MUCH HADHAM PARISH COUNCIL

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Notice is hereby given that the Extraordinary meeting of the Much Hadham Parish Council **Planning Committee** will be held on **Monday, 19 February 2018**, in the **Much Hadham Bowls Club, 7:30 pm**, for the purpose of transacting the business set out in the Agenda below, and you are hereby summoned to attend.

FMForth

Fiona Forth
Clerk of the Council

14 February 2018

A G E N D A

18/22. Apologies for absence

18/23. Declarations of Interest

18/24. Residents' comments on current planning applications and appeals

18/25. Planning appeals
To consider the Parish Council's response to the following planning appeal:
3/16/2321/FUL – Erection of 8 dwellings (4 semi-detached and 4 detached) with associated access road at land at Old Station Road Millers View Much Hadham

MUCH HADHAM PARISH COUNCIL

MINUTES of the Much Hadham Parish Council Extraordinary Planning Committee meeting held on Monday, 19th February 2018, at 7:30 pm, in the Much Hadham Bowls Club.

Members:	*Cllr W Compton	*Cllr W O'Neill
	*Cllr I Hunt	*Cllr C Thompson (Committee Chairman)
	*Cllr B Morris	*Cllr K Twort

*Denotes present.

In attendance: F Forth, Parish Clerk and 6 members of the public.

18/22. APOLOGIES FOR ABSENCE

None.

18/23. DECLARATIONS OF INTEREST

None.

18/24. RESIDENTS' COMMENTS ON CURRENT PLANNING APPLICATIONS AND APPEALS

A resident queried when the Parish Council's response to the planning appeal would be available and the Clerk confirmed that it would be on the website by the end of the week.

In response to a question regarding the Section 52 agreement, it was confirmed that this was now part of the proposed Parish Council response.

18/25. PLANNING APPEALS

3/16/2321/FUL – Erection of 8 dwellings (4 semi-detached and 4 detached) with associated access road at land at Old Station Road Millers View Much Hadham

Cllr I Hunt highlighted that he had updated the draft rebuttal response, received at the Planning Committee meeting on the 6th February, to include a comment in relation to the Section 52 agreement. The updated rebuttal response had been circulated with the agenda for this meeting.

Subsequent to issuing the agenda, the legal advice had been received and it was proposed that that rebuttal document be amended as follows:

- refer to the receipt of more recent commentary on the section 52 agreement within "B. Factual Errors in The Appellant's Case"; and

- include, as an appendix, the wording suggested based on the legal advice, the Counsel's opinion and the section 52 agreement.

Following a lengthy discussion of the revised document, including amendments suggested by Cllr B Morris, it was RESOLVED to submit the circulated rebuttal subject to the following amendments:

- the amendment referred to above relating to the legal opinion on the section 52 agreement;
- inclusion of the Policies Map referred to on page 3 as an appendix;
- deletion of the comment relating to the former railway on page 6; and
- adding a reference to the section 52 agreement within the 'conclusion' section.

Given the deadline of the 23rd February, the wording of amendments to be agreed by the Committee Chair, Cllr I Hunt and the Clerk.

In addition to the electronic submission, it was agreed that a paper submission (recorded delivery) of the final document will also be made.

Note – submitted rebuttal attached as Appendix A.

There being no further business the meeting closed at 8:10 pm

MUCH HADHAM PARISH COUNCIL

19 February 2018

Reference APP/J1915/W/17/3186663

Land At Old Station Yard, Millers View, Much Hadham, Hertfordshire

Preamble

Much Hadham Parish Council is against the appeal proposals.

This submission is additional to that of 5th December 2016 submitted (on 7th December 2016) to the LPA (the Local Planning Authority, East Herts Council) in response to planning application 3/16/2321/FUL, all of which remains fundamental to our objection.

[It is noted that the subject land is variously called by the appellant "Land at Old Station Road" and "Land at Old Station Yard". Within the parish, it is known by the latter name. There is no Old Station Road and Station Road itself is neither adjacent nor on the primary access route to the site.]

[In this response we refer to the subject site as the Appeal Site and the neighbouring development on the other land at Old Station Yard as the Adjacent Site.]

Summary

The purpose of this submission is to update the earlier one, without repeating it, in the light of subsequent events and to respond to the new evidence and arguments presented by the appellant.

The evidence is presented under these headings:

A. Developments since the LPA decision to Refuse permission

B. Factual Errors in The Appellant's Case

C. Rebuttal of Grounds for Appeal

- Visual Impact on Landscape Character
    1. Visual Prominence of the Development
    2. Impact on Landscape Character
- Affordable Housing and Developer Contributions
    1. Relationship of Appeal Site and Adjacent Site
    2. Adopted and Emerging Affordable Housing Policy
- Presumption in Favour of Sustainable Development
- Council's Duty to Work Proactively with the Applicant

D. Conclusion

A. Developments since the LPA decision to Refuse permission

1. **LPA policies reinforced**. The Council has stated in its Authority Monitoring Report for 2015/16 that it does not have a 5 year supply of housing land. Consequently paragraph 14 of the NPPF is engaged.

1.1 However, saved policies GBC2 The Rural Area Beyond the Green Belt and GBC3 Appropriate Development in the Rural Area Beyond the Green Belt are not out of date policies and remain as material considerations to which significant weight should be attached. In other words, the current saved policies do not permit this inappropriate development in the Rural Area Beyond the Green Belt. None of the exceptions permitted by GBC 3 apply. Moreover, in terms of their underlying countryside protection aims, GBC2 and GBC3 still align with the objectives in the NPPF.

1.2 In paras 6.32 – 6.34 of the appeal case, the appellant has built an argument that the presumption in favour of sustainable development as determined solely by the NPPF applies. In doing so, the appellant mistakenly relies on the LPA's previous position that, inter alia, GBC2 and GBC3 are housing supply policies and out of date but it is important to note that the Appeal Court stance in Richborough Estates v Cheshire East Council (2016) was overruled by the Supreme Court on 10 May 2017 i.e. after the decision date for this application. The LPA's previous position is no longer valid (and the parish council's understanding, as given in its previous submission, that the policies would be considered out of date has been superseded too).

1.3 The Supreme Court judges stressed that the NPPF is no more than guidance and cannot 'displace the primacy' of a statutory development plan of the LPA in determining planning applications. Additionally, although it is not obvious from the NPPF itself, the Court also held that whether the adverse impacts of granting planning permission outweigh the benefits needs to be assessed against not only the policies of the NPPF, but also the development plan policies, which includes GBC2.

1.4 The LPA has recently announced that it now has a housing land supply of 6.2 years following the publication of the latest annual monitoring report in January, based on the supply of land identified in the emerging district plan. The NPPF's "tilted balance" test is no longer required to be applied as the supply exceeds 5 years. Whilst sustainable development that is in accordance with the district's housing policies continues to be approved, this proposal falls outside of those policies and permission should therefore be refused.

2. **Recent planning decisions** by the LPA continue to support the principle of refusing permission for development of land in the Rural Area beyond the Green Belt that is not adjacent to or within the village boundary.

2.1 Of direct relevance was 3/17/2112/OUT for 35 units (including full affordable housing provision) elsewhere in the parish's rural area, which was refused permission in December 2017. There have been no instances of multiple units being approved on a site not touching or within the village boundary.

3. **The draft District Plan** is now a much more material consideration following the completion of the public consultation and public independent examination. This means that more weight can be given to both the strategic and targeted policies.

3.1 Two policies in particular should prevent any further consideration of this site:

GBR2 Rural Area Beyond the Green Belt – the construction of new buildings is considered inappropriate

VILL1 Group 1 Villages – prior to this parish council preparing a neighbourhood plan, development in Much Hadham will be limited to the built up area as defined in the Policies Map *(Appendix 1 – extract from full map which can be found at https://www.eastherts.gov.uk/submission and contained within Sheet D (Reverse))*

3.2 These further policies should prevent approval of this proposal as it falls short of meeting their requirements, as explained either in this submission or our earlier submission:

HOU3 Affordable Housing – on sites of 11-14 new dwellings, affordable housing provision of 35% is expected

DES1 Landscape Character – new developments must conserve, enhance or strengthen the landscape character

DES2 Landscaping – new developments must retain, protect or enhance landscape features which are of amenity and/or of biodiversity value

DES3 Design of Development – new development must make the best possible use of the available land by respecting or improving upon the character of the site and the surrounding area, in terms of its scale, height, massing……..

3.3 Finally, should the proposal clear all of those hurdles, there is still the unaddressed matter of planning obligations:

DEL2 Planning Obligations – consider what planning obligations are necessary to make the development acceptable

3.4 It is worth noting too that once the District Plan is made, the housing supply will exceed five years, eliminating the case for considering developments such as this on sites outside of LPA policies.

4. **The parish's Neighbourhood Plan project** has evolved through several public consultations to the point at which it is now being drafted in its pre-submission version.

4.1 Housing allocations to meet the minimum requirement of 54 new homes in the period 2017-2033 will be included. Indeed, 23 units have already received planning permission and at least 19 of these are under active construction at the time of writing. The village has an approved housing supply equivalent to 6.8 years.

4.2 On a separate aspect, the neighbourhood plan will also seek to preserve from encroaching development certain priority views that meet specific criteria e.g. to preserve views on entry to the village that contribute to the feeling of a rural setting. One of these is south-east from the former railway bridge on Kettle Green Lane, looking directly towards Old Station Yard. 91.3% of respondents expressing an opinion at a public consultation in September 2017 attended by 248 residents favoured preserving this specific view.

4.3 Whilst it is acknowledged that the prospective neighbourhood plan can be given very little consideration as a policy statement, these are accurate and pertinent facts regardless.

B. Factual Errors in The Appellant's Case

Factual errors in its content relating to site and surroundings:

Para 2.4 There is not a public bus service to Hoddesdon. PRoW 014 running south west does not go from Millers View but from Station Road to Wynches and beyond. Kettle Green Road had a name change to Kettle Green Lane ~2 years ago.

Para 3.16 Includes the statement that "……it is considered that the former outline permission (and associated Section 52 Agreement) granted under LPA Ref. 3/86/0806/OP has fallen away…….". We would draw the attention of the Inspector to the residents' earlier submissions concerning the Section 52 agreement (including legal counsel's opinion), which were reviewed by the LPA in its consideration of the planning application. The agreement, which the LPA is a party to, prevents any development of the Old Station Yard site, including both the Adjacent Site and the Appeal Site. Although the LPA ruled in its decision notice that the agreement is no longer extant, legal counsel fundamentally disagreed. Attached as Appendix 2 is a more recent commentary dated 15 February 2018 on the relevance of the Section 52 agreement, together with a copy of the agreement itself and Counsel's opinion on the matter). In the absence of a definitive ruling on the validity of the Section 52 agreement, its existence remains another reason for rejecting the appeal.

Para 5.6 The Appeal Site is stated to be adjacent to the village boundary. This is untrue and an important error. The Adjacent Site now being developed is adjacent to the boundary and stands between the Appeal Site and the boundary. The Policies Map in the draft District Policy does not propose moving the boundary. Thus the Appeal Site is entirely surrounded by land designated as the Rural Area beyond the Green Belt.

C. Rebuttal of Grounds for Appeal

The Grounds for Appeal are presented in Section 6 of the appeal.

Para 6.3: "Both of these sites also *(our underlining)* sit outside of the village boundary but were considered, on balance, to be acceptable sites for residential development." The use of "also" implies some degree of equivalence between the status of the Appeal Site and the status of the two other sites referred to at the time they received planning permission. As explained above, this is not the case as both examples given (Miller's View and the Adjacent Site) were, at the time of their respective approved applications, adjacent to the then village boundary, which this site isn't.

Para 6.4: It follows that the appellant's inference here that the LPA would in principle extend its approval for development of the Appeal Site is presumptuous. Furthermore, with the benefit of the Supreme Court decision in Richborough Estates v Cheshire East Council, the LPA should no longer accept the principle that development is permissible for any site outside the boundary, adjacent or otherwise, as it would breach its development policy GBC2. It is core to this parish council's objection to the appeal that, in fact, such an assumption or inference by the appellant is fundamentally wrong and all arguments flowing thereafter in favour of development are null and void.

Visual Impact on Landscape Character

Two aspects are covered in the Appeal:

1. Visual Prominence of the Development

Para 6.8 "The proposed dwellings have also been positioned to continue the building line of the approved dwellings on the adjacent site to the southeast." Para 6.9 "It can be seen from the site layout plan that the dwellings have been positioned in a linear formation……." Thus, there is only one point of access into the estate i.e. from Windmill Way, which would result in the Millers View estate layout becoming an unacceptably long cul de sac, contrary to site design principles adopted elsewhere by the LPA e.g. in dismissing a recent major application 3/17/2112.

The site plan clearly demonstrates an elongated finger of development poking into the countryside. It is simply not credible to claim this is in harmony with the existing village boundary when over 70% of its boundary is shared with undeveloped (largely agricultural) land. The sloping site will give prominence to those houses at the higher levels, dominating the neighbouring property at Mill Cottages, which is much more successful at blending in as it is at a lower level and under the highest treeline. In maintaining the scale, size and ridge height of the houses as the site is developed up the slope, peaking with a large house perched on the highest contour in the area, no meaningful consideration has been given to reducing the visual prominence of the development e.g. by reducing ridge heights.

The promises of tree planting to reduce prominence would be unenforceable on the eventual owners of the properties, who may well prefer uninterrupted, sunlit views across the countryside, irrespective of the damage to the soft boundary we currently enjoy. The measures proposed for reducing prominence are perfunctory at best and lacking in both substance and credibility.

The appellant has also submitted CGI representations claiming to show the visual impact of the proposed housing but these are bound to be partial: the view will vary with assumptions made about tree growth, the season, time of day, distance from site, shadows, no. of years elapsed since completion etc etc. We are not provided with any of that detail so the CGIs are materially deficient and unreliable representations of how the site would look if developed.

2. Impact on Landscape Character

Para 6.19 "…….the character of the Appeal Site and adjacent sites has changed quite significantly in recent history. The Appellant considers therefore, that the landscape character as existing today should not be revered……." This argument is completely at odds with the facts as reported in the applicant's own Design & Access statement: "Although the currently vacant site formed part of the old station and goods yard development, the site has all but reverted back to a natural state and takes the form of rough, unmanaged woodland with a high proportion of low-grade trees and saplings." The characteristic feature of this site is of undeveloped woodland i.e. a natural state. The appellant throughout has misrepresented this site as being previously developed and in the application provided photos of the old station. However, the Appeal Site lies further north-west than the station and platforms, which were on the Adjacent Site. At the Appeal Site there was a railway cutting. The only visible evidence of the former railway are the remains of a small construction – possibly a hut or storage facility. It had become well vegetated until recent clearance work was undertaken in conjunction with the development of the Adjacent Site.

<u>Affordable Housing and Developer Contributions</u>

This was the second main reason for refusal.

1. Relationship of Appeal Site and Adjacent Site

a. The LPA and the parish council are clear that the Appeal Site and the Adjacent Site are to be considered as a single site with phased development. There is plenty of justification for this in Appendix 3.

Consistency in the use of consultants and repetition of entire reports undermines the argument that the sites are considered to be separate developments. The evidence points to a phased development.

b. In para 6.25 the appellant claims it would be unfair on the developer of the Appeal Site if it had to bear the full weight of any affordable housing provision assessed on the development of the combined site. However, as evidenced in

Appendix 3, Swing Ltd is the beneficiary of the development planning gain on both sites, so the question of fairness does not arise.

2. Adopted and Emerging Affordable Housing Policy

a. The cynical ploy of designing the houses without garages is aimed solely at limiting the gross floor space to less than 1000sqm so as to avoid an affordable housing provision. There is no other credible explanation for differing from the standard throughout the rest of Millers View and the Adjacent Site of providing double garages.

b. It is equally cynical of the appellant in para 6.29 to seek protection from policy HSG3 on the grounds that the site is outside the village boundary (i.e. in the rural area), whilst at the same time seeking to have the site judged as if it were an extension of the built settlement, rather than forbidden under the LPA's rural development policy. The emerging policy HOU3 makes clear that the affordable housing provision is to apply to all sites and this carries significant weight too.

Presumption in Favour of Sustainable Development

Para 6.32 the appellant argues that the NPPF presumption in favour of sustainable development should be applied, given the absence of an up to date development plan. However, as argued earlier, the current planning policies (other than those relating to housing supply) still have force.

Whilst para 14 of the NPPF is a consideration, the Supreme Court decision put it in its proper context. In this case, the presumption does not apply as other material considerations, as identified by the LPA in its decision, outweigh the limited benefits from building 8 large houses here in the rural area, remote from village facilities.

Council's Duty to Work Proactively with the Applicant

Para 6.35 – 6.37 The appellant is poorly positioned to argue that the LPA didn't proactively reach out to work collaboratively. No pre-application advice was sought according to the planning application so the opportunity, in the form of a procedure for providing advice, was there but seems not to have been taken advantage of prior to the application. Had the appellant done so, then there could have been a longer discussion of affordable housing, financial obligations etc.

Moreover, the failure to disclose in the application the connected nature of the Appeal Site and the Adjacent Site, as discussed above, would have delayed the discovery of the requirement for an affordable housing contribution. The fault for this lies at the door of the applicant, not the LPA.

D. Conclusion

This report demonstrates that:

- The current and emerging LPA policy of refusing development in the rural area in principle should be enforced
- There are no similar precedents for development in the rural area
- The existing supply of new housing in the village is already plentiful
- No effort has been made to limit the prominence of proposed houses by reducing their size / height / mass as the building line approaches the peak of the slope
- Should the Planning Inspector be minded to grant permission for the development, despite its unsustainable and remote location from village facilities, and notwithstanding the development prohibition imposed under the Section 52 agreement, then the provision of affordable housing in accordance with LPA policies must be a condition. The lack of it prevents approval.

Inset map 21
Much Hadham

APPENDIX 1 - Policies Map extract

542000 543000

02 22 24 26 28 32 34 36

220000

98

96

94

92

219000

88 86 84

218000

VILL1
Much Hadham

SM

CA

CFLR1

WS

SSSI

Appeal site

Adjacent site

Key

Description	Policy	Description	Policy	Description	Policy
CA Conservation Area	HA4	WS Wildlife Sites - WS	NE1	Green Belt	GBR1
Area of Archaeological Significance - AAS	HA3	SSSI Site of Special Scientific Interest – SSSI	NE1	East Herts District Boundary	
SM Scheduled Monuments	HA1, HA3	Community Trust Open Space Land	GA1	Group 1 and 2 Village Boundaries	VILL1/ VILL2
Open Space, Sport and Recreation	CFLR1	Rural Area Beyond the Green Belt	GBR2	Employment Areas	ED1/Site Reference

APPENDIX 2 – Section 52 Agreement

There follows (or are separately attached):

- Email of 15 February 2018 from RPS Group advising residents of the weight to be given to the Section 52 agreement
- Counsel's Opinion dated 24 January 2017
- Section 52 agreement dated 10 February 1987

Email of 15 February 2018 from RPS Group advising residents of the weight to be given to the Section 52 agreement

From: Danny Simmonds <SimmondsD@rpsgroup.com>
Date: 15 February 2018 at 10:18:58 GMT
To:
Cc:
Subject: Old Station Yard - S52 Agreement

Suggested wording as follows :

The existence of a Section 52 Agreement is highly relevant in this case. The Agreement dated 10 February 1987 prevents development on the appeal site. Submitted to the Council back in February 2017 and now appended to the this representation is a copy of Counsel's opinion on the matter. The opinion is categoric :

- The covenant not to permit the erection of the buildings on the appeal site is not conditional or contingent upon any other future event
- The restriction is unqualified and regulates development on the appeal site pursuant to any subsequent planning permission

Counsel is able to conclude that the development proposed (ie the appeal scheme) is in breach of the covenant and restrainable.

Accordingly, notwithstanding the residents' objection to the principle of the proposed development, it will not be possible to lawfully implement the scheme, in the event that the appeal is successful.

It is noted that the District Council do not accept the opinion. However, it is the view of residents, that an adequate and reasoned response has not been provided by the Council. As reflected in the committee report, the Council officer merely reports that 'I do not consider that a differing position in regard to this matter should be taken …'

The residents are of the opinion that the S52 Agreement should be given weight in consideration of the appeal proposal, along with other concerns raised in their representation.

Regards

Danny

Note – "Council" referred to is East Herts Council

LAND AT OLD STATION YARD, MUCH HADHAM

S.52 AGREEMENT DATED 10 FEBRUARY 1987

OPINION

Danny Simmonds BA (Hons) Dip UPI MRTPI
Director, Planning
RPS CgMs
140 London Wall
London EC2Y 5DN

LAND AT OLD STATION YARD, MUCH HADHAM

S.52 AGREEMENT DATED 10 FEBRUARY 1987

OPINION

1. I am asked to advise on the proper interpretation of the section 52 agreement dated 10th February 1987 (**'the agreement'**) concluded in respect of land at Old Station Yard, Much Hadham (**'the site'**). The site is within the administrative area of East Hertfordshire District Council (**'the Council'**).

BACKGROUND

2. The British Railways Board applied, by application dated 1 May 1986, for outline planning permission for residential development (ten dwellings) on the former station area within the site. The Council resolved, on 28 August 1986, to grant planning permission 3/0806-86 (**'the first permission'**) in respect of the site subject, inter alia, to the execution of a s.52 agreement.

3. The agreement recites the background as summarised at paragraph 2 above. The owners of the site then covenanted with the Council as follows:

> *'The [owners of the site] and their successors in title and all persons deriving title under them hereby covenant with the Council that upon planning permission being granted for the development of the said land as aforesaid that they and their successors in title as aforesaid will*
>
> *a) restrict the erection of dwellings on the site to a maximum of ten and no more whatsoever*
>
> *b) not permit the erection of buildings within the site to the north west of the coalyard shown for the purpose of identification hatched black on the plan ('the hatched land')*
>
> *c) at their own cost make up to adoption standards part of the road known as Windmill Way Much Hadham aforesaid ... shown for the purpose of identification coloured red on plan no. 2 annexed hereto such works ... to be completed to the Satisfaction of the County Surveyor ... within six months of the commencement of implementation of the said planning permission thereafter the Road to be adopted by the County*

d) *the dwellings shall not be rateably occupied until the existing access serving the site onto Station Road has been closed*

e) *construction traffic shall only use the said Windmill Way as necessary for access to and egress from the site.'* (u/l added)

It was further agreed and declared that the covenant was entered into pursuant to s.52 of the Town & Country Planning Act 1971 (**'the 1971 Act'**) and s.33 of the Local Government (Miscellaneous Provisions) Act 1982.

4. The first permission was granted by decision notice issued in February 1987. It was not followed by an application for approval of reserved matters and expired in due course.

5. A detailed planning application was subsequently submitted for the same development on the same site as authorised by the first permission (3/87/0666FP). This was approved by decision notice issued in June 1987 (**'the second permission'**). The second permission was not subject to any further s.52 agreement. It was implemented, resulting in the 10 houses existing on the site.

6. A further detailed application was submitted in October 2015 for the erection of three dwellings on part of the hatched land (3/15/1952/FUL) (**'the third application'**). The third application resulted in planning permission dated 3 February 2016 (**'the third permission'**).

7. The Parish Council and others objecting to the third application relied upon the submission that development of the hatched land (or any part of it) was prohibited by the agreement. Officers advised members, however, as follows so far as the effect or proper construction of the agreement was concerned:

> *'10.26 The Section 52 agreement relates to the outline planning permission (ref. 3/86/0806OP) and the key part of that agreement referred to by third parties is a restrictive covenant. The covenant requires that no further development should take place on the land which is the subject of this application. The context of the Section 52 agreement is however exclusive to the granting of outline planning permission ref. 3/86/0806/OP, which was not implemented. A separate, full planning permission for the same site was later granted for 10 houses under ref. 3/87/0666/FP. Officers have reviewed the file and concluded that the later, full application (ref. 3/87/0666/FP) was implemented. No legal agreement was attached to that permission.*
>
> *10.27 Given that the later, full planning permission (ref. 3/87/0666/FP) was implemented, that permission superseded the previous outline planning permission (ref. 3/86/0606/OP) referred to in the*

s.52 agreement; because the site had already been developed it was not possible to implement the outline permission. Further, because planning permissions are time limited if not implemented, permission ref. 3/86/0806/OP also eventually expired through time. When ref. 3/86/0806/OP ceased to be valid or capable of implementation, the Section 52 agreement and all the covenants within it effectively became redundant because neither the Council nor any other parties which are signatories to the Section 52 agreement could reasonably enforce its requirements'

8. The Council is currently considering a further detailed application for the development of eight dwellings on the remainder of the hatched land (**'the fourth application'**).

DISCUSSION

General

9. Section 52(1) of the 1971 Act provided as follows:

> *'A local planning authority may enter into an agreement with any person interested in land in their area for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement; and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the local planning authority to be necessary or expedient for the purposes of the agreement'.*

The current equivalent provision is at Section 106(1) of the Town & Country Planning Act 1990, which is – so far as material here – to the same effect.

10. S.52 (& s.106) agreements may therefore be entered into at any time and entirely independently of any planning application or permission. Where entered into in respect of development to be authorised pursuant to planning permission, the precise relationship between the requirements or restrictions imposed by the agreement and the permission to be granted and development to be carried out pursuant to it will depend, naturally enough, on the terms or wording of the agreement itself. Individual requirements or restrictions may take effect, for example, upon the grant of permission or commencement of development or the occurrence of some other specified event, and their duration may be temporary or permanent. These are matters for negotiation and agreement between the parties to the agreement.

11. It is important that s.52 (& s.106) agreements should be interpreted as a whole, since provisions elsewhere within them may, as here, shed light on and reinforce the proper interpretation of the restriction or requirement that is the principal focus of concern for the time being.

Proper interpretation of the agreement

12. Clauses 1(a)-(e) at paragraph 3 above all took effect, very clearly, *'upon [the first permission] being granted'* in accordance with the common introductory wording. The covenant or promise not to permit the erection of buildings on the hatched land in particular, ie clause 1(b), was not conditional or contingent upon any other or further event. It follows that any proposal to erect any building on the hatched land has been contrary to and in breach of covenant since February 1987, when the first permission was issued. Clause 1(b) and the remaining covenants could, of course, have been agreed to be conditional instead upon the commencement of development pursuant to the first permission, but that is not what the agreement provides for or what, it's to be presumed, the parties agreed. Neither is clause 1(b) expressed to restrict the erection of buildings on the hatched land only in the event that development of the remainder of the site should take place pursuant to the first permission. The restriction is unqualified and regulates development of the hatched land pursuant to any subsequent planning permission.

13. This straightforward interpretation of clause 1(b) is supported and reinforced by the terms of clause 1(c). The completion of highway works required by clause 1(c) was expressly deferred to a date *'within six months of the commencement of implementation of [the first permission'.* This contrasts with clause 1(b) and confirms that the parties applied their minds to when the various requirements or restrictions should 'kick in'. They agreed in that context that clause 1(b) should take effect upon grant of the first permission without further ado. It is instructive that clauses 1(b) & (c) contrast with one another.

14. Finally, this interpretation explains the grant of the second permission without a further s.52 agreement. Officers presumably considered at that time consider that a further agreement was not required in light of the agreement already entered into. The agreement had 'kicked in' and the restriction at clause 1(b) in particular had taken effect.

Officers' advice

15. The key point to appreciate so far as officers' advice at paragraph 7 above is concerned is, to my mind, that it does not address the wording of the agreement at all. Officers presume instead, with respect, that the restrictions in the agreement attach to the first permission only because it provided the context for its conclusion. That is so, but it doesn't follow that each of the requirements and restrictions agreed was tailored to apply in the context only of development pursuant to the first permission. It is apparent from paragraph 13 above that a staged approach was adopted, with clause 1(b) taking effect from February 1987 and not expressed to regulate only development pursuant to the first permission.

16. Officers' advice also leaves the absence of a s.52 agreement in respect of the second permission unexplained. It leaves it to be inferred that their predecessors erred in not requiring the conclusion of a further s.52 agreement (there is no suggestion of any material change in circumstances between the first & second permissions), whereas its proper interpretation suggests that this was not necessary.

CONCLUSION

17. For these reasons I conclude that:

    a. proposals to erect any building on the hatched land have been contrary to and in breach of covenant since February 1987;

    b. the third permission was granted in the context of an erroneous interpretation of the agreement and its implementation would be restrainable by the court as in breach of it; and

    c. development pursuant to planning permission granted on the fourth application would also be in breach of covenant and likewise restrainable.

18. I trust that this clear, but please don't hesitate to make contact through chambers if it might to discuss this matter further.

SIMON PICKLES
24 January 2017

Landmark Chambers
180 Fleet Street
London EC4A 2HG

Section 52 agreement dated 10 February 1987

DATED 10th February 1987 (6)

BRITISH RAILWAYS BOARD (1)
and
EAST HERTFORDSHIRE DISTRICT COUNCIL (2)
and
BRYAN MONTAGU NORMAN
and
RONALD SCOTT NORMAN
and
ANTHONY GOSSELIN TROWER (3)

AGREEMENT UNDER SECTION 52 TOWN AND COUNTRY PLANNING ACT 1971 AND SEC 33 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

relating to land at The Old Station Yard Much Hadham Hertfordshire

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R Wray Solicitor
East Hertfordshire
District Council
2 The Causeway
Bishop's Stortford
Herts CM23 2EJ

This Agreement is made the 10th day of February 1987 between British Railway Board whose office is situate at Rail House Euston Square London NW1 called ("the Principal Owner") of the first part and East Hertfordshire District Council of The Council Offices The Causeway Bishop's Stortford Hertfordshire (hereinafter called "the Council") of the second part and Bryan Montagu Norman of Moor Place Much Hadham and Ronald Scott Norman of St Clere Kemsing Sevenoaks Kent and Anthony Gosselin Trower of 5 New Square Lincoln's Inn London WC2 (hereinafter called "the Secondary Owners") of the third part

WHEREAS

(1) The Principal Owner is the Beneficial Owner in fee simple absolute in possession of the land situate at Much Hadham in the County of Hertford which land is shown for the purpose of identification only edged red on plan No 1 annexed hereto (hereinafter called "the plan") and the buildings erected thereon or on some part thereof and known as Old Station Yard Much Hadham aforesaid (hereinafter called "the Site")

(2) The Secondary Owners are the Beneficial Owners in fee simple absolute in possession of the land situate at Much Hadham in the County of Hertford which land is shown for the purpose of identification only edged green on the plan (hereinafter called "the Green Land")

(3) The Council is the Local Planning Authority for the area within which the said land is situate for the purposes of the Town and Country Planning Act 1971 and a Principal Council for the purposes of the Local Government (Miscellaneous Provisions) Act 1982

(4) The Principal Owner has submitted to the Council a written application dated the 1st May 1986 and numbered 3/0806-86 (hereinafter called "the

Application") for planning permission for residential development of former station area (hereinafter called "the Dwellings") in accordance with the application a copy of which is annexed hereto

(5) On the 28th August 1986 the Council resolved to grant planning permission in respect of the applications subject inter alia to the execution of this Agreement

(6) The parties hereto make this Agreement under the provision of Section 52 of the Town and Country Planning Act 1971 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other powers them enabling

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. The Principal Owner and Secondary Owners for themselves and their successors in title and all persons deriving title under them hereby covenant with the Council that upon planning permission being granted for the development of the said land as aforesaid that they and their succesors in title as aforesaid will

(a) restrict the erection of dwellings on the site to a maximum of ten and no more whatsoever

(b) not permit the erection of buildings within the site to the north west of the coalyard shown for the purpose of identification hatched black on the plan

(c) at their own cost make up to adoption standards part of the road known as Windmill Way Much Hadham aforesaid (hereinafter called "the Road") shown for the purpose of identification coloured red on plan No 2 annexed hereto such works as specified in the Schedule appended hereto to be completed to the satisfaction of the County Surveyor (hereinafter called "The Surveyor") of the

Hertfordshire County Council (hereinafter called ("the County") within six months of the commencement of implementation of the said planning permission thereafter the Road be adopted by County

(d) the dwellings shall not be rateably occupied until the existing access serving the site onto Station Road has been closed

(e) construction traffic shall only use the said Windmill Way as is necessary for access to and egress from the site

2. The parties hereby agree and declare that the covenant contained herein is entered into in pursuance of Section 52 of the Town and Country Planning Act 1971 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982

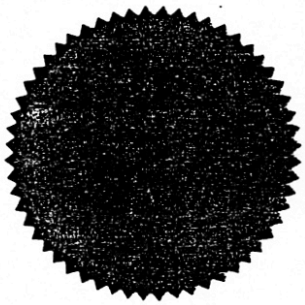
IN WITNESS whereof the parties hereto caused their respective Common Seals to be affixed and their hands to be set the day and year first before written

6999

THE COMMON SEAL of the said
EAST HERTFORDSHIRE DISTRICT COUNCIL
was hereunto affixed in the presence
of:

THE COMMON SEAL of the said
BRITISH RAILWAYS BOARD was
hereunto affixed in the presence of:

A PERSON AUTHORISED
BY THE [illegible] TO ACT
INSTEAD OF THE SECRETARY
7116



SIGNED SEALED and DELIVERED by the said BRYAN MONTAGU NORMAN in the presence of:

J.P. Welch
22 Hanover Square
London
W1A 2BN

SIGNED SEALED and DELIVERED by the said RONALD SCOTT NORMAN in the presence of:

S. E. Hayes
5 New Square
Lincoln's Inn
London EC2A
Articled Clerk

SIGNED SEALED and DELIVERED by the said ANTHONY GOSSELIN TROWER in the presence of:

J. P. Welch
22 Hanover Square
London
W1A 2BN

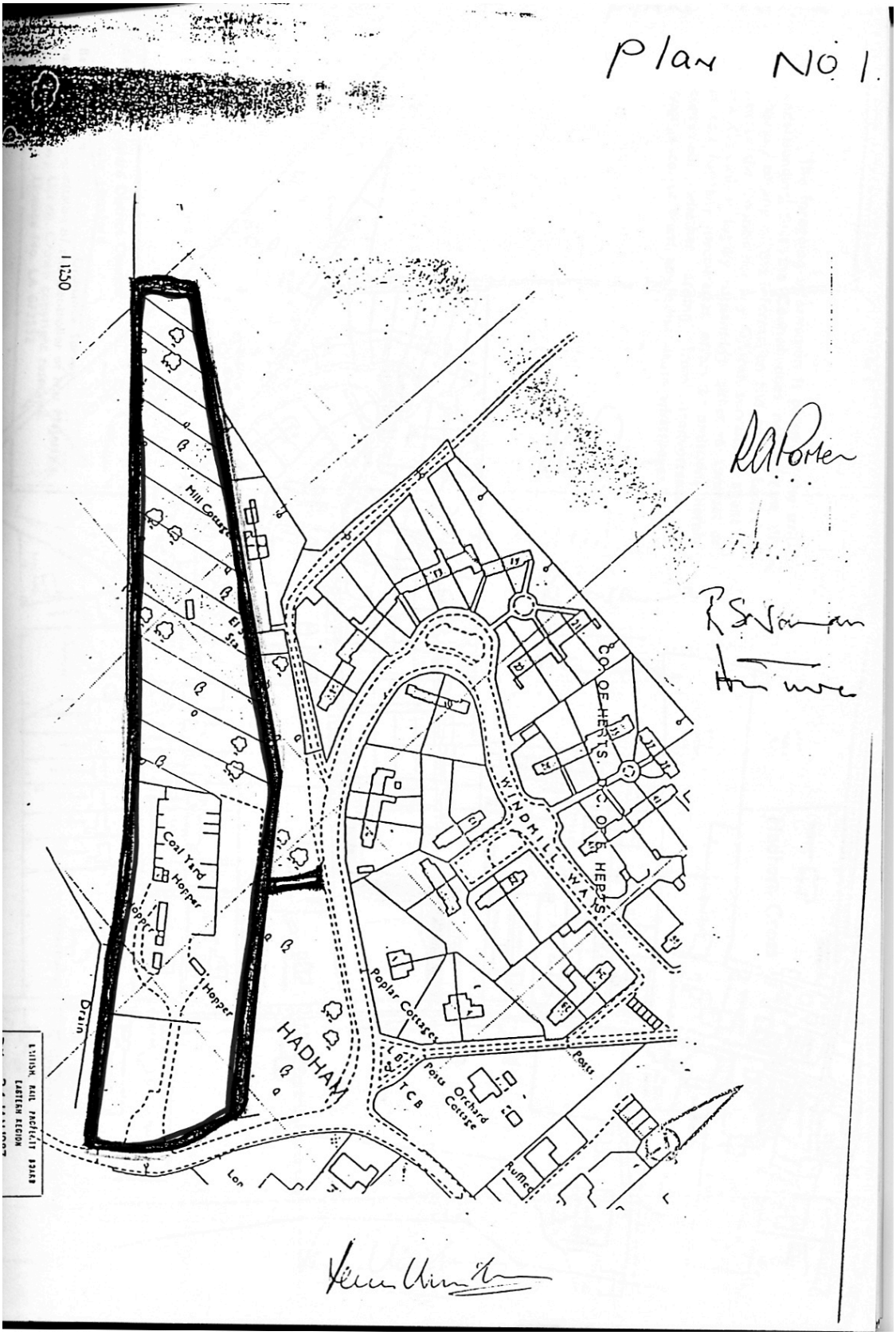
THE SCHEDULE

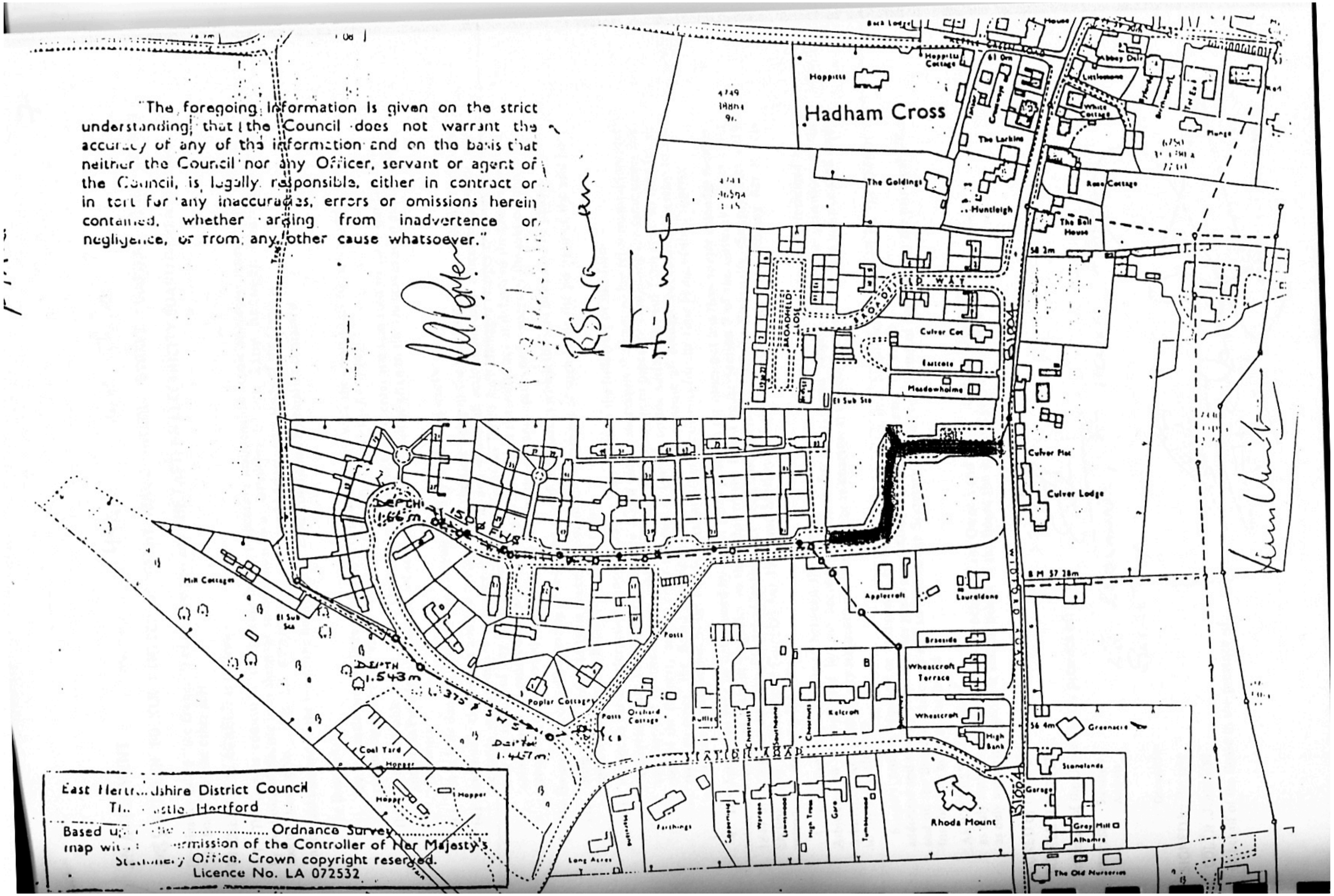
The works referred to in Clause 1(C) to this Agreement shall comprise:-

1. The laying of the final bituminous macadam wearing course 30mm thick on the road.

2. The raising of gulleys and manhole frames where necessary.

3. The laying of white carriageway markings at the junction with the B1004.


Plan No 1.
1:1250
Hill Cottage
Coal Yard
Hopper
Hopper
Drain
HADHAM
Poplar Cottages
Orchard Cottage
Posts
Rushes
WINDMILL WAY
CO. OF HERTS.
C. OF HERTS.
BRITISH RAIL PROPERTY BOARD
EASTERN REGION


"The foregoing information is given on the strict understanding that the Council does not warrant the accuracy of any of the information and on the basis that neither the Council nor any Officer, servant or agent of the Council, is legally responsible, either in contract or in tort for any inaccuracies, errors or omissions herein contained, whether arising from inadvertence or negligence, or from any other cause whatsoever."
Hadham Cross
Hoppitts
Hoppitts Cottage
The Goldings
Huntleigh
The Larkins
The Bell House
Rose Cottage
White Cottage
Littlemore
Abbey Dale
Broadfield Close
Broadfield Way
Culver Cot
Eastcote
Meadowholme
El Sub Sta
Culver Mas
Culver Lodge
B 1004
Applecroft
Laureldene
Braeside
Wheatcroft Terrace
Wheatcroft
High Bank
Greenacre
Stonelands
Garage
Grey Mill
The Old Nurseries
Rhoda Mount
Kelcroft
Chestnuts
Southacre
Chestnut
Posts
Orchard Cottage
Poplar Cottage
Mill Cottages
Coal Yard
Hopper
Long Acres
Farthings
Copperwood
Warden
Lawnswood
High Trees
Gore
Tumblewood
Depth 1.66m
Depth 1.543m
Depth 1.457m
375 φ S.W.S.
BM 57.28m
56.4m
58.2m
East Hertfordshire District Council
The Castle Hertford
Based upon the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office. Crown copyright reserved.
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APPENDIX 3 – Evidence for a single site and phased development.

a. From Land Registry searches, it is a fact that both sites were previously under a single title deed HD226112 with ownership in the name of Swing Ltd. The carving out of the Adjacent site as a separate title HD555523 and its transfer to a developer, Bellis Homes, on 15 July, 2016 was a step in the first phase of the overall development.

b. Planning Application 3/15/1952 for 3 detached properties was submitted by Swing Ltd and approved on 4 February, 2016, so the Adjacent Site acquired its development value whilst in the ownership of Swing Ltd. It was superseded by 3/16/1712 submitted by Bellis Homes on 27 July, 2016, which was essentially the identical application but with 4 semi-detached properties on the same plots as 2 detached properties in the earlier application. This minor amendment was approved but, given the previous approval would not have impacted the site's development value significantly.

c. This current application 3/16/2321 is in the name of Alex Purves but the site remains in the ownership of Swing Ltd. It is not known if there is a connection between the applicant and the site owner – indeed nothing at all is known about Alex Purves, a name which may or may not be a pseudonym. Nevertheless, if permission were to be granted, then the value of the Appeal Site as development land would accrue to Swing Ltd, again.

d. It is the case that all 3 of the planning applications were submitted by DLA Town Planning Ltd (St Albans office) as agent for the applicant in each case. It would be stretching credulity to breaking point to claim that there is no connection between the three applicants. Policy HSG3 does not require that a single ownership applies to the subject sites, merely that where the development of a site is phased or divided into separate parts, it will be considered as a whole for the purposes of affordable housing. That is exactly what has happened here. A single planning company, DLA, has prepared the plans. A single company, Swing Ltd, has captured the accretion in value of the sites from the planning approvals. It would make a mockery of the intention of HSG3 and the requirements for affordable housing if salami slicing a larger site into smaller sites to avoid planning obligations were permitted

e. Various specialist reports submitted with the original application for the Adjacent Site 3/15/1952 included surveys for the entire site, which is evidence of the ongoing intention to develop the entire site. Examples include the Roman snail survey, the arboricultural report, the bat survey and the eco-appraisal. These documents can be found at the LPA's website:

https://publicaccess.eastherts.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NV8BXHGLH3Y00

[Each of these reports also accompanied the subsequent planning application by Bellis Homes 3/16/1712, even though they were prepared for Swing Ltd.]

These reports were then referenced again in the specialist reports by the same consultants for the Appeal Site application.

For example, Fig 1037/2/1 Tree Plan submitted as part of the Bat Roost Assessment in the report by Green Environmental Consultants for this application clearly refers to a Phase l and a Phase ll corresponding to the Adjacent site and the Appeal site respectively (it also refers to the client as Bellis Homes, the developer of the Adjacent site, rather than Alex Purves).

f. The Transport Statement (accessed as above) was used by both applications, although prepared for Swing Ltd. It was then used again with a change of date and client name (to Alex Purves) and updated site plan for the Appeal Site application.

g. The Desk Study report on the risk of ground contamination was used by the application for the Adjacent Site (accessed as above). It, too, was then used again with a change of date and client name (to Alex Purves) and updated site plan for the Appeal Site application.

h. On the ground, Bellis Homes are developing the Adjacent Site beyond the boundaries of its title deed HD555523 and into the Appeal Site. Moreover, ground and underground utilities works seem to be anticipating approval of the current application with, for example, drainage pipes at the furthest point of the Adjacent site readied for extension into the Appeal site. The Appeal site has also been used for materials storage for the Adjacent site, to the detriment of the natural groundcover. Bellis Homes could only do all this with the permission of Swing Ltd.