



# **DEVELOPMENT MANAGEMENT COMMITTEE**

**Thursday, 4th June, 2015**

**7.30 pm**

**Town Hall**

**Publication date: 27 May 2015**

**CONTACT**

If you require further information or you would like a copy of this agenda in another format, e.g. large print, please contact Rob Cowan in Democracy and Governance on 01923 278375 or by email to [legalanddemocratic@watford.gov.uk](mailto:legalanddemocratic@watford.gov.uk) .

Welcome to this meeting. We hope you find these notes useful.

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## **SPEAKING AT DEVELOPMENT MANAGEMENT COMMITTEE**

Only one person will be permitted to speak on behalf of objectors and one in support of a proposal. Precedence to speak in support of the proposal will be given to the applicant or their representative.

In order to speak, a person must register before 12 noon on the day of the meeting by contacting the Democratic Services Team. The contact details are available on the front of this agenda.

If a speaker wishes the Development Management Committee to consider any documentation at the meeting, then it must be submitted to the Democratic Services Team by 12 noon on the day of the meeting.

# COMMITTEE MEMBERSHIP

Councillor R Martins (Chair)  
Councillor G Derbyshire (Vice-Chair)  
Councillors S Bashir, N Bell, S Johnson, I Sharpe, M Turmaine, M Whitman and  
T Williams

## AGENDA

### PART A - OPEN TO THE PUBLIC

1. **APOLOGIES FOR ABSENCE/COMMITTEE MEMBERSHIP**
2. **DISCLOSURE OF INTERESTS (IF ANY)**
3. **MINUTES**

The minutes of the Development Control Committee (now named the Development Management Committee) held on 14 May 2015 to be submitted and signed.

Copies of the minutes of this meeting are usually available seven working days following the meeting.

*(All minutes are available on the Council's [website](#).)*

### CONDUCT OF THE MEETING

The Committee to take items in the following order:

1. All items where people wish to speak to the Committee and have registered to do so by telephoning the Democratic Services Team.
  2. Any remaining items that the Committee agree can be determined without further debate.
  3. Those applications where Members wish to discuss matters in detail.
4. **42 DURBAN ROAD WEST** (Pages 1 - 30)  
  
Application for the erection of double storey side extension to contain internal staircase. Side roof extensions to convert hips to gables. Installation of rear dormer. Creation of a fifth flat in loft space. Installation of external wall insulation.
  5. **19 KING STREET** (Pages 31 - 58)  
  
Application for the retention of existing façade to King Street, demolition of remaining building to rear and erection of a part 4 storey, part 3 storey building to provide a ground floor Class A1/A2 unit and 25 flats with 13 parking spaces (duplicate of ref. 14/01574/FULM without the provision for affordable housing).



# Agenda Item 4

	PART A	Item Number
Report of: <b>Development Management Section Head</b>		
Date of Committee:	<b>4<sup>th</sup> June 2015</b>	
Site address:	<b>42 Durban Road West, Watford</b>	
Reference number:	<b>15/00172/FUL</b>	
Description of development:	<b>Erection of double storey side extension to contain internal staircase. Side roof extensions to convert hips to gables. Installation of rear dormer. Creation of a fifth flat in loft space. Installation of external wall insulation.</b>	
Applicant:	<b>Gainforce</b>	
Date received:	<b>5<sup>th</sup> February 2015</b>	
8 week date (minor):	<b>10<sup>th</sup> May 2015 (but extended until 5<sup>th</sup> June 2015 by agreement)</b>	
Ward:	<b>Vicarage</b>	

## SUMMARY

The application is for planning permission to enlarge the roof of the building by converting its side hips to gables and by adding a rear dormer. The converted loft would contain a fifth flat. It is also proposed to replace an existing external staircase on the right side of the building by adding a double storey side extension to contain an internal staircase. Some associated changes are proposed to the landscaping of the site. The Development Management Section Head recommends that the application be approved as set out in the report.

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## **BACKGROUND**

### **Site and surroundings**

The site is located on Durban Road West, not far from its junction with Whippendell Road. It stands beside a bend in the street, and because of that bend the plot is triangular, being wide at the front and pointed at the rear. This is not a nationally or locally listed building, and there are none nearby. This is not a conservation area. There are no protected trees on the site.

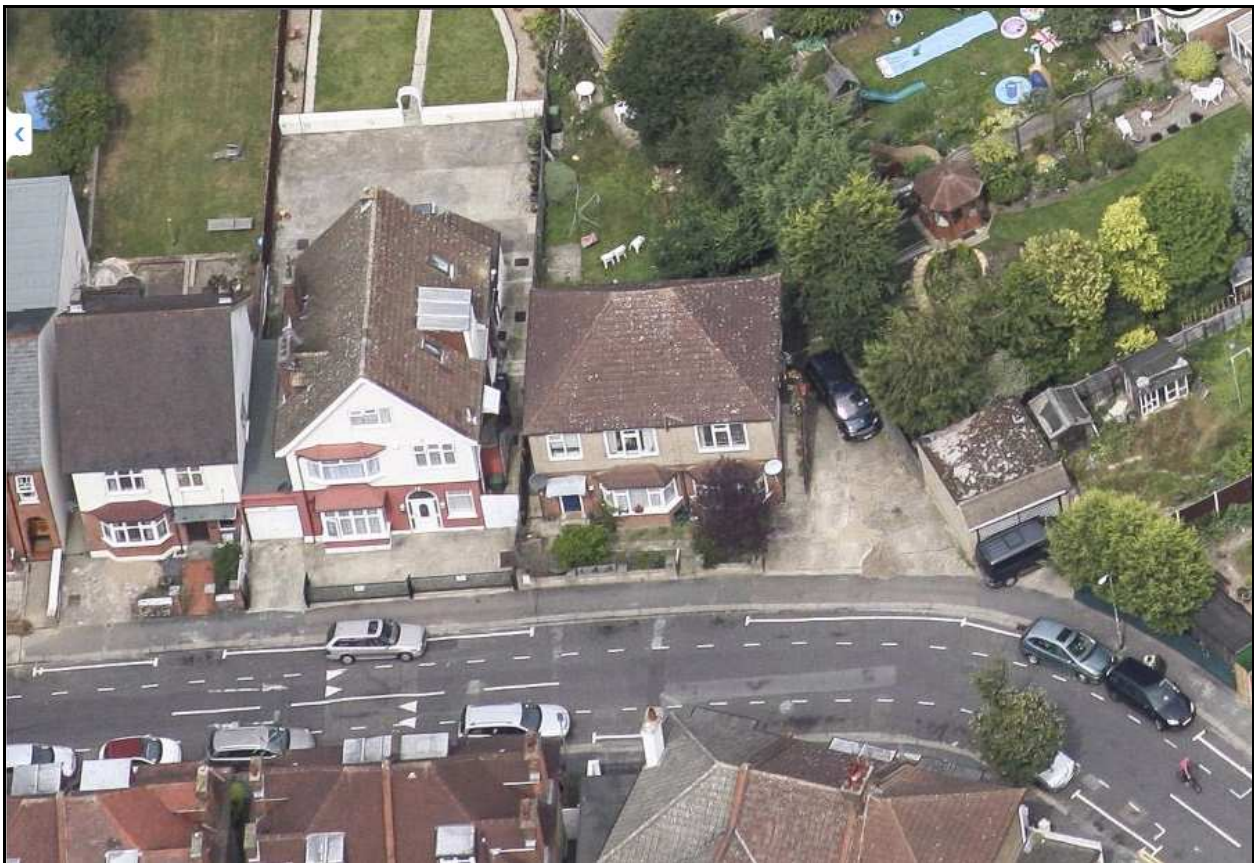
The site is a detached building that apparently dates from 1920. Once a house, it has been converted into four flats: two on the ground floor and two on the first floor. The original front door serves one flat; doors on both sides of the building at ground floor serve two other flats; and an external flight of concrete stairs runs up the right side of the building to provide access to a first floor side door for another flat. Refuse and recycling bins are stored beneath that external staircase.

On all four sides the building is finished in red bricks at ground floor and in unpainted pebble-dash render at first floor. The roof is hipped on either side, with a short lateral ridge. There are no roof lights or dormers, as the loft has not been converted. At the front of the ground floor there is a pair of bay windows.

The site has a small front garden, including a small tree, which is behind a low front boundary wall. A passage approximately one metre wide runs down the left side of the building. On the right side of the building there is a triangular open space (wide at the front and narrowing to a point level with the rear of the house) which is laid as hardstanding for car parking. It is possible to walk down either side of the house to access the rear garden. Standing to the right of that parking area, and positioned at an angle to the house, is a double garage; but that is outside the boundary of the application site, and no information has been provided as to who owns it.

Because the whole plot is triangular (wide at the front and pointed at the rear) the rear garden is similarly triangular. The garden is flat, and it consists mainly of a lawn, although there is a patio behind the building and also a small pond. The rear garden of this site is smaller than most of the others on this side of the street.

There is no immediate neighbour to the right. The neighbouring house to the left (44) is longer than this building and so, while their fronts are level, the neighbouring dwelling projects further to the rear. That dwelling's roof has a ridge at right angles to the street, with a gable end facing the street and another facing the rear garden. The properties in this street are mostly of a similar age, and they have a variety of roof forms, some having hips and others gables, some of the gables facing the street, and others facing sideways.



Aerial photograph of the site (taken from [www.bing.com/maps](http://www.bing.com/maps))



### **Proposed development**

This application is for planning permission to enlarge the roof by extending the existing hips on either side to make them into gables. The loft is to be converted into a flat. This will increase the number of flats in the building from four to five. There will be a dormer containing two windows at the rear of the roof. At the front five rooflight windows will be set into the roof slope. It is also proposed that a double storey side extension be erected, which would contain a new internal staircase, to replace the existing external staircase.



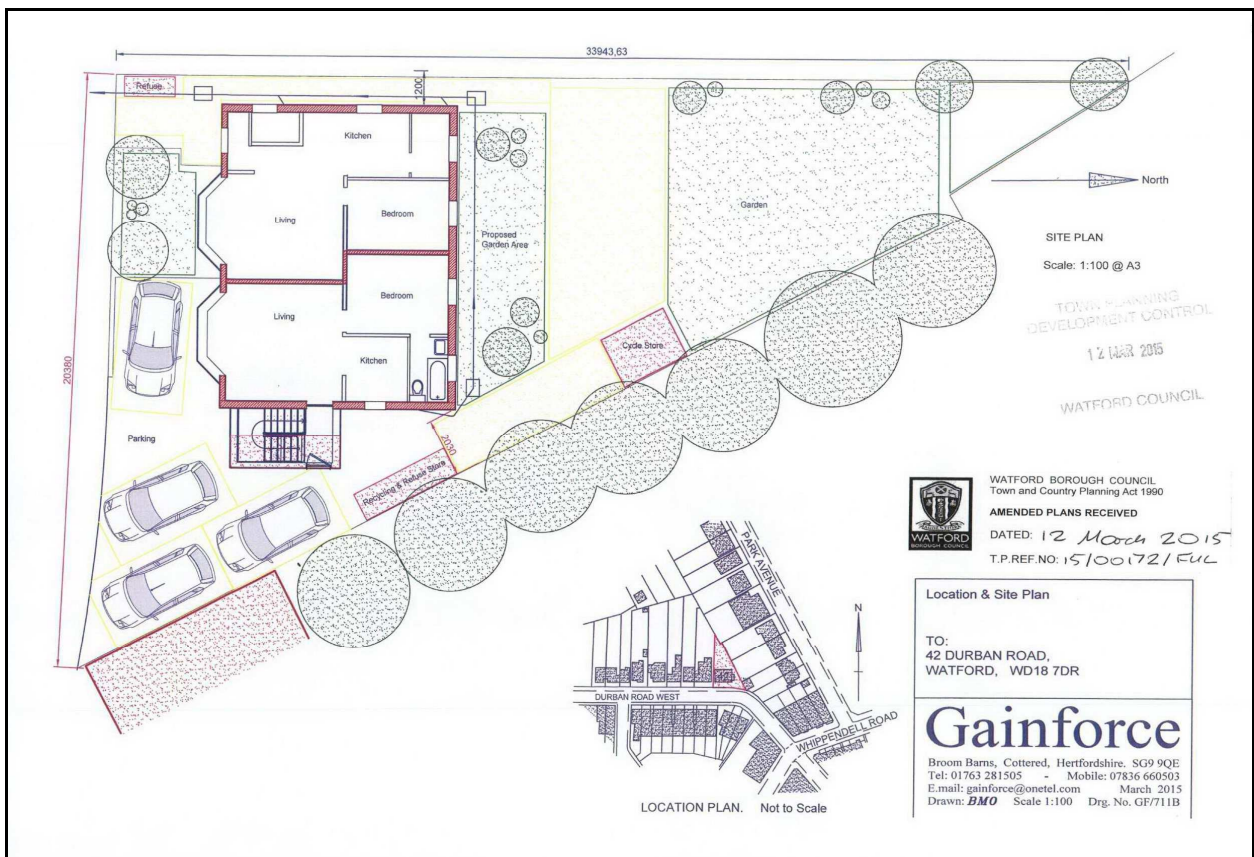
Photomontage: indicative impression of the proposed front elevation

The new flat will have two bedrooms, an open-plan kitchen and lounge/dining room, a bathroom, and also a shower room which will be en suite to one of the bedrooms.

A proposed site plan has been submitted which shows the proposals for landscaping and



parking. No existing site plan was included for comparison, but it can be concluded from a site inspection that the proposed changes to the landscaping would be as follows. The front lawn would be reduced so as to lay more hardstanding for a parking space in front of one of the two bay windows (the right), and this would involve removing the small cherry tree that stands there. The remaining front garden would consist of a small area of soft landscaping in front of the other bay (the left) with two bushes or small trees shown there. In addition to the parking space in front of the right bay, another three parking spaces are shown on the triangular area of hardstanding to the right of the building. The layout illustrated would entail two of those cars blocking the third car in.



Proposed site layout plan

A store for refuse and recycling bins is shown behind that parking area, and in the rear garden there would be a bicycle store. The rear garden (which currently has a small patio immediately behind the building, and a lawn beyond that) would consist of a small garden

of soft landscaping immediately behind the building, then a new patio separating that small garden from the main garden occupying the rest of the space. An existing row of tall conifer trees along the slanted boundary is to remain, as those trees stand on the other side of the boundary.

The application is accompanied by a Design and Access Statement.

Amended drawings were received on 12 March 2015. These corrected some errors on the drawings that were originally submitted as regards the proposed windows of the new flat, and some minor changes were made to the windows and door of the proposed side extension.

#### **Determination deadline extensions**

This application was originally submitted on 5 February 2015. It was found to be invalid on 12 March 2015 because it had come to the Council's notice that incorrect information had been submitted regarding the people with ownership interests in the site, as the leaseholders of the existing flats had not been mentioned on the application form. That problem was soon solved when a revised application form was submitted, and the eight week consideration period began again from that date, giving a new determination deadline of 8 May 2015.

Because of the number of objections that have been received, it has been necessary to refer this case to the Development Control Committee for determination (rather than determining it under delegated powers). As a consequence, the period for determination of the application has been further extended (with the applicant's consent) to 5 June 2015 so that it can be considered by the Committee at the meeting on 4 June 2015.

#### **Planning history**

Apparently this building dates from 1920. There are only the following two planning history records for the site:

84/00009/FUL – Conversion of dwelling with flat into 4 self-contained flats and ancillary works and external staircase - Refused planning permission on 15.02.1984.

84/00091/FUL – Conversion of house and flat into 4 self-contained one bedroom flats and ancillary works and external staircase - Granted conditional planning permission on 06.03.1984.

### **Relevant Policies**

#### **National Planning Policy Framework**

Section 6 – Delivering a wide choice of high quality homes

Section 7 – Requiring Good Design

#### **Hertfordshire Waste Core Strategy And Development Management Policies Document 2011-2026**

No relevant policies.

#### **Hertfordshire Minerals Local Plan Review 2002-2016**

No relevant policies.

#### **Watford Local Plan Core Strategy 2006-31**

SD1 Sustainable Design

SS1 Spatial Strategy

UD1 Delivering High Quality Design

#### **Watford District Plan 2000**

SE7 Waste storage, recovery and recycling in new development

SE22 Noise

SE36 Replacement trees and hedgerows

SE37 Protection of trees, woodlands and hedgerows

T10 Cycle parking standards

T21 Access and servicing

- T22 Car parking standards  
T24 Residential development  
T26 Car free residential development

### **Supplementary Planning Documents**

Residential Design Guide (adopted July 2014)

Watford Character of Area Study (adopted December 2011)

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## **CONSULTATIONS**

### **Neighbour notifications**

Letters were sent to eight properties in Park Avenue and Durban Road West. Five responses were received, and a summary of the points that were raised is to be found in the section of this report entitled *Consideration of Representations Received*.

### **Consultations**

#### Parking Service

The Deputy Parking Manager has requested that the new flat be excluded from any entitlement to claim residents' parking permits for the local Controlled Parking Zone, by means of a Section 106 planning obligation in the form of a unilateral undertaking to fund the necessary amendment to the Traffic Order. The applicant has now submitted a unilateral undertaking to that effect.

#### Arboricultural consultant

The proposals indicate the loss of a mature but poor quality purple leaved cherry in the front garden to provide an additional parking space. Given the poor quality of the tree I have no objection to this. However the design and access statement refers to replacement with a dwarf tree and shrubs. I would wish to see a albeit ultimately small growing tree replacing the lost one therefore a detailed landscaping scheme should be submitted and approved prior to work commencing on site.

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## **APPRAISAL**

In accordance with s.38 of the Planning and Compulsory Purchase Act 2004, the Development Plan for Watford comprises:

- (a) *Watford Local Plan Part 1: Core Strategy 2006-31 (adopted Jan 2013)*
- (b) the continuing “saved” policies of the *Watford District Plan 2000*
- (c) the *Hertfordshire Waste Core Strategy And Development Management Policies Document 2011-2026*
- (d) the *Hertfordshire Minerals Local Plan Review 2002-2016*

### **Principle of the development**

There will be no loss of a family house because this property has already been divided into four flats in the 1980s. The creation of a fifth flat is acceptable in principle, as this is a residential area. There is a need for new housing in the Borough and this new flat will help to meet that need.

### **Design and character of the area**

There will be no increase in the maximum height of the roof. The hip to gable side roof extensions on either side are considered acceptable aesthetically. The gable on the right will not seem to jostle the neighbour because that neighbour has a pitched roof sloping away from the site, so there will still be a gap at roof level (albeit a narrower gap than is there currently). As there is no immediate neighbour on the right, plenty of space will remain on that side.

The double storey side extension will be narrow, as its only purpose is to contain an internal staircase. The amended drawings that were submitted on 12 March 2015 are an improvement over the original design because there will now be two front windows in that extension, helping to make it a more active frontage (previously an awkward expanse of blank front wall was proposed, with only one window). The side extension would be set back slightly behind the front corner of the main building, and its roof would be set down below that of the main house, so as to keep the extension subordinate to the main building.



Proposed front elevation

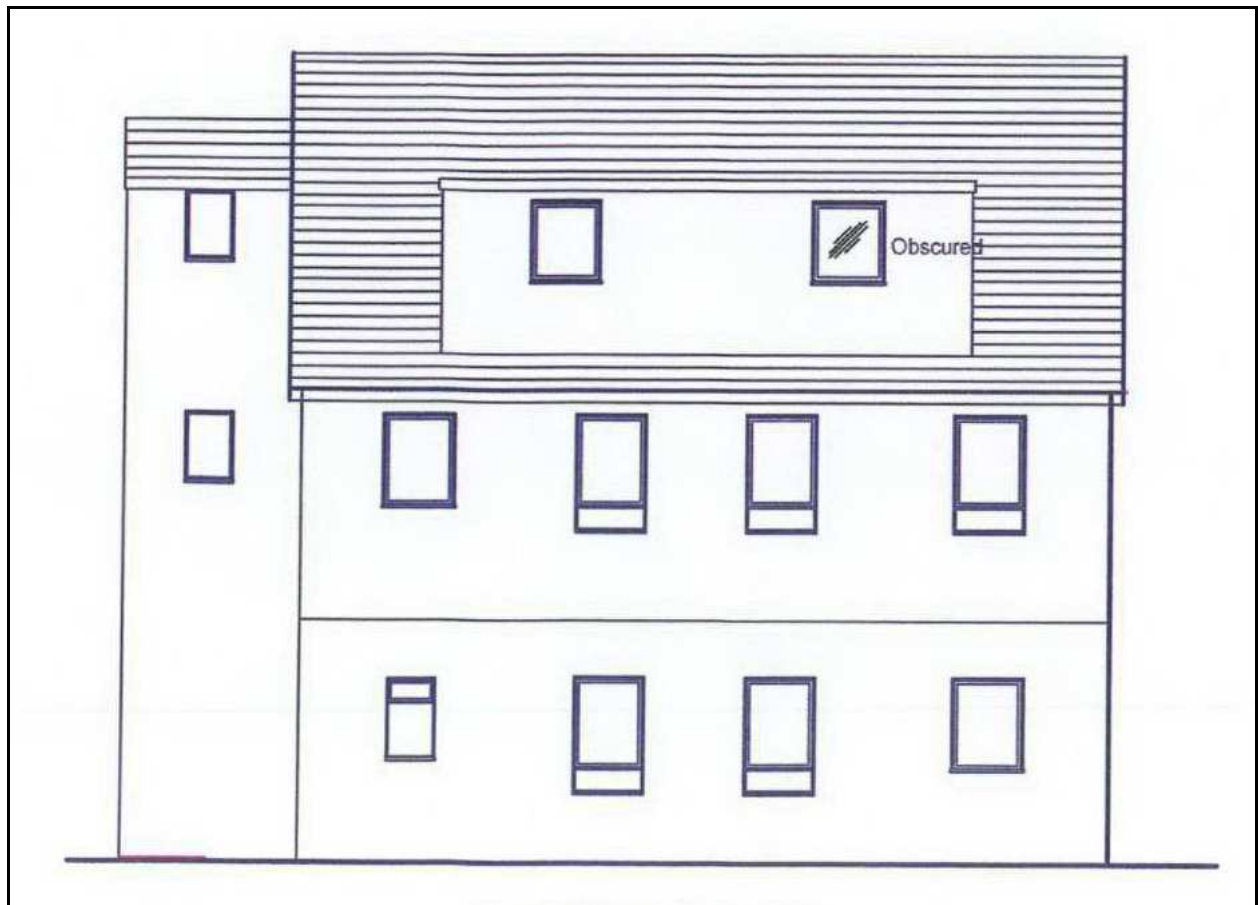
The five front roof lights will be flush with the roof slope, and they will be modest in size. They will be symmetrically arranged, and they will not harm the appearance of the site. The rear dormer will not be the full width of the building and it will be only about half the height of the roof, sitting in the middle to keep the appearance symmetrical. It is considered acceptable. It will not be visible from the street.

### **External wall insulation**

The proposal includes the installation of external wall insulation, which will improve the thermal efficiency of the existing flats on the ground and first floors. A condition should be applied to ensure that the materials will match the existing materials – this will involve the use of brick slips at ground floor level and a pebble-dash finish at first floor. There are a number of houses in Watford that have already had these types of finish applied to external wall insulation, and they prove that it can be done convincingly, so as to retain the building's original character.

### Impact on neighbours

To the right of this site are the rear gardens of some houses on Park Avenue. Those houses are well separated from the site by the lengths of their rear gardens, so they will not suffer any loss of natural light or outlook. There is currently a tall and dense row of evergreen trees along that slanted boundary, and those trees belong to the neighbours. They provide a privacy screen, and they are to remain.



Proposed rear elevation

The rear dormer will contain only two windows, and those will look out over the site's own rear garden. The front roof light windows will look out onto the street. No side facing windows are proposed.



## Room sizes

The following minimum room size requirements are taken from the Residential Design Guide (RDG), the current version of which (the second edition) was adopted in July 2014. The minimum size for a dwelling is taken from section 7.3.6 which is based on the number of bedrooms, while the requirement for living / kitchen / dining rooms is taken from section 7.3.8 which is based on the number of “bed spaces” (i.e. occupants) and it is assumed that a main double bedroom will contain a couple, while other rooms will contain children – hence the number of *bed spaces* in a dwelling is one more than the number of *bedrooms*.

Room	Required	Proposed	Acceptable?
Gross internal area	For a 2 bedroom dwelling: 61m <sup>2</sup>	69m <sup>2</sup>	Yes
Main double bedroom	Area: 12m <sup>2</sup> Length & breadth should be min 2.75m	Area: 13m <sup>2</sup> Length: 4.137 Breadth: 3.2m	Yes
Bedroom 2 (single)	Area: 8m <sup>2</sup>	8.6m <sup>2</sup>	Yes
Living / kitchen / dining space	For a 2 bedroom unit (i.e. 3 “bed spaces”), combined area should be min 25m <sup>2</sup>	28.5m <sup>2</sup>	Yes
Storage	1.5m <sup>2</sup> for 2 people, plus 0.5m <sup>2</sup> for each extra occupant, so in this case 2m <sup>2</sup> is required	None	No

As the table above indicates, the proposal meets the requirements that are set out in the RDG, save only in as regards the provision of storage space, in that there is no built-in cupboard proposed for bulky household items. However, given that there is sufficient room

for storage furniture in individual rooms, it is not considered that this omission would be sufficient to found a reason for refusal of planning permission.

### **Garden**

There will be only a small increase in the footprint of the building, and that will only result in the loss of a little hardstanding at the side. There will be no loss of rear garden space.

The RDG (section 7.3.23) states that for flatted developments the minimum acceptable size for a communal garden should be 50m<sup>2</sup> plus 15 m<sup>2</sup> per additional unit over two units. In this case there would be five flats, so the minimum requirement would be 95m<sup>2</sup>. The rear garden will be the same size that it is now. The garden is a right angled triangle, and scale measurements taken from the site plans indicate that the area is 143m<sup>2</sup>. It is not a particularly large garden, especially when compared with its neighbours; but that figure complies with the adopted minimum standard, and it is considered to be adequate.

As is noted above, the front lawn would be reduced so as to lay more hardstanding for parking in front of one of the two bay windows (the right), and this would involve removing the small tree that stands there. The remaining front garden would consist of a small area of soft landscaping in front of the other bay (the left) with two bushes or small trees shown there. This seems to have been done so that the site will still be able to accommodate four cars (presumably for the four existing flats), despite the fact that the space beside the house will have been reduced somewhat by the erection of the side extension. However see below (Parking) regarding how realistic this might be.

The Council's arboricultural consultant commented that "the proposals indicate the loss of a mature but poor quality purple leaved cherry in the front garden to provide an additional parking space. Given the poor quality of the tree I have no objection to this. However the design and access statement refers to replacement with a dwarf tree and shrubs. I would wish to see a albeit ultimately small growing tree replacing the lost one therefore a detailed landscaping scheme should be submitted and approved prior to work commencing on site." It is worth noting that the cherry tree is not protected by a Tree

Preservation Order and it is not in a Conservation Area, so it is currently the case that its owner could remove it at any time.

It would be possible to provide another parking space on the site (see below *Parking*) by demolishing the front boundary wall and paving the entire front garden. However, this would harm the appearance of the site and the street scene, so it would be appropriate to apply a condition requiring that a landscaping scheme be submitted for approval, as recommended by the arboricultural consultant. Once approved, it would be a requirement of the condition to implement the landscaping scheme.

### **Parking**

As is noted above, despite the reduction in space at the side of the building, the loss of some front garden space will mean that the site will still have four parking spaces. However, one space would be boxed in behind two others and this cannot be considered as a realistically viable parking space. It would mean that the resident of one flat would only be able to use their car if their neighbours had gone out in theirs, or if they were available and willing to move it. This hardly seems satisfactory. Consequently, there will be only three useable parking spaces for the five flats. No existing parking plan has been submitted, but it is clear from a site inspection that currently only two cars, or perhaps three at the most, would be able to park on the drive without being blocked in. In the event, therefore, the proposed parking scheme would be no less practical than the existing scheme.

Clearly one of the five flats (presumably the proposed new flat) would not be able to have a parking space on the site at all. However, that in itself is not a reason to refuse planning permission because this is a sustainable location, being close to local shops and services, close to a bus route, and only a ten minute walk from the town centre; so it is possible to live here without a car.

However it would be possible that the occupant of the new flat might nevertheless want to own a car, and might seek to park it on the street. That would increase the congestion on

the street, which would be unacceptable. To avoid this problem the applicant has entered into a Section 106 planning obligation as a unilateral undertaking whereby he has agreed to fund an amendment to the local traffic order, so as to exclude the new flat from any entitlement to claim parking permits for the local Controlled Parking Zone. This will not affect the rights of the existing four flats to have permits.

### **Community Infrastructure Levy**

As is explained above, this application was originally submitted in February. At that time the Council was seeking the completion of Section 106 planning obligations in order to mitigate the impact of developments on local services. However on 1<sup>st</sup> April 2015 that procedure was largely superseded by the new Community Infrastructure Levy (CIL). The use of s.106 planning obligations is still appropriate (as in this case) to ensure that a new dwelling in a Controlled Parking Zone will not be able to claim new parking permits, so as to ensure that there will be no increase in parking congestion on the street as a result of the development. However, since 1<sup>st</sup> April 2015, the Council can no longer use s.106 planning obligations to collect contributions for infrastructure provision that is covered by the CIL.

In this case one new dwelling will be created. No CIL Additional Information Form has been submitted, but it is a simple matter to measure the scale floor-plan, which shows that 70m<sup>2</sup> of new residential floor-space will be created in the loft. Although that figure is less than 100m<sup>2</sup>, the development will be liable to pay the levy because it involves the creation of a new dwelling.

### **Consideration of representations received**

Five responses have been received: some of them being from people who live in the existing flats on the site, while one is from the next door neighbours at 44 Durban Road West, and another is from 63 Durban Road West on the opposite side of the street. The following table contains a summary of the points that were raised.

Points Raised	Officer's Response
<p>The description of the development that was on the application form used the word "refurbishment" but it is clear that the main purpose of this application is the creation of a new flat.</p>	<p>The description has been amended (with the applicant's consent) to make it clearer. The Council was concerned that it did not make it clear that a double storey side extension was being proposed. However the original wording did include mention of the new flat. The original wording was: "Refurbishment of building to replace external staircase, add external wall insulation and create additional dwelling in roof space." The revised description is: <i>"Erection of double storey side extension to contain internal staircase. Side roof extensions to convert hips to gables. Installation of rear dormer. Creation of a fifth flat in loft space. Installation of external wall insulation."</i></p>
<p>A resident who lives on the opposite side of the street was surprised not to receive a notification letter from the Council, although (clearly) they are aware of the application.</p>	<p>Notification letters are usually sent to adjoining neighbours (i.e. those whose boundaries touch the site), but not necessarily to those on the opposite side of a street because they are not likely to be directly affected. This is in line with statutory requirements.</p>
<p>An objector believes that there has for many years been a ban on the conversion of houses in this street because of parking concerns.</p>	<p>That is not the case. Policy H13 of the Watford District plan 2000 seeks to limit the number of houses in a street that may be converted into flats to no more than 10 per cent, but that does not apply in this case because the site is not a house – it was</p>

	converted into flats several decades ago.
No extra parking is proposed for the new flat. There are three spaces now, and a drawing shows a fourth space as proposed in front of a ground floor front bay window.	The proposal is to provide four parking spaces, so the fifth flat would not have a parking space. However this is a sustainable location where it is not necessary to have a car – see above <i>Parking</i> .
No dimensions are given on the plans, so it is not clear whether three cars would fit at the side of the building. The proposed parking arrangement seems unrealistic.	The plan is to scale, so measurements can be taken from it. However, because this site is in a sustainable location, close to local shops and services, near a bus route, and within easy walking distance of the town centre, in planning terms it would not matter if the site were to have no parking spaces at all – so long as measures were taken to ensure that no more cars would be parked on the street by limiting the number of parking permits to which the premises are entitled.
This street suffers from parking congestion. Where will the builders' vehicles be parked during the work? Where will materials and waste be stored? During the works what will be the access arrangements for the upstairs flat that is currently accessed via the external staircase? The roof above the first floor flats will have to be removed. During the works the disruption to the occupants of the upstairs flats would be intolerable.	The method of construction of the development is a matter for the applicant to resolve with the tenants or leaseholders as a legal issue; it is not a material planning consideration. Planning permission does not over-ride private property rights, so the granting of planning permission does not necessarily mean that it will be legally possible for the development to go ahead.
The local schools are fully subscribed and the streets cannot cope. It is wrong to cram	This is to be a two bedroom flat, so it is likely to contain at most an adult couple and

<p>flats into every available space.</p>	<p>one child. The development will be liable to pay the Community Infrastructure Levy to fund improvements to local services (including education), so as to mitigate the pressure that the development would otherwise bring to bear on those services.</p>
<p>The development will cause more parking congestion on the street.</p>	<p>That will not happen because residents of the new flat will be excluded from any entitlement to claim parking permits, and without such a permit they cannot legally park on the street because it is a CPZ.</p>
<p>Raising the roof will make the street ugly.</p>	<p>The ridge will not be any higher than it is now. The hip to gable side roof extensions are considered acceptable aesthetically. Several houses in this street (including the two buildings immediately to the left of the site) have gable ends rather than hips.</p>
<p>The Design and Access Statement says that the property next door at 44 was formerly five flats. The owners of 44 have written to make it clear that this was a long time ago, and that it is now a single dwelling.</p>	<p>Whether the next door property is or has ever been divided into flats, and if so when that was, is not a relevant factor in considering this application.</p>
<p>The owner of 44 does not agree with a dimension that is marked on the site plan which shows the gap down the left side of the site as being 1200mm. They believe it should be 960mm.</p>	<p>A disagreement over 240mm (i.e. less than the length of a standard ruler) is not likely to make a difference when it comes to deciding whether a fifth flat should be allowed in the loft space. Moreover, it has no bearing on the consideration of whether the side extension should be allowed because that would be on the other side of</p>



	<p>the building. The applicant has said that the boundary fence was recently erected by his own contractors while he was not present, and he considers that they put it in the wrong position. He feels that he has lost some space, while apparently the neighbours at 44 believe that on the contrary they have lost some. Whoever is right, it seems that the loss is only a few centimetres. However, this is not a material planning consideration because there is no proposal to build on disputed land. The Council does not keep definitive records of where boundaries are located and has no involvement in boundary disputes.</p>
<p>There will be four new windows in the rear of the roof, which will overlook the neighbours at 44. The neighbours concede that they are already overlooked, but they would like the bathroom window to be obscurely glazed, and also the windows of the new internal staircase, leaving the only new unobscured window as being the one for the kitchen and living room.</p>	<p>The proposal is for two new windows in the rear dormer, plus two in the new stairwell. The windows in the stairwell will certainly not threaten the privacy of 44 as they are on the other side of the site, and set well forward of the rear building line. The condition that the neighbours have requested regarding obscure glazing in the bathroom window is reasonable and should be applied. The window of the kitchen will look out over the site's own rear garden. It will be possible for someone to peer out of it at an angle and see some of the neighbours' garden, but this is normal and to be expected in any urban setting. It is very common for two storey houses to have</p>

	dormer windows in their converted lofts, and on a house (but not on flats as here) such a loft conversion normally does not even require planning permission.
Few details have been provided about the proposed refuse area. It will have an impact on the neighbours at 44, and also on the street-scene.	Given its position so far back in the site, it is not likely to have an impact on any neighbour, nor on the street scene. The neighbours at 44 will not be able to see it as it will be on the other side of the building.
The neighbours at 44 are worried that scaffolding might be erected on their land.	The granting of planning permission does not over-ride private property rights. The developer would not have any right to erect scaffolding on a neighbour's land without their consent.
The neighbours at 44 are pleased to see that the landscaping will be improved at the rear because at present the rear garden is unsightly.	It should be noted that, while a planning permission can contain a condition stipulating for example how much hard or soft landscaping there should be, it cannot control issues such as how often lawns are mowed, beds are weeded or hedges trimmed because those are not planning considerations. So if a garden is considered "unsightly" because it is neglected, a new landscaping scheme will not necessarily solve that problem.
One of the existing flats (42a) could have their light obstructed by the double storey side extension. That flat's outlook would be harmed. It would suffer a loss of privacy by its front door.	The side windows of that ground floor flat are close to the rear corner of the building, and they will not be obstructed by the double storey side extension, which will be positioned further forward on the side elevation. In any case those windows (there

	<p>are actually two, not one as shown on the drawing) are small minor windows. They currently receive little light because of the large trees on the boundary, and their only outlook at the moment is onto parked cars. These are not main windows – the flats’ main windows are on the front and rear elevations.</p>
<p>The shared garden space is insufficient for further residents. One objector writes that currently it is used by 6 adults and 4 children, while another says there are 7 adults and 4 children, with another baby due soon.</p>	<p>The RDG states that for flatted developments the minimum acceptable size for a communal garden should be 50m<sup>2</sup> plus 15 m<sup>2</sup> per additional unit over two units. In this case there would be five flats, so the minimum requirement would be 95m<sup>2</sup>. The rear garden will be the same size that it is now. The garden is a right angled triangle, and scale measurements taken from the site plans indicate that the area is 143m<sup>2</sup>. That is considered adequate.</p>
<p>The leaseholder and resident of one of the first floor flats writes that (contrary to a claim in the Design and Access Statement) the roof is not in need of any repair.</p>	<p>The applicant does not need such an excuse to justify the development. The truth as to whether the roof leaks or not is irrelevant. In deciding whether to allow the application the Council must consider whether it complies with adopted policies and relevant design guidance, and whether it is acceptable in planning terms. The fact that a proposed development might be unnecessary is not a valid reason to refuse planning permission.</p>
<p>Removing the cherry tree from the front</p>	<p>Please refer to the section of this report</p>

garden would spoil the appearance of the site.	above dealing with the garden. The owner may remove that tree without the need for any application to the Council because it is not protected by a Tree Preservation Order and it is not in a Conservation Area.
--	--

**Conclusion**

The application is for planning permission to enlarge the roof of the building by converting its side hips to gables and by adding a rear dormer. The converted loft would contain a fifth flat. It is also proposed to replace an existing external staircase on the right side of the building by adding a double storey side extension to contain an internal staircase. Some associated changes are proposed to the landscaping of the site.

The development will not result in the loss of a house because this former house has already been converted into flats in the 1980s. The room sizes largely comply with the minimum standards that are set out in the RDG. The new dwelling would have access to a communal garden of an adequate size. No significant harm would be caused to the amenity of any neighbour as a result of this development.

Although the additional flat would not have an off-street parking space, it is unnecessary to have one in a sustainable location such as this. Because of the unilateral undertaking that has been entered into by the applicant, the new flat will be excluded from any entitlement to claim permits to park on the street, which is within a Controlled Parking Zone.

The proposal retains a small landscaped front garden (albeit some of the existing front garden, including a tree will be lost), and this can be controlled by a condition to ensure that the street scene is not harmed.

## **HUMAN RIGHTS IMPLICATIONS**

The Local Planning Authority is justified in interfering with the applicant's Human Rights in order to alleviate any adverse effect on adjoining properties and their occupiers and on general public amenity. With regard to any infringement of third party Human Rights, these are not considered to be of such a nature and degree as to override the Human Rights of the applicant and therefore warrant refusal of planning permission.

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## **RECOMMENDATION**

That, in consequence of a unilateral undertaking under s.106 of the Town and Country Planning Act 1990 (as amended) having been entered into to secure the contribution set out below, planning permission be granted subject to the following conditions:

### S.106 Heads of Terms

A financial contribution to the Council of £2000 towards the variation of the Borough of Watford (Watford Central Area and West Watford Area) (Controlled Parking Zones) (Consolidation) Order 2010 so as to exclude future residents of the new flat from entitlement to resident parking permits for the controlled parking zones in the vicinity of the site in accordance with saved Policy T24 of the Watford District Plan 2000.

### Conditions

1. The development to which this permission relates shall be begun within a period of three years commencing on the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Construction of the development hereby permitted shall not take place before 8am or after 6pm Mondays to Fridays, before 8am or after 1pm on Saturdays and not at all on Sundays and Public Holidays.

Reason: To safeguard the amenities and quiet enjoyment of neighbouring properties during the time that the development is being constructed, pursuant to Policy SE22 of the Watford District Plan 2000.

3. The new flat shall not be occupied until full details of all hard and soft landscaping works (including details of how rainwater falling on the new hardstanding will be disposed of) have been submitted to and approved in writing by the Local Planning Authority. The approved landscaping scheme shall be carried out not later than the first available planting and seeding season after completion of the development. Any trees or plants, whether new or existing, which within a period of five years die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, or in accordance with details approved by the Local Planning Authority.

Reason: In the interests of the visual amenity of the site, in accordance with Policy UD1 (Delivering High Quality Design) of the Watford Local Plan Part 1: Core Strategy 2006-31. As the proposal involves the removal of an existing tree, which forms a feature in the street scene, and as few details have been submitted regarding the proposed changes to the landscaping of the front and rear gardens, it is considered necessary to require further details for assessment. This condition is also necessary to ensure that the new area of hardstanding will not discharge rainwater onto the public highway and also to ensure that some soft landscaping will be retained at the front of the premises, because laying the whole of the front garden as paving for parking would harm the visual amenity of the site.

4. The walls (including those parts that have been clad in external insulation) shall be finished in materials to resemble the existing walls in terms of their colour, texture

and style. This means that the ground floor shall be finished in red bricks or red brick slips, and the first floor shall be finished in render. The roof tiles shall resemble those used on the existing house. The frames of the windows in the front elevation of the side extension shall be white to match the colour of those used in the existing building.

Reason: In the interests of the visual appearance of the site and the character of the area, pursuant to Policy UD1 (Delivering High Quality Design) of the Watford Local Plan (Core Strategy) 2006-2031.

5. No windows or doors, other than those shown on the plans hereby approved, shall be inserted in the walls or the roof of this development unless otherwise approved in writing by the Local Planning Authority.

Reason: To prevent overlooking and consequent loss of privacy to neighbouring premises pursuant to Policy UD1 (Delivering High Quality Design) of the Watford Local Plan (Core Strategy) 2006-2031, and in accordance with the principles of good design that are set out in the Residential Design Guide supplementary planning document (section 7.3.16) as referenced in paragraph 12.1.5 supporting Policy UD1.

6. The proposed rear dormer window serving the bathroom of the new flat shall be fitted with obscured glass at all times and shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

Reason: To minimise overlooking of those parts of neighbouring premises, pursuant to section 17 (point 4) of the National Planning Policy Framework and Policy UD1 (Delivering High Quality Design) of the Watford Local Plan (Core Strategy) 2006-2031.



## **Informatives**

- 1 The planning officer's full report gives more detail than is to be found in the Decision Notice. The full report can be obtained from the Council's website [www.watford.gov.uk](http://www.watford.gov.uk), where it is to be found as an appendix to the agenda of the meeting of the Development Control Committee of 4 June 2015. Alternatively a copy can be provided on request by the Regeneration and Development Department.
  
- 2 In dealing with this application, Watford Borough Council has considered the proposal in a positive and proactive manner having regard to the policies of the development plan as well as paragraphs 186 and 187 of the National Planning Policy Framework and other material considerations, and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.
  
- 3 This planning permission is accompanied by a planning obligation in the form of a unilateral undertaking, which is binding upon the owners and their successors in title. It obliges the owners to make a contribution towards the costs of the varying of the local traffic regulation order when work commences on implementing this permission. It includes an obligation to inform the Local Planning Authority when work commences by contacting the Section 106 Co-Ordinator in the Regeneration and Development Department. The effect of the planning obligation will be to exclude residents of the new flat from entitlement to permits for the local Controlled Parking Zone.
  
- 4 The development will involve the creation of an address for a new flat. The applicant must apply to the Council to allocate a street number or name. This is a requirement of the Public Health Act 1925. Applications for this purpose should be made to the Local Land and Property Gazetteer Officer at Watford Borough Council, Town Hall, Watford, WD17 3EX.

Drawing numbers

GF/711B, GF/712A, GF/713, GF/717, GF/718B, design and access statement,  
photomontage artist's impression (front view as proposed).

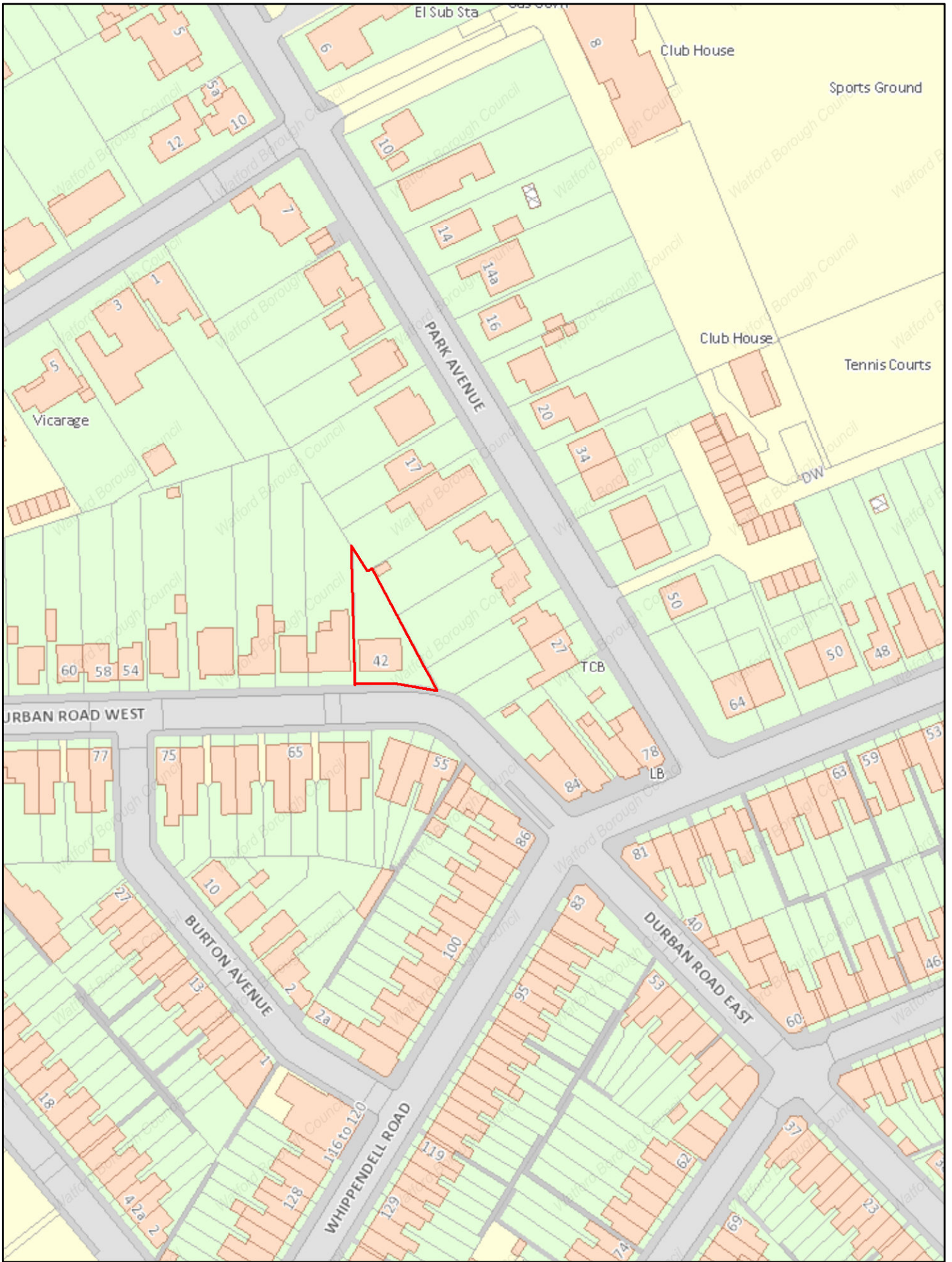
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**Case Officer: Max Sanders**

**Tel: 01923 – 278288**

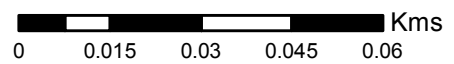
**Email: [max.sanders@watford.gov.uk](mailto:max.sanders@watford.gov.uk)**





42 Durban Road West

Date: 27/05/2015



Scale 1:1,250





PART A	
Report of: <b>DEVELOPMENT MANAGEMENT SECTION HEAD</b>	
Date of Committee	<b>4<sup>th</sup> June 2015</b>
Site address:	<b>Mecca Bingo, 19, King Street</b>
Reference Number:	<b>15/00417/FULM</b>
Description of Development:	<b>Retention of existing façade to King Street, demolition of remaining building to rear and erection of a part 4 storey, part 3 storey building to provide a ground floor Class A1/A2 unit and 25 flats with 13 parking spaces (duplicate of ref. 14/01574/FULM without the provision for affordable housing).</b>
Applicant:	<b>Heronlea Group</b>
Date received:	<b>19<sup>th</sup> March 2015</b>
13 week date(major):	<b>18<sup>th</sup> June 2015</b>
Ward:	<b>Central</b>

## SUMMARY

This application is a duplicate of application reference 14/01574/FULM which was granted planning permission on 12<sup>th</sup> March 2015. This permission included the provision of 4 shared ownership affordable housing units, a reduction on the normal policy requirement of 9 units for a scheme of this size, which was agreed following the submission of a viability appraisal. It was also subject to a Section 106 agreement to secure financial contributions towards infrastructure and community facilities and to exclude the development from the local controlled parking zone. The only difference with the current application is that the applicant is arguing that a “vacant building credit”, as announced by

the Government on 28<sup>th</sup> November 2014 and further clarified on 25<sup>th</sup> March 2015, be applied to the scheme, thereby removing any need for the provision of affordable housing.

At the time of the determination of the previous application, the Development Management Section Head was of the opinion that vacant building credit was not appropriate to apply to applications in Watford and the reasons for this were explained in detail in the report to committee. Following the updating of the guidance on vacant building credit in the Planning Practice Guidance by the Government on 25<sup>th</sup> March 2015, the Development Management Section Head remains of the opinion that vacant building credit should not be applied to this application. As such, the application should provide 4 units of affordable housing as previously agreed for application reference 14/01574/FULM.

The Development Management Section Head therefore recommends that planning permission be refused, as set out in the report.

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## **BACKGROUND**

### **Site and surroundings**

The site is located on the southern side of King Street at the junction with Granville Road. It is roughly rectangular in shape with a site area of 0.10 hectare. It is currently occupied by the Mecca Bingo building, which has recently closed. The building is locally listed and was originally constructed in 1913 as a cinema. In the 1930s the existing Art Deco façade was installed as part of a comprehensive refurbishment of the building. The site is also located within the High Street/King Street Conservation Area. This encompasses the commercial buildings fronting King Street and High Street and the adjoining residential roads of Granville Road, The Crescent, Smith Street and Cambridge Road.

### **Proposed development**

The application proposes the retention of the existing Art Deco façade on King Street, the demolition of the remainder of the building and the erection of a part 4 storey, part 3 storey building attached to the rear. The ground floor of the retained frontage is to be used for

Class A1 (shops) or Class A2 (financial and professional services) purposes with the upper floors converted into 6 flats (2 on each floor). The new building will comprise 19 flats to give a total of 25 flats in the scheme. The 4 storey element will include an undercroft parking area for 13 cars and a communal bin store. A small communal amenity area and a cycle store are also proposed.

This application is a duplicate of application reference 14/01574/FULM which was granted planning permission on 12<sup>th</sup> March 2015. This permission included the provision of 4 shared ownership affordable housing units, a reduction on the normal policy requirement of 9 units for a scheme of this size, which was agreed following the submission of a viability appraisal. It was also subject to a Section 106 agreement to secure financial contributions towards infrastructure and community facilities and to exclude the development from the local controlled parking zone. The only difference with the current application is that the applicant is arguing that a “vacant building credit”, as announced by the Government on 28<sup>th</sup> November 2014 and further clarified on 25<sup>th</sup> March 2015, be applied to the scheme, thereby removing any need for the provision of affordable housing.

### **Planning history**

The building was constructed in 1913 as Watford’s first large cinema and it opened in December 1913 as the Central Hall Cinema. It was refaced in its current Art Deco style in the 1930s as part of a comprehensive renovation. It ceased use as a cinema in 1968 and subsequently became a bingo hall. This use has now also ceased and the building is vacant.

The High Street/King Street Conservation Area was designated in 2006. This included the application property as a Locally Listed Building. In April 2013 the building was made the subject of an Article 4 Direction to restrict permitted development rights relating to the painting of the exterior of the building.

14/01574/FULM - planning permission granted on 12<sup>th</sup> March 2015 for the retention of existing façade to King Street, demolition of remaining building to rear and erection of a



part 4 storey, part 3 storey building to provide a ground floor Class A1/A2 unit and 25 flats with 13 parking spaces.

### **Relevant policies**

#### **National Planning Policy Framework**

- Section 1 Building a strong, competitive economy
- Section 2 Ensuring the vitality of town centres
- Section 4 Promoting sustainable transport
- Section 6 Delivering a wide choice of high quality homes
- Section 7 Requiring good design
- Section 10 Meeting the challenge of climate change, flooding and coastal change
- Section 12 Conserving and enhancing the historic environment

#### **Hertfordshire Waste Core Strategy and Development Management Policies Document 2011-2026**

- 1 Strategy for the Provision for Waste Management Facilities
- 1a Presumption in Favour of Sustainable Development
- 2 Waste Prevention and Reduction
- 12 Sustainable Design, Construction and Demolition

#### **Hertfordshire Minerals Local Plan Review 2002-2016**

No relevant policies.

#### **Watford Local Plan Part 1 - Core Strategy 2006-31**

- WBC1 Presumption in favour of sustainable development
- SS1 Spatial Strategy
- SPA1 Town Centre
- SD1 Sustainable Design
- SD2 Water and Wastewater
- SD3 Climate Change
- SD4 Waste

- TLC1 Retail and Commercial Leisure Development
- HS1 Housing Supply and Residential Site Selection
- HS2 Housing Mix
- HS3 Affordable Housing
- T2 Location of New Development
- T3 Improving Accessibility
- T4 Transport Assessments
- T5 Providing New Infrastructure
- INF1 Infrastructure Delivery and Planning Obligations
- UD1 Delivering High Quality Design
- UD2 Built Heritage Conservation

**Watford District Plan 2000**

- SE7 Waste Storage and Recycling in New Development
- SE27 Flood Prevention
- SE39 Tree and Hedgerow Provision in New Development
- T10 Cycle Parking Standards
- T21 Access and Servicing
- T22 Car Parking Standards
- T24 Residential Development
- T26 Car Free Residential Development
- S7 Secondary Retail Frontage
- L8 Open Space Provision in Housing Development
- L9 Children's Playspace
- U15 Buildings of Local Interest
- U18 Design in Conservation Areas
- U20 Demolition in Conservation Areas
- U24 Shopfronts

**Supplementary Planning Guidance and Supplementary Planning Documents**

Locally Listed Buildings in Watford (2010)

Watford Character of Area Study (2011)

High Street/King Street Conservation Area Character Appraisal (2013)

Shopfront Design Guide (2013)

Residential Design Guide (2014)

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## **CONSULTATIONS**

### **Neighbour consultations**

Letters were sent to 47 properties in King Street, Granville Road, The Crescent and Smith Street. No replies have been received.

### **Advertisements in local paper/ site notices**

A public notice was published in the Watford Observer on 27<sup>th</sup> March 2015. Two site notices were placed outside the site on 7<sup>th</sup> April 2015, one on each road frontage.

### **Consultations**

#### **Thames Water**

With regard to surface water drainage it is the responsibility of a developer to make proper provision for drainage to ground, water courses or a suitable sewer. In respect of surface water it is recommended that the applicant should ensure that storm flows are attenuated or regulated into the receiving public network through on or off site storage. When it is proposed to connect to a combined public sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required.

Thames Water would advise that with regard to sewerage infrastructure capacity we would not have any objection to the above planning application.

No impact piling shall take place until a piling method statement (detailing the type of

piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement. Reason: The proposed works will be in close proximity to underground sewerage utility infrastructure. Piling has the potential to impact on local underground sewerage utility infrastructure.

Hertfordshire County Council (Highway Authority)

The Highway Authority does not wish to restrict the grant of permission subject to the following conditions:

1. Prior to the commencement of demolition works details of the method of washing of vehicle wheels exiting the site shall be submitted to and approved in writing by the Local Planning Authority in conjunction with the Highway Authority and the agreed method shall be operated at all times during the period of site works.
2. The development shall not begin until details of the disposal of surface water from the drives and parking areas have been submitted to and approved in writing by the Local Planning Authority in conjunction with the Highway Authority. No dwelling shall be occupied until the works for the disposal of surface water have been constructed in accordance with the approved details.
3. The development shall not begin until details of the layout and construction of the access to The Crescent have been submitted to and approved in writing by the Local Planning Authority in conjunction with the Highway Authority. The development shall not be brought into use until the accesses have been laid out and constructed in accordance with the approved details.

4. All materials and equipment to be used during the construction shall be stored within the curtilage of the site unless otherwise agreed in writing by the Highway Authority prior to commencement of the development.

5. Prior to the commencement of the site works details of on-site parking for all contractors, sub-contractors, visitors and delivery vehicles shall be approved in writing by the Local Planning Authority in conjunction with the Highway Authority and that area shall be maintained available for use at all times during the period of site works.

Informative:

If there are any gates for the proposed entrance, the entrance gates shall be set back a minimum of 6.0m or at least 5.5m from the edge of carriageway/back of footway and shall open inwards into the site.

Access and parking:

The parking and access arrangements as shown on drawing title "Landscape Plan" are acceptable. There is sufficient turning space and vehicles will be able to enter and leave the site in a forward gear. The LPA as Parking Authority will determine the appropriate level of parking for the proposed, however, the Highway Authority considers the proposed level of parking should prevent any overspill onto the surrounding highway network. The existing on street parking restrictions will prevent any overspill onto the surrounding highway network.

Hertfordshire County Council (Development Services)

No comments received.

Hertfordshire Constabulary (Crime Prevention Design Advisor)

Detailed comments have been made, not all of which are planning matters. Comments can be summarised as follows:

### *Secured by Design part 2 physical security*

To alleviate my concerns regarding security for the proposed development, I would look for the development to be built to the physical security of Secured by Design part 2, which is the police approved minimum security standard. National sustained research proves that Secured by Design housing developments suffer at least 50% less burglary, 25% less vehicle crime and 25% less criminal damage.

### *Parking*

Underground/basement car parking *will* be problematic if not adequately secured and users will feel vulnerable. The plans HL-005 and HL-006 appears to show this as open, although plan HL-008 (elevations) appears to show it gated? If the undercroft parking area were not secured with access control and was left open, I would wish to formerly object as security for the development would be compromised. The site is a town centre location and the development opposite in Granville Road has its rear parking area secured by full height electronically controlled gates.

a) A barrier arm would not be sufficient and the entrance exit should be controlled by a visually permeable roller shutter or similar. The bottom metre of the shutter could be solid laths to prevent litter and leaves being blown into the parking area, whilst above this it could be visually permeable. The shutters should start to close within 5 seconds of vehicles leaving or entering the parking area, so as to prevent unauthorised persons tailgating into the parking area or on foot sneaking into the parking area when a vehicle leaves. The sensor that detects motion to close the gate should also be mounted on the inside of the gates to prevent tampering by offenders.

b) Painting the walls and ceiling white of the underground car parking area can greatly aid lighting and help make residents feel safe. Lighting levels should be to the appropriate British Standard.

*Pedestrian path to rear amenity/parking area*

On the southern boundary with the next door dwelling is a footpath that is shown open on plans HL-005 (Landscape plan) & HL-008 (elevations) and gives access to the private rear amenity and parking area for the proposed development. This must be gated and locked to prevent access by offenders. If it were left open I would wish to formerly object as security for the development would be compromised.

Planning Policy

No comments received.

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**APPRAISAL**

In accordance with s.38 of the Planning and Compulsory Purchase Act 2004, the Development Plan for Watford comprises:

- (a) the *Watford Local Plan Part 1 - Core Strategy 2006-31*;
- (b) the continuing “saved” policies of the *Watford District Plan 2000*;
- (c) the *Hertfordshire Waste Core Strategy and Development Management Policies Document 2011-2026*; and
- (d) the *Hertfordshire Minerals Local Plan Review 2002-2016*.

**Land allocation**

On the Proposals Map of the Watford District Plan the site is located within a Secondary Retail Frontage within the defined Town Centre. In the Core Strategy it is located within the Town Centre Special Policy Area (SPA1). The objectives of the Town Centre SPA are to strengthen and consolidate Watford’s position as a regional centre in the retail hierarchy; seek a more balanced provision of town centre facilities and infrastructure, including retail, leisure, entertainment and other town centre uses; seek access improvements for people of all ages, interest and backgrounds; redevelop the existing shopping centre at Charter Place; and deliver around 3,300-4,200 additional jobs in the wider town centre area in the retail, leisure, office and service sectors.

### **Approved development under ref. 14/01574/FULM**

The current proposal is identical to that approved under application ref. 14/01574/FULM. The report to committee on 12<sup>th</sup> March 2015 discussed the proposed development in detail in relation to the principle of the development; shopping policies; layout and design; impact on heritage assets; housing policies; impact on adjoining properties; flood risk and drainage; transport, access and parking; and sustainability, energy and waste. There have been no changes in policy relating to these issues since 12<sup>th</sup> March 2015 and the proposal remains acceptable in all these respects. The application was subject to a viability appraisal and, as a result of this, it was agreed that the proposal should include 4 shared ownership units for affordable housing. This was a reduction on the requirement for 35% (9 units) as set out in Policy HS3. No further viability appraisal has been submitted with this application. Due to the short time period that has elapsed since planning permission was granted, this is considered acceptable.

The planning permission was also subject to a Section 106 unilateral undertaking to secure not only the 4 units of affordable housing but also:

- i) financial contributions towards community facilities, open space, children's playspace and sustainable transport measures;
- ii) a payment of £2,000 towards the variation of the relevant Traffic Regulation Order to exclude the site from the controlled parking zone, thereby preventing residents' parking permits being allocated to this site;
- iii) a payment of £1,500 towards the remarking of parking bays on Granville Road outside the application site; and
- iv) fire hydrants, as required, to serve the development.

On 1<sup>st</sup> April 2015 the Council implemented its Community Infrastructure Levy (CIL) charging schedule which covers the financial contributions secured under (i) above. Under the Community Infrastructure Levy Regulations 2010, payments towards infrastructure and facilities covered by CIL can no longer be sought by section 106 planning obligations



unless there are site specific requirements which are necessary to make the development acceptable. CIL is charged on the relevant net additional floorspace created by the development. The charge for residential floorspace is £120/m<sup>2</sup>. The CIL charge is non-negotiable and is calculated at the time planning permission is granted. The obligations under (ii), (iii) and (iv) above remain directly related to the development, fairly and reasonably related in scale and kind to the development and necessary to make the development acceptable.

The only main issue to consider as part of this application is the applicant's case for vacant building credit to be applied to the application.

### **Planning Practice Guidance**

On 28<sup>th</sup> November 2014, the Government announced (by way of a Written Statement to Parliament) that it was making changes to national policy. This included the announcement of a financial credit, equivalent to the existing gross floorspace of any vacant buildings brought back into any lawful use or demolished for re-development, that should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes. This was referred to as the vacant building credit.

An amendment relating to this change in 'policy' was subsequently made to the national Planning Practice Guidance (PPG). It is relevant to note that no changes were made to the National Planning Policy Framework (NPPF), despite the Government announcement referring to changes in national 'policy'.

On 25<sup>th</sup> March 2015, the Government announced by way of a further Written Statement to Parliament that the changes announced in the Written Statement of 28<sup>th</sup> November 2014 were a change in national policy and the Government would be updating the PPG to make this clear. Revisions to the PPG were made on 26<sup>th</sup> March 2015 giving clarification on the application of vacant building credit. The revised guidance is as follows:

*Paragraph: 021 Reference ID: 23b-022-20150326*

### **What is the vacant building credit?**

National policy provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions may be required for any increase in floorspace.

*Paragraph: 022 Reference ID: 23b-022-20150326*

### **What is the process for determining the vacant building credit?**

Where there is an overall increase in floorspace in the proposed development, the local planning authority should calculate the amount of affordable housing contributions required from the development as set out in their Local Plan. A 'credit' should then be applied which is the equivalent of the gross floorspace of any relevant vacant buildings being brought back into use or demolished as part of the scheme and deducted from the overall affordable housing contribution calculation. This will apply in calculating either the number of affordable housing units to be provided within the development or where an equivalent financial contribution is being provided.

The existing floorspace of a vacant building should be credited against the floorspace of the new development. For example, where a building with a gross floorspace of 8,000 square metres is demolished as part of a proposed development with a gross floorspace of 10,000 square metres, any affordable housing contribution should be a fifth of what would normally be sought.

*Paragraph: 023 Reference ID: 23b-023-20150326*

**Does the vacant building credit apply to any vacant building being brought back into use?**

The vacant building credit applies where the building has not been abandoned.

The policy is intended to incentivise brownfield development, including the reuse or redevelopment of empty and redundant buildings. In considering how the vacant building credit should apply to a particular development, local planning authorities should have regard to the intention of national policy.

In doing so, it may be appropriate for authorities to consider:

- Whether the building has been made vacant for the sole purpose of redevelopment.
- Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.

**The applicant's case**

It should be noted that the case made by the applicant in their application submission is in relation to the wording in the PPG introduced on 28<sup>th</sup> November 2014. They have quoted extensively from the guidance issued in early 2015 by the Planning Advisory Service. Some of this guidance has since been clarified or superseded by the Government's updates to the PPG on 25<sup>th</sup> March 2015. The relevant parts of this guidance quoted by the applicant are given below:

***17. Does the financial credit for vacant buildings mean that on regeneration sites, where industrial floorspace is being replaced by residential, we can no longer get any affordable housing?***

*Provided the floorspace in the industrial buildings has not been abandoned that amount of vacant floorspace will have to be deducted from the amount of new*

*floorspace, and it will only be the new additional floorspace that will have to provide affordable housing in accordance with your policies. Therefore, if there is no additional floorspace you cannot request any affordable housing.*

**19. The financial credit refers to 'gross' floorspace- how should this be calculated? Is it gross external floorspace, as referred to in most planning application considerations, or gross internal, as referred to in CIL?**

*This method of measurement is not specified and is therefore open to the interpretation of the authority. It would seem logical to opt for Gross Internal Area (floorspace -GIA) as this provision is very similar to the CIL provision.*

**20. What is a 'vacant building'? Is it defined by planning unit? Or does the whole of a physical building structure need to be vacant e.g. if a small retail unit is occupied on the ground floor of a mixed a multi-storey retail and office building (with numerous planning units) the 'building' is not vacant (like CIL).**

*There is no definition given for this - it could potentially be any of these and local authorities will have to decide on a definition and await case law.*

**21. What constitutes being 'vacant' and 'abandoned' for the purpose of this paragraph – how long does a building have to be vacant before it potentially benefits from the credit? How long does it have to remain vacant before it is abandoned? How is abandoned defined for the purposes of this policy, is it the same as in the CIL regulations i.e. - contains a part that has been in lawful use for a continuous period of at least six months within the period of three years?**

*It is not the same as the CIL requirement - there is no reference to time period in this affordable housing financial credit policy or the guidance. The case law on abandonment should be used to assess whether or not the financial credit applies. However, as assessing whether something is abandoned can take a great deal of*

*research, it would be advisable to have a working definition of abandonment, whilst ensuring that all those involved in assessing whether the policy applies understand that there is a more complex legal position.*

The applicant then goes on to refer to the published advice of selected other councils:

*Some Councils have published advice, the City of London state in their Committee Report on the matter:*

*"Counsel's advice has been sought on the weight to be attached to the Government's new policies and the scope to seek exemption for the City of London. This advice indicates that the Government and the Planning Inspectorate are likely to attach significant weight to the new national policy and would be unlikely to allow the policy to be undermined by existing local development plan policies. If the City Corporation wishes to seek an 'exemption' from the new national policy this would need to be promoted and justified through a review of the recently adopted City of London Local Plan."*

*They are clear that the PPG supersedes their recently adopted Local Plan (adopted January 2015). In addition Norwich City and Solihull too agree that that the PPG supersedes their Core Strategies, the Norwich Core Strategy was adopted January 2014 and Solihull December 2013 respectively, these were both adopted after the Watford Core Strategy (January 2013).*

*As a result of the new guidance we have assessed this against our planning application for Mecca Bingo and the results are now as follows;*

*Mecca Bingo ceased trading at the site on the 9th November 2014 and the property has remained vacant since then.*

*Watford Borough Council have provided no guidance on the vacant building credit. This application is for part demolition and new build with retention and conversion of the front facade of the building. We are therefore bringing this vacant building / site back into use.*

*As set out in Paragraph: 022 Reference ID: 23b-022-20141128 of the NPPG, the existing floor areas is credited and discounted against the affordable housing requirement. The existing building has a floor area of 15,491 sq ft and the proposed, 17,134 sq ft, as a result the net floor space increase is 1,643 sq ft.*

*Affordable Housing Calculation based on the new guidance is as follows;  
25 units @ 35% (being WBC Local Plan /Core Strategy threshold) = 8.75 units  
should be provided.*

*Credit - (Existing building size) - 15,491 sq ft*

*We have calculated the average size of our units which equals =  $17,134 / 25 = 685$  sq ft*

*Policy requirement 8.75 units x 685 sq ft = 5993 sq ft*

*Credit to be applied against the policy requirement = 15,491 sq ft*

*Total = -9,497.25 sq ft credit and as such no affordable housing is required to be provided.*

*As a result of this new legislation of the NPPG and the detailed calculations shown above, no affordable housing contributions are now required as part of this application.*

The latest update of the PPG clarifies how the vacant building credit should be calculated. The method used above does not accord with this latest guidance.

### **The Council's case**

Notwithstanding the interpretation to be placed on the wording of the PPG in relation to

vacant building credit, there is a broader question to consider regarding the relationship between the provisions of the development plan and any other material considerations. Under section 38(6) of the Planning and Compulsory Purchase Act 2004 an application for planning permission must be determined, “in accordance with the policies of a development plan unless material considerations indicate otherwise”. The Courts have held that the section 38(6) obligation “requires the decision maker not merely to have regard to the plan but to offer it priority” (*R (on the application of Ash Parish Council) v Guildford Borough Council* [2014] EWHC 3864 (Admin)). In *South Northamptonshire Council v Secretary of State for Communities and Local Government* [2013] EWHC 11, the Court held that:

the section (section 38(6)) requires not a simple weighing-up of the requirement of the plan against the material considerations but an exercise that recognises that while material considerations may outweigh the requirements of a development plan, the starting point is the plan which receives priority. The scales do not start off in an even balance.

In *Ash Parish Council* the Court also pointed out that:

Although the NPPF is a material consideration it is not of equal legal force to the policies in the Development Plan: see *Sea and Land Power Energy Ltd v Secretary of State for Communities and Local Government* [2012] EWHC 1419 and *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 at [46]:

“All of this, one has to remember, sits within the statutory framework for the making of decisions on applications for planning permission, in which those decisions must be made in accordance with the development plan unless material considerations indicate otherwise. Government policy in the NPPF does not, and could not, modify that statutory framework, but operates within it – as paragraph 12 of the NPPF acknowledges.”

It is clear, therefore, that priority in the decision making process is to be given to the development plan. Moreover, if the NPPF is not of equal legal force to policies in the development plan then the guidance in the PPG must be even less so.

It is also well established law that the weight to be given to a material consideration is a matter for the decision maker not the Court, unless the decision maker has behaved irrationally (*Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759 per Lord Hoffmann at 780).

The Council is entitled, therefore, to place greater weight on the provisions of the development plan than on the policy in the NPPF and the guidance in the PPG. The Council's adopted Core Strategy is up to date, has been the subject of examination in public and has been found to be sound and in conformity with the NPPF. The development plan also includes the "saved" policies from the Watford District Plan 2000, which are referred to in Appendix D of the Core Strategy.

The Council will therefore consider the individual circumstances of each case, having regard, firstly, to the provisions of the development plan and, secondly, to any other material planning considerations, including the NPPF and PPG. In particular the Council will take into account the length of time the site or building has been vacant and the matters referred to in *Paragraph: 023 Reference ID: 23b-023-20150326* of the PPG in deciding whether it is appropriate to apply the vacant building credit to an application for development.

It is worth noting that the purpose of the vacant building credit policy is to incentivise the development of brownfield land, including empty and redundant buildings. This implies that buildings have been empty or redundant for many years and have not come forward for redevelopment, possibly for reasons of viability. It is clear from the policy that it is appropriate for the local planning authority to consider the circumstances of the vacancy of a building and whether the site has recently been granted planning permission for



redevelopment. This implies that the vacant building credit should not apply as a blanket policy in all cases but that the local planning authority should use its discretion in when to apply the policy. The purpose in applying the policy would be to help release empty and redundant buildings for redevelopment that had not previously come forward. The application of vacant building credit would potentially provide a significant financial benefit to any development scheme through the substantial reduction in the amount of affordable housing that would need to be provided.

There is no definition of 'vacant building' in the PPG for the purposes of applying the vacant building credit; however, the definition contained in the CIL Regulations is instructive. If the existing floorspace is to be discounted for the purposes of CIL, a part of the building must have been occupied for a lawful use for a continuous period of at least 6 months within the previous 3 year period on the date of a permission being granted. If this is satisfied for the purposes of CIL, this would indicate that the building has not been subject to long term vacancy. Consideration would need to be given, however, to the percentage of the building that had been occupied as the CIL Regulations only require a 'part' of the building to be occupied without defining how much of the building a 'part' is. If this part is a only a small percentage, the local planning authority could have regard to the fact that the majority of the building had been vacant for a longer period of time (i.e. more than 3 years).

Paragraph 023 of the PPG states that vacant building credit applies where the building has not been abandoned. However, it then goes on to make clear that local planning authorities should have regard to a number of material considerations in considering how vacant building credit should be applied to a particular development. This makes clear that it should not be considered as a blanket policy to be applied in all circumstances. Three material considerations are given:

i) *The intention of national policy*

This is unclear. It could be interpreted as referring to the purpose of the vacant building credit policy, i.e. to incentivise the development of brownfield

land, or could refer to the NPPF. In any event, the former interpretation accords with the general thrust of the NPPF to bring forward the development of brownfield land.

- ii) *Whether the building has been made vacant for the sole purpose of redevelopment*

In this case, if the building is been made intentionally vacant for the purpose of redevelopment, vacant building credit should not apply.

- iii) *Whether the site benefits from an extant or recently expired permission for essentially the same development*

In this case, the site could presumably be, or have been, developed but there is an implication that the applicant may be seeking opportunistically to benefit from vacant building credit and therefore has deliberately not developed the site. However, it may be that the viability of the development has changed significantly since the permission was granted so regard may need to be given to the reasons for this, if this is in fact the case.

Local planning authorities are required to have regard to all relevant material planning considerations in determining planning applications and so there would be no reason why the local planning authority should not consider other material considerations in applying vacant building credit to a particular development, in the same way as applying any other planning policy.

In the case of the current application, the building has not been subject to long term vacancy. Mecca Bingo closed in October 2014 and the applicant purchased the site in November 2014. The subsequent vacancy of the building has been due to the applicant going through the process of applying for planning permission to develop the site. Planning permission for redevelopment was granted in March 2015 under reference 14/01574/FULM. This was demonstrated by the applicant, through a viability appraisal, to be a viable development with the provision of a reduced number of 4 affordable housing

units. The applicant has deliberately not commenced this development in order to submit the current duplicate application, solely to seek to benefit from vacant building credit.

Having regard to case law, the latest guidance in the PPG, the fact that the site has not suffered long term vacancy, and that planning permission for a viable development of the site was granted only in March 2015, it is not considered appropriate to apply vacant building credit to this application.

### **The applicant's response to the Council's case**

The applicant was made aware of the Council's position in an email exchange during the application process. They have commented as follows:

“As noted in your guidance there has been revised guidance, whilst the update provides more clarification than the previous provisions as to factors local planning authorities should take into account, uncertainty still remains as to how, in practice, the credit will apply, and actually how local authorities apply the guidance. For example, no time limit is specified for the period of time that has to elapse before the building is considered “vacant” or for that matter “abandoned”. The amendments explain issues to consider but actually doesn't state what impact these have on the application of the Vacant Building Credit.

With respect to the up to date Core Strategy - this was found sound in a period of overlap of the NPPF and RSS which as noted in many inspectors reports lead to a number of policy conflicts and the Council committed to keep the Core Strategy under review particularly with regard to housing - a number of recent appeal decisions have illustrated that Core Strategies from this period are now out of date - unless reviews have started.

In addition the Planning Advisory Service provide clarity on the PPG and recent changes for Local Authorities. It states:

*It is Government policy as it was announced by Brandon Lewis, Housing and Planning Minister in the 'House' on 28th November 2014. This was re-emphasised by RT Hon Eric Pickles in his statement on the 25th March 2015. So it is just like the NPPF and has as much weight as the NPPF. It is a material consideration and it is up to the decision makers how much weight to give the material consideration – that said if it goes to appeal the Planning Inspector would base his decision on the new government policy.*

As a result it is quite clear that more weight should be applied to the PPG than has been said by the Council - particularly as ministers have stated that it has the same weight as the NPPF - which is clear in Annex 1 that this is a serious Material Consideration

With respect to your reasons for refusal [*note: these were not reasons for refusal but were given as reasons why it was considered that vacant building credit should not be applied to the application*] we consider each as follows:

*1. The site was purchased by Heronslea as soon as it became vacant. The site did not, therefore, experience any long term vacancy.*

The Rank Group had been advertising the building for some time - and were unable to provide any other operator. Heronslea purchased the property after the property became vacant. The PPG, nor the Council, provide any guidance on the period for vacancy prior to application of the vacant building credit.

*[Comment: This is discussed in more detail in the report.]*

*2. The site benefits from a planning permission for redevelopment which has been demonstrated to be viable with a reduced provision of affordable housing.*

The purpose of the policy is to incentivise the development of brownfield. The site is vacant as accepted by the Council. This site is a vacant brownfield site which the Government seek to incentivise - this is a separate matter to the viability approach

from the previous application. I also direct you to a decision by South Bucks Council recently where a revised application of a brownfield site was allowed with the vacant building credit. Having spoken with the agents and the Council for this application the council actively encouraged the approach. This application was approved following the revised guidance in the PPG. South Bucks (application 14/02354 FUL) were of the view that the legislation was there to ensure such developments were to occur despite any extant permissions. As you are well aware we wished to use the Vacant Building Credit guidance during the initial application and WBC stated that they did not recognise this and approved our application based on viability. It would appear that immediately after you granted our permission you then widely accepted VBC and used our application as the template at the forum [*this refers to the Developers Forum hosted by the Council on 23<sup>rd</sup> April 2015*], how can this be fair and reasonable practice? In addition, we did not agree with a number of points with the Councils viability consultant and could have further argued this thus reducing the provision however given the delays incurred we commercially needed to obtain consent.

*[Comment: The Council takes a different view from South Bucks Council. The reasoning behind the Council's position is explained in detail in the report.]*

*3. As such, the site needs no incentive to bring it forward for development through the application of vacant building credit or any other incentive.*

The purpose of the policy is to support the development of brownfield land, including empty and redundant buildings, and reduce the need for development in the Green Belt.”

*[Comment: This is discussed in the report.]*

## **Conclusion**

The proposed development remains acceptable in its form, layout, scale, design and impacts on heritage assets and adjoining properties. The only matter for consideration is the application of vacant building credit to the application. The Development Management

Section Head has had regard to and given due weight to relevant case law, the latest guidance in the Planning Practice Guidance, and the particular circumstances of this case, and has reached the conclusion that vacant building credit should not apply in this case. As such, the application fails to provide 4 affordable housing units which, it has been shown, can be provided as part of a viable development, and is therefore unacceptable.

In the event that the applicant fails to complete a Section 106 unilateral undertaking to secure (i) the exclusion of the development from the local controlled parking zone, (ii) the remarking of parking bays on Granville Road, and (iii) the provision of fire hydrants, as required, these should also be used as additional reasons for refusal.

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### **HUMAN RIGHTS IMPLICATIONS**

The refusal of planning permission will have an impact on the human rights of the applicant to develop the land. However, this is considered justified in order to accord with the policies of the development plan and in the wider public interest.

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### **RECOMMENDATION**

That planning permission be refused for the following reasons:

1. The proposed development fails to make provision for affordable housing and as such is contrary to Policy HS3 of the Watford Local Plan Core Strategy 2006-31.
2. The proposal fails to make appropriate provision to restrict on-street parking in the surrounding Controlled Parking Zone and for the remarking of parking bays on Granville Road and, as such, is contrary to saved Policy T24 of the Watford District Plan 2000.

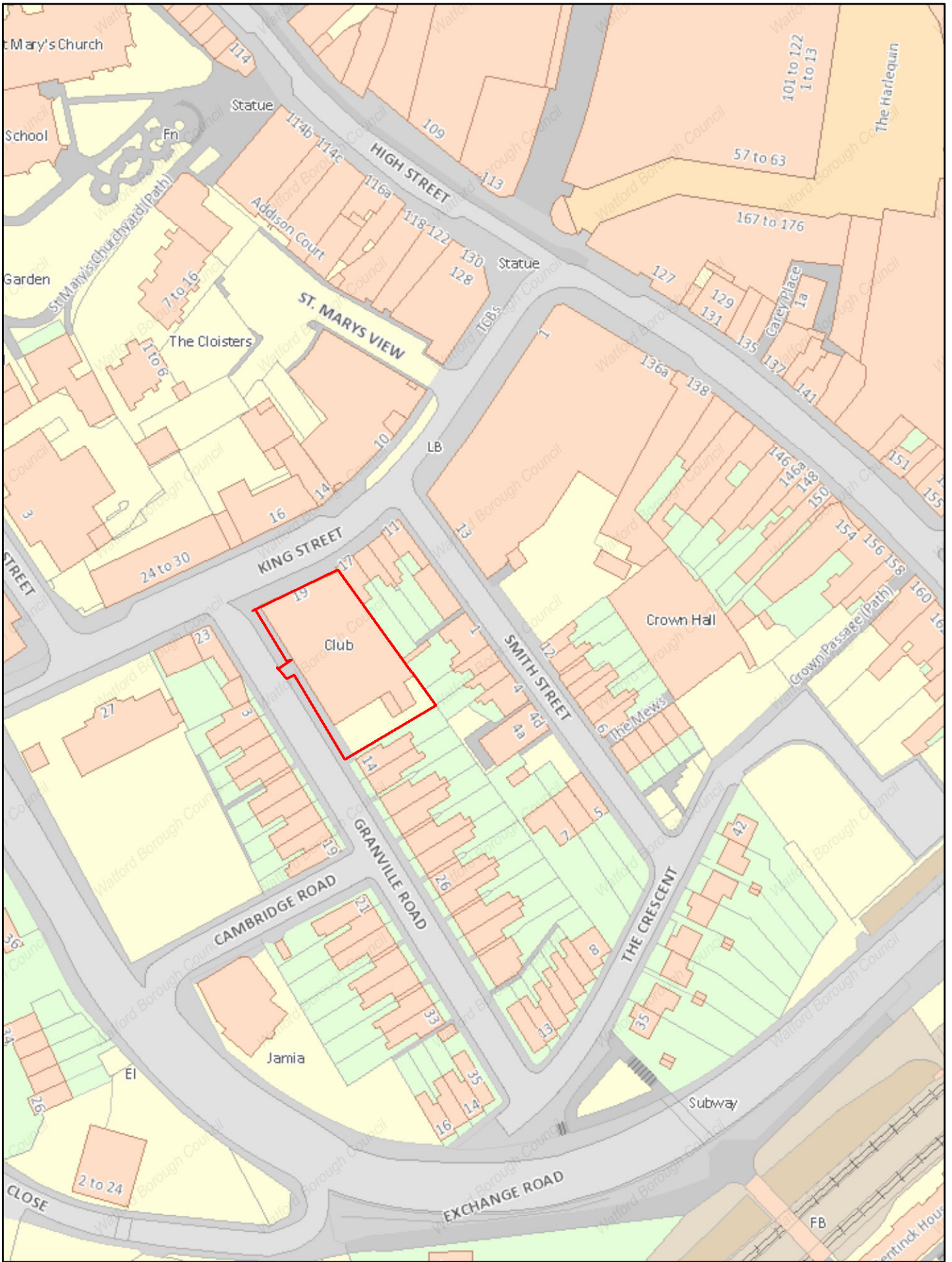
3. The proposal fails to make provision for fire hydrants to serve the development and as such is contrary to Policy INF1 of the Watford Local Plan Core Strategy 2006-31 and saved Policy H10 of the Watford District Plan 2000.

Drawing numbers

HL-001, 002, 003, 004(V2), 005(V2), 006(V2), 007, 008(V2), 009, 010

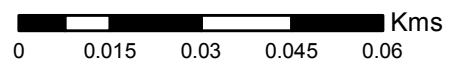
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Date: 10/02/2015



Scale 1:1,250





