

WELWYN HATFIELD BOROUGH COUNCIL
PLANNING CONTROL COMMITTEE – 08 NOVEMBER 2012
REPORT OF THE DIRECTOR (STRATEGY AND DEVELOPMENT)

S6/2012/1962/FP

LAND ADJACENT TO FLATS AT 37- 48 LAMBS CLOSE, CUFFLEY, HERTS, EN5

ERECTION OF A DETACHED DWELLING WITH ASSOCIATED PARKING
FOLLOWING THE CHANGE OF USE OF THE LAND FROM PARKING, INCLUDING
THE DEMOLITION OF EXISTING GARAGES (WITH THE EXCEPTION OF THE REAR
WALLS) AND REMOVAL OF EXISTING HARDSTANDING

APPLICANT: Mr Ismail

(Northaw & Cuffley)

1 Site Description

- 1.1 The application site is located at the southern end of an existing cul-de-sac development of flats accessed from Lambs Close. The application site is accessed via a private shared driveway with these adjoining flats.
- 1.2 The shape of the application site is almost rectangular with a site area of approximately 0.065 hectares. The entrance to the site is in the northeast corner of the application site through a pair of existing metal gates. On the east boundary of the application site is a ditch and railway embankment. The north boundary of the application adjoins a communal garden area with the existing flats. On this northern boundary of the application site are 11 derelict brick garages. These garages were originally flat roofed but for most only the brick walls now remain following fire damage.
- 1.3 The west boundary of the application site adjoins the rear boundaries of the residential properties at Nos. 29 & 31 Theobalds Road. This boundary has a close boarded fence approximately 1.8m high. Close to this boundary fence, and in the rear gardens of the dwellings in Theobalds Road, are two large mature oak trees protected by Tree Preservation Order TPO 209.
- 1.4 The southern boundary of the application site adjoins the rear gardens Nos.1 & 3 Theobalds Close. This boundary has a similar existing close boarded fence.
- 1.5 The application site is reasonably level and has previously provided parking to the adjoining flats in Lambs Close. The application site is not currently used for parking.

2 The Proposal

- 2.1 The application seeks full planning permission for a change of use of the land from parking and the erection of a detached dwelling with second storey accommodation within the roofspace.

- 2.2 The proposed dwelling would have a maximum depth of approximately 13m and a maximum width of approximately 14m. The maximum height of the roof is approximately 10m.
- 2.3 The walls are to be finished in facing brickwork under a pitched roof of tiles. The windows are to be in UPVC with stone effect cills and headers.
- 2.4 The proposed dwelling will have 7 bedrooms with two of these at second floor level within the roofspace. An integral double garage is proposed with further parking at the front on the driveway for at least 2 cars.
- 2.5 The existing brick wall to the north boundary of the site is to remain and the existing entrance gate is to be removed and replaced. The south and west wooden boundary fencing is to remain and the east open natural boundary to the railway is to be retained.
- 2.6 No trees are to be removed as part of the proposed development and no works are proposed to any trees to facilitate the development apart from pruning back overhanging branches of a hornbeam tree on the south boundary. In respect to the two protected oak trees on the west boundary the submitted arboricultural report recommends that a separate tree works application is made for future maintenance of the trees, but this is not necessary to allow the proposed development to proceed.

3 Relevant Planning History

Application Site:

- 3.1 S6/2011/0413/FP Erection of 1 pair semi-detached dwellings with associated parking following the change of use of the land from parking, including the demolition of existing garages (with the exception of the rear walls) and removal of existing hardstanding – refused 16/06/2011 & dismissed at appeal 09/01/2012
- 3.2 S6/2010/2466/FP Erection of 2 semi-detached dwellings following clearance of existing site - withdrawn 08/02/2011
- 3.3 S6/2006/1446/FP Demolition of existing garages and erection of three 2-bedroom terraced dwellings – Refused 21/12/06 and dismissed at appeal
- 3.4 S6/2005/0042/FP Demolition of existing garages and erection of 4 no. two bedroom terraced dwellings – Refused 02/11/05 and dismissed at appeal.
- 3.5 S6/2003/1572/FP Demolition of 11 garages and the erection of six 2 bed flats – Withdrawn 27/05/03
- 3.6 S6/2002/1261/FP Demolition of 11 garages and erection of seven 2 bedroom flats – Refused 21/02/02 and dismissed at appeal.
- 3.7 S6/1997/0656/FP New parking layout and replacement of existing garages – granted 26/09/97.

3.8 S6/1990/0986/FP New Addition of new Mansard roof, staircase, and lift to blocks A,B,C & D and the provision of 4 x 1 bedroom flats to blocks A,B & C only, with associated car parking - Refused 15/03/91 and allowed at appeal.

3.9 E/2210-64 Erection of 48 flats and garages

Tree Preservation Order Applications for adjoining protected trees (TPO 209):

3.10 S6/2010/3152/TP Reduce by 15% and removal of deadwood of two Oaks covered by TPO209 – Refused 10/03/11

3.11 S6/2006/1115/TP Work to oak tree (T2) protected by tpo 209 – Granted 10/10/09.

Adjoining Land of Lambs Close Development:

3.12 S6/2005/1560/FP Erection of 4 two bedroom and 1 three bedroom terraced dwellings following demolition of existing garages- refused 10/02/06 and allowed at appeal.

3.13 S6/2005/0043/FP Demolition of existing garages and erection of 6 no. two bedroom terraced dwellings – Refused 10/03/05

3.14 S6/2002/1260/FP Demolition of 33 garages and erection of thirteen 2 bedroom flats – Refused 21/10/02

3.15 S6/1998/0272FP Part cosmetic mansard and part full mansard incorporating 3 No. flats (amendments to planning permission S6/0986/90/FP) – Granted 08/06/98

3.16 S6/1995/561/FP Amendment to existing consents S6/0703/94/FP and S6/0665/94/FP (Provision of 8 No. studio flats to provide 4, 2 bedroom flats and 2 studio flats) – Granted 01/09/95.

3.17 S6/1994/703/FP Provision of new mansard roof, staircase and lift to block C, and provision of 8 studio flats with car parking. (Amendment to S6/0986/90/FP) – Granted 24/11/94

3.18 S6/1994/665/FP Provision of new mansard roof, staircase and lift to block B, and provision of 8 studio flats with car parking. (Amendment to S6/0986/90/FP) – Granted 24/11/94

3.19 S6/1992/583/FP Addition of new mansard roof, staircase and lift to Block A and the provision of 8 studio flats with associated car parking - revisions to Planning Permission S6/0986/90/FP – Granted 29/10/92

3.20 S6/1990/987/FP Addition of new Mansard roof, staircase, and lift to each block and the provision of 4 x 1 bedroom flats to blocks A, B, C, with associated car parking – Refused 15/3/97

3.21 S6/1990/986/FP Addition of new Mansard roof, staircase, and lift to blocks A,B,C & D and the provision of 4 x 1 bedroom flats to blocks A,B & C only, with associated car parking – refused 15/03/91 and allowed at appeal.

- 3.22 S6/1990/142/FP Addition of new Mansard roof, staircase and lift to each of the four existing blocks, comprising of four 1 bedroom flats per block, provision of 28 car parking spaces, demolition of some garages – Refused 27/04/90 and appealed.

4 Planning Policy

- 4.1 National Planning Policy Framework

- 4.2 East of England Plan 2008:

SS1: Achieving Sustainable Development

ENV7: Quality in the Built Environment

T14: Parking

ENG1: Carbon Dioxide Emissions and Energy Performance

- 4.3 Welwyn Hatfield District Plan 2005:

SD1 Sustainable Development

GBSP2 - Towns and specified settlements

R1 – Maximising the Use of Previously Developed Land

R3 – Energy Efficiency

R7 – Protection of Ground and Surface Water

R11 – Biodiversity and Development

R17 – Trees, Woodlands and Hedgerows

R19 - Noise and Vibration Pollution

M14 - Parking standards for new developments

D1 - Quality of design

D2 - Character and context

D8 – Landscaping

D9 – Access and Design for People with Disabilities

H2- Location of Windfall Residential Development

H6 - Densities

- 4.4 Supplementary Design Guidance, February 2005

- 4.5 Supplementary Planning Guidance, Parking Standards, January 2004

- 4.6 Circular 03/09 – Costs Awards in Appeals and other Planning Proceedings

5 Constraints

- 5.1 The site lies within the excluded settlement of Cuffley as designated in the Welwyn Hatfield District Plan 2005.

6 Representations Received

- 6.1 This application has been advertised by site notice and neighbour notification letters. 7 individual letters of objection have been received from Flats at 5, 12A, 16 & 33 Lambs Close and 1 Theobalds Close and 31 Theobalds Road and 34 The Ridgeway. A further 42 signed letters of objection have been received from residents in Lambs Close and a petition of objection of 12 signatures from residents in Lambs Close. A letter of objection from the Northaw and Cuffley Residents Association. A letter of objection from the planning consultant and solicitors representing the Leaseholders Association (see copy of letters in

attached APPENDIX 1). The objections in the residents individual letters can be summarised as follows:

- The existing site garage should be demolished to allow for amenity land and further parking
- The site is over developed
- The proposed development will result in the loss of 24 parking spaces which will make worse the already intolerable parking situation in Lambs Close. Parking is now hard to find near residents flats in Lambs Close, and often impossible, and so have to park in adjacent roads.
- The new development will overlook existing dwellings in Lambs Close, Theobalds Road and Theobalds Close.
- The proposed development will negatively impact on the two mature oak trees adjacent to the site. Permission was withheld previously because of this and removal of the garage concrete floors risk damage to the roots and stability of the protected trees.
- The size of the protected oaks trees may have an affect on the use of the development, with debris from the trees and also risk of house subsidence.
- The proposed development would appear overbearing when viewed from the rear of No.1 Theobalds Close.
- There would be overlooking to the rear of No.31 Theobalds Road & No.1 Theobalds Close.

The objections in the signed letter by 22 objectors are reproduced in full as follows:

- *The proposal would result in the permanent loss of 24 off street (on site) vehicle parking spaces: currently 37 off street parking spaces and proposed reduction to just 13 off street spaces to serve the parking needs of 71 flats. This gross under provision is unacceptable by any local planning authorities' standards. In 2008 the garage on the application site were damaged by fire and access to the site was blocked by the owner. However, the lawful planning use of the site remains as garaging and parking pursuant to earlier planning permissions. There is a need for the parking facilities to be available on the application site, the proposed residential development would remove them permanently and the harm caused thereby would not be outweighed by any asserted benefit of the proposal.*
- *Existing car parking problems in Lambs Close are intolerable. There are an insufficient number of off and on street parking spaces for residents, no residents' visitors parking and no cycle parking (if garages are permanently removed). It is hard to find a vacant parking space especially in the evenings and weekends and we are often forced to park in neighbouring streets sometimes half a mile away or more from Lambs*

Close, which increases the number of road trips and gives rise to congestion in those streets.

- *We are seriously concerned that any permanent reduction in the off street (on site) car parking provision will severely damage the ability both for ourselves and future generations of flat occupiers to meet their needs for car parking. We ask you to REFUSE planning application S6/2012/1962/FP on the basis that it would seriously impact adversely upon our environment and we consider that we have a right to expect the Council to protect our living conditions.*

The objections in the signed petition of 12 signatures are reproduced in full as follows:

- *Loss of Parking: The application site is the subject of earlier planning permissions which contained conditions requiring the provision and retention of parking and garaging in perpetuity. The applicant is not complying with these conditions having blocked access to the site to prevent residents from using it for parking purposes. The applicant proposes to reduce 37 existing off street garaging/parking spaces to just 13 off street spaces to serve 71 flats in Lambs Close. There is already a shortage of off and on street parking spaces in Lambs Close (45 on street spaces in total) and this leads to congestion in other streets in the local area – streets that are under extreme pressure for on street parking themselves. The loss of parking provision at the application site would consolidate and exacerbate the existing situation and have demonstrable unacceptable and permanent impacts on residents and the local area. We wish to urge the local planning authority in the strongest possible terms to refuse the planning application S6/2012/1962/FP on the ground of loss of parking.*
- *Overlooking: The rear windows contained within the west facing elevation would overlook private garden space in the south west corner of the communal gardens of the existing flats regularly enjoyed by residents because this area is not only the sunniest spot but also hidden from public view and overlooking by the flats' occupiers*
- *Overbearing Impact: The proposed building would be within one metre of the boundary shared with residents of flats 37 to 48 Lambs Close with a 9.5m ridge height and a 9.5m high flank wall on the north elevation adjacent to gardens currently enjoyed by residents. A 9.5m high flank wall within one metre of flat occupiers' garden boundary fence would have a very considerable overbearing and over dominant impact.*
- *Overshadowing/Loss of Light The proposed building would be located south of the adjacent block of flats in Lambs Close (numbers 37 to 48). The orientation of the building to the block of flats, combined with its 9.5m height and short distance from these flats, would result in unacceptable overshadowing and loss of sunlight and daylight to the private rear gardens and windows of some of the flats. We reasonably expect the Council to safeguard access to sunlight and daylight currently enjoyed by adjoining residential properties.*
- *Character and Appearance: The existing garages on the site are low*

enough not to have a significant impact on the green and open character and appearance of the area. They provide a nice transition between the flats in Lambs Close and the bungalows in Theobalds Close. The proposed house by virtue of its scale and close proximity to the boundaries of neighbouring occupiers would appear cramped and fail to reflect the green and open character of the existing pattern of development and its surrounding environment.

- *Two Oak Trees: The development could be impacted by two protected oak trees adjacent to the site due to loss of sunlight/daylight and falling branches resulting in pressure from future residents for these trees to be lopped to the detriment of their established character. Any reduction in the off street (on-site) car parking provision will severely damage the ability both for ourselves and future generations of flat occupiers to meet their needs for car parking. Surely this must contravene the Welwyn Hatfield District Plan Review, Supplementary Planning Guidance, Parking Standards, Adopted January 2004?*

With regards to other amenity issues we are anxious for you to view the proposed dwelling from our properties and private garden area and would therefore appreciate it if you could please contact Hilary Birch to arrange a suitable time for a visit.

7 Consultations Received

- 7.1 **Hertfordshire (Transport Programmes and Strategy) (HTPS)** – do not wish to restrict the grant of planning permission subject to planning conditions which require parking to be provided before first occupation and for parking and storage during construction to be only on the application site. It is also recommended that future occupiers are restricted from applying for parking permits in Lambs Close.
- 7.2 **Council's Landscape Officer** –advise that there is no objection to the principle of constructing a building at this distance from oak trees provided the foundations are appropriate to the situation and the root protection area is sufficiently fenced. The overall mass of the trees is the only issue which has not been reduced by the proposed design and future applications to undertake tree works on the oaks will be assessed on the type of works requested and the reasons for it. It would be inappropriate to dismiss the application entirely on the possible negative perception of the trees and so there are no objections subject to appropriate conditions.
- 7.3 **Thames Water** – advise that public sewers cross or are close to the proposed development and so approval must be sought from Thames Water for works within 3m of the sewer. In regards to surface water drainage it is advised that it is the responsibility of the developer to make the appropriate provision.
- 7.4 **Environment Agency** – advise that the main flood risk from this site is the management of surface water run-off and ensuring that drainage from the development does not increase flood risk either on-site or elsewhere. In regards to the potential for contaminated land, because of the underlying geology (London Clay) and the distance to any watercourses, the Environment Agency are satisfied that contamination would not affect any controlled waters.

7.5 **Client Services (refuse collection)** – advise that there are no issues concerning waste management.

8 Parish Council Representations

8.1 Northaw and Cuffley Parish Council ‘The PC feel strongly that this application is a gross overdevelopment of the site. It is inappropriate in this location and does not fit with other housing in the road as the majority of accommodation is in four blocks of flats’.

9 Discussion

9.1 This application is presented to the Planning Control Committee because the application has been ‘called-in’ by Councillor Couch for the following reasons:

- **Loss of Parking:** The proposal would result in the permanent loss of 24 off street vehicle parking spaces: currently 37 off street parking spaces and proposed reduction to 13 spaces to serve the parking needs of 71 flats. This gross under provision is unacceptable and makes the existing development of flats unsustainable. In 2008 the garages on the application site were damaged by fire and access to the site was blocked by the owner. However, the lawful planning use of the site remains as garaging and parking pursuant to earlier planning permissions. There is a need for the parking facilities to be available on the application site, the proposed residential development would remove them permanently and the harm caused thereby would not be outweighed by any asserted benefit of the proposal.

- **Overlooking:** The rear windows contained within the west facing elevation would overlook private garden space in the south west corner of the communal gardens of the existing flats regularly enjoyed by residents because this area is not only the sunniest spot but also hidden from public view and overlooking by the flats’ occupiers. From the rear west facing elevation of the proposed building there would also be clear views into the garden of the bungalow at No. 1 Theobalds Close and also clear views into their rear internal living areas including the master bedroom and dining room.

- **Overbearing Impact:** The proposed building would be within one metre of the boundary shared with residents of flats 37 to 48 Lambs Close with a 9.5m ridge height and a 9.5m high flank wall on the north elevation adjacent to gardens currently enjoyed by residents. A 9.5m high flank wall within one metre of flat occupiers’ garden boundary fence would have a very considerable overbearing and over dominant impact. The proposed building is also within 1.25 metres of the rear boundary fence of No. 1 and No. 3 Theobalds Close with a 5m eaves height and 9.5m ridge height on the west elevation and a 9.5m high flank wall and 9.5m ridge height on the south elevation having an equally overbearing impact to residents of these two existing properties.

- **Loss of Sunlight and Daylight:** The proposed building would be located south of the adjacent block of flats in Lambs Close (numbers 37 to 48). The orientation of the building to the block of flats, combined with its 9.5m height and short distance from these flats, would result in unacceptable overshadowing and loss of sunlight and daylight to the private rear gardens and windows of some of the flats.

- **Character and Appearance:** The existing garages on the site are low enough not to have a significant impact on the green and open character and

appearance of the area. They provide a nice transition between the flats in Lambs Close and the bungalows in Theobalds Close. The proposed house by virtue of its scale and close proximity to the boundaries of neighbouring occupiers would appear cramped and fail to reflect the green and open character of the existing pattern of development and its surrounding environment.

- **Two Oak Trees:** The proposed development could be impacted by two protected oak trees adjacent to the site due to loss of sunlight/daylight and falling branches resulting in pressure from future residents for these trees to be lopped. The trees' roots may eventually invade drains of the proposed house and affect its foundations placing further pressure on future residents to lop the trees to the detriment of their established character.

- **Trees at no. 3 Theobalds Close:** There is concern about the impact of the development on the long term health of trees at no. 3 Theobalds Close. As leylandii these are of no great amenity value in themselves but their loss would intensify the overbearing and over dominant impact of the proposed development particularly on occupiers of 3 Theobalds Close. No proper and detailed consideration appears to have been given to erecting a building within the root protection area of these trees in accordance with BS5837:2012.

- **Drainage:** There are serious sewerage problems in the vicinity of the application site with waste being ejected immediately outside the kitchen at no. 3 Theobalds Close and there are no guarantees that the drainage system could cope with a further dwelling of the large size proposed. Local people reasonably expect the Council to take due care and diligence by informing their drainage engineer about existing flooding problems in the area.

9.2 The main issues to be considered are:

1. **The Principle of Housing Development**
2. **Design**
3. **Highways and Parking Considerations**
4. **Residential Amenity**
5. **Other Matters**

1. The Principle of Housing Development

9.3 The National Planning Policy Framework (NPPF) defines the application site as being 'previously developed land'.

9.4 In paragraph 17 of the NPPF (Core Planning Principles) it states that :

'Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking'

9.5 One of the core land-use planning principles listed in this paragraph of the NPPF is:

'encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value'

9.6 In paragraph 111 of the NPPF (Conserving and enhancing the natural environment) it states that

'Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value. Local planning authorities may continue to consider the case for setting a locally appropriate target for the use of brownfield land'

9.7 At a local level, Policy R1 (Maximising the Use of Previously Developed Land) is relevant and states that:

"In order to make the best use of land in the district, the Council will require development to take place on land which has been previously used or developed. Development will only be permitted on 'greenfield' land where it can be demonstrated that no suitable opportunities exist on previously used or developed land".

9.8 Local Plan Policy R1 is considered to be consistent with the guidance of the NPPF and so relevant. The NPPF also makes clear that it encourages the re-use of previously developed land provided that 'it is not of a high environmental value'.

9.9 Local Plan Policy H2 (Location of Windfall Residential Development) is relevant because windfall sites to provide housing is consistent with the guidance of the NPPF. Policy H2 states that all applications for windfall residential development will be assessed for potential and suitability against a set of five criteria. The application site is already defined as previously developed land located in a designated settlement. As such this complies with the requirement that these types of site should be given priority over greenfield sites. The remaining criteria of Policy H2 are discussed below in further detail, however, the principle for using this site for Windfall Residential Development is accepted.

9.10 Notwithstanding this, the proposed development still needs to comply with all of the other relevant Development Plan Policies including the change of use of the land from parking. Strong objections have also been raised by the residents in Lambs Close flats about the loss of this parking provision to their flats. This additional matter of existing parking will be considered next.

9.11 The most recent use of the application site is for parking in connection with the adjoining development of flats in Lambs Close. This parking area appears to have been part of the original 1960's development which comprised of 48 two bedroom flats at that time. The only drawing (No.58/61/5) in the Council's records which may show the original parking layout of the site is attached to application file E/2210-64. The planning status of this drawing is, however, unclear as is not marked as an approved planning drawing. This drawing shows possibly the original layout of the Lambs Close development. If this is the case, then the application site was marked out for 24 parking spaces at that time for the original flats at Lambs Close.

9.12 The use of the application site for parking, along with any previous planning applications and appeals, are a material planning consideration as part of the assessment of whether the change of use of this application site from parking to residential is acceptable for the proposed development. These applications and appeals will be considered next.

9.13 In 2002 a planning application was submitted (S6/2002/1261/FP) for this application site for erection of seven 2 bedroom flats. At this time concerns were

raised by the Council about the loss of this parking for existing residents in Lambs Close. This loss of parking was one of the reasons why the application was refused.

- 9.14 This previously refused application was also the subject of a planning appeal where the Planning Inspector noted that:

'relatively few of the garages are currently used by residents in Lambs Close'.

- 9.15 Notwithstanding this, the same Planning Inspector concluded that :

'In my opinion, due to this shortfall, the additional requirement that would result from the proposal would cause overspill parking onto other roads in the area'.

- 9.16 This concern along with other reasons resulted in the planning appeal being dismissed in December 2003.

- 9.17 A further planning application was received for this site in 2005 for the erection of 4 terraced dwellings (S6/2005/0042/FP). Concerns were raised again by existing residents in Lambs Close about the existing loss of parking, but this was no longer accepted by the Council. The reason for this was that there were no objections by Hertfordshire Transport Planning & Policy to the proposal in regards to Highway Safety and that the usage of the site for parking at that time was now only limited, with just one of the eleven garages being used for parking. The Officer Report at the time stated:

'whilst it is recognised that there are issues at certain times of day relating to pressure for on-street parking, it is considered overall that the proposal would not exacerbate existing overspill parking in Lambs Close and other roads in the area and also that the loss of the garages would itself be insufficient a reason to warrant refusal of the application'.

- 9.18 This application was however refused by the Council due to arboricultural reasons because of the impact on the protected oak trees. This planning application was again subject to another Planning Appeal. The Planning Inspector noted on his site visit in March 2006 that:

'the site is currently in a semi-derelict condition and occupied by eleven dilapidated lock-up garages'.

- 9.19 The same Inspector also states later on in his decision letter:

'The Council has agreed that the use of the appeal land for housing would be acceptable; neither has there been objections raised by the Highway Authority to the use of the narrow unmade vehicular access. Given the location of the site and lack of objection to the proposed vehicular access from the Highway Authority, I concur with these views. I note the comments of the local residents and whilst I sympathise with that concern, as the land is not in the ownership of the Council or local residents, it is unlikely that the lands can be retained for the purposes of parking'.

- 9.20 The Planning Inspector in this appeal, however, accepted the Council's concerns about the impact of the development on the protected oak trees and dismissed the appeal solely on arboricultural grounds.

- 9.21 Another planning application was submitted in 2006 for three terraced dwellings and this application was refused by the Council due to only the impact of the proposal on the protected oak trees. At the time of the Officer's site visit a photograph clearly shows that the application site was not only in a dilapidated state, as noted by previous Planning Inspectors, but there is evidence of fly-tipping.
- 9.22 This refused application was again subject to a Planning Appeal and this was dismissed again solely on the impact of the proposed development on the protected oak trees. This Inspector's Decision letter makes no reference to the change of use of the site from parking. In the seven letters of representations received by third parties at the time, which were summarised in the Officer's report, the loss of existing parking is not raised as a concern.
- 9.23 In the last planning application (application S6/2011/0413/FP), however, the Lambs Close Leaseholders Association raised strong objections to the proposed development for housing due to the loss of existing parking and the impact this will have on the existing residents of Lambs Close. The Leaseholders Association representations at that time included a letter from their appointed Planning Consultants and Solicitors which stated why this loss of parking was unacceptable and why the application should be refused.
- 9.24 The letter of objection from the Leaseholder Association's Planning Consultant in the previous application (S6/2011/0413/FP) was critical about the accuracy of the previous Officer's report for application S6/2005/0042/FP six years earlier. This criticism was over the Officer's interpretation of the previous Planning Inspector's findings with regards to the principle of losing 11 garages, and that their usage cannot be secured in perpetuity for parking purposes by the flats occupiers. This letter of objection goes on to state that because of this error, the Planning Inspector for application S6/2005/0042/FP had:
- 'clearly not been presented with all the findings of The Inspector in 2003 and nor had his attention been drawn to a condition requiring retention of the site in use for parking and garage in perpetuity'.*
- 9.25 Furthermore, it was the view of Leaseholders Association in the previous application (S6/2011/0413/FP) that the Council has misguided the previous Planning Inspector and this has:
- 'unfortunately influenced all subsequent decisions to date in respect of this land'.*
- 9.26 From these previous representations from the Leaseholders Association in the last application it appeared that there was a view that the last two planning appeal decisions should not be relied on as part of determining any future planning applications. This view by the Leaseholders Association is based on their opinion the previous Planning Officers reports of S6/2005/0042/FP & S6/2006/1442/FP had misguided the earlier Planning Inspectors in reaching their decision. The appeals, in the Leaseholder's view, should have included reasons relating to the loss of parking which would then have been be a material planning consideration when determining future planning applications for the site.
- 9.27 As part of the assessment of this planning application, it is still important to again assess how much weight should therefore be attached to these previous appeal decisions. However, there is now another appeal decision for this site which

relates to the previous application (S6/2011/0413/FP) which needs to be considered.

- 9.28 In regards to the concern from the Leaseholders Association about the Council's interpretation and reliance on the previous Appeal Inspector's findings it is appropriate to consider how Planning Inspectors reach their decision.
- 9.29 When Planning Inspectors assess the merits of the case, they do not only consider the reasons why the Council has refused planning permission but may consider the case 'de novo' and so assess all the material considerations afresh. Planning Inspectors, also act entirely independently of the Council, and in doing so need to judge whether or not they have sufficient information to determine the appeal.
- 9.30 In taking this approach, there is no evidence to show that any of the previous Planning Inspectors did not properly consider the use of the site for parking when reaching their conclusions. The extent of their discussion on the matter in their decision letters, or limited reference to it, would therefore appear to relate to the amount of weight they attributed to this particular consideration.
- 9.31 It is clear that more weight was attached to the change of use of this site from parking in the first appeal decision letter (application S6/2002/1261/FP) and that in subsequent appeals the weight attached to this matter has decreased significantly. This changing view by Planning Inspectors is through their own professional judgment of the planning issues over this period of time, and where events and circumstances have moved on. It is important to stress that the Planning Inspectors views remain at all times independent from the decisions made by the Council. It is also important to stress that these appeal decisions carry significant weight when dealing with future applications and so are an important material planning consideration.
- 9.32 There is very strong criticism by the appointed Solicitor for Leaseholders Association which have been also based on submission by Counsel from 4-5 Gray's Inn in their letter dated 18 October 2012 (see copy in APPENDIX 1) of the previous Planning Inspector's decision letter where the Leaseholders representations on the parking issues were dismissed by the Planning Inspector with the statement:

'Representations have also been received concerning the use and retention of the appeal site for car parking in connection with the neighbouring flats. I acknowledge that the parking situation and the use of this land for parking greatly concerns local residents. However, this is a matter outwith the remit of this appeal, which is concerned solely with the refusal of planning permission for two dwellings on the site'

- 9.33 The appointed Solicitor for Leaseholders Association in their letter considers this to be:

"quite plainly wrong in law"

- 9.34 Furthermore, the appointed Solicitor for Leaseholders Association considers that even if they had the status to challenge the Inspector's decision via judicial review, it would not be necessary to do so:

"because a manifest error of law cannot bind the approach of the Council or another Inspector on a subsequent application"

- 9.35 The appointed Solicitor for Leaseholders Association also considers that the Council has also made errors in the decision making process on previous planning applications, but did accept that the parking issues in the last application (S6/2011/0413/FP) were considered as a material consideration by the Council.
- 9.36 It is this continued criticism of the previous appeal findings by the Leaseholders Association that all of the previous appeal decisions are unsound and so must not form a material planning consideration for the purposes of determining this application which are an important concern to Officer's.
- 9.37 In particular, the weight attached to the last appeal decision letter (application S6/2011/0413/FP) should carry significant weight in assessing the merits of this application. The reason for this is twofold. Firstly the decision was made only earlier this year and so the circumstances surrounding this case, particularly in regards to parking have not materially changed. Secondly, the argument advanced by the Leaseholder Association in regards to the change of use of the land from parking was raised in considerable depth not only through the application process, but further opportunity was provided during the appeal consultation process. As such the Planning Inspector was made fully aware of the concerns of the Leaseholders Association about this from the proposed development. There was an opportunity for the Planning Inspector to request further information about the parking use of the application site, but in his planning judgment did not consider it necessary.
- 9.38 The 3 issues set out in the last appeal decision letter why planning permission was withheld related only to design, the residential amenity of future occupiers of the development and the impact on the protected trees and not because of the change of use of the site from parking or any impact on the residential amenity of adjoining neighbours. As there have been no material changes to the parking issues for Lambs Close since this last appeal was determined, there appears to be no reason why planning permission should be withheld for the change of use of the land from parking according to the Planning Inspectorates previous findings.
- 9.39 As such, considerable weight is still attached to the last appeal decision in regards to the change of use of the land from parking to residential being acceptable. Some weight is still also given to the previous appeal decision letters and evidence contained within them, including the sites use and appearance.
- 9.40 A further issue raised by the Leaseholder Association relates to the question of enforceability of the application site being retained for parking through the use of a previous planning condition related to condition 3 for application S6/1997/656/FP.
- 9.41 This matter of whether the application site could be retained for parking has already recently been considered by members of the Planning Control Committee (PCC) last year (17 March 2011) following concerns raised by the Leaseholders Association that a breach of planning control had occurred following the submission of this application.
- 9.42 At that meeting no evidence existed in the Enforcement Officer's view that demonstrated that a breach of planning control had taken place, or that any breaches were still enforceable. Furthermore, it was not considered expedient for the Council to take action as there was evidence that the site had not been used

for parking for some time. Members resolved not to take further action at this time on this evidence.

- 9.43 At the time of the previous Planning Committee (PCC) Report (16 June 2011) for application S6/2011/0413/FP it was stated that this enforcement matter was still subject to an on-going investigation. Furthermore, it was stated in this previous PCC Report that for the purposes of a planning application that it was still necessary to assess whether the principle of a change of use from parking is acceptable, even if a breach of planning control has occurred and is still enforceable. This view has not changed in dealing with this application.
- 9.44 Simply, even if a breach of planning control has occurred, this does not preclude the Council in determining this application, if it is considered that the principle of a change of use from parking is acceptable. It does need to be noted, however, that if planning permission is granted and the permission implemented, that would prevent the Council from enforcing any breach of planning control for parking on the application site in the future.
- 9.45 Since the publication of the previous PCC Report (16 June 2011), the Council's Enforcement Team have reviewed further the evidence that exists and sent a letter to the Leaseholder Association appointed Solicitor on 10th February 2012 in regards to enforcing the reinstatement of parking provision for residents in the adjoining flats. This letter concluded that :
- 'even if the "immunity" issue could be overcome in some way, enforcement proceedings are neither appropriate, or expedient, taking account of the provisions of PPG18.'*
- 9.46 This letter from the Council's Enforcement Team reached this conclusion having considered the previous planning permissions granted for the site and planning conditions which were imposed. Of these, Condition 3 on planning application S6/1997/0656/FP (New parking layout and replacement of existing garages – granted 26/09/97) was considered to be of most relevance and is the application referred to by the appointed Solicitor for the Leaseholders Association.
- 9.47 It is clear that the requirements of this condition were not fully discharged as three garages on the application site were never constructed and it appears that this is also accepted by the Leaseholders Association. As such there is at least some form of breach of condition that was over 10 years ago and so adds weight to the concerns over the enforceability of this condition.
- 9.48 The Leaseholders Association Solicitor contends that the Planning Control Committee (17 March 2011) were misdirected and that the requirement to retain the parking use in perpetuity would remain in effect and could be enforced against until 10 years after the breach which was when the site was gated in 2008.
- 9.49 In considering this alternative view by the Leaseholders Association, it is appropriate to consider that the planning condition only refers to 14 of the 24 original parking spaces on the application site. The condition also does not make clear that the parking is to be retained solely for the use of the neighbouring flats. This raises further issues of whether it is expedient or appropriate of trying to enforce compliance of this condition.

- 9.50 The historic use of this application site is also relevant in assessing the use of the application site over the last three appeals.
- 9.51 In the 2002 planning appeal it was noted by the Inspector that relatively few of the garages were used by residents. By the time of the appeal site visits in 2006 and 2007 the situation had deteriorated further, and this is supported by the applicant's evidence.
- 9.52 The applicant has stated that in 2005 only one tenant used 2 garages in the application site and both were for storage purposes. According to the applicant, in 2006 the application site was now empty and was suffering fly-tipping. In 2008 there was a fire on the application site with extensive damage to the garages. It was in this year that the site was gated by the applicant to protect against fly-tipping and antisocial behaviour.
- 9.53 It is reasonable to consider on this evidence that the application site usage for parking by the existing residents reduced over this time.
- 9.54 At the time of the previous appeal site visit in December last year the Planning Inspectors observed in his decision letter that:

'The appeal site is currently derelict, comprising overgrown hard-standing and the remains of eleven lock-up garages. It is a backland location to the south of a block of flats at the end of Lambs Close, a cul-de-sac. It is likely that the garages were originally built in connection with the flats'

- 9.55 These assessments, therefore, add further weight to the conclusion that the application site over the time of the planning appeal decisions has changed.
- 9.56 This previous evidence in the earlier applications indicates that some of the garages were used for storage rather than parking which implies that if they were available again to the existing residents of Lambs Close, that there would be potential pressure for this storage use rather than parking. Previous evidence of fly tipping must also raise concerns whether the isolated location of these garages and parking are now in an appropriate area where there is sufficient surveillance. Appropriate security measures would probably now be required to prevent potential fly-tipping for example and to improve the safety of users to encourage use of the site for parking. Such security, however, cannot be guaranteed as necessarily being forthcoming.
- 9.57 The question of whether this condition is still enforceable also remains uncertain and whether it would achieve the requirements that the Leaseholder Association seek in re-providing parking for the existing flats in Lambs Close. The consequences of the Council not being able to successfully enforce this planning condition should also be considered. If this situation did occur, then there is the potential for this site to remain abandoned for the foreseeable future which could then be vulnerable to abuse.
- 9.58 This site will also be seen by adjoining residents and so any further deterioration of this appearance will harm the amenity of adjoining residents. The applicant has advised that the reason why the gates were put on was to prevent further fly tipping which had taken place. This previous abuse of the site use is an indication of the potential problem if the site remains un-gated, but still available for parking. As already stated, additional security could try to prevent this, but this cannot be guaranteed as necessarily being forthcoming.

- 9.59 The Leaseholders Association are of the view that insufficient consideration of the loss of parking as a material consideration has been a failure of previous Planning Inspectors and previous Officers. The strength of objection by the Leaseholders Association, however, only became apparent in the last application, (S6/2012/0413/FP) and this was considered as a material consideration by Officers. In this application a more detailed assessment has been made in response to the further evidence submitted by the Leaseholders Association.
- 9.60 Officers do not consider that the previous Planning Inspectors have failed in their duties, but were entitled to attach as much weight as was thought necessary to this matter of parking. Whilst the Council is sympathetic to the Leaseholders Association concerns over parking, as was the previous Planning Inspector, it is still necessary to consider whether the principle of for a change of use for parking is acceptable for this proposed development, taking into account all the matters discussed above, including that of the potential success of bringing this site back into parking use and which would be limited for only the safe use of the existing residents in Lambs Close.
- 9.61 Whilst it is impossible to state categorically that such a use could never be achieved, it would not be unreasonable to consider whether there is a likely to be such success on the evidence available at the moment. Officer's are of the view that it is very unlikely that this site could be reinstated for parking and garaging for its previous use for the residents of Lambs Close. Furthermore, and to avoid the potential of having a blighted site, that an alternative use should be considered if possible, and if such a use was found to be compliant with planning policy, then planning permission should be granted.
- 9.62 As such, the previous view given by the Enforcement Team previously that enforcement proceedings is neither appropriate or expedient with regard to national planning policy are still appropriate for the reasons given above.
- 9.63 It is in this context that this application has to be assessed.
- 9.64 As a last point, the Leaseholder Association has criticised the Council's decision making process for another former parking site at 1-12 Lambs Close (application S6/2005/1560/FP) and this has been subject to an Ombudsman investigation. The provisional decision by the Ombudsman earlier this year did not find fault with the Council's decision making in dealing with either the application or the subsequent appeal. The status of previous planning approval for application S6/2005/1560/FP referred to the planning history above remains unchanged for the purpose of this discussion.
- 9.65 A detailed analysis of the existing parking arrangements has been provided by the Leaseholders Association in this planning application. It is noted, however, that the additional parking which was identified for the previous mansard roof additions and new flat developments was not fully implemented. There remains therefore the potential for additional parking still to be provided for the residents of Lambs Close in the future from these extant permissions.
- 9.66 The main issue, however, still remains on whether there is evidence from the planning history of this site and its usage to justify resisting its change of use from parking.

9.67 Overall, it is considered that the principle for a change of use from parking is justified for this site as there is no evidence to suggest that the decisions by any of the previous three Planning Inspectors were incorrect for the reasons given above.

9.68 When all these factors are taken into account the principle for a change of use from parking to residential is considered acceptable subject also to compliance with the other remaining planning policies.

2. Design

9.69 Local Plan Policies D1 & D2 and the accompanying Supplementary Design are relevant, along with the National Planning Policy Framework and ENV7.

9.70 Policy D1 requires the standard of design to be of a high quality and this reflected in the NPPF where 'good design is a key aspect of sustainable development' (paragraph 56).

9.71 In the previous planning appeal, the proposed pair of two storey dwellings was an issue in design terms as the Planning Inspector noted that:

'It is apparent that the design of the proposed dwellings seeks to imitate the design of the recently-constructed development near the entrance to Lambs Close. Whilst such a design may be appropriate for a large single building containing many residential units and a varied roof-scape and footprint, adopting the same design approach for this smaller scheme appears plain, inelegant and lacking proportion. Its detailing and overall form is unprepossessing and uninspired, and crude in parts.....Notwithstanding that it is a backland site, I find that the proposal is inappropriate in its context. It lacks the presence and individuality of design to provide the desired visual link between the flats and the bungalows. It thus fails to take the opportunities available for improving the character and quality of the area. As such the scheme does not accord with Policies D1 and D2 of the District Plan and the Council's Supplementary Design Guidance.'

9.72 This scheme is now for a single dwellinghouse which has 3 levels of accommodation with the second floor contained within a gabled ended roof space with dormers on the rear roofslope. The property, however, appears as a two storey property at the front, with only a couple of small rooflights in the front roofslope. Although the previous Planning Inspector had concerns over the quality of the design, this current proposal is considered to be of a significant improvement and is considered to no longer appear 'plain, inelegant and lacking proportion'. Nor is the architectural detailing and form of the current proposal considered to be 'unprepossessing and uninspired'. The application has submitted proposed external materials for the walls and roof, however, it would be reasonable to have this subject to a planning condition for the submission of materials for approval.

9.73 The overall architectural quality of the proposed design is now considered to be of a good standard and compliant with the requirements of Policy D1 and the SDG along with the NPPF.

9.74 With regards to the proposed site layout, the area provided at the front and rear of the property is considered sufficiently large enough in terms of functional

space for the size of the proposed dwelling. The previous Planning Inspector, as noted above, had concerns over the previous proposal for this site where it was stated that the building:

'lacks the presence and individuality of design to provide the desired visual link between the flats and the bungalows. It thus fails to take the opportunities available for improving the character and quality of the area.'

9.75 In this application, the proposed design no longer reflects the other recent development at the entrance of Lambs Close referred to the previous Planning Inspector, but is individually designed. It has been designed so that the main windows are to the front and rear which provides the main habitable rooms with an aspect directed towards the main garden areas to the dwelling and away from that of its adjoining neighbours. In regards to scale, the neighbouring flats are significantly higher whereas the neighbouring properties in Theobalds Close are single storey. It is considered that the height and scale of the building provides the visual link required by the previous Planning Inspector as it provides a transition in design and heights from the flats to the bungalows. The proposal therefore complies with Policy D1 and D2 of the District Plan and the Council's Supplementary Design Guidance.

9.76 In previous applications for this site there have been concerns in regards to the design of the development and its layout in relationship to the impact these would have on the adjoining two protected oak trees as required by Local Plan Policy R17. The reasons for these concerns were considered by the Planning Inspector in the last application where it was stated:

'Owing to the effect the presence of the trees would have on the living conditions of residents were the houses built, I find that there would be a real and significant risk of demands from the occupiers to reduce the size of the trees or even remove them in order to improve the living conditions, prevent drains and gutters being blocked by falling leaves, to avoid danger from falling branches, and to enable a garden to be properly established.'

9.77 In this application, one dwelling is being proposed instead of two and so the use of the surrounding garden area for this design will be different in that there will be more garden area available for use which will not be in shadow. In terms of landscaping, the areas under the oak trees will need to be landscaped appropriately and the main lawn areas located outside the tree canopies, but there are still sufficient alternative areas of this site which would be suitable for grass and for sitting out. The main living room and rear terrace is also located on the side of the dwelling furthest away from the trees. Although there will still be some degree of overshadowing from the trees to the rear garden area and loss of light to some of the rear windows, this will not be so severe as if the site was for two properties where the impact would be greater due to the constraints of the layout providing access to other areas not in shade. It is acknowledged that there is potentially a greater level of maintenance required keeping gutters and drains clear when trees are nearby, however, it is considered unreasonable to withhold planning permission solely on this basis.

9.78 In summary, it is considered that the design of the proposed development has overcome the previous concerns of the Planning Inspector in terms of design and the potential impact on the adjoining protected trees. The architectural quality of building is significantly improved and now respects the existing character and

context of the area. The use of the application site for one dwelling rather than two allows much greater flexibility of the site in terms of its use and layout which results in the living conditions of future residents to reach an acceptable standard. As such the likely pressure from residents for work on the protected trees is significantly reduced to levels which would not unduly risk the future of these trees in any subsequent tree work applications.

- 9.79 The proposal is therefore considered to comply with Local Plan Policy D1 & D2 & R17 and the Supplementary Design Guidance and the NPPF.

3. Highways and Parking Considerations.

- 9.80 Local Plan Policy M14 and the accompanying Supplementary Planning Guidance (SPG) is relevant. This site is located in Zone 4 where a 4 or more bedroom property requires 3 spaces.

- 9.81 The proposed development shows parking provision for 2 garage spaces and at least 2 further parking space to the front of the dwelling which is considered sufficient. It would be reasonable however to impose a planning condition for the detailed parking layout and access arrangement to be submitted along with the proposed surface material and for these areas to be retained for solely that purpose.

- 9.82 Subject to a planning condition requiring the approval of a site layout plan showing the provision of 4 parking spaces and their construction, prior to first occupation of the dwelling, the proposal complies with Local Plan Policy M14 and the SPG.

- 9.83 Hertfordshire (Transport Programmes and Strategy) (HTPS) have also been consulted and advise that the on-site parking provision is adequate and there are sufficient spaces for turning to allow vehicles to leave the development in forward gear. HTPS have also advised that a planning condition should be imposed requiring the storage and delivery of materials is to be on-site and not on the public highway. This would be a reasonable requirement and so should be subject to a planning condition.

- 9.84 The proposal therefore provides sufficient parking and appropriate turning space for the new dwelling to safeguard highway safety.

- 9.85 HTPS has also commented on the existing/previous use of the site where it is noted :

'If the current proposal is implemented the opportunity to use reuse the site for car parking would be permanently lost. Therefore, the highway authority's assessment of this planning application takes into account the wider impact of the proposal.

The site previously consisted of 11 of garages and 13 private parking spaces. The site has been closed since 2008. Therefore, the implications of the permanent loss of the parking has been observed and recorded during this time.

The highway authority is aware of the comments made by the residents association regarding the problems associated with the lack parking space. However, the highway authority generally assesses the level of parking in planning applications in terms of its impact on road safety,

network capacity and sustainability. It should be noted the Parking Standards in Welwyn Hatfield are prepared and implemented by the Planning Authority.

Lambs Close is within a built up residential area therefore vehicle speeds are relatively low. The safety concerns raised by the residents are noted but any additional movements created as a result of looking for a parking space during the last three years has not resulted in any recorded injury collisions that would lead us to believe the application would create a hazardous situation.

Regarding capacity, it is the view of the highway authority that any additional vehicle movements associated with this proposal it will not lead to a significant change in the amount of traffic in the area, therefore the proposal will not lead to capacity problems within the local road network.

Hertfordshire County Council as the Local Highway Authority considers the proposal would not have an unacceptable impact on the safety and operation of the highway.'

- 9.86 These comments advise that the proposal would not have an unacceptable impact on the safety and operation of the highway in regards to the adjoining development of Lambs Close. As such the proposal is considered to comply with the requirement of Local Plan Policy M14 and the accompanying Supplementary Planning Guidance – Parking Standards and the NPPF.
- 9.87 HTPS note that the parking standards for new development are prepared and implemented by the Local Planning Authority. The issues of parking for the existing residents in Lambs Close and potential implications for the change of use of this existing site from parking has already been discussed in full under the Principle of Development above as part of the Planning Authority's assessment of this application.

4. Residential Amenity

- 9.88 In regards to the impact on the residential amenity of adjoining neighbours in terms of sunlight/daylight, privacy and visual impact in terms of dominance, Local Plan Policy D1 and the Supplementary Design Guidance (February 2005) is relevant along with the NPPF.
- 9.89 In regards to the impact of the proposal on the existing residential amenity of adjoining neighbours, the nearest properties could be impacted is the block of flats at 37-48 Lambs Close, No.31 Theobalds Road and Nos.1 & 3 Theobalds Close.
- 9.90 With respect to the adjoining flats, the only side windows are proposed in the development would be from three first floor en-suite windows. All these can be subject to a planning condition requiring obscure glazing and for windows to be non-opening below 1.8m from finished floor level. No significant loss of privacy would result subject to these planning conditions.
- 9.91 The resultant separation distance from the flats to the new development would also be sufficient to ensure that there would be only limited overshadowing to the communal gardens and that the proposed development would not appear overbearing.

- 9.92 In regards to whether the proposal would appear over dominant, the proposed dwellings would be visible from windows on the south side block of the flats and communal garden. This in itself does not make the development unacceptable and due to proposed height of the dwelling and the separation distance the proposal is not considered to appear over dominant.
- 9.93 Turning to the adjoining dwellinghouses in Theobalds Close and Road, the development would be located at the bottom of these properties gardens. Within the proposed site layout it is No.1 Theobalds Close which could be most impacted, however, the resultant separation distance is still sufficient to ensure the proposal does not either appear overbearing or over dominant from this neighbour's property. Furthermore, as the proposal is north of this neighbour there would be no significant overshadowing or loss of daylight to this existing dwelling. A planning condition can also be used to ensure that any side windows can be obscured and non-opening to protect these neighbour's privacy.
- 9.94 In regards to the properties in Theobalds Road, the separation distance is sufficient to ensure that there will be no undue overlooking from the rear windows of the development to this neighbour. The resultant separation distance would also be substantial so that the proposal would not appear over bearing or over-dominant.
- 9.95 Overall, and subject to the above planning conditions, the proposal would not have an unacceptable impact on the residential amenity of adjoining neighbours and so complies with Local Planning Policy D1 and the SDG.
- 9.96 In regards to the residential amenity of the occupiers of the proposed development, concerns have been raised in previous applications and appeals over the impact of the protected trees on the maintenance, and outside living areas of the new occupiers from the two protected oak trees, particularly when the trees are in leaf. In the last appeal decision letter the Inspector considered the impact on the garden areas in his first issue and maintenance matters as a second further issue.
- 9.97 In regards to the first issue, the amount of garden area which will be overshadowed will still be the same, but there are more opportunities for residents to find other areas of the garden in sun at these times because the site is for now only for one dwelling. The Inspector previously concluded that:
- 'Whilst the shading would be less at other times of year, it is evident that the level of shading in summer would be greatest when the prospective residents would wish to utilise their garden most. Thus their experience of the shading by the trees and their perception of the effect of the trees on their enjoyment of the property would be great. Whilst shade can be welcome at times, to experience it continually in parts of the property and for a notable percentage of time in other areas would, I find, be overbearing and would have an unacceptable, deleterious effect on the living environment.'*
- 9.98 This is a finely balanced issue, as there is still likely to be concerns from future occupiers about the level of shading to the rear garden, irrespective of the opportunity for other areas of the site being in full sun. The Council's arborist has noted that the internal layout of the building has been carefully designed to have open plan areas to alleviate the presence of the oak trees. The Council's arborist does acknowledge that there may be pressure to prune the trees still due to

shading, but because of the revised design any future TPO applications will be 'more defensible'.

9.99 If planning permission is granted for this development, it is likely that a future TPO application for tree works will be submitted by future occupier's to reduce the shadowing of the house and garden area. The Council's arborist does not see however how any future tree works would be appropriate to overcome this.

9.100 In the Planning Inspectors second issue it is stated:

'Owing to the effect the presence of the trees would have on the living conditions of residents were the houses built, I find that there would be a real and significant risk of demands from the occupiers to reduce the size of the trees or even remove them in order to improve the living conditions, prevent drains and gutters being blocked by falling leaves, to avoid danger from falling branches, and to enable a garden to be properly established. However, I find that these trees contribute so greatly to the character and appearance of the locality that their well-being and form should not be risked by siting the residential development as proposed in this scheme. The proposal thus runs counter to Policy R17 of the Welwyn Hatfield District Plan'

9.101 In this application the Council's arborist has advised that:

'the dwarfing aspect of living with large oak trees is unnerving to some people and play on their minds. Many people also feel that trees should be pruned regularly to keep them maintained, irrespective of the trees needs or the lack of visible faults'.

9.102 The concerns raised above by the Planning Inspector to improve living conditions are still applicable, along also with the on-going issue that even the current proposal will still suffer from drains and guttering being blocked by falling leaves and the danger of falling branches.

9.103 The overall assessment by the Council's arborist is that the 'future residents of the house will be impacted on the trees to some extent, but measures have been undertaken to reduce this impact. The severity of the remaining impact will be determined by the perception of the future resident'.

9.104 Whilst the Council's arborist correctly concludes that it would be inappropriate to dismiss the application entirely on the possible negative perception of the tree mass, it does however, raise the on-going concern that such perceptions are likely to result in a future TPO application for tree works.

9.105 The main planning issue here, is therefore, what is the likely outcome of such a TPO application in regards to the future retention of what are important oak trees are an important feature in the locality.

9.106 On balance, and taking into careful account the comments by the Council's arborist and the previous Planning Inspectors findings, the level of risk considered by Officer's of a future TPO application being granted at appeal for inappropriate tree works from the repercussions of granting planning permission, irrespective of the Council's strong resistance, still remains far too high to secure the long terms protection of these protected oak trees.

9.107 As such the proposal is considered to fail to comply with Policies D1 and R17 of the adopted Welwyn Hatfield District Plan 2005 and the adopted Supplementary Design Guidance.

5. Other Matters

9.108 **Tree Root Protection Area:** In addition to the above concerns about the impact of the proposed development on the future of the protected oak trees, it is also necessary to assess whether there would be an impact through the implementation of the development.

9.109 In the last application the separation distance was considered to be sufficient to ensure the development was unlikely to threaten to these trees which could endanger their future. The separation distance is similar in this application and so no new issues arise from this. A planning condition approving the tree protection measures and hard landscaping along with the foundation design would ensure that the impact on the roots was sufficiently controlled.

9.110 **Protected Species:** The presence of protected species is a material consideration, in accordance with the National Planning Policy Framework, Natural Environment & Rural Communities (NERC) Act 2006 (section 40), Wildlife and Countryside Act 1981 as well as Circular 06/05.

9.111 Protected species such as great crested newts, otters, dormice and bats benefit from the strictest legal protection. These species are known as European Protected Species ('EPS') and the protection afforded to them derives from the EU Habitats Directive, in addition to the above legislation. Water voles, badgers, reptiles, all wild birds, invertebrates and certain rare plants are protected to a lesser extent under UK domestic law (NERC Act and Wildlife and Countryside Act 1981).

9.112 In the UK the requirements of the EU Habitats Directive is implemented by the Conservation of Habitats and Species Regulations 2010 (the Conservation Regulations 2010). Where a European Protected Species ('EPS') might be affected by a development, it is necessary to have regard to Regulation 9(5) of the Conservation Regulations 2010, which states:

"a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions."

9.113 The Conservation Regulations 2010, (Regulation 41) contains the main offences for EPS animals. These comprise:

- "Deliberate capture or killing or injuring of an EPS"
- "Deliberate taking or destroying of EPS eggs"
- "Deliberate disturbance of a EPS" including in particular any disturbance which is likely –
 - (a) to impair their ability –
 - (i) to survive, to breed or reproduce, or to rear or nurture their young, or,
 - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate, or

(b) to affect significantly the local distribution or abundance of the species to which they belong

- “Damage or destruction of an EPS breeding site or resting place” (applicable throughout the year).
 - e.g. bat maternity roost (breeding site) or hibernation or summer roost (resting place)
 - e.g. great crested newt pond (breeding site) or logpiles / piles of stones (resting place)
 - e.g. dormice nest (breeding site or resting place (where it hibernates)

9.114 In some circumstances a person is permitted to ‘derogate’ from this protection. The Conservation Regulations 2010 establishes a regime for dealing with such derogations via the licensing regime administered by Natural England. The approval of such a license by Natural England may only be granted if three strict “derogation” tests can be met:

- the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative; and
- favourable conservation status of the species must be maintained

9.115 Notwithstanding the licensing regime, the Council as Local Planning Authority (LPA) has a statutory duty to have regard to the requirements of the Habitat Directive and therefore should give due weight to the presence of an EPS on a development site. Therefore in deciding to grant permission for a development which could affect an EPS the LPA should:

- a) Consider whether an offence to an EPS is likely to be committed by the development proposal.
- b) If the answer is yes, consider whether the three “derogation” tests will be met.

9.116 A LPA failing to do so would be in breach of Regulation 9(5) of the Conservation Regulations 2010 which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.

9.117 There is no evidence in this application that indicates that the proposal is likely to have any impact on protected species.

9.118 **East of England Plan Policies:** On 10th November 2010, The High Court quashed the decision of the Secretary of State for Communities and Local Government to unilaterally revoke Regional Spatial Strategies in England on two grounds:

- That he acted outside his statutory powers in circumventing the need for parliamentary scrutiny of such a fundamental change to the national planning system; and
- He failed to consider the likely environmental effects of revoking Regional Strategies.

9.119 Whilst the minister for Communities and Local Government has announced that the judgement “changes very little”, it is likely that the Government's proposals to

revoke Regional Spatial Strategies will need to be revisited prior to the passage of primary legislation. In the meantime, the policies in the East of England Plan are considered to be re-instated and to form part of the development plan again and are therefore a material consideration which can be taken into account in reaching a decision. However, the Government's intention to abolish Regional Spatial Strategies is also a material consideration that could be considered to reduce the weight to be attached to the policies in Regional Spatial Strategies.

- 9.120 It is recommended that the application be considered against policies (SS1, ENV7, T14) of the East of England Plan, which at the time of this decision forms part of the development plan for the borough but that the weight accorded to these policies is carefully considered in reaching a decision.
- 9.121 **Sustainable Development:** The applicant has submitted a statement assessing the proposals against the sustainability checklist contained within the Supplementary Design Guidance. This states that the proposed design will use energy efficient condensing boilers and water heating, full roof insulation, double glazed windows, individual local temperature controls. These proposed measures are considered for this scale of development to be reasonable.
- 9.122 In relation to the management of water services, the applicant proposes water recycling including water butts, permeable parking areas and water consumption minimisation through water efficient taps, smaller baths etc. These measures for this scale of development are felt to be appropriate.
- 9.123 If planning permission is granted, it is suggested that these measures are secured through planning conditions.
- 9.124 **Sewers:** Thames Water has identified a sewer crossing the site and state approval is required from them for the erection of a building or an extension to a building or underpinning work over the line of or would come within 3 metres of a public sewer. The application has been submitted with details from Thames Water and so the applicant is aware of this sewer.

10 Conclusion

- 10.1 This revised scheme has attempted to overcome the concerns raised by the last Planning Inspector over the proposed impact of the development on the future retention of the protected trees and the design concerns with regard to the appearance of the building and its impact on the surrounding character and context.
- 10.2 This proposal has reduced the number of residential units from two to one and maintained a similar separation distance from the rear of the new dwelling from the bases of these protected trees.
- 10.3 Although it is acknowledged that for some of the year these protected oak trees are not in leaf, there are a number of months when the overshadowing to the rear garden of the new dwelling will result in a loss of residential amenity to future occupiers and cause on-going maintenance issues. This impact on the rear outlook of the proposed dwelling and the use of its rear outside private amenity space due to the overshadowing from these protected trees is still of a concern, albeit the impact has been reduced further in this proposed design. It is therefore still likely that future occupiers of this proposed dwelling would be successful in requesting inappropriate tree works to these protected oak trees as an outcome of granting planning permission.

- 10.4 Overall, the proposal is considered has only overcome the previous concerns of the Planning Inspector in the last application (S6/2011/0413/FP) with respect to the architectural quality of the design appearance of the proposed dwelling.
- 10.5 The proposal therefore fails to comply with Policy R17 & D1 of the Welwyn Hatfield District Council and the accompanying Supplementary Design Guidance and the National Planning Policy Framework.

11 Recommendation

11.1 It is recommended that planning permission be refused for the following reasons:

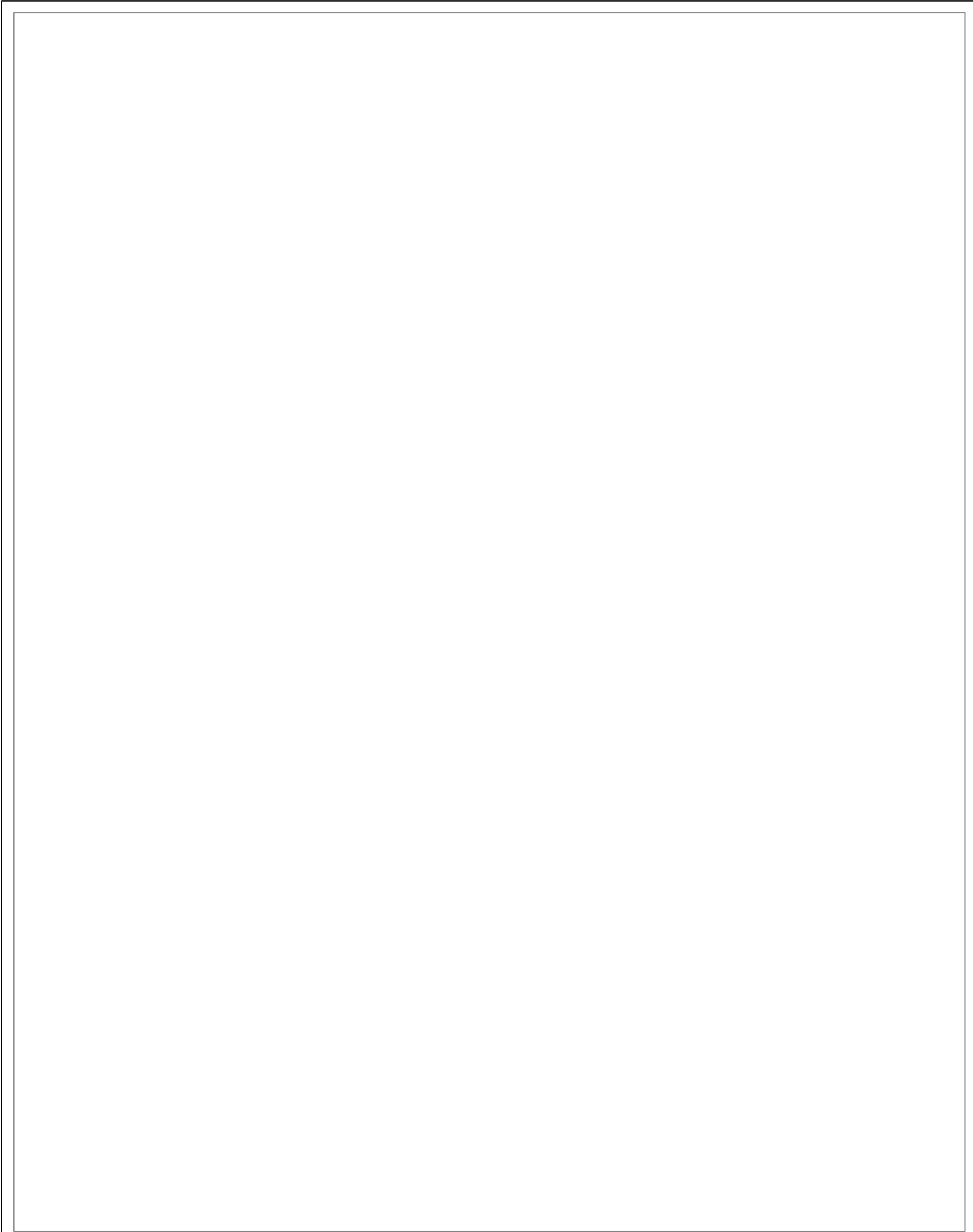
1. The two Oak trees, which are the subject of a Tree Preservation Order (No 209), would significantly impact on the proposed dwelling due to their close proximity to this dwelling. This likely loss of residential amenity and concerns over safety and maintenance is likely to result in future occupiers of the proposed dwelling being pressured to apply for inappropriate tree works to these protected trees. The potential harm to the future health and well being and possible loss of these protected and important trees which would result from such an application would be harmful to the established character and amenity of the locality. The proposal is therefore contrary to Policy D1 & R17 of the Welwyn Hatfield District Plan 2005 and Supplementary Design Guidance (Statement of Council Policy) and the National Planning Policy Framework.


P. Jefcoate (Strategy and Development)
Date 22.10.12

Background papers to be listed

Appeal Decision Letters:

APP/C1950/A/07/2035640
APP/C1950/A/05/1194541
APP/C1950/A/03/1115192
APP/C1950/A/11/2155240

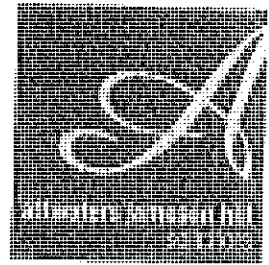


 Council Offices, The Campus, Welwyn Garden City, Herts. AL8 6AE	Title: 37-48 Lambs Close, Hatfield		Scale: DNS
	Project: PCC Meeting		Date: 16 June 11
	Drawing Number: S6/2011/0413/FP		Drawn: Andrew Windscheffel
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Our Ref: SA/RAJ/120058

Your Ref: S6/2012/1962/FP

Date: 18 October 2012



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Mr C Conway
Director (Strategy and Development)
Welwyn Hatfield Borough Council
Council Offices
The Campus
Welwyn Garden City
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By email and post: planning@welhat.gov.uk

Dear Mr Conway

Submissions on behalf of Lambs Close Leaseholders' Association

Planning Application Number: S6/2012/1962/FP

Site Address: Garages and land adjacent to flats at 37 to 48 Lambs Close, Cuffley, POTTERS BAR EN6 4HD

Description: Erection of a detached dwelling with associated parking following the change of use of the land from parking, including the demolition of existing garages (with the exception of the rear walls) and removal of existing hard standing

We represent Lambs Close Leaseholders' Association and have been instructed to prepare their submissions in respect of legal issues pertaining to their objections relating to the above mentioned application. These submissions have been prepared by us and upon the advice of Brian Ash QC of 4-5 Gray's Inn Square, London.

As you will be aware, our clients have consistently voiced strong concerns about the detrimental impact of the loss of parking arising from redevelopment proposals on this site. They do not consider that their concerns have been given proper consideration by the Council or by Inspectors on the appeals which have been held. It is clear that the Council failed to provide Inspectors with the true and full facts of the cases upon which to base their decisions.

The complaints about the Council's approach to the assessment of the merits of the parking issue on previous applications and appeals have been fully detailed in earlier correspondence and in the representations on the appeal against the refusal of application S6/2011/0413/FP. They do not need to be repeated here but, in summary, it is clear that the Council

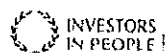
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has placed undue reliance on earlier appeal decisions which were made without a proper understanding of the planning history of the requirement to use the site for parking and of the ability of the Council to take enforcement action in order to retain that use.

It was against this background that the Council's officers considered the issue of loss of parking in the committee report on the 2011 application (Ref: S6/2011/0413/FP) but subsequently did not recommend a refusal on this ground.

Our clients made comprehensive representations on the parking issue on the appeal (LPA Ref: S6/2011/0413/FP, Appeal Ref: APP/C1950/A/11/2155240), which were dismissed by the Inspector without any consideration of the merits of the parking issue on the basis that "this is a matter outwith the remit of this appeal, which is solely concerned with the refusal of planning permission for two dwellings on the site".

This was quite plainly wrong in law but, since the appeal was dismissed on other grounds, our clients would not have had the required status to challenge the decision (via judicial review) as persons "aggrieved" by it and, in any event, it would not have been necessary to do so, because a manifest error of law cannot possibly bind the approach of the Council or another Inspector on a subsequent application.

It is quite clear that the Council itself has made errors in the decision making processes on earlier planning applications but did consider the loss of parking issue to be a material consideration in the determination of the 2011 planning application. In this 2012 planning application (Ref: S6/2012/1962/FP) the Council can and should give proper and detailed consideration to our client's objection on the merits of the parking issue rather than giving undue weight to decisions on earlier applications.

So far as we are aware, no party has sought to claim that the parking issue was not material. The recent appeal decision demonstrates the fragility of reliance on earlier decisions where matters have not been debated at all or have been considered without a full understanding of the relevant facts.

It has been suggested by the Council in correspondence dated March 5th 2012 (Ref. ENF/2011/0003) that previous appeal decisions are material considerations, if they are not legally challenged by third parties. As we have indicated, a legal challenge by an objector would not arise when the appeal is dismissed on other grounds. Furthermore, an appeal decision on the planning merits is not a binding precedent for any purpose beyond that of the decision itself and it remains necessary for the Council to have regard to our clients' complaints about the deficiencies in the consideration of the parking issue on previous planning applications and appeals and the 2011 enforcement case (Ref: ENF/2011/0003).

As to the planning history, we believe that, despite earlier confusion on this matter, the Council is now fully aware of the relevance of condition 3 of the permission granted in 1997 which says that:-

"The car parking and garaging shown on drawing number 97/9 shall be provided and marked out prior to the occupation of any of the flats within the mansard roof of block C, previously approved under planning ref: S6/0651/95/FP and shall be retained in that use in perpetuity"

In a Planning Control Committee meeting held on March 17th 2011 it was incorrectly asserted that a breach of condition 3 occurred in 1997 and the subsequent decision making process as to the expediency or otherwise of initiating enforcement proceedings has revolved around that. This has led to the assertion by the Council in its letter of March 5th 2012 that the condition was breached more than 10 years ago and has, therefore, "gained immunity from planning enforcement powers". This is clearly wrong in that it is not the condition that gains immunity but any breach of planning control relating to it. Any immunity arising from the failure to build the garages would relate to the occupation of the flats. The requirement to retain the parking use in perpetuity would remain in effect and could be enforced against until 10 years after the breach. The Council's letter does not dispute the fact that the condition was breached in 2008 when access to the site was denied to local residents by the erection of a locked gate. It is therefore still amenable to enforcement action and this must be taken into account in the context of the present planning application.

The Council's letter dated March 5th 2012 goes on to say that "the recent appeal decision... did not attach any significant weight to your clients' extensive representations about impact on their living conditions and amenity, if the parking area were to be developed". This is then put forward as an indication that enforcement proceedings would be neither appropriate nor expedient.

In so far as this is intended to be or to include a reference to the loss of the parking use, as we have already pointed out, the previous appeal Inspector did not consider the weight to be attached to our clients' representations at all, because, as a result of a plain error of law, he considered them to be irrelevant (Appeal Ref: APP/C1950/A/11/2155240).

If it is intended to apply only to the impact on amenity of the buildings themselves, it is difficult to see how this could carry much weight in the balance in a decision whether to take enforcement action. The loss of parking issue was free standing in the context of the appeal, as was the impact of the trees. The Inspector did not moderate his view of the impact of the trees, because he did not consider the buildings to have a harmful effect on amenity.

Furthermore, our clients are extremely concerned about the very cursory consideration given by the Inspector in paragraph 12 of the decision letter to their detailed objections on amenity grounds. It focuses exclusively on the effect on the proposed buildings to the south of the site and says

nothing at all about the other matters which were raised. It is clearly both disappointing and unsatisfactory, if detailed objections are rejected in a short sentence or two or not expressly analysed at all.

Accordingly, this decision could not possibly justify a conclusion by the Council that enforcement action is not expedient.

We therefore urge you to give full and fair consideration to our clients' objections to the loss of parking as a plainly material consideration, unfettered by any undue reliance upon earlier appeal decisions and by any belief that there is no power to take enforcement action against the discontinuance of the parking use. We also ask you to give full and detailed consideration to their concerns on amenity and not to place undue weight on the very limited conclusions of the Inspector on the previous application.

Yours sincerely



px Salvatore Amico
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Attwaters Jameson Hill Solicitors

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cc Robert Baldock, Director of Governance
Nicola Swan, Legal Services Manager
Michel Saminaden, Chief Executive
Tracy Harvey, Head of Planning
Lisa Hughes, Principle Planning Officer
Peter Jefcoate, Senior Planning Officer

Enclosures

Letter dated March 5th 2012 from Welwyn Hatfield Borough Council
Letter dated April 11th 2011 from Attwaters Jameson Hill Solicitors



Jameson & Hill
72-74 Fore Street
HERTFORD
Herts
SG14 1BY

Tracy Harvey
Head of Planning

Our Ref: ENF/2011/0003
Your Ref:
Reply To: Mr C Robson
Direct Tel: 01707 357466

Date: 5 March 2012

Dear Sirs

TOWN & COUNTRY PLANNING ACT 1990 (as amended)
Development at Lambs Close Cuffley – Parking Conditions

I refer to your letter of 11 April 2011 concerning the above. You will be aware that we also received and have dealt with a two formal letters of Complaint dated 8 July and 1 November 2011 respectively from your Clients, concerning assessment of previous planning applications relating to proposals to develop land at Lambs Close. As my predecessors discussed with your clients, we promised to review the planning position and respond to your letter once the outcome of the recent appeal [S6/2011/0413/FP] was known and I have now done so. I have sent a copy of this letter directly to your Clients for their interest. It seems the best way forward. I also apologise for the delay in writing to you.

Your clients have complained that the Authority failed to properly assess planning applications that were made in 2002, 2005 and 2006 at Lambs Close. In consequence they have claimed that the alleged failure was prejudicial to formal consideration of planning application S6/2011/0413/FP where permission was refused by the Council and the subsequent appeal has now been dismissed. My Head of Planning [Tracy Harvey] has responded to the allegations in writing on 11 August 2011 and 12 January 2012.

To recap, the Council, as local planning authority, has a statutory duty to determine planning applications that are made to it, and has discretionary powers to make those decisions. An applicant may appeal against the Council's decision, if aggrieved that the decision was unreasonable. Third Parties, [including your clients] are entitled to challenge decisions under Judicial Review if, for example it appears that the decision has failed to take account of a material planning consideration. The applications at issue were determined, taking account of relevant planning policies and other material considerations [including parking], and fall well within the Council's discretionary powers. No third party challenge has been made to any of the decisions that have been complained

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about and they therefore stand as relevant planning history and a material consideration [along with related appeal decisions] to any further proposals to develop the Land. As Mrs Harvey has explained in her letters the issue appears to be that the local planning authority and the Planning Inspectorate did not attach as much weight to loss of parking spaces, as the Residents Association might have wished. Assessing applications involves weighting and balancing different, sometimes conflicting issues and it is inevitable that planning decisions do not always achieve a satisfactory outcome for everyone

Turning to your letter of 11 April 2011, I have noted your recital of the history of planning applications between 1994 and 1997. I have not carried out my own detailed research of that history to be able to corroborate your views, or otherwise. But the terms of Condition 3 of the 1997 permission, [with its reference to development associated with S6/0651/95/FP], gives me some doubts about the succession of those planning permissions. It may be well be that the development is a hybrid of different stand-alone permissions [as has happened in a number of older developments involving S73 applications] In that case the development may be unauthorised, but have gained immunity from planning enforcement action.

Within the caveat of the preceding paragraph I have considered your opinion about Condition 3 of the 1997 permission. At Para 4 on page 2 of your letter you comment that the development

"was clearly implemented but not completedbecause 3 garages were not in fact constructed"

Condition 3 specifically requires that the approved parking and garaging be provided and marked out prior to occupation of any of the flats. That being the case its requirements have been breached for a period exceeding 10 years and the Condition is no longer enforceable.

I have noted what you say that we have clear grounds for enforcing against the

"retained in that use, in perpetuity"

clause of the condition, following the fire of 2008, when access to the area was closed off. Where a planning condition has already gained immunity from planning enforcement powers I do not know of any planning precedent for the action you suggest. Similarly to earlier decisions, the recent appeal decision [S6/2011/0413/FP], did not attach any significant weight to your clients' extensive representations about impact on their living conditions and amenity, if the parking area were to be developed. Therefore, even if the "immunity" issue could be

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Your ref:

Our ref: RAJ.CP.LAMBSCLOSE/110257

Date: 11th April 2011

Ms Tracy Harvey
Head of Development Control
Planning Department
Welwyn Hatfield District Council
The Campus
Welwyn Garden City
Herts AL8 6AE

Dear Ms Harvey

**Enforceability of parking conditions – development at Lambs Close, Cuffley,
Potters Bar (S6/2011/0413/FP)**

We act as Planning Solicitors to the Lambs Close Leaseholder's Association and have been asked to write to you on their behalf with our Opinion on the enforceability of parking conditions attached to various Planning Permissions for development at Lambs Close, Cuffley.

I do not rehearse the planning history in detail, which will be well known to you. Essentially 48 flats were granted Planning Permission in 1964 with 48 garages, although in the event 56 garages were built.

Two Planning Permissions were granted in 1994 (S6/0703/94/FP) and (S6/0665/94/FP) which was for the provision of additional flats contained within mansard roofs at blocks B and C at Lambs Close.

Those consents were subject to amendments granted in 1995 under reference S6/0561/95/FP. This is the first Planning Permission that we need to deal with in detail and I attach a copy of it herewith together with a copy of the approved layout plan. Condition 3 deals with parking. It should be noted that the approved plan shows 12 car parking spaces to the south of block D with a further 13 car parking spaces facing them on the other side of the access way. The plan denotes that 23 garages on those car parking spaces are to be demolished to make way for the proposed 25 parking spaces. Thus the approved plan contemplates the demolition of the existing 11 garages (which have been there since the development was first provided in 1964) and their replacement with 12 car parking spaces. You will note that in the 1995/97/98 series of plans car parking spaces are shown with a clear background and dotted lines delineating the individual spaces whereas garages are shown shaded in by way of contrast and with solid lines delineating them. The approved plan is actually marked '*existing garages to be demolished and area turned into new parking bays*'.

The parking scheme under Planning Permission S6/0561/95/FP was not implemented. Instead a revised proposal was approved in 1997 under application S6/0656/97/FP.

Again, a copy of that Permission and approved layout plan is enclosed for ease of reference. This proposal was for a revised parking layout (drawing number 97/9). Although the description of the development refers to *'new parking layouts and replacement of existing garages'* it is absolutely clear that what the development contemplated was the retention of the existing 11 garages as an amendment to the 1995 approval which was to replace those 11 garages with 12 car parking spaces. That is entirely clear from the notes on the approved plan which indicate:-

- (a) *'This area is occupied by 11 existing garages'*
- (b) *'Garages re-roofed not re-built'*

Where the notes on the approved plan also states *'11 garages to replace 12 parking spaces shown on approved plan (this area is occupied by 11 existing garages)'*, the approved plan referred to is the approved plan attached to the 1995 consent (S6/0561/95/FP) which was the consent which approved the 12 parking spaces to replace the 11 existing garages in this location.

That 1997 Planning Permission was implemented. The garages were refurbished as proposed and indeed we attach a copy of the Managing Agent's letter of the 25th September 1997 which confirms that refurbishment was underway. This is therefore the consent that authorised the retention of the 11 existing garages. Otherwise, and without this consent, it would have been necessary to demolish the 11 garages and lay them out as 12 car parking spaces as per the 1995 consent.

The development authorised by this consent was therefore clearly implemented. It was not completed in its entirety because the three garages facing the block of 11 authorised by that consent were not in fact constructed.

Condition 3 attached to the 1997 consent reads as follows :-

'The car parking and garaging shown on drawing number 97/9 shall be provided and marked out prior to the occupation of any of the flats within the mansard roof of block C, previously approved under planning ref :S6/0651/95/FP and shall be retained in that use in perpetuity.'

As we say, the work to the garages was undertaken and the garages retained. The car parking spaces opposite were made available. The consent, although implemented, was not actually completed because as we say three of the permitted garages were not constructed.

Critically, the consent was implemented. Furthermore, and having been implemented, the garages remained in existence right through to March 2008 when they were badly damaged by a fire. In September 2008 the owner of the site prevented residents using the parking area by blocking off the access. The condition also requires that the area shall be retained in car parking use in perpetuity.

It is of course important for the purposes of ascertaining whether there remains an ability to enforce this condition, to identify when any breach may have occurred. Quite clearly in this case the breach of the condition only occurred during 2008 when the garages were badly damaged by fire and the requirement for the site to be retained in car parking use in perpetuity was breached by the blocking of the access by the

owners of the site subsequent to that fire. Until 2008 the site was not only available for car parking use by the residents but was in fact used by them for car parking. There is therefore a breach of condition 3 and its requirement that the car parking should be retained as a car parking use in perpetuity, and that breach occurred in September 2008.

We do not consider that a breach occurred when the parking was first used by non residents. There is nothing in Condition 3 of the 1997 consent that requires the car parking use to be retained in perpetuity solely for the use of residents, or indeed, at all. It is simply the use as car parking which is required to be retained in perpetuity.

There is therefore an availability for the Council to take enforcement action against breach of condition 3, and the condition will not become immune from enforcement until September 2018.

For sake of completeness we shall also deal with Planning Permission S6/0272/98/FP (copy enclosed for ease of reference) which operated as a minor amendment to the car parking layout approved by the 1997 consent (S6/0656/97/FP). This approval still showed the 11 garages retained and marked 'G26-G36' on approved drawing number 2. A note on the approved drawing states 'existing garages retained'. It made no changes to the car parking layout but simply allocated a car parking space opposite the garages to block D in lieu of garage G30 (proposed as a parking space for block C under reference S6/0561/95/FP). This consent does not therefore affect the physical retention and layout of the garages approved in the 1997 consent or the car parking spaces approved by the 1997 consent.

We understand that our clients, the Lambs Close Leaseholders Association, will be submitting an objection to the current application to develop the area the subject of the 1995/1997 and 1998 consent, for residential development. One of the reasons for their objections will be the cumulative and severe loss of car parking available to residents of Lambs Close required by earlier planning consents which has resulted in a grossly inadequate availability of car parking spaces for the residents of the flats. However, the purpose of this letter is to set out our view that, as a matter of law, the Council is entitled to enforce the car parking condition number 3 contained within Planning Permission S6/0656/97/FP for the reasons set out in this Opinion.

Yours sincerely,


R A Jameson
JAMESON & HILL

cc: Peter Jefcoate, Welwyn Hatfield Borough Council
Lindsey Lucas, Hertfordshire County Council



Jane R Orsborn

Associated with

PROSPECT PLANNING

Chartered Planners & Surveyors



"Laurels"
121 Queen's Road
HERTFORD

Tracy Harvey
Head of Planning
Welwyn Hatfield Borough Council
The Campus
Welwyn Garden City
AL8 6AE

October 19th 2012

By e mail to planning@welhat.gov.uk

Dear Madam,

S6/2012/1962/FP

Erection of a detached dwelling with associated parking following change of use of the land from parking, including demolition of existing garages (with the exception of the rear walls) and removal of existing hard standing

Garages and land adjacent to 37-48 Lambs Close, Cuffley

Thank you for your letter dated 27th September 2012 notifying me of receipt of the above mentioned application. I am again instructed by Lambs Close Leaseholders Association (LCLA) to submit planning representations to this application on their behalf. I confirm that before preparing this representation, I have reviewed the submitted documentation very carefully and taken fully on board the appeal decision issued in January 2012 in respect of the previous application on this site (S6/2011/0413/FP).

You will also be receiving a letter from my clients Solicitors, Attwaters Jameson & Hill, which explains (based on Counsel's opinion taken following the appeal decision) why the decision of the previous Inspector that the loss of parking was "outwith the remit of this appeal" was erroneous in law and that his decision that loss of parking is not a material consideration cannot be binding on the Council (or any other Inspector at appeal).

Having regard to these circumstances, I have addressed this revised application firstly by analysing it in the context of the issues which the previous Inspector identified and then in the context of my clients' continuing grave concerns with regard to the implications of the permanent loss of parking on the application site.

Jane R Orsborn BA Hons; Dip TP; MRTPI; DMS

Inspector's issues.

The Inspector's appeal decision dated 9.01.12 ref APP/C1950/A/11/2155240 identified 3 key issues. LCLA considers there to be at least 2 additional determining issues – loss of car parking and impact on the amenity of adjoining property – as explained below.

Dealing firstly with the Inspector's 3 issues, LCLA would comment thus:-

First Issue (paragraphs 4 to 6 of the appeal decision letter) – effect of the trees (T001 and T002) on the living conditions of prospective occupiers and

Second Issue (paragraph 7) – whether or not the proximity of the dwelling(s) to the preserved trees would constitute a threat to their well being.

The Inspector found T001 and T002 would overhang the rear garden of Unit 1 (northern unit) to a considerable degree and have an adverse impact on the living conditions of residents. He further commented (paragraph 7) that he found these trees ***“contribute so greatly to the character and appearance of the locality that their well being and form should not be risked by siting the residential development as proposed”***.

In putting forward a revised proposal, therefore, it would be expected that these issues would be fully addressed. Yet they have not been. The rear (west) elevation of the proposed dwelling is set at exactly the same distance – 14m – as the rejected scheme, meaning that these trees are just as likely to create shadow in the rear garden. Moreover, the dormers that are now proposed in the rear elevation to serve two additional bedrooms in the roof (meaning that habitable accommodation is now proposed at three levels) will be on a level with the large canopy of both trees such that views from, and light and sunlight into, these second floor rooms will be restricted by leaves and branches. Thus, the same conclusions apply to this scheme as the Inspector drew in respect of the dismissed appeal, namely that the trees will have an adverse impact on the living conditions of residents. The only difference is that as only a single dwelling is proposed, the space to the rear of the proposed building would no longer be subdivided. The fact remains, however, that it will be very difficult to establish a garden under the canopy of these trees, due in large part to their high demand for water, and what garden is created will be in shade for much of the time when occupants are likely to want to make use of their outdoor space. It can reasonably be assumed that a seven bedroom property will have several residents thus creating a need for good quality private amenity space.

It is presumably because of the failure of the application to address these fundamental concerns that the (slightly revised) report by Haydens (dated Sept 2012) is largely silent on the impact of T001 and T002 on living conditions. The only comment with regard to the impact of these trees on the proposed dwelling is at paragraph 4.12.1 of their Tree Survey, Arboricultural Implication Assessment and Preliminary Method Statement and Tree Protection Plan which includes the statement that ***“The development will be affected by shading from retained trees, though the impact of this on users of the site is a matter of personal preference”***. In view of the comments of the Inspector, such a casual comment regarding impact on living conditions is quite amazing.

What is perhaps even more surprising is the comment by Haydens at paragraph 2.3 of that same report that they do not know whether or not any of the trees, including T001 and T002 the subject of previous concerns, are protected by means of a Tree Preservation Order. This

strongly suggests that the applicant has not made his arboricultural advisers aware of the Inspector's January 2012 decision.

The submitted Design and Access Statement also makes no detailed analysis of the impact of T001 and T002 on the living conditions of occupiers of the proposed dwelling. Indeed, the DAS contains so many factual errors – eg referring to a 5 bedroom house when the plans show a 7 bedroom property; to withdrawn national policy guidance (PPS3); to policies in the London Plan when the site is in Hertfordshire etc. – that it would be quite dangerous to rely on anything within it. A further error of direct significance to the tree issue is on pp5 where it is stated that trees with TPOs on an adjacent site lie to the east whereas T001 and T002 lie to the west in the rear gardens of properties in Theobald's Road. Hence, if the author of the DAS has given any consideration to the impact of trees on the living conditions of occupiers of the proposed dwelling he has most probably misdirected himself by being under the illusion that the trees of concern lie to the front of the proposed dwelling when in fact they are to the rear and thus have a significant impact on the main outdoor amenity area.

Finally, with regard to the matter of the two protected oak trees, the DAS comments that Haydens do not consider that the proposed dwelling would adversely impact on them. However, this conclusion is in direct conflict with the findings of the Inspector with regard to his second issue, namely that ***“Owing to the effect the presence of the trees would have on the living conditions of residents were the houses built, I find that there would be a real and significant risk of demands from the occupiers to reduce the size of the trees or even remove them in order to improve living conditions, prevent drains and gutters from being blocked by falling leaves, to avoid danger from falling branches and to enable a garden to be properly established”.***

In the absence of any evidence to demonstrate that the dwelling now proposed has been removed sufficiently far from these trees to overcome the issues of concern to the Inspector, which are fully shared by residents of Lambs Close, the application should again be refused. Any decision to the contrary is likely to be challenged.

Third issue (paragraphs 8 to 11 of the Inspector's decision letter) – the effect of the design of the proposed houses on the character and appearance of the area.

The new design per se is of a considerably higher quality than the dismissed scheme. It is, however, open to debate whether it is appropriate to build a seven bedroom property sited between bungalows and flats on a backland site where there is no street frontage.

However, due to the increased eaves and ridge height of the dwelling compared with the scheme dismissed at appeal – 8.5m to eaves and 9.5m to the main ridge for the proposed dwelling compared with 6m to eaves and 8.75m to ridge for the dismissed scheme - residents of flats at nos 37 to 48 Lambs Close are very concerned about the overshadowing and overbearing effect on their amenity area. Currently the garages have a height of about 2m. Hence the grassed amenity area immediately to the south of nos 37 to 48 enjoys a very pleasant aspect in full sun. This is a facility much enjoyed by residents, several of whom are elderly and at home throughout the day. The construction of a building more than 4 times as high as what currently exists will change this aspect and thus considerably reduce their enjoyment of this area. This is contrary to advice at Section 7 of The NPPF regarding the requirement for good design especially paragraph 61 which states, inter alia, that *“planning*

decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment”.

Additional issues of concern to LCLA.

Change of use of the land resulting in the loss of car parking

The Council is fully aware of the concerns of LCLA with regard to the loss of car parking for residents of the flats from the application site which is an inevitable consequence of the grant of a planning permission for its change of use and redevelopment. The Council will also, of course, have noted the comment of the Inspector at paragraph 13 of his letter dated 9th January 2012 that whilst he acknowledged that the parking situation and the use of this land for parking greatly concerns local residents, *“this is a matter outwith the remit of this appeal which is concerned solely with the refusal of planning permission for two dwellings on the site”.*

The fact that the Inspector could take such a view when that application (as does this) also included the change of use of the land from parking as well as construction of two dwellings was a matter of considerable surprise and consternation to LCLA. Accordingly, they sought professional legal advice on the validity of the decision. Advice was taken in the form of Counsel’s Opinion from Mr Brian Ash QC and is referred to in the letter to the Council from Attwaters Jameson and Hill dated October 18th 2012 ref. SA/RAJ/120058 which is submitted concurrently with this letter.

Counsel’s Opinion, based on quoted case law, was that ***“The Inspector’s rejection of the parking concerns on the basis that they are not material to the determination of the appeal is erroneous in law”.***

Having regard to this legal opinion, therefore, LCLA urges the Council to give full and proper consideration to the loss of parking from this site and the impact of that loss on residents’ amenities, congestion etc as previously set out in detail in correspondence in response to application S6/2011/0413/FP and the subsequent appeal against refusal of that application.

In summary, since acquiring the application site in 2001 the owner has submitted three planning applications prior to that which was dismissed at appeal in January 2012 (ref.S6/2011/0413/FP). The references for the three applications are S6/2002/1261/FP, S6/2005/0042/FP and S6/2006/1446/FP. The officer reports for these three applications made no mention of the existence of garaging/parking conditions. This not only denied residents the opportunity to object to the applications on stronger grounds in terms of loss of parking but when a locked gate was erected by the owner in 2008, it also denied them the opportunity to report a breach of planning control because at that time they were unaware that a breach may have occurred. It was only in 2011 that residents discovered the existence of a critical condition (no 3 of S6/1997/0656/FP) which required retention in perpetuity of the land the subject of this planning application as garaging/open parking to serve Lambs Close. LCLA consider that many of their problems with regard to lack of parking stem from the Council’s failure to acknowledge the existence of that condition, and more recently, its failure to enforce it.

It is also important to have in mind that until 2007 when it was redeveloped with housing pursuant to planning permission ref. S6/2005/1560/FP there was availability for residents to use the garaging/parking site adjacent to flats 1 to 12 for car and cycle parking purposes. The

need for residents to use the application site adjacent to flats 37 to 48 has considerably increased since the permanent removal of that parking area.

The fact that the garages on the application site had not been in full use prior to erection of the gate was because they were badly damaged by a fire and the owner made no attempt to repair them and return them to a useable condition.

An additional point not previously raised before but drawn to the attention of LCLA by a disabled resident is the lack of any ability to provide disabled off street parking due to existing congestion caused by wholly inadequate parking provision. Currently the existing 37 off street spaces which are, theoretically, available to serve 71 flats would be reduced to just 13 under this proposal. This level of provision falls far short of the Council's adopted standards, leading to clear conflict with adopted policy M14. A summary of the key issues with regard to parking is attached as Appendix 1 to this letter.

For all of these reasons, therefore, LCLA feels very strongly that the issue of the impact of the loss of parking on this site must be given considerable weight by the Council in the determination of this application notwithstanding the Inspector's (erroneous) conclusion in this regard.

LCLA is also aware that the Council's Enforcement Officer has expressed the view, following the dismissal of the appeal in January 2012, that the original condition which sought to retain this land for parking in association with the flats (condition 3 of S6/1997) is no longer capable of enforcement. Via the of October 18th 2012 from Attwaters Jameson and Hill, Brian Ash QC has advised LCLA that the Council is mistaken in law regarding its interpretation of the enforceability of that condition. The condition is still amenable to enforcement action and thus it remains an important material consideration. Case law endorses the legal position that both a site owner and the wider public are entitled to assume that planning conditions will be enforced reasonably and fairly by the local planning authority, once they have been imposed.

One further point with regard to car parking is that it was erroneously stated by a representative of the applicant at the meeting of Planning Committee at which application S6/2011/0413/FP was determined that LCLA had "*no interest*" in retaining parking on this land. The fact is that LCLA made a formal offer to Apollo Consultants to purchase the land the subject of this application on 19th October 2009 for the purpose of ensuring its retention for car parking. That offer was rejected by letter dated 27th October 2009. Copies of this correspondence are attached to this letter. LCLA's offer has never been withdrawn and The Association remains able and willing to purchase this land at a price attributable to its lawful use as a car park for the adjoining flats.

Impact on the amenity of adjoining property

The Inspector gave some consideration to this issue at paragraph 12 of his decision letter but failed to provide any direct response to the detailed representations of LCLA in this regard. Counsel's opinion is that this is also open to challenge and accordingly advises that there is no reason why LCLA should not raise again its concerns on residential amenity due to the different characteristics of a new proposal.

Residents' concerns in this regard are largely set out above in response to the Inspector's previously identified third issue of design and focus upon the overbearing impact of the proposed dwelling on the amenity area to the south of Block D and the overshadowing effect

as a result of which the existing sunny aspect which occupiers of the flats have always enjoyed will be severely compromised.

A further issue is overlooking of this amenity area from the second floor (dormer) windows and overlooking into the rear garden of the bungalow at 1 Theobalds Close.

Conclusion

To summarise, the permanent loss of the ability to park on this land in the event of planning permission being granted remains of grave concern to LCLA for all of the reasons previously given. Based on the legal advice received this remains an important material consideration notwithstanding the previous Inspector's appeal decision. Additionally, they have concerns that the latest scheme has done nothing to address the previous Inspector's concerns regarding the likely impact of residential development on the two protected oak trees. The loss of these trees (or any significant lopping or topping) would adversely impact on the setting of the flats at 37-48 Lambs Close. A further adverse impact on the amenities of residents would arise from the overbearing and overshadowing impact of a building over four times as high as the existing garages.

For all of these reasons, therefore, we urge the Council to reject this application.

Yours sincerely

Jane R Orsborn.

Cc Hilary Birch, LCLA

Enclosures:-

Letter dated 19th October 2009 from LCLA to Apollo Consultants Ltd.

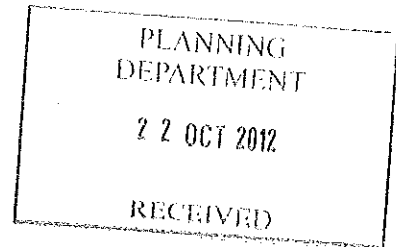
Response from Apollo Consultants Ltd dated 27th October 2009 to LCLA

LCLA statements on parking deficiencies and the impact of this on residents.

7 Lambs Close, Cuffley, Hertfordshire EN6 4HB

19 October 2009

Mr Vedat Djemal
Apollo Consultancy Ltd
288 Southbury Road
Enfield
Middlesex
EN1 1TR



SUBJECT TO CONTRACT

Dear Mr Djemal

GARAGE SITE TO THE SOUTH OF LAMBS CLOSE, CUFFLEY

I refer to my letter dated 18 August 2009 and our subsequent telephone conversation.

Following the valuation performed by Gilmartin Ley Chartered Surveyors on 10 August I have now obtained further professional advice as to the value of the freehold interest in the land at the south end of Lambs Close. I have also independently carried out thorough research of the site. I understand that the land is currently being offered to let through your agents Mehdi & Ward for a rental of £7,500 per annum.

From the advice I received the gross rental value of 11 garages is not likely to exceed £6,000 per annum. I would need to spend in the region of £55,000 on re-pointing, renewing the garage roofs, providing new garage doors, overhauling the yard and boundaries, re-introducing the power supply, installing lighting and an electric operated entrance gate.

Taking these factors into account I am prepared to make an offer of £80,000 (eighty thousand pounds) for the benefit of the freehold interest in the site with vacant possession.

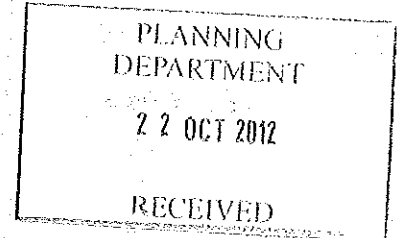
This offer is on the basis that I am a cash buyer and that the transaction will exchange and complete within 28 days. I have a conveyancing solicitor lined up who will be available for the entire process.

I look forward to hearing from you.

Yours sincerely

Hilary Birch

V.Djemal
C/O Apollo Consultancy Services Lt
Herewood House
288 Southbury Road
Enfield Middlesex EN1 1TR



Ms Hilary Birch
7 Lambs Close,
Cuffley, Hertfordshire
EN6 4HB

Dated: 27th October 2009

My Re: Apollo Consultancy

Dear Madam

RE: Garage site to the south of Lambs close, Cuffley

Thank you for your letter dated 19th October 2009 the contents of which have been duly noted. I put your offer to the landlord and it has been rejected outright. There is no room for negotiation and I closed my file accordingly.


V.Djemal


Lambs Close Leaseholders' Association



Appendix 1

Parking Statistics

Planning Application Number: S6/2012/1962/FP

Site Address: Garages and land adjacent to flats 37 to 48 Lambs Close, Cuffley, Herts EN6 4HD

Proposed Development: Erection of a detached dwelling with associated parking following the change of use of the land from parking, including the demolition of existing garages (with the exception of the rear walls) and removal of existing hard standing

Local Planning Authority: Welwyn Hatfield Borough Council

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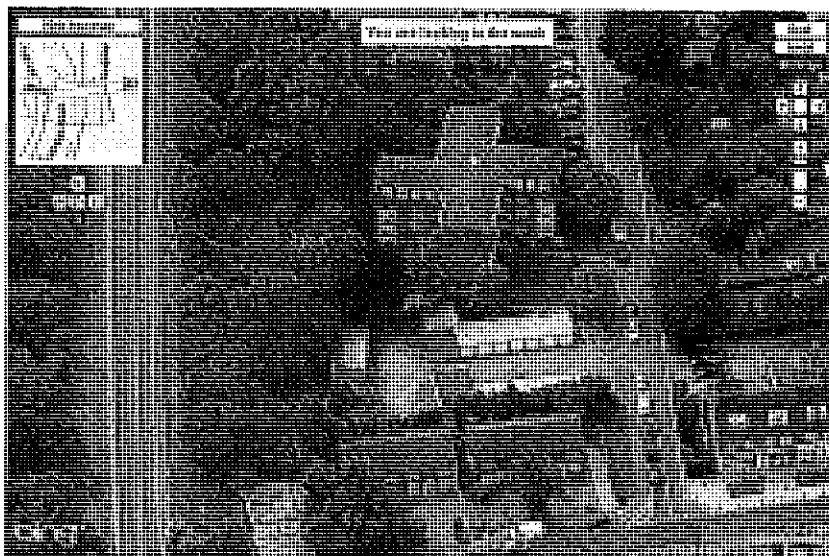
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1 Executive Summary

- 1.1 The principal matter of concern by Lambs Close Leaseholders' Association ("LCLA") is the fact that the application site ("Site A") was used for car parking and garaging by residents of Lambs Close and surrounding streets pursuant to earlier planning permissions that contained conditions requiring the provision and retention of parking spaces and garages on the application site in perpetuity.
- 1.2 Since acquiring the application site in 2001 the owner has deliberately neglected it in a bid to gain planning permission. In 2008 the garages were damaged by fire and access to the site was blocked by the owner. Put broadly, LCLA's case on planning application S6/2012/1962/FP is that there is a need for the parking facilities to be available on the application site, the proposed residential development would remove them permanently and the harm caused thereby cannot be outweighed by any asserted benefit of the proposal.

2 Background

- 2.1 In 1965 two garaging/parking courts were built in Lambs Close at the same time as the four adjacent blocks of flats (comprising 48 two bedroom dwellings) and were designed to represent the main off street (on site) parking provision available to the flats' occupiers.
- 2.2 The garage court at the southern end of Lambs Close is adjacent to flats 37 to 48 ("Site A") and the garage court at the northern end of Lambs Close is adjacent to flats 1 to 12 ("Site B").
- 2.3 In the 1990s these garaging/parking courts became the subject of conditions pursuant to planning permissions (to build 23 mansard roof flats) that requires their retention in perpetuity. The original 48 flats increased in number to 71 flats with the addition of the mansard roofs.
- 2.4 The garaging/parking courts were well maintained and local people including Lambs Close residents enjoyed the convenience of them for off street car and cycle parking.
- 2.5 In 2001 ownership of the two garaging/parking courts changed hands to Apollo Consultants Ltd ("Owner"). Since acquiring the garage courts, the new Owner has had no interest in maintaining them for their lawful use as garaging/parking and in 2002 started applying for planning permission to change the use of the land from car and cycle parking to housing.
- 2.6 The bird's eye view photo below shows the garages on land adjacent to flats 1 to 12 ("Site B") in good condition circa 2000 having been maintained by the previous freeholder.



- 2.7 The photo below, taken on 21 April 2007, shows the poor condition of the garages on Site B having been deliberately neglected by the Owner in a bid to gain planning permission. Nonetheless, 26 out of 33 garages were in use whilst the other 7 garages were empty because they required essential maintenance work to prevent them from flooding.



- 2.8 Two garage tenants who had each rented a garage on Site B continuously for over 30 years reported to LCLA that the upkeep of the garages had never been a problem under previous ownership (pre 2001). As a consequence anti-social behaviour such as fly tipping had been mitigated.
- 2.9 In 2005 the Owner eventually secured planning permission to change the use of Site B from garaging/parking (Ref: S6/2005/1560/FP). In 2007 Site B garage tenants were forced to quit their tenancy agreements to make way for five terraced houses under planning permission S6/2005/1560/FP. The possibility in the future of this site's use for off street car parking in association with the adjacent flats is permanently lost.
- 2.10 The demolition of the garages and erection of five houses on Site B in 2007/08 resulted in a permanent decrease of **52%** of the off street parking provision previously available to residents of the 71 flats in Lambs Close. The 33 garages on Site B represented **43%** of the off street parking provision and the seven open car parking spaces (accessed through Site B) represented a further **9%**.

2.11 **Table 1.0 – Pre 2007** Off street garaging and car parking provision to serve 71 flats

	Location	Type of Parking	No.	%
1	Site A	Garage	11	14%
2	Site A	Open parking space	13	17%
3	Outside Block D	Open parking space	10	13%
4	Outside Block A	Open parking space	3	4%
5	Outside Block A	Open parking space accessed through Site B	7	9%
6	Site B	Garage	33	43%
			77	

2.12 **Table 2.0 – Post 2007** Off street garaging and car parking provision to serve 71 flats

	Location	Type of Parking	No.	%
1	Site A	Garage	11	30%
2	Site A	Open parking space	13	35%
3	Outside Block D	Open parking space	10	27%
4	Outside Block A	Open parking space	3	8%
			37	

2.13 In 2011 LCLA's appointed planning consultant Jane Orsborn MRTPI¹ analysed the recent planning history of Lambs Close and identified the fact that an **injustice** has been caused to residents on the loss of Site B for garaging/parking purposes. The injustice had occurred because of a basic and avoidable error by Welwyn Hatfield Borough Council ("WHBC").

2.14 To be specific, the S6/2005/1560/FP Case Officer **misinterpreted** the December 2003 Appeal Decision and mistakenly believed that the 2003 Inspector had not objected in principle to the loss of the 33 garages.

¹ Member of the Royal Town Planning Institute

2.15 On page 8 of the S6/2005/1560/FP Officer Report the Officer wrote:

"It should be noted that the Inspector did not object in principle to the loss of these 33 garages."

When what the 2003 Inspector actually wrote² was:

"I am concerned that the loss of the small number of garages that are used by residents of Lambs Close and the surrounding roads would exacerbate the existing parking problems in the area."

The Inspector concludes:

"that the proposal would have a detrimental effect on parking and highway safety in the area."

2.16 Because of this error the Officer's consideration of planning application S6/2005/1560/FP was administratively flawed from the outset and he dropped the loss of parking as a reason for refusal without giving parking issues a further thought. It should be noted that this same Planning Officer had put forward a strong argument to retain the garages in perpetuity only eleven months earlier (Ref: S6/2005/0043/FP). By a letter dated April 11th 2011 to WHBC (Ref: S6/2011/0413/FP) Mrs Orsborn wrote:

*"It is clear from analysis of the paper work that the Council's failure to carry forward the concerns expressed in December 2003 by The Inspector in respect of already inadequate parking to serve residents of Lambs Close has contributed greatly to many of the existing parking problems in this area. **It is thus imperative that the same mistake is not repeated at this southern end of the site.** Even with the retention of the 24 parking spaces there will still only be 37 on site spaces to serve 71 flats."*

2.17 In 2012 LCLA reported the injustice to Lambs Close residents, caused by WHBC, to the Local Government Ombudsman.

² See page 5 of Appeal Decision APP/C1950/A/03/1115193

3 Off Street (On Site) Car Parking

- 3.1 According to Welwyn Hatfield Borough Council's Parking Standards there should be a total of 105.5 off street (on site) car parking spaces to serve the existing development of 71 flats³ in Lambs Close. There are currently 37 off street spaces which equates to a shortfall of 68.5 spaces (105.5 minus 37).
- 3.2 The S6/2012/1962/FP proposal would result in the **PERMANENT LOSS** of 24 off street vehicle parking spaces (currently 37 off street spaces and proposed reduction to 13) increasing the existing shortfall of 68.5 spaces to a staggering 92.5 spaces (105.5 minus 13). The significant shortfall of off street parking increases pressure for on street parking in Lambs Close and surrounding streets and this in turn increases traffic movements on the public highway. There is consequent risk of additional danger to all users of the local road network and interference with free flow of traffic.
- 3.3 The proposed reduction of parking will consolidate and exacerbate existing parking problems increasing car trips by people searching for vacant on street parking spaces in other streets and thus **increasing vehicle emissions** having a negative impact on tackling climate change.
- 3.4 Even with retention of the 24 off street car parking spaces located within the application site there would still be a total of only 37 off street parking spaces to serve 71 flats.
- 3.5 The permanent loss of 24 off street garaging/parking spaces on land adjacent to flats 37 to 48 Lambs Close, Cuffley, would leave just 0.18 (13/71) off street parking spaces per two bedroom dwelling which is unacceptable by any authorities' parking standards. It increases pressure for on street car parking immensely. Compare this 0.18 figure to the **"1.5"** off street parking spaces per two bedroom dwelling stipulated by Welwyn Hatfield Borough Council in their Parking Standards document (January 2004). **0.18 equates to one fifth of a car parking space per two bedroom dwelling.**
- 3.6 The general public reasonably expect WHBC to use their Parking Standards as a benchmark to inform a decision when considering loss of off street parking for an existing established development.

³ The 71 flats in Lambs Close comprise 13 one bedroom dwellings, 55 two bedroom dwellings and 3 three bedroom dwellings.

- 3.7 The photo below shows the turning facility at the end of Lambs Close (outside Block D) obstructed by displacement car parking on a daily basis due to an insufficient level of designated off street and on street parking spaces.



- 3.8 An obstruction within a turning area contravenes requirements on emergency vehicle access contained within Section 17 of The Building Regulations 2000 B5 (Fire Safety)⁴ which says that:

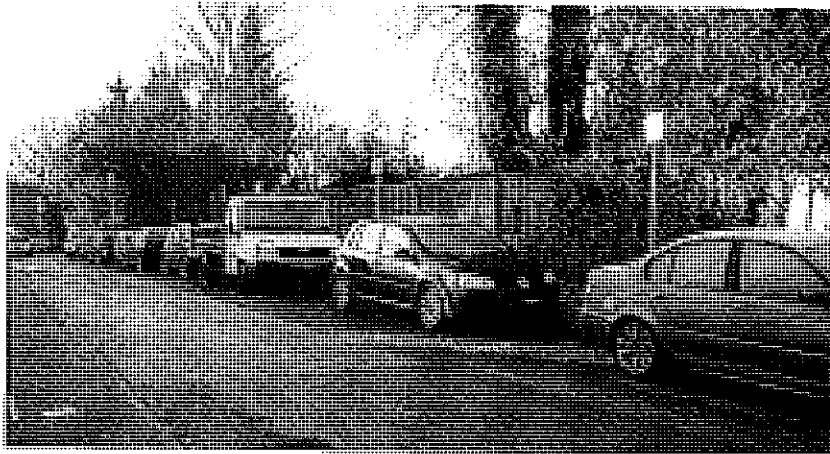
'Fire service vehicles should not have to reverse more than 20m from the end of an access road.'

- 3.9 When LCLA spoke to the Fire Brigade about the parking problems in Lambs Close they said that **"it is the job of the local planning authority"** to mitigate displacement car parking that may obstruct a large emergency vehicle requiring access. This emphasises further the need to accommodate vehicles off street in Lambs Close.

⁴ Appendix 55 - Manual for Streets, Emergency Vehicles (Paragraph 6.7.2)

4 On Street Car Parking

- 4.1 Lambs Close and surrounding streets are already under severe pressure for on street car parking. Due to its location adjacent to Cuffley high street (Station Road B156), on street parking in Lambs Close is popular with shoppers particularly since the parking spaces at Tesco Express (opposite the junction of Lambs Close) and the on street parking in Station Road, Theobald's Road and other nearby streets is often fully occupied.
- 4.2 On street parking is restricted to residents for two hours in the middle of the day (11am to 1pm) Monday to Friday. Whilst this parking restriction prevents daytime commuter parking for nearby Cuffley train station, it is of little benefit to residents because outside the two hour restricted period the 45 on street parking spaces are available to, and very well used by, the general public for the reasons explained above.
- 4.3 Resident parking permits for the 45 on street parking spaces are available to a total of 79 dwellings, namely the 71 flats in Lambs Close and 8 maisonettes fronting Station Road (opposite Tolmers Road). This on street parking provision is grossly insufficient even if residents did have exclusive all day car parking.
- 4.4 There is not enough on street parking spaces in Lambs Close to accommodate the overspill parking from the application site because, as mentioned above, the 45 on street parking spaces in Lambs Close do not accommodate the parking needs of 79 dwellings and this in turn results in overspill parking onto other streets in the area increasing traffic movements on the local road network.
- 4.5 Outside Blocks B and C (facing south west): Nine cars cram along an area where there are six designated on street car parking spaces. A car in the middle and one at each end are parked on the single yellow line.



- 4.6 On street parking spaces are at a premium in both Lambs Close and surrounding streets and Lambs Close residents cannot therefore rely on finding a vacant on street parking space once the off street spaces are fully occupied. It is only the off street (on site) parking spaces upon which residents can rely. This approach is consistent with the advice at paragraph 4.1 of the WHBC Supplementary Planning Guidance Parking Standards (Adopted January 2004) that states:

"Residential development will generally be expected to accommodate all parking demand on site".

- 4.7 The 45 on street parking spaces equates to just 0.56 (45/79) spaces per two bedroom dwelling. **That's half an on street car parking space per two bedroom dwelling!**
- 4.8 Outside Block A (facing west): With no vacant parking spaces available two cars cram into one car parking space. In the background the dark blue car is parked on a single yellow line creating a bottle neck with the silver car parked on the opposite side of the road.



5 Off and On Street Car Parking

- 5.1 The development proposal would decrease by 30% ($82 - 24 = 58$) the overall off and on street parking provision for existing residents (currently 82 overall spaces) leaving just 58 off and on street car parking spaces (13 off street and 45 on street) to serve a total of 79 existing dwellings (71 flats and 8 maisonettes). That's only 0.73 ($58/79$) off and on street parking spaces per two bedroom dwelling, which equates to **three quarters of a car parking space per two bedroom dwelling!** It's a gross under provision that will consolidate and exacerbate existing parking problems if the authorities allow the permanent removal of further off street parking in Lambs Close.
- 5.2 The parking problems are so bad that there are not enough overall spaces to accommodate residents' visitor parking. As a consequence residents' visitors add to the increased traffic movements on the adjoining highway network when they find that they cannot park in Lambs Close.
- 5.3 **If** the occupiers of the aforementioned 79 dwellings had two cars each (possible now or in the future), then that's 158 vehicle owners fighting for just 58 off and on street spaces in Lambs Close. That's an overspill of 100 cars onto other streets in Cuffley that have their own on street parking problems already. One such street is Theobald's Road (adjacent to Barclays Bank) home to Cuffley School. This street becomes congested with parents parking and is also popular with shoppers being adjacent to the high street (Station Road B156).
- 5.4 Lambs Close residents and their visitors find it extremely difficult to find alternative on street parking in Cuffley village and these difficulties give rise to people driving round and round the local road network **increasing the risk of death and injury due to collisions.**
- 5.5 One Lambs Close resident reported skidding into the main road (Station Road B156) on a snowy winter's night in 2010 and only managed to escape having a major accident because the driver coming down the main road noticed what had happened and slowed down just in time to avoid a collision.
- 5.6 Due to the grossly inadequate off and on street parking provision Lambs Close residents are regularly forced to leave their cars in other residential streets overnight often half a mile away or more. The increased traffic movements on the local road network are consolidated and exacerbated because people then have to re-park their vehicles at 8am or 11am the next day when parking restrictions commence in those surrounding residential streets.

6 Parking Provision below Demand

6.1 Paragraph 8.3.6 (page 103) of the Manual for Streets states that:

'Provision below demand can work successfully when adequate on-street parking controls are present and where it is possible for residents to reach day-to-day destinations, such as jobs, schools and shops, without the use of a car. This will normally be in town and city centres where there will be good public transport and places that can be accessed easily on foot and by cycle'.

6.2 Car parking provision below demand does not work successfully in Lambs Close for two key reasons:

1. The on street parking control in Lambs Close is two hours in the middle of the day Monday to Friday designed to prevent commuters from parking all day. Outside these hours Lambs Close is used frequently by shoppers due to its close proximity adjacent to the high street and this has the effect of making it difficult for residents to park their car in the street in which they live. The knock on effect is parking on street in other roads and increased traffic movements on the highway as a consequence.
2. Cuffley village is identified as an urban settlement (Zone 4) and Welwyn Hatfield Borough Council recognise that residents are reliant upon the car to access necessary facilities such as schools, places of work and hospitals. See Appendix C of Welwyn Hatfield District Plan Review, Supplementary Planning Guidance, Parking Standards, Adopted January 2004.

6.3 The on street parking provision is grossly insufficient even if residents did have exclusive all day parking. It is important to note however that all day resident parking is something that is known to be unacceptable to both the Parish and Borough Councils.

7 Sustainable Communities

- 7.1 Page 16 of the Manual for Streets says that well-designed streets have a crucial part to play in the delivery of sustainable communities, defined as *'places where people want to live and work, now and in the future'*. The Local Government White Paper makes it clear that, in creating sustainable communities, local authorities have an essential and strategic role.
- 7.2 In 2007 the garaging/parking court adjacent to flats 1 to 12 ("Site B") was redeveloped resulting in a loss of 40 out of 77 off street garaging/parking spaces previously available to residents - this equates to a loss of 52% of the off street parking provision. The loss of both garaging and parking courts (Sites A and B) would equate to **a total loss of 83% of the off street car parking provision** - leaving a grossly inadequate 13 off street spaces and 45 on street spaces to serve a total of 79 dwellings (71 flats and 8 maisonettes).
- 7.3 The car parking provision in Lambs Close has already significantly reduced with the loss of Site B for garaging/parking purposes (originally 77 off street parking spaces, reduction to 37) making the street a less desirable place in which to live. Many residents of the 71 flats have moved out of Lambs Close because the car parking shortage has had such a negative impact on their quality of life for two key reasons:
- a) Residents can no longer tolerate the continued inconvenience of parking away from their home often in other streets
 - b) Residents feel anxious about having to park their vehicle in other streets because of increased car trips and an increased crime risk. This is explored in the document titled "Impact of Loss of Parking."
- 7.4 The lack of sufficient parking provision in a street within an urban settlement such as Cuffley is wholly inconsistent with the advice contained within the Manual for Streets and other Government policies which local authorities are asked to follow.
- 7.5 Allowing the permanent removal of an additional 24 off street parking spaces located within the current application site would have the effect of making the existing residential development in Lambs Close less sustainable and add to the harm already caused by the permanent removal of Site B for garaging/parking purposes.

8 Discussion

- 8.1 If the application site (the last remaining garaging/parking court in Lambs Close) were to be redeveloped for housing, the possibility in the future of its use for off street car parking would be permanently lost.
- 8.2 Existing residents have a right to expect their local planning authority to protect and preserve their parking amenity especially when the loss of parking would cause permanent harm to the local area. The Department for Communities and Local Government inform LCLA that:
- “Authorities should have processes in place that protect existing established communities from the impacts of new developments.”
- 8.3 Car parking pressures in Lambs Close is so severe that any departure from the agreed terms of garaging/parking conditions pursuant to earlier planning permissions would result in serious injury to public amenity. As such the lawful planning use of the application site for car parking and garages ought to be protected in the public interest⁵. Furthermore LCLA have been reliably informed that authorities should **not allow** conditions validly imposed on planning permissions to be flouted when as a consequence considerable harm would arise.
- 8.4 LCLA discussed the present case with a number of local planning authorities, all of whom said that they would find the proposed reduction in off street parking levels **“unacceptable”** especially when the residential road in question has a village centre location and adjoins a busy B road. They said that they would look at the statistics on loss of parking for an existing development in the same way that they would if they received a planning application for a new development of 71 flats with a parking provision of 13 off street spaces. LCLA reasonably expect Welwyn Hatfield Borough Council to do the same. Such a provision is wholly inadequate, the off street parking needs of existing residents are not met and this results in a lot of on street parking and negative impact on peoples’ quality of life among other factors.
- 8.5 The lack of sufficient off street and on street car parking in a street within an urban settlement such as Cuffley is wholly inconsistent with the advice contained within the Manual for Streets and other Government policies which local planning authorities are asked to follow. The Government makes it very clear that **new developments should not be at the expense of detriment to the locality or the living environment of local residents.**

⁵ The Planning System: General Principles (paragraph 29)

- 8.6 Planning application S6/2012/1962/FP to reduce the off street parking allocation in Lambs Close from 37 spaces to just 13 (to serve 71 flats) would exacerbate and consolidate existing parking problems, causing overspill parking onto other streets in the area and as a consequence, have an adverse impact on the surrounding highway network amongst other factors. See Appendix 2 - Impact of Loss of Parking.
- 8.7 Clearly the recent lawful use of the application site for car parking purposes has not been in the control of residents since a locked gate was erected in 2008 by the owner thus preventing lawful access. This is a clear breach of condition 3 of planning permission S6/1997/0656/FP that requires the provision of garaging and car parking spaces located within the application site to be '*retained in that use in perpetuity*'. However, planning conditions run with the land, and not land ownership.
- 8.8 Case law endorses **the legal position** that both the site owner and the wider public are entitled to assume that planning conditions will be enforced reasonably and fairly by the local planning authority, once they have been imposed. Residents reasonably expect the local planning authority to enforce condition 3 of the 1997 consent and they will be lobbying the Council to do so.
- 8.9 It is in the public interest, for this generation and the next that the authorities of today secure the application site for parking/garaging purposes.
- 8.10 LCLA urge the Council to give **proper and detailed consideration** to residents' objection on the merits of the parking issue and recognise that a permanent reduction of 24 off street car parking spaces will significantly compromise the ability both for present and future generations of flat occupiers to meet their needs for car parking. This is inconsistent with various Government guidance and the Welwyn Hatfield District Plan Review, Supplementary Guidance, Parking Standards, Adopted January 2004.

9 Conclusion

- 9.1 The proposed change of use of the application site from garaging/parking would permanently reduce by **65%** the existing off street parking provision in Lambs Close leaving only 13 off street parking spaces to serve 71 flats. This gross parking under provision is unacceptable by any local planning authorities' standards and causes harm to the local area and quality of life of residents. Please see Appendix 2 - Impact of Loss of Parking.
- 9.2 There is a need for the car parking facilities on the application site to be fit for use in order that it can be effectively put to use. Furthermore there is a wish amongst residents to use the garages and car parking area. There is overwhelming evidence to justify the fact that the land in dispute could be, and should be, effectively put to use for garaging and car parking.
- 9.3 The removal of such a valuable and needed amenity would permanently increase pressure for on street parking consolidating and exacerbating existing parking problems and for this reason **the parking use of the land is justified** and ought to be preserved.