

POST COMMITTEE COMPLIANCE REPORT

Planning Ref: 25/01196/FP	
Site Address: Starwood House, Avenue One, Letchworth Garden City, Hertfordshire, SG6 2HB	
Proposal: Erection of two buildings including three units for Flexible Use Classes including Eg (ii) (iii), B2, B8, including servicing, parking, access, landscaping	
Committee date	21 st August 2025
Date final draft S106 posted on website	TBC
Case Officer	Alex Howard

1. Purpose of report

- 1.1. The propose of this report is to provide an update to the Development and Conservation Manager on any amendments to the proposed conditions and planning obligations pursuant to those agreed by the Planning Control Committee (PCC), and to demonstrate that the Section 106 Heads of Terms agreed by PCC have been captured in the final S106 agreement or similar mechanism.
- 1.2. This report also considers whether there have been any relevant material considerations arising between the PCC meeting and the date of preparing this report, which could have led PCC Members to a different planning decision, and which would require reconsideration at PCC.
- 1.3. This report summarises the relevant issues raised by representations received on the application since the PCC meeting. Any representations that raise new planning issued are addressed in this report.
- 1.4. The report also lists any relevant changes to legislation, planning policies and guidance since the assessment of the application.

2. Recommendation

- 2.1. That application 25/01196/FP be GRANTED planning permission subject to the following matters:
 - a) The completion of a suitable legal agreement in line with the agreed Heads of Terms.
 - b) A response of no objection and any relevant conditions from the Local Lead Flood Authority, to be delegated to the Development and Conservation Manager prior to any decision.
 - c) A response of no objection and any relevant conditions from the Hertfordshire Highway Authority, to be delegated to the Development and Conservation Manager prior to any decision.
 - d) An agreement to an extension of time to the statutory determination date to allow for a), b) and c) to occur.

e) The conditions and informatives set out in the report of the Development and Conservation Manager with the following amendment to Condition 13, the addition of the following Condition 1 and the subsequent renumbering of other Conditions:

Condition 13 The development hereby permitted shall not commence save for demolition to slab level and site clearance works, until a monitoring and maintenance plan in respect of contamination, including a timetable of monitoring and submission of reports to the local planning authority, has been submitted to, and approved in writing by, the local planning authority. Reports as specified in the approved plan, including details of any necessary contingency action arising from the monitoring, shall be submitted to, and approved in writing by, the local planning authority.

Reason: To protect and prevent the pollution of controlled waters from potential pollutants associated with current and previous land uses in line with National Planning Policy Framework paragraphs 187, 196 and 197 and relevant position statements within the Environment Agency's Approach to Groundwater Protection.

Condition 1 The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition "(the biodiversity gain condition)" that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be North Hertfordshire District Council. There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. (<https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments>). Based on the information available this permission is considered to be one which will require the approval of a biodiversity gain plan before development is begun because none of the statutory exemptions or transitional arrangements are considered to apply.'

3. Background

3.1. Application was reported to Planning Control Committee with a resolution to grant permission subject to the measures set out under section 2.1 of this report. The Planning Committee voted to grant permission and since the meeting, Officers have been working to ensure compliance with the recommended resolution.

4. Condition amendments

4.1. The Planning Committee agreed to Officers recommended amendments to conditions, namely the inclusion of the statutory BNG condition (1) and amended wording to the monitoring and maintenance plan for contamination (13).

5. Representations received by interested parties and statutory consultees (Post PCC)

5.1. As per the resolution, some statutory consultees were required to submit formal responses post PCC confirming no objections and any conditions.

5.2. Pursuant to part b), the Local Lead Flood Authority confirmed on the 17th September 2025 that they have no objections subject to 4 conditions. These conditions have been agreed by the applicant where appropriate.

5.3. Pursuant to part c), the Hertfordshire Highway Authority confirmed on the 21st November 2025 that they have no objections subject to conditions. These conditions have been agreed by the applicant where appropriate.

6. Planning Policies and Material considerations

6.1. This report considers whether the application:

- (a) Can be determined (by issuing a decision notice) based upon the existing resolution of PCC; or
- (b) Whether there have been any material changes in circumstances or new planning issues that would or could lead to the PCC reaching a different conclusion from that reached.

6.2. The Council is required to discharge its statutory duty under s70(2) of the Town and Country Planning Act (as amended), and in doing so the Council must consider whether to grant planning permission or not, considering all relevant material considerations at the time of issuing a decision notice on a planning application. Case law – *Kides, R (on the application of) v South Cambridgeshire District Council & Ors* [2002] EWCA Civ 1370, is relevant given that a period has passed following the resolution of the PCC to grant planning permission.

6.3. In summary the *Kides* case assessed the nature and extent of a Council's duty under Section 70(2) of the Act. The appellant's contention was based on a duration of more than five years passing between the Council's decision, in principle, to grant planning permission and the issuing of the decision notice; and that several material changes in circumstances had taken place during that period. The permission to apply for judicial review was refused and the appeal dismissed at the Court of Appeal. This was on the basis that the Council had not failed in its duty to 'have regard to' material considerations when issuing the decision. The case provides guidance to local planning authorities in considering whether new or emerging planning consideration would result in a requirement to refer back to planning committee. In the *Kides* case, it was found that not in every case where a new material consideration arises, after passing a resolution, but before the issuing of a decision notice, that there has to be referral back to committee.

6.4. The judgement in *Kides* indicated that the Council's duty is discharged if, at the date on which the decision notice is issued, the Authority has considered all material considerations relating to the application and has done so with the application in mind. In practical terms, therefore, where since the passing of the resolution, a new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a 'material consideration' the delegated officer should err on the side of caution and refer the application back to PCC for specific reconsideration, in light of that new factor.

6.5. The application should only proceed for determination if the delegated officer is satisfied
(a) that the authority is aware of the new factor, (b) that it has considered it with the

application in mind, and (c) that on a reconsideration the authority would reach the same decision. In the Kides case the Council did not accept that any of the factors were justified or significant objections at all, let alone ones, which taken together, would lead to a different result. The judge held that the Council's decision would have been the same.

6.6. Since the resolution by PCC the following changes have occurred:

No changes to the proposal outside of those matters required to comply with the resolution.

7. Planning Obligations – S106 Heads of Terms

7.1. The Heads of Terms presented to the PCC contained headlines summarising the proposed content of the detailed Section 106 Legal Agreement. In the intervening period between the meeting of PCC and this report, detailed s106 drafting has been undertaken, translating the headlines into detailed clauses, triggers and contributions.

7.2. The final S106 is in accordance with the Heads of Terms.

8. Conclusion and Recommendation to the Development and Conservation Manager

8.1. **Officers consider that no material considerations have arisen since PCC that would have resulted in a different recommendation from the PCC or would have affected the determination of the PCC.**

8.2. **It is considered that the Council's duty has been discharged in this case, as that the date at which the decision notice is to be issued, the authority has considered all material consideration affecting the application and has done so with the application in mind. Since the passing of the resolution, all new factors which might rationally be regarded as material considerations or the purposes of Section 70(2) of the Act, have been duly considered and the delegated officer is fully aware of their relevant to the decision-making process. On further consideration taking account all of the above, officers have concluded that the authority would reach the same decision.**

8.3. **The final S106 Legal Agreement is considered to accord with the Heads of Terms, and therefore it is recommended that the Development and Conservation Manager agree the details of the Section 106 Agreement for execution and issue the decision notice.**

Recommending Officer and Date

Alex Howard

7th January 2026

Authorising Officer and Date

A handwritten signature in black ink, appearing to read 'S Greaves'.

Shaun Greaves

19 January 2026