

Planning Committee

5 February 2025



Application No.	24/01268/RVC		
Site Address	Development Site at Former the Old Telephone Exchange, Elmsleigh Road, Staines-upon-Thames, TW18 4PN		
Applicant	Mr Robert Mackenzie-Greive on behalf of Fairview Homes Ltd		
Proposal	Variation of Condition 2 (plan numbers) relating to planning permission 20/01199/FUL for the demolition of the former Masonic Hall and redevelopment of site to provide 206 dwellings together with car and cycle parking, hard and soft landscaping and other associated works. to update the approved plans to remove reference to Affordable Housing.		
Case Officer	Kelly Walker		
Ward	Staines		
Called-in	This planning application has been referred to the Planning Committee to make a decision by the Planning Development Manager under Standing Order Part 3 section(b), 2.		
Application Dates	Valid: 01.11.2024	Expiry: 31.01.2025	Target: Over 13 weeks EOT agreed
Executive Summary	<p>The original planning application (ref 20/01199/FUL) proposed the redevelopment of the site to provide 206 dwellings in the form of 2 towers, together with car and cycle parking, hard and soft landscaping and other associated works, following the demolition of the existing buildings. This permission was allowed at appeal (ref: APP/Z3635/W/21/3280090) on 17 January 2022, subject to conditions and a Section 106 (S106) Legal Agreement.</p> <p>This application seeks to vary Condition 2 (plan numbers) of the consent to update the approved plans to remove reference to Affordable Housing. This is because the applicant is proposing a contribution to the Local Planning Authority of £3.85 million towards off-site affordable housing in lieu of on-site provision which will be subject to a Deed of Variation to the original S106 agreement.</p> <p>This proposal has been subject to a viability review by the Council's Independent Viability consultants and has been agreed. The proposal also includes the substitution of amended plans to remove reference to the on-site affordable housing. The proposal is considered to accord with Policy HO3 and is acceptable.</p>		

Recommended Decision	The application is recommended for approval subject to the prior completion of a Section 106 agreement.
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Updates

- 1.1 The decision on this application was deferred at the 8 January 2025 Planning Committee meeting until the next Planning Committee meeting (5 February 2025) to allow time to discuss alternative provision with Rentplus UK.
- 1.2 A meeting with Rentplus UK was held on Tuesday 14 January 2025 which provided Members with details about what Rentplus UK offer in terms of their business model and how they provide affordable rented units. The application at Elmsleigh Road was discussed briefly at the end of the meeting.
- 1.3 The Rentplus UK website refers to their Strategy and business model (<https://rentplus-uk.com>)

'We are a privately owned business with a social purpose driven by outcomes which benefit our communities'

'We buy new, attractive, affordable homes from developers under section 106 and let these on 20-year full repairing leases to Registered Providers (RPs), which manage them on our behalf'

'The RPs work with Local Authorities (LAs) to allocate the homes to local people on their housing lists who want to get on the property ladder.'

'Successful applicants move in and pay an affordable rent for between five and 20 years'

'At the end of the tenancy, our tenants will be buying 100% of their home. When they do so we give them 10% of property's value as a gift to boost their deposit and they use this to secure a high street mortgage.'

- 1.4 Rentplus UK explained that they sell 25% of the units on 5 year time frames. With 25% of the units sold to the occupant after 5 years, another 25% after 10 years, another 25% after 15 years and the final 25% after 20 years.
- 1.5 The main issue with the Rentplus UK model is that in order for future occupants to be eligible for the affordable housing they offer, occupants must meet certain income levels.
- 1.6 Rentplus UK have shared the minimum income level threshold, residents in Spelthorne area need to qualify for a property within the scheme, which is as follows:
 - a minimum of £44k pa to qualify for a 1-bed flat
 - a minimum of £64k pa to qualify for 2-bed flat
- 1.7 The Council's Housing Allocation Policy sets out the criteria of eligibility to be included in the Council's Housing Register. One of the criteria of eligibility is assessed at income level (2.3 (iv) of the Policy) which provides as follows:

“To qualify, a single person household applicant MUST NOT have an income higher than £30,000 net. For joint applicants, the total household income MUST NOT be greater than £60,000 a year.”

- 1.8 There are 2495 applicants on the Councils Housing Register, of which 1064 require a 1 bed unit and 878 a 2 bed unit (see below).

Housing Register Applications by Band and Calculated Bedroom Need:

Band	Requires a 1-bed	Requires a 2-bed	Requires a 3-bed	Requires a 4-bed or more	Grand Total
A	32	14	3	-	49
B	119	245	112	32	508
C1	285	181	174	32	679
C2	110	107	70	17	304
D	518	331	101	12	962
Grand Total	1,064	878	460	93	2,495

- 1.9 Therefore no applicant on the Council Housing Register would meet the Rentplus UK income criteria to qualify for a 2-bedroom flat. Also, no single applicant on the Council Housing Register would meet the Rentplus UK criteria to qualify for a 1-bedroom flat.
- 1.10 The only scope for applicants on the Housing Register would be - for a couple with no children to apply for a 1-bedroom flat if their income is above £44k pa. The Council’s Strategic Lead for Housing has noted that at present there are 26 applicants on the Spelthorne Housing Register who could potentially meet this requirement out of 1,069 applicants seeking a 1-bedroom flat. Of those, 4 are in receipt of benefits as part of their income, and 5 are receiving pension as part of their income, which may or may not be accepted as an income source by Rentplus UK.
- 1.11 In addition, applicants on the Councils Housing Register are assessed and banded to reflect the level of need, with A being the highest priority (see below)

All applications are assessed and awarded a Band to reflect the level of need of the applicant and local connection. There are five bands:

- **Band A** – Emergency / Priority.
- **Band B** – Urgent need to move.
- **Band C1** – Identified need to move.
- **Band C2** – Cases with a reasonable preference need but no local connection.
- **Band D** – Low housing need and no 'deemed' housing need.

- 1.12 Therefore of those 26 households with the required income level for a 1-bedroom flat, 22 are in band C or D, 3 couples in Band B (of which one is expecting a child and will need a larger property) and 1 retired couple in Band A seeking a transfer from another property.
- 1.13 This shows there are very few people on the Council's Housing Register who would qualify to be able to live (rent and eventually purchase) an affordable housing unit with Rentplus UK. The Rentplus UK model will not provide affordable housing for those who need it the most, as it would not fulfil the requirements of the Council's Housing Allocation Policy or therefore the nominations agreement required by the S106 agreement.
- 1.14 Notwithstanding the above, at present the Council has 231 households in B&B and Temporary Accommodation (TA), with the Council's annual revenue cost of over £2.5m a year to cover the cost of the temporary accommodation. The income levels of those in B&B and TA does not meet the income thresholds set by Rentplus UK.
- 1.15 In addition, the Council's Strategic Lead for Housing notes that *'Our experience shows that A2D are risk conscious in their operations due to significant external pressures. Thus, we have reservations as to the proposed model of transferring some of the existing A2D tenants with a high-income level to Rentplus and the Council nominating tenants with lower income into A2D portfolio instead'*
- 1.16 As such Officers continue to have concerns with using Rentplus UK to deliver affordable housing at this site.

Background

- 1.17 As noted in the officer report the applicant contacted the Council approx. 2 years ago (January 2023) about their difficulties in being able to provide onsite affordable housing at the site, and specifically in relation to providing it as per the terms of the S106 agreement – 70 units (24 affordable rented and 46 shared ownership).

1.18 The S106 Agreement states: -

- 1.6 An agreement to transfer the Affordable Housing units to a Registered Provider shall be entered into prior to the carrying out of any above ground works comprised in the Development and the Owner shall not carry out any above ground works comprised in the Development unless an agreement for the transfer of the Affordable Housing Units has been completed.
- 1.7 No Occupation of any Affordable Housing Units or additional Affordable Housing pursuant to paragraph 6 below shall take place until the relevant Registered Provider has entered into a nominations agreement with the Borough Council in the Borough Council's approved form from time to time.

1.19 The applicant informed the Council that they had been trying to secure a Registered Provider (RP) to purchase and provide the affordable housing at the site but had had no success.

1.20 In October 2023 the applicant referred the Council to Rentplus UK, as a company who could provide some affordable units at the site, but this would not be as per the terms of the S106 agreement. The applicant said Rentplus UK could provide 46 affordable rented units at the site

1.21 Planning Officers sought advice from the Council's solicitor and Strategic Housing Officer, and both had concerns about what Rentplus offered.

1.22 Officers had a meeting with Rentplus UK in early 2024 and it was clear that the Rentplus UK model would not meet the terms of the approved S106 agreement, because the affordable housing provided by Rentplus UK would not be offered to the highest category of need on the Councils housing list. In addition, as a side issue at that time, Rentplus UK were not a recognised RP.

1.23 Following this, officers had a meeting with the Leader, Cllr Sexton and Cllr Doran on 19 April 2024, where they also expressed their concerns. The Leader wrote to the applicant in a letter dated 23 May 2024 noting the high number of families on the Council's housing register, acknowledged the applicants actions in trying to find an RP and that they are in breach of the S106 agreement as works had commenced,

'Indeed, I have been contacted by the proposed provider, Rent Plus, who wish to meet and explain their delivery model to me. I know that officers have carefully considered the proposal of Rent Plus model. They attended the meeting with Rent Plus to discuss the proposal and raise some concerns about its functioning. Although it might be attractive to some local authorities, the officer view is that this will neither address nor assist in providing much needed truly affordable rented units. This has already been communicated to you.

I appreciate that the current economic situation may have an impact on finding a Registered Provided but the Council is not under any obligation to accept something it finds does not represent good value for its housing need.

Both myself and the Chair of the Community and Wellbeing Committee are in full agreement with this stance. The model will not deliver what is needed for our residents (e.g. no direct nomination rights from our housing list and taking the 'cream' off the housing register or from A2D).'

Separately, I am aware that there have been discussions around viability in connection with the possible prospect of delivery via an off-site commuted sum. Again, it is disappointing that this is moving in the wrong direction as far as I and other politicians are concerned. The principle of an off-site contribution is something that we are politically willing to consider – but I need to be very clear - it has to be a very meaningful sum, and there needs to be a commitment via a S106 agreement that this is affordable rent (which falls within the legal definition).

As it stands at present, you are currently in breach of s106 agreement and the Council reserves the right to take any further action it decides is necessary to secure the best outcome for the borough.

1.24 The letter then went on to request that the applicant did the following: -

'1. Provide a revised viability assessment to officers based on the position at appeal stage (and not the current position)

2. Have a single round of discussions around viability to achieve an improved position as far as the Council is concerned – via an external review of your figures undertaken by our external advisors.

3. To undertake a further trawl of RP's as the list provided will not be reflective of the current position. It appeared very much focused on those RP's based in London who do not wish to move out, rather than casting the net wide enough.

This should not be a protracted process, and I expect this to be completed within the next four weeks, at which point we will consider our options. The Council reserves the right to take any further action it decides is necessary to secure the best outcome for the borough'

1.25 The applicant followed the advice given to them, which led to a further tender process to 81 RPs. This resulted in no offers from any RPs to provide the S106 compliant affordable housing at the application site.

1.26 The applicant also carried out a viability assessment based on the cost at the time of the appeal, (rather than at the time of the review, which would have incurred higher costs and therefore a reduced commuted sum offer) as requested in the letter. This review offered a commuted sum for offsite affordable housing of £2.37m.

1.27 The above were provided to support this current planning application which was submitted in October 2024. As with all planning applications, letters were sent out to neighbouring properties and publicity carried out. No letters of representation were received.

1.28 The Officers Committee report was written and printed for the January 2025 Planning Committee before the Christmas break. Development Management Officers in Planning have had no contact from any Members about this application or received any requests for clarification or queries prior to the Committee Meeting in January...

Points to note

- 1.29 Rentplus UK now have Registered Provider (RP) status, as of July 2024. However, this does not change their affordable housing model or how they operate. As such this would still not meet the Council's affordable housing requirements and there is still a fundamental issue with who would be housed in the affordable units provided by Rentplus UK. This would not be the people most at need and highest on the Council's Housing Register, as was the concern raised last year. It will not fulfil the requirements of the Council's Housing Allocation Policy or therefore the nominations agreement required by the S106 agreement
- 1.30 As instructed, the applicant submitted their viability assessment for a payment of £2.37m and this was independently reviewed by a Council appointed Viability Assessor and a value of £3.85 has eventually been agreed. This accords with the Council's Policy on Affordable Housing, HO3 and the NPPF 2024.

Policy HO3: Affordable Housing

The Council's target for affordable housing is that 40% of all net additional dwellings completed over the plan period, 2006-2026, should be affordable. This will be achieved by:

- a) having regard to the circumstances of each site, negotiating for a proportion of up to 50% of housing on sites to be affordable where the development comprises 15 or more dwellings (gross) or the site is 0.5 hectares or larger irrespective of the number of dwellings. The Council will seek to maximise the contribution to affordable housing provision from each site having regard to the individual circumstances and viability, including the availability of any housing grant or other subsidy, of development on the site. Negotiation should be conducted on an 'open book' basis,
- b) encouraging registered social landlords to bring forward smaller sites of one to fourteen dwellings (gross) consisting wholly of affordable housing regardless of site size.

Provision within any one scheme may include social rented and intermediate units, subject to the proportion of intermediate units not exceeding 35% of the total affordable housing component.

Where affordable housing is provided on any site the Council will seek to ensure that it is maintained in perpetuity, normally by means of a legal agreement, for the benefit of those groups requiring access to such housing. Where such a restriction is lifted, for any reason, the Council will require any subsidy to be recycled for alternative affordable housing provision. Where the Council considers a site is suitable for affordable housing and a reasonable provision could be made, planning permission will be refused if an applicant is unwilling to make such provision.

In proposals for housing development a financial contribution in lieu of provision for affordable housing will only be acceptable where on-site provision is not achievable and where equivalent provision cannot readily be provided by the developer on an alternative site.

Where, as a means of avoiding the requirement to provide affordable housing, a proposed development site is subdivided so as to be below the site size threshold, or is not developed to its full potential so as to be below the number of dwellings threshold, planning permission will be refused.

- 1.31 The Council's Strategic Lead for Housing has noted that the commuted sum could assist the Council with affordable housing delivery – either through development or property acquisition, with the stock further supporting the financial viability of KGE as well as providing a long term sustainable and affordable tenancies to residents in the highest priority of housing.
- 1.32 One way of utilising the commuted sum, would be to use it to top up any funding that the council may receive from Central Government to purchase properties on the open market, e.g. Local Authority Housing Fund, thus reducing the need for the Council taking on additional borrowing.
- 1.33 The current application before us was submitted in October 2024 to vary plans along with a Deed of Variation (DoV) to vary the S106 to have a payment for offsite affordable housing rather than the 70 onsite units. The evidence submitted with the application shows that S106 compliant onsite affordable housing is not achievable. The terms of the DoV have been negotiated so that the payment is to be made before occupation of the building.
- 1.34 This is what is currently 'on the table' and under assessment with this application.
- 1.35 If approved the money would be given to the Council for offsite affordable housing and the units in the development could be sold on the open market to anyone, including to an affordable housing provider – which happened at the former Brooklands site in Ashford for instance.
- 1.36 If the S106 was to be changed in any other way, this will need a new DoV to the S106 which would need to be submitted along with evidence/viability. This will take time and negotiations with any interested parties, who may change their mind in due course, or may or may not be a viable option at that time.
- 1.37 It may be possible for a new viability assessment to be submitted with today's costs, which would be higher and therefore less/no payment offered in lieu of the affordable housing on site.

MAIN REPORT

1. Development Plan

- 1.1 The following policies in the Council's Core Strategy and Policies DPD 2009 are considered relevant to this proposal:
 - HO3 (Affordable Housing)
 - CC3 (Parking Provision)
- 1.2 The policies contained within the National Planning Policy Framework (NPPF) (December 2024) are also relevant. This follows a Written Ministerial Statement (WMS) 'building the homes we need'. The WMS and the NPPF 2024, sets out Government's ambitions for growth, building homes and improving affordability. It places importance on building new homes and affordability.
- 1.3 On 19 May 2022, the Council agreed that the draft Spelthorne Local Plan 2022 – 2037 be published for public consultation under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). The public consultation for the Pre-Submission Publication version of the Local Plan ended on 21st September 2022 and the local plan was submitted to the Planning Inspectorate on 25th November 2022.
- 1.4 An Examination into the emerging Local Plan commenced on 23 May 2023. However, on 6 June 2023, the Council resolved to request that the Planning Inspector pause the Examination for a period of three (3) months to allow time for the new council to understand and review the policies and implications of the emerging Local Plan. After the three month pause the Council would decide what actions may be necessary before the Local Plan Examination should proceed. This was agreed.
- 1.5 On 14 September 2023, a letter was received from the Housing Minister stating that the Housing Secretary was directing the Council "not to take any step to withdraw the plan from examination..." The Council resolved to extend the pause in the Examination timetable until the proposed changes to the NPPF had been published before determining the next steps.
- 1.6 On 22 September 2023, the Inspector agreed to a further pause to the Examination and requested that the Council continue to address the issues that he identified in the first week of the Examination, in particular flood risk and its potential implications in relation to the site allocation and delivery strategy of the plan.
- 1.7 On 18 July 2024, Council considered a report into the resumption of the Local Plan Inquiry which had previously been agreed by the Corporate Policy and Resources Committee on 8 July 2024. The report set out the recent response from the Environment Agency, and the options for deciding whether or not Council agreed a request for further Main Modifications to the Local Plan in order to resume the Examination hearings and progress the Plan to adoption. Council agreed the option to progress the local plan and officers requested this from the Inspector.

- 1.8 On 24 October 2024, the Council agreed to re-instated 13 of the 15 Green Belt sites as housing allocations. and requested the Planning Inspector to resume the Examination into the Local Plan. On 12 December 2024, the Planning Inspectorate confirmed that the Local Plan examination would resume on the 27 January 2025.
- 1.9 On 12 December 2024, the Planning Inspectorate confirmed that the Local Plan would resume on the 27 January 2025.
- 1.10 The following policies of the Pre-Submission Spelthorne Local Plan 2022 – 2037 are of relevance:
- H2: Affordable Housing
- 1.11 The NPPF policy states at para 49 that: Local planning authorities may give weight to relevant policies in emerging plans according to:
- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given).
 - b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
- 1.12 Section 38(6) the Planning and Compulsory Purchase Act 2004 requires applications to be determined in accordance with the development plan (unless material considerations indicate otherwise) and not in accordance with an emerging plan, although emerging policies may be a material consideration.
- 1.13 Also relevant is the following Supplementary Planning Guidance: -
- SPG on Parking Standards

2. Relevant Planning History

- 2.1 The site has the following planning history: -

20/01199/FUL	Demolition of the former Masonic Hall and redevelopment of site to provide 206 dwellings together with car and cycle parking, hard and soft landscaping and other associated works	Refused 13/01/2021 Appeal allowed 17/01/2022
14/01377/FUL	Demolition of existing Masonic Hall and Old Telephone Exchange and redevelopment of the site to create a mixed-use scheme comprising 140 residential units (48 no. 1-bed and 92 no. 2-bed units), a 102 bedroom	Refused 16/02/2015

	hotel, up to 1507 sqm of mixed commercial spaces (Classes A1, A2, A3,A4, D2 and B1), and up to 1408 sqm of masonic lodge (Class D1), together with means of access, landscaping and other associated works.	
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3. Description of Current Proposal and background

- 3.1 The application site originally comprised the former Masonic Hall and former Telephone Exchange. The site is located at the rear of the Elmsleigh Shopping Centre and adjacent to Tothill car park and the former Debenhams and Staines Community Centre.
- 3.2 Planning application ref 20/01199/FUL proposed the redevelopment of the site to provide 206 dwellings in the form of two towers, together with car and cycle parking, hard and soft landscaping and other associated works, following the demolition of the existing buildings
- 3.3 Following refusal of planning permission by Spelthorne Borough Council, an appeal was lodged. The appeal ref APP/Z3635/W/21/3280090 was allowed on 17 January 2022, subject to conditions and a Section 106 (S106) legal agreement to provide on-site affordable housing. The S106 also secured a number of provisions relating to landscaping, highways and transport including a Car Club scheme, and provision for an offsite play area contribution. The permission has been implemented and is nearing completion.
- 3.4 This application seeks to vary Condition 2 (plan numbers) of the consent to update the approved plans to remove reference to Affordable Housing. This is because no on-site affordable housing will now be provided. The applicants have advised that they have approached numerous Registered Providers (for affordable housing) and there has been no interest from any to take the residential units. However, the applicant is proposing a contribution towards off site affordable housing instead, and this will be subject to a Deed of Variation to the original S106 Legal Agreement.

4. Consultations

- 4.1 The following table shows those bodies consulted and their response.

Consultee	Comment
Valuation Advisor	No objection
Strategic Lead, Housing	No objection
Senior Legal Officer	No objection

5. Public Consultation

5.1 A statutory site notice was displayed, and the application was advertised in the local press. Currently no letters have been received in relation to this application.

6. Planning Issues

- Affordable housing

7. Planning Considerations

Affordable housing

7.1 Policy HO3 of the Core Strategy and Policies DPD (CS & P DPD) requires up to 50% of housing to be affordable where the development comprises 15 or more dwellings. The Council's policy is to seek to maximise the contribution to affordable housing provision from each site having regard to the individual circumstances and viability, including the availability of any housing grant or other subsidy, of development on the site. Negotiation is conducted on an 'open book' basis.

7.2 Paragraph 64 of the NPPF 2024 states that, '*...Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required (including the minimum proportion of Social Rent homes required), and expect it to be met on-site unless: a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and b) the agreed approach contributes to the objective of creating mixed and balanced communities.*'

7.3 The planning appeal included 70 affordable units which had been reviewed and agreed by the Council's Independent viability consultant. The S106 agreement completed at the appeal provided for 70 units (34%) of the total number of dwellings to be affordable housing. This was split into 46 no. (65%) being affordable rent properties and 24 no. (35%) being intermediate housing. The agreement also included nomination rights by the Council for the affordable properties

	Private	Affordable (shared ownership)	Affordable (affordable rent)	TOTAL
One bed	69	12	24	105
Two bed	67	12	22	101
Total	136	24	46	206

7.4 Since the approval and the commencement of the development, the applicant has been unable to appoint a Registered Provider (RP) to take on the approved affordable housing units at the site. They have submitted a report on the tender process in support of their application to show they have carried out 4 no. separate tender processes to dispose of the affordable units subject to the S106. The most recent tender was carried out in June 2024 and the applicant approached 81 parties. The applicant notes that '*...Fairview New*

Homes (Fairview) issued the latest invitation to tender on the 7th June 2024, to 81 Registered Providers who either have stock in Spelthorne or the surrounding boroughs or who could potentially have an interest in affordable housing development at the subject site. Tender returns were requested by 5pm on Thursday 20th June 2024'

7.5 The applicant notes that of the 81 parties approached, only 21 responses were received, all declining the opportunity, and the remaining parties did not respond. Several reasons were given for declining to bid, including: they do not currently work in Spelthorne, the location is not appropriate, they do not develop flatted development/high rise, unit mix not appropriate, they do not purchase S106 units/develop new homes and finally, due to the single stair core in the towers.

7.6 The applicant has concluded

'12. Following a review of the responses received, it is clear that market sentiment has not improved since the previous tenders were undertaken.

13. Registered Providers continue to remain under extreme financial pressure and market sentiment for the purchase of developer led s106 units remains extremely poor with the majority of developing RP's concentrating on owned sites and land led opportunities.

14. The introduction of the Building Safety Act has led many developing RPs to avoid the development of any high-rise buildings, instead focusing on low rise developments. Where RPs will consider high-rise buildings, they require the provision of a second staircase, regardless of whether this is required by the relevant legislation relating to the development.

15. The mix of smaller units within the development, which cannot now be changed, is not attractive to many RP's who prefer larger family homes and often restrict 1 bed units for rented tenure to a maximum of 25% of the overall affordable housing offer.

16. The repeated attempts to tender the scheme have demonstrated that there is no appetite for the affordable housing units on site and alternatives should be considered to the delivery of on-site affordable housing based on the tenures required by the s106 agreement.'

7.7 Following exhausting options to appoint an RP to provide the approved on-site affordable units, the applicant has undertaken a further viability assessment based on the viability at the time of the original planning application and not updated to reflect the current position. This has been reviewed by the Council's Independent Viability Consultant and a value of £3.85 million has been agreed. This money will be paid to the Local Planning Authority and used by the Council to provide additional affordable units off-site.

7.8 The Council's Strategic Lead for Housing has been consulted and has noted that, *'The delivery of on-site affordable housing remains to be a strong preference of the Council due to substantial demand in the area. We*

understand that the options of engaging with Registered Providers have been extensively reviewed and despite considerable effort, no RP could be found to acquire and manage the on-site units. With that in mind (subject to an acceptable amount of monetary contribution for affordable housing delivery elsewhere agreed by the Council), we agree to the changes proposed in the deed of variation.'

- 7.9 In regard to a commuted sum, Policy HO3 on Affordable Housing states that: *'...In proposals for housing development a financial contribution in lieu of provision for affordable housing will only be acceptable where on-site provision is not achievable and where equivalent provision cannot readily be provided by the developer on an alternative site.'*
- 7.10 This is also considered to accord with the approach set out in the NPPF which at paragraph 63 states that, *'...off-site provision or an appropriate financial contribution in lieu can be robustly justified; and b) the agreed approach contributes to the objective of creating mixed and balanced communities. As such, the proposal accords with the requirement of Policy HO3 and the NPPF. The amount to be provided has been reviewed and is considered to be acceptable.*
- 7.11 The S106 Deed of Variation requires that the financial contribution is paid to the Local Planning Authority. The agreement specifies this to be not less than 5 working days following the expiry of the six week period within which a judicial review claim could be made and prior to the Occupation of any Dwellings. The money can be used to provide additional affordable housing for the Borough (over and above the policy requirements) via either newly built schemes or by the purchase of street properties, subject to the terms within the Deed of Variation agreement.

Equalities Act 2010

- 7.12 This planning application has been considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.13 The question in every case is whether the decision maker has in substance had due regard to the relevant statutory need, to see whether the duty has been performed.
- 7.14 The Council's obligation is to have due regard to the need to achieve these goals in making its decisions. Due regard means to have such regard as is appropriate in all the circumstances.

- 7.15 It is considered that this proposal may affect individuals with protected characteristics specifically the impact of the development on disabled people. However, given the application is at outline stage and design is not under consideration.

Human Rights Act 1998

- 7.16 This planning application has been considered against the provisions of the Human Rights Act 1998.
- 7.17 Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.
- 7.18 Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, i.e., peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.
- 7.19 In taking account of the Council policy as set out in the Spelthorne Local Plan and the NPPF and all material planning considerations, Officers have concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by the approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

Financial Considerations

- 7.20 Under S155 of the Housing and Planning Act 2016, Local Planning Authorities are now required to ensure that potential financial benefits of certain development proposals are made public when a Local Planning Authority is considering whether or not to grant planning permission for planning applications which are being determined by the Council's Planning Committee. A financial benefit must be recorded regardless of whether it is material to the Local Planning Authority's decision on a planning application, but planning officers are required to indicate their opinion as to whether the benefit is material to the application or not. It is relevant to note that the proposal is a CIL chargeable. The CIL contribution will increase as a result of this proposal, given that the previously approved on site affordable units were subject to CIL relief. As these will no longer be provided on site this relief will no longer be applicable, and a new CIL Liability Notice will be issued.

Other Matters

- 7.21 As a consequence of the Deed of Variation to the S106, the proposal will no longer provide affordable housing on site. As a result, the application seeks to substitute approved plans which identify on site affordable units, with plans

that do not. The plans themselves are identical to the approved ones regarding layout, size of units etc and the amendment relates only to the reference to affordable units. As such the amended plans are considered to be acceptable.

7.22 The approved scheme proposes 48 on-site car parking spaces. It is relevant to note that the Council's Parking Standards (SPG) stipulate lower parking standards for affordable units compared to privately owned units. For example, a two-bedroom affordable unit has a parking standard of 1.25 compared to 1.5 for a private unit. As all of the previously approved 70 affordable units are not to be occupied privately, the consequent demand for car parking will be slightly greater. In particular, the Parking Standards stipulate that the approved scheme should provide 266 parking spaces, whilst the proposed development should provide 283 spaces (an additional parking number of 17).

7.23 Whilst the proposed parking shortfall is slightly greater compared to the approved scheme, it is considered that the level of parking on site continues to be acceptable in this town centre location and accord with Policy CC3 of the CS and P DPD. The Inspector in the appeal considered the parking provision to be acceptable and made the following comments:

'55. The proposed development would provide significantly fewer car parking spaces than the adopted car parking standards set out in the Parking Standards SPG. However, it is a car free type development which would be supported by the highway authority in this location and would have the characteristics of developments where section 5 of the Parking Standards SPG provides opportunities for reduced requirements.

56. The appeal site is very accessible and shops, services and public transport options are within easy walking distance. The proposal would fall into the categories of schemes where standards could be reduced in accordance with the Parking Standards SPG. It would also fall within criterion (b) of Policy CC3 of the Core Strategy where the level of car parking provision can be considered having regard to the scope for encouraging alternative means of travel to the development that would reduce the need for on-site car parking, particularly relevant in areas well-served by public transport. I have placed some weight on the Council's stated position that a breach of Policy CC3 would not in isolation be sufficient to justify refusal of consent.

57. Paragraph 111 of the Framework makes it clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts of on the road network would be severe. Either consideration do not apply here. I have placed significant weight on the Framework in this regard. 58. As set out above, I consider that the level of parking provision is appropriate for the proposed development and that Policy CC3 of the Core Strategy is met. On the basis of the evidence before me, I find that no harm to the living conditions of the occupants of nearby properties with regard to car parking would occur as a result of the proposed development.'

Conclusion.

- 7.24 The proposal to no longer provide on-site affordable housing but to provide a commuted sum of £3.85 million, to be spent on off-site affordable housing, and the substitution of plans to remove reference to the on-site affordable housing, is considered to accord with Policy HO3. The proposal is considered to be acceptable and is therefore recommended for approval subject to the prior completion of a S106 Deed of Variation agreement.

8. Recommendation

- 8.1 GRANT Subject to the Deed of Variation of the S106 Agreement being signed to include the following:

-The provision of £3,85 million

-To be paid not less than 5 working days following the expiry of the six week period within which a judicial review claim could be made and prior to the occupation of any dwellings.

(and the imposition of the conditions further below)

- 8.2 In the event the S106 Agreement is not completed to the satisfaction of the Planning Development Manager, REFUSE the application for the following reason: -

The proposed development is unacceptable in that it fails to provide on site affordable housing or a financial contribution in lieu of affordable housing and is therefore contrary to Policy HO3 of the Spelthorne Core Strategy and Policies DPD 2009, and the NPPF 2024.

Conditions

1) The development hereby permitted shall be carried out in accordance with the following approved plans: ERS-ASA-ALL-00-DR-A-110 Rev. R1; /120 Rev. R1; /121 Rev. R1; 122 Rev. R1; /140 Rev. R1; /141 Rev. R1; /0200 Rev. R12; /300 Rev. R1; /301 Rev. R1; /0405 Rev. R1; /4100 Rev. R1; /4101 Rev. R1 received 14 October 2020; ERS-ASA-ALL15-DR-A-0215 Rev. R6 Received 14 October 2020. ERS-ASA-ALL-XX-DR-A-251 Rev. R4; /252 Rev. R4; /253 Rev. R4; /254 Rev. R4; /255 Rev. R4; /256 Rev. R4 Received 14 October 2020. D2864-FAB-XX-00-DR-L-0200 Rev. PL04; /0210 Rev. PL04 received 14 October 2020. ERS-ASA-ALL-00-DR-A-100 Rev. R2 received 06 January 2021. INL/E4445/007B received 09 February 2021. ERS-ASA-ALL-00-DR-A-0400 Rev. R5; /0401 Rev. R5; /0402 Rev. R5; /0403 Rev. R5; /0404 Rev. R2; and ERS-A-SK-210301MR01-R01 Rev. R3 received 19 April 2021. 04550-TR-0021-P2; 0032-P1; /0033-P2; /0033A received 01 June 2021. Amended plans numbered ERS-ASA-ALL-01-DR-A-0201 Rev R10, /202 Rev R10, /208 Rev R6, /209 Rev R6 and /213 Rev R6 received on 24 October 2024

Reason: - For the avoidance of doubt and in the interest of proper planning

2) The site shall be remediated in accordance with the agreed method statement and timetable for implementation as shown in the submitted and agreed Combined Desk Study, Data Review and Remediation Strategy Report (Card Geotechnics Ltd., CG/39188, Revision 2, August 2022), approved under reference 20/01199/DC1.

Reason: - To protect the amenities of future residents and the environment from the effects of potentially harmful substances, in accordance with policies SP6 and EN15 of the Spelthorne Borough Core Strategy and Policies Development Plan Document 2009

3) Prior to the first use or occupation of the development, and on completion of the agreed contamination remediation works, a validation report that demonstrates the effectiveness of the remediation carried out shall be submitted to and agreed in writing by the Local Planning Authority.

Reason:- To protect the amenities of future residents and the environment from the effects of potentially harmful substances, in accordance with policies SP6 and EN15 of the Spelthorne Borough Core Strategy and Policies Development Plan Document 2009.

4) The development shall be implemented in accordance with the details in the agreed Construction Logistics Plan (Fairview Estates (Housing) Ltd, Rev 8, February 2023) received on 24th February 2023), Construction Environmental Management Plan (Fairview Estates (Housing) Ltd, December 2022, Rev 6) received on 15th December 2022, Demolition Document (Fairview Estates (Housing) Ltd., FNH 446, Rev. C, September 2022) received on 12th September 2022, Asbestos Survey Report (OC Consulting (UK) Ltd, ML-7525-135-1, 22nd April 2022), and Road Condition Survey (Fairview New Homes, August 2022) approved under reference 20/01199/DC2.

Reason: - This condition is required in order that the development should not prejudice highway safety, nor cause inconvenience to other highway users, and accord with the National Planning Policy Framework 2019 and Policy CC2 of the Core Strategy and Policies Development Plan Document February 2009

5) The development shall be implemented in accordance with the drainage details including the Technical Note dated July 2022, reference: 332511026-TN-002 and as agreed by Surrey County Council as the Local Lead Flood Authority in the letter dated 23 August 2022 approved under reference 20/01199/DC3.

Reason: To ensure the design meets the technical stands for SuDS and the final drainage design does not increase flood risk on or off site.

6) Prior to first occupation, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority to demonstrate that the Sustainable Urban Drainage System has been constructed as per the agreed scheme.

Reason: To ensure the Sustainable Drainage System is built to the approved designs.

7) The renewable energy details approved under reference 20/01199/DC6, as set out in the technical letter dated 30/10/2022, the SAP summary results by Abbey Consultants and drawing numbered FNH446-A-27-M-101 Rev 0 received on 21/11/2022 which include details and drawings demonstrating how at least 39% of the energy requirements generated by the development as a whole will be achieved utilising renewable energy methods shall be fully implemented with the construction of each building and thereafter retained.

Reason: - To ensure that the development is built in accordance with the submitted renewable energy details and is sustainable and complies with Policy SP7 and CC1 of the Spelthorne Development Plan Core Strategy and Policies DPD.

8) The agreed Bird Hazard Management Plan from Ecology Solutions (10621.BHMP.vf), and Appendices, dated October 2022, plus the Podium Deck - General Arrangement (FNH446 02(0)), dated 15/07/2022 approved under reference 20/01199/DC5 shall be implemented as approved and shall remain in force for the life of the building. No subsequent alterations to the plan are to take place unless first submitted to and approved in writing by the Local Planning Authority.

Reason: - It is necessary to manage the development in order to minimise its attractiveness to birds which could endanger the safe movement of aircraft and the operation of Heathrow Airport.

9) The details agreed in the 'System Modification to Mitigate Radar Harm Caused by the Old Telephone Exchange and Masonic Hall Staines Building Development', dated 23.11.2022 approved under reference 20/01199/DC7 shall be put in place to ensure that the proposed development during the construction phase and thereafter will have no impact on the H10 Radar at Heathrow Airport.

Reason:-To ensure the development does not endanger the safe movement of aircraft or the operation of Heathrow Airport through interference with communication, navigational aids and surveillance equipment.

10) The development hereby approved shall not be first occupied unless and until the facilities for the secure parking of bicycles within the development sites have been provided in accordance with the approved plans. Thereafter the said approved facilities shall be retained and maintained to the satisfaction of the Local Planning Authority.

Reason: - The above condition is required in recognition of Section 9 (Promoting Sustainable Transport) of the NPPF.

11) The agreed amended Residential Travel Plan dated August 2024 (received 22 August 2024) setting out the sustainable transport measures shall be implemented in accordance with the agreed Travel Plan and timetable.

Reason: - The above condition is required in recognition of Section 9 (Promoting Sustainable Transport) of the NPPF.

12) The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for the designated purposes.

Reason: - The above condition is required in recognition of Section 9 (Promoting Sustainable Transport) of the NPPF.

13) The development hereby approved shall not be first occupied unless and until at least 20 of the available parking spaces are provided with a fast charge socket (current minimum requirement: 7kw Mode 3 with Type 2 connector – 230 v AC 32 amp single phase dedicated supply) in accordance with agreed details including plan number FNH446-0-12-031-K- and charging point specification and retained thereafter.

Reason: - The above condition is required in recognition of Section 9 (Promoting Sustainable Transport) of the NPPF.

14) The development shall be carried out in accordance with the following mitigation measures:

- The non-floodable ground floor area of the building shall be no larger than 715 square meters, as shown in drawing number INL/E4445/007B (titled Flood Level Compensation Assessment, dated 2 February 2021 and prepared by Rogers Cory Partnership)

- The floodable area as shown in drawing number INL/E4445/007B shall be implemented and made floodable as outlined in the letter from Rogers Cory Partnership (RCP) to Spelthorne Borough Council, dated 10 March 2021 (reference TS/INL/E4445/17820), including the following mitigation measures it details:

- iii) There shall be a minimum of one 1m wide opening in every 5m length of wall on all sides the building (including the car parking, bin and cycle stores) that are shown as floodable in drawing number INL/E4445/007B.

- ii) The openings shall extend from ground level up to at least 15.8 metres AOD.

- iii) Vertical bars within openings, if required, shall be spaced at least 150mm apart in accordance with drawing number ERS-A-SK210301MR01-R01 (titled Car Park Openings Bay Study, revision R2, dated 9 March 2021 and prepared by Assael Architecture Limited).

These mitigation measures shall be fully implemented prior to first occupation. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: - To prevent an increase in flood risk elsewhere in accordance with paragraphs 160 and 163 of the NPPF and policy LO1 of the Core Strategy and Policies Development Plan Document (adopted 26 February 2009).

15) Finished floor levels shall be set in accordance with drawing number ERSA-SK-210301MR01-R01 (titled Car Park Openings Bay Study, revision R3 and dated 15 April 2021, such that:

- The residential entrance finished floor levels shall be set no lower than 15.8 metres above Ordnance Datum (AOD)
- All residential units shall be set above 15.8m AOD These mitigation measures shall be fully implemented prior to first occupation. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: - To reduce the risk of flooding to the proposed development and future occupants in accordance with paragraph 163 of the National Planning Policy Framework and policy LO1 of your Core Strategy and Policies Development Plan Document (adopted 26 February 2009).

16) There shall be no raising of existing ground levels on site within the 1% annual exceedance probability flood extent with an appropriate allowance for climate change throughout the lifetime of the development.

Reason: - To prevent an increase in flood risk elsewhere in accordance with paragraphs 160 and 163 of the National Planning Policy Framework and Policy LO1 of your Core Strategy and Policies Development Plan Document (adopted 26 February 2009).

17) The details to demonstrate that the rated noise level from on-site plant shall be at least 5 dB(A) below the background noise level at the nearest noise sensitive property as set out in the 'Plant Noise Assessment', March 2024, Ref: 20-9042 PNA Rev A, approved under reference 20/01199/DC11, received on 04.04.2024, for on-site plant shall be installed prior to the first occupation of the development and thereafter maintained as approved.

Reason:- To safeguard the amenity of nearby properties.

18) The wildlife impact avoidance measures and ecological enhancement measures shall be carried out strictly in accordance with the recommendations set out in Paragraphs 4.19, 4.20, 4.21, 4.26, 4.27. 5.2 and Appendices 1, 2 and 3, of the Environmental Dimension Partnership Ltd 'Ecological Appraisal' dated September 2020.

Reason: - To encourage wildlife on the site.

19) The details submitted in the Syntegra Consulting Ltd ("SC") – Air Quality Technical Note (Dated May 2024 reference Ref: 22-9042-AQ), Indoor Air Quality Assessment by Syntegra (dated September 2024, reference 22-9042 Rev A) and the technical specifications for the Greenwood CMEV units, approved under reference 20/01199/DC11 shall be implemented before the

development is first occupied. The equipment shall thereafter be retained and maintained in accordance with the approved details.

Reason: - To protect the future occupants from poor air quality as the result of the ingress of air subject to emissions from the adjacent car parks and from HDV emissions from the access ramp to the Elmsleigh Centre.

20) Prior to the first occupation of both buildings hereby approved, the approved public walkway through the site shall be provided and thereafter be permanently made available and accessible for members of the public.

Reason: - To ensure that the public walkway is made permanently available and accessible to the public.

21) The hard and soft landscaping details shown on amended plans numbered FNH446 02[4] received on 30 January 2024, amended plans FNH446 01 [25], FNH446 04 [25] and FNH446 05 [25] approved under reference 20/01199/DC9 shall be carried out prior to the first occupation of the buildings. The planting so provided shall be maintained as approved for a period of 5 years, such maintenance to include the replacement in the current or next planting season whichever is the sooner, of any trees or shrubs that may die, are removed or become seriously damaged or diseased, with others of similar size and species.

Reason: - To minimise the loss of visual amenity occasioned by the development and to enhance the proposed development.

22) The landscape management details in the agreed MCA Landscape Management Plan and Specification dated 26 September 2022 approved under reference 20/01199/DC9 shall be carried out as approved.

Reason: - To minimise the loss of visual amenity occasioned by the development and to enhance the proposed development.

23) Before the first occupation of any part of the development, the refuse and recycling facilities shall be provided in accordance with the approved plans and retained thereafter.

Reason: - To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties and the appearance of the locality in accordance with policies SP6 and EN1 of the Spelthorne Borough Core Strategy and Policies Development Plan Document 2009.

24) The agreed external lighting details including PSU4000.3786 S278 Elmsleigh, Staines – Proposed Lighting Layout – P01, Elmsleigh Road Staines Podium Landscape GA, Black Tall Square Aluminium Bollard specification, Modern Post Lantern specification and Phosco details and specifications received on 6 December 2023 and amended plan no. FNH446 02 [04] and AD 27-E-200 Rev E and 201 Rev E received on 30 January 2024, all approved under reference 20/01199/DC10 shall be implemented prior to the first occupation of the buildings and shall at all times accord with approved details.

Reason:- In the interest of the visual amenity.