

Appellant Statement of Case

**Land Between Royston Road and Cambridge Road, Barkway,
Hertfordshire.**

On behalf of Redrow Homes South Midlands.

Date: 10 July 2025 | Pegasus Ref: P25-1423_R001v3

LPA Ref: 24/O1994/S73



Document Management.

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1. Introduction

- 1.1. This full Statement of Case ("SoC") is prepared on behalf of Redrow Homes South Midlands (a trading name of BDW Trading Ltd) ("the Appellant"). This SoC accompanies a Planning Appeal made against the non-determination by North Hertfordshire District Council ("North Herts") of an application submitted under Section 73 of the Town and Country Planning Act 1990 ("the s.73 application"). The s.73 application, and this pursuant Appeal, concerns Land between Royston Road and Cambridge Road, Barkway, Hertfordshire ("the Site").
- 1.2. This SoC sets out the planning rationale in support of the proposed variation. The remainder of this SoC is structured as follows:
 - **Section 2** provides relevant details of the Site and its planning history;
 - **Section 3** sets out the relevant planning policy context;
 - **Section 4** sets out the proposed s.73 application;
 - **Section 5** provides an assessment of the appeal proposal; and
 - **Section 6** summarises and concludes the report.
- 1.3. Appendix 1 provides a schedule of the core documents that are enclosed within the Appeal submission, and are referred to as relevant within this SoC.

2. The Site and Planning History

Location

- 2.1. The nature of the variation proposed does not affect the context of the Site, a summary only is provided here as background.
- 2.2. The Site is located to the north of the village of Barkway, and currently comprises of two agricultural fields. Royston Road is located to the west of the Site, and Cambridge Road forms the eastern boundary.
- 2.3. A bridleway runs north to south through the centre of the Site, and a second bridleway is located along the northern boundary. Land immediately to the south of the Site is safeguarded education land.
- 2.4. The Site is located within the boundary of Barkway Parish Council.

Planning History

- 2.5. The Site has a planning history dating back to 2016. The applications of direct relevance to this Appeal are set out below.

Outline Planning Permission

- 2.6. The s.73 application relates to a variation of an Outline Planning Permission ("OPP") granted on 25 July 2023 (18/O1502/OP) for the following development:

Outline application with all matters reserved other than strategic point of access onto Royston Road and Cambridge Road for the erection of up to 140 dwellings and a new shop.

- 2.7. The Applicant for the OPP was the Rand Brothers, and the OPP was granted subject to a number of planning conditions (see CD-E1 for the Decision Notice). Two of those conditions are relevant to this Appeal. The first is condition 3, which relates to compliance with approved plans and reports:

3. The development hereby permitted shall be carried out wholly in accordance with the details specified in the application and supporting, approved documents and plans, together with the reserved matters approved by the Local Planning Authority, or with minor modifications of those details or reserved matters which previously have been agreed in writing by the Local Planning Authority as being not materially different from those initially approved.

Reason: To ensure the development is carried out in accordance with details which form the basis of this grant of permission or subsequent approval of reserved matters.

- 2.8. The list of approved plans and reports is provided on the front cover of the OPP Decision Notice.
- 2.9. The second is condition 20, relating to the surface water drainage strategy:

20. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment carried out by Ardent Consulting reference 163461-02a dated June 2018. The surface water drainage scheme should include;

1. Implementation of the appropriate drainage strategy based on infiltration into using appropriate above ground SuDS measures and indicated on Surface Water Drainage drawing.

2. Provision of storage to ensure no increase in surface water run-off volumes for all rainfall events up to and including the 1 in 100 year + 40% climate change event.

The mitigation measures shall be fully implemented prior to full site occupation and in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

Reserved Matters Submission

- 2.10. Pursuant to grant of the OPP, the Site was purchased by the Appellant and a Reserved Matters submission ("the RM") was validated on 22 August 2024 (24/O1883/RM). The RM was submitted following pre-application discussions with various consultees including Planning and Urban Design Officers.
- 2.11. The RM is yet to be determined.
- 2.12. Although not of direct relevance to this Appeal, it is of note that the Appellant has made various applications to begin discharge the pre-commencement of construction conditions attached to the OPP.

3. Planning Policy Context

- 3.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The Development Plan

- 3.2. The North Hertfordshire Local Plan 2011–2031 (“the Local Plan”) was adopted on 8 November 2022. The site is allocated for development by Policy BK3.
- 3.3. A review of the Local Plan was commenced in January 2024 as required by adopted Policy IMR2. Preparation remains at an early stage, with the Local Development Scheme (November 2024) stating adoption in December 2027.
- 3.4. The Site is located within the area of the Barkway & Nuthampstead Neighbourhood Plan 2018–2031, which was approved at a referendum that took place on 1 May 2025. The Plan does not appear to have been formally made by the Local Planning Authority at the time of writing.

National Policy and Guidance

- 3.5. The following are important material considerations to this Appeal
- National Planning Policy Framework (“the Framework”) (December 2024, as amended February 2025)
 - National Planning Practice Guidance; Flexible options for planning permissions (“the PPG”) (Various) (CD–E16)

Housing Delivery Test

- 3.6. The latest Housing Delivery Test (2023) outlines that over the period 2020–2023, North Herts delivered 1,400 homes against a requirement to deliver 1,333 homes. As such, North Herts achieved a measurement of 105%.

Five Year Housing Land Supply

- 3.7. The most recently published Five-Year Housing Land Supply Position Statement (May 2024) (CD–E18) concludes that over the period 2024/25 – 2028/29 North Herts have a 3.9 year supply of deliverable housing sites with no buffer applied. This equates to a shortfall of 1,359 homes as of 31 March 2024.
- 3.8. Since it was published, the Framework has been revised to introduce a requirement for a minimum 5% buffer to be applied at all times when calculating supply (paragraph 78a). This rule further increases North Herts’ shortfall to at least 1,639 homes (by calculating 5% of the five year housing requirement (5,600 homes) is 280 homes + the currently stated shortfall of 1,359 homes).
- 3.9. The Appellant has not undertaken any detailed analysis and has assumed the delivery data stated in the Position Statement is correct, notwithstanding that the data is more than a

year out of date. The Site is not included in the trajectory; its delivery would allow for an important contribution to be made towards meeting the substantial shortfall in housing supply.

- 3.10. The tilted balance set out at paragraph 11 (d) of the NPPF is therefore engaged and the presumption in favour of sustainable development applies.

4. The s.73 Application

- 4.1. The s.73 application was submitted to North Herts on 6 September 2024 and was validated on 19 September 2024 with the application reference 24/O1994/S73 and the following description:

Removal of wording to Condition 3 of planning permission 18/O1502/OP granted on 25.07.2023.

- 4.2. The proposed amended wording for condition 3 as contained in the covering letter (CD-A2) is copied below:

"The development hereby permitted shall be carried out wholly in accordance with the details specified in the application and supporting, approved documents and plans Location Plan (dwg ref 1797-30-110), the Land Use Plan (dwg ref 1797-30-101E) and the Site Access Plans (dwg refs 163462-006A and 163462-007A) and broadly in accordance with the Proposed Access Arrangements Plan (dwg ref 163462-005A), the offsite highway works plans (dwg refs 163462-002A, 163462-004B and 163462-008), the Access and Movement Plan (dwg ref 1797-30-103E), the Urban Design Parameter Plan (dwg ref 1797-30-104A), the Landscape Parameter Plan (dwg ref 1797-30-105A), the Illustrative Masterplan (dwg ref 1797-30-100G) and the Masterplan Summary Document (dated March 2022), together with the reserved matters approved by the Local Planning Authority, or with minor modifications of those details or reserved matters which previously have been agreed in writing by the Local Planning Authority as being not materially different from those initially approved".

- 4.3. A site notice was placed on 26 September 2024 requesting comments by 19 October 2024. The Appellant agreed Extensions of Time to the statutory determination deadline to allow a decision to be made, with the last of these Extensions expiring on 20 June 2025.

- 4.4. On 23 May 2025 the Appellant requested an amendment to the application description to state the following:

Variation of wording to Condition 3 and Condition 20 of planning permission 18/O1502/OP granted on 25.07.2023.

- 4.5. The proposed amended wording for condition 20 as contained in the covering letter (CD-B1) is copied below:

"The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment carried out by Ardent Consulting reference 163461-02a dated June 2018. The surface water drainage scheme should include; Notwithstanding the surface water drainage strategy set out within the approved Flood Risk Assessment (Ardent Consulting, reference 163461-02a dated June 2018), prior to commencement of development a detailed surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme shall include:

1) Implementation of the appropriate drainage strategy based on infiltration into using appropriate above ground SuDS measures; and

2) Provision of storage to ensure no increase in surface water run-off volumes for all rainfall events up to and including the 1 in 100 year + 40% climate change event.

The surface water drainage scheme shall be fully implemented prior to full site occupation and in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority”.

- 4.6. The update of the public website to reflect this amendment and undertake re-consultation was delayed by North Herts until 3 June 2025. The North Herts website states an expiry date of 21 June 2025 for the re-consultation following this amendment. Officers confirmed that the re-consultation has been limited to the Lead Local Flood Authority only given the content of condition 20 and the proposed changes (CD-D1).

The Appellant

- 4.7. The s.73 planning application forms stated the Applicant as being Mr Glass of Redrow Homes South Midlands. After submission of the s.73 application, Redrow Homes became a trading name of BDW Trading Ltd.
- 4.8. This did not change the company name of the Applicant. For completeness, a request was made to North Herts on 19 June 2025 (CD-D2) for the Applicant name to be amended to state Redrow Homes South Midlands (a trading name of BDW Trading Ltd), and for any references to individual employees removed. This request has not yet been actioned by North Herts.
- 4.9. As stated on the appeal forms, the Appellant is Redrow Homes South Midlands (a trading name of BDW Trading Ltd).

5. The Case for the Appellant

Validity of s.73 application

- 5.1. The s.73 application does not necessitate a change in the description of the original OPP, and does not result in any change to the operative part of the OPP. No change is proposed to the type of development or the quantum of development approved by the OPP, and the Site to which the permission applies remains the same.
- 5.2. There is a need to vary the Section 106 Agreement relating to the OPP to ensure it remains applicable. A Deed of Variation has been prepared by the Appellant (see CD-E20 for latest draft), and is discussed further at paragraph 5.29.
- 5.3. Lastly, it is well-established as confirmed by the PPG (CD-E16)¹ that there is no statutory limit on the degree of change that can be made to conditions under a s.73 application. In other words, material amendments can be made so long as there is no change to the operative part of the original planning permission. This approach is supported by case law, as clearly set out by the High Court in *Armstrong*² and upheld by the Court of Appeal in the *Fiske* judgement³.
- 5.4. The validity and scope of the s.73 application is therefore not in question.

The OPP

- 5.5. The PPG provides the following description for outline planning permissions:

*"An application for outline planning permission allows for a decision on the general principles of how a site can be developed. Outline planning permission is granted subject to conditions requiring the subsequent approval of one or more 'reserved matters'". [our emphasis]*⁴

- 5.6. In respect of the details that an outline planning application must include, the PPG states:

"Information about the proposed use or uses, and the amount of development proposed for each use, is necessary to allow consideration of an application for outline planning permission.

*Under article 5(3) of the Development Management Procedure Order 2015, an application for outline planning permission must also indicate the area or areas where access points to the development will be situated, even if access has been reserved".*⁵

¹ Paragraph: 013 Reference ID: 17a-013-20230726. Revision date: 26 07 2023

² *Armstrong v Secretary of State for Levelling-up, Housing and Communities & Anor* [2023] EWHC 176 (Admin)

³ *Test Valley Borough Council v Fiske* [2024] EWCA Civ 1541

⁴ Paragraph: 005 Reference ID: 14-005-20140306. Revision date: 06 03 2014

⁵ Paragraph: 034 Reference ID: 14-034-20140306. Revision date: 06 03 2014

5.7. In respect of conditions reserving outline application details, the PPG states:

“Where details have been submitted as part of an outline application, they must be treated by the local planning authority as forming part of the development for which the application is being made. Conditions cannot be used to reserve these details for subsequent approval. The exception is where the applicant has made it clear that the details have been submitted for illustration purposes only”. [our emphasis]⁶

5.8. The OPP sought outline permission for residential development with the main vehicular access to be approved in detail and all other matters reserved (i.e. appearance, landscaping, layout and scale). The below table sets out the plans and reports that were approved by condition 3, along with commentary on whether the details provided were fixed or informative. Copies of the approved documents are provided at CD-E2 to CD-E15.

Document	Informative or Fixed	Commentary
1797-30-110 – Location Plan	Fixed	The red line is fixed and defines the site that benefits from OPP.
163462-006 Rev A – Proposed Access – Royston Road	Fixed	Details of this access point not reserved by the OPP description of development, this plan is therefore fixed.
163462-007 Rev A – Proposed Access – Cambridge Road	Fixed	Details of this access point not reserved by the OPP description of development, this plan is therefore fixed.
1797-30-101 Rev E – Land Use	Informative	The key in this plan states the details of the land uses shown are indicative, and this plan is therefore intended to be informative.
1797-30-100 Rev G – Illustrative Masterplan	Informative	Layout is a reserved matter. By virtue of being titled ‘Illustrative’, the plan only illustrates one possible way the detailed design could come forward.
1797-30-103 Rev E – Access and Movement	Informative	Layout is a reserved matter. The routes within the site cannot therefore be fixed at the outline stage, and this plan is informative. The key states that the plan shows an ‘Indicative secondary street network’.
1797-30-104 Rev A – Urban Design Parameter Plan	Informative	This plan provides urban design principles, with the key stating both ‘fixed’ and ‘indicative’ parameters. It is clear this is intended as an informative plan.
1797-30-105 Rev A – Landscape Parameter Plan	Informative	This plan again states both ‘fixed’ and ‘indicative’ parameters. It is clear this is intended as an informative plan.
Tree Survey and Constraints Plan Sheets 1 to 6	Informative	These plans show all existing trees and do not show any removals, including those required to deliver the strategic access points on Cambridge Road and Royston Road. The plans are therefore informative only of the constraints that should be regarded when preparing the detailed layout.
163462-002 Rev A – Royston Rd Crossing Option 2	Informative	The plan clearly states that the design is ‘subject to topographical survey and detailed design’ as well as to ‘RSA at S278 stage’.

⁶ Paragraph: 005 Reference ID: 21a-005-20190723. Revision date: 23 07 2019

163462-004 Rev B – Gateway and Foot-Cycleway	Informative	Title of plan refers to 'Potential Gateway Feature and Foot/Cycleway Extension' and the notes indicate that the plan is subject to RSA at S278 stage.
Proposed Access Arrangements 163462-005 Rev A	Informative	This is an overview plan that shows the two access points into the site and refers to other plans (006A & 007A) that show the detail of those accesses, which have been approved separately. Notes also indicate the plan is subject to arboriculture / ecology review, review of proposed levels, additional topographical survey and RSA at S278 stage.
163462-008 – Indicative Pedestrian Improvements Plan	Informative	Title of plan is 'Indicative Pedestrian Improvements Plan', the key refers to 'Potential remedial resurfacing of footway...final locations of resurfacing to be agreed'. Notes also indicate the plan is subject to RSA at S278 stage and the need to avoid affecting statutory undertakers equipment.
Master planning Summary Document	Informative	This report sets out the design principles and the framework within which the detailed design should be brought forward, including reference to several of the other approved plans.

5.9. The above list demonstrates that the OPP took a more onerous approach than was needed by requiring development to be brought forward “*wholly in accordance*” with all of the plans. This is particularly apparent given the discrepancies between and within the plans themselves, which state a mix of ‘fixed’ and ‘indicative’ parameters. It should also be remembered that the OPP was obtained by a promoter with the intention that the reserved matters would be brought forward by a housebuilder. It would be logical to not be overly prescriptive in situations like these. The selective use of qualifying words, such as “*broadly in accordance with*” could have been applied by North Herts alongside “*wholly in accordance with*” at the outline stage in line with the PPG advice to avoid the confusion that has arisen between fixed parameters and general design principles.

5.10. The Appellant has taken legal advice (enclosed at CD-E17) which confirms that the current wording of condition 3 is unlawful as a result of being unenforceable and imprecise through its requirement for details to be “*wholly in accordance*” with illustrative plans. This conclusion is provided with reference to both policy and relevant case law, as set out in the legal advice.

Condition 3 variation

5.11. Section 73 of the Town and Country Planning Act 1990 states “...*the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted*”. Accordingly, it is only the conditions of the OPP that are open for consideration. It is not a complete re-consideration or assessment of the original permission.

5.12. Consequently, the main issue is whether the proposed amended wording of condition 3 is sufficiently reasonable and precise in the interests of securing appropriate parameters within which the reserved matters can be brought forward. When determining whether the proposed variation is acceptable, the decision-maker has the discretion of considering whether it is necessary to amend the wording provided by the Applicant as well as consider amending other existing conditions or impose new ones, provided they relate to the development and meet the relevant tests for planning conditions. As discussed further

later, North Herts has exercised this discretion by proposing alternative amended wording for relevant conditions (albeit not in a timely manner).

- 5.13. It is important to emphasize that the original outline planning permission remains valid and will remain so notwithstanding the outcome of this appeal. A Section 73 application results in a new, independent planning permission, meaning the original consent remains extant. The OPP established that the principle of development is acceptable, and the Appellant would have the genuine option of implementing the OPP if it chose not to pursue the s.73 application. Therefore, it constitutes a legitimate fallback position and is an important material consideration in the decision-making process. This further reinforces the limited scope of the current application, which does not seek to revisit the principle of development but instead focuses solely on the appropriateness of the conditions.
- 5.14. The grant of OPP has confirmed acceptability of the approved plans and no changes to the plans themselves are proposed so this is not in question. The RM submission will appropriately test whether a high quality scheme can be achieved.
- 5.15. Paragraph 57 of the Framework sets out the tests that all planning conditions must satisfy, including being precise and reasonable. The current wording of condition 3 does not satisfy these tests, by virtue of requiring complete accordance with a series of plans and reports that go beyond what is reasonable for an outline permission as illustrated by the above discussion. Plans provided at the outline stage are usually intended to provide the design principles and framework within which the subsequent detailed design will be prepared and submitted for reserved matters approval, in line with the guidance that has been discussed above. This is further recognised in the Design section of the PPG, which in relation to the role of parameter plans states:

"Parameter plans can provide elements of the framework within which more detailed design proposals are generated, but they are not a substitute for a clear design vision and masterplan, and need to be used in a way that does not inhibit the evolution of detailed proposals. For example, setting maximum parameters for aspects such as building heights can still allow flexibility in determining the detailed design of a scheme".
[our emphasis]⁷
- 5.16. The OPP plans evidently sought to align with this by marking several plans as 'indicative' or 'illustrative'. Condition 3 currently goes beyond this though by requiring the detailed design to be "*wholly in accordance with*" plans including an Illustrative Masterplan and an Urban Design Parameter Plan which are clearly intended to be informative. Para 4.3.10 of the OPP Officer Report shows this was recognised at the outline stage, stating: "*However, given that the masterplanning plans are indicative due to this application being outline with all matters expect access reserved, there may be changes to the layout at the reserved matters stage*".
- 5.17. In pre-application discussions with North Herts, the principle of a s.73 application was agreed by all parties as being necessary to enable the evolution in the design from the outline to the detailed stage, that was needed to provide an acceptable scheme – from a technical and urban design perspective. Email correspondence dated 8 August 2024 (CD-

⁷ Paragraph: 011 Reference ID: 26-011-20191001 Revision date: 01 10 2019

D3) provided the initial suggestion from North Herts Planning Officers that condition 3 be amended to qualify the plans that require 'strict accordance' and those that require 'broad accordance'. The Appellant sought further clarification by proposing amended wording of condition 3 that was considered to address comments made by Officers, but a prompt response from North Herts was not received. The s.73 application was thus submitted with this wording.

5.18. In a meeting held post-submission of the s.73 application on 19 March 2025 (CD-D4), North Herts suggested an alternative proposal which included producing a new masterplan document and parameter plans. In subsequent email correspondence dated 27 May 2025 (CD-D5) North Herts altered their preferred approach again to instead seek to vary the wording of Condition 3 to refer only to those plans which are fixed by the OPP, with examples given being the site location plan and technical access drawings. A new condition would also be created requiring the submission of a Masterplan Compliance Statement that would justify variances from the remaining plans which would be approved for informative purposes only.

5.19. The Appellant confirmed their willingness to consider this alternative variation to the OPP conditions. North Herts promised draft condition wording would be provided by 6 June 2025, this was still awaited at the time the notice of intention to appeal was issued to North Herts on 19 June 2025 (CD-D2), albeit suggested wording for a new condition was eventually provided on 25 June 2025 (CD-D7).

5.20. This was followed on 3 July 2025 with a further email from North Herts that set out amended wording for condition 3 (CD-D8):

"The development hereby permitted shall be carried out wholly in accordance with the Location Plan (Plan No. 1797/30/110), Proposed Access – Royston Road (Plan No. 163462/006 Rev A), Proposed Access – Cambridge Road (Plan No. 163462-007 Rev A), and the reserved matters approved by the Local Planning Authority, or with minor modifications of those details or reserved matters which previously have been agreed in writing by the Local Planning Authority as being not materially different from those initially approved.

Reason: To ensure the development is carried out in accordance with details which form the basis of this grant of permission or subsequent approval of reserved matters".

5.21. The email set out again wording for a new condition titled "Masterplan Compliance Condition", drafted to be read alongside condition 3 as amended:

"Concurrent with the submission of the first Reserved Matters application, and any subsequent Reserved Matter applications, a Masterplan Compliance Statement shall be submitted to and approved in writing by the Local Planning Authority. The Masterplan Compliance Statement shall provide detailed explanation of how the proposal accords with the Masterplan Summary Report approved under application reference No. 18/O1502/OP and dated March 2022, and plan numbers 1797/30/101 Rev E – Land Use Plan; 1797/30/103 Rev E – Access and Movement; 1797/30/104 Rev A – Urban Design Parameter Plan; and 1797/30/105 Rev A – Landscape Parameter Plan; 163462-002 Rev A – Alternative Royston Road Crossing Improvements (Option 2); 163462-003 Rev B – Cambridge Road Potential Gateway Feature and Foot/Cycleway Extension; 163462-008 – Indicative Pedestrian Improvements Plan; 1797/30/100 Rev G – Illustrative Masterplan; 1797/30/104 Rev A – Urban Design Parameter Plan. Where the proposal does not accord

with a specific principle or parameter within the approved Masterplan, the Masterplan Compliance Statement must provide clear and robust justification for each departure.

Reason: To ensure that the development as envisaged by the outline application is satisfactorily implemented in accordance with Policy SP9 of the North Hertfordshire Local Plan".

- 5.22. No objection was made to the above suggested conditions by the Appellant. Despite there being agreement on the conditions, North Herts remained unwilling to commit to a prompt determination of the application. A suggestion was made that the application could be taken to meeting of the Planning Committee on 8 August 2025 at the earliest, although this was provided as a suggested rather than a clear commitment. North Herts further stated that if the application were taken to Committee, it would be subject to agreement to a legal mechanism to secure the Deed of Variation, despite a well-advanced draft being available and with North Herts for agreement.

- 5.23. The Appellant was therefore given no confidence that the application would be determined in a timely manner, especially in light of the constant delays experienced post-submission.

Condition 20 variation

- 5.24. Similarly, the variation to condition 20 has been the subject of discussions with Officers during the course of determination of the s.73 application and the RM. The variation allows for the opportunity to ensure an appropriate sustainable drainage scheme can be delivered, taking into account updated technical investigation data as explained in the covering letter (CD-B1). This is a reasonable variation that still maintains the original requirements of the condition and aligns with condition 21. A consultation response to the s.73 was received from the Lead Local Flood Authority ("LLFA") on 2 July 2025 (CD-C4) which confirmed no objection to the variation. On this basis, North Herts also confirmed no objection from a planning perspective.

Matters raised by consultees

- 5.25. The consultation responses provided to the s.73 application are enclosed at CD-C. The only response from a technical consultee apart from the LLFA was a comment from the Local Highway Authority (Hertfordshire County Council) confirming no objection. Comments were submitted by Barkway Parish Council, the County Councillor for Royston East and Ermine, and ten local residents raise objections. The objections do not raise any new matters that have not already been dealt with through the above discussion. The objections raise concerns that the s.73 application would allow changes to be made without obtaining further approval from North Herts. This appears to be a misunderstanding of what the s.73 application is seeking, as the detailed design would still be subject to Reserved Matters approval prior to commencement of development.

Reasons for Approval

- 5.26. As this is an Appeal against the failure of North Herts to determine the s.73 application within agreed time limits, there are no reasons for refusal to respond to. However, the above discussion has shown the Appellant has engaged in detailed discussions with North Herts, and thus has a good idea of any likely objections to the proposal.

- 5.27. Notwithstanding the Appellant's position that the variation to condition 3 as submitted is acceptable as per the above discussion. North Herts has confirmed that it considers there is a variation to condition 3 that would be acceptable, along with the addition of a new condition. The wording of these alternative conditions has been agreed by the Appellant. This cannot therefore reasonably form a reason for refusal.
- 5.28. No objection has been made from a planning (from North Herts) or technical (from the LLFA) perspective to the variation of condition 20. In any event, this variation only secures the requirement for the submission and approval of further drainage details prior to commencement of development – in line with condition 21.
- 5.29. The only possible putative reason for refusal that remains is the lack of a S106 legal agreement. The Appellant began engaging with North Herts to complete a Deed of Variation (DoV) in early April, providing details of its legal representative on 9 April 2025 promptly after it was agreed a DoV would be required (CD-D6). This was followed up by the Appellant's solicitor providing a draft DoV and chasing the North Herts legal team directly for comment. However, no action was taken by the North Herts legal team until nearly three months later on 8 July 2025 when it was confirmed there were no comments on the DoV from a legal perspective (CD-D9). This matter clearly does not form a reasonable reason for refusal, especially given that the lack of an agreed DoV results from substantial inaction by North Herts.
- 5.30. It is hoped that a variation to the existing s.106 Agreement can be agreed and finalised shortly. The current draft Deed of Variation is attached (CD-E20).
- 5.31. The above discussion has illustrated that North Herts acknowledges the potential for a positive determination of the s.73 application, and the Appellant has consistently sought to engage constructively in this respect, despite the ongoing delays in communication from North Herts.
- 5.32. The site is allocated in the adopted development plan. Paragraph 11 (c) of the Framework is clear that applications which accord with the development plan should be approved without delay. The s.73 application has not been processed promptly in accordance with this national policy. This Appeal is therefore submitted as the Appellant has (reasonable) concerns about the likelihood of a timely determination ever being achieved at the local level.
- 5.33. The Appellant's evidence has further demonstrated that the presumption in favour of sustainable development applies, as set out by paragraph 11 of the Framework. This appeal relates to a site that is not only allocated in the adopted Local Plan, but also benefits from an extant OPP – which is a further important material consideration.
- 5.34. The housing supply deficit in North Herts is significant, equating to at least 1,639 homes. This s.73 application would allow the Appellant to bring forward the delivery of much needed new homes, making a meaningful contribution of 140 homes towards addressing that shortfall. This aligns with the national policy objective to significantly boost the supply of homes in response to the ongoing housing crisis.
- 5.35. In light of the above, the Inspector is respectfully urged to allow the appeal and grant planning permission.

6. Conclusion

- 6.1. This Statement sets out the planning rationale that underpins the proposed s.73 application, and demonstrates its acceptability in planning terms. The original wording of planning condition 3 is clearly unreasonable and overly onerous, and this has been accepted by North Herts itself. It has also been accepted that a variation of condition 20 is needed to deliver an appropriately designed sustainable drainage system that takes into account the latest available technical data.
- 6.2. There are no reasonable reasons for refusal of this s.73 application in this context. The Appellant considers that the wording of the amended conditions as proposed by the s.73 application are entirely acceptable when assessed against the relevant tests. There is no change proposed to the approved plans themselves, or the list of approved plans. The amended wording provides the flexibility required to bring forward an appropriately designed scheme, but continues to ensure that the detailed design (primarily through the Reserved Matters) will be assessed against those approved plans.
- 6.3. The Appellant's evidence demonstrates that the Appeal scheme should benefit from the presumption in favour of development as set out by paragraph 11 of the Framework. In accordance with Section 38(6) and the Framework taken as a whole, the Inspector is respectfully requested to uphold this Appeal and to grant planning permission.

Appendix 1 – Core Documents Schedule

CD Ref.	Document	Date
<i>A – Copies of all plans, drawings and documents sent to the LPA as part of the application</i>		
CD-A1	A copy of the original application form sent to the LPA	2 September 2024
CD-A2	Covering Letter – Original Submission	2 September 2024
CD-A3	A copy of the LPA's letter in which they acknowledged the application	24/01994/S73 · 19 September 2024
CD-A4	Site Notice	24/01994/S73 · 26 September 2024
<i>B – Copies of any additional plans, drawings and documents sent to the LPA but which did not form part of the original application.</i>		
CD-B1	Covering Letter – Additional Variation of Condition 20	23 May 2025
<i>C – Application Consultation Responses</i>		
CD-C1	Barkway Parish Council NB: Extract with comments relevant to s.73 application only	6 October 2024
CD-C2	County Councillor for Royston East and Ermine NB: Extract with comments relevant to s.73 application only	6 October 2024
CD-C3	Local Highway Authority Hertfordshire County Council	NH/22364/2024 · 11 October 2024
CD-C4	Lead Local Flood Authority Hertfordshire County Council	2 July 2025
CD-C5	All public comments, including:	
	Talland, Royston Road, Barkway	30 September 2024
	11 High Street, Barkway	30 September 2024
	5 Periwinkle Close, Barkway	2 October 2024
	146 High Street, Barkway	2 October 2024
	13 Royston Road, Barkway	2 October 2024
	1 High Street, Barkway	9 October 2024
	8 High Street, Barkway	10 October 2024
	Kings Cottage, London Road, Barkway	11 October 2024
	6 Periwinkle Close, Barkway	11 October 2024
	17 Lindsay Close, Royston	25 October 2024
<i>D – Relevant Correspondence with the LPA</i>		
CD-D1	LPA correspondence on LLFA consultation	10 June 2025
CD-D2	Request for change of Applicant name	19 June 2025
CD-D3	Email correspondence between Appellant and LPA on approach to s.73 application	8 August 2024
CD-D4	Note of workshop held 19 March 2025, authored by North Herts Extract of notes relevant to s.73 application only	8 April 2025
CD-D5	Email correspondence from LPA on approach to s.73 application	27 May 2025
CD-D6	Correspondence confirming Applicant's legal details and LPA's instruction of legal team	24 April 2025
CD-D7	LPA's suggested wording of new condition	25 June 2025
CD-D8	LPA's suggested wording of all varied conditions	3 July 2025

CD-D9	North Herts legal team confirmation of no comments	8 July 2025
<i>E – Other Appeal Documents</i>		
CD-E1	Original Outline Planning Permission Decision Notice	18/01502/OP 25 · July 2023
	<i>Outline Approved Plans and Reports:</i>	
CD-E2	Location Plan	1797-30-110
CD-E3	Proposed Access – Royston Road	163462-006 Rev A
CD-E4	Proposed Access – Cambridge Road	163462-007 Rev A
CD-E5	Land Use Plan	1797/30/101 Rev E
CD-E6	Illustrative Masterplan	1797/30/100 Rev G
CD-E7	Access and Movement	1797/30/103 Rev E
CD-E8	Urban Design Parameter Plan	1797/30/104 Rev A
CD-E9	Landscape Parameter Plan	1797/30/105 Rev A
CD-E10	Tree Survey and Constraints Plan	Sheets 1 to 6
CD-E11	Alternate Royston Road Crossing Improvements (Option 2)	163462-002 Rev A
CD-E12	Cambridge Road Potential Gateway Feature and Foot/Cycleway Extension	163462-004 Rev B
CD-E13	Proposed Access Arrangements	163462-005 Rev A
CD-E14	Indicative Pedestrian Improvements Plan	163462-008
CD-E15	Masterplan Summary Report	March 2022
CD-E16	National Planning Practice Guidance Extract: Flexible options for planning permissions	26 July 2023
CD-E17	Legal Advice	30 June 2025
CD-E18	Five-Year Housing Land Supply Update	May 2024
CD-E19	Draft Statement of Common Ground	10 July 2025
CD-E20	Draft Deed of Variation	4 July 2025

Town & Country Planning Act 1990 (as amended)
Planning and Compulsory Purchase Act 2004

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