

West Area Planning Committee

9 February 2016

This report relates to development approved under planning permission reference: **11/02881/FUL at Castle Mill, Roger Dudman Way, Oxford**, specifically the University's Voluntary Environmental Statement (VES) reference 14/03013/FUL and 14/03013/CONSLT (for the ES Addendum and additional substantive information). The development was approved in 2012 as an extension to existing student accommodation at Castle Mill to provide additional 312 postgraduate flats, consisting of 208 student study rooms, 90 x 1 bed graduate flats and 14 x 2 bed graduate flats, plus ancillary facilities, 360 covered cycle spaces and 3 parking spaces.

Ward : Jericho and Osney

Applicant : The University of Oxford

Recommendation : Committee is asked to:

1. Confirm that the submitted Voluntary Environmental Statement meets the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as far as possible given that the assessment is retrospective and should be taken into account and inform the Council's decisions as set out in paragraph 3.26
2. Discharge and approve the outstanding planning conditions as set out in paragraphs 4.6 and Appendix B
3. Determine whether enforcement action should be taken as set out in paragraphs 4.8
4. Assess the mitigation options put forward by the University and note the unilateral legal agreement proposed as a commitment to bring forward option 1 as set out in paragraph 4.33
5. Consider whether it is appropriate to recommend discontinuance action for consideration by Council as set out in paragraphs 5.6, 5.48, 5.49 and 5.53 & 5.54

1.0 Background

1.1 On 7 November 2011 a planning application for the development described above at Castle Mill, Roger Dudman Way was submitted to Oxford City Council by the University of Oxford. The submitted proposals were not considered to require environmental impact assessment (EIA) and the planning application was considered by the West Area Planning Committee on 15th February 2012. Planning permission was granted for the reasons set out below; and the development has since been built and occupied.

1.2 Reasons for approval of the planning application¹

1. The Council considers that the proposal accords with the policies of the development plan as summarised below. It has taken into consideration all other material matters, including matters raised in response to consultation and publicity.

¹ From West Area Planning Committee minutes 15th February 2012 and Planning Permission 11/02881/FUL

Any material harm that the development would otherwise give rise to can be offset by the conditions imposed.

2. The development seeks to provide purpose built student accommodation at a site allocated for the purpose which is already partly built out for that use, and where the previous planning permission for the remainder of the site remains extant. The site is a brownfield one and lies adjacent to the main line railway into Oxford station to the south and was formerly used for railway related activities. Due to its linear form adjacent to the railway lines and its poor access from Botley Road, the site is ill suited to commercial development, family housing, or other uses which would generate significant levels of traffic. It is well suited to the needs of the University's graduate students however as it would enjoy good links by foot and cycle to the city centre, Walton Street and North Oxford. As such the development makes good and efficient use of the land. 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.
 3. Many of the public comments received express concerns about cycle and pedestrian access to the site, either from Roger Dudman Way or via Walton Well Road to the north. The latter access is intended to be closed during construction. Although these concerns are acknowledged, measures are in hand to create alternative pedestrian routes and to improve current conditions along Roger Dudman Way. On other matters the buildings proposed on up to 5 floors are large but appropriate in height and scale at this location; issues of biodiversity and the relationships to the neighbouring allotments addressed; and the site safeguarded from flood risk. The site is sustainable with good levels of energy efficiency included within the development. There are no objections from statutory organisations
- 1.3 Since then the development's history has included the Judicial Review Proceedings undertaken by the Campaign for the Protection of Rural England (CPRE) and the independent review of the granting of planning permission overseen by Vincent Goodstadt.
 - 1.4 The development was the subject of a formal screening opinion of the Council to the effect that the development was not EIA Development – i.e. did not require an environmental statement. The CPRE sought to challenge that but the normal period for challenging the grant of permission based on that screening opinion had expired. The CPRE argued that there was an on-going duty to remedy breaches of European law (which it claimed had occurred) and that the only way to effect that remedy was by the Council being required to undertake discontinuance action in order to facilitate a retrospective EIA.
 - 1.5 On 9 July 2013 the University confirmed, that it would “*carry out an assessment of the environmental impact of the development on a voluntary basis following the processes of the Directive and the regulations so far as possible.*” The University also indicated that it would give consideration to additional mitigation to deal with the landscape and visual effects of the development. The Council stated that having received that voluntary EIA and detailed proposals for further mitigating the impact on Port Meadow and how these would be secured it would, following consultation ask the Committee whether:

- The development was constructed in accordance with the planning permission granted and, if not, whether it is expedient that any enforcement action be taken.
 - The University's applications to discharge planning conditions should be granted.
 - The Council should make a discontinuance order.
- 1.6 In the light of this the Judge refused to give the CPRE permission to seek judicial review. This was on the basis that even if the procedural deficiencies claimed by the CPRE occurred, what was being done would rectify them so far as possible. He explicitly expressed no view as to whether or not those errors actually occurred.
- 1.7 The discharge of some of the planning conditions on the planning permission for Castle Mill student accommodation was deferred in September 2013.
- 1.8 The Council also commissioned Mr Vincent Goodstadt to review:
- Whether 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.
- 1.9 Mr Goodstadt reported that although there was no obligation upon an applicant for planning permission to consult, best practice encouraged pre-application consultation and that, whilst the University's commitment to pre-application consultation was consistent in principle with best practice objectives, it had not been successful in meeting all of those objectives.
- 1.10 He concluded that the steps taken by the Council to consult were in accord with statutory procedures and in line with procedures generally used by the Council including its own relevant guidance. He further concluded that these procedures were consistent with practice generally in English planning authorities and in accordance with Government regulation.
- 1.11 As regards Committee reporting, Mr Goodstadt noted that the report 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
- the development would allow the University to meet and maintain the requirements of other recent permissions for academic floor space that no more than 3,000 of its students should live in open market housing. And that:

1.12 “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”

1.13 In this regard Mr Goodstadt reported:

“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.”

“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.” And;

“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.”

1.14 He further stated:

“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.”

2.0 Purpose of this report

- 2.1 The first purpose of this report is to feedback to members on the environmental information derived from the Voluntary Environmental Statement (VES) and confirm both the Council’s consultants and Officer’s view that the VES together with the further information submitted in late 2015 can reasonably be described as an environmental statement within the meaning of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (“the EIA Regulations”).
- 2.2 The second purpose of this report is for members, with the benefit of the environmental information, to determine whether the schemes and details supplied under the various outstanding planning conditions are now acceptable.
- 2.3 Once these decisions have been made the report will advise members whether there are any outstanding breaches of planning control and whether if there are it would or would not be expedient to consider enforcement proceedings against the University.
- 2.4 The third purpose of this report is for members to consider the nature of the mitigation that the University is proposing to ameliorate the impact of the development and the further planning processes that would be involved in delivering the proposed scheme of mitigation.
- 2.5 The final purpose of the report is to advise members on the issue to be considered in relation to discontinuance action.
- 2.6 Although set out as discrete elements the issues set out above do overlap in the report that follows.
- 2.7 This report has a number of appendices as follows:
 - Appendix A – Summary of Consultation Responses
 - Appendix B – Planning Conditions Assessment
 - Appendix C – The Independent Review by SLR Consultants December 2014
 - Appendix D – The VES Non-Technical Summary
 - Appendix E – SLR Consultants November 2015
 - Appendix F – Screening Opinion Letter – Planning Conditions
 - Appendix G – Goodstadt Review Report

3.0 The Voluntary Environmental Statement (VES)

- 3.1 On 29th October 2014 the City Council received a Voluntary Environmental Statement (VES) from the University of Oxford (to replicate the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as far as possible given that the assessment is retrospective) assessing the environmental effects of the development. It included three possible mitigation options – that is to say going beyond anything which was required when the development was permitted.
- 3.2 This VES was subject to public consultation which closed in December 2014. The City Council commissioned consultants to conduct an independent review of the VES. That review accepted the contents of the VES in large measure but also identified some potential areas where further information and clarification should be sought. Further information was sought and an Environmental Statement Addendum was registered by the Council on September 2nd 2015.
- 3.3 The assessment of the Environmental Statement Addendum by both the Council and its environmental consultants identified the need for some further additional information in relation to the geo environment and in particular land contamination. As a result further information was provided by the University on the 16th November 2015. A further public consultation was undertaken which commenced on 26th November 2015 and ran until Dec 18th 2015.
- 3.4 The consultation undertaken for the various parts of the VES has exceeded the statutory requirements for publicising environmental statements because of the extent of public and stakeholder interest in this matter. All three sets of documents comprising the VES are available for inspection on the Council's planning public access system and a set of all documents is available for committee members in the member's room at the Town Hall. A summary of all the consultation responses is attached to this report as Appendix A.
- 3.5 The VES has covered a range of technical and other information contributing to the formal environmental assessment of the constructed development. The structure and scope includes assessments of alternative approaches to the development, the site's planning context and history, landscape and visual impact, the historic environment, ecological and nature conservation, geo environmental, flood risk, transport, air quality, noise and socio-economic issues. The process seeks to identify and assess individual impacts and appropriate mitigation across this range of issues. Three options for overall mitigation have been identified. The University is proposing to carry out the mitigation in Option 1 (see further below for an explanation of Option 1). The Council's independent consultant's review of the VES is attached at Appendix C.
- 3.6 The Council's approach when assessing the voluntarily submitted statement and the further information received has been to follow the processes of the EIA Regulations as if they applied, including where the Council required the provision of further information. The review of the original and further information submitted by the University has been to satisfy the following key question:

“Given the voluntary and retrospective nature of the exercise, can the VES together with the further information reasonably be described as an Environmental Statement as described by the EIA Regulations?”

- 3.7 That is the relevant test as established by the Courts. In answering this question it has been necessary for the consultant to determine whether the VES and ES Addendum would accord with Regulation 2(1) of the EIA Regulations, which states that:

““Environmental Statement” means a statement –

- (a) That includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but*
(b) That includes at least the information referred to in Part 2 of Schedule 4.”

Extracts from the VES – Non-Technical Summary

- 3.8 The VES comes with a non-technical summary (VESNTS). This is attached at Appendix D. Its purpose is to summarise the VES and provide an overview of the impacts and proposed mitigation. The following extracts are from the VESNTS where it summarises the key impacts and mitigation proposed.
- 3.9 Landscape, Visual and Heritage Assessment: The assessment determines that, in a considerable number of cases, the sensitivity of various landscape and visual receptors is judged to be moderate or high. The magnitude of effect upon them is judged to be medium or high, and the level of effect is considered to be moderate or substantially adverse. The VES considered the varying impacts upon 25 identified heritage assets. The development has a ‘high adverse’ impact on four heritage assets of high heritage value, namely:
- St. Barnabas church, a grade 1 listed building;
 - Port Meadow, a scheduled monument and registered common;
 - The river Thames and towpath; and
 - The Oxford skyline’.
- 3.10 The Design Mitigation Strategy (DMS): has identified six mitigation measures. “As a result of the assessment of the environmental effects of the development, additional measures have been identified and considered in order to mitigate the environmental effects, in particular in relation to landscape and visual effects and effects on the historic environment.
1. Elevational changes to the facades of the buildings;
 2. Tree planting in the badger run along the west boundary of the site;
 3. Introduction of a structural, planted boundary screen to increase the ‘green’ screening between the buildings and Port Meadow;
 4. Removal of some buildings entirely.
 5. Modifications to the form of the roofscape of the buildings, including to reduce height.
 6. Reduction in the height of various buildings through the removal of a floor”.
- 3.11 The DMS considers combinations of different measures to assess how best to mitigate the effects of development. Three options have been identified comprising:
- Option 1: Building façade treatment (design mitigation measure 1) and tree planting along western boundary of the site in the Badger run (measure 2);
 - Option 2: Building façade treatment (design mitigation measure 1), tree planting (measure 2) and modification of roof forms to hip and low level roofs (measure 5);

- Option 3: Building façade treatment (design mitigation measure 1), tree planting (measure 2), removal of a floor from six buildings and replacement of all roofs with low level roofs (measure 6). A total of 33 student residence units (38 bedrooms) would be removed.

3.12 The VES judged that the mitigation measures proposed result in the following effects:

- Option 1 measures result in a reduction in the level of effect of a limited number of landscape and visual impacts from substantial adverse to moderate adverse.
- Option 2 measures result in a reduction in the level of effect of the majority of landscape and visual impacts from substantial adverse to moderate adverse.
- Option 3 measures result in a reduction in the level of effect of the majority of landscape and visual impacts from substantial adverse to slight to moderate adverse, and to slight adverse when vegetation is in leaf.

3.13 Mitigation measures designed to address some of these impacts have beneficial effects, but it is considered that the 'high adverse' impacts on the high heritage value sites can only be reduced to 'medium adverse' by the reduction in height of all the buildings under the option 3 mitigation measures set out in the Design Mitigation Strategy'.

3.14 "The University has reviewed the implications of the options in the DMS, and proposes to undertake design mitigation measures 1 and 2 as included in Option 1 set out in the Design Mitigation Strategy. Following consideration of the VES by Oxford City Council, details of changes to the elevational treatments to the buildings suggested in option 1 in the Design Mitigation Strategy will be submitted in a new planning application at a later date. This would also include for all necessary pre-application consultation. Full details of the tree planting suggested in the Design Mitigation Strategy will be submitted to the City Council".

3.15 Ecology: The development including the mitigation and enhancement measures (i) had regard for relevant legislation and current planning guidance; (ii) contributes to achieving the objectives of the planning policies relating to biodiversity;

Extracts from the Independent Review of the VES (undertaken on behalf of the council by SLR consultants²)

(i) December 2014 Report

3.16 Landscape and Visual impact:

The methodology used broadly accords with best practice, however there are several omissions which when combined, could result in a lack of clarity, inaccuracies or underestimates in the assessment of effects.... Although the impact assessment does not clearly identify which landscape and visual impacts are regarded as significant, it is clear from paragraph 7.4.24³ that the overall level of landscape and visual impacts is significant. In this context it is clear that a mitigation strategy is necessary in order to reduce the residual landscape and visual effects'.

3.17 Historic Environment: 'Five key issues were identified that assist in defining and

² December 2014 report

³ October 2014 Voluntary ES

characterising the impacts of the development upon the historic environment....

- Issue 1: the development exclusively impacts upon the setting of heritage assets rather than the assets per se.
- Issue 2: The development has high adverse impacts upon the setting of four assets that have national and international heritage values (these are St Barnabas Church [Listed grade 1], Port Meadow [SSSI, SAC & SM], The Oxford Skyline [Internationally recognised silhouetted skyline] and the river Thames).
- Issue 3. The nature of the adverse impacts relates to both changes to historic landscape character, and to direct loss and obstruction of views, including those of the Oxford skyline.
- Issue 4. Views to the heritage assets are kinetic, experienced, for example by people walking across an open landscape with a developing sequence of views.
- Issue 5. The open landscape setting of heritage assets retains some inherent dynamics arising from seasonal changes, other development in Oxford, and landscape management by others. In summary, the impact assessment addressed all the potential issues raised and provided a fair and honest overview of the indirect impacts that might occur...The ES chapter has undertaken all necessary processes and assessment for this development and provided a comprehensive staged approach for addressing issues, in particular setting between heritage assets and the development'.

3.18 Ecology and Nature Conservation impact

SLR consultants 'has identified a number of weaknesses...and so the conclusion that the impacts of development on ecology cannot be verified. The EclA as it stands is not robust. This is largely because the stated methodology for assessing the significance of effects has not been followed, and the stated effects are not supported by sufficient evidence. Whilst SLR is not challenging the scope of the surveys undertaken of the conclusions of the EclA the following information is required before the EclA can be verified.....'

3.19 Geo Environment:

'With some modification, the chapter will confirm to common EIA practice...and the demands of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011'.

3.20 Flood Risk and Drainage

'SLR has assessed the baseline conditions, impact assessment, mitigation measures, residual effects within ES chapter 11 to be appropriate, taking into account the nature of the development and its hydrological setting. The assessment provides adequate coverage of the generic subject matter albeit with some potential deficiencies within all aspects of the assessment. Whilst notable deficiencies and omissions in the assessment have been identified, no significant effects have been identified that are anticipated to require material amendment to the proposed development...the ES is sound in flood risk and drainage terms'.

3.21 Transport

'SLR has raised a number of concerns with regard to the assessment and so the summary statement made, that the impacts of the development on transport and traffic are not considered to be significant, may not be accurate and cannot be verified by SLR. Further clarification and evidence will be required before the summary statement can be verified....it is considered that the conclusions made within the ES chapter are not substantiated...'

3.22 Air Quality

'No evidence of any assessment of emissions from the energy centre is available to support the statement: "the energy centre emissions would not have a detrimental impact upon local air quality"...SLR considers that quantification should be provided. Given the findings of the impact assessment and proposed mitigation measures, the residual effects are considered to be acceptable...the remaining summary effects are considered to be acceptable'.

3.23 Socio Economic Background

Provides contextual background to the design and mitigation options put forward. The assessment concludes that the social and economic implications of each would impose substantial financial costs ranging from preliminary estimates of £6 million under option 1 to £13.5 million with option 2 and £30 million with option 3..."all these figures are preliminary and subject to further investigation and development. These are substantial costs which would divert the University's resources and mean that investment in other projects would not occur or would be delayed. Options 2 and 3 would involve temporary displacement of students into alternative accommodation during building works. Option 3 would also involve the permanent loss of 33 units (38 bedrooms) on the top floor of the development, which comprise mainly 1 and 2 bedroom flats for small families and older students. The loss of this accommodation would not help the University comply with the City Council's 3000 student limit, and force those students to find accommodation elsewhere in the city, with consequent adverse social and economic impacts".

3.24 SLR Independent Review Conclusions (2014 Report)

In the main it is considered that the VES broadly accords with the requirements of the EIA Regulations, albeit the technical assessments, survey data and reporting in the VES are considered to contain areas of weakness, omissions and inconsistencies....it is recommended that the Council requests the submission of additional information as allowed by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011'. Appendix C.

ii - SLR Independent Review Conclusions (November 2015 VES, VES Addendum and second VES Addendum)

3.25 The consultants have reviewed all the submitted information. 'SLR is of the view that the current submission can reasonably be described as an environmental statement as described by the EIA Regulations'. The letter provided by the consultant confirming this is attached as Appendix E.

3.26 The VES process having been concluded, and the Council's consultant having confirmed it accords with the relevant legislation officers have no further concerns to raise with this process. It is recommended that this work as undertaken is now accepted.

4.0 Discharge of Outstanding Planning Conditions

4.1 The attached report outlines the position on the agreed and outstanding planning conditions. Many of the conditions were to have been agreed pre commencement or pre-occupation and the situation has moved on as the buildings have been constructed and occupied. The report therefore addresses the conditions under current

circumstances and now recommends the approval and discharge of all of the outstanding conditions. To the extent that the environmental information and any consultation response (or any other representation) is relevant to the subject matter of a particular condition, that information has been taken into consideration in determining whether or not the particular condition should be discharged. This is noted in the attached report where applicable.

- 4.2 In August 2015 the Secretary of State issued a planning policy statement making intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. This policy change is not applicable to the current applications. Regardless of whether non-compliance with a planning condition constitutes “unauthorised development” (the issue identified in the policy statement being “the development of land has been undertaken in advance of obtaining planning permission”) the policy statement is clear that the “policy applies to all new planning applications and appeals received from 31 August 2015”. All of the condition submissions and the permissions that they relate to predate that.
- 4.3 A question had been raised as to whether or not the Council can grant approvals after the time by which the original condition required that approval to have been obtained – e.g. can an approval that a condition requires prior to development commencing be granted after development has commenced. As a matter of domestic law a local planning authority can lawfully approve a scheme under a condition even where the time by which it should have been done has passed. Local planning authorities can discharge conditions in such circumstances in reliance upon exceptions to what is known as the **Whitley** principle. In **Whitley** it was said generally there needed to be compliance but that there were exceptions. One exception was that if a condition requires an approval before a given date and the developer has applied by then for the approval, which is subsequently given so that no enforcement action could be taken, work done before the deadline and in accordance with the scheme ultimately approved can amount to a start to development. Another instance where failure to comply with a pre-condition does not render the development unlawful is where “it would be unlawful, in accordance with public law principles, notably irrationality or abuse of power, for a local planning authority to take enforcement action to prevent development proceeding, the development albeit in breach of planning control is nevertheless effective to commence development” (see **R (Hammerton) v London Underground Ltd** [2003] J.P.L. 984 (Admin)).
- 4.4 The Courts have also held that the **Whitley** principle and its exceptions can be applied in an EIA case so as to allow the discharge of pre-commencement conditions where work has already commenced: see **Ellaway v Cardiff County Council** [2015] Env. L.R. 19. The **Whitley** case considered conditions requiring things to be done pre-commencement (e.g. to submit a scheme and have it approved) but which were not in fact complied with prior to commencement of development. The issue was when, despite this, the development could be said to have lawfully been commenced. In **Ellaway v Cardiff County Council** [2015] Env. L.R. 19 the court confirmed that this was also possible in an EIA case. The approval of the subsequent applications is therefore capable even in EIA cases of validating the implementation of the permission. It is though only exceptionally that this should be permitted in EIA cases, and members will need to consider whether in relation to the discharge of any conditions which should have been discharged pre-commencement and/or occupation that this test is met. These are considered in Appendix B below. It is also necessary to ensure that the developer has not obtained any unfair advantage in what has happened. In terms of

the EIA Regulations the submission of the VES ensures that there has been compliance with those Regulations.

- 4.5 Therefore, as a matter of domestic law a local planning authority can lawfully approve a scheme under a condition even where the time by which it should have been done has passed. Local planning authorities can discharge conditions in such circumstances in reliance upon exceptions to the Whitley principle. In **Ellaway** the court confirmed that this was also possible in an EIA case. The approval of the subsequent applications is therefore capable even in EIA cases of validating the implementation of the permission. It is though only exceptionally that this should be permitted in EIA cases, and members will need to consider whether in relation to the discharge of any conditions which should have been discharged pre-commencement and/or occupation that this test is met. These are considered in Appendix B below. It is also necessary to ensure that the developer has not obtained any unfair advantage in what has happened. In terms of the EIA Regulations the submission of the VES ensures that there has been compliance with those Regulations.
- 4.6 In this instance a further screening opinion was adopted by the Council in the context of the application for approval under condition 16. That is appended at Appendix F. For the reasons set out there and taking account of the subsequent environmental information received, the officer advice is that this is not an EIA case. In any event the attached report addressing the conditions addresses the issues of exceptionality and unfair advantage in treating this as if it were an EIA case. The attached report recommends that the outstanding conditions are agreed and discharged.

Consideration by the Local Planning Authority of the Expediency of Enforcement Action

- 4.7 If one or more of the outstanding planning condition submissions is not approved then the issue of enforcement action arises to be considered. An enforcement notice may not be issued simply to remedy a breach of planning control. It must also appear to the Council to be expedient to issue the notice having regard to the development plan and any other material considerations.
- 4.8 Consistent with the individual officer assessment of the discharge of conditions with the benefit of the full environmental information, officers do not consider that there is any reasonable basis for taking enforcement action.

Consideration of the Proposed Mitigation Measures set out in the Voluntary Environmental Statement (VES)

- 4.9 In the VES the University explained the investigation which had been taking place into mitigation of the significant adverse impacts of the constructed development. These relate primarily to the adverse visual impact upon the setting of heritage assets as described in section three above.
- 4.10 The landscape visual impact assessment and historic environment impact assessments, along with the design mitigation chapters in the VES are where assessment of the environmental effects of the development, additional design interventions and possible mitigation measures have been identified. These have focussed on what can be done to mitigate the environmental effects of the development, in particular in relation to landscape and visual effects and effects on the historic environment.

- 4.11 The development and its impacts can be summarised as follows. The development consists of eight blocks comprising the most recent parts of the Castle Mill, Roger Dudman Way scheme. The blocks are four and five storey in height, closely spaced, regular in form and layout. The blocks are of institutional scale and appearance, with a mainly uniform roofline along the length of the run of buildings. The facades of all the blocks have a common design style and architectural language in appearance and are mainly white rendered externally. The adverse landscape visual and heritage effects result from various combinations of the characteristics of the finished development which are broadly:
- Large scale and size
 - Highly visible appearance
 - White colour used in the render treatment
 - Repetitive elevation and profile
 - Lack of obscuring elements such as trees in front of the development
 - Skyline impacts
 - Effect on spires and towers (direct through concealment and indirect through the impact on their setting)
- 4.12 The assessments identify that the most significant detrimental impacts are from the visual prominence of the buildings particularly on views towards the city across Port Meadow. In these views, depending upon the view point proximity to the development itself, the large scale white rendered elevations and bulky, repetitive built form, largely unrelieved by intervening obscuring landscape elements, impact detrimentally upon the skyline and setting of this edge of the city. The visibility of key towers and spires in iconic views from Port Meadow towards the city is reduced the closer the viewpoint to Roger Dudman Way. The development is still visible but not as visually prominent in views from Botley and Wytham Woods.
- 4.13 The VES analysis comments: “height, form, layout and overall appearance of the development are such that they draw the eye...white is visible and is in certain views, perceived as being out of scale and character with its setting....”
- 4.14 The University has committed to mitigating the detrimental impact of the built development. The Design Mitigation Strategy (DMS) defines a number of informing principles and assesses the effectiveness of mitigation of the development in terms of its form, height and size. Six possible mitigation measures have been identified:
1. Elevational changes to the facades of the buildings;
 2. Tree planting in the badger run along the west boundary of the site;
 3. Introduction of a structural, planted boundary screen to increase the ‘green’ screening between the buildings and Port Meadow;
 4. Removal of some buildings entirely.
 5. Modifications to the form of the roofscape of the buildings, including to reduce perceptions of overall height.
 6. Reduction in the height of various buildings through the removal of a floor.
- 4.15 The DMS considers combinations of the different measures to assess how best to undertake the mitigation. Three alternative mitigation options were identified but Option1 is the package on offer.
- **Option 1:** Building façade treatment (design mitigation measure 1) and tree planting along western boundary of the site within the Badger run (measure 2);

- **Option 2:** Building façade treatment (design mitigation measure 1), tree planting (measure 2) and modification of roof forms to hip and low level roofs (measure 5);
- **Option 3:** Building façade treatment (design mitigation measure 1), tree planting (measure 2), removal of a floor from six buildings and replacement of all roofs with low level roofs (measure 6). A total of 33 student residence units (38 bedrooms) would be removed.

- 4.16 The mitigation options involve differing levels of intervention and cost. The DMS assesses the outcomes delivered by each option. The other parts of the VES also consider the role and impact of mitigation. The University has put forward Option 1 as the mitigation package and has proposed a unilateral undertaking (via s.106 of the Town and Country Planning Act 1990 (as amended) committing itself publically and contractually to the delivery of the mitigation measures once these have been agreed in detail. Enforcement of the implementation of the legal agreement would be by the Council. The unilateral undertaking will require the University to:
- Use best endeavours to secure agreement with the Council as to an acceptable mitigation scheme under Option1
 - Agree to the submission of any necessary planning applications within an agreed time period
 - If planning permission is granted for the mitigation scheme, to implement this within an agreed period
 - If planning permission is refused, to submit a modified planning application using their best endeavours to overcome the objections raised to the option 1 mitigation measures in the previous application.
- 4.17 Initial discussions have taken place with Council officers about the tree planting specification, management and maintenance. The planting mitigation in the original ES raises a number of issues all of which will need to be successfully overcome by the University to bring these measures forward. The proposed trees are expected to be between 6 and 9m in height when planted so come with considerable root ball volume to achieve successful establishment. The space available to plant new trees is heavily constrained by available width and depth and is realistically limited to the area within the badger run (1 – 2m wide). The measures undertaken to deal with the previous uses of the site and former contamination in this area may constrain how deeply new trees can be planted.
- 4.18 Officer negotiations have been aimed at securing a more naturalistic boundary planting using as far as possible native species, or at least cultivars of native species, which is more appropriate to the existing riparian landscape character of the area. Also, to secure planting at or as near as possible to existing ground level so that it is more sustainable and possibly removes the need for the retaining wall. The University's consultants continue to investigate this measure. It is not anticipated that the changes to the badger run to facilitate tree planting will lead to its abandonment by badgers however the local planning authority will also need reassurance on this point when the planning application is submitted.
- 4.19 The external elevational changes to the buildings (changing the render colour, applying brickwork etc) will need to be discussed in detail and will require a further planning application to be submitted to approve them for implementation. This is an understandable approach given the need for the Council to consider the matters set out in this report, before the University can move with certainty onto fully resolving the

precise details of the mitigation measures. Members will need to bear in mind that planning applications may come before them in future so should take care to avoid pre-determining themselves at this stage.

4.20 The University's suggested timeframe for delivery of proposed mitigation measures is set out below (dependent upon the decision reached by the committee on 9th February):

- First public consultation exercise on the precise detail of the mitigation measures by 15 July 2016
- Second public consultation exercise by 30 November 2016
- Application for full planning permission by 31st January 2017
- Commence (not completion) of the Mitigation Works within 18 months of the date of the planning permission
- If permission refused by the Council:
 - Revised application to be submitted
 - consult (x2)
 - submit revised planning application within 18 months of first refusal
 - if that approved commence mitigation works within 18 months of planning permission being granted

4.21 Whilst the VES has three possible mitigation options within it, the University has made clear that only Option 1 is being put forward. Members will therefore need to consider the merits of Option 1 alongside a range of relevant issues including:

- the planning policy context and history of the site's development including the extant 'commenced' planning permission;
- Benefits of the mitigation in terms of heritage, visual impact and landscape considerations;
- Economic and Socio-economic issues including opportunity costs for the University in undertaking the mitigation options
- Feedback from statutory bodies, interest groups and individuals.

4.22 Planning Policy considerations (summary)

- the development is in line with the current and previous local planning policy allocation for student housing development on the site;
- the development is supported by policies that encourage provision of purpose-built student accommodation, to help meet housing need and allow the Universities to continue their active roles in the economy;
- the development is assisting in meeting local planning policy objectives (currently Core Strategy policy CS25) that seeks to limit the number of University students living in the community to 3000 or less (and imposes restrictions on University academic developments until this figure is reached);
- the development accords with policies promoting the efficient use of land for development, the re-use of brownfield land, and the remediation of contaminated land, to take pressure away from greenfield sites;
- the need to read the development plan context as a whole and balance the development's contribution to delivering purpose built student accommodation against the impact upon protective policy designations for heritage and natural assets, view cones, setting of the city, open spaces and quality of new development

4.23 Planning history considerations

Some weight has to be given to the comparative impact of the extant ‘fallback’ position that would exist through building out the original planning permission (‘reserved matters application’ ref. 02/00989/RES, approved by the City Council in 2002). The original permission differed from the current development scheme as it included 85 fewer accommodation units, was lower in height with three and four storey buildings, and located the buildings differently on site with a large open area (drainage feature) in the centre. The mitigation option cannot be judged against a fall-back position of a vacant site with no committed development on it.

4.24 Benefits of the mitigation upon heritage, visual impact and landscape considerations

The height, form, layout and overall appearance of the development dominates in certain views. In these views the external appearance is perceived as being of a different scale and character than its setting. The views of the city edge skyline from Port Meadow are impacted by the prominence of the development. The visible campanile of St. Barnabas Church is above the tree line and between the groups of trees when viewed from the footpath from Medley, and at some points along that route is seen behind the new accommodation blocks.

The table below assesses the effect of mitigation option 1 (tree planting and elevational alterations) on the significant detrimental visual effects of the development. The development has had adverse effects on the landscape character and views, and the setting and significance of heritage assets. In these circumstances mitigation is required. Mitigation measures considered in the Design Mitigation Strategy options 1-3 would reduce the landscape and heritage impacts of the development to varying degrees; the reduction in height of a floor of most buildings as suggested in Option 3 would however have other undesirable planning impacts, including from the loss of 33 graduate accommodation units and the displacement of such students back into the community.

Table 1: Option 1 - Assessment against the identified significant detrimental visual impacts

As built impact identified in the VES	Anticipated heritage, visual impact and landscape mitigation effect from Option1
Large scale and size	<p>The proposed mitigation does not involve alterations to the building envelopes so the size and scale of the overall development will remain unchanged.</p> <p>The mitigation option relies upon on tree planting and elevational changes to more successfully ‘distract’ the eye from the impact of the overall scale and mass of development than at the present.</p>

Highly visible appearance	<p>The elevational changes proposed will alter the white rendered appearance, using combinations of new materials to make the overall appearance more varied, recessive in tone and less visually dominant.</p> <p>The tree planting will provide a natural intervening feature between the development and the foreground of Port Meadow. This will also reduce the visibility of the lower portion of the development.</p>
White colour used in the render treatment	The elevational changes proposed will alter the white rendered appearance using combinations of new materials to make the overall appearance more recessive and less visually dominant.
Repetitive elevation and profile	The introduction of a range of new materials in the elevations will enable a more varied texture and articulated appearance to be created. The greater diversity in the elevational treatment will be more sympathetic to the context and backdrop against which the development is seen.
Lack of obscuring elements such as trees in front of the development	<p>The tree planting proposals are for substantial semi-mature sized trees (6 - 9m in height at planting time). These will give an instant, tree screen effect along the Port Meadow and allotments frontage of the site (recognising that the new trees will then have to establish for a period of time as they settle into their new locations). The tree screen will be read against the bottom third to half way up the buildings.</p> <p>The boundary planting introduces an additional layer of vegetation in front of the development in views from Port Meadow which, in combination with the planting that has already been undertaken between the gaps in the trees along the south boundary of Port Meadow, will improve screening. These screening benefits will compound over time as the trees become established and mature and in conjunction with the Network Rail managed trees and the new trees planted at the edge of Port Meadow.</p> <p>Appropriate, native, deciduous species will be used, and scope for additional trees within the Castle Mill development itself will be explored. This more naturalistic planting that officers are negotiating will include trees with a diversity of heights and crown forms and that this informality could act as a useful visual foil to the blocky,</p>

	repetitive elevations in views from Port Meadow which could work with the building façade measures. In combination these changes should make an appreciable difference to the appearance of the development.
Skyline impacts	<p>The overall physical roofline, external building envelopes and mass of the development are not proposed to change under Option 1 mitigation.</p> <p>[Note: Mitigation measures designed to address some of these impacts will have beneficial effects, but it is noted that the 'high adverse' impacts on the high heritage value sites can only be reduced to 'medium adverse' by the reduction in height of all the buildings under the option 3 mitigation measures set out in the Design Mitigation Strategy'].⁴</p>
Effect on spires and towers (direct through concealment and indirect through the impact of their setting)	The mitigation option relies upon on tree planting and elevational changes to help screen parts of the buildings and to more successfully 'distract' the eye from the impact of the overall scale and mass of development than at the present.
<p><u>Historic Environment:</u> The development impacts upon the setting of heritage assets rather than the assets per se.</p> <p>The development has high adverse impacts upon the setting of four assets that have national and international heritage values (these are St Barnabas Church [Listed grade 1], Port Meadow [SSSI, SAC & SM], The Oxford Skyline [Internationally recognised silhouetted skyline] and the river Thames).</p> <p>The nature of the adverse impacts relates to both changes to historic landscape character, and to direct loss and obstruction of views, including those of the Oxford skyline.</p>	<p>The mitigation option relies upon on tree planting and elevational changes to help screen parts of the buildings and to more successfully 'distract' the eye from the impact of the overall scale and mass of development than at the present.</p> <p>Mitigation measures designed to address some of these impacts will have beneficial effects, but it is noted that the 'high adverse' impacts on the high heritage value sites can only be reduced to 'medium adverse' by the reduction in height of all the buildings under the option 3 mitigation measures set out in the Design Mitigation Strategy'.⁵</p>

⁴ VES Non-Technical summary

⁵ VES Non-Technical summary

<p>Views to the heritage assets are kinetic, experienced, for example by people walking across an open landscape with a developing sequence of views.</p> <p>The open landscape setting of heritage assets retains some inherent dynamics arising from seasonal changes, other development in Oxford, and landscape management by others.</p>	
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4.25 Socio-Economic and Economic consideration of the mitigation options

The VES includes an assessment of the impact of the University on the Oxford economy, the social and economic effects of the development of the Castle Mill Phase 2 graduate accommodation development, and of the implications of the mitigation options that have been considered. The social and economic implications of the three mitigation options considered in the Design Mitigation Strategy have been reviewed. All three would impose substantial financial costs on the University.

4.26 The Addendum to the VES set out the costs of the options as follows. These costs have been discussed with the University who advise that they were originally provided by an independent Quantity Surveyor and have also been subject to additional Proctorial level scrutiny within the University.

Cost	Option 1	Option 2	Option 3
Physical works	£5,780,000	£10,470,000	£12,000,000
Inflation	£550,000	£1,000,000	£1,120,000
Loss of rent during works	£0 (1)	£2,500,000	£1,450,000
Loss of rent over the lifetime (2)	£0	£0	£8,100,000(3)
Cost of physical works to provide the accommodation elsewhere (4)	£0	£0	£8,100,000
Sub Total	£6,340,000	£13,970,000	£24,850,000
Estimated cost of acquiring new site 2140sq m	£0	£0	£5,250,000,
CIL	£0	£0	£250,000
Total	£6,340,000	£13,970,000	£30,300,000

(Assumptions in VES addendum Page 15-4),

4.27 The assessment finds that the economic impact of funding any of the three proposed mitigation options at Castle Mill is not as beneficial to the local economy as utilising the funds to deliver investment in additional University projects elsewhere in Oxford. This

suggests that there is a local economic benefit that needs to be reflected in the decisions made between the overall cost of the mitigation measures at Castle Mill and the University's ability to invest those funds in other projects in the city.

Public and Interest Groups Consultation Response

- 4.28 Three consultations have been undertaken in respect of the VES. The level of consultation has exceeded the statutory minimum requirements because of the levels of interest in this issue. Members will see the extent of groups, associations and individual public responses to the three consultations undertaken on the VES. These are set out in summary form at Appendix A. The groups and associations who have commented include:

Oxford Preservation Trust
Oxfordshire Badger Group
East Oxford Residents Association
Jericho Community Organisation
Linton Road Neighbourhood Association
Save Port Meadow campaign
Friends of Old Headington
Oxfordshire Architectural & Heritage Society
Jericho Living Heritage Trust
Campaign for the Preservation of Rural England
Cripsey Meadow Allotment Association
Northway Residents Group
English Heritage
Port Meadow Protection Group
Oxford Civic Society
Oxford Pedestrian Association
Oxfordshire Green Party

- 4.29 Appendix A summarises the significant amount of feedback from individuals, societies, groups and statutory undertakers in relation to the VES. Comments have variously covered the mitigation options; planning process; the impacts of the Castle Mill scheme as constructed, the roles of the City Council and the University and suggestions for how the scheme could be improved. The majority of the feedback has raised objections and concludes that the implementation of Option 1 mitigation does not go far enough in addressing the concerns that exist with the residual impact of the development, primarily on visual and heritage interests. In terms of the Mitigation Options, individual comments have been as follows:
- 720 (94%) of those that commented would prefer Option 3, with 10 preferring Option 1 and 7 for Option 2. 28 comments did not state a preference.
 - Of the 720 who prefer Option 3, 105 have stated that they consider Option 3 to be a compromise and not enough of a solution, and 254 commenters have stated that Options 1 and/or 2 will have little or no impact.

Conclusion

- 4.30 There are clear public benefits from this development in the provision of purpose built student accommodation. There are fundamental policy objectives to support the delivery of new student accommodation, and to remove students from privately rented housing in a city where there is a very significant need for housing and limited areas to

achieve new supply. The site was allocated for student accommodation and was a brownfield site in need of re-use and restoration. There has been permission to develop the site for student accommodation going back over a decade, albeit not previously to the same overall extent as has now been constructed.

- 4.31 On the other hand there is the residual harm assessed in relation to the historic landscape character and views of Oxford. The development has been assessed as having high significant adverse impacts upon the setting of four assets that have national and international heritage values; St Barnabas Church, Port Meadow, the Oxford Skyline and the river Thames. As noted in the VES the 'high adverse' impacts on the high heritage value sites can only be reduced to 'medium adverse' by the reduction in height of all the buildings under the option 3 mitigation measures set out in the Design Mitigation Strategy. This level of mitigation is not being offered.
- 4.32 Option 1 mitigation measures primarily result in a reduction in the level of effect on a more limited number of landscape and visual impacts from substantial adverse to moderate adverse effect. Option 1 will provide a greater level of visual distraction from the impact of the development than at present. The cost to the University to mitigate this situation is also to be considered. The cost of mitigation must be factored against the potential diversion or loss of investment in University projects elsewhere within the city and the impact this may have upon the wider public benefits from the success of the University to the city and beyond.
- 4.33 The University has offered to mitigate the existing development. Members can only consider what is on offer, a reasonable timetable for its delivery and the means by which it is to be secured. In your officers' view the mitigation should be accepted and secured through the unilateral undertaking.

5.0 Consideration by the Council of the merits or otherwise of Discontinuance Action

- 5.1 The committee is now asked to consider matters relevant to the issue of discontinuance. The committee does not have the constitutional authority to determine on this matter but must recommend to Council if in the committee's judgement, this action should be pursued. A decision to take discontinuance action is the exercise of a discretionary power by the Council. In this case discontinuance would mean partial or total demolition and removal or alteration of the constructed development. The power to take such action is in the following terms:

If, having regard to the development plan and to any other material considerations, it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—

(a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or

(b) that any buildings or works should be altered or removed, they may by order—

(i) require the discontinuance of that use, or

(ii) impose such conditions as may be specified in the order on the continuance of it, or

(iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works, as the case may be.

- 5.2 It has been suggested that the Council is under a duty to take discontinuance action in order to remedy a breach of European law; specifically the Environmental Impact

Assessment Directive. No breach of the Directive (or the EIA Regulations) has been established in legal proceedings albeit it is accepted that the VES has identified that there would be significant impacts in visual and heritage terms. Even where such a breach could be established, there is no duty upon the Council to take discontinuance action. A basic premise of European law is the principle of legal certainty which allows for time limits to be imposed on challenges alleging breach of European law. It would be contrary to this principle to “side-step” such limits by converting the discretion to make a discontinuance order into a duty to do so. This view has been upheld by the Court of Appeal in *R (Evans) v Basingstoke and Deane BC* [2014] 1 W.L.R. 2034. Also in the case of *R (Wells) v Secretary of State for Transport, Local Government and the Regions* [2004] ECR I-723, ECJ the European Court said that it is for the competent authorities of a Member State – here the Council – “to take, within the sphere of their competence, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.

- 5.3 Such particular measures include, subject to the limits laid down by the principle of procedural autonomy of the Member States, the revocation or suspension of a consent already granted, in order to carry out an assessment of the environmental effects of the project in question as provided for by Directive 85/337”. Here through the VES a full assessment has now on any view been carried out. The Court of Appeal in *Evans* made clear that whether to discontinue was, even in a case where it was alleged that there was a breach of EU law, something that could be considered but not something that had to be done. The question is whether it is expedient to do so.
- 5.4 As regard must be had to the development plan the determination must be made in accordance with the development plan unless material considerations indicate otherwise. In that sense the determination parallels the basic approach to the determination of a planning application.

Assessment of matters relevant to the consideration of discontinuance action

- 5.5 Four key questions are central to the committee’s consideration. These are:
- Firstly the need to consider whether the local planning authority would still have granted planning permission if faced with the totality of the 2011 planning application (including all planning policy, material considerations and technical matters taken into consideration), supplemented by the VES and the mitigation to be delivered through the proposed option 1 mitigation measures secured by a unilateral undertaking.
 - Secondly, to review the position as if a planning application were made for the development now. A broadly similar context of planning policy, material considerations and technical matters remain to be considered, along with the impact and mitigation of the development that has been assessed through an environmental statement. The proposal is also supplemented with a binding commitment to implement the option 1 mitigation measures through steps set out in a unilateral undertaking.
 - Thirdly, after consideration of the first two questions whether under these circumstances pursuance of discontinuance action would be reasonable and expedient in the public interest particularly by reference to what on-going harm

remains if the Council decides not to pursue discontinuance action; and

- Fourthly, what weight to give to the public costs of discontinuance.

5.6 These questions are now addressed in turn:

- First question: Whilst speculation is required as to the outcome of reconsideration of the original planning application if accompanied by a VES, unilateral undertaking and mitigation measures, the events that have followed the determination of the 2011 planning application have been well documented in the initial sections of this report. The Goodstadt Review is attached at Appendix G and it concluded that the February 2012 meeting of the committee was not misled, was aware of all relevant policy and other material considerations and understood the issues including that of the height of the buildings and impact upon views. In addition there has been no material change of policy either nationally or locally since the 2012 meeting considered that review. In that respect it would not be unreasonable to conclude that the same or similar outcome would have been arrived at by the committee.
- Secondly, considerations relevant to a hypothetical planning application made for the development now but accompanied by the assessments set out in the VES and the offered mitigation measures.

5.7 The planning assessment that follows sets out the development plan and other material issues relevant to the assessment including environmental ones. These are broadly similar to those considered for the constructed scheme in 2012 however the National Planning Policy Framework and the National Planning Practice Guidance has been introduced since then.

Table 2 - Relevant Planning Policy

<u>Oxford Local Plan 2001-2016</u>	<u>Oxford Core Strategy 2026</u>	<u>Sites and Housing Plan (DPD) - MP1 – Model Policy (NPPF – presumption in favour of sustainable development</u>
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	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 CS14 – Supporting city-wide movement CS17 - Infrastructure and developer contributions CS18 - Urban design, town character, historic environment CS19 - Community safety CS25 - Student accommodation	HP5 - Location of Student Accommodation HP6 - Affordable Housing from Student Accommodation HP11 - Low Carbon Homes HP15 - Residential cycle parking HP16 - Residential car parking SP26 - Land north of Roger Dudman Way

<p>Impact Analysis</p> <p>CS19- Nuisance</p> <p>CP21 - Noise</p> <p>CP22 - Contaminated Land</p> <p>CP23 – Air Quality</p> <p>Management areas</p> <p>TR.1 – Transport Assessment</p> <p>TR.2 – Travel Plans</p> <p>TR3 - Car Parking Standards</p> <p>TR4 - Pedestrian & Cycle Facilities</p> <p>TR5 – Pedestrian and cycle routes</p> <p>TR8 – Guided Bus / Local Rail Service</p> <p>TR11 – City centre car parking</p> <p>TR12 Private non-residential parking</p> <p>NE11 - Land Drainage & River Engineering Works</p> <p>NE12 - Groundwater Flow</p> <p>NE13 - Water Quality</p> <p>NE14 - Water and Sewerage Infrastructure</p> <p>NE15 – Loss of trees</p> <p>NE21 - Species Protection</p> <p>NE22 – Independent Assessment</p> <p>NE23 - Habitat Creation in New Developments</p> <p>HE2 - Archaeology</p> <p>HE10 - View Cones of Oxford</p> <p>SR8 – Protection of allotments</p> <p>SR9 - Footpaths & Bridleways</p> <p>DS22 - Cripsey Rd, North End Yard - Ox University Use</p>		
<p><u>Supplementary Planning Documents.</u></p> <p>1. Affordable Housing and Planning Obligations SPD (Adopted Sept</p>	<p><u>National Planning Policy Framework (NPPF)</u></p> <p>1. The Sites and Housing Plan (Policy MP1: Model Policy) this</p>	<p><u>National Planning Practice Guidance (NPPG)</u></p> <p>Planning Practice Guidance has been revised and updated.</p>

<p>2013)</p> <p>2. Parking Standards, Transport Assessment and Travel Plans (Feb 2007)</p> <p>3. Natural Resource Impact Analysis SPD (Adopted Nov 2006)</p>	<p>reflects the presumption in favour of sustainable development in NPPF. It requires policies in Local Plans to follow the approach of the presumption in favour of sustainable development so that it is clear that development which is sustainable can be approved without delay. All plans should be based upon and reflect the presumption in favour of sustainable development which should be applied locally. This policy approach now forms part of Oxford's Local Plan.</p> <p>2. NPPF to be read alongside other relevant national planning policies, on Sustainable Drainage; Parking and Waste.</p>	<p>It provides further guidance on air quality, climate change, conserving and enhancing historic environment, EIA, design, flood risk, contamination, natural environment, noise, open space, SEA & SA, renewable & low energy, transport (travel plans & assessments), waste, water supply & quality and determining planning applications.</p>
<p><u>Other relevant documents</u></p> <p>1. Character Assessment Toolkit</p> <p>2. Oxford Heritage Plan</p> <p>3. Oxford Views Study</p>		

Planning Policy Assessment

- 5.8 The 'Local Plan' and in particular recently adopted documents such as the Sites and Housing Plan includes a Model Policy (Policy MP1). This policy ensures that 'when considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.' The policy encourages the City Council to 'work proactively with applicants to find solutions', so that applications for 'sustainable development can be approved where possible' and to 'secure development that improves the economic, social and environmental conditions in the area.' Planning applications that accord with Oxford's Local Plan are advised to be approved unless material considerations indicate otherwise.
- 5.9 Policy CS25 in the Core Strategy supports the principle of purpose built student accommodation, subject to the overall limits on student numbers at 3,000, and designed and managed in a way that attracts students to take it up. There should be no unacceptable impact on the amenity of local residents.
- 5.10 Policy HP5 in the Sites and Housing Plan, which forms part of the 'Local Plan' makes it clear that planning permission will be granted for student accommodation in specified locations, which includes 'on a site allocated in the development plan to

potentially include student accommodation.’ Policy SP26 then goes on to allocate the application site for student accommodation and states that planning permission will be granted in principle. The policy also confirms that planning permission ‘will not be granted for any other uses.’ The supporting text highlights an important material consideration that ‘the whole site has the benefit of an extant planning permission for 517 student rooms’ with only the southern block built to date. The text goes on to confirm that ‘narrowness of the site and of the access means it is most appropriate to develop the site for student accommodation, which would be car free.’

- 5.11 Student accommodation in this location is acceptable in principle, since it is an allocated site on brownfield land, where other alternative uses such as residential are not supported.
- 5.12 Policy CS18 in the Core Strategy addresses the need for high quality urban design, townscape character and protection of the historic environment specifically development that ‘responds appropriately to the site and its surroundings; creates a strong sense of place...high quality architecture...responding positively to the character and distinctiveness of the locality...development must not result in loss or damage to important historic features, or their settings, particularly those of national importance and...views of the skyline of the historic centre will be protected’. Guidance set out in the more recent character assessments and view studies will be of relevance in testing the impact of development upon designated and non-designated heritage assets and areas subject to protective designations (considered in detail later).
- 5.13 Development having an adverse impact upon these policies would need to be carefully considered against other policy objectives. Development plans need to be read as a whole and a balanced judgement made about the weight to be given to policies

Relevant Planning History

- 5.14 In August 2000 outline planning permission was granted for a mixed use development of residential and student accommodation on a large tract of land at Roger Dudman Way north of the Sheepwash Channel (Rewley Abbey Stream) on former railway land known as North End Yard. The site was aligned north - south and accessed from the junction of Botley Road with Roger Dudman Way 600m to its south. The site’s linear form measured approximately 320m in length and 45m in width at its wider southern end, narrowing to 27 m at its northern end where it adjoins the public car parks serving Cripsey Road allotments and Port Meadow. In total the application site measures 1.2 ha. (3 acres).
- 5.15 The outline permission of 2000 was followed by detailed proposals for 87 x 2 bed flats at what is now Venneit Close, and by the University for a development of 354 student units which became the first phase of the University’s Castle Mill development.
- 5.16 The scheme represents a second phase of graduate rooms at Castle Mill but within a reworked scheme which would provide some 439 student units in total rather than the 354 previously permitted, representing an increase of 85 units. As with the phase 1 accommodation, the proposed development consists mainly of single

study bedrooms arranged in clusters with a shared amenity / kitchen area; some slightly larger units with a small kitchenette; and larger one and two bed “flats.” Typically the accommodation would be occupied for up to 3 years by University graduates, in the main single persons though in some cases couples, occasionally with a child. A small number of rooms would be reserved for visiting academics and students. In addition shared facilities are provided at a central common room.

Landscape, Built Form, Historic and Visual impact assessment

- 5.17 The site is linear in form and the development would be laid out in a series of eight linked blocks. As with phase one the majority of the blocks would be aligned in an east - west direction but with two to the narrower northern end aligned north - south. The eight blocks would accommodate the majority of student rooms with shared facilities such as covered cycle stores, bin storage, laundry room, landscaped spaces and energy centre set between them. Interspersed between the paired east - west blocks along their eastern edge would be three “gatehouses” leading to shared foyer areas. A further freestanding communal common room is also to be provided. A 3.8m wide access road for servicing and maintenance purposes would run along the eastern side of the site which would also provide a cycle and pedestrian route through to Walton Well Road on completion. Three disabled parking spaces are located along the route.
- 5.18 The student rooms in the east - west blocks would have their windows facing north and south, avoiding directly overlooking the railway lines to the east and allotments to the west. Within the two north - south blocks corridor access is provided where they face the railway line. There are student rooms within the gatehouse buildings which do have windows facing the railway lines. These and all other windows along this side of the development are high performance fixed double glazed units to provide light only with additional light and ventilation provided from windows in elevations facing in other directions. The fenestration within the principal eastern elevations is both vertically and horizontally aligned. Central to each block are full height continuous glazed windows identifying the corridor access at each level of accommodation.
- 5.19 The east - west blocks rise to four and five storey levels with the linking gatehouse elements set at three storeys. The north - south blocks are on four levels. The five storey blocks rise to approximately 17.0m above ground level to the highest point of their pitched roofs, and the north - south ones to 13.0m. The eaves height would be approximately 13.7m and 11.2m respectively. This compares to 13.7m at its highest point in the existing accommodation and 10.4m at eaves. The lift shafts are located externally to the accommodation blocks with full height vertical glazed slots. The lift shafts are topped with a glazed cap. The architecture is of institutional scale with large building blocks facing east towards the railway line with protected areas created behind.
- 5.20 The facades of all the blocks have an essentially common design style and architectural language. The elevations of the blocks will comprise of render, brickwork and other features to provide an overall diversity of external treatment, with texture and articulation of finish. Windows are dark grey aluminium units with the roof of standing seam metal construction similar to that used in the existing accommodation.

- 5.21 Although the immediate environment of the development site consists of railway sidings to the east and allotments to the west, it is also located close to Port Meadow to the north beyond the public car parks at Walton Well Road. Port Meadow is a unique and sensitive location which constitutes an important heritage asset.
- 5.22 Part 12 of the National Planning Policy Framework applies in relation to the planning considerations relevant to heritage assets. ‘heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance... Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal... local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and the desirability of new development making a positive contribution to local character and distinctiveness. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting’....
- 5.23 Section 66(1) of the Listed Buildings Act provides as follows “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.” In ***East Northamptonshire District Council v Secretary of State for Communities and Local Government*** [2015] 1 WLR 45 the Court of Appeal held that section 66(1) requires the decision-maker to give “the desirability of preserving the building or its setting” not merely careful consideration for the purpose of deciding whether there would be some harm, but considerable importance and weight when balancing the advantages of the proposed development against any such harm: [22]-[24] per Sullivan LJ.
- 5.24 Land at Port Meadow is sensitive. The view across Port Meadow is a low lying, distant and expansive one across the floodplain of the River Thames towards the centre of Oxford. There is virtually no topographic variation to the view except the wooded hills of East Oxford which are just visible in the background to the left (east) of the view. The open and historic grazed common land of Port Meadow which is publicly accessible plays an important part in the character of the view, providing an historic green setting to the city. The line of trees along the railway line and a variety of more ornamental trees in the gardens of North Oxford reinforce this green setting, from which the “dreaming spires” emerge, seen against the open skyline. The green foreground and middle grounds contrast with the colour and texture of the buildings on the skyline, enabling the skyline buildings to stand out in silhouette. The expansiveness of the view means that the spires, towers and domes appear relatively small. Closer to the edge of the built up area it is clear that trees and hedgerows around the perimeter of Port Meadow are not unbroken however and views are afforded from various vantage points through gaps in the greenery towards, in particular, the railway line and residential North Oxford to the

east and Wolvercote to the north. These remind the viewer that Port Meadow is not set within open countryside but abuts the built up urban edge of the City in these directions.

- 5.25 The very northern tip of the development site falls just within the “View Cone” from Wolvercote and CS18 of the adopted Core Strategy 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. From the apex of the view from Wolvercote the site is located in the far distance, approximately 1.7m (2.7km) to the south - east. To the south the development is glimpsed most readily from closer positions, especially along the footpath which leads from Medley to the termination of Walton Well Road at the public car park there. Although this footpath falls just outside the identified View Cone, views along it remain sensitive even though the broken tree line along the Castle Mill Stream at this point allows the existing student accommodation as well as trains idling on the adjacent railway lines to be glimpsed in the distance during winter months. In the summer these features are largely hidden from view. The views along this path are not “static” therefore but “dynamic” where the juxtaposition of features and the degree of impact will vary as the viewer proceeds. The views also change with the passing of the seasons as the gaps “close” during the summer months, and also with the time of day and with the prevailing weather conditions. There can be no doubt of the significance of the Oxford skyline and its landscape setting as one of the enduring images of the City, an image which in planning terms successive development plans have sought to protect.
- 5.26 The environmental assessment process has identified potential landscape, visual and heritage impacts from the proposed development (assessment assuming incorporation of the mitigation measures in Option1). The assessments identify that the most significant detrimental impacts primarily come from the visual prominence of the buildings particularly on views towards the city across Port Meadow.
- 5.27 In these views, depending upon the view point proximity to the development itself, the large scale elevations and bulky, repetitive built form, if unrelieved by intervening obscuring landscape elements, will have the potential to impact detrimentally upon the skyline and setting of this edge of the city. The effect on visibility of key towers and spires in iconic views from Port Meadow towards the city would be direct through concealment and indirect through the impact on their setting. The impact reduces the closer the viewpoint to Roger Dudman Way. The development is still visible but not as visually prominent in views from Botley and Wytham Woods
- 5.28 The effect of mitigation upon the impact of the development needs to be considered so the residual impact is balanced with the wider range of planning policy and other considerations. The height, form, layout and overall appearance of the development will draw the eye in certain views. In these views the external appearance will be perceived as being of a different scale and character than its setting. The views of the city edge skyline from Port Meadow would be impacted by the prominence of the development. The visible campanile of St. Barnabas Church is above the tree line and between the groups of trees when viewed from the footpath from Medley, and at some points along that route would be seen behind the new accommodation blocks. The scheme approved under the extant planning permission (to be regarded as a fall-back position) would also have had some impact upon its setting and also proposed an

institutional form of development although it is acknowledged as being a scheme of lower storey height buildings.

- 5.29 The elevational treatments and diversity of materials in the appearance of the development will help to reduce visual prominence and enable the blocks to recess in appearance against the existing visual backdrop of the City and sit more comfortably against the first phase of the Castle Mill development. These measures will be less successful in mitigating the skyline impacts that arise from the scale and form of the building. These have a greater impact upon the skyline edge and setting of the city than the development that has been approved before.
- 5.30 There will be additional tree planting in front of the entire length of the new student blocks to provide an intervening landscaped feature, more typical of the existing backdrop along the city edge. There will also be additional off-site tree planting at the edge of Port Meadow all of which will assist in mitigation of the landscape, visual and heritage impacts. Certainly it is 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 high value landscape setting, and on public views. There would be a residual 'high adverse' impact on four heritage assets of high heritage value, namely: St. Barnabas church, a grade 1 listed building; Port Meadow, a scheduled monument and registered common; the river Thames and tow path; and the Oxford skyline'.
- 5.31 Given all of the foregoing, a judgment has to be made by the local planning authority as to whether the degree of change to the views and landscape setting that would result from the proposed development is sufficient to warrant refusal of planning permission, taking into account other important benefits and policy objectives.

Other Environmental and Technical considerations

- 5.32 **Transport and Access Assessment:** The development has 21 car parking spaces and 360 cycle spaces to serve a total of 439 student residential units. It is located close to the railway station and its associated bus interchange, and possesses good cycle and pedestrian links to Botley Road, North Oxford, Jericho and Port Meadow, making the site a highly sustainable, accessible location. This form of development would meet planning policy and highway authority requirements for transport and sustainability.
- 5.32 **Ecological, Nature Conservation and Biodiversity Assessment:** Overall the ecological investigations undertaken have concluded that other than for badgers the site is only of limited ecological interest. In terms of badgers an annex sett with 4 entrances was identified before the construction of the development took place. A license was obtained from Natural England for closure of the sett. An artificial sett has been provided as a replacement elsewhere on the site. A 2m badger run along the western boundary of the site has been created to allow movement of badgers through the site. A schedule of other wildlife enhancements could be incorporated into a new development. There is no objection to the development on these grounds.
- 5.34 **Geo-Environmental and Sustainability Assessment:** The site was identified as suffering from historic contamination arising from its

former use. Testing determined that contamination was significant and a remediation strategy was agreed with the Environment Agency. Implementation of the agreed remediation strategy has now taken place. In order to mitigate the potential leaching of contaminants through the surface water infiltrating the soil, a closed attenuation sustainable drainage scheme (SUDS) system was installed which collected and discharged the surface water directly into the Castle Mill Stream. This was also agreed with the Environment Agency and given consent. This system therefore removed the potential contamination linkage and mitigated further contamination. Following all of the remediation and mitigation measures that have been completed, the requirements of the NPPF have been met. The site is now suitable for its new use and there is no risk of significant harm to the end users from the residual contamination.

5.35 The development will have dedicated district heating and meet planning policy requirements for energy generation and efficiency. The aim would be to achieve BREEAM Excellent for the new development.

5.36 **Flood Risk Assessment** - A full flood risk assessment (FRA) accompanied the planning application and the measures required to mitigate flood risk at the development have been implemented. The Environment Agency raised no objection to the development.

5.37 **Noise and Air Quality Assessment** - The scheme has limited potential for the generation of noise that would adversely impact upon existing residential properties in the area. Noise issues have been considered as follows:

- effect of noise from the railway on occupants of the development;
- impact of noise from mechanical services plant;
- noise from road traffic from the development;
- reflection of railway noise off the new building facades.

Existing levels of railway noise on the site were quantified and suitable internal design levels were agreed with Environmental Health. The design of the buildings has taken into account the existing noise climate and suitable forms of construction developed to mitigate external noise to the agreed internal levels. Internal levels will need to be checked post-construction.

5.38 The development will generate very limited road traffic as the majority of residents will access the scheme by bicycles or on foot. Measurements of typical daytime ambient noise levels have been undertaken at residential properties adjacent to Roger Dudman Way, the only access road to the site. An assessment of typical levels of vehicle noise generated by the additional vehicles using Roger Dudman Way to access the site has indicated there will be either no noise impact or a minor impact only as a result of the limited additional traffic.

5.39 The potential for noise from the operational railway to be reflected back towards the existing residential flats to the east of the site at William Lucy Way has been modelled. The modelling exercise and assessment has concluded that there is a minor noise impact of up to 1dB (A) for through trains and up to 1dB (A) for static idling trains as a result of reflection off the façade of the buildings. It would not normally be deemed appropriate or necessary to introduce mitigation to try and reduce the noise impact where it is limited to 1dB (A) only.

- 5.40 **Air Quality** – The development will not have a significant impact on air quality during construction. Occupation of the development does not have an impact on local air quality and the occupants of the development are not affected by local sources of air pollutants (e.g. the energy centre, road vehicles or train movements).
- 5.41 **Economic and Socio Economic Assessment** - A development at Castle Mill Phase 2 could provide 312 student accommodation units, and lead to beneficial social and economic effects by removing over 300 students from the housing market in the city, reducing the University's impact on housing pressures in Oxford. Purpose-built student accommodation will help the University to comply with the planning policy limit for the number of its students living in open market accommodation, which in 2012, was at or about the limit of 3000. Without compliance with this policy requirement, the University's ability to occupy new academic and research developments would be adversely affected.

Feedback from Statutory Consultees, Interest Groups and Public consultation

- 5.42 Clearly this assessment is undertaken somewhat on a hypothetical basis. In this respect the statutory undertaker and public consultation feedback undertaken on the original planning application and more recently on the three parts of the VES could be considered as a proxy indicator of likely feedback from those sources. Paragraph 1.2 notes the main areas of public concern at the time the original application was considered. Appendix A summarises the significant amount of feedback from individuals, societies, groups and statutory undertakers in relation to the VES. Comments have variously covered the mitigation options; planning process; the impacts of the Castle Mill scheme as constructed, the roles of the City Council and the University and suggestions for how the scheme could be improved.
- 5.43 The majority of the feedback has raised objections and concludes that the implementation of Option 1 mitigation does not go far enough in addressing the concerns that exist with the residual impact of the development, primarily on visual and heritage interests.

Conclusion

- 5.44 As part of the assessment of the merits or otherwise of discontinuance, the committee needs to have in its mind what issues it would consider if a major new development of student accommodation was proposed on the Castle Mill site now. The foregoing assessment has set out the issues and the weight that would need to be considered for each if the decision were taken afresh. There are not significant differences with the issues considered in 2012 save for the environmental statement information and additional mitigation measures that now also need to be considered.
- 5.45 The site has been allocated for the purpose and development will allow the University to house more of its postgraduates in purpose built accommodation. The development would allow the University to meet the requirements of other recent permissions for academic floor space that no more than 3,000 of its students should live in open market housing. There is a critical housing situation in the city, recognisably worse now than in 2012. The importance of the University in being able to meet its academic, research and housing needs from an economic and

socio-economic perspective in the city is recognised.

- 5.46 As with the constructed development, the blocks of development would be seen 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 a diversity of colours, tones and textures in materials used on external elevations would however assist the development in sitting more easily in the landscape and heritage context of these views. Notwithstanding this there would be a residual 'high adverse' impact on four heritage assets of high heritage value, namely: St. Barnabas church, a grade 1 listed building; Port Meadow, a scheduled monument and registered common; the river Thames and tow path; and the Oxford skyline', that would need to be considered. The law requires the decision-maker to give "the desirability of preserving the building or its setting" not merely careful consideration for the purpose of deciding whether there would be some harm, but considerable importance and weight when balancing the advantages of the proposed development against any such harm. In 2012 the balance of impact versus delivery of policy objectives gave greater weight to the need to provide additional student accommodation in the city.
- 5.47 The proposed development is capable of relating appropriately to the adjacent railway lines and to Cripsey Meadow allotments. Existing wildlife interests could be appropriately accommodated and impacts upon Badger setts and runs could be mitigated. The scheme is capable of responding positively to climate change having no significant adverse impact. Other technical considerations such as access and transport, flood risk, ecology and biodiversity, sustainability, air quality and noise are capable of being satisfactorily addressed. The sites historical uses and contaminated condition is capable of being remediated to an acceptable degree, commensurate with the proposed uses.
- 5.48 In these circumstances, bearing in mind the 'presumption in favour of sustainable development', the available environmental information, the mitigation and tests of law that apply here and taking account of consultation responses, Members could still reasonably take the view that the balance of weight rests with securing the delivery of student accommodation and that the proposal accords with Local Plan policies.
- The Third consideration; whether under these circumstances pursuance of discontinuance action would be reasonable and expedient in the public interest particularly by reference to what on-going harm remains if the Council decides not to pursue discontinuance action
- 5.49 The issues in this case have been covered at length. The residual harm remaining after mitigation has been implemented has been highlighted. If the decision is not to take discontinuance against the development as mitigated then the residual harm also has to be accepted.
- The fourth issue: The financial consequences of taking discontinuance action. It is established law that the financial consequences to the Council of taking discontinuance action are material to such a decision. Members have previously been advised (February 2013) as to the nature and consequences of discontinuance action. Orders require confirmation by the Secretary of State. If confirmation by the Secretary of State is required the procedure would be similar to that for a planning appeal. The Council

would be required to pay the costs of a successful objector unless there are exceptional circumstances. Unreasonable behaviour on the part of the Council could also lead to an award of costs in favour of a successful objector.

- 5.50 In the current circumstances it would appear prudent to anticipate that there would be an objection and that a local public inquiry would be required. It appears highly likely that the Council, the University (as an objector) and at least one other interested party would be represented by Queen's Council and the range of likely issues is such that a three week inquiry would appear a conservative estimate. The Council's legal and associated costs in connection with such an inquiry are estimated to be at least £100,000. The University's costs are likely to be similar if not higher. Objectors' costs are far more speculative but, in the absence of unreasonable behaviour on the part of the Council in connection with discontinuance, are not likely to be payable by the Council.
- 5.51 Should an order take effect, compensation is payable to the beneficiary of the original planning permission. This is on the basis of abortive work and any other costs directly attributable to the order including loss of income, the cost of subsequent physical works to the development and loss in land value. For example, if the University was required to remove a floor from the development the Council would be liable for, amongst other things, the costs of physically executing those works. The University has produced its calculations as to the Option 3 mitigation costs and these highlight the potential costs that would be involved even in partial discontinuance action. They have advised officers that these costs have been scrutinised within the University at Proctorial Level. Clearly discontinuing the benefit of the 2012 planning permission would have greater cost implications than the mitigation options. The Council would need to fund these significant costs from public funds and consider whether this would be expedient at a time of significant financial pressure upon local authority budgets.

Conclusions

- 5.52 In the preceding sections officers have set out the considerations to be addressed by the Committee. On the question of whether full or partial discontinuance of the constructed development would be appropriate, the Committee's judgement has to be on the balancing of policy objectives, environmental information, proposed mitigation, and other material considerations including the statutory presumption in favour of preserving the setting of the identified heritage assets under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as well as the response received to the consultations. The balancing judgement will determine whether this type of development is in accordance with the development plan.
- 5.53 The 2012 decision was to conclude that the development should be granted planning permission. There have been no significant changes of planning policy since then, this considered with the content of the VES, proposed mitigation and other material considerations do not indicate that the development plan should be departed from. If Members are of the view that the development, with mitigation is acceptable then there should be no basis for discontinuance.
- 5.54 Internal legal advice and Queen's Counsel have confirmed that this would be a lawful decision for the Council to reach. Given this, and the absence of any other material considerations indicating that discontinuance action should be pursued either in part or whole, Members are recommended not to pursue discontinuance action.

6.0 Recommendations:

Committee is asked to:

1. Confirm that the submitted Voluntary Environmental Statement meets the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as far as possible given that the assessment is retrospective and should be taken into account and inform the Council's decisions as set out in paragraph 3.26
2. Discharge and approve the outstanding planning conditions as set out in paragraphs 4.6 and Appendix B
3. Determine whether enforcement action should be taken as set out in paragraphs 4.8
4. Assess the mitigation options put forward by the University and note the unilateral legal agreement proposed as a commitment to bring forward option 1 as set out in paragraph 4.33
5. Consider whether it is appropriate to recommend discontinuance action for consideration by Council as set out in paragraphs 5.6, 5.48, 5.49 and 5.53 & 5.54

7.0 Background Papers:

- 7.1 Planning Applications 97/00342/NOY, 02/00898/RES, 11/02881/FUL.
- 7.2 Voluntary Environmental Statement and additional information Ref 14/03013/FUL for the original VES or 14/03013/CONSLT for the ES Addendum and additional substantive information.

8.0 Contacts

- 8.1 Contact Officers for this report:

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