

**TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)**

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

**Fiscal House
2 Havant Road
Emsworth
PO10 7JE**

**Local Planning Authority Reference:-18/00827/
Planning Inspectorate Reference:-
APP/X1735/W/19/3220134**

HAVANT BOROUGH COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY Mr & Mrs P A Munday AGAINST REF Removal of Condition 3 of Planning Permission APP/17/00634. AT Fiscal House, 2 Havant Road, Emsworth, PO10 7JE

Planning Inspectorate Reference: APP/X1735/W/19/3220134

LPA Ref: APP/18/00827

1.0 Introduction

- 1.1 The application was validated on 15th August 2018 and sought the Removal of Condition 3 of Planning Permission APP/17/00634. This condition was: "The development hereby permitted shall be used only for B1A(Offices), and for no other purpose whatsoever including any other purpose in Class B of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order.

Reason: To restrict the use of the premises in the interests of local amenity as residential properties are around the application site, and to retain the site in employment use, having due regard to Policies CS2, CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011."

- 1.2 The application was determined under delegated powers on 10th October 2018 where it was resolved to refuse permission on the following grounds:

Without control of the use of the site given by condition 3, the other permitted uses under the Town and Country Planning (Use Classes) Order 1987 and its subsequent amendments, would allow uses which are materially and substantially different to B1(a) Offices. These other uses could comprise B1(b), B1(c) and B8 (Storage and Distribution). It is considered that given the close proximity of neighbouring residential properties that, without control from the Local Planning Authority, these changes could have a significant adverse impact on the amenities of neighbouring properties and would not be suitable for this area, particularly with regard to the limited access and junction arrangements adjacent to the site on the corner of Havant Road and Warblington Road. As such it is considered that the proposal could have a significant adverse impact on the amenities of the neighbouring properties and road users. Overall it is considered that the proposal to remove condition 3 would conflict with policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011.

- 1.3 It is considered that the Delegated Officer Report is sufficiently detailed to form the basis of the LPA's Statement of Case. Therefore, the Inspector is respectfully requested to first refer to this document that has already been forwarded with the appeal questionnaire.

- 1.4 This Appeal Statement will not duplicate, but only update and elaborate on current policy situation and the reason for refusal as follows:

2.0 PLANNING POLICY UPDATE

2.1 Draft Local Plan

With respect to the Local Plan, the Council is preparing a new Local Plan and consulted on a Draft (Regulation 19) version of the Havant Borough Local Plan 2036 (HBLP 2036) between 1 February and 18 March 2019. Whilst the Plan has limited weight in decision-making at this stage in the plan preparation, the Draft Local Plan, it is of relevance in setting out the Council's direction of travel.

- 2.2 The Pre-Submission Local Plan is the version of the plan which the council considers to be 'sound' having been informed by extensive research, before it is formally submitted for examination. It takes account of the comments made during previous consultations and takes many of the suggested changes on board. Now that the consultation has finished, we will collect the responses together, analyse what they say and produce a summary of them, which will be published here in due course.

- 2.3 The Local Plan will then be submitted to the Secretary of State for Housing, Communities and Local Government, together with the comments received and the Local Plan's Examination will start. This is expected in the Autumn of 2019.
- 2.4 With respect to this appeal, the draft High Quality Design Policy E1, reiterates the Council's commitment to achieving high quality design that respects its context and does not cause unacceptable harm to the amenity of neighbours. This draft policy is copied in full in Appendix B.

3.0 THE APPLICATION

The proposal is for the Removal of Condition 3 of Planning Permission APP/17/00634. This condition was: The development hereby permitted shall be used only for B1A(Offices), and for no other purpose whatsoever including any other purpose in Class B of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order.

Reason: To restrict the use of the premises in the interests of local amenity as residential properties are around the application site, and to retain the site in employment use, having due regard to Policies CS2, CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011.

4.0 PLANNING CONSIDERATIONS

- 4.1 It is considered that the Delegated Officer Report is sufficiently detailed to form the basis of the LPA's Statement of Case. Therefore, the Inspector is respectfully requested to first refer to this document that has already been forwarded with the appeal questionnaire.

5.0 COMMENTS ON THE GROUNDS OF APPEAL

- 5.1 The Appellant at paragraph 3.8 of his statement outlines that given that the Conservation Officer has not objected to this application or the previous one that the LPA have limited grounds to have refused this application. The Conservation Officer would only comment on the impact of the development on the character and setting of the development on the conservation area. The Conservation would not comment upon the impact of the development with regards to the impact on the amenity of the area. Therefore this statement is not relevant in terms of the material planning considerations of this case.

- 5.2 At paragraph 3.9, the appellant makes comments that it was wrong for the LPA to impose a condition restricting national permitted development rights. As was outlined in the Delegated Report for this application. When the Local Planning Authority considers the imposition of conditions on planning permissions it must comply with the six tests relating to planning conditions outlined in the NPPF, which are that conditions are:

- (1) necessary
- (2) relevant to planning
- (3) relevant to the development to be permitted
- (4) enforceable
- (5) precise
- (6) reasonable in all other respects

- 5.3 The reason for condition 3 was "To restrict the use of the premises in the interests of local amenity as residential properties are around the application site, and to retain the site in employment use, having due regard to Policies CS2, CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011". The case of *I'm Your Man V Secretary of State* established the principle that if a limitation is to be imposed on a permission granted pursuant to an application, it must be done by condition. It was held that, in the absence of a specific condition, that the description of development does not expressly provide a power to impose limitations on the grant of planning permission pursuant to an application. Consequently, any essential restrictions relating to limitation on use, must be secured by condition, even where the description of development purports to contain the 'limitation'. It is noted that the agent for this application considers that the imposition of the condition to control the use of the site, to that which was applied for, is unreasonable. However, given the above noted caselaw, it is considered that in principle imposition of a condition restricting the use is reasonable and complies with the tests as outlined above.

- 5.4 Condition 3 did outline that one of the reasons to control the use of the building was in the interests of local amenity as residential properties are around the application site. Having regard to the Town and Country Planning (Use Classes) Order 1987 and its subsequent amendments, it noted that without a condition restricting the site to B1(a), that permitted development rights could be engaged, the uses that could include are: B1(b): Research and development of products and processes, B1(c): Light industry, and/or B8 Storage and Distribution. Given these potential changes, which are materially and substantially different to B1(a) Offices. It is considered that given the close proximity of neighbouring residential properties that, without control from the Local Planning Authority these changes could have a significant adverse impact on the amenities of neighbouring properties. The appellant fails to acknowledge that given the context of the site, and without specific evidence to the contrary, how any other allowed use classes allowed by utilising Permitted Development rights would impact on the amenities of the area.
- 5.5 The appellant in his statement refers to the desire to convert the application site into residential use and comments on a number of matters in this regard. Clearly as outlined in the officers Delegated report, this application is not for a residential use, and limited commentary on the other potential B use classes, and the subsequent impact on the amenity of the area has not been thoroughly considered.

6.0 CONCLUSIONS

- 6.1 The LPA remains of the view that the that to allow the removal of condition 3, would have an adverse impact on residential amenity and highway impact as the Town and Country Planning (Use Classes) Order 1987 and its subsequent amendments, it noted that without a condition restricting the site to B1(a), that permitted development rights could be engaged, the uses that could include are: B1(b): Research and development of products and processes, B1(c): Light industry, and/or B8 Storage and Distribution.
- 6.2 Given these potential changes, which are materially and substantially different to B1(a) Offices, it is considered that given the close proximity of neighbouring residential properties that, without control from the Local Planning Authority these changes could have a significant adverse impact on the amenities of neighbouring properties and not suitable for this area particularly with regard to the limited access and junction arrangements adjacent to the site on the corner of Havant Road and Warblington Road. As such it is considered that the development has a significant adverse impact on the amenities of the neighbouring properties. As such the proposal is considered to conflict with policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011.

APPENDICES

- Appendix A Borough Map and Location Plan
Appendix B Policy E1 from Draft Havant Borough Council Local Plan 2036
Appendix C Suggested Conditions

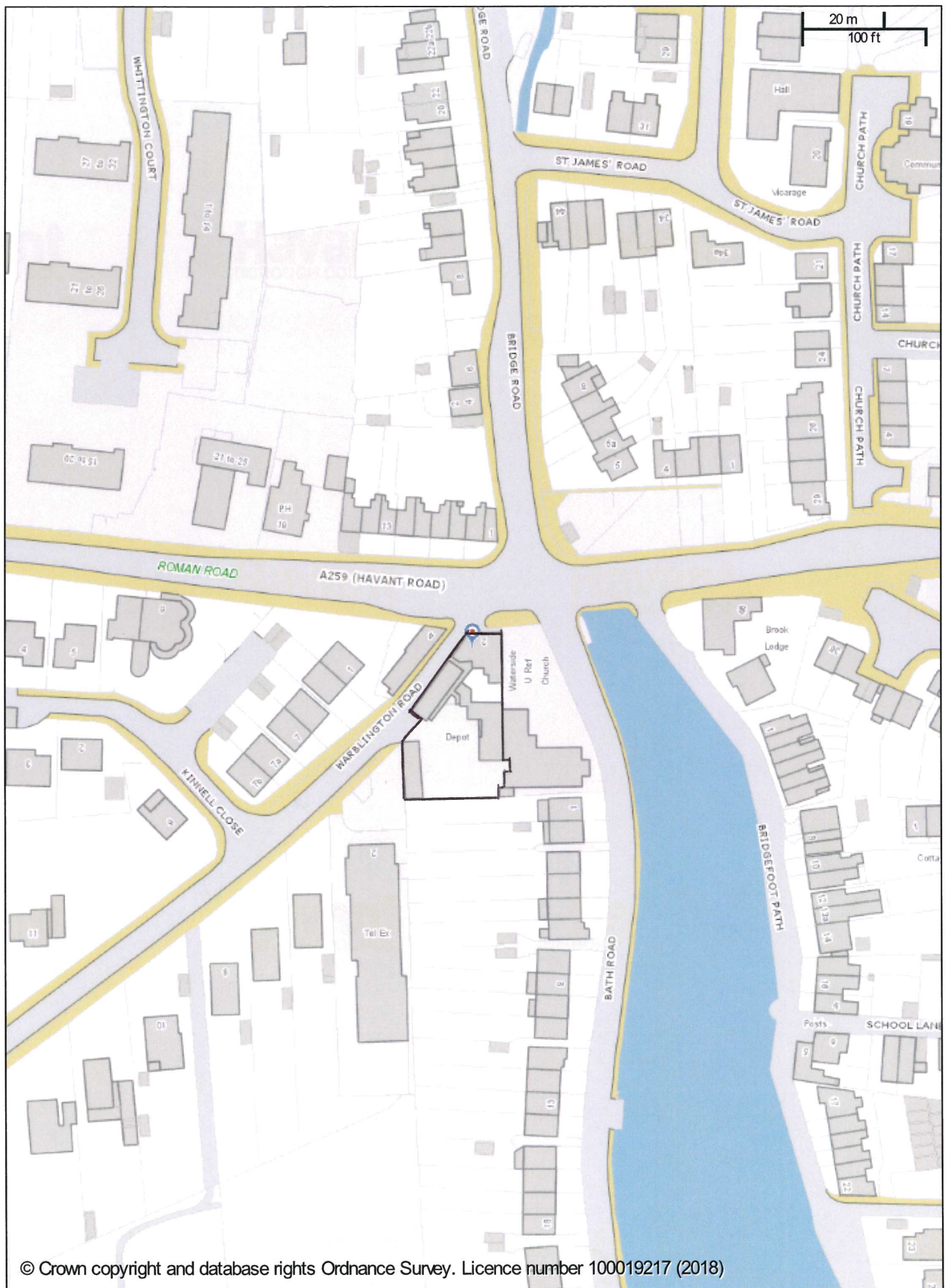
APPENDIX A

**APPEAL – Fiscal House
2 Havant Road
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Borough of Havant





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APPENDIX B

5 | The Environment

E1 | Health and Wellbeing

- 5.3 This policy would update and replace Policy CS1 (Health and Wellbeing) of the Core Strategy.
- 5.4 An analysis of how development will affect air quality across South Hampshire is currently under way. Any changes to this or other policies following the conclusion of this work will be incorporated into the pre-submission draft of the Local Plan.

Why this policy is needed

- 5.5 The NPPF recognises that supporting healthy communities is fundamental to the social role of planning in delivering sustainable development. The link between planning and health has long been established. The Government has published an evidence resource for planning and designing healthier places²². The planning system can help promote public health through the provision of environments, facilities and initiatives which enable people to live a healthy lifestyle and take responsibility for their own wellbeing. The planning process can influence the provision of new and improved facilities and opportunities, to encourage healthy choices and active lifestyles, when creating new places and new development.
- 5.6 Addressing health inequalities and improving the health and well-being of the Borough's population, both physical and mental, are key priorities for Havant Borough and Hampshire County Councils. Health and wellbeing are influenced by a number of themes, including transport, open space, housing, employment, food and environmental quality.
- 5.7 Havant is one of the most deprived areas in Hampshire with the main focus areas of the Borough being Wecock, Haying Island Beachlands and Leigh Park. The strong association between deprivation and poor health is captured in the Index of Multiple Deprivation (IMD) that assesses deprivation across a range of indicators: education; skills and training; employment; crime and disorder; income; health, disability; living environment; and barriers to housing and services.
- 5.8 Partnership working within local government plays a key role in the effective delivery of health and well-being services and this links to making sure that the infrastructure of proposed development is fit for the future growing population and its needs. Havant Borough Council works closely with Hampshire County Council as public health authority, individual agencies and the voluntary sector to achieve shared outcomes and goals to benefit the health and wellbeing of the local community with local priorities including increasing physical activity, reducing obesity and improving mental health and well-being. The local Havant Health Profile 2017 shows that these areas of health are worse than the England average²³.
- 5.9 Through the provision of accessible and appropriate facilities in well designed communities, opportunities for people to live healthier lives will be maximised. More importantly, people will remain healthier for longer if they are encouraged to take responsibility for their own health and wellbeing. But this can only be achieved if the right infrastructure is in the right place to enable people to make positive choices to shape their own health. Walkable neighbourhoods encourage

²² For full details see <https://www.gov.uk/government/publications/spatial-planning-for-health-evidence-review>

²³ For full details see <http://fingertipsreports.phe.org.uk/health-profiles/2017/e07000090.pdf>

people to walk and cycle more and drive less, and thereby produce less air pollution than those living in car dominated environments.

E1 | Health and Wellbeing

Planning permission will be granted for development proposals which:

- a. Promote and facilitate an inclusive community through the maintenance or enhancement of the Borough's local built and natural environment to create a sense of place and community belonging;
- b. Promote and facilitate active and healthy lifestyles through good urban design and easy access to local services, facilities and our green and blue environment;
- c. Promote and facilitate informal play, social interaction and active travel (walking and cycling) through the design and layout of the development, provision of high quality footpaths, cycle paths, seating and signage;
- d. Maximise opportunities for increasing walking and cycling for all types of trips, creating and improving linkages within the Borough, particularly along stream corridors, along the coast and into the countryside;
- e. Provides new or enhanced public realm which promotes active travel, provides high quality surface treatments, landscaping, signage and street furniture including seating and is accessible to all;
- f. Retain open spaces, including children's play spaces, which are valued by local communities unless alternative provision is made available of equivalent or greater community benefit in terms of quality, quantity and accessibility in line with Policy E2. In particular it is important to protect and enhance the following strategic open spaces which serve as destination facilities:
 - i. Emsworth Recreation Ground
 - ii. Havant Park
 - iii. Hayling Park
 - iv. Hayling Beach
 - v. Staunton Country Park
 - vi. Waterlooville Recreation Ground (Jubilee Park)
 - vii. Purbrook Heath
- g. Create, where necessary, new open spaces in line with Policy E2 which are located within housing developments, that are safe and accessible for children to play (informal and formal), contribute to the Borough's green infrastructure, and provide opportunities for growing food and socialising.

How the policy works

- 5.10 The health needs of the Borough can be split into two broad categories: the needs associated with public health and the needs associated with clinical health. The clinical health needs of the Borough are addressed separately through the Council's Infrastructure Delivery Plan and Policy IN1. Clinical health focuses on the provision of facilities and services including GPs, health centres, ambulance services and hospital provision. This policy, however, focuses on public health and how the planning system can help promote public health and enable people to live a healthy lifestyle.

- 5.11 Development should promote and facilitate active and healthy lifestyles through the pattern of development, good urban design and good access to local services and facilities. This is largely through facilitating active travel which provides opportunities for reducing exposure to air quality pollution at the same time. Air quality, and specifically air pollution is considered by Policy E20.
- 5.12 Active travel (walking and cycling) should be prioritised over other modes of transport as it provides the greatest opportunity for people to be physically active in their day to day lives. The distance to facilities as well as a route's quality and security all influence how likely people are to choose to walk or cycle. Walking and cycling routes must be safe, well lit, overlooked and welcoming. Developments must be laid out to promote walkable communities and link up to existing pathways and cycle routes wherever possible.
- 5.13 Open space is vitally important for healthy communities. Access to good-quality open space promotes physical activity, positive mental wellbeing and healthy childhood development. The Borough's urbanised character means that open spaces are highly valued and represent a finite resource that should be protected and enhanced. The seven open spaces identified in Policy E1 represent strategic or 'destination' open spaces where people are likely to travel further in order to access them.
- 5.14 New open spaces should be provided alongside residential development of over 50 dwellings in line with Policy E2 (Green Infrastructure). Formal children's play space may not always be appropriate but spaces could include opportunities for informal play. This could include natural features such as earth mounds, trees or streams, or they may be artworks such as interactive sculptures or paint on the path's surface.
- 5.15 Development should contribute to building healthy communities through the creation of an inclusive built and natural environment. Inclusive design means providing for all people regardless of age or ability. Healthy communities are ones which meet the needs of children and young people to develop, as well as being adaptable to the needs of an increasingly elderly population and those with dementia and other sensory or mobility impairments. The Council will work with Hampshire County Council as Public Health Authority to improve the design of the built environment for the elderly.
- 5.16 Health and wellbeing is not a standalone policy, it is influenced by a number of themes, including transport, open space, housing, employment and environmental quality. Therefore this policy should be read alongside all the other policies in this plan.

APPENDIX C

HAVANT BOROUGH COUNCIL

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APPEAL BY Mr & Mrs P A Munday AGAINST REFUSAL of Removal of Condition 3 of Planning Permission APP/17/00634. AT Fiscal House, 2 Havant Road, Emsworth, PO10 7JE

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SUGGESTED CONDITIONS

If the Inspector is minded to grant planning permission for the development, then the LPA would suggest the following condition:

- 1 The development must be begun not later than three years beginning with the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.