views identified as part of the plan-making process, such as Oxford City Council’s *View Cones* (2005).

127. In some ways Oxford has been the source of best practice nationally in its approach to seeking to manage the impacts of development on the wider setting of its heritage assets (in addition to the impacts of the immediate environs). Its view cone policy was ahead of its time, and since then there is an emerging consensus about the need for such policy in diverse places as Edinburgh, London, Islington and Winchester. The approach in each is tailored to local circumstances.

128. The practices advocated in these various studies have a well-established pedigree in Oxford already in the analysis and visualisation of major developments. For example, they have been used in the analysis of the impact on the View Cones as part of the appraisal of the recent Blavatnik development. Similarly the visualisation was used in the presentation on the recent St Cross development. The point that is being made here is not that these techniques are perfect since they are open to interpretation. They are however much better than the use of artist's impressions, photomontages, wireline drawings or static 3-D imaging, which themselves are equally open to challenge but less capable of being interrogated. There is also an opportunity to build up a virtual model of the City over time within which policy and projects can be assessed as well as contribute, with potential added value in terms of education, marketing the city as well as heightening sensitivities to the setting of development.
129. It is now widely recognised that it is often desirable for local planning authorities to have local design review arrangements in place to provide assessment and support to ensure high standards of design. This is clearly stated in the NPPF:
- "56. Local planning authorities should have local design review arrangements in place to provide assessment and support to ensure high standards of design...In general, early engagement on design produces the greatest benefits. In assessing applications, local planning authorities should have regard to the recommendations from the design review panel."*

Assessment

130. There is an inherent difficulty in assessing the approach to design by the applicant because although the DAS is meant to provide the primary source of information it was limited, and the information in the Feasibility Study was not part of the application. It is also noted that the DAS was also not aligned with the Planning Statement, which itself makes statements which are not supported by evidence. It has been suggested that the application should also have been accompanied by photomontages in order to be validated. This matter is discussed in paragraph 60.
131. The impact of the scheme arose not only from the increased density but from the stated desire set out clearly in the DAS¹⁶ to be different from Phase 1, with the following character:
- "a strong contemporary feel"*
"sculptural forms"
"to stand in its own right as a timeless contemporary design"
- These central concepts however need not of themselves be inappropriate since planning policies and decisions should not attempt to impose architectural styles or particular tastes. Nor does the View Cone policy seek to proscribe all new skyline features (for example "minor elements of no great bulk"¹⁷). Therefore the proposed development could not have been refused on the basis of the architectural approach

¹⁶ "The client preference is for a strong, clean lined, contemporary feel to the buildings achieved by the use of sculptural forms in off white colouring set on a dark plinth throughout the scheme. It was concluded that phase 1 is of its time and that the new scheme should stand in its own right as a timeless contemporary design. The off white 'render' colouring links visually to a certain extent to the 'Khuja' flats building to the south shown in the photographs"

¹⁷ Refer Policy H9 Tall Buildings

alone. However design considerations were material. The NPPF sets out in Section 7 the principles that should be applied to *'Requiring Good Design'*. In particular paragraph 56 of the NPPF expresses this need to have regard to design *"respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation"* These considerations require design and architecture to be taken into account, for example in assessing the impact on setting of the protected view in Policy HE10. All these matters can be seen as being related to the more general question of whether the core design concept adopted by the architects in the DAS (refer paragraph 131 above) was appropriately applied, or even appropriate, in the context of the particular location, adjacent to Port Meadow.

132. In this context it is important to consider the approach adopted to the consideration of Policy HE 10. This policy requires new development to be assessed as to whether they enhance that skyline and setting of the skyline. The Policy is not only concerned with the impact on the skyline but also that even where buildings do not intrude directly into the skyline, they form a frame to it and should be designed accordingly. These were central to design concept of the 2002 scheme which chose a height, massing and colour to harmonise with the treed middle ground of the View Cone and with its setting in an urban edge location adjoining the green belt.
133. The Review does not seek to judge whether finalised design achieved these objectives. It however needs to be recognised that the resultant conflicts arose because the architectural form sought by the applicant was meant to stand out and be seen from a distance. In this context the DAS should have tested impact of the architectural form of development not only the skyline but on the 'frame' within which the protected view of Port Meadow is set.
134. Similarly although the architects' unpublished Feasibility Study and Planning Statement which was not submitted to the Council drew attention to the visual impact on Port Meadow and on William Lucy Way residences these views were not presented in the DAS itself. This meant that the analysis required by Policy CS9 did not form an explicit part of the design process by the applicant.
135. Over and above the context that should have been applied as part of the design process there are other design factors which affected the ultimate form and quality of the development. These include: the reduction in the amount communal space; the treatment of the public realm; the poor quality of pedestrian access to Botley Road; and the view out from the site over the Port Meadow. This highlights the value of a design review process to address the design challenges of major schemes, and ensure the full range of design considerations (e.g. those set out in the NPPF) is tackled beyond the immediate policy issues which were the focus of the planning committee's considerations.
136. The limitations of the pre-application process, the limited response to consultation and the related DAS analysis inevitably conditioned the processing of the application. The result was that the design issues associated with the scheme were only going to be fully considered in the assessment by Council officers. It therefore has to be recognised that what design issues in relation to Port Meadow views were addressed

were only those that were picked up by the planning officers.

137. The planning officers concerns related to the View Cone Policy (HE10). The resulting analysis through wireline drawing demonstrated to a large extent the difference between the original 2002 scheme and the new proposal. Whilst it is considered to be generally accurate it was limited in what it could demonstrate because of a range of factors:
- a. It was limited in its perspectives in terms of views from Wolvercote. These did not address the views of the recreational users of the Meadows, the close views and in particular the massing; this would have had the benefit of informing the landscape strategy that was needed to mitigate the impacts.
 - b. It did not address views from the west from William Lucy Way (WLW): although it is argued that this development post-dated the 2002 application, it should have been taken into account. If it had been it would have demonstrated the fact that the views from WLW were to a significant degree going to be affected by the 2002 application if it had been implemented.
 - c. The use of wirelines does not deal with the issues of massing and in particular the impacts of colours which would have been possible to illustrate and could have helped guide the final selection of colour options.
138. Although the 'View Cone' Policy of Oxford City has been at the forefront of planning thinking and policy in managing the setting of its historic assets including the view of a city, there are specific challenges posed in assessing the impacts of significant views identified in the HE10 'View Cone Policy'. For example, although it has not been possible to carry out a systematic review of the evidence some respondents believe that the height of what is acceptable has risen over the years since the first development along the western edge of Oxford started to emerge.
139. There were therefore issues in the application for the View Cone Policy HE10 related to the following:
- a. The need to undertake the assessment from a 'dynamic' set of viewpoints and not just from a fixed point at Wolvercote. In the case of RDW, the officers recognised this and went beyond a narrow interpretation of policy.
 - b. The need to consider the view in terms of the frame within which it is set; in the case of RDW this did not have the same level of consideration that was given to the impact on the 'silhouette of the skyline'. This was however important since a critical difference in the case of RDW site was that it sat in front of the main tree line on the urban edge and not behind it like Waterside and William Lucy Way.
 - c. Some of the more visual intrusions have been low rise developments, which reinforce the importance of giving consideration to all aspects of design, and not just height or massing in this case.

- d. The need for a clearer context of what change is acceptable; in the case of Port Meadow View Cone, it has been subject to change over many years, transforming it from an industrialised 'foreground' and new skyline elements (e.g. Said Building). Equally it appears that there has been an incremental change over the years over what has been seen as acceptable, which will make it increasingly difficult to define a limit of height without a policy context.
140. These issues have been highlighted in the briefings by officers of the Council, Oxford Preservation Trust and English Heritage given to this Review. Their joint work on reviewing the policy is well in hand and should address the concerns that have been highlighted by the RDW development. It is therefore concluded that the current review of View Cone Policy is to be welcomed, and needs to be expedited and, if possible, embedded in policy rather than be published solely as guidance. This should be part of a more comprehensive review of the setting of Oxford than the original View Cone policy provided with its focus on particular viewpoints.
141. Concerns have also been raised in various forms about the need for expert input into the design considerations on the RDW development. These include the suggestion that the scheme should have been referred to an external design review panel, which is well established practice in Oxford. Three forms of panel have been used in the past. At present the decision about the use of these various mechanisms is done on a case by case basis. The City Council has however already recognised the need to be more systematic in its approach to the design review process. Separately it agreed in October 2013 to establish a new Oxford Design Review Panel in order to raise the quality of design in the city. This will build on the approach already established in the city through the West End Design Panel.
142. This initiative is to be welcomed. It will raise issues in terms of resources and institutional capacity to make an input to such a process. It is considered that a post-hoc review of the Council's experience in using Panels might provide useful insights into how they can be most effective (e.g. the experience on the St Cross planning application). The process will also need to be responsive to the programming of projects and seek to combine the local knowledge with national expertise.
143. There are good examples elsewhere of how this should be developed to provide a clearer framework for when (e.g. pre- or post-application), what type of projects and who should be involved in such reviews and what weight should be given to any recommendations from the Panel. Any arrangements should also consider how it interfaces with in house design capacity and assessments, since it is not an alternative body for determining planning applications.
144. A further matter for the Review was to consider questions about the level of design awareness amongst staff and members (e.g. the lack of critical assessment of the DAS). At present there is no dedicated specialist urban designer in-house although there are staff who have skills and training that might be harnessed. Senior management has also initiated in-house training, for example, through the MK Bob programme in order to raise the urban design capacity of the in-house planning resource despite the resource constraints under which they have operated. This is to be commended. The details of this programme has not been able to be evaluated but

based on experience of working with London boroughs (through Urban Design London) there may be ways of strengthening this work through targeted training in assessing matters of design in planning applications.

Recommendations

145. In the light of the above considerations the decision on the RDW application needs to be seen in the context of Oxford City Council's strong policy framework to promote good design and protect its heritage assets and their setting. The need to refresh the pioneering approaches it developed to View Cone policy is a priority. There is an increasing mismatch between the expectations for higher standards of design of new development and the challenges in delivering it. This arises from a range of factors, for example, the pressures to maximise the use of land, the scale of 'footprint' of new development and the increasing possibilities of building technology. These pressures however, as demonstrated by the RDW development argue for a strategic review of the physical capacity of the City to respond to and manage these pressures on its historic environment and implement the policies in the Core Strategy for the City. . The wider strategic issues for this are discussed in Section I.

146. There is in addition action that can be taken to provide members with greater support in their considerations of design issues and visual impacts. The actions already being taken by the Council are welcomed, for example a Design Review Panel. It is considered that these could be supported by in-house training programmes and the enhanced within a framework discussed in paragraph 142-143 above. **Recommendation 3**, therefore, identifies action to deliver this.

Recommendation 3: **Visual Impacts & Quality of Design**

It is recommended that existing initiatives to improve the design capacity of the Council should be complemented by action to enhance the use of in-house expertise and to provide members with greater support on their considerations of design issues and visual impacts by:

- a. Developing greater technical capacity (IT and skills) to take advantage of the rapidly evolving potential for interpreting design and integration with established GIS systems;
- b. Improving the advice on the design evidence used to support application, in particular in the preparation of Design and Access Statements;
- c. Enhancing member 'training' on design and planning;
- d. Investigating and adopting the best new field-based approaches to assessing the visual impact of new development.

SECTION G: COMMITTEE REPORTING

Context

147. The Oxford planning committee structure has changed over the years with the latest system being introduced not long before the RDW application was considered. This new system sought to introduce a more efficient system whilst retaining a level of local focus. The decision on the RDW application was therefore taken by the West Area Planning Committee (WAPC). A survey of their background and involvement in the RDW decision was undertaken as an input to the Review.
148. The membership of the committee was cross party, composed of very experienced members with an average of over 10 years' experience on Council and a substantial service on planning committee (including as chairs). They had also been through formal training courses on 'being a member of a planning committee' in accord with good practice. The members also bring a great range of additional relevant experience and skills which are relevant to planning. These include, inter alia, architecture, technical skills in modelling, as well as of academic background and expertise in conservation and architectural history.
149. The members the Committee received the background papers electronically without any difficulties. These included access to all the background papers and material that formed part of the application, as well as a full set of PowerPoint briefing from the Head of City Development, which was used at the meeting. All members were already familiar with the location and did not consider that there was a need to undertake a prior site visit, although some did so anyway. Some additional information in advance of the meeting was requested.
150. The committee meeting is considered by the members to have provided sufficient opportunity for members to be briefed and issues discussed. The focus of discussion was on the height of the buildings and the visual impact on the skyline from Port Meadow, although other matters were covered including S106 contributions and NIRA assessment. The decision to approve was made in line with the officers' recommendation subject to 24 conditions and Sec. 106 legal agreements.

Committee Paper

151. The background policies and consultation have been discussed in earlier sections. The following points were highlighted in the report and are critical to the matters of this review. The main determining issues identified were described as:
- built forms and visual impact;
 - access to the site;
 - planning obligations;
 - biodiversity;
 - sustainability; and
 - flood risk.

These did not include contamination although the committee was told that the Environment Agency wanted a "Phased risk assessment required for ground contamination conditions". This was required to ensure the remediation of

contaminants on the site, in order to protect groundwater quality and was consistent with the internal advice from the Environment Department. A condition was included as part of the consent.

152. The report considered that the development “responds positively to the particular circumstances and constraints of the site alongside busy railway lines”. It was recognised that:

- the location was close to Port Meadow, “a unique and sensitive location”, and needed to be assessed against PPS5 ‘Planning for the Historic Environment’;
- views to and from the adjoining areas of the railway lines and public allotments would change dramatically but not be adversely impacted;
- land at Port Meadow was more sensitive falling just within the “View Cone” from Wolvercote (policy HE10), which seeks to retain significant views and protect the green backcloth to the City from development within or close to a view cone which might detract from them;
- as with the extant permission, it would be seen to an extent from various vantage points within Port Meadow through and above the tree line, especially in winter months;
- the pre-eminent spires on the skyline from Port Meadow were not impacted to any great degree by the proposals;
- the campanile of St. Barnabas Church was seen as an exception to the previous point, as it is visible above the tree line and impact would not be dissimilar however to that created by the extant permission;
- the University had sought to mitigate the impact by lowering the overall height of the accommodation blocks by 1.2m and offering to fund landscaping;
- the University would examine again the choice of colours, textures and tones to materials for external elevations and roofs in order that the development sit more comfortably within views from Port Meadow;
- it was not the case that the development would be entirely hidden from view from Port Meadow or that there would be no impact from the development on the landscape setting and on public views;
- mitigation described was of a similar fashion to the extant permission. Mitigation through on and off site planting and in the judicious choice of materials and their colours, tones and textures would however assist the development in sitting more easily in these views; and
- it would allow the University to meet and maintain the requirements of other recent permissions for academic floorspace that no more than 3,000 of its students should live in open market housing.

153. In this context the report stated that

“a judgment has to be made as to whether the degree of change to the views and landscape setting in this direction would result from the development is sufficient to warrant refusal of planning permission taking into account other benefits and objectives to be weighed in the balance”

Officers came to a conclusion, the balance of advantage lay with supporting the proposals with the mitigation described in place, (and in similar fashion to the

extant permission), given the benefits of the development in providing much needed purpose-built student accommodation on an allocated site.

Questions Raised through Consultation

154. Central to most of the questions that have been raised through the Review is a desire to understand the basis of officers' judgments and the committee's decision to approve the application. Concerns have been expressed that the committee did not consider all material considerations, in particular the following issues of local amenity (particularly lighting & noise), tree felling, contamination and the provisions of the 1990 Act:
- a. Light pollution across a heritage site is seen as a material issue, but the committee paper gave no consideration the impact of the lighting on the Meadow in the design of the buildings. (This relates particularly to the stairwell in the 3rd building from North to South that is shedding light onto Port Meadow).
 - b. The noise assessment did not address the potential consequential impact of the development on William Lucy Way.
 - c. It has been asked whether the action by Oxford University to cut down the trees on the proposed site before the planning application had been heard, was a material consideration.
 - d. Contamination issues were considered not to be have dealt with in the committee paper, despite its importance.
 - e. It is suggested that the provisions of the Act (Listed buildings and Conservation Areas) Act 1990 should have be taken into account.
155. The method of reporting to the Committee has also been a matter of concern. This has led to accusations that the committee was misled by the emphasis that was put on the presentation of the case for approving the development. This was expressed in various ways including:
- a. The errors in the application were not highlighted
 - b. There was a lack of discussion on contamination, e.g. why was it not listed as a key issue in the report with others listed at paragraph 151 above?
 - c. The report did not make explicit the internal debate within the planning department in particular the internal reports by the Heritage Officer and Tree Specialist
 - d. The impact of the increase in area and height of the development relative to the original consent was not clear in the committee report,
 - e. The limited information on the impact of the proposed mitigation measures particularly the impact of the 1.2m reduction in the apex that was negotiated by officers and the scope for off-site planting¹⁸.
156. Even if all matters that were material were reported properly to committee there is an underlying belief by campaigners that the committee misdirected itself or was misdirected in the basis it used for its decision. This centres around concern that the report:
- Did not take into account the provisions of Policies local planning policies HE3

¹⁸ The off-site planting has been carried out, although the concerns about this Condition are noted

and HE7 or PPS5 policies HE6 and HE9.

- Should have been considered a potential departure from policy and the plan by a change in the interpretation of policy set in precedents and thereby gave preferential policy interpretation to Oxford University.
- Did not give enough information and analysis on design considerations and left matters to be handled under conditions, when they should have been determined at the time of the planning approval (e.g. the materials which were critical to the visual impact on the protected view of the city).

157. In order to inform this Review on what the committee received and understood, a confidential survey has been carried out of all the members on the WAPC at the time of the decision. Amongst other things this sought to establish what they understood and to what extent their understanding has been changed now they can see the development built. Whilst it was clear to members that the key issue was the visual impact it was not considered that the full range of impacts was clear. It is also interesting that Oxford University's need for occupation by autumn 2013 did not feature in the Committee report. In addition a consistent part of the feedback has been about the quality of the design and impact on William Lucy Way, which were not discussed in committee, and which might be considered as important to the impact on the View Cone as the height of the development.

Best Practice

158. There is clear guidance on best practice, for example the LGA 2011 report '*How planning works? An introductory guide for councillors*'. There is also a statutory duty that requires development control decision to be in accordance with policies in the development plan unless material considerations indicate otherwise. These are set out in Section B of this report. In addition all other material considerations must also be taken into account. These include for example:

- national planning policy and advice
- local planning policies
- draft policy
- the environmental, social and economic impacts of the proposal
- access and provision of infrastructure for the site
- the design of the proposal
- the planning history of the site and
- the views of organisations and individuals, in relation to relevant planning matters.

What weight is given to any material consideration is dependent on the particular circumstances. Other considerations may exist and ultimately the courts are the arbiters of what is a material consideration but the courts will not get involved in the judgement about what weight should be given to any matter¹⁹.

159. A primary source of guidance on best practice in planning is the LGA /PAS report '*Probity in planning for councillors and officers*'. This set out the following guidance

- Officer reports to committee on planning applications should:
 - Be accurate

¹⁹ Subject to the tests of reasonableness

- Include the substance of any objections and other responses received
- Have a clear assessment against the relevant development plan policies national policy and any other material planning considerations
- Have a written recommendation for a decision to be made
- Contain technical appraisals which clearly justify the recommendation
- Justify any proposed departure from the development plan policies
- Record any oral updates or changes to the report

Assessment

160. In the light of the above considerations the Review has assessed the committee process against the following key questions
- Did the committee address all material considerations?
 - Were the visual impacts of the scheme effectively presented to committee?
 - Was the interpretation and application of the relevant policies sound?
 - Was the committee report misleading in the way it was written?
161. Material Considerations: The main policy question that has been raised are those representations which argue that the provisions of Policies local planning policies HE3 and HE7. This matter relates directly to the discussion on the provisions of the 1990 Act referred to in paragraphs 67-68. The OAHS²⁰ are of the opinion that there is a case that the Roger Dudman Way blocks do affect the setting of the conservation area, and of the collective asset which is the towers of central Oxford, most of which are listed at Grade II* or Grade I.
162. However the provisions of the 1990 Act were not considered material to the type of issues under consideration at the time that the application was determined. It is however considered that the assessment against the provisions of the 1990 Act should be an explicit consideration of any future view cone analysis. It is recommended that this could be clarified as part of the Heritage Strategy being developed by the Council (refer Section I).
163. In addition it is considered that the approach to the View Cones policy was not restricted to a fixed viewing point but to views from within it as well. It therefore considered that HE3 and HE7 in effect address the same matters as should have been addressed through Policy HE10, even if this was not explicitly stated²¹. This issue however raises the need to clarify the inter-relationships of policies and the provisions of the 1990 Act.
164. It has also been argued that PPS5 policies HE6 and HE9 were not taken into account. In addition it has been suggested that Members were not informed that these policies set a series of information requirements and tests for decision-making that directly relate to the City's statutory duties regarding the setting of LBs and CAs (including what action was needed under S66, S67 and S73 of the 1990 Act). It is considered that policies HE6 and HE9 of PPS5 were considered under the

²⁰ Oxford Architectural and Historical Society

²¹ For example, an aspect which is explicit in Policies HE3 & 7 but implicit in an assessment on the View Cone is the extent to which a development would enhance a heritage asset.

general reference to the PPS that was made in the report, even though it was not discussed in detail. In addition it is noted that the Heritage Officer's internal note referred specifically to these matters. It is therefore considered that the provisions of the PPS5 were taken into account by officers in drawing up their report.

165. It is considered therefore that all relevant material policy considerations as interpreted at the time of the application were referred to in the committee report or the supporting documents. In addition those matters that have been raised subsequently were implicit in the discussion on the impacts of the development on the View Cones policy, albeit not fully discussed.
166. The survey of committee members has also confirmed that the members had no difficulty in accessing these documents and were all aware of their content. Part of the background to the concerns however relates to the fact that the assessments of matters presented in the committee report was limited to those matters that were considered critical to the decision. This however has been taken as evidence that there was a failure to have regard to all material considerations. It is however normal practice to focus a report on the issues that need to be debated.
167. It is therefore concluded that the papers sent to committee did list and thereby identify the need to have regard to all material policy considerations. It is however good practice to have a systematic record of the evaluation against all policies that are seen as material when dealing with major applications.
168. In relationship to the specific issues listed in paragraph 154 above the following is concluded:
 - Noise and lighting in principle were covered in the DAS. The subsequent experience now the development has occurred however would appear to raise issues not identified in the committee report, namely, the light spillage across the meadow and the reflected noise onto William Lucy Way. These are matters that should be considered through the voluntary Environmental Statement. There is therefore still scope to which it is possible to use the outstanding planning processes (e.g. the landscape plan and S106 agreement) to implement any appropriate remedial action that is identified.
 - A concern about advance tree felling on development sites has arisen. The concern is that it could prejudice discussions on compensatory planting measures. It has however not involved the felling of any trees covered by TPOs nor the safeguarding of trees generally that would have been retained in the development proposals. The issue has been taken up already and undertakings given to prevent recurrences. The extent of existing and required tree planting and management would have been material, and is a matter that might relate to the outstanding undischarged conditions. It is however not a matter that the Review has or should have sought to determine.
 - The concern that contamination was not discussed in the committee report. However it is clear that contamination issues were addressed. This is evidenced by the reference to the appropriate national policy context (PPS 23) and the imposition of Condition 16. The errors on the application form did not divert

the Council from consulting the relevant authorities and taking action (i.e. imposing conditions), which was consistent with the extant planning consent. The amount of any supporting text in the report was a matter of judgement of the officers as to how much explanation was required to support their recommendation.

169. Reporting of Visual Impact: Officers' reports should be accurate and the recommendations evidence based. As already discussed, the form that this takes is a matter of judgement, The extent to which any inaccurate statements in the applicant's supporting documents should have been explicitly raised within the committee report is also a matter of judgement, but is not of itself necessary and does not imply any intention to mislead.
170. In terms of the information supplied on the height reduction it is considered that the committee were provided with background information. This was clear in the revised plans and the wireline drawing but they were not the best way to convey such information. Similarly, the report has been read as implying that the modified roof plans made a significant amendment to the originally submitted drawings. The text did not however make such a claim nor was it part of the conclusion of the report. This was also consistent with the fact that the amendments to the submitted plans were not advertised (which would have been required if the changes were seen as significant). The committee report therefore was not as clear as it could have been. This was important since the committee discussion is dependent on the written report without the benefit of pre-application briefings or site visits.
171. A major concern has been raised about whether the views of individual officers needed to have been identified and presented to committee. This relates to whether the internal note by the Heritage and Conservation Officer should have been made public. The note was part of an ongoing internal discussions and a further site visit which would also have had to be presented if this course of action was followed. In principle in any event it is not appropriate to provide internal notes to the committee. The committee should however expect to be provided with an integrated and balanced report on the issues concerned, signed off by the Head of Service. The initial concerns of the Heritage Officer were followed up internally and were reflected in the committee paper though in an unqualified way. With hindsight the presence of the Heritage Officer would have avoided the current debate but his absence did not result in the Committee being misled in terms of the judgement that they were being asked to make. With hindsight it would have been beneficial to involve the Heritage and other policy officers much earlier in the process. A lesson of the RDW application is however the importance of involving the right team of officers in the evaluation of applications at the outset. This has already been recognised by staff with the introduction of a case conference process for the handling of major applications.
172. The immediate and specific concern is whether the committee were in anyway misled in their briefing of the matters upon which they had to make a decision. The question is whether there was new information that any alternative expert opinion would have provided that the committee should have had before them in making their decision. From the review of the evidence and consultations with members of

staff and members the answer to this question is that this was not the case. It was agreed by all officers that there was a balance of issues that should be put before the committee, and which was therefore presented in the report. This reflected the matters raised in internal notes from the heritage and planning officers which were subsumed within the committee report. The implication in this report was that the decision on whether or not to approve or refuse the application should be based on weighing the impact on the landscape setting and local views against the benefits of providing purpose built student accommodation at an allocated site.

173. In terms of the professional position of officers there was a general acceptance amongst all the senior staff involved that
- a. the scheme even as modified had an adverse effect of the view cone;
 - b. there was a need for a balancing of the issues against the other policy objectives of the plan (namely the provision of student accommodation); and
 - c. the issues raised were matters of degree relative to the impact that would otherwise arise from the implementation of the extant consent.

All these matters were presented in the report. It is also considered that this was understood by members, as reflected in the debate and voting that took place at the committee itself.

174. The survey of committee members has confirmed that the presentation by officers on the visual impact was clear for all but one of the members involved and that in this respect this has not been changed by having seen the completed scheme. However, one member felt that the full visual impact of the completed scheme was not conveyed by the presentation. It is considered that this relates to the fact that the discussion related almost entirely to the impact on the skyline and not the 'green backcloth' to the view of the skyline. This is consistent with the feedback from members that the information provided to them about the design of the buildings was not clear. That matter is not part of the responsibility of the Heritage Officer and therefore the committee would not necessarily have been any better informed about this critical issue by his presence.

175. Interpretation and Application of Policy: A further consideration in terms of the committee process relates to the interpretation and application of policy that was included in the report. This has been assessed in terms of its approach to the balancing of issues that were at the heart of the decision of the committee (including the consideration of design issues).

176. There is no question that the report to committee made clear the balancing that was required between the various material considerations, namely, the need for student accommodation and the visual impact, in the light of the established uses for the site in policy and extant consents. The need for such a trade-off is not accepted by most of the representations received. Behind this lies an implicit assumption that the established policy to protect the skyline and setting of Oxford was an over-riding long term strategic objective that should not be compromised by ad hoc development proposals.

177. There is therefore an implicit assumption behind the objections that the proposed development of RDW was a departure from the plan and should have been treated as such, with all the implications for consultation and reporting. From discussions with officers this is a matter that requires further clarification, as discussed in Section I.
178. The second implication of the objections is that the committee should have given more consideration to design issues and in consequence not have left so many aspects of design as a matter to be handled by planning conditions. This is consistent with the issues raised in the Section F on Visual Impact and reinforces the need for :
- a. the establishment of a design review panel;
 - b. outside training for members on design; and
 - c. the review of how design issues are managed within the professional service of the council.
179. The question has also been asked whether the committee report was correct in stating that there was a policy need for student accommodation since the 3000 threshold was not breached at the time of the committee. Even if this were the case, it is still desirable to promote new dedicated student accommodation and reduce the pressure on the overheated housing market in Oxford.
180. Reporting to Committee: A final consideration of the Review is to try to give some insight as to whether the report was written in a way that left members with little choice but to go with the officer's recommendation. This is a perennial challenge when dealing with contentious applications where there are trade-offs between key policies in the Council's strategy.
181. This need to balance priorities when considering design issues is reflected in the NPPF *"Local planning authorities should not refuse planning permission for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design (unless the concern relates to a designated heritage asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal's economic, social and environmental benefits)."*
182. The importance of high quality design and visual impact of new development has therefore always had special significance in Oxford because of its unique character and heritage while embracing the changes that are necessary to ensure its continued prosperity in the 21st century. As the Core Strategy itself recognises the challenge of doing so cannot be underestimated given the scarcity of available land and the policy constraints, such as the Green Belt, flooding and areas of nature conservation importance; and the city's outstanding architectural heritage. The latter constrains development in a three-dimensional sense, since the need to protect Oxford's unique skyline makes tall buildings inappropriate in some parts of the city.
183. This has led to some notable debates over the years and most recently the contrasting cases of the Blavatnik and St Cross schemes. Both were contentious in terms of their design implications. Although they were recommended for approval on the balance of the issues (as was the case with RDW) the committee was able to test the recommendation and approve one and refuse the other. An examination of the

committee reports in these two cases indicates that there is not a critical difference in principle with the style used for the RDW application. What was different however was the level of public comment following consultation, and the level of information with the schemes and related analysis that was available to be presented to the committee.

184. As presented the report was clear about the choice but was limited in its advice to committee about how weight should be given to the key issues. It could have provided more detailed guidance and more explanation of technicalities, for example:

- a. In terms of the weight that should be given to the Visual Impacts the report could have included: better visualisations; a more detailed analysis of the design components (e.g. colour, massing, community & space); why the proposal was not considered a departure from Policy; and a comparison with the approved 'fall back' scheme: and
- b. In terms of student accommodations, an up to date briefing on: the supply & demand; related developments in terms of Policy CS25; and the way this policy should be interpreted.

A more reasoned justification within the report would also have countered the accusations that have subsequently been made that the report was misleading²².

185. This conclusion is reinforced by the fact that the decision of the committee was based, inter alia, on the following statements in the report :

"Whilst there is some impact in long distance views from Port Meadow, such impact falls to be weighed in the balance with the benefits of the development and the mitigation proposed in response"

"The buildings proposed on up to 5 floors are large but make good use of what might appear an unpromising development site" and

"(The development) would be seen to an extent from various vantage points within Port Meadow through and above the tree line, especially in winter months. Mitigation through on and off site planting and in the judicious choice of materials and their colours, tones and textures would however assist the development in sitting more easily in these views"

186. This level of mitigation was expected to be achieved through the conditions that were placed on the planning consent. In practice the choice of materials and tree planting in particular did not deliver the level of amelioration that was expected and which could not have been demonstrated by visualisation shown to committee. This again highlights the need for more effective tools and for a design review process in assessing the design issues involved in major developments.

²² For example by the use of generalised phrases like "that the development could be seen to an extent .."

Recommendations

187. The report could have been clearer in the evaluation and analysis of the choices that were put before the committee. This would not however have altered the choice before the committee but made the decision less open to the questioning that it is currently experiencing. It is therefore concluded that the information presented was not as complete as it should have been but the information itself was not misleading. The issues raised in terms of the specific approach to design issues have been discussed earlier in this report. Consideration also has been given to the committee report on the RDW application in terms of its scope, visual impacts, the interpretation and application of policy and the balance.

188. The findings of this review are that the experience and expertise on the committee made it well equipped to handle the complex of issues and the balance of judgement that was required. There is however potential for improvements the reporting as identified in **Recommendation 4**.

Recommendation 4: Committee Reporting

It recommended that the presentation of the planning issues of major applications to committee should be strengthened by

- a. **A systematic documentation of the policy evaluation including clarification of the extent and nature of any departure from policy;**
- b. **A more evidenced-based approach to the presentation of the choices before committee, and the impact of mitigation through conditions in reports; and**
- c. **The use of alternative means of addressing design considerations (e.g. in terms of visualisations and where necessary site visits).**

SECTION H: GROUND CONTAMINATION AND PLANNING CONDITIONS

Context

189. Ground contamination is subject to a range of legislative processes and guidance. The need to have regard to ground contamination issues in handling planning applications is established in national planning policy. The relevant policy at the time was PPS 23. This sets out the approach that should be adopted to the handling of application where the land in question might be contaminated. This recognises the role of the Environment Agency and local environment officer in providing advice to the planning authority in the process of determining an application.
190. The RDW site has a level of contamination arising from its former use as railway sidings and having made-up land. This was reflected in the original planning consent in 2000, which required a full validation report and final completion certificate prior to occupation of the site in order to remediate any contamination. This was built into the approval of the detailed consent in 2002.

The 2011 Planning Application

191. Contamination was tested for as part of the geotechnical background report but no conclusions were presented in terms of the level of risk. There was however no pre-application discussion with the Oxford City Council's Environment Department (ED) nor was there a reference to consultation by the applicant with the Environment Agency on this matter in the Planning Statement. The generic risk assessment was not submitted to Oxford City Council with the planning application until 28 March 2013.
192. The planning application form indicated that there was no contamination issue. This was wrong and has caused some concern in view of the long history involved. In answer to questions by the Review the university's consultant confirmed that this was a mistake and arose from a belief that the necessary decontamination of the whole 1.2 ha had taken place prior to the building of the Phase 1 in 2002. However as discussed in Section D, when this error was known the form was not corrected.
193. The application was identified through the weekly list mechanism by the Environment Department who informed the planning officers that the reports submitted with the application do not draw conclusions and, therefore, the standard condition should be placed on any permission given to the developer. The Condition 16 that was applied was not that recommended by ED or the Environment Agency but appears to have been generated automatically. It is not however considered that the different wording altered the process. All three conditions seek to ensure that a phased risk assessment process is undertaken.
194. The key aspect of the Condition 16 on contamination that is relevant to this Review is the need for the applicant to discharge the condition prior to commencement of development and prior to occupation. Both of these requirements were breached. It is also noted that the commencement of works on site would have been subject to the Building Regulations Part C1 Site Preparation and Resistance to Contaminants. This procedure was however handled by the Inspectors employed by the University.

195. The breach of planning conditions was brought to the attention of planning officers sometime in mid-2012 who entered into discussions with the University to seek an early retrospective discharge of the condition. As a result a report was submitted, which the applicant's consultants accepted was incomplete. Revised documents (dated November 2011) were submitted in March 2013 following which the ED identified a recent oil spillage following which the EA were notified as required under normal regulatory procedures. The Environment Agency has therefore been fully involved in the liaison with the ED over the discharge of the planning conditions following the breach.
196. Subsequent work has now reached a point whereby the ED and EA are able to sign off the necessary documents which would allow the condition 16 to be discharged in normal circumstances. This process has however been delayed because of the current work on the voluntary Environmental Statement being prepared by the applicant.

Questions Raised through Consultation

197. A wide range of issues have been raised through the consultative process related to contamination. These in the main arose from the breach of planning conditions. The related matters that have been raised concerning the planning process relate to the accuracy of the planning application form and the EIA screening process which have been considered in earlier sections of this report.
198. Respondents to the Review have raised concerns about the technical basis of the judgments made and the consistency of various technical reports and their timing adequacy and scope of consideration of all the relevant contamination issues. These are matters which it is considered relate to the question of whether the assessments that have been carried out relate to best practice. In addition the adequacy of the responses to problems has been questioned in terms of whether formal enforcement proceedings should have been taken by the Council when it was discovered that there was a breach of planning conditions and whether there were risks to students and site workers that were not addressed. These specific issues are discussed below

Assessment

199. The review has given consideration to three aspects of best practice that need to be addressed in terms of the complex of issues raised by the history on contamination:
- a. the approach to the use of conditions in this situation;
 - b. the approach to the handling of breaches of planning conditions;
 - c. the coordination of action across a multi-sectoral issue; and
 - d. liaison with the public
200. The Use of Conditions: There is strict guidance in the use of conditions in planning which are assumed here. In terms of contamination there are specific problems of enabling the development process in a controlled way. PPS23 (Annex) therefore

recognises that *“there will be situations where the information available when a planning application is being considered will be sufficient to resolve the main issues regarding contamination from a planning point of view but insufficient to resolve all the details. The planning authority in these situations will need first to be satisfied that the proposal will deliver an appropriate development and that the risks are sufficiently well known that there is a viable remediation option. If it is so satisfied, it may be appropriate to grant permission subject to conditions relating to the condition of the land”*

201. The use of three-stage conditions is therefore recommended with the following aims
 - *“to provide for further investigation and characterisation of the site to confirm the nature and extent of contamination and validate the conceptual model and allow more refined risk assessment and appraisal of remedial options”;*
 - *‘to propose and receive approval for a remediation scheme that ensures the removal of unacceptable risks to make the site suitable for use’; and*
 - *‘to submit and receive approval for a validation report that demonstrates the effectiveness of the remediation carried out, preferably before building begins and certainly before the site is occupied by future users’.*

202. This is the approach that the planning committee has sought to follow in its decisions which were based on advice from the competent technical bodies (i.e. ED and EA). The approach had been successfully used in the Phase 1 of the development in 2002 and there was every reason to believe that it was appropriate in this particular situation. Any errors that were made during the process (e.g. in completing the planning application form) may have delayed decisions but there is no evidence that it interfered with the proper consideration of the issues by the relevant bodies.

203. It is therefore concluded that the use of conditions was an appropriate means of controlling development and securing the proper management of the contamination issues involved.

204. Breach of Planning Conditions: The development of the RDW site was in advance of a condition to which planning permission had been granted and therefore has been accepted by all parties who have been consulted that it was a breach of planning control. The Council has therefore sought to enforce the phased contaminated land planning condition. There were a range of actions open to it in such a situation ranging from informal action to remedy the situation to the full powers of enforcement procedures, as listed below:
 - No formal action
 - Inviting a retrospective application
 - Obtaining further information
 - Enforcement Notice
 - Temporary Stop Notice
 - Stop Notice
 - Enforcement of planning conditions: Breach of Condition Notice
 - Injunction to restrain a breach of planning control

205. The choice of the most appropriate procedure is a matter for the local planning authority. Without condoning a wilful breach of planning law, it is accepted that enforcement action should be proportionate to the breach and the balance of public interest involved. Local planning authorities would always seek to avoid taking formal enforcement action where for example there is no material harm or adverse impact; or development is acceptable and action would solely be to regularise the development; it is considered that an application to discharge of a condition is the appropriate way forward to regularise the situation. In any event, whatever the grounds for choosing to informal action the local planning authority should keep a contemporaneous record of any action taken, including the decision itself.
206. In the case of RDW it is understood that the basis of the decision was that informal action was seen as the most expeditious way of regularising the situation. In view of the subsequent approvals that have been now been received from the ED and EA it appears that no unacceptable risk has arisen. The decision to discharge the conditions on the basis of this advice will now be done within the context of an independent Environmental Statement. However in view of the nature of the breach it is considered that there should have been a contemporaneous record of how the decision was taken to adopt an informal approach to enforcement, and to document the subsequent follow-up action.
207. It is therefore concluded that whilst the decisions that were taken may prove to have been appropriate after the event, the University should have complied with the pre-commencement condition. The response by the ED has been correct and prompt, which has helped significantly in bringing matters under more effective control. The decisions related to the enforcement of planning conditions however needed to be clearer and more accountable, i.e. auditable.
208. Inter-agency Coordination: The various stages involved in the processing the RDW application have highlighted the importance of coordination between the various agencies and departments. It is considered that a review should be undertaken of the lessons that have arisen in terms of the setting of conditions, the notification of decisions, project management, and the links to building control, planning control and environmental management.
209. Liaison with the Public: the Review noted that amongst some respondents to it there was much confusion and misunderstanding about what has been, will be and should be done in terms of contamination, and by whom. Whilst considerable time has already been expended by council officers on these issues, it is considered that a further use of a range of media might be helpful in providing accurate and accessible information that addresses these concerns.
210. In addition, it needs to be recognised that there are limitations on the scope of actions that are possible within the planning system. For example planning conditions cannot be used to take action which is prescribed under other legislation, for example, health and safety or environmental protection. There are also different terminologies which have produced misunderstandings to the public e.g. the legal distinction that exists between '*contaminated land*' which has a statutory definition and land which is contaminated which is a general description. When therefore

issues raised have fallen outside the scope of the review then this has been referred on to the appropriate body, for example, to assess the potential current risks to individuals from contamination.

Findings and Recommendations

211. The findings of this Review in relation to the questions of contamination and enforcement are that

- a. The application of conditions was an appropriate and accepted means of dealing with the contamination issues on the RDW site;
- b. The University's breach of the pre-commencement condition should not have occurred; and
- c. The procedures used to remedy the breach may resolve this issue.

It is however recommended that enforcement procedures and coordination should be strengthened as identified in **Recommendation 5**.

Recommendation 5: Planning Conditions

It is recommended that enforcement procedures and coordination should be strengthened through:

- a. **An auditable process for determining the appropriate enforcement action;**
- b. **A review of the use of standard planning conditions, and updating of them where necessary;**
- c. **Inter-agency co-ordination to address the issues set out in the main report;**
- d. **The use of a range of media should be considered to provide accurate and accessible information on contamination issues.**

SECTION I: WIDER IMPLICATIONS

Context

212. The planning decision on the RDW development centred on the need to balance the need for student accommodation and the views of the City's heritage assets from Port Meadow. This is part of the wider challenge in Oxford to secure the unique character and heritage of the City whilst sustaining its role as the home to one of the world's top Universities and responding to the very contrasting needs and aspirations of the diverse communities of Oxford. This is at the heart of the conflict that has arisen. This is an overarching planning challenge in Oxford generally. As such the question that is posed by the Review is to what extent are there wider planning issues that may need to be addressed. The following paragraphs put down some reflections on this and some potential implications for the City Council and the Universities and Colleges.

Wider Planning Issues

213. In terms of the planning and related technical services offered by the Council the experience of the Review has been very positive. Despite being under great scrutiny there has been unquestioning cooperation with the Review team. The steps that are already in hand demonstrate the commitment of the service to learn and act on the experience and not wait for an external prompt into action. There is however a danger of a fragmented and incremental approach. The recommendations in this report are therefore not a shopping list of potential actions that could be taken but collectively should be seen as a programme of action.
214. In terms of planning process the RDW decision has to be seen within the wider context of the growing pressure on councils to process planning applications quickly, alongside growing aspirations for better quality developments and greater levels of consultation and participation in planning decisions. In this context the pre-application process is becoming a more significant part of the planning system if these competing goals are to be achieved. The need to strengthen the pre-application process on major schemes therefore is a common thread throughout this report and critical to good consultation and sensitive design.
215. In terms of planning policies the Review has already identified the need to strengthen the policy approach to protecting the setting of the City and its design policy. There is also a difference between the way policies are interpreted and the expectations of the wider community in Oxford. There is also a need to consider the implications of the 1990 Act (refer paragraph 161-164) and a clearer and more explicit approach to determining departures from the plan. Wider concern has been raised about the commitment to the existing heritage policies and the need to bring forward the Heritage Strategy. There is much in hand but it is important that it is integrated into the assessment process and not treated just as a specialist area.
216. In terms of the Core Strategy the development pressures created by the need for additional student accommodation exhibited by the RDW application are not likely to lessen. They were fully explored at the Core Strategy examination. They are not

readily resolved through individual applications on an incremental basis. The available land for new development inevitably will get tighter, with an associated increased pressure for increasing density and scales of development. The balance between the provision of much needed accommodation, the protection of the Greenbelt and the safeguarding of its heritage, a cornerstone of Oxford's international image, now needs to be reviewed and resolved through a refreshed longer term view and its conclusions reflected in the development plan policies for Oxford.

Future Requirements of the Universities & Colleges

217. In terms of organisational relationships, the interdependence between the Universities & Colleges and the City cannot be underestimated. Therefore, despite views that have been made to the contrary, it is essential that there is a very close working relationship between all parties. The real question is whether these need to be strengthened. The experience of the RDW development highlights the distinct move in the last few years to improve that working relationship. This has also been confirmed in liaison with Oxford Brookes University. The key lesson that has been brought out is the importance of how that relationship is managed in terms of the maintaining beneficial informal workings whilst separating it from any regulatory interface, such as pre-application discussions as set out in an SLA.
218. In terms of meeting the needs of the Universities and Colleges, it is considered that a more strategic approach to assessing their needs, and programme-based approach to development proposals. This would better manage the issues that arise from a project-based approach and would allow a better and more timely interface with the planning process. There is already a dialogue between the Council and the Universities and Colleges on this issue.
219. In terms of relationship with the City it is clear universities are increasingly defined by the City within which they are located. This is just as true of Oxford, despite its history, as of the newer institutions with which it competes for students and research. This note does not seek to set out the full basis of this perspective but the experience of RDW does not present the best model for future developments for the University. It does however highlight the importance of the university in terms of its impact on the needs of the city and its contribution to meeting the challenges the City faces in improving the quality of life and liveability for all its communities. This includes engaging with the community on an ongoing process and not just as and when projects arise, in addition to regular and strategic engagement with the City council and stakeholders. There are examples of emerging ideas in this area in the UK and elsewhere. Whilst each university has its own particular circumstances, the example of Harvard University's engagement with the civic community illustrates the potential for redefining relationships and being proactive in very challenging context.

Recommendations

220. This Review has identified a range of wider implications that impinge on the planning process in Oxford. The initiatives that the City Council had already put in hand to address issues that have been dealt with in this Review is to be commended, especially in terms of the need to promote high standards of design. Additional action listed that Oxford City Council should also give consideration to is identified in ***Recommendation 6.***

Recommendation 6: Wider Planning Issues

It is recommended that Oxford City Council also gives consideration to:

- a. Enhancing the planning service in relation to in terms of planning process, policy and strategy as specified in Section I of the main report; and:**
- b. Progressing and formalising a more strategic approach to the future development needs and engagement with the Universities and Colleges.**

SECTION J: GENERAL CONCLUSIONS & RECOMMENDATIONS

221. The overall Castle Mill development is equivalent in scale to a major college of the University. Its development in 2012 should have been one of the least contentious major developments in Oxford. The site is a brownfield disused rail sidings. The site has been identified for at least 15 years as suitable for student accommodation. The need for such accommodation is not questioned, nor is the existing planning consent for a 3/4-storey development. Yet despite having followed due processes it has resulted in major protests, including a petition to the Council to review its decision.

222. The findings of this review are that the controversy created by the RDW development lies in series of separated but clearly inter-related individual decisions, assumptions and judgements made at each stage of the planning process. The combined effect resulted in inadequate consultation on the proposals; and a less detailed assessment of the proposals than there could have been.

223. These findings set out in this Report. In summary these issues arose from:

- A tight timescale (para 46-47), in part created by policy requirements (para. 26-27), and a limited testing of alternative schemes (para. 115-117).
- An existing consent for the site (para. 20) and the planning policies (para. 25) created a presumption in favour of the development of the site;
- Consultation arrangements which failed to reach some of those most affected by the scheme (para. 96-99); and
- The significantly different design concept (para. 130-132) and the increased scale of development compared with the 2002 scheme (para. 21); and
- The related lack of awareness of these differences (para. 100 & 174).

These led to a series of decisions which resulted in a level of consultation and discussion that was not representative of the standards applied elsewhere in Oxford.

224. The report makes a range of recommendations in terms of the application of best practice which could help to increase the confidence of members, officers and the community in the planning process. These can be summarised under six headings:

- a. The Consultation Processes should be more proactive, especially, at the pre-application stage including the involvement of councillors (refer para. 92-93 & 159);
- b. The practice already being applied in Oxford in the assessment of Visual Impact and Design of new development needs to be applied more generally and skills of officers and members enhanced (refer para 144);
- c. Planning committee papers could be clearer in setting out the implications of controversial decisions and supporting evidence base (refer para. 187-188);
- d. Further improvements in the processes and the coordination of issues such as EIA screening and managing land contamination which are cross cutting in their procedural requirements (refer para. 69-70 & 208);
- e. The implications of the RDW decision on existing planning policies needs to be reviewed (refer para. 215-216);
- f. The universities should consider how they could strengthen their relationships with the City and its communities on an ongoing basis (refer para. 217-219);.

These recommendations if implemented will enable a review of planning practice and a focus on drawing out the lessons that need to be learnt and applied.

APPENDICES

A: Terms of Reference of the Cross-party Working Group

B: List of Persons & Organisations Consulted or Responding

C: Status of Planning Conditions

D: Approved and Adopted development Plan Documents

E: Documents Submitted Compared with Validation Requirements

F: Environmental Impact Assessment Screening Checklist

G: Government Guidance on Design and Access Statements

H: Diagrams from Core Strategy

I: DCLG Coding of Development Types from April 2008 (extract)

A: Terms of Reference of the Cross-party Working Group

DEVELOPMENT OF BY UNIVERSITY OF OXFORD OF STUDENT ACCOMMODATION AT ROGER DUDMAN WAY, OXFORD REVIEW OF PLANNING PROCESSES

Purpose of the Review

The purpose of the review is to assess whether in the context of this development the City Council complied with its planning processes and met statutory and National Policy requirements, how the processes compare with other Local Planning Authorities, and to identify best practice. Specifically, in determining the planning application in 2012 for this development:

- Whether the material planning considerations were adequately assessed and described to the Planning Committee
- Whether best practice was adopted in informing and consulting residents and stakeholders
- Whether all the factors that could reasonably be considered by the Planning Committee were reported by officers and in a reasonable format.

In addition the Council wishes to identify best practice to maximise assurance in the planning process, promote good design and ensure that residents are consulted and listened to.

Background

The development by the University of Oxford for student accommodation at Roger Dudman Way has attracted adverse comment since construction commenced. The development comprises some 19,241m² (312 flats), bounded by the railway line and allotments, and is visible from Port Meadow, which is important as a public amenity and as a landscape setting.

There are two planning permissions (2002 and 2012). The 2012 planning application was approved by the West Area Planning Committee. The second planning permission increased the development by 83 flats and construction is now being completed. The first phase of the 2002 permission was implemented, and the 2002 permission is relevant to the planning context.

Earlier this year the West Area Planning Committee decided that it wishes to commission an independent review of the planning procedures in this case to identify where processes could be improved. Officers have advised that the correct procedures were adopted and that the committee came to its decision in a rational fashion, bearing in mind all the material circumstances. Nevertheless it is appropriate to review these procedures in the light of public comment.

This reflects the Council's view that the planning application process is much more than notification of the receipt of a new planning application and it is important for officers, elected members, applicants and third parties to be mindful of:

- the importance of positive engagement with stakeholders and interested parties at both pre application and planning application stages;
- the need to understand the characteristics of a site, including the identification of positive and negative features to inform the design process and assessment of its impact; and
- the challenges Oxford faces in meeting the development needs of its communities in an environment which holds many physical constraints.

The Brief

There are four issues which are of specific concern which the review needs to address:

- The extent, form and effectiveness of the planning consultations
- The assessment and analysis of the visual impact of the development.
- The presentation of analyses and recommendations in officers' reports.
- The processes for assessing and analysing ground contamination

These are discussed below. A full briefing will be provided to the appointed consultant who is asked to focus on these issues, as well as provide any wider observations of the Council's planning and environmental processes.

The consultant will also be invited to include any other concerns that they feel appropriate that arise from their investigation.

1. Planning Consultation

The Council's consultation processes comprise web-based notification and consultation, site notices and written notification to amenity, community and other interest groups. In addition for major developments there is encouragement for the applicant to undertake additional consultation, which in this case included a public exhibition and written notification to potential interest groups. In this context some objectors to the development contest whether the applicant, the University of Oxford, contacted the full range of interest groups identified in their consultation.

2. Assessment and Analysis of Visual Impact

An assessment and analysis of the visual impact of the development were included in the committee report and placed on the internet. At the time of the planning application the visual impact of the development attracted little or no comment from amenity societies or the wider public, although it was debated extensively at the planning committee. Objectors to the development assert that that the visual analysis presented to the committee was misleading, did not represent the full impacts of the scheme, and that planning committee members did not have an adequate understanding of the issue.

3. Presentation of Analyses and Recommendations in Officers Report

The Head of Planning presents to the Planning Committee a single consolidated officer report and recommendations based on advice from the officers. External consultants' reports and

public representations are reported separately to avoid the potential for misunderstanding. Some objectors to the development assert that in this context internal reports were suppressed and that the report to the planning committee failed to balance and take sufficient weight of the visual and environmental factors.

4. Ground Contamination and Planning Conditions

The planning application form identified that the site was not contaminated. However, the application documentation included an Environmental Review which did identify ground contamination. The planning conditions included a requirement to submit and agree a risk assessment for contamination, prior to a start on site. The assessment was submitted after the commencement of construction, and was assessed by the Council as deficient. The Council and the Environment Agency have been working with the University to address the outstanding conditions, and there is some provision for retrospection in enforcement. Some objectors to the development assert that the enforcement of planning and environmental conditions should be strengthened. The review needs to advise on whether the planning conditions were discharged in an appropriate manner and whether there were other options available to the Council in the drafting, discharge and enforcement of the planning conditions.

Method

The appointed consultant will be provided with further background material and have full access to Council files.

The consultant will agree a method statement and programme for the review on appointment. They will be appointed by the Council and report to the West Area Planning Committee Working Party.

As part of the review the consultant will agree with the Council a structured consultation to include:

- a range of individuals, interest and amenity groups
- University of Oxford officers and their development consultants
- Council officers, members and consultants.

Reporting

The consultant will provide a draft report for review and agreement by the West Area Planning Committee Working Party before delivering a final report.

APPENDIX B: LIST OF PERSONS AND ORGANISATIONS CONSULTED OR RESPONDING
(List does not include persons where feedback was received through online/confidential surveys)

NAME	ORGANISATION
Sietske Boeles	CPRE
Michael Tyce	CPRE
Wendy Skinner Smith	Cripley Meadow Allotment Association
David Brock.	English Heritage
Kathy Davies	English Heritage
Sushila Dhall	Green Party
Frances Rubin	Hayfield Road Resident's Association
Julie Elliott	Hayfield Road Resident's Association
Mark	Headington Heritage
Jenny Mann	Jericho Community Association
Richard Holmes	Mid counties Co-operative Society
Mrs Charlotte Frizzell	Natural England
Marc Turner	Natural England
Barbara Morgan	Network Rail. Planner
Colin Field	Network rail
Managing agents	North Oxford Property Services
Stephen Lynam	Osney Island Residents' Association
Nick Caldwell	Oxford Architects
David Clark	Oxford Archaeological & Historical Society
George Lambrick	Oxford Archaeological & Historical Society
Paul Large	Oxford Brookes University
Sue Holmes	Oxford Brookes University
Matt Gaskin	Oxford Brookes University
Peter Thompson,	Oxford Civic Society
Clive Booth	Oxford Civic Society, Chairman
Tony Joyce	Oxford Civic Society
Hugh Jones	Oxford County Council
Debbie Dance.	Oxford Preservation Trust
Eleanor Cooper	Oxford Preservation Trust
Prof. Ewan McKendrick	Oxford University
Paul Goffin	Oxford University
Mike Wigg,	Oxford University
Carolyn Puddicombe	Oxford University
Isabel Hughes	Oxford University
Colin George	Oxford University
Liz Liddiard	Oxford University
Terry Gashe	Oxford University Planning Consultant
Trevor Halls	Oxford University Architect
John Thompson	Oxford University
John Mitri	Oxford University
Marc Paronia	Oxford University HCD Building Inspector
Peter Radwell	Oxford University EIA consultant
Adrian Arbib	Save Port Meadow Campaign Group

Toby Porter	Save Port Meadow Campaign Group
Nicky Moeran.	Save Port Meadow Campaign Group & Walton Manor Residents Association
Sarah Murphy	Save Port Meadow Campaign Group
Shirley McCready	St Margaret's Neighbourhood Plan Forum
Ian Carmichael.	Thames Valley Police. (Crime Prevention)
Owners	Turbo Teds
Derek Baker	The Environment Agency
Cathy Harrison	The Environment Agency
Judith Freedman,	William Lucy Way Residents' Association
Jonathan Bowen	William Lucy Way Residents Association
Jane Bowen,	William Lucy Way Residents Association
Ross Elder	William Lucy Way Residents Association
Stella Wood	William Lucy Way Residents Association
Jaqui Walters	William Lucy Way Residents Association
Andrew Burchardt	Wolvercote Commoners
Alison Cobb.	Wolvercote Commoners

NAME	RESIDENTS
Sonke Ardlung	Resident
Jeremy Arden	Resident
Richard Bossons	Resident
David Bradbury	Resident
Tessa Burrows	Resident
Liz Cairncross	Resident
Liz Carmichael	Resident
Josie Calvert	Resident
Jonathan Clark	Resident
Keith & Jane Cunningham	Resident
Mark Davies	Resident
Paul de Villiers	Resident
Joanna Dennison	Resident
Michael Drolet	Resident
Sean Feeney	Resident
Julian Fitzell	Resident
Louie Fooks	Resident
Alice Freeman	Resident
Sam Friggens	Resident
Imogen Goolld	Resident
Mike Hamblett	Resident
Jamie Hartzell	Resident
Vicky Hirsch	Resident
Penny Howe	Resident
Mark Hughes	Resident
Mark Hughes-Morgan	Resident
Bruce Hutt	Resident
David Hyams	Resident

Basil Kouvaritakis	Resident
Richard Lawrence-Wilson	Resident
Richard Luff	Resident
Stella Maidment	Resident
Gary McGeough	Resident
Julie Mitchell	Resident
Tony Morris	Resident
Carey Newson	Resident
Harry Nicolle	Resident
Pamela Nightingale	Resident
Sarah Norman	Resident
Tim Oliver	Resident
Margaret Pelling	Resident
Debora Porter	Resident
Josephine Quinn	Resident
Elaine Russell-Wilks	Resident
Julie Saunders	Resident
Judith Secker	Resident
Jessica Simor, QC	Resident
Michael Stinton	Resident
Liz Storer	Resident
Clova Stuart-Hamilton	Resident
John Temple	Resident
Rosalind Thomas	Resident
Jackie W.	Resident
Rob Walters	Resident
Michael Ward	Resident
Dominic Woodfield	Resident
Sarah Wookey	Resident
John Wyatt	Resident

NAME	POLITICIANS
Nicola Blackwood MP	MP
Cllr Susanna Pressel	Local Ward Member
Cllr Colin Cook	Local Ward Member
Cllr James Fry	Local Ward Member
Cllr John Goddard	Local Ward Member
Cllr Michael Gotch	Local Ward Member
Cllr Jean Fooks	Local Ward Member
Cllr Stuart McCready	Local Ward Member
Cllr Jim Campbell	Local Ward Member
Cllr Gwynneth Royce	Local Ward Member
Cllr Louise Lupton	Local Ward Member
Cllr Van Nooijen	WAPC
Cllr Benjamin	WAPC
Cllr Jones	WAPC
Cllr Price	WAPC
Cllr Tanner	WAPC
Cllr Lloyd-Shogbesan	WAPC
Cllr Khan	WAPC
Cllr Canning	WAPC

NAME	OCC OFFICERS
Michael Crofton-Briggs	OCC Planning Services
Niko Grigoropoulos	OCC Planning Services
Mark Jaggard	OCC Planning Services
Murray Hancock	OCC Planning Services
Nick Worllidge	OCC Planning Services
Laura Goddard	OCC Planning Services
Adrian Roche	OCC Planning Services
Martin Armstrong	OCC Planning Services
Claire Gardner	OCC Planning Services
Robert Fowler	OCC Enforcement
John Copley	OCC Environment Dept
Mai Neilson	OCC Environment Dept
Emily Green	OCC Environment Dept

APPENDIX C: STATUS OF PLANNING CONDITIONS

Castle Mill, Roger Dudman Way: 11/02881/FUL: Details in Compliance with Conditions.

1. No Details Required

- **Condition No.1: Time Period for Implementation.**
- **Condition No.2: Approved drawings.**
- **Condition No.6: Completion of Landscaping.**
- **Condition No.8: Construction of Parking Areas.**
- **Condition No. 14: No infiltration of water (soakaways).**
- **Condition No.17: Natural Resource Impact Analysis.**
- **Condition No.19: Wildlife Initiatives.**

2. Details agreed on 16th November 2012

- **Condition No.3: Samples of Materials.**
- **Condition N.15: Drainage.**
- **Condition No.20: Construction Management Plan.**
- **Condition No. 21: Construction Travel Plan.**

3. Agreed in part 10th December 2012

- **Condition No. 11: Noise Attenuation.**
- **.**
- **Condition No.12: Vibration.**

4. Details submitted on 14th February 2013. Called into Committee for determination.

- **Condition No.4: Management Controls on Student Accommodation.**
- **Condition No.5: Landscape Plan.**
- **Condition No.7: Landscape Management Plan.**
- **Condition No.9: Control of Car Parking.**

- **Condition No.10: Students Tenancies: No Private cars in Oxford.**
 - **Condition No.13: CCTV.**
 - **Condition No.18: Management of Badger Sett.**
5. **Condition No. 16: Ground Contamination** (Various details in compliance received at intervals. To come to committee for determination.)
 6. **Condition No. 22: Public Art.** (Details submitted 26th July 2013. To committee for determination)

APPENDIX D: APPROVED AND ADOPTED DEVELOPMENT PLAN DOCUMENTS (and related principle policies)

Oxford Local Plan 2001-2016.

CP1 - Development Proposals
CP6 - Efficient Use of Land & Density
CP8 - Design Development to Relate to its Context
CP9 - Creating Successful New Places
CP10 - Siting development to meet functional needs
CP11 - Landscape Design
CP13 - Accessibility
CP14 - Public Art
CP17 - Recycled Materials
CP18 - Natural Resource Impact Analysis
CP21 - Noise
CP22 - Contaminated Land
TR3 - Car Parking Standards
TR4 - Pedestrian & Cycle Facilities
NE11 - Land Drainage & River Engineering Works
NE12 - Groundwater Flow
NE13 - Water Quality
NE14 - Water and Sewerage Infrastructure
NE21 - Species Protection
NE23 - Habitat Creation in New Developments
HE10 - View Cones of Oxford
SR9 - Footpaths & Bridleways
DS22 - Cripsey Rd, North End Yard - Ox University Use

[It should be noted that Policies HE3 and HE7 have been also suggested as material – refer paragraph 161 of the main report]

Oxford Core Strategy 2026.

CS2 - Previously developed and greenfield land
CS4 - Green belt
CS9 - Energy and natural resources
CS10 - Waste and recycling
CS11 - Flooding
CS12 - Biodiversity
CS13 - Supporting access to new development
CS17 - Infrastructure and developer contributions
CS18 - Urban design, town character, historic environment
CS19 - Community safety
CS25 - Student accommodation

Sites and Housing Development Plan Document (DPD) - Proposed Submission

HP5 - Location of Student Accommodation
HP6 - Affordable Housing from Student Accommodation
HP9 Design Access and Context
HP11 - Low Carbon Homes
HP15 - Residential cycle parking

HP16 - Residential car parking
SP26 - Land north of Roger Dudman Way

Supplementary Planning Documents.

1. Planning Obligations (2007)
2. Parking Standards, Transport Assessment and Travel Plans (2006)

Other Policy Documents.

1. PPS1: Delivering Sustainable Communities.
2. PPS3: Transport.
3. PPS5: Planning for the Historic Environment.(and its associated Practice Guide)
4. PPS9: Biodiversity and Geological Conservation.
5. PPS22: Renewable Energy.
6. PPS23: Planning and Pollution Control.
7. PPS24: Planning and Noise.
8. PPS25: Planning and Flood Risk

South East Regional Spatial Strategy

Appendix E: Documents Submitted Compared with Validation Requirements

The following tables list the documents that are or may be required in order to validate a planning application compared with those submitted but the applicant. The requirements are classified into three groups as defined by Oxford City Council in its guidance to applicants:

- A. National List of Minimum Requirements Necessary for Validation
- B. Local List of Requirements Necessary for Validation which may be required
- C. Supporting information that may also be required in certain

The lists of documents provided are classified as follows:

Documents Provided	
Documents not provided at the time of application but required as a condition of approval	CONDITIONED
Documents not required	N/A

A. National List of Minimum Requirements Necessary for Validation	
Requirement	Provided
1. Completed Application Form	
2. Design and Access Statement	
3. Location Plan	
4. Block Plan	
5. Completed Ownership Certificate	?
6. Notices	
7. Appropriate fee	
8. . Environmental Impact Assessment (EIA) for Schedule I Developments	N/A

B. Local List of Requirements Necessary for Validation which may be required:	
1. Other plans and drawings including: Existing and proposed elevations, floor plans, site sections, finished floor and site levels, Roof plan	
2. Affordable Housing Statement.	N/A
3. Biodiversity and Geodiversity Survey and Assessment.	
4. Daylight/Sunlight Assessment.	
5. Energy Statement.	BREEAM
6. Flood Risk Assessment. .	
7. Heritage Statement.	
8. Land Contamination Assessment (<i>refer to policy CP22</i>	CONDITIONED
9. Landscaping Details.	CONDITIONED
10. Natural Resources Impact Analysis (NRIA).	
11. Noise Impact Assessment.	
12. Parking Information	PART OF D&AS
13. Planning Obligations	
14. Statement of Community Involvement..	
15. Transport Assessment.	
16. Travel Plan.	N/A
17. Tree Survey.	
18. Viability Assessment.	N/A
19. Waste Management Details	
20. CD-ROM	

APPENDIX F: Environmental Impact Assessment Screening Checklist

<http://www.planningportal.gov.uk/planning/appeals/online/tutorialshelp/onlineappealservicehelp/onlineappealservicehelpforlpas>

The following note is abstracted from the above Government web-site

Environmental Impact Assessment (EIA) helps to ensure that an authority giving development consent for a project makes its decision in the full knowledge of any likely significant environmental effects on the environment.

The link below is to the EIA checklist used by the Government's National Planning Casework Unit and The Planning Inspectorate when screening for EIA. Local Authorities may also find that the checklist provides a useful foundation for screening for EIA, but there is no obligation for it to be used.

http://www.planningportal.gov.uk/uploads/pins/eia_analysis_screening.doc

APPENDIX G: GOVERNMENT GUIDANCE ON DESIGN AND ACCESS STATEMENTS

Design and Access Statements

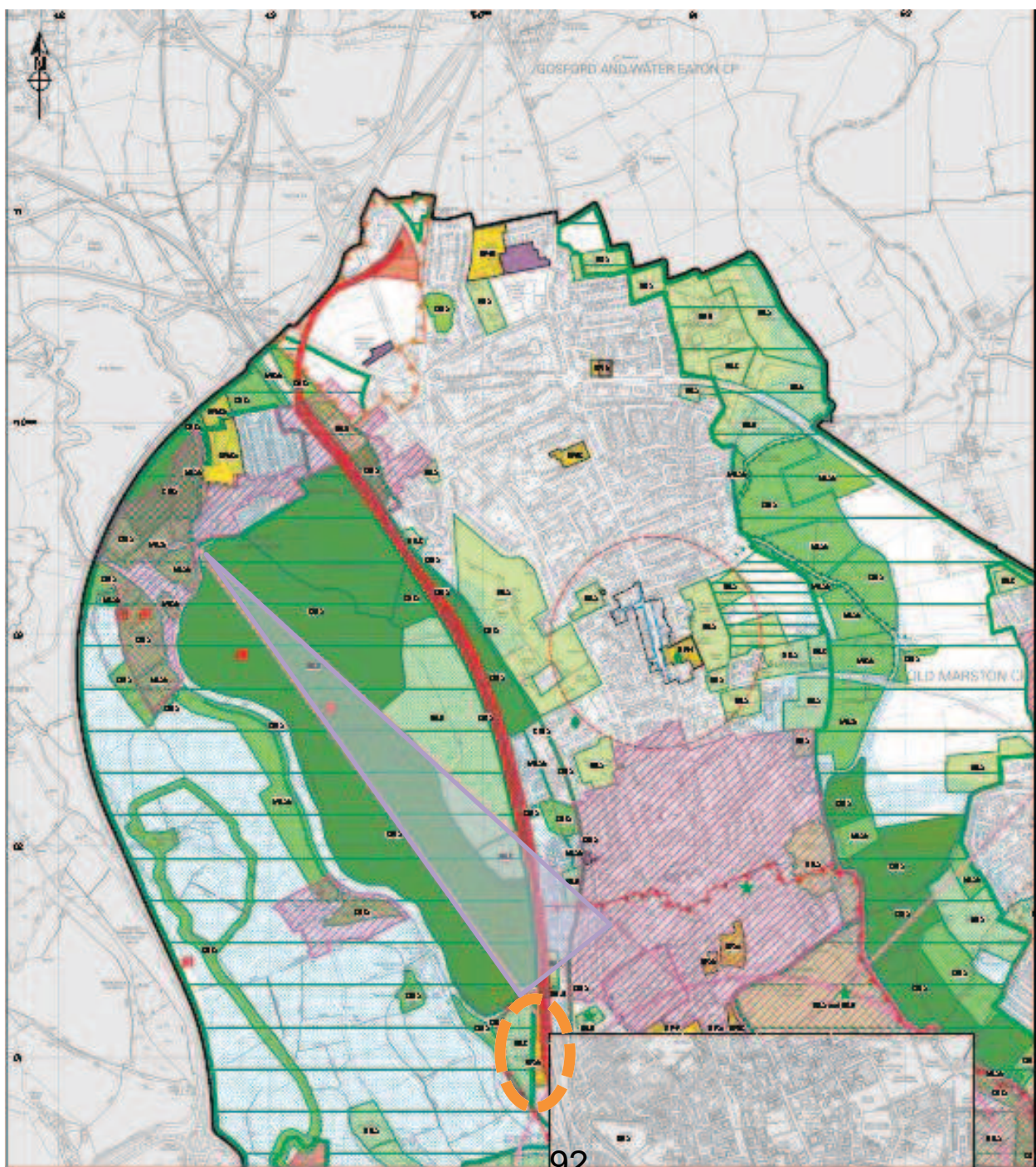
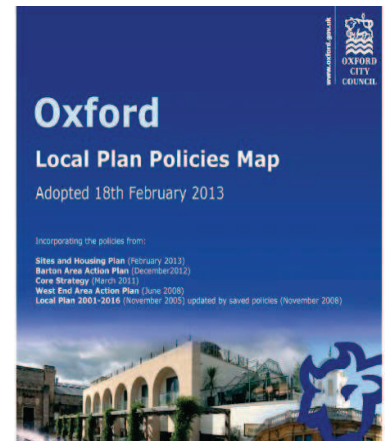
Appraising the Context (Abstract of Paragraph 97 DCLG Circular 01/2006)

97. A design and access statement must demonstrate the steps taken to appraise the context of the proposed development. It is important that an applicant should understand the context in which their proposal will sit, and use this understanding to draw up the application. To gain a good understanding of context and to use it appropriately applicants should follow a design process which includes:
- **Assessment** of the site's immediate and wider context in terms of physical, social and economic characteristics and relevant planning policies. This may include both a desk survey and on-site observations and access audit. The extent of the area to be surveyed will depend on the nature, scale and sensitivity of the development.
 - **Involvement** of both community members and professionals undertaken or planned. This might include, for example, consultation with local community and access groups and planning, building control, conservation, design and access officers. The statement should indicate how the findings of any consultation have been taken into account for the proposed development and how this has affected the proposal.
 - **Evaluation** of the information collected on the site's immediate and wider context, identifying opportunities and constraints and formulating design and access principles for the development. Evaluation may involve balancing any potentially conflicting issues that have been identified.
 - **Design** of the scheme using the assessment, involvement, and evaluation information collected. Understanding a development's context is vital to producing good design and inclusive access and applicants should avoid working retrospectively, trying to justify a pre-determined design through subsequent site assessment and evaluation.
98. In the light of this understanding of the context, a design and access statement should explain how this has been considered in relation to its proposed **use**. The use is the use or mix of uses proposed for land and buildings. Use cannot be reserved within an outline application. Design and access statements for both outline and detailed applications should explain the use or uses proposed, their distribution across the site, the appropriateness of the accessibility to and between them, and their inter-relationship to uses surrounding the site.
99. In addition, the statement should explain how this context has been considered in relation to the physical characteristics of the proposal, that is, the amount, layout, scale, landscaping and appearance of the development.

Appendix H : Diagrams from Oxford Core Strategy

North West Policy Map highlighted to show Wolvercote View Cone (purple cone) and Roger Dudman way Site allocation (yellow circle)

(Use this link to access the full Key to the notations on the Policy Map
<http://www.oxford.gov.uk/Library/Documents/Planning/Oxford%20Policies%20Map%20South%20West.pdf>)



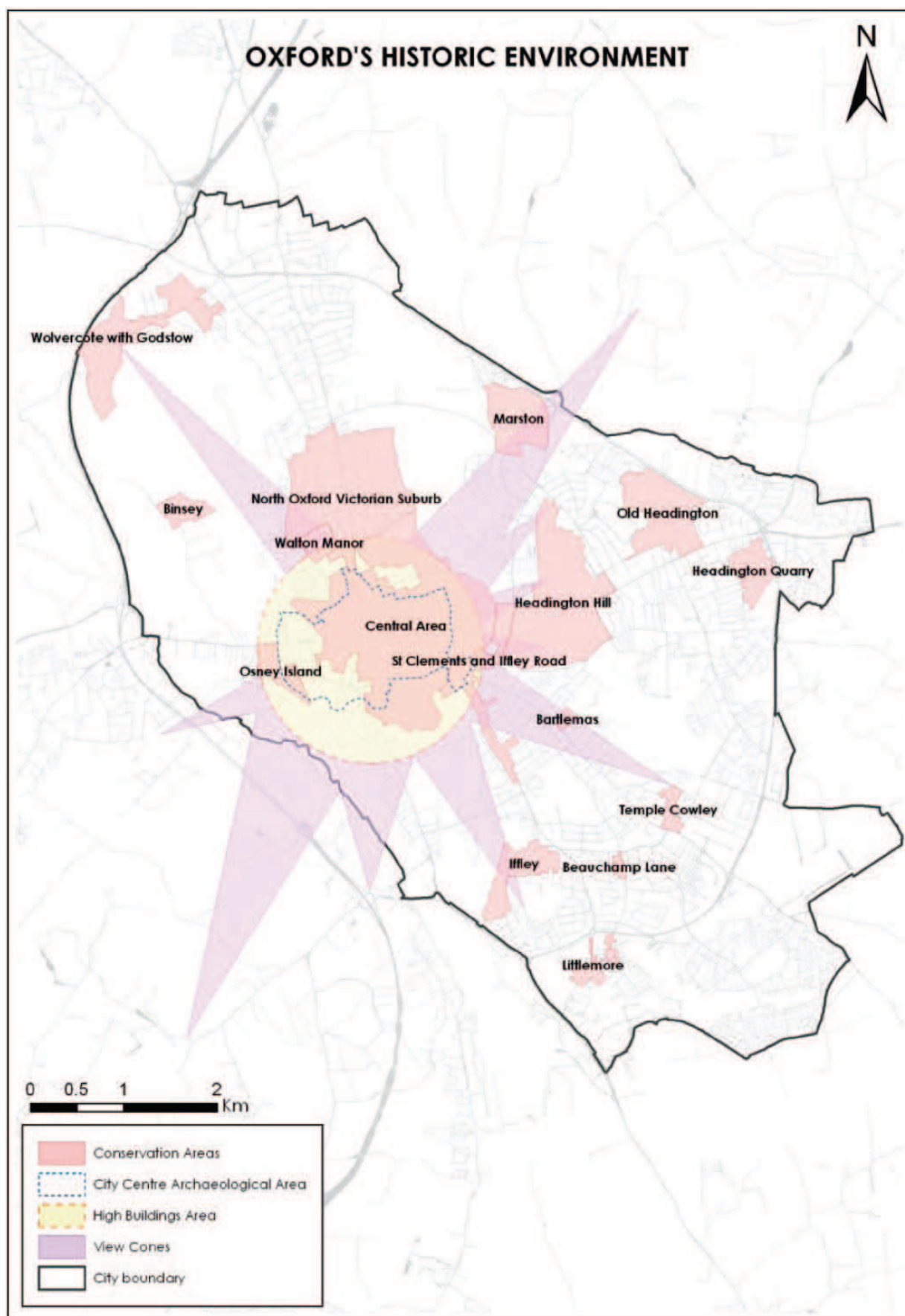


Figure 14 – Oxford's Historic Environment

APPENDIX I: Guide to the DCLG coding of Development Types from April 2008 (extract)

The Department of Communities and Local Government code planning applications which includes two classes of major applications - large scale and small scale. Large scale relates to developments of over 200 dwellings, or 10K sq. m. or 2ha. in size. Small scale refers to developments of over 10 units , 1K sq. m. or 1 ha (or 0.5 ha if residential use) In size. The following table is an extract from the schedule used by the Oxford City planning department.

Code	Meaning	Criteria
LARGE SCALE MAJOR		
01	Large Scale Major – Dwellings	Number of dwellings 200 or more. If no number specified site area of 4 hectares or more.
02	Large Scale Major – Offices / R & D / Light Industry	Floor space of 10,000 sq m or more <u>OR</u> site area of 2 hectares or more. (Do <u>not</u> include any land outlined in blue)
03	Large Scale Major – Manufacture / Industry / Storage / Warehousing	
04	Large Scale Major – Retail Distribution and Servicing	
05	Large Scale Major - Gypsy and Traveller Sites	
06	Large Scale Major – All Other	
SMALL SCALE MAJOR		
07	Small Scale Major - Dwellings	Number of dwellings 10 to 199. If no number specified site area of 0.5 and less than 4 hectares
08	Small Scale Major - Offices / R & D / Light Industry	Floor space of between 1,000 sq metres and less than 10,000 sq metres <u>OR</u> site area between 1 hectare and less than 2 hectares
09	Small Scale Major - Manufacture / Industry / Storage / Warehousing	
10	Small Scale Major - Retail Distribution and Servicing	
11	Small Scale Major - Gypsy and Traveller Sites	
12	Small Scale Major – All Other	