

**SHROPSHIRE COUNCIL
EXAMINATION OF THE SITE ALLOCATIONS & MANAGEMENT OF
DEVELOPMENT (SAMDev) PLAN**

LOCAL PLANNING AUTHORITY'S REPOSE

**Protected Employment Site
Inspector's additional questions to the Council**

Inspector's Narrative

1. Policy MD9 of the SAMDev Plan protects 'existing employment areas'. Land between the A5124 and Battlefield Brook is identified as protected employment land on the Policy Map (Shrewsbury Area - Inset 1).
2. Further to discussions at the hearing sessions relating to employment in Shrewsbury, I have some concerns about the inclusion of this land as part of an 'existing employment area'. In short, I wish to establish the status of this land.

IQ1 - Is it existing employment land that can be safeguarded?

3. The Council consider that this matter should be resolved through the exercise of sound planning judgement. The identification of the remaining plots within the existing employment area is 'sound' given the planning history of the land and the issues explored in response to IQ3 and IQ4, despite the conclusions drawn under IQ2.
4. In the Submission Draft SAMDev Plan, the Council sought to protect the partially developed land at Greenhills Enterprise Park under Policy MD9 – Protected Employment Areas. Greenhills Enterprise Park is situated to the north-west of Battlefield Enterprise Park which is an existing employment area in north Shrewsbury.
5. Greenhills Enterprise Park is situated within the route of the A5124, Battlefield Link Road and is considered to be the final land parcel of the extensive Battlefield Enterprise Park. Greenhills Enterprise Park received outline permission 02/1429/O for organic and non-organic food related B1, B2 and B8 uses on 1st October 2003. The land was engineered to recognisable plots 1, 2, 3, 4, 5a and 5b, the area was bunded and structurally landscaped, the plots were accessed with estate roads and serviced with electricity sub-station, street lighting and all utility services between 2004 and 2005. The advance development under permission 02/1429/O effectively established the use and character of Greenhills Enterprise Park as a location for commercial investment for the local commercial property market. Greenhills Enterprise Park has been actively marketed for several years by local and regional agents with on-site marketing boards for the whole site and individual plots. Plot 5a was developed as the Shropshire Food Enterprise Centre in 2007 and Plot 1 was developed as a Mercedes car dealership in 2014 with both approved under separate full permission.
6. The Council recognised at the Hearing on 13 November 2014 that Plots 2, 3, 4 and 5b of Greenhills Enterprise Park do not currently benefit from an extant grant of planning permission. It is further recognised that permission 02/1429/O lapsed without the submission or approval of any of the reserved matters for the individual plots. The completion of Greenhills Enterprise Park

would now require a grant of consent(s) for the development of the remaining plots 2, 3, 4 and 5b.

7. The Council does not accept that the absence of an extant permission for Plots 2, 3 4 and 5b of Greenhills Enterprise Park should necessarily disqualify the land from being part of the existing employment area of Battlefield Enterprise Park under Policy MD9, as proposed in the Draft SAMDev Plan.
8. In the Local Plan, there is no definition of an "existing employment area" in either the Core Strategy or SAMDev Plan which would limit the inclusion of sites within an existing employment area to those sites which have the benefit of an extant permission for employment development. The SAMDev Plan in para 4.78 does, however, provide for the protection of existing employment areas as follows:

"As required in policy CS14, the protection of existing employment areas is based on evidence of the purpose, viability and redevelopment potential of the sites. This evidence is set out in the Shropshire Strategic Sites and Employment Areas Study for Shrewsbury (Phase 1) and the Market Towns and Key Centres (Phase 2). These studies identify a hierarchical ranking of existing employment areas in the principal settlements of the County which is explained in Table MD9.1"

9. Therefore, existing employment areas are made up of sites identified in the evidence base and so, the identification of Plots 2, 3, 4, and 5b within Greenhills Enterprise Park in the SEAS Phase 1 Study is consistent with the Core Strategy. The evidence in the SEAS Phase 1 Study offers sufficient justification in terms of the significance of this land to the maintenance of a full range of new development opportunities in Shrewsbury.
10. The remaining plots on Greenhills Enterprise Park would form a significant development opportunity within the sub-regional employment site of Battlefield Enterprise Park. This would support release of the significant new employment allocations in Shrewsbury and be consistent with Core Strategy Policy CS14 which states that:

'the portfolio of [*allocated*] employment land and premises will be supported by: protecting existing strategic employment land and premises to secure these sites for employment uses'.

11. The Council therefore considers that the designation of Greenhills Enterprise Park under Policy MD9 of the SAMDev Plan is 'sound' for the following reasons:
 - The designation was positively prepared in relation to the Core Strategy Policy CS13 and CS14 and in relation to the scope and objectives of Policies MD4 and MD9 where the reasonable and justifiable intent was to secure 'readily available land' by protecting it as employment investment locations. In short, Policy MD4 could achieve no more than had already been physically achieved on site and the landowner and authority are now awaiting an improvement in economic circumstance to deliver the remainder of this site to completion;
 - The designation was justified based on the proportionate evidence in the Strategic Employment Areas Study (SEAS), Phase 1 even though the assessment in the Employment Land Review of permission 02/1429/O as an existing commitment may have been misplaced. The SEAS assessment uses the correct context for Greenhills Enterprise Park in short, it forms part of the strategic land supply in Shrewsbury and will support the overall

land supply in the town until larger allocated sites on the Sustainable Urban Extensions South and West, come forward for development. Further whilst Greenhills Enterprise Park is significant at around 8ha, it is proportionally a reasonable and justifiable extension to Battlefield Enterprise Park (estimated at 74ha) of which Greenhills Enterprise Park would represent an approximate 10% increase in the land area;

- The site is readily available, accessed and serviced employment land now being actively marketed with the physical character of serviced brownfield land forming an extension to the larger Battlefield EP and capable of delivery;
- The Council's approach to the designation of Greenhills Enterprise Park is consistent with national policy in para 22 and para 173 to avoid the long term protection of employment sites with little reasonable prospect of delivery (para 22) by ensuring that employment sites (inter alia) are viable and deliverable.

12. The Council recognises that the development of Plots 2, 3, 4 and 5b on Greenhills Enterprise Park would require the grant of a new permission. This in turn, would require submission of supporting evidence to establish the suitability of the land for the proposed uses. This is expected to confirm the position already established by permission 02/1429/O and through the planning history of Greenhills Enterprise Park and the parallel development of an integrated waste management facility previously allocated in the Shropshire Waste Local Plan (2004). This matter will be addressed further in the Council's consideration of the Inspector's question IQ5 to be forwarded separately to this note.
13. The existing employment uses on Plots 1 and 5a have taken effect on the basis of the separate full permissions granted on these plots. To this extent, Greenhills Enterprise Park has been established as a recognisable employment area and investment location. Plots 1, 5a and the adjacent 5b (although currently undeveloped) situated on the frontage of Vanguard Way has the further effect of forming a link between Greenhills Enterprise Park and the larger employment area of Battlefield Enterprise Park, immediately adjacent.
14. The Council considers that there is sound justification for determining that Greenhills Enterprise Park is existing employment land.

Inspector's Narrative

15. I understand that this land was not allocated as employment land in the Shrewsbury and Atcham Local Plan.
16. I understand that there was an outline planning permission that included this land. However this has since expired. No subsequent application for approval of reserved matters was made although full applications for developments were made on other parts of the land that was subject to the outline planning permission. It was agreed that no extant planning permission now exists.
17. Some extensive engineering works have been carried out to the land. It was agreed at the hearing that these were substantially completed more than four years ago and are now immune from any enforcement action.

IQ2 - Were these works carried out lawfully?

Context

18. The Council considers that this issue is a matter for the Council and the Inspector to determine through sound planning judgement. This sound planning judgement should be based on the law as stated by the Court of Appeal in Greyfort Properties Ltd v SSCLG [2012] JPL 39; [2011] EWCA Civ 908.
19. The judgement required of the Council and Inspector requires the application of the 'Whitley' principle and its exceptions in law to the facts of outline permission 02/1429/O and the planning history of Greenhills Enterprise Park. The 'Whitley' principle is based on the understanding that development is carried out 'lawfully' when the operations are clearly authorised by the grant of permission.
20. The 'Whitley' principle is set out by Woolf LJ in Whitley & Sons v Secretary of State for Wales (1992) 64 P&CR 296 at p302 which states: If operations contravene the condition(s) on a planning permission, then those operations cannot be properly described as commencing the development authorised by the permission. Consequently, such operations are regarded, in common law, as being carried out without grant of permission and are regarded as 'unlawful'.
21. A number of exceptions to the 'Whitley' principle are recognised by the Courts whereby, development might still be regarded as 'lawful'. The following exceptions are relevant to the judgement required of the Council and Inspector:
 - where the requirements of a condition are met in substance (i.e. the operations were approved and implemented) but not met in form (i.e. the formalities of approval are not completed) as set out in R v Flintshire CC ex p Somerfield Stores Ltd [1998] P&CR 336;
 - where the details required by condition are approved after the operations were carried out whereby approval is granted retrospectively as set out in Leisure Great Britain plc v Isle of Wight Council (1999) 80 P&CR 370;
 - where the operation should commence development despite it being in breach of planning control as it would be unlawful (i.e. irrational or an abuse of power) for the local planning authority to take enforcement action to prevent the development proceeding as set out in R (Prokopp) v London Underground Ltd [2003] EWCA Civ 961, [2004] 1 P&CR 31 at [85] per Buxton LJ.
 - where the condition that was not discharged does not go to the 'heart of the planning permission' so that, the development on completion can still be judged on the facts of the case to be unlawful as set out in Greyfort Properties Ltd v SSCLG at [19].
22. The exercise of judgement in relation to these exceptions implies that more than one decision may be required to form a sound judgement on whether the completed development may be regarded as 'lawful'.

Planning History

23. The facts of outline planning permission 02/1429/O and the planning history at Greenhills Enterprise Park are as follows.

24. The general facts of outline permission 02/1429/O are that the application represented a joint venture between Advantage West Midlands (the former Regional Development Agency) and Shropshire County Council in 2003 to establish the Shropshire Food Enterprise Park as a significant investment location for a principal economic growth sector in the Shropshire economy.
25. Outline permission 02/1429/O granted on 1st October 2003 was the first consent for the proposed Shropshire Food Enterprise Park granted as departure to the Shrewsbury and Atcham Local Plan (2001) which designated the land as Countryside. The proposed Shropshire Food Enterprise Park land adjoined the new extensive employment allocation of Battlefield Enterprise Park (20ha) and formed a continuous extension of this principal new employment area.
26. The planning history of Greenhills Enterprise Park can be summarised as follows:
- 02/1429/O – outline permission for 6 development plots and had the effect of creating the plots, infrastructure and structural landscaping of the Greenhills Enterprise Park. The permission granted full consent for infrastructure and landscaping operations on the discharge of:
 - Condition 2 permitted the provision of highway access junctions on approved Plan 900 into Greenhills Business Park from Vanguard Way, the local distributor road in Battlefield Enterprise Park. The extent and layout of the permitted highway accesses were varied through a non-material amendment proposed and discussed with the local planning authority early in 2004 and approved by letter dated 31st March 2004. This non-material amendment has been identified during the preparation of this note after the Hearings on 13th November and 17th December 2014;
 - Condition 20 permitted the provision of structural landscaping at the north and east boundaries of the site on approval of the details of the works which were to be implemented within twelve months of the commencement of any part of the development. Condition 20 was discharged by the local planning authority on the approval of plans for the earthworks, formation of banks and the scheme of planting submitted to the local planning authority in December 2003 and approved by letter dated 20th May 2004. Structural landscaping plans showing engineering works and planting scheme were identified during the preparation of this note after the Hearings on 13th November and 17th December;
 - 06/1117/F – full permission for Plot 5a for the erection of the Shropshire Food Enterprise Centre offering 12 incubator food production units with associated enterprise centre, administration and cafeteria facilities completed in 2007;
 - 08/0484/F – full permission for Plot 2 for 3No. Class B industrial units but this permission lapsed in 2012. A subsequent application 11/03191 to renew the full permission for Plot 2 was withdrawn in 2012 due to the difficult economic circumstances at that time;
 - 12/0357/F – full permission for Plot 1 for a Mercedes car dealership with car repair workshop completed in 2014.
27. It is recognised that 02/1429/O expired with none of the reserved matters being applied for or granted. The facts of the other elements of the planning history are that Plot 1 and Plot 5a were developed lawfully under respective

full permissions 06/1117/F and 12/0357/F. Consequently, there are no extant permissions for undeveloped Plots 2, 3, 4 and 5b on Greenhills Enterprise Park.

Outline Permission 02/1429/O

28. Outline permission 02/1429/O was granted for organic and non-organic food related B1, B2 and B8 uses and was subject to 25 conditions including Conditions 2 and 20 detailed as shown in the decision notice in Appendix 1 : 02-1429-Battlefield EP – Decision Notice (attached separately).
29. The former local planning authority (i.e. Shrewsbury and Atcham Borough Council) intended to grant a 'hybrid' permission to permit the implementation of infrastructure works (Condition 2) and structural landscaping (Condition 20 on the discharge of those conditions).
30. This is identified in notes dated 17th March 2004 of a meeting between the local planning authority and the agent for the applicant which state that the local planning authority did not recognise any further pre-commencement conditions having addressed the following matters on 17th March 2004:
 - Condition 2 – details of a non-material amendment to the approved highway accesses to the site;
 - Condition 7 - continued use of an agricultural site access from the A5124, Battlefield Link Road until the structural landscaping was implemented;
 - Condition 18 – that details of surface water drainage may be discharged on a plot by plot basis;
 - Condition 23 – treatments including the pallet of materials for the external facings of the buildings, rooftop structures and perimeter fencing (with the condition later discharged by the approval of a Masterplan
 - Condition 24 – to remove a balancing pond under permission 04/0484/VAR.
31. Regrettably, the decision notice for 02/1429/O contained additional pre-commencement 'condition precedents' in Conditions 2, 10, 11, 17 and 18. Further, these condition precedents were not explicitly discharged by the local planning authority before Condition 2 and Condition 20 were implemented.

Application of the 'Whitley' principle and its exceptions

32. These additional 'condition precedents' require the Council and Inspector to apply the 'Whitley' principle (and its exceptions) to permission 02/1429/O and to reach a sound judgement on whether the commencement and completion of the works under Conditions 2 and 20 were 'lawful', as set out in Appendix 2 (attached).
33. The Council considers that the 'condition precedents' in Conditions 2, 10, 11, 17 and 18 were not fulfilled before the commencement of permission 02/1429/O. The 'Whitley' principle would therefore apply to permission 02/1429/O because the commencement of the completed infrastructure, engineering and landscaping developments contravened each of these 5 Conditions and so, the completed developments may be regarded as being 'unlawful'.
34. In reaching these conclusions in relation to the 'Whitley' principle, it is necessary to recognise two further matters:

- the 'condition precedents' in Conditions 10, 11, 17 and 18 were included in the approved Masterplan intended to provide guidance for the preparation of reserved matters applications. It would appear, therefore, that Conditions 10, 11, 17 and 18 were intended to be the mechanism through which the provisions of the Masterplan could be enforced in determining subsequent reserved matters applications, however, this is not their effect in law;
- to reach a sound judgement, it is necessary to apply the exceptions to the 'Whitley' principle to confirm that the completed developments are 'unlawful':
 - Exception 1 : requires that Conditions 2, 10, 11, 17 and 18 be met in substance (i.e. the operations were approved and implemented) but not met in form (i.e. formal notification of approval) – this first exception does not apply because none of the condition precedents have ever been approved through reserved matters applications or submissions of details to the local planning authority;
 - Exception 2 : requires that the details in Conditions 2, 10, 11, 17 and 18 be approved retrospectively after the operations were carried out – this second exception does not apply because none of the condition precedents have ever been implemented except for those operations (highway access and structural landscaping) considered to be granted full consent;
 - Exception 3 : requires that the operation be effective to commence development despite it being in breach of planning control and that it would be unlawful to take enforcement action to prevent the development commencing – this exception might be applied to Condition 2 in relation to the completed highway works. The principal highway junction accesses approved in Condition 2 under Plan 900 formed the junction access for Road A identified on Development Plan 2 in the Masterplan. In completing the full road layout under the non-material amendment, the applicant also implemented the highway access to the site in Condition 2. Any enforcement action against these works would have been irrational at the time as the works were considered to be lawful. Therefore, this exception may be applied to Condition 2.
 - Exception 4 : requires that the conditions do not go to the heart of the permission – this exception might be applied to Condition 17 as the laying out of wheelchair accessible parking spaces could be undertaken at a point after the development was commenced and so, does not go to the heart of the permission.

35. The Council considers that the exceptions to the 'Whitley' principle identified above can be applied to Conditions 2 and 17 and so these conditions would not prevent the commencement of the completed works.

36. The Council considers that Conditions 10, 11 and 18 for surface water drainage, building materials and the position of hard and soft landscaping for individual buildings would need to be determined before development commenced and so, go to the heart of the permission. In conclusion, the 'condition precedents' of Conditions 10, 11 and 18 were not fulfilled and so, the 'Whitley' principle would still apply to permission 02/1429/O and the completed developments may still be regarded as being 'unlawful'.

37. The Council invites the Inspector to consider whether the Council has applied sound reasoning and reached sound planning judgements about whether the completed developments were lawful.

IQ3 - What are the implications of these works for the lawful use of the site?

38. To reach a sound judgement about the status of the undeveloped land at Greenhills Enterprise Park, it is necessary to consider the implications of the conclusion to question IQ2 that the completed developments were not lawful at the time they were implemented.

39. The Council considers that there are 3 related implications for the status of the undeveloped land at Greenhills Enterprise Park as follows.

Implication 1 – the ‘use’ of Greenhills Enterprise Park

40. It is recognised that permission 02/1429/O has now lapsed due to the applicant’s failure to submit reserved matters applications for Plots 2, 3, 4 and 5a and there is now, no extant permission for employment uses on the land.

41. Further, the development completed on Greenhills Enterprise Park proceeded in advance of all the pre-commencement conditions under permission 02/1429/O being fulfilled. The completed development was therefore, not authorised (i.e. lawful) by permission 02/1429/O and this permission failed to take effect.

42. To regularise the fact that the employment uses on Plots 2, 3, 4 and 5b did not take effect under permission 02/1429/O, these undeveloped plots require a new grant of permission for Class B or other commercial uses.

43. The proposed employment uses on Plots 1 and 5b did take effect on the basis of the separate full permissions granted on these plots. To this extent, Greenhills Enterprise Park has been established as a recognisable employment investment location. Plots 1, 5a and the adjacent 5b (although currently undeveloped) situated on the frontage of Vanguard Way has the further effect of forming a link between Greenhills Enterprise Park and the immediately adjacent employment area of Battlefield Enterprise Park.

44. Therefore, employment uses have been implemented lawfully at Greenhills Enterprise Park and it does form part of the existing employment area of Battlefield Enterprise Park.

Implication 2 – the ‘character’ of the land

45. It is recognised that the structural landscaping and infrastructure works around the undeveloped plots at Greenhills Enterprise Park should be regarded as ‘unlawful’ development at the time of their completion. This is because, the developments should not have proceeded in advance of all the pre-commencement conditions under 02/1429/O being discharged.

46. However, the completed engineering, infrastructure and landscaping works are now established development having been completed for over 10 years and so, are immune from enforcement action. This established development has effectively changed the character of the undeveloped land and this significantly influences the reasonable expectations for its future use.

47. The structural landscaping and bunding has enclosed the land from the surrounding countryside and has reinforced the highway landscaping around the A5124, Battlefield Link Road. The structural landscaping necessitated significant engineering works to establish Plots 2, 3 and 4 which are now being marketed. These works re-profiled the site levels of Plot 2 (to 73 AOD), Plot 3 (to 72.25 AOD) and Plot 4 (to 70.5) creating recognisable investment opportunities on the Greenhills Enterprise Park.
48. The related road and service / utility infrastructure developed to the plot boundaries clearly links these undeveloped plots into the highway layout of Battlefield Enterprise Park. This is further reinforced by the substantial electricity substation on the site which clearly indicates the future use of the land.
49. The Council considers that the established development on Greenhills Enterprise Park changes the character of this land from its previous designation as countryside to serviced brownfield land in the townscape of north Shrewsbury.

Implication 3 – the 'designation' of the land

50. The designation of the undeveloped land at Greenhills Enterprise Park requires the exercise of sound planning judgement.
51. The change to the character of the land is consistent with the co-location of Greenhills Enterprise Park with the existing employment area of Battlefield Enterprise Park. The effect of this co-location is evidenced by the progressive planning history in this locality where Plots 1 and 5a of Greenhills Enterprise Park have been developed by the Shropshire Food Enterprise Centre and Mercedes dealership. This is further evidenced by the parallel development of the integrated waste management facility allocated by the Shropshire Waste Local Plan (2004).
52. The location and situation of Greenhills Enterprise Park to the rear of the Battlefield Enterprise Park and within the line of the A5124, Battlefield Link Road clearly indicate that residential classes of development would be unsuitable (even secure residential accommodation) in close proximity to larger Class B2 uses.
53. The planning history in and around Greenhills Enterprise Park would indicate that industrial, commercial or professional service uses offer the most reasonable prospects for the future development of the land. The character of the land as serviced brownfield land and the layout and configuration of the site would support this designation.
54. Consequently, it is considered that an employment designation would be appropriate for this land and a sound planning judgement on this basis may simply require evidence to confirm the suitability of the land for these uses.
55. The Council will begin to address this in response to Inspector's question IQ4.

Inspector's Narrative

56. Core Strategy Policy CS14 relates to the managed release of employment land and a requirement to maintain a portfolio of employment land and premises. It was put to me at the hearing that the land in question meets the definition of "readily available land."

IQ4 - Is this of any relevance to the existing status of the land?

57. The Local Plan includes a definition of 'readily available land' as a key concept underlining the economic and employment strategy of the Local Plan in Core Strategy Policy CS13 and Policy CS14.
58. This concept supports the objective in Core Strategy Policy CS13 to plan and manage the delivery of a flexible and responsive supply of employment land and premises to offer a range and choice of sites in appropriate locations. This is necessary to deliver the 290 hectares of employment development required in Policy CS14.
59. The objective of delivering 'readily available employment land' to the market is consistent with the objectives of national policy in NPPF paras 22 and 173 to avoid the long term protection of employment sites with little reasonable prospect of delivery (para 22) by ensuring that employment sites (inter alia) are viable and deliverable (para 173).
60. The concept of 'readily available land' is a key driver for the allocation of land in SAMDev Policy MD4 and the protection of existing employment areas in Policy MD9. This concept drives the delivery of investment opportunities to the market either by improving undeveloped land or protecting existing commercial land and premises.
61. Whilst the definition of readily available land should not be used to circumvent the grant of consent to determine the lawful use of land, the concept can be used to prove the suitability of land for employment uses. The concept (as defined in the Core Strategy Glossary) offers three significant tests of the suitability of employment land: the physical condition of the land, the capacity to provide the type and scale of infrastructure required for the proposed commercial activity and the active marketing of the land to the commercial market.
62. The Council considers that Greenhills Enterprise Park provides sufficient evidence of the marketing of the site utilising both on-site advertisements and the use of regional and local agents. This provides evidence of reasonable prospects of securing the development of the land.
63. The completed infrastructure and landscaping development on Greenhills Enterprise Park to service the undeveloped land has already provided all major infrastructure to the existing plot boundaries.
64. The Council is further satisfied that the previous planning history of Greenhills Enterprise Park provides evidence to assure the Inspector that the physical condition of the land will support employment uses.
65. It is recognised that contemporary evidence may further indicate the suitability of the land to support the 'soundness' of designating it for employment use in the Local Plan. This matter will be addressed in the response to Inspector's question IQ5 to be forwarded separately to this note.

Liam Cowden
Principal Planning Officer
Shropshire Council

23 January 2015

Appendix 2

Application of the Whitley Principle to Additional Pre-commencement Conditions in Outline Permission 02/1429/O

The Council draws the following conclusions in relation to undischarged conditions 2, 10, 11, 17 and 18 attached to permission 02/1429/O in relation to the 'Whitley' principle.

- Condition 2 – clearly identified the further precedents (i.e. the siting, design and external appearance of the buildings, the means of access and the landscaping) that formed the reserved matters for detailed applications to be submitted under Conditions 3 and 4. It is recognised that:
 - the highway access in Plan 900 (discharged by Condition 2) was specifically exempt from the identified 'reserved matters' and did not require further approval from the local planning authority; but
 - the non-material amendment to extend the road layout to that identified in the Masterplan at para 5.1 and Development Plan 2 did not satisfy the view taken by the Court of Appeal in *Henry Boot Homes Ltd v Bassetlaw District Council* [2003] 1 P. & C.R 23. This requires that where a third party interest (i.e. objectors to the development proposed in 02/1429/O) or a public interest (i.e. proximity to the Registered Battlefield) would be affected by the development then the mechanism to vary a condition is that laid down in Section 73 of the Town and Country Planning Act 1990. This mechanism was used by the local planning authority to vary Condition 24 to remove the need for a balancing pond on the site later in 2004. This same mechanism may have been used to vary the road layout early in 2004. This non-material amendment had the effect of extending the road layout from the highway access junctions only shown on Plan 900 in Condition 2 to the full road layout shown in the Masterplan and also revised the indicative road layout approved in permission 02/1429/O issued in October 2003;
- Condition 10 – required full details of the type of facing materials for the external walls and roof of the individual buildings to be submitted and approved in writing before the development permitted by 02/1429/O was commenced. It is recognised that:
 - The Masterplan in paras 7.10 – 7.18 addresses matters of the external appearance of buildings and rooftops but these guidance notes were merely advisory and so, do not satisfy Condition 10;
- Condition 11 – required the provision of a detailed scheme of landscaping for the individual buildings to be submitted and approved in writing before the development permitted by 02/1429/O was commenced. It is recognised that:
 - The Masterplan in paras 7.19 – 7.31 addresses matters of the soft and hard landscaping and security around buildings and services areas but again, this guidance would not satisfy Condition 11;
- Condition 17 – required the provision of a scheme indicating the ratio of wheelchair accessible parking spaces their position relative to the

main entrance of each building to be submitted and approved in writing before the development permitted by 02/1429/O was commenced. It is recognised that:

- The Masterplan in para 7.40 identified the ratio of wheelchair parking provision but not the relative location of the provision specified in Condition 17 and so does not satisfy the condition;
- Condition 18 – required the provision of details of the method of surface water disposal to be submitted and approved in writing before the development permitted by 02/1429/O was commenced. It is recognised that:
 - The Masterplan in paras 9.0 – 9.7 addresses matters of services, utilities and waste but again, these guidance notes do not satisfy Condition 18.