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## Appeal Decision

Inquiry opened on 26 March 2019

Site visit made on 7 June 2019

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 26 July 2019

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Appeal Ref: APP/G2245/W/18/3200270

Swanley Square Shopping Centre, London Road, Swanley BR8 7TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full and outline planning permission.
  - The appeal is made by U+I Group Plc against the decision of Sevenoaks District Council.
  - The application Ref SE/17/02279/FUL, dated 14 July 2017, was refused by notice dated 20 November 2017.
  - The development proposed is a revised hybrid application for the phased redevelopment of part of the Swanley Square Shopping Centre and land to the rear, comprising a detailed application for Blocks 1, 2 and 4 and an outline only application (with details relating to appearance and landscaping reserved) for Blocks 3, 5, 6 and 7. Blocks 1, 2 and 4 comprise the erection of three buildings ranging between 3 and 11 storeys in height comprising 210 residential units (build to rent and market), 1457sqm of retail/commercial floorspace (Use Class A1-A5, B1), a multi storey car park and associated public realm surface level parking, landscaping and access works. Blocks 3, 5, 6 and 7 involves the demolition of existing buildings/structures and outline parameters for four new buildings which will comprise up to 93 residential units (market) and up to 2,861 sqm of commercial floorspace (use classes A1-A5, B1) up to 958 sqm of community floorspace; and associated public realm surface level car parking, landscaping and access works.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 16 July 2019.

### Preliminary matters

1. The application is for full permission for Blocks 1, 2 and 4: and outline permission for blocks 3, 5, 6 and 7, with appearance and landscaping reserved. I have considered the appeal accordingly.
2. The appeal was made against refusal of planning permission on 4 grounds: the effect on character and appearance, the effect on living conditions in terms of natural light, failure to provide adequate parking, and the failure to provide any affordable housing. On 26 July 2018, the Council resolved not to defend reasons for refusal related to parking and affordable housing. On 28 September 2018, the Council decided not to defend any of the reasons for refusal. The Council attended the Inquiry only to observe proceedings and to provide information on housing supply.

3. The Inquiry was adjourned on the first day because notification issues meant that it was possible that some members of the public might not have been aware of the Inquiry or could have been discouraged from attending. It resumed on 4 June 2019 and sat for 4 days.

#### Costs application

4. At the Inquiry an application for a partial award of costs was made by U+I Group plc against Sevenoaks District Council. This application is the subject of a separate decision.

#### Decision

5. The appeal is allowed and planning permission is granted for the phased redevelopment of part of the Swanley Square Shopping Centre and land to the rear, comprising a detailed application for Blocks 1, 2 and 4 and an outline only application (with details relating to appearance and landscaping reserved) for Blocks 3, 5, 6 and 7. Blocks 1, 2 and 4 comprise the erection of three buildings ranging between 3 and 11 storeys in height comprising 210 residential units (build to rent and market), 1457 sqm of retail/commercial floorspace (Use Class A1-A5, B1), a multi storey car park and associated public realm surface level parking, landscaping and access works. Blocks 3, 5, 6 and 7 involves the demolition of existing buildings/structures and outline parameters for four new buildings which will comprise up to 93 residential units (market) and up to 2,861 sqm of commercial floorspace (use classes A1-A5, B1) up to 958 sqm of community floorspace; and associated public realm surface level car parking, landscaping and access works at Swanley Square Shopping Centre, London Road, Swanley BR8 7TG in accordance with the terms of the application, Ref Ref SE/17/02279/FUL, dated 14 July 2017, subject to the conditions in the schedule at the end of this decision.

#### Main Issues

6. From all I have read and the representations made at the Inquiry, the main issues are as follows:
- The effect of the proposed development on the character and appearance of the area in terms of scale, massing and townscape impact;
  - The effect on the living conditions of nearby occupiers, in terms of daylight and sunlight; and
  - Whether the amount of parking would be adequate.

#### Reasons

##### *The site and surroundings*

7. Swanley town centre as it now exists was developed in the 1970s on the site of the Victorian Kettlewell Hospital. Mainly 2 and 3 storey retail and residential blocks including The Cedars surgery and car parks are centred around Swanley Square. In 1980s a large Asda superstore was built on the north east side of the square. An adjacent wide pedestrianised boulevard known as Asda Walk, centred on the square, is used for a large and popular weekly market. Subsequent development has included another surgery (The Oaks) and some residential units as well as a new Aldi supermarket. The appeal site comprises most of the 1970s shopping centre and the associated car parks.

8. The centre is situated on relatively high ground and is surrounded by mainly residential and municipal buildings and a large green space, Swanley Recreation Ground.

*Planning policy*

9. The development plan for the area includes the Sevenoaks Core Strategy (CS) of 2011 and the Sevenoaks Allocations and Development Management Plan (ADMP) of 2015. The CS notes that Swanley is the second most populous settlement in the District with around 16000 inhabitants and is the second most important strategic development location after Sevenoaks. It also remarks that there are issues of deprivation in some areas and the town centre needs improvement. The spatial vision for the District includes regeneration of Swanley Town Centre to better meet the needs of the community and support the economy *'through development to include a mix of new shops, offices, hotel and residential development together with accompanying environmental improvements'*.
10. Strategic objectives include focusing employment and retail development in the towns of Sevenoaks and Swanley, and safeguarding the countryside around the towns and villages, promoting change within them by making the best use of previously developed land. The whole of Sevenoaks District lies within the Metropolitan Green Belt and the CS says that this will continue to be protected and its distinctive character will remain. Key issue 5 mainly concerns the regeneration and transformation of Swanley town centre with a high quality new shopping, business and housing hub with an improved environment and public spaces.
11. CS policy LO5 advises that Swanley will be regenerated so that it better meets the needs of the population it serves. *'The regeneration scheme will contain a mix of uses including retail, offices, residential and community facilities (including replacement of existing medical facilities) and will bring about a substantial improvement in the environment of the town centre. The provision of a hotel will be supported. Links between the town centre and the station will be improved.'* **The supporting text points out that there is significant scope for development within the area of the centre to achieve regeneration objectives and that *'the shopping centre suffers from a high level of vacancies and a limited range of stores. It loses a significant amount of expenditure to other areas, the environment is in need of improvement and overall it does not serve its local community as well as it should'*.** There is no dispute that this position has not significantly altered since adoption of the CS. The 2016 Sevenoaks District Retail Study confirms that the centre is currently underperforming as a comparison goods sales destination, with nearby competition from Bluewater and Dartford. The comparison goods offer in the centre is currently quite **limited and restricted to 'value' retailers.**
12. ADMP policy H2(c) identifies the Swanley Centre as suitable for mixed use development including higher residential densities to maximise the efficient use of previously developed land and reduce the use of greenfield land. Policy TLC2 seeks to enhance the retail offering in Swanley by, amongst other things, establishing a new primary retail frontage.
13. Other policies relevant to the application include EN1 of the ADMP which seeks amongst other things that the form and layout of the proposed development should respond to the scale, height, materials, site coverage and topography of

the area; and the proposal would ensure satisfactory means of access for vehicles and pedestrians and provide adequate parking. Parking is the subject of policy T2 which seeks a flexible approach in accordance with Kent County Council's (KCC) current standards.

14. The Council commissioned 'A Vision for Swanley and Hextable' (VSH) in 2016 to consider how these settlements can improve and grow. It was subject to extensive consultation and forms part of the evidence base for the emerging replacement Sevenoaks District Local Plan 2015-2035 (SDLP), which was published for consultation in December 2018. For Swanley, the vision anticipates that to be a thriving commuter town, this might mean including provision of high-density residential development around the station and town centre, meeting the needs of young professionals seeking a first step on the housing ladder; and a strong and vibrant retail and cultural offer that appeals to new and existing residents. The document positively encourages redevelopment and expansion of the town centre with new retail and residential accommodation.
15. Emerging policy ST1 seeks to focus redevelopment in the major towns including Swanley. The text indicates that mixed-use regeneration of Swanley town centre is sought to better meet the needs of the population it serves. Emerging policies EMP1 and EMP2 indicate that the principle of development of the town centre with a mixed use scheme is strongly supported. The SDLP as a whole can only attract limited weight, as the consultation period closed only in February 2019. However it continues the emphasis in the CS and ADMP of revitalising the town centre and this aspect attracts significant weight.

#### *Character and appearance*

16. The site is characterised mainly by the existing largely concrete retail and residential units which are surrounded by a large expanse of open car park. The buildings are dated and architecturally unremarkable. They are purely functional seen from the rear, at the point where most visitors arrive. The proposed development would comprise a phased introduction of firstly, the largest portion of the new residential units over a new multi-storey car park (Blocks 1 & 2) and improvement and landscaping of Swanley Square, followed by the remaining blocks in sequence, culminating in the formation of a new retail thoroughfare along Nightingale Way. The phasing is intended to allow existing businesses to continue to operate without undue disruption and limit the extent of noise and disturbance, whilst facilitating some income in the early stages.
17. The existing buildings are predominantly low scale. The most obvious change to the area would result from the replacement of the open asphalt car park with new buildings up to, in the case of Block 1, 11 storeys high. Four of the other buildings would be of 8 storeys with lesser elements rising to 6 and 7 storeys. Only the block forming the south western side of Swanley Square would be 3 storeys, replacing the existing 2 storey retail and residential building. Combined with its height, Block 1 would also be of substantial bulk, especially seen in views from the High Street and the recreation ground. Block 3 would be in close proximity to much lower existing development at Berkeley Court and The Oaks surgery.
18. However, the immediate visual impact for users of the shopping centre would be muted. Due to distance and perspective, even the 11 storey Block 1 would

be seen well behind Swanley Square and Asda Walk. It would not loom over or dominate these areas, which would retain a sense of pleasant informality. The height of the block has been revised following consultation to reduce its bulk. The imposing effect of height would in any case be mitigated by stepping up the massing of each block to different degrees. The form of the various blocks would define the new Nightingale Way as a destination in itself, rather than as simply a means of parking or delivery. In longer views, the commercial centre of Swanley is currently difficult to perceive for anyone who does not know the area well. Travelling by car or walking from the station, the location of Swanley Square and Asda Walk is not easy to find. The proposed taller buildings would create an urban focus in the townscape which would draw the eye. The arrangement of the various blocks would improve views through to the centre, which are currently unclear. The articulation of the upper floors with angled facades would add an element of architectural interest. Moreover, the prominent siting of Blocks 3 and 5, end on to the recreation ground, would form an attractive frontage to the group as a whole, seen from the recreation ground towards the station.

19. The whole would represent the kind of step change envisaged in the VSH. The proposal to use brick and metal with high level **planted 'green' areas** and planting boxes in a staggered type of fenestration would be attractive and would create a strong sense of place. Overall, the replacement of traffic dominated, characterless car parking and the existing outdated public realm with new occupied buildings and a new and refurbished retail area would reinvigorate the whole of the centre.
20. From outside Swanley, the higher buildings in the centre would not appear out of scale. Swanley is a town of significant size and population. Currently, the only noticeable tall building is Horizon House adjacent to the station, an office building recently converted to residential. The new buildings would not be dissimilar in height and would be distinctive on the skyline. The wide open area of the recreation ground forms an appropriate backdrop for the scale of this proposal. It would not appear unacceptable, alongside the scale and floor area of the existing single storey ASDA superstore.
21. Paragraph 85 of the 2019 National Planning Policy Framework (NPPF) advises that planning policies and decisions should recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites. Paragraph 127 advises amongst other things, that planning policies and decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities). I conclude on this issue that the proposed scheme complies with the design quality and character and appearance aims of the CS (SP1), the ADMP (EN1), emerging policy in the SDLP and the relevant aims of the NPPF.

#### *Living conditions*

22. The concerns over daylight and sunlight relate to 6 apartments in Nightingale House at the south end of Asda Walk which would be facing Block 1: and 12 apartments in Berkeley Court which would face Blocks 2, 6 and 7 across Nightingale Way, 3 of which would be adjacent to Block 3. The owner of No. 8 Nightingale House made representations at the Inquiry. The apartment is one

- of 2 single aspect flats on 1<sup>st</sup> and 2<sup>nd</sup> floors at the northern end of the block. Although on the end of Nightingale House, there are no windows in the flank wall. The occupants rely on daylight in the main living area from a full height opening glazed door with a railing. The kitchen at the rear only benefits from natural light that passes through the living area. The amount of daylight received in the most affected living spaces is already restricted by the relatively small size of the windows and the depth of the rooms. The occupiers frequently need to use artificial light in the kitchen areas. That situation would not change significantly as a result of the scheme.
23. All the flats currently benefit from a wide open aspect to the south west across open car parking areas. Block 1, as revised following consultation, would obstruct a proportion of the daylight and sunlight enjoyed by the occupants. Having regard to the (advisory) guidance in the Building Research Establishment **Report "Site Layout Planning for Daylight and Sunlight: a Guide to Good Practice" second edition (2011)**, the amount of sunlight would remain within acceptable parameters. With regard to levels of daylight, the vertical sky component (VSC), a measure of comparison, would be noticeably and significantly reduced. However, only 4 of the 16 windows affected would have a level below the BRE recommended guideline figure of 27% or 0.8 times the existing value. Two of these are bedrooms. At 22% and above, the remaining 2 living/kitchen areas would retain an acceptable proportion of VSC, given the central urban location.
24. The development would negatively affect daylight distribution within the living areas of the 2 most affected flats in Nightingale House and this represents a degree of harm. However, this would not be to the extent that unacceptable living conditions would result.
25. Turning to the 3 storey Berkeley Court, the daylight and sunlight received at windows to bedrooms, lounges and kitchens of flats with a north east elevation would not be unacceptably affected by the proposed development on the opposite side of Nightingale Way. In terms of daylight distribution, 47 would meet the BRE recommendation. Ten would retain between 0.63 and 0.77 times their existing value, as opposed to the 0.8 times recommendation. However, the effect would be most noticeable at the rear of the affected rooms where the internal door is situated: the remaining floor area of these rooms would continue to receive an acceptable level of daylight. The remaining 3 bedrooms facing the proposed Block 3 on the south eastern flank wall would experience a greater and very noticeable reduction in daylight: especially on the ground floor. However, this is because the existing windows currently receive daylight across an open car park. Given the mostly night-time use of these rooms, it is not considered that an unacceptable impact on living conditions would occur.
26. I conclude on this matter that the amount of daylight and sunlight enjoyed by occupants of dwellings in Nightingale House and Berkeley Court would be reduced, but not to the extent that their living conditions would be unacceptably affected. The NPPF at paragraph **123(c) requires "a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards)".** Any redevelopment of the under-utilised town centre is likely to lead to an effect on daylight and sunlight to some extent. There would be a limited degree of harm to the occupants of a very small number of flats which needs to be taken into

account but the magnitude of this does not mean that the development would conflict with the amenity protection objectives of policy EN2 of the ADMP.

### *Parking*

27. The existing parking areas do not contribute to the character or quality of the area. Moreover, different parking policies have led to under-use of parts of the centre and excess demand in others. Parking standards are set by the Kent Design Guide: Interim Guidance Note 3 (IGN3) which sets a maximum standard of one space per residential unit: a reduction in this, or even nil provision is encouraged in support of demand management and the efficient use of land. Whilst this standard is now of considerable age, the overall thrust of national and local development plan policy (policy LO4, in respect of developments in Swanley) remains to limit the need to travel whilst offering a genuine choice of transport modes.. The 2019 NPPF says that this can help to reduce congestion and emissions, and improve air quality and public health. Paragraph 122 indicates that the efficient use of land needs to take into account the scope to promote sustainable travel modes that limit future car use. Swanley is well served by public transport and is a location where the density of development can be optimised and the quality of parking improved to be under cover, safe and secure as well as providing better access for pedestrians and cyclists.
28. Traffic surveys indicate a great number of unoccupied parking spaces throughout the week, except for 2 hours on market days. There is no evidence showing that occupiers of the new apartments in the scheme will necessarily all have cars. The provision of dedicated parking spaces for a car club, which is a common feature of new flatted developments and which is a benefit ensured by the S106 Agreement, is likely to be attractive to many. The fact that Block 1 **will be 'Build to Rent' further reduces the likelihood that** many occupiers will have private cars.
29. There is no evidence to contradict the sufficiency of the proposed 180 spaces for the 303 residential apartments including 132 in Block 1: or the adequacy of 338 spaces in total, which has been established using unquestioned demand methodologies and has been agreed, following consultation and amendment, by the highways and transportation authority, Kent County Council<sup>1</sup>. The likely shortage on market days would be addressed by the provision of a market day bus service (ensured by the S106 Agreement) which would stop in Nightingale Way and at another point near Asda, to be agreed.
30. There was a discussion at the Inquiry about the needs of market traders who currently use some spaces on the site of Block 1. Eleven dedicated replacement spaces form part of the proposal between Blocks 1 and 2 for use on market days. It is understood that traders use a variety of locations nearby including local streets and a hoarded site at the redundant Swanley Working **Men's Club** in the High Street, currently owned by the Council and allocated for residential development. Some traders use their vehicles at the point of sale. From my inspection of the market and from the evidence of the market trader who attended the Inquiry, there is nothing to suggest that the future vitality of the market is under threat from the proposed scheme.

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<sup>1</sup> Department for Transport Guidance on Transport Assessment, National Planning Practice Guidance 2014, DCLG advice, TRICS (Trip Rate Information Computer System) and ARCADY (Assessment of Roundabout Capacity And Delay). See also Swanley Transport Study CD 42/3

31. I do not question the genuine concerns of the Town Council and local residents on parking problems that exist currently and the widely perceived prospect that this development could exacerbate them. However, **I accept the appellant's** evidence that there are few car parks that do not have a **'no deficiency' position** from time to time. Government policy is as outlined above. Redevelopment of the centre of Swanley, if it is to take place, in whatever form, is going to involve new parking arrangements in accordance with national and local policy aims to encourage sustainable transport modes in such well served central locations. The projected number of parking spaces would satisfy the projected demand. This is notwithstanding any modal shift that may occur in the future.
32. I conclude that there is no evidence that the proposed development would not comply with the transport and parking aims of CS policy SP2 and ADMP policies T1 and T2, and national guidance.

#### Other matters

##### *S106*

33. A signed and dated Section 106 Agreement and Deed of Variation have been provided which facilitates the provision, implementation and monitoring of a Travel Plan; the provision of a quicker pedestrian link to the station, when practically possible (**due to land ownership issues outside the appellant's** control); access from the development to the recreation ground; improvements to Nightingale Way; improvements to Swanley Square; the provision of a market day bus service and 2 bus stops; the provision of affordable housing in the form of Build to Rent units (such units to be subject to a viability review if subsequently offered on the market thereby identifying an affordable housing contribution); the provision of a replacement Cedars Surgery within Block 7 within the phasing programme, subject to the agreement of the NHS Dartford Gravesham Swanley Clinical Commissioning Group; a Car Club and membership for the occupiers of each housing unit for 3 years, with monitoring; a scheme for employment, education and skills for local residents; a local procurement strategy; provision for a late stage review of affordable housing viability for the outline elements; and a contribution towards parking control.
34. I consider that the provisions of the Agreement and Variation are directly related to the proposed development, fairly and reasonably related in scale and kind, and would be necessary to make it acceptable. They meet the tests set out in paragraph 56 of the 2019 NPPF and Regulation 122 of the CIL Regulations. As such I give the S106 Agreement and Variation significant weight.

##### *Housing supply*

35. Housing supply was the subject of up to date written statements including a summary of deliverable housing sites from the Council, dated April 2019<sup>2</sup>. The Council identifies a surplus in supply of 9 units above the 3711 units<sup>3</sup> agreed to be required over the next 5 years. This is an extremely small margin. However, it is unclear whether the sites are all deliverable, in the terms set out in the NPPF. Some permissions have expired because pre-commencement conditions have not been addressed. Some are outline permissions where it cannot be

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<sup>2</sup> Doc 4

<sup>3</sup> The appellants round this up to 3712

concluded that reserved matters are capable of resolution within 5 years. Many are only **noted as 'Application being prepared'**, with no assurance that an application is actually forthcoming, what sort of application it would be (full or outline) or that it would be approved: or whether there would need to be an accompanying S106 Obligation. All of these factors cast significant doubt on the deliverability of the required dwellings within the required timescale. Importantly, the Council relies on the dwellings included in the appeal scheme being allowed in order to meet its housing delivery plans.

36. The extent of **doubt cast on the Council's** 5 year housing land deliverability is so significant that I have to conclude that the claimed 0.2% surplus is extremely unlikely to exist. The Council acknowledged at the Inquiry that the housing supply figure is untested and that the 'tilted balance' set out in paragraph 11 of the NPPF, should apply.
37. I have taken account of all the other matters raised, including the need for some retail businesses and the Cedars Surgery to relocate, but the development would not achieve the comprehensive improvements desired in Swanley town centre without some inconvenience. The increase in bulk and height of the town centre in views from outside the settlement would not harm any aspect of the Kent Downs Area of Outstanding Natural Beauty or how it is experienced.

## Conclusions

38. Objectors draw attention to the strong community spirit in Swanley and point out that the proposed development has been resisted consistently in consultation and throughout the application process. They consider that it is unlikely that retailers will be attracted to the new units. I recognise that the scheme represents a significant and substantial change in the nature of the town centre that will affect the way many people experience their day to day lives. However, without decisive action, the centre is extremely likely to continue to decline. The existing buildings and the businesses in them are unlikely to become more attractive or prosperous without the economic stimulus that regeneration would bring. The gradual outflow of shoppers and their purchasing power to other places is not going to go away without new investment. Whilst there may be other ways in which the centre can be reinvigorated, of lesser scale and impact, there is no alternative scheme being put forward. The improvement and revitalisation of Swanley town centre by means of comprehensive redevelopment has been a consistent policy objective for many years.
39. The provision of 303 dwellings including 132 affordable homes in the form of **'Build to Rent' for local people** comprises a very significant benefit that attracts great weight on its own. The location of the new dwellings on brownfield land at the centre of the town would improve the night-time economy and provide improved security. The creation of a large area of new retail space, the refurbishment of the Square and the upgrading of Nightingale Way would revitalise the centre. The prospect of an improved link to the station is a positive aspect, as is the proposal to plant up roof areas and balconies and provide an allotment area as part of the scheme. The development would help to reduce pressure to develop the Green Belt, which comprises 93% of the area of Sevenoaks District. The site is well served in terms of public transport, being

**within the Transport for London 'Oyster' area** Zone 8 and accessible by buses from outlying parts of Swanley and nearby villages.

40. Against these benefits, a deterioration in terms of sunlight and daylight has been identified for a few occupiers, which does not lead to unacceptable living conditions. No evidence has been provided to indicate that the proposed height, mass, design or density of the proposed buildings on this town centre site would be inappropriate. The scheme would represent significant change with inconvenience for some businesses and disruption during the construction period. However, none of these disadvantages, nor any of the other points conscientiously and passionately raised by objectors, begin to outweigh the benefits of the proposal. I conclude that the development complies with the development plan and should be granted planning permission.
41. Moreover, the District has not provided persuasive evidence that it has a 5-year housing land supply and policies for the supply of housing were accepted to be out-of-date. In accordance with NPPF paragraph 11, if development plan policies which are most important for determining the application are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The application of the tilted balance reinforces the case for approving the scheme.

#### Conditions

42. I have considered the suggested conditions in the light of paragraph 55 of the NPPF, planning policy guidance and Appendix A to Circular 11/95 *The Use of Conditions in Planning Permission: Suggested Models of Acceptable Conditions for Use in Appropriate Circumstances*. They have been adapted in accordance with the recommendations therein where appropriate, to ensure the wording is precise, necessary, relevant and enforceable. The wording has also been altered in accordance with comments received and discussed at the Inquiry. The submission of the agreed draft conditions implies the written agreement of the appellant to those conditions requiring action prior to construction.
43. Apart from the time limitation on the start of development, the usual conditions concerning submission of reserved matters and the list of approved drawings, conditions are necessary to establish and remediate contamination. Drainage details need to be approved to ensure surface water is dealt with in accordance with SUDS principles<sup>4</sup>.
44. No condition is necessary to control waste water arrangements and the discharge into the public sewer as this is a statutory responsibility. The requirement to complete phases 1A and 2 within a certain time is unreasonable. It cannot be ensured and fails to meet the tests set out in the NPPF.
45. A piling method statement is necessary in the interests of safeguarding the water supply and avoiding undue disturbance. A Demolition and Construction Environmental Management Plan is necessary in the interests of the continuing operation of the centre and local amenity. Other aspects of the development that necessitate conditions include an archaeological investigation; site levels; broadband connections; external materials and hard and soft landscaping;

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<sup>4</sup> Sustainable Urban Drainage System

noise mitigation within dwellings; refuse and recycling arrangements; parking management; the provision of cycling storage and electric charging points; tree protection; biodiversity enhancements; external lighting and delivery and servicing.

46. Other conditions **require a minimum BREEAM rating of 'Very good'**; seek to control air quality and sound emissions resulting from various plant installations; require crime prevention measures; and details of privacy screens on the podium of Block 1. Conditions require details of interactive and directional signage for users of the new parking, and the provision of an upgrade for the pedestrian crossing on the High Street. Restrictions are placed on the use of commercial space to avoid a concentration of single uses and to encourage viability. Opening hours are restricted in the interests of local amenity. Permitted development rights are withdrawn in respect of boundary treatment, commercial extensions and communications equipment in the interests of character and appearance. Conditions concern the provision of the car park and its access along a widened Nightingale Way before occupation of Blocks 1 or 2; the provision of public art as part of the car park cladding; provision of spaces for use by the car club; the provision of allotments and a scheme for growing hops; and controlling the times of use of communal amenity areas in Block 1. To ensure that the much needed landscaping and improvements to Nightingale Way take place, a condition prevents occupation of any retail units in Blocks 4, 6 and 7. Finally, a condition requires the appearance of Blocks 3, 5, 6 and 7 (the outline permission) to conform to a design code based on the Design and Access Statement.
47. For all the above reasons, the appeal should be allowed.

*Paul Jackson*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Megan Thomas Of Counsel, instructed by the Head of Legal and Democratic Services, Sevenoaks District Council

### FOR THE APPELLANT:

Sasha White	Queens Counsel, instructed by Osborne Clarke
He called	
David Cafferty BSc (Hons) BArch RIBA	HLM Architects
Judith Livesey BA MA MRTPI	Lichfields
Ian Smith MRICS	Consil
Paul Lulham MSc MA CMLT	DHA
Dr Malcolm Hockaday FRTPI FCMI FRSA	Lichfields

### INTERESTED PERSONS:

Dr E Lunt	The Oaks Surgery
Clive Baugh	Local resident
Cllr Dee Morris	On her own behalf
Robert Murrell	Business owner
John Roach	Local resident
Robert Brickell	Swanley Neighbourhood Plan
Alan Dean	Local resident
John Burton	Local resident
Cllr Lesley Dyball	SDC local Councillor
Chris Prestedge	Swanley Action Group
Peter Bucknell	Local resident
Elaine Everest	Local resident
David Griffith	Local resident
Jennifer Edwards	Local resident
Michelle Blandford	Local resident
Mark Fittock	Local resident
Albert Venter	Local resident
Anna Taylor	Local resident
Paul Brickell	Local resident
Dale Watson	Local resident
Tracey Moore	Local resident
Paul Darrington	Swanley Town Council
Cllr Jackie Griffiths	SDC local Councillor
Monica Snow	Local resident
Debbie Stock	Dartford/Gravesham/Swanley Clinical Commissioning Group

### DOCUMENTS

- 1 Statement from Dr Lunt
- 2 Letter from Mrs J V Cockerton
- 3 Statement from the Council

- 4 Council note on housing supply dated April 2019 together with Lichfields briefing note on housing supply dated 14 May 2019
- 5 Appeal decision ref APP/G2245/W/18/3214175, supplied by the appellant
- 6 Drawings pertaining to Doc 5
- 7 Statement from Greg Hart
- 8 Schedule of S106 policy justification, submitted by the Council
- 9 Photos of Horizon House, submitted by a member of the public
- 10 Statement from Mr & Mrs B R Hurd
- 11 Copy of statement by Chris Prestedge
- 12 Copy of ADMP Appendix H2 (c) Swanley Town Centre Regeneration Area, supplied by the appellant
- 13 Copy of Schedule 12 of the S106 Agreement
- 14 Letter confirming status of DS Jersey (No 5) Ltd, from U+I Group plc
- 15 Email trail between the Dartford/Gravesham/Swanley Clinical Commissioning Group and SDC
- 16 Copy of comments from Fela Adewusi
- 17 Plan showing potential bus stop location in Nightingale Way, supplied by the appellant
- 18 Analysis of relationships between Nightingale House and between apartments in Block 1, requested by Inspector
- 19 Note on camera angles and lenses used in CGI

#### Schedule of conditions

##### Time limitation

1. The development within Phases 1A and 2 hereby permitted shall be commenced before the expiration of three years from the date of this permission.

##### Outline Planning Permission – Phases 1B, 2, 3, 4 and 5

2. Approval of the details of the landscaping and external appearance (hereinafter called the "Reserved Matters") for each relevant phase shall be obtained in writing from the local planning authority before any development in that phase is commenced (excluding demolition or remediation works) and the development shall be carried out as approved.

##### Outline Planning Permission – Phases 1B, 2, 3, 4 and 5

3. Application for approval of the Reserved Matters for each phase shall be made to the local planning authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun no later than the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved.

##### Approved plans

4. The development hereby permitted shall be carried out in accordance with the following approved plans:
  - SWA-HLM-XX-XX-DR-A-07-01 PA2
  - SWA-HLM-XX-XX-DR-A-06-01 PA6
  - SWA-HLM-XX-XX-DR-A-06-02 PA6
  - SWA-HLM-XX-XX-DR-A-06-03 PA2

- SWA-HLM-XX-XX-DR-A-06-04 PA2
- SWA-HLM-XX-00-DR-A-04-10 PA2
- SWA-HLM-XX-01-DR-A-04-10 PA2
- SWA-HLM-XX-02-DR-A-04-10 PA2
- SWA-HLM-XX-XX-EL-A-04-01 PA2
- SWA-HLM-XX-GF-GA-A-06-01 PA6
- SWA-HLM-XX-00-GA-A-06-01 PA6
- SWA-HLM-XX-01-GA-A-06-01 PA6
- SWA-HLM-XX-02-GA-A-06-01 PA6
- SWA-HLM-XX-03-GA-A-06-01 PA6
- SWA-HLM-XX-04-GA-A-06-01 PA6
- SWA-HLM-XX-05-GA-A-06-01 PA6
- SWA-HLM-XX-06-GA-A-06-01 PA6
- SWA-HLM-XX-07-GA-A-06-01 PA6
- SWA-HLM-XX-08-GA-A-06-01 PA6
- SWA-HLM-XX-09-GA-A-06-01 PA6
- SWA-HLM-XX-10-GA-A-06-01 PA6
- SWA-HLM-XX-13-GA-A-06-01 PA6
- SWA-HLM-XX-XX-SE-A-06-01 PA4
- SWA-HLM-XX-XX-EL-A-06-01 PA4
- SWA-HLM-XX-XX-EL-A-06-02 PA3
- SWA-HLM-XX-XX-EL-A-06-03 PA5
- SWA-HLM-XX-XX-EL-A-06-04 PA2
- SWA-HLM-XX-XX-EL-A-06-05 PA3
- SWA-HLM-XX-XX-EL-A-06-06 PA2
- SWA-HLM-XX-XX-EL-A-06-07 PA2
- SWA-HLM-B1-LG-GA-A-04-01 PA5
- SWA-HLM-B1-00-GA-A-04-01 PA4
- SWA-HLM-B1-01-GA-A-04-01 PA4
- SWA-HLM-B1-02-GA-A-04-01 PA4
- SWA-HLM-B1-03-GA-A-04-01 PA5
- SWA-HLM-B1-04-GA-A-04-01 PA5
- SWA-HLM-B1-05-GA-A-04-01 PA4
- SWA-HLM-B1-06-GA-A-04-01 PA5
- SWA-HLM-B1-07-GA-A-04-01 PA5
- SWA-HLM-B1-08-GA-A-04-01 PA4
- SWA-HLM-B1-09-GA-A-04-01 PA4
- SWA-HLM-B1-10-GA-A-04-01 PA4
- SWA-HLM-B1-RF-GA-A-04-01 PA4
- SWA-HLM-B2-00-GA-A-04-01 PA2
- SWA-HLM-B2-01-GA-A-04-01 PA2
- SWA-HLM-B2-02-GA-A-04-01 PA2
- SWA-HLM-B2-03-GA-A-04-01 PA2
- SWA-HLM-B2-04-GA-A-04-01 PA2
- SWA-HLM-B2-05-GA-A-04-01 PA2
- SWA-HLM-B2-06-GA-A-04-01 PA2
- SWA-HLM-B2-07-GA-A-04-01 PA2
- SWA-HLM-B2-RF-GA-A-04-01 PA2
- SWA-HLM-B4-00-GA-A-04-01 PA2
- SWA-HLM-B4-01-GA-A-04-01 PA2
- SWA-HLM-B4-02-GA-A-04-01 PA2
- SWA-HLM-B4-03-GA-A-04-01 PA2
- SWA-HLM-B4-04-GA-A-04-01 PA2
- SWA-HLM-B4-05-GA-A-04-01 PA2
- SWA-HLM-B4-06-GA-A-04-01 PA2
- SWA-HLM-B4-07-GA-A-04-01 PA2
- SWA-HLM-B4-RF-GA-A-04-01 PA2
- SWA-HLM-B1-XX-EL-A-04-01 PA4

- SWA-HLM-B1-XX-EL-A-04-02 PA4
  - SWA-HLM-B1-XX-EL-A-04-03 PA4
  - SWA-HLM-B1-XX-EL-A-04-04 PA4
  - SWA-HLM-B2-XX-EL-A-04-01 PA4
  - SWA-HLM-B2-XX-EL-A-04-02 PA2
  - SWA-HLM-B2-XX-EL-A-04-03 PA4
  - SWA-HLM-B2-XX-EL-A-04-04 PA2
  - SWA-HLM-B4-XX-EL-A-04-01 PA2
  - SWA-HLM-B4-XX-EL-A-04-02 PA2
  - SWA-HLM-B4-XX-EL-A-04-03 PA2
  - SWA-HLM-B4-XX-EL-A-04-04 PA2
  - SWA-HLM-B1-XX-SE-A-04-01 PA5
  - SWA-HLM-B1-XX-SE-A-04-02 PA5
  - SWA-HLM-B1-XX-SE-A-04-03 PA5
  - SWA-HLM-B2-XX-SE-A-04-01 PA2
- 
- Air Quality Assessment (June 2017)
  - Arboricultural Impact Assessment (May 2017)
  - Arboricultural Survey (May 2017)
  - Daylight and Sunlight Report (07.06.17)
  - Design and Access Statement (05.05.17)
  - Draft Framework Travel Plan (June 2017)
  - Economic Benefits Assessment (July 2017)
  - Energy and Sustainability Statement (26.05.17)
  - Flood Risk Assessment (07.06.17)
  - Wind Assessment (17.11.16) and Addendum (dated 06.10.17)
  - Noise Assessment (June 2017)
  - Phase 1 Geo-Environmental Assessment (June 2017)
  - Planning Statement, prepared by Lichfields (July 2017)
  - Planning Viability and Housing Statement (July 2017)
  - Site Waste Management Plan (16.03.16)
  - Statement of Community Engagement (2017 Addendum)
  - Surface Water Management Report (30.06.17)
  - Townscape and Visual Impact Assessment (06.06.17)
  - Transport Assessment (June 2017)
  - Utilities Statement (30.06.16)

#### Land contamination

5. No development shall be carried out on the land until a remediation strategy to deal with the risks associated with contamination of the site has each been submitted to and approved, in writing, by the local planning authority. The strategy will include the following components:
  - a) A preliminary risk assessment which has identified:
    - i. all previous uses
    - ii. potential contaminants associated with those uses
    - iii. a conceptual model of the site indicating sources, pathways and receptors
    - iv. potentially unacceptable risks arising from contamination at the site.
  - b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

- c) The results of the site investigation and the detailed risk assessment referred to in (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components requires the written consent of the local planning authority. The scheme shall be implemented as approved.

#### Land contamination

- 6. Prior to the first occupation of the residential units within any relevant phase, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan and certificates for removed material and imported soils to demonstrate that the site remediation criteria have been met. The development shall be carried out in accordance with the approved details.

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be implemented as approved.

#### SUDS

- 7. Prior to the commencement of development, a detailed sustainable surface water drainage scheme for the site compliant with the principles set out in the Surface Water Management Strategy (Heyne Tillet Steel, October 2016) shall be submitted to and approved in writing by the local planning authority. The drainage scheme shall demonstrate that the surface water generated by the whole development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) for all areas can be accommodated and disposed of via infiltration within the curtilage of the site, unless otherwise agreed in writing by the local planning authority. No development shall take place other than in accordance with the approved details.

#### SUDS

- 8. No building hereby permitted shall be occupied within a phase until details of the implementation, maintenance and management of the sustainable drainage scheme for that phase have been submitted to and approved in writing by the local planning authority. The scheme for the relevant phase shall be implemented and thereafter managed and maintained in accordance with the approved details. Details shall include:
  - i) a timetable for its implementation; and
  - ii) a management and maintenance plan for the lifetime of the development/phase which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

No development shall take place other than in accordance with the approved details.

#### SUDS

9. Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where it has been demonstrated to the local planning authority's satisfaction that there is no resultant unacceptable risk to controlled waters and/or ground stability. The development shall be carried out in accordance with the approved details.

#### Piling method statement

10. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express prior written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater or by means of disturbance to local residents. The development shall be carried out in accordance with the approved details.

#### Air quality

11. Prior to the commencement of works above ground level within Phase 1A, further details of the hereby approved Combined Heat and Power Plant shall be submitted to and agreed in writing by the local planning authority. The details shall include the location, size and design of any external flue(s) and an air quality impact assessment. The development shall be carried out in accordance with the details so approved and the hereby approved Energy and Sustainability Report (reference 9023.003.004, dated 26 May 2017).

#### Archaeology

12. Prior to the commencement of each phase of development, the applicant, or their agents or successors in title, will secure and implement in respect of that phase:
  - i. A desk-based assessment of the archaeological potential, undertaken by an appropriate geo-archaeologist and Palaeolithic specialist, submitted to and approved in writing by the local planning authority; and
  - ii. Implementation of archaeological field evaluation and discovery works in accordance with a specification and written timetable which has been submitted to and approved in writing by the local planning authority.

No development of the relevant phase shall take place other than in accordance with the approved details.

#### Demolition and Construction Environmental Management Plan (DCEMP)

13. Prior to the commencement of each phase of development, a Demolition and Construction Environmental Management Plan (DCEMP) for that phase shall be submitted to and approved in writing by the local planning authority and thereafter implemented and maintained throughout the construction period of that phase in accordance with the approved DCEMP. The DCEMP shall include:
  - a. Details of the proposed working hours;
  - b. Details of locations of vehicle parking for site operatives and visitors;
  - c. Details of proposed wheel washing facilities located adjacent the construction site access;

- d. Details of an area for the storage of plant and materials;
- e. A site waste management plan;
- f. Details of temporary utilities;
- g. How the construction will comply with the sustainable use of soils on construction sites;
- h. Details of temporary utilities;
- i. Details of a routing agreement for the site construction traffic and HGV traffic associated with the movement of bulk material to and from the site;
- j. Details of means of controlling noise, vibration and suppressing dust during the construction process (to include the regime for dust deposition measurement at the site boundaries);
- k. Details of a surface water drainage scheme for the temporary drainage of the Site;
- l. Details of hours of construction/operation.

#### Site levels

- 14. Prior to commencement of development of Phase 1A, full details of existing and proposed levels, including finished slab levels of Blocks 1 and 2 shall be submitted to and agreed in writing by the local planning authority. Proposed plans shall include a level (e.g. highway or footpath) adjacent to the site that will remain fixed/unchanged and shall include levels adjoining the site. No development shall take place other than in accordance with the approved details.

#### Utilities

- 15. Prior to the commencement of each phase, details of a scheme to provide utilities connections to the dwellings hereby permitted in that phase to facilitate access to infrastructure that meets modern communication and technology needs, including broadband and where feasible Superfast Fibre Optic Broadband, high speed internet cabling and digital TV cabling shall be submitted to and approved in writing by the local planning authority. The agreed scheme shall be provided prior to first occupation of any of the residential units in the relevant phase.

#### Crime Prevention

- 16. Prior to the commencement of works above ground level within each phase, a scheme of measures to minimise the risk of crime according to the principles and physical security requirements of Crime Prevention through Environmental Design (CPTED) for that phase shall be submitted to and approved in writing by the local planning authority. The measures so approved shall be implemented prior to the first occupation of that phase of the development and shall be retained thereafter.

#### Materials

- 17. Prior to the commencement of above ground works within each phase, samples of all materials to be used in the construction of the external surfaces of each building in that phase shall be submitted to and approved in writing by the local planning authority, including (where applicable):
  - i) Samples of all brick (including details of the mortar and method of pointing)
  - ii) Samples of precast stone;

- iii) Samples of aluminium spandrel panels;
- iv) Samples of the proposed window, door and balcony treatments;
- v) Samples of all other materials to be used externally.

The development shall be carried out in accordance with the approved details.

#### Privacy screens

18. Prior to occupation of Phase 1A, details of privacy screening to the east (side) boundary of the hereby approved 6th floor and podium level roof terraces shall be submitted to and agreed in writing by the local planning authority. The details so approved shall be implemented prior to the first use of the terraces and shall be retained thereafter.

#### Noise mitigation

19. Prior to the commencement of works above ground level within each phase (excluding demolition and/or remediation works), a noise assessment and characterisation for the potential noise impact on the dwellings within that phase, together with details of necessary mitigation measures shall be submitted to and approved in writing by the local planning authority.

The noise assessment shall be carried out in accordance with the requirements of BS4142: 2014.

The mitigation measures shall include details of acoustic ventilation and glazing required within that phase to protect the approved bedrooms, living rooms and balconies from railway and road traffic noise and vibration in accordance with the requirements of BS8233:2014 and the strategy set out in the Environmental Noise Assessment by Idom Merebrook (reference ENA-19502-16-101 REV A, dated June 2017).

The details submitted in relation to phase 1A shall include a noise management plan for the existing delivery and service yard to the rear of Block 2. The noise management plan shall include details of hours of operation, number and type of vehicle movements and measures to control noise and disturbance to adjacent occupiers.

The approved noise management measures shall be completed in accordance with the approved details prior to the first occupation of the relevant phase and maintained thereafter.

#### Refuse and recycling

20. Prior to the commencement of above ground works within each phase, details for the storage of waste on the premises, including the design and position of storage facilities for refuse and recycling for that phase shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to (i) in relation to the residential element of the development, first occupation; or (ii) in relation to the commercial element of the development, commencement of the use hereby permitted. The approved refuse facilities shall be retained and maintained thereafter.

#### Plant/machinery

21. No external plant, equipment or extract system shall be installed until full details relating to its design, noise, vibration and control of odour have been submitted to and approved in writing by the local planning authority. The details shall include any necessary mitigation required to demonstrate that the plant, equipment or extract system would not cause an increase in the ambient background noise level at the

boundary of the nearest residential property. For the avoidance of doubt, calculated rated noise levels from any externally mounted plant or equipment at the boundary of the nearest noise residential property shall not exceed the existing background level in accordance with the results of a BS4142:2014 noise assessment.

The plant, equipment or extract system shall be installed in accordance with the approved details and retained and maintained as such thereafter.

#### Interactive signs

22. Prior to the commencement of above ground works, details for the provision of three interactive parking signs, including their design, location and timetable for implementation, shall be submitted to and approved in writing by the local planning authority.

The signage shall be installed in accordance with the approved details.

#### Directional signage strategy

23. Prior to the first occupation of each phase of the development, full details of a directional signage strategy relevant to that phase shall be submitted to and approved in writing by the local planning authority.

Details shall include the location of informational, warning and directional signage within the site and around the perimeter of the development hereby approved including:

- a) Information, location and availability of car parking spaces including car club spaces hereby approved;
- b) Information, location and availability of servicing and delivery locations and restrictions;
- c) Directional signage and distance information for location of public transport facilities including bus, train and taxi pick-ups;
- d) Information and directional signage for pedestrian movements, footways and road crossing points between all parts of the development hereby approved.

The scheme shall be implemented fully in accordance with the approved details prior to the first occupation of the relevant phase and retained and maintained thereafter.

#### Pedestrian crossing – Grampian condition

24. Prior to the commencement of above ground works, details for the upgrade of the existing controlled pedestrian crossing on the High Street from a Pelican crossing to a Puffin crossing shall be submitted to and approved in writing by the local planning authority.

The details shall include a timetable for implementation. The development shall take place in accordance with the approved details.

#### Parking Management Plans

25. Prior to commencement of use of the car parks hereby approved, details of a Parking Management Plan to include space allocation between users (including market day van and disabled car parking provision) shall be submitted to and approved in writing by the local planning authority:

- a) Multi-storey car park;
- b) Car parking adjacent to Block 3.

- c) Car parking adjacent to Block 4
- d) Car parking adjacent to Block 5
- e) Any other car parking to be provided.

The relevant car parks shall be provided prior to the first occupation of the development within that phase and shall be maintained and operated in accordance with the Parking Management Plans so approved, unless otherwise agreed in writing by the local planning authority.

#### Electric vehicle charging

26. Prior to the commencement of each phase, full details of the electric vehicle charging points showing their proposed locations, type and specifications shall be submitted to and approved in writing by the local planning authority. The electric vehicle charging infrastructure shall be installed in accordance with the details so approved prior to the first occupation of that phase of the development and shall be retained and maintained for use at all times.

#### Cycle parking

27. Prior to the commencement of each phase, details of all secure cycle parking facilities, including where appropriate details of internal wheeling ramps on stairwells and lifts shall be submitted to and approved in writing by the local planning authority.

The approved facilities shall be fully implemented and made available for use by the allocated users prior to the first occupation of that phase of the development and shall be retained and maintained for use at all times.

#### Hard and soft Landscaping – Detailed Phases

28. Prior to the commencement of phase 1A and 2, a landscaping scheme for those phases consistent with the hereby approved Landscape Strategy shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall include the following details:

- a) trees and shrubs to be retained (including details of appropriate tree protection measures for the existing trees and shrubs shown to be retained);
- b) soft plantings, including trees, grass and turf areas, shrub and herbaceous areas; their location, species (use of native species where possible), density and size; including climbing plants on Block 1;
- c) enclosures: including types, dimensions and treatments of walls, fences, pedestrian and vehicular gates, screen walls, barriers, rails, retaining walls and location, species and size of hedges;
- d) biodiverse and green roofs;
- f) any other landscaping feature(s) forming part of the scheme; and
- g) a landscape management plan detailing how each of the landscaping areas will be maintained.

All landscaping in accordance with the approved scheme shall be completed/planted prior to the first occupation of any part of that phase. The landscaping and tree planting shall have a two year maintenance/watering provision following planting and any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely

damaged or diseased within fifteen years of completion of the development shall be replaced with the same species or an approved alternative to the satisfaction of the local planning authority within the next planting season.

No development shall take place other than in accordance with the approved details and the landscaping shall be maintained as such thereafter.

#### Tree Protection/Pruning

29. Prior to the commencement of development, an Arboricultural Method Statement (to include a schedule of pruning works) and a Tree Protection Plan (specifying necessary tree protection measures for each phase of development) in accordance with British Standard 5837:2012 (or later revision) has been submitted to and approved in writing by the local planning authority.

The development shall be carried out in accordance with the agreed details and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until fencing has been erected in accordance with the Tree Protection Plan. Within any area fenced in accordance with this condition, nothing shall be stored, placed or disposed of above or below ground, the ground level shall not be altered, no excavations shall be made, nor shall any fires be lit, without the prior written consent of the local planning authority. The fencing shall be maintained in accordance with the approved details, until all equipment, machinery and surplus materials have been moved from the site.

#### Hard and soft Landscaping – Outline Phases 1B, 3, 4 and 5

30. The reserved matters submitted in respect of Phases 1B, 3, 4 and 5 shall include the landscaping scheme for that phase consistent with the hereby approved Landscape Strategy. The landscaping scheme shall include the following details:

- a) trees and shrubs to be retained (including details of appropriate tree protection measures for the existing trees and shrubs shown to be retained);
- b) soft plantings, including trees, grass and turf areas, shrub and herbaceous areas; their location, species (use of native species where possible), density and size; including climbing plants on Block 1;
- c) enclosures: including types, dimensions and treatments of walls, fences, pedestrian and vehicular gates, screen walls, barriers, rails, retaining walls and location, species and size of hedges;
- d) biodiverse and green roofs;
- e) hard landscaping: including ground surfaces (including the Public Right of Way through the site), kerbs, edges, ridge and flexible pavings, unit paving, steps and if applicable synthetic surfaces;
- f) any other landscaping feature(s) forming part of the scheme; and
- g) a landscape management plan detailing how each of the landscaping areas will be maintained.

All landscaping in accordance with the approved scheme shall be completed/planted prior to the first occupation of any part of that phase. The landscaping and tree planting shall have a two year maintenance/watering provision following planting and any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within fifteen years of completion of the development shall be replaced with the same species or an approved alternative to the satisfaction of the local planning authority within the next planting season.

No development shall take place other than in accordance with the approved details and the landscaping shall be maintained as such thereafter.

#### Biodiversity enhancement

31. Prior to the commencement of each phase, full details of appropriate measures to enhance the biodiversity and nature conservation value of the part of the site related to that phase shall be submitted to and approved in writing by the local planning authority. The details shall include, but not be limited to, provision of bat boxes, bird boxes and native planting and a timetable for implementation.

No development shall take place other than in accordance with the approved details prior to the first occupation of the relevant phase of the development.

#### External lighting

32. Prior to the commencement of each phase, details of external lighting for that phase shall be submitted to and agreed in writing by the local planning authority. The details shall include:

- i) Details of the lighting fixtures and location;
- ii) Details of the colours of the light;
- iii) Hours of operation;
- iv) Details of compliance with the Institute of Lighting Engineers guidance notes for the reduction of light pollution.

The approved lighting shall be installed prior to first occupation of the relevant phase and no further external lighting shall be installed on the site without the prior written consent of the local planning authority.

#### Opening hours

33. The ground and first floor commercial units hereby approved shall not be operational except between the hours of 07:00 to 23:00 Monday to Saturday and 0800 to 2200 Sundays and Bank Holidays.

#### Delivery and service times

34. Deliveries, servicing and collections (including waste collections for the commercial uses) shall not take place outside the hours of 0700 and 1900 Monday to Saturday and at no time on Sundays or Bank Holidays.

#### Approved uses

35. The commercial units hereby approved shall be used as Class A1, A2, A3, A4 or A5 or B1 and no other use whatsoever shall be permitted. No more than 30% of the total number of ground floor commercial units hereby approved shall be occupied for Class B1 use at any time.

#### BREEAM

36. The commercial development shall achieve a BREEAM minimum rating of at least Shell Only "Very Good". Evidence shall be provided in writing to the local planning authority –

- i) Prior to the commencement of each phase of development, details of how it is intended the non-residential elements of that phase will achieve a BREEAM Design Certificate minimum rating of "Very Good" or alternative as agreed in writing by the local planning authority; and

- ii) Prior to the first use of each phase of development, details that the development has achieved a BREEAM Post Construction Certificate minimum rating of at least "Very Good" as agreed in writing by the local planning authority.

#### Removal of Permitted Development

- 37. Notwithstanding the provisions of Parts 2 a - f, 7 a - f, 16 a - c, of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order), no development permitted by those parts shall be carried out.

#### Public art

- 38. Prior to the commencement of above ground works associated with Block 1, details of the perforated panelling, to include a scheme of public art, and timetable for implementation shall be submitted to and approved in writing by the local planning authority.

The development shall be carried out in accordance with the approved details before the multi-storey car park comes into use.

#### Multi-storey car park

- 39. No occupation of any residential units within Block 1 or 2 shall take place until the multi-storey car park hereby permitted has been provided in accordance with the approved drawings. The car park shall be retained as such thereafter.

#### Nightingale Way access works

- 40. Prior to first use of the multi-storey car park, the alterations to the Nightingale Way bend, including widening of the carriageway adjacent to Block 1, shall be carried out in accordance with drawing SWA-HLM-XX-00-GA-A-06-01/PA6.

#### Car club

- 41. Prior to the occupation of Phase 1A a strategy for the provision and distribution of a minimum of 3 spaces to be used exclusively for car club(s), shall be submitted to, and approved in writing by the local planning authority. The strategy shall include a timetable for implementation. The spaces shall be provided, retained and maintained in accordance with the approved details.

#### Allotments

- 42. During the first planting season following first occupation of Block 1, the raised planters for fruit and vegetable growing shown on the hereby approved drawing SWA-HLM-XX-ZZ-GA-L-91-10/PA6 shall be created using soil imported to BS3882: 2015 Topsoil grade in order to be suitable for edible planting and retained thereafter.

#### Hops

- 43. Prior to the commencement of above ground works associated with Block 1, a scheme for growing hops, including details of planters and fixings, a maintenance and irrigation programme and timetable for implementation shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the scheme so approved before occupation of the 50<sup>th</sup> apartment in Block 1.

#### Amenity

44. The external communal amenity areas hereby permitted within Block 1 shall not be used other than for essential maintenance, except between the hours of 07.00 to 22.00 on any day.

#### Nightingale Way

45. No occupation of any retail units in Blocks 4, 6 or 7 shall take place until the landscaping and improvement works to Nightingale Way have been completed in general accordance with the Design and Access Statement and drawings SWA-HLM-XX-00-GA-L-91-01 PA3, SWA-HLM-XX-00-GA-L-91-02 PA3, SWA-HLM-XX-00-GA-L-91-10 PA3.

#### Design Code

46. As part of the reserved matters submitted pursuant to condition 2, a document setting out the design principles (**hereafter referred to as a 'Design Code'**) for the development hereby approved shall be submitted to the local planning authority for approval. The Design Code shall set out how the principles and objectives of the Design and Access Statement 05/05/2017 shall be met by the development hereby approved and shall include the following matters:

- (i) The design, form and general arrangement of external architectural features of buildings including the walls, roofs and fenestration.
- (ii) The colour, texture and quality of external materials and facings for the walls and roofing of buildings and structures;
- (iii) The design of the public realm to include landscaping, the colour, texture and quality of surfacing of footpaths, streets, parking areas and other shared surfaces;

The development shall be carried out in accordance with the approved Design Code.



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## Costs Decision

Inquiry opened on 26 March 2019

Site visit made on 7 June 2019

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 16<sup>th</sup> July 2019

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Costs application in relation to Appeal Ref: APP/G2245/W/18/3200270  
Swanley Square Shopping Centre, London Road, Swanley BR8 7TG

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by U+I Group plc for a partial award of costs against Sevenoaks District Council.
  - The inquiry was in connection with an appeal against the refusal of Sevenoaks District Council to grant planning permission for a revised hybrid application for the phased redevelopment of part of the Swanley Square Shopping Centre and land to the rear, comprising a detailed application for Blocks 1, 2 and 4 and an outline only application (with details relating to appearance and landscaping reserved) for Blocks 3, 5, 6 and 7. Blocks 1, 2 and 4 comprise the erection of three buildings ranging between 3 and 11 storeys in height comprising 210 residential units (build to rent and market), 1457 square metres (sqm) of retail/commercial floorspace (Use Class A1-A5, B1), a multi storey car park and associated public realm surface level parking, landscaping and access works.  
Blocks 3, 5, 6 and 7 involves the demolition of existing buildings/structures and outline parameters for four new buildings which will comprise up to 93 residential units (market) and up to 2,861 sqm of commercial floorspace (use classes A1-A5, B1) up to 958sqm of community floorspace; and associated public realm surface level car parking, landscaping and access works.
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### Decision

1. The application is allowed in the terms set out below in the Formal Decision and Costs Order.

### The submissions for U+I Group plc

2. The submission was made in writing. The appellant seeks an award for the abortive costs of attending the first day of the inquiry on 26 March 2019, which had to be adjourned as a result of the Council's failure to properly or lawfully notify the public of the appeal. The appellant's case relies on the Council's notification letter dated 6 February 2019. This letter expressly stated that spaces would be limited and it gave a clear message that prior registration was required, and that such registration must be completed by the stipulated date. This had major implications in terms of public attendance, as became clear on day 1 of the inquiry. It was the view of both main parties that the inquiry could not proceed. An adjournment was inevitable in order to allow the inquiry to proceed lawfully.
3. There is no basis in procedural rules or planning guidance for such a prior registration procedure or "limited space" constraint to public inquiries. It is

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fundamental to the nature of a public inquiry that it is open to the public, and there should be no limitation on who can attend, such as by imposing a prior registration system or warning that spaces are "limited". People wishing to attend should be able to do so without registering beforehand, and without fear that they may not qualify for a "limited" space. The appellant's costs of attending the adjourned day 1 of the inquiry were wasted and are claimed in this application.

4. The appellant also claims their costs of having to deal with all the matters that have arisen since the 26 March 2019 adjournment because if the Inquiry had been adjourned then these costs would not have arisen, as follows:
  - Dealing with the new LPA position on the 5 year housing land supply. This necessitated a written response from the appellant, in the form of a briefing note.
  - Unnecessarily protracted section 106 and conditions negotiations from March to June 2019.
  - Pre-inquiry conferences attended by the appellant's team in May 2019.

The response by Sevenoaks District Council.

5. There was no failure by the Council to comply with the proper procedure to notify interested parties of the appeal or the appeal venue. Once it had been decided that the appeal would be held by way of public inquiry, the Council sent out 'Notification of Appeal Venue' letters dated 6th February 2019. It is right to concede that there is an element of ambiguity in the notification letter. It could be that the latter phrase in the first paragraph referring to 'spaces limited' could be read as the number of "persons attending to give evidence" being restricted, and therefore asking that the Council be advised of this. However, importantly, it is not unambiguously telling people that they have to pre-register otherwise they will be denied entry or the ability to speak.
6. A costs application has to involve unreasonable behaviour. Whilst the letter is not happily worded, the objective behind it was overtly reasonable in trying to ensure that local residents could be safely and comfortably seated in an appropriately sized room. The letter had the good intention of removing some guesswork.
7. Reference to "limited space" was a matter of fact in that the venue had a limited capacity, significantly less than the number of representations (more than 500) made as part of the process of considering the planning application. It was not an unreasonable action. It was not done recklessly. It was done in good faith with a laudable objective. It had an unintended side effect. The costs regime is a very useful tool in the planning process but it was not put in place to punish any party for an inadvertent slip such as has occurred here.
8. The submission version of the Local Plan was submitted on 30 April 2019 and was accompanied by a 5 Year Supply of Deliverable Housing Sites. It would have been necessary to inform the Inspector of these two developments in any event and the appellants could have chosen to reply. The adjournment has not created the need for the **appellant's** briefing note.
9. Negotiations relating to the s106 agreement and conditions would have needed to be carried out prior to the closing of the original inquiry. The appellant has

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therefore expended no more time on this than would have been required without the adjournment.

10. The Council understands that pre-Inquiry conferences are necessary in the lead up to an inquiry. However, little had changed in terms of the matters relating to the appeal between 26 March 2019 and 4 June 2019 and so there would have been little for the appellant's team to discuss.

## Reasons

11. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG says that local authorities are at risk of an award of costs if they fail to notify the public of an inquiry or hearing, where this leads to the need for an adjournment.
12. Whilst the intention of the Council was to ensure that a room of sufficient size was provided for the Inquiry, **the requirement to register for 'health and safety reasons' required members of the public to contact the Council using the contact information provided.** It was stated at the start of the Inquiry by members of the public that some people who had wished to attend, to listen or to give evidence, could not do so because either the contact number provided was not answered, or there was no response to emails sent to the email address provided.
13. This meant that it was likely that there were people who had not attended because they had been unsuccessful in registering. In any event, even if prospective attendees had been successful in registering, the text of the **Council's note is that at the Inquiry, 'there will be spaces limited'**. That would, unintentionally, have sent the message that a restriction would be placed on numbers. However, there is nothing in the Inquiry Procedure Rules that suggests that numbers attending an Inquiry should be controlled. The **Inspectorate's** Procedural Guide<sup>1</sup> advises that local people are encouraged to take part in the inquiry process. That would especially be the case where **people's** living conditions were a matter at issue, as here.
14. **Accordingly, the Council's behaviour** in issuing such a notice, however well-intentioned, led to the adjournment to 4 June. It is appreciated that the intention was laudable, but the effect was entirely foreseeable. The Council might have avoided an award of costs had it not been evident on the first day **that members of the public had been unable to follow the Council's** suggested procedure because the telephone was not answered, or emails were not replied to. After putting in place a procedure, and knowing the level of interest, the failure to properly deal with **requests for 'registration'** amounted to unreasonable behaviour.
15. Turning to the remaining grounds for an award of costs, the differences between the parties on housing supply did not change substantially between February 2019 (the date of the Lichfields study CD38) and the end of April. The parties had prepared submissions on this matter for consideration by the Inspector on the first day. Nothing arose in respect of the S106 Agreement that would not have arisen later and would have needed dealing with. The

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<sup>1</sup> March 2019

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telephone conversations and meetings necessary were helpful in firming up the **parties' positions** and potentially identifying areas of common ground: and in my **view led to a shortening of the Inquiry sitting time, to everyone's benefit.** The evolution of policy, and the stages through which emerging Local Plans progress, may often need to be notified during an Inquiry and the subsequent decision-making process. I do not find that the appellant was involved in any unnecessary expense in respect of these matters.

#### Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Sevenoaks District Council shall pay to U+I Group plc the costs of the appeal proceedings described in the heading of this decision related to the costs of attending the Inquiry on the first day; such costs to be assessed in the Senior Courts Costs Office if not agreed. The Inquiry opened at 10:00 and was adjourned at 11:30.
17. The applicant is now invited to submit to Sevenoaks District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Paul Jackson*

INSPECTOR