



Department for Communities and Local Government

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Our ref: NPCU/ALLOT/Y1945/74866

26 May 2016

Dear Ms Chen

Allotments Act 1925 Section 8 Farm Terrace Allotments, Occupation Road, Watford

1. I am directed by the Secretary of State for Communities and Local Government to refer to your letter of 17 December 2014 and to subsequent correspondence regarding Watford Borough Council's ('the Council') proposal for the appropriation of Farm Terrace Allotments, Occupation Road, Watford.

2. The Government is committed to ensuring adequate protection is afforded to allotments. The Secretary of State's consent for disposal will only be given if he is content that Section 8 (the statutory criteria) of the Allotments Act 1925 is satisfied:

'consent may be given unconditionally or subject to such conditions as the Minister thinks fit, but shall not be given unless the Minister is satisfied that adequate provision will be made for allotment holders displaced by the action of the local authority or that such provision is unnecessary or not reasonably practicable'.

3. The Secretary of State's Allotment disposal guidance: Safeguards and alternatives published on 30 January 2014 ('Guidance'), sets out the assessment criteria against which applications for consent to dispose of statutory allotments are to be determined. These criteria are intended to provide a safeguard against the erosion of allotment sites through pressure on local authorities to provide land for other purposes.

Reason for Disposal Request

4. The Council wishes to appropriate the statutory allotment site and change its use to facilitate the delivery of the Watford Health Campus Scheme ('the Scheme') under section 122 of the Local Government Act 1972. The Scheme is a regeneration project involving (in summary) the potential improvement/expansion of Watford General Hospital, new road access arrangements, residential development of over 600 new homes including affordable housing, commercial office development, shopping, community and leisure facilities and green space/infrastructure.

5. The master plan for the Scheme shows that it is intended to deliver the following facilities on the allotment site: expansion of the adjacent hospital facilities and services (1.1 ha or 40% of the allotment site); family housing (c 69 new dwellings, approximately 1.4 ha or 52% of the site); a community Garden (0.4 ha, within the area designated for housing); and a replacement car park for Watford Football Club (approximately 0.2 ha or 8% of the site).

6. The inclusion of the allotment land in the planned future expansion of the hospital facilities is considered by the Council to provide the Hospital Trust with the most cost effective option, the best configuration of its requirements and the optimum quality of new or replacement provision. The Council considers that without the allotment land the Trust's aspirations for the site will be compromised and the constraints imposed will result in increased disruption to the hospital's operational facilities as no other suitable decant land is available.

7. Another key reason relied on by the Council for the inclusion of the allotment land is to provide an opportunity for a further 69 three bedroom homes with gardens, enabling a more balanced mix of housing across the Scheme. The Council also rely on an updated appraisal of the viability of the Scheme, reported to the Secretary of State in March 2015, to demonstrate that the inclusion of the allotment land would support the financial viability of the Scheme and reduce the risk of key elements of the Scheme proceeding in a sub-optimal way, in light of the Scheme's vulnerability to market conditions. Recent financial information was also provided in April 2016 and is considered further below.

Background

8. A previous application was approved by the Secretary of State on 8 May 2013. The decision was quashed by consent by the High Court on 28 August 2013 pursuant to a judicial review brought by allotment holders. On 18 December 2013, following the resubmission of the application, the Secretary of State issued a further decision granting consent. The decision was again challenged by allotment holders in the High Court and a decision was made in favour of the claimants on the grounds that the Council had failed to inform the Secretary of State of changes to the amount of housing proposed on the site since the application was submitted which were material to the question of viability. A new application was made to the Secretary of State in December 2014 by the Council. The Council has kept the Secretary of State informed and updated on matters relating to the application since that time.

9. Hertsmere Borough Council, within whose area the new Paddock Road allotment land lies, approved the planning application for the change of use of 0.63 ha of land from paddock to allotment land on 27 May 2015 thus extending the existing Paddock Road Allotment site. A planning application for the Watford Health Campus, excluding the allotment land (14/00511/OUTM), was approved by the Council in September 2014. A planning application for the Watford Health Campus, including the allotment land (14/00512/OUTM), is currently under consideration.

10. The Secretary of State wrote to interested parties following receipt of the application from the Council in December 2014 to seek their views. Those parties included the National Allotment Society ('NAS') and the Farm Terrace Community Association. Approximately 50 responses were received all of which have been taken into account by the Secretary of State when making his decision. A number of different issues were raised in these responses which are considered below.

Compulsory Purchase Order

11. The Secretary of State confirmed the Borough of Watford (Watford Health Campus) Compulsory Purchase Order 2014 ('the Order') on 21 January 2016. The Order Lands include 26.5 hectares of land encompassing the Watford Health Campus Site but not including the allotment land. The purpose of the Order is to facilitate the delivery of the Scheme.

12. The Inspector who heard the inquiry into the Order concluded that he would have recommended that the Order be confirmed with modifications had agreement with the joint promoters of the Croxley Rail Link been reached (IR 153). Subsequently, the Croxley Rail Link Order objections were resolved and the Secretary of State decided to confirm the Order. In doing so, the Secretary of State's view was that:

"the proposed purpose of the Order including the facilitating of the delivery of the Watford Health Campus, will significantly contribute to the achievement of the promotion of improvement of the economic, social and environmental wellbeing of the area." (DL10)

13. The Secretary of State found that there was a compelling case in the public interest for the confirmation of the CPO. In doing so, the Secretary of State adopted the conclusions and reasons of the Inspector on the following matters. The Inspector found that there were strong economic benefits of the proposal (IR134-136) in terms of regeneration and decontamination works creating jobs for local people on otherwise constrained land. There were strong social benefits in terms of the significant housing contribution the scheme would make and the provision of education, open space and retailing. The inspector found that the hospital, however, did not present a compelling case because the ultimate plans for the hospital are as yet uncertain (IR138). The "utterly compelling case" in principle was made by the improved road access to Watford General Hospital to replace the current poor and life-threatening access (IR139).

14. Further the Secretary of State agreed with his Inspector that there would be strong environmental benefits as the decontamination works were unlikely to occur without the CPO and the reduced flood risk to the area at risk provided a compelling argument (IR140-141).

15. As to resources and viability, the Secretary of State noted the Inspector's conclusions that the first phase of the scheme was viable and that *'subsequent stages are viable and would be made more viable by the inclusion of [the Allotments] if permission is given for their appropriation'* and that *"even if permission is not given, alternative courses of action can be explored"* (IR145). The Secretary of State also noted his Inspector's conclusion that *'an adverse decision on the application to appropriate the [Allotments] would not be an impediment'* (IR146) and that there was a *'more than reasonable prospect that the scheme would proceed'* (IR147).

16. Finally, on alternatives, the Secretary of State agreed with his Inspector that *'it is clear that if the CPO is not confirmed, an alternative is unlikely to be found'* (IR150).

17. It is noted that the Council's evidence to the Inspector (IR55), and as explained in its application for consent, was that the possibility of a new primary school on the allotment site was being explored as an alternative to the Council's preferred option of expanding the existing primary school.

Further representations

18. The Secretary of State wrote to all interested parties on 28 January 2016 seeking further representations on the Council's application following the confirmation of the Compulsory Purchase Order. Both NAS and the Farm Terrace Community Association wrote to the Secretary of State (on 9 and 18 February 2016 respectively) in order to make further comments and to confirm that they remain opposed to the appropriation of the allotment site. Both parties consider that the Council has failed to demonstrate exceptional circumstances that support disposal of the allotment land and that the CPO decision demonstrates that the allotment land is not needed to ensure that the Scheme is completed or viable.

19. A further 11 representations objecting to the appropriation of the allotment land were received, 5 of which are stated as being from existing Farm Terrace plot holders. Some of the objections raised in the representations were similar to those made by NAS and the Farm Terrace Community Association but in addition it was said, amongst other things, that: the allotment site needs to be preserved as a green recreational space; allotments are important for conservation, health and food supply; the Scheme will create additional traffic problems; appropriation of Farm Terrace will set a precedent for other allotment sites; new houses on the allotment land will not help the hospital; the new allotment site is too far away and the government should protect allotments and support development on brown field sites rather than green field (allotment) land. All representations received following the confirmation of the CPO have been taken into account by the Secretary of State when making his decision.

20. The Council submitted a further update on 21 April 2016 enclosing information on the increased infrastructure costs of the Scheme (phase 1 is now showing a £3.8m increase in costs compared to 2013 and in relation to the second phase under development, Business Zone South, a £1.88m increase in construction costs is reported). In their view, this information highlights the importance of the incorporation of the Farm Terrace Allotment site into the Watford Health Campus to aid the overall viability of the Scheme.

21. The Secretary of State wrote to all interested parties on 29 April 2016 to seek their views on this information. Two representations were received from NAS, one from the Farm Terrace Community Association and a further 7 from other third parties (including one received outside the deadline for replies). All representations received, including the late response, have been taken into account by the Secretary of State.

22. The representations made as part of this most recent consultation included the following issues (grouped into 3 categories):

- the site will not be used for a hospital or other health connected purpose; the allotment site will become a building site for developers; the term 'Health Campus' should have been dropped long ago; if disposal is refused the road will still need to be finished so what other options are available; the plan for the hospital element of the Health Campus is still uncertain and this is confirmed by the Council's table which shows the omission of the Block Central Zone because of "uncertainty with the hospital"; the Trust's clinical strategy will not be finalised until December 2016 and the decision should be deferred until then, the Secretary of State has not been informed of this; if Watford General is not developed then the need for disposal of Farm Terrace is removed.
- the Council's viability case needs to be qualified with alternative financing options; revenue from increased land values will easily outweigh additional development costs; the viability information is incoherent and unclear; allotments should not be disposed of to cover the financial losses of a local authority; the costings and consultant's reports on infrastructure are not provided; what are the issues which continue to impact on viability and why were increased construction costs unforeseen; the updated viability information is not sufficient or detailed enough for a robust decision to be made; the December 2014 application from the Council has omissions and contains information over 4 years old so the design of the Scheme has changed since that time and elements of the Scheme are uncertain; insufficient evidence of cost increases for an informed judgement and the Secretary of State should scrutinise the change in infrastructure costs; the funding agreement with the Trust would trigger extra funding in the event of infrastructure costs increasing to this level.

- the destruction of well used allotment land for housing is unsatisfactory; Farm Terrace Allotment should be allowed to continue; there is no need for disposal of the allotments; the decision-maker needs to consider the significant value of these historic, mature allotments to the community in terms of health, well-being and green-space; the value of this resource to the community should outweigh its financial value.

23. In particular, comments received from NAS on the updated viability information included: there is still no clear plan for what the allotment land will be used for; the clinical strategy is still undecided therefore it is impossible for Health Campus viability information to be adequately defined; changes to costs are not itemised/justified/explained therefore it isn't possible to evaluate the programme; escalating costs are a concern and appear to be above inflation and NAS representations from February 2015 and February 2016 are still applicable. NAS considers that the updated viability information does not change their view that the inclusion of the Farm Terrace Allotment site is neither essential nor vital to the Health Campus Scheme.

24. The responses received from the viability consultation were circulated to all third parties and Watford Borough Council on 16 May 2016 in order to provide an opportunity for additional comments arising from the representations received. One response was received from Watford Borough Council who stated that *'having reviewed the representations, the Council takes the view that there is nothing significantly new being raised that has not been covered within our application and the Council's subsequent updates to the Secretary of State'*.

25. The Farm Terrace Community Association wrote separately to the Secretary of State on 7 April 2016 drawing his attention to correspondence received from the Mayor of Watford Borough Council on 6 April. The Community Association considered that the comments made by the Mayor were in contrast to the positive messages previously portrayed in the application and demonstrated that the West Hertfordshire Hospital Trust still has no permanent plans in place. The Mayor's email states that *'the hospital are (sic) now getting closer to knowing what they want'*. The Secretary of State has noted the comments of both the Council and the Farm Terrace Community Association and has taken them into consideration.

26. In this regard, the Secretary of State notes that he had been provided by the Council on 27 January 2016 with an update regarding the Trust's position in a letter to the Mayor from the Trust dated 9 January 2016. This explained that the Trust had now published its Strategic Outline Case which identified a short-list of 3 options for the Watford General Hospital redevelopment: (i) provide acute care at a new location; (ii) centralise acute care at Watford and (iii) emergency / specialised care at Watford and planned care/complex diagnostics at St Albans, the latter being identified as the "preferred option", with further feasibility work ongoing on the various options. Both options (ii) and (iii) would involve use of the allotment land and therefore the Trust's position was that *"some or all of the allotment land is very likely to be required by the Trust to support our strategic development plans."* As to the timeline, the Trust expected to *"have a fairly definitive view of the planned way forward by the summer of 2017."*

Statutory criteria

27. Section 8 of the Allotments Act 1925 sets out 3 mandatory criteria, one of which must be met in order for the Secretary of State to grant consent for the disposal of allotment land. The criteria are:

- i) The Secretary of State is satisfied that adequate provision will be made for allotment holders displaced by the action of the local authority or
- ii) The Secretary of State is satisfied that such provision is unnecessary or
- iii) The Secretary of State is satisfied that such provision is not reasonably practicable.

28. The Secretary of State is satisfied that adequate provision will be made for allotment holders displaced by the action of the local authority. The allotment site which would be lost is 2.63 ha. The Council in its application stated that, as of 17 December 2014, 31 plot holders were cultivating 37 plots (including the 4 who at the time of the application had given notice). The Secretary of State has been informed that, as of 26 January 2016, there were 24 tenants cultivating 31 plots (277 poles).

29. The Council submitted a review of alternative sites which was undertaken by an independent consultant on behalf of the Council. As a result of the recommendations made, the Council decided to provide 110 plots at an alternative 2.63 ha site in Lower Paddock Road. Although there are fewer plots, provision will match the number of plots lost at Farm Terrace as plot sizes will be designed to meet the requirements of any displaced plot holders. This new site borders the existing Paddock Road Allotment site and will therefore increase the capacity of the established allotment community at that site. The Secretary of State was informed by the Council on 5 February 2015 that the proposed extension to the Paddock Road allotments was to be slightly increased and would therefore now be able to provide a total of 2.7 ha of alternative provision on that site. Other potential new allotment sites were considered unsuitable.

30. As stated in paragraph 9, Hertsmere District Council granted the relevant planning permission for this to occur. Provision for the displaced Farm Terrace allotment holders would therefore be available to existing plot holders at Paddock Road or on available plots closer to Farm Terrace (Holywell and Brightwell) or on other allotment sites within the Borough.

31. Paragraph 2.2 of the allotment disposal guidance states that “*adequate alternative provision should ideally be within three-quarters of a mile of the existing allotment site and be easily accessible. If this is not the case, an explanation will be required*”. The Secretary of State notes that Paddock Road is clearly not within three-quarters of a mile of Farm Terrace Allotment. The Council considers Paddock Road to be 1.7 miles by shortest car journey and 1.5 miles on foot from the site, however other interested parties consider the distance by car to be greater, for example the NAS considers it to be 2.1 miles and have objected to the alternative provision on this basis.

32. Further, early discussions with NAS raised the importance of soil quality and waterlogging on the new Paddock Road site. External consultants have been appointed to work on issues around soil quality as well as the relocation of tenants. All necessary remediation work will take place on the new Paddock Road site, funded by the allotment investment programme, to ensure that the land is suitable for cultivating and all appropriate facilities will be provided on site. The Secretary of State therefore considers that NAS's concerns on these issues would be addressed through the level of investment being allocated to Paddock Road which would allow for new subsoil and topsoil with associated drainage.

33. The Council considers that two sites (Holywell and Brightwell), both within three-quarters of a mile of Farm Terrace (c. 0.5 miles from Farm Terrace), would be able to accommodate displaced plot holders if they did not wish to relocate to Paddock Road. As at 17 December 2014, the two sites had combined vacancies of 52 plots. The Council considers that this number of vacant plots could easily accommodate the displaced Farm Terrace allotment holders who, between them at the time of the application, rented 33 plots comprising 284.5 poles (not including the 4 plot holders who at the time of the application had given notice). The NAS in their representation to the Secretary of State of 10 February 2015 disputed this and claimed that there were only 199.5 poles on the 52 plots at the Holywell and Brightwell sites. Subsequent correspondence from Watford Borough Council dated 8 February 2016 however, stated that there are 57 plots and 301 poles available at the Holywell and Brightwell sites (28 and 29 plots available respectively). The Secretary of State also notes from the application (page 28 question 7) that if necessary, the Council would be prepared to provide additional capacity at the Holywell allotment site.

34. Taking account of the re-provision at Paddock Road and availability of plots at Holywell and Brightwell as quoted by the Council on 8 February 2016, the Secretary of State considers that adequate provision would be made for displaced allotment holders and that **this statutory criterion is met.**

Policy Criteria

35. In accordance with the guidance, the Secretary of State's consent will normally only be given if he is satisfied that the following policy criteria have been met:

- i). the allotment in question is not necessary and is surplus to requirements;
- ii). the number of people on the waiting list have been effectively taken into account;
- iii). the council has actively promoted and publicised the availability of sites and has consulted the National Allotment Society;
- iv). the implications of disposal for other relevant policies, in particular local plan policies, have been taken into account.

Policy criterion i - Is the Allotment in question unnecessary and surplus to requirements?

36. The Secretary of State must consider the following when seeking to establish whether or not councils have met the criteria of whether the allotment in question is not necessary and is surplus to requirements: a) the number of plots (if cultivated) and their size, b) the number of existing plot holders, c) the number of people on the waiting list for that site and d) if the waiting list has closed and at what number.

37. As of 26 January 2016, there were 24 tenants on the allotment site cultivating 31 plots (277 poles). The site contains 128 plots in total - predominantly 10 and 5 pole plots however there are some non-standard size plots of for example 4 and 7 poles. All plots are planned for disposal. The waiting list for the Farm Terrace Allotment site was closed by the Council in December 2012 so effectively removing the need for the site in terms of new plot holders since that time. There were 8 potential plot holders on the waiting list for the Farm Terrace site at the time of its closure. The Council states that all 8 people were offered a plot on alternative sites with vacancies but that as at December 2014 this offer had not been taken up.

38. As explained above at paragraphs 33-34, the Secretary of State is satisfied that adequate alternative provision is being made on the enlarged Paddock Road site along with existing sites at Holywell and Brightwell.

39. However, the Secretary of State concludes that although adequate alternative provision for displaced plot holders has been provided, there is still a need for the current site as there are existing plot holders. The Secretary of State has also noted that the waiting list for the Farm Terrace Allotment site was closed to new potential plot holders by the Council in December 2012. The Secretary of State has therefore decided that **criterion i) has not been met.**

Policy Criterion ii - Have the number of people on the waiting list been effectively taken into account?

40. The Borough currently has 13 allotment sites. As of 10 February 2016, there were 39 people from across the borough on the waiting list for an allotment. Of these, 4 are waiting for a specific plot to become available and 11 have been contacted about viewing available plots on the site of their choice. Since the application to dispose of the allotment site in December 2014, the waiting list on the Briar Road allotments has been opened. The total number of vacant plots on allotment sites in the borough is 160 as of 10 February 2016. The Council considers that there is adequate allotment provision within the Borough to accommodate those on the waiting list. Vacant plots are also available within 0.75 miles of Farm Terrace on the Holywell and Brightwell allotment sites.

41. The Secretary of State concludes that the waiting list has been taken into account and there is sufficient provision within the Borough to meet the needs of all those on the waiting list. The Secretary of State has therefore decided that **criterion ii) has been met.**

Policy criterion iii - Has the council actively promoted and publicised the availability of sites and consulted the National Allotment Society

42. Consultation and meetings have taken place between the Council and NAS since 2012. NAS has also made a number of representations to the Secretary of State since 2013 outlining its objection to the disposal of Farm Terrace. The objections raised during that time include:

March 2013 - the allotments should not be used to further increase housing in the Scheme; the alternative provision is unsatisfactory as it is not possible to walk to and is 2.1 miles away by road; displaced plot holders will need to travel by car adding traffic to congested highways; retaining the allotment site in the Scheme would be a great asset; lack of publicity and promotion of allotment sites; the numbers of those on the waiting list are inaccurate; the allotment site is not surplus to requirements; those on the waiting list have not been adequately taken into consideration.

October 2013 - the Council did not consult with NAS prior to resubmitting their application; if no new information is forthcoming then the grounds for quashing the original decision still stand; Farm Terrace still has a waiting list even though the Council closed the waiting list in 2012; the need for the use of the allotment site for the redevelopment remains unclear; the allotment site is not needed for the redevelopment to take place; and the Council continues to not actively promote its allotments.

February 2015 - all previous representations remain relevant and in particular the application is challenged due to: inadequate alternative provision; uncertainty of what the allotment land will be used for; exceptional circumstances put forward by the Council are not clear cut and are open to interpretation; there has never been any attempt by the Council to compromise; the density of housing suggested within the Scheme only provides for a relatively small area of land to cater for growing produce and lack of consideration for existing tenants.

43. The National Allotment Society also provided a further response after the confirmation of the CPO on 9 February 2016 to confirm that it remains opposed to the appropriation of the allotment site. This is addressed elsewhere in the decision, along with the substance of NAS's other particular concerns. NAS also responded to the updated viability information provided by the Council on 21 April 2016 (see paragraph 23). It is however clear that they have been consulted as part of the Council's application process.

44. As to the question of promotion and publicity of allotments by the Council, this is one of the areas where NAS has raised concerns. Indeed, the waiting list for the Farm Terrace Allotment site was closed by the Council in December 2012 so effectively removing the possibility of promoting the site in terms of new plot holders since that time.

45. The Secretary of State considers that the Council, however, does actively promote the availability of allotment sites in its area. The Council publicised the £820k allotment investment programme which was completed in December 2014, except for the new Paddock Road site. This is achieved mostly through the council's website but also by bus/bus shelter posters, dedicated leaflets, articles in the council's magazine (most recently to coincide with the allotment investment programme) and news releases. The Council has also explained that it engages with the Allotment Stakeholder Panel, which represents Watford plot holders, in order to inform the promotion and publicity programme. The Council has reported that there has been a steady increase in the numbers of people accessing the Council's allotment website in the 4 years to November 2014 and a marked improvement in allotment occupancy rates has been maintained.

46. Accordingly, the Secretary of State concludes that the Council is actively publicising and promoting Watford's allotment sites and that NAS has been consulted. The Secretary of State has therefore decided that **criterion iii) has been met.**

Policy criterion iv - Have the implications of disposal for other relevant policies, in particular local plan policies, been taken into account.

47. The allotment site is not specifically referenced in the adopted Local Plan and there is no relevant Neighbourhood Plan for the area. The allotment site lies within an area known as the Watford Health Campus which is designated for significant regeneration and improvement within the Watford Borough Council Local Plan Part 1 Core Strategy and is designated as a Special Policy Area 3 (SPA3) within the Plan. The emerging Local Plan Part 2 will include the extension and delineation of the boundary of the SPA 3.

48. The 2014 Housing Strategy identifies the Watford Health Campus as a delivery vehicle for its aims. The Council's emerging Economic Development Strategy 2015-2020 reinforces the critical importance of sustaining the employment base in the Borough supported by developments like Watford Health Campus. The Council has further indicated that it considers that the approach taken by the scheme is supported by the Green Spaces Strategy 2013-2023.

49. In light of the above, the Secretary of State concludes that the Council has considered the implications of the disposal for local plans and policies. The Secretary of State has therefore decided that **criterion iv) has been met.**

Exceptional Circumstances

50. Although the statutory criteria are met and policy criteria (ii), (iii) and (iv) in the Guidance are satisfied, policy criterion (i) is not. Paragraph 1.7 of states that '*In exceptional circumstances, the Secretary of State may be content to grant consent for disposal where the statutory criteria, but not all the criteria in the policy guidance, are satisfied.*'

51. In summary, the exceptional circumstances put forward by the Council are *‘(i) supporting the viability of the proposal as a whole by providing readily developable land which could support important elements of the proposals as identified below’*.

These are identified as: *‘(ii) providing land on which some of the important land uses underpinning the scheme can be located, including health facilities and family housing; (iii) providing an opportunity through the location of the allotments the urban design opportunities of the site to secure a well-designed and sustainable proposal’* and *“(iv) the allotment land sits in a central and strategic location with respect to the Watford Health Campus site. Its incorporation within an enlarged Watford Health Campus would greatly assist in achieving the overall vision and objectives of this important regeneration scheme’*.

52. NAS and the Farm Terrace Community Association are of the view that exceptional circumstances have not been demonstrated by the Council as the allotment land has not been shown to be crucial to the viability of the West Hertfordshire Hospitals NHS Trust project to expand services and facilities or to the delivery of the regeneration project. Both parties also consider that this view was supported by the Compulsory Purchase Order Planning Inspector.

53. Objections put forward by third parties on the exceptional circumstances cited by the Council were similar to those made by NAS and the Farm Terrace Community Association but also included concerns that (i) the exceptional circumstances are not clear and are open to interpretation by the Secretary of State; (ii) the concept was introduced after WBC failed in their first submission; (iii) exceptional circumstances over-riding the allotments is a serious cause for concern; (iv) the exceptional [circumstances] addition means that the policy criterion can effectively be ignored; (v) a better designed site overall and/or building houses are not exceptional circumstances justifying a deviation from policy.

54. The Secretary of State has considered carefully the Council’s representations, the CPO decision and the representations from NAS, the allotment holders and others to the effect that the basis for the inclusion of the allotments in the Scheme are inadequate to justify their disposal when they bring such benefits to the allotment holders themselves and the wider community. The Secretary of State has borne in mind in particular that, in light of the findings of the CPO Inspector and his own decision to approve the CPO, the Council is committed to implementing the Scheme without the inclusion of the allotment land and there is a reasonable prospect that this will occur.

55. However, the Secretary of State does consider that there are exceptional circumstances in the public interest in this case to allow the use of the Farm Terrace allotment land to be developed as part of the Watford Health Campus and that their use to support the regeneration initiative with its significant benefits to the population of Watford outweighs the benefits of the site remaining as statutory allotment land. This is for the following reasons.

56. First of all, the Secretary of State has recognised the importance of the Scheme and its wider regeneration benefits for Watford in confirming the CPO itself (see paragraphs 11-17). One of these benefits is the significant contribution the Scheme makes towards meeting Watford's housing needs (12.28% of Watford's total identified housing need, see IR50 and IR137).

57. A major intended use of the allotment land is to provide c 69 family houses with gardens and thus ensure a balanced housing mix (significantly increasing the ratio of houses, in comparison to flats/maisonettes, if the allotments are included) at a time when the Council reports an increasing need for family housing in the area. Further, in light of the Scheme's increased vulnerability to market conditions without the allotments, if risks materialise, there may be a need to increase the density of the flatted development further and potentially undermine the quality of the housing provided as part of the Scheme. Further, the use of the allotment land which supports its viability thereby improves the likelihood of the Scheme being able to achieve the 35% affordable housing ratio. The Secretary of State notes the potential that c.0.9 ha of the area intended for housing might need to be used for a new primary school (which would itself bring a public benefit) but that this is not yet a settled proposal.

58. In addition, although it is noted that the intentions of the hospital are not yet certain despite the recent update from the Trust (see paragraph 26 above), the Secretary of State is of the view that the allotment land would permit the best configuration of the future expansion of hospital facilities onsite in a cost effective way, including by permitting decant land for the reconfiguration process. The wider public benefits of ensuring cost effective yet optimum improvements at the hospital are clear. Further, the Secretary of State is also persuaded that the incorporation of the allotment land into the Scheme would assist in achieving the overall vision and objectives of the Scheme, and allow the opportunity for the best urban design solutions to be achieved to deliver a sustainable mixed community by regenerating contaminated and otherwise constrained land in Watford.

59. Further, without the allotment land, the Secretary of State accepts that the financial viability of the Scheme is at the lower end of the industry accepted viability scale due to a number of up front abnormal development costs to address including mitigation of the flood plain, access, contamination and topography, and it is thus vulnerable to market conditions. It is acknowledged nonetheless that the first phase of development is funded and underway, and subsequent stages are considered to be viable by the Council, as the CPO inspector found.

60. The Secretary of State considers that the recent limited information from the Council on increased infrastructure costs does not enable him to draw any specific further conclusions on the impact of the Scheme's overall viability without the allotments, as consultees pointed out. However, in light of the overall evidence, the Secretary of State agrees with the view taken by the CPO Inspector (IR145) that the inclusion of the allotments would improve the Scheme's overall long-term viability. The Secretary of State considers that this would thereby reduce the risk of the quality of the overall scheme being undermined.

61. Accordingly, the Secretary of State considers that, in combination, the above benefits of the allotment land to the Scheme constitute exceptional circumstances justifying the granting of consent for the allotments despite the fact that policy criterion i) is not met. In reaching this view, the Secretary of State has kept in mind that the statutory criterion of adequate alternative provision for allotment holders is met, and that all other policy criteria are met.

Human Rights

62. The Secretary of State has carefully considered whether the interference with the allotments holders' rights as tenants of the allotments under Article 1 of the First Protocol is justified and proportionate.

63. Although current plot holders are being deprived of their existing allotments which have been tended over many years, alternative sites are being offered in the Borough within 0.75 miles of Farm Terrace. Plots on two active allotment sites (Holywell and Brightwell), located within 0.5 miles of Farm Terrace, could also be used for the relocation of current Farm Terrace allotment tenants if required. Compensation is being offered to affected plot holders and assistance given to relocate.

64. The loss of the existing provision for current plot holders and the alternative provision and assistance available to them must be balanced against the wider public interest in terms of the benefits to be gained by the wider community by including the allotment land in the Watford Health Scheme.

65. Having taken into account the rights of the current plot holders under Article 1 of the First Protocol and having balanced this against the wider public interest, the Secretary of State considers that the interference with the allotments holders rights is justified by the advantages to the wider public interest by proceeding with the Scheme as a whole, as outlined above.

Public Sector Equality Duty

66. In making this decision, the Secretary of State has had due regard to the need to (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, pursuant to s 149 of the Equality Act 2010.

67. The Secretary of State considers the loss of allotment land will have significant potential negative impacts on protected groups in terms of age and disability. The Secretary of State has carefully considered these potential negative impacts and he notes that they are likely to be significantly, if not wholly, mitigated by the proposed alternative suitable provision in the Borough on sites within 0.5 miles and a 5-10 minute walk of the Farm Terrace site (i.e. Holywell and Brightwell). Moreover, the Secretary of State has also taken into account the Council's commitment to provide a compensation package and to provide assistance to plot holders to bring replacement plots up to standard and move larger items to the new site.

68. The Secretary of State is therefore of the view that the Scheme's negative impacts on the elderly or disabled plot holders are being adequately mitigated by the accessible alternative provision close by and the other measures outlined above.

Decision

69. Accordingly, for the reasons given above and in pursuance of his powers under section 8 of the Allotments Act 1925, the Secretary of State gives consent for the disposal of Farm Terrace Allotments, Occupation Road, Watford.

Yours sincerely

Ray Colbourne

Ray Colbourne
Team Leader - Central