

Brookmans Park Roads Ltd  
Flat 4 Collingwood Court  
130 Station Road  
Barnet  
Herts, EN5 1SS

15th October 2018

Dear Mr Elmore,

**RE: OBJECTION TO APPLICATION 6/2018/1996/FULL**

We are the owners of title HD46041 which includes the private roads of Brookmans Avenue, Mymms Drive, Calder Avenue and other roads within the Brookmans Park Estate. Brookmans Park Roads Ltd is a not-for-profit company that aims to support the interests and amenities of residents. For example, we worked with Welwyn Hatfield Council in 2015 to successfully introduce controlled parking on Brookmans Avenue.

We strongly object to application 6/2018/2242/FULL for reasons outlined below.

1. The title to 77 Brookmans Avenue contains a restrictive covenant preventing any more than one private dwellinghouse being erected on the premises. In addition, we believe that all the criteria for a building scheme are clearly identifiable in the title or readily ascertainable, which is further evidence that the covenant is enforceable. We therefore believe this development is unlawful, and we have written to the applicants requesting they withdraw the application and cease any further advancement of this development. We appreciate that restrictive covenants are not a material planning consideration per se; however, should the applicants choose to continue with this development, it would be contrary to NPPF paragraph 122(a) and 122(b) which relate to planning decisions aimed at achieving increased dwelling densities. 122(a) requires decisions to take into account whether the available land is “**suitable for accommodating it**” and 122(b) requires decisions to take into account market “**viability**”. A proposed flatted development that is unlawful due to breaching a restrictive covenant limiting the premises to a single dwellinghouse cannot by definition be considered viable, nor can the land be considered suitable for accommodating it.
2. The Arboricultural Impact Assessment and Method Statement is out of date. It wrongly shows the proposed frontage with vehicular entrances on both the left and right as per the current usage, whereas the actual proposal has a single central entrance. As a result, the document assumes the existing Purple Leaved Plum Tree (T1) located on the grass verge on the street will be retained when in fact it will need to be removed. The application should be refused until a corrected Arboricultural Impact Assessment is submitted.
3. The submitted drawings show changes to the verge and footpath between the tarmac of Brookmans Avenue and the applicants title. As per paragraph 2 above, the drawings show that the existing Purple Leaved Plum Tree (T1) in the centre of the grass verge will

be removed and replaced with a hardstanding driveway into the property. However, the verge, footpath and tree are part of title HD46041 which we own, and the applicants have no rights to make any such changes. We do not permit the applicants to make these proposed changes or to remove the tree. The application is therefore unworkable.

4. The applicants have provided no information on how they intend to provision for utility services. Brookmans Avenue is a private road and any existing easements granting 77 Brookmans Avenue rights to run water, gas or electricity through pipes and cables under the street are granted for normal use by a single dwellinghouse only. The proposed development represents an increase in burden on services of 8 times current usage based on dwelling count, and 3.2 times current usage based on bedroom count. There will potentially be a further increased demand for services due to the targeting of the flats to elder generations, e.g. additional power for lifts. The original conveyancing parties could not possibly have contemplated that such a change would come about, given the restrictive covenant limiting the premises to a single dwellinghouse, and so this usage constitutes excessive user and is unlawful. This will generate a large burden on our underground services, resulting in issues such as reduced water pressure/flow rates to other residents, potential drainage issues, nuisance through additional need for excavation and maintenance, damage to the newly-laid road surface, etc. We will therefore not be granting any revised easement or licence to increase the capacity of existing services from Brookmans Avenue to serve the proposed development. We also do not permit the applicants or any other party to carry out any excavation of any part of our title that may in any way contribute to excessive use of the proposed application, e.g. increasing water, gas or electricity capacity. In summary, we believe the application has no legitimate provision for use of essential services, and so is contrary to policy H2(iii) of the Welwyn Hatfield District Plan 2005 and contrary to policy SADM1(iii) of the WHBC Draft Local Plan Proposed Submission August 2016.
5. We note that the applicants propose underground parking as a solution to the substantial increase in parking demand of the proposed development. However, the reality is that residents of the flats are likely to park on the street instead, as on-street parking is more convenient than having to traverse the underground car park, sharp turns, electric gates, etc. We have been delighted with the controlled parking scheme that was implemented in Brookmans Avenue as a result of WHBC and us working together, but this was never intended to accommodate flatted development. We therefore need to review this arrangement with WHBC and so, until this is resolved, it would be inappropriate to assume any on-street parking will be available to the proposed development, either to residents of the proposed development or to construction/trade vehicles.
6. The verge and footpath of 77 Brookmans Avenue are part of title HD46041 which we own, and we dispute any vehicular right of way over this land for the purpose of accessing the proposed multiple dwellings from Brookmans Avenue. Any public right of way over the verge/footpath by virtue of this being part of the highway would be limited to pedestrian usage. Any private vehicular right of way through long user would be limited to current usage. The applicants propose a total of 18 off-street parking places, compared with the present usage of 2 - 3 parked vehicles at any one time. This represents approximately 6 times current vehicular usage over the verge/footpath. Furthermore, the proposed usage is of a different nature to current, changing from a single family dwelling to flatted development for the elderly, which may result in use by larger specialist transport vehicles, medical vehicles, etc. As per the arguments in paragraph 4 above, we believe this is excessive user and we will not be granting any

new easements to the applicants. The application is therefore contrary to WHBC Supplementary Guidance - Parking Standards 2004 (SPG), as we believe the site is unable to lawfully support the proposed level of off-street parking.

7. Paragraph 6.10 of the WHBC Draft Local Plan Proposed Submission August 2016 states with regard to windfall developments “**The impact on surrounding residents ... will need to be taken into account to ensure that no significant adverse impact would arise.**” We note the Pre-Application Advice from 06 June 2018 addresses only the visual aspect of the application on neighbouring properties, which is clearly insufficient. To fully meet the criteria in 6.10, *all* impact must be considered, including additional traffic, strain on on-street parking, highway safety issues, additional wear-and-tear on the private road, noise, outlook, etc. When all factors are taken into account, there is plainly significant adverse impact on surrounding residents (further demonstrated by the level of objection to this application) and so this application is contrary to WHBC Draft Local Plan Proposed Submission August 2016 paragraph 6.10.
8. Further to paragraph 1 of this objection, NPPF paragraph 122(b) requires that planning decisions aimed at achieving increased dwelling densities must take into account “**local market conditions**”, i.e. decisions must not result in the creation of unsellable and vacant properties as a way of increasing dwelling count to meet quotas. All recent examples of windfall developments where detached properties were replaced with increased density developments within surrounding roads are:
- **2 Georges Wood Road, Brookmans Park:** 2 flats have still not sold despite being on the market for 3 years, and a third flat is also back on the market and unsold.
  - **9a Brookmans Avenue:** 2 out of 3 flats have still not sold, despite being advertised for sale since development began 18 months ago.
  - **67 Mymms Drive, Brookmans Park** (~400m from the application site): Replaced a large detached property with two semi-detached houses and a detached house on Calder Avenue, all three of which have failed to sell despite being on the market since early 2018.
  - **11 Brookmans Avenue:** Once complete, this will add multiple flats to the existing surplus.

In summary, there is an insufficient demand for this type of high density, urban-style, expensive development around Brookmans Park, with multiple such new properties presently unsold and vacant. The premier roads within Brookmans Park are desirable precisely because of their spacious developments and large individual gardens, and so, unlike certain urban areas, converting desirable low density detached properties into expensive high density developments with reduced gardens will result only in properties that are difficult to sell and will remain vacant. This application is therefore contrary to NPPF paragraph 122(b).

9. We note that the Planning Statement and Pre-Application Advice from 06 June 2018 reference the developments at 9a and 11 Brookmans Avenue as potential precedents. We also note that these developments rely on the upheld appeal decisions APP/C1950/W/15/3128952 (for construction of 3 flats) and APP/C1950/W/17/3173234 (for increase from 3 to 5 flats). Both appeal decisions directly address the concern of precedent, with paragraph 10 of APP/C1950/W/15/3128952 stating “each application and appeal is considered on its own merits and I find that such a generalised fear of precedent can

only be given limited weight” and paragraph 7 of APP/C1950/W/17/3173234 stating “As any future similar proposals could be assessed by the Council on their own merits this proposal would not result in material harm through establishing a precedent”.

Furthermore, numbers 9a and 11 are at the bottom of Brookmans Avenue, adjacent to the shops, to Bradmore Green and only 200m away from the Marlborough Court development which was referenced by the Appeal Inspector. This is compared with the application site which is almost 1km away from the Marlborough Court development, towards the top of the Brookmans Avenue with a very different street pattern. Given the Inspectors’ comments and the difference in location and street pattern between 9a/11 and 77 Brookmans Avenue, we believe it is wholly inappropriate to use these developments as precedents. The application should therefore be considered purely in the context of the detached dwellings within several hundred metres of it.

10. Furthermore, decisions on past applications for flatted developments were based on the NPPF 2012, which is now superseded. The NPPF July 2018 contains revised guidance, including paragraph 122, which puts a new onus on the planning authority to take into account the market viability and land suitability of developments of this nature. The NPPF does not limit these assessments to traditional planning considerations. It follows that matters such as restrictive covenants and rights of way, which may previously have been given no weight, should now be taken into account as they will materially impact market viability and land suitability. The original decisions on 11 Brookmans Avenue were finely balanced, being originally rejected and then approved on appeal, and we believe that, had the details in this objection been available at the time and the NPPF 2018 been in effect, it is likely those previous applications would have failed.

We believe this application should be refused for the reasons above.

With kind regards  
Brookmans Park Roads Ltd